

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-3726

RECEIVED
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SC Court of Appeals

Raquel Martinez,

Respondent,

v.

Spartanburg County and S.C. Association
of Counties Self-Insurance Fund,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI

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INTRODUCTION

“Justice delayed is justice denied.” – William E. Gladstone (1868).¹ This workers’ compensation claim arises from an incident that occurred on April 4, 2005, over fourteen years ago.² Respondent Raquel Martinez (“Martinez”), who was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff’s Department at the time, alleges she suffered a mental injury as a result of investigating an accident in which a Greenville County Sheriff’s Deputy had accidentally backed over and killed his two-year-old daughter. This case has been heard by *six* different Commissioners of the South Carolina Workers’ Compensation Commission (“the Commission”). All six Commissioners have determined the claim is not compensable under the South Carolina Workers’ Compensation Act because Martinez’s investigation of the accident on April 4, 2005 (1) was not an unusual or extraordinary condition of her employment and (2) was not the proximate cause of her mental condition.

This case has been appealed to the circuit court on three separate occasions,³ and on each appeal to the circuit court, the case has been assigned to Judge Mark J. Hayes, II, who has heard oral arguments five different times. Despite the unanimous opinions of the Commissioners who have heard the case, following each appeal to the circuit court, Judge Hayes has issued Orders reversing and remanding the case to the Commission. His latest Order, dated July 15, 2019, threatens criminal and civil contempt proceedings against members of the Commission.

¹ Fred R. Shapiro, *You Can Quote Them*, Yale Alumni Magazine, May-June 2010.

² At the time of the accident on April 4, 2005, President George W. Bush was less than 3 months into his second term as President; Apple, Inc. was more than 2 years away from releasing the first iPhone; Pluto was still a planet; and the South Carolina Supreme Court was comprised of five different Justices [The current longest serving Justice on this Court (Chief Justice Beatty) was still nearly 2 years away from being elected to serve as an Associate Justice on the South Carolina Supreme Court.]

³ Since the alleged date of injury was prior to the July 1, 2007 amendment of S.C. Code Ann. § 42-17-60, an appeal from the Commission was required to first be made to the circuit court.

This case has now been appealed to the Court of Appeals on three separate occasions.⁴ Notably, in 2011, the Court of Appeals issued a decision reversing the first order of Judge Hayes and holding that substantial evidence supported the Commission’s finding that Martinez did not suffer an “unusual or extraordinary” condition of her employment.⁵ Following the Court of Appeals’ decision, Martinez sought review by this Court, which granted certiorari and heard oral arguments on October 15, 2013. On January 8, 2014, this Court vacated the Court of Appeals’ opinion and remanded the case back to the Commission on the grounds that the circuit court’s order was not immediately appealable pursuant to its prior decision in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013).⁶ Since then, this case has been assigned to *legal purgatory*, seemingly without escape from endless appeals and remands.

JURISDICTION

Pursuant to S.C. Const. Art. V, Section 5 and S.C. Code Ann. Section 14-3-310 (1976), Petitioners, Spartanburg County and the South Carolina Association of Counties Self-Insured Fund, petition this Court to issue a Writ of Certiorari to review the decision of Circuit Court Judge J. Mark Hayes, II in the workers’ compensation case of *Raquel Martinez v. Spartanburg County, Employer, and South Carolina Association of Counties Self-Insurance Fund, Carrier*, Circuit Court Case No. 2017-CP-42-3726, SCWCC File No. 0515098.

⁴ Petitioners most recently filed a Notice of Appeal with the South Carolina Court of Appeals on August 12, 2019.

⁵ Martinez v. Spartanburg County, 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014)

⁶ Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014).

COMPLAINT

Petitioners respectfully assert that Judge Hayes erred in each of his prior Orders⁷ by: (a) reversing the three previous Decisions and Orders of South Carolina Workers' Compensation Commission's Appellate Panel ("the Appellate Panel"), which all held Martinez did not sustain a compensable injury by accident arising out of and in the course of her employment on April 4, 2005; (b) remanding the case back to the Appellate Panel on three separate occasions; (c) reversing the Appellate Panel's specific findings of fact and conclusions of law in each of its prior Decisions and Orders regarding compensability and Martinez's relationship with Officer Johnson; (d) instructing the Appellate Panel to delete its findings of fact regarding Martinez's relationship with Officer Johnson and to make a specific findings that Martinez had a "law enforcement relationship with Officer Johnson"; (e) reversing the Appellate Panel's specific findings of fact and conclusions of law in each of its prior Decisions and Orders regarding causation of Martinez's mental condition; (f) holding that he established causation as a matter of law in his February 25, 2009 Order; (g) instructing the Appellate Panel to delete its specific findings of fact and rulings of law regarding causation and to substitute a ruling that the investigation performed by Martinez on April 4, 2005 caused her mental injury; and (h) threatening the Appellate Panel in his Amended Order, filed July 15, 2019, with the use of his "powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning" for his perceived failure by the Appellate Panel to conform with his Orders.

⁷ Judges Hayes has issued six (6) separate Orders in this case: Order, filed February 25, 2009; Order, filed December 3, 2015; Order Denying Motion to Alter or Amend Judgment, filed May 2, 2016; Order, filed October 3, 2018; and Order Denying Rule 59(e) Motion to Alter or Amend, filed July 15, 2019; and Amended Order, filed July 15, 2019. Petitioners raise issue with all six of Judge Hayes's prior Orders. While Petitioners contend Judge Hayes has erred in each of his six Orders, Petitioners will focus this Petition on three primary Orders: the Order of February 25, 2009; the Order of October 3, 2018; and the Amended Order of July 15, 2019.

Specifically, Petitioners believe Judge Hayes exceeded the statutory authority granted by the legislature, his scope of review under Section 1-23-380 of the Administrative Procedures Act (“APA”)⁸, and his appellate jurisdiction, and thus, violated Article V, Section 11 of the South Carolina Constitution and Petitioner’s rights under Article I, Section 3 and Section 22 of the South Carolina Constitution, in his prior Orders by: (a) reversing each of the Appellate Panel’s Decisions and Orders; (b) reversing the Appellate Panel’s detailed findings of fact regarding compensability, the relationship between Martinez and Office Johnson, and causation of Martinez’s mental condition; (c) instructing the Appellate Panel delete specific findings of fact, (d) ordering the Appellate Panel to make certain findings of fact; (e) holding that he established causation of Martinez’s mental condition as a matter of law; (f) making determinations regarding the credibility of the witnesses; and (g) threatening the Appellate Panel with his “powers” to punish for civil or criminal contempt and report for judicial or professional sanctioning.

Finally, Petitioners acknowledge this Court’s decision in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), which defined “final judgment” under Section 1-23-390 of the APA⁹ and held a circuit court order remanding a matter to the Commission for further proceedings does not constitute a final judgment as required Section 1-23-390, and was thus, not immediately appealable. However, Petitioners assert Bone’s interpretation and application of Section 1-23-390 violates the due process and equal protection rights of workers’ compensation defendants. (*See* S.C. Const. art. I, §3 & §22). Alternatively, assuming arguendo that Bone’s interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners’ due process and equal protection rights. The decision in Bone, and its

⁸ S.C. Code Ann. § 1-23-380 (1977)

⁹ S.C. Code Ann. § 1-23-390 (Supp. 2012)

application in this case, has locked this case into a continuous cycle of remands, prevented Petitioners - as well as Respondent - from obtaining any type of finality, and spoiled any possible interest in judicial economy.

QUESTIONS PRESENTED

1. Did the Circuit Court exceed its scope of review under Section 1-23-380 in its Orders from February 25, 2009, December 3, 2015, October 3, 2018, and July 15, 2019?
2. Does the application of Section 1-23-390 to Petitioners as shown in Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), violate Petitioners' equal protection and due process rights?

STATEMENT OF THE CASE

Respondent Raquel Martinez (“Martinez”) was employed as a Master Deputy Forensic Investigator by the Spartanburg County Sheriff’s Department. On April 21, 2006, Martinez filed a Form 50 alleging that she had suffered a mental injury as a result of investigating an accident in which a Greenville County Deputy Sheriff had accidentally backed over and killed his two-year-old daughter. On May 12, 2006, Spartanburg County and its carrier, the South Carolina Association of Counties Self-Insurance Fund (collectively “Petitioners”) filed their Form 51 denying, inter alia, that Martinez suffered a compensable mental injury as a result of any unusual or extraordinary condition of employment.

A hearing was held before Commissioner G. Bryan Lyndon on September 6, 2006, in Spartanburg, South Carolina. At the hearing, Martinez contended that while performing an investigation on April 4, 2005, as part of her duties with the Spartanburg County Sheriff’s Department, she encountered an unusual and extraordinary condition of employment, which subsequently led to her mental breakdown and hospitalization. Martinez alleged she was permanently and totally disabled and requested a lump sum payment of the award. Petitioners contended that Martinez did not suffer a compensable mental injury as a result of an unusual or extraordinary condition of her employment. Petitioners asserted that Martinez was employed as a forensic investigator, that it was her job to investigate homicide and death cases, and that she was performing her regular job when she investigated the child’s accidental death on April 4, 2005.

On November 20, 2006, Commissioner Lyndon issued his Decision and Order finding, inter alia, that the investigation of the accident on April 4, 2005 was not an unusual or extraordinary condition of employment and not the proximate cause of Martinez’s mental condition.

Within the statutory period, counsel for Martinez filed a Form 30, Request for Commission Review, setting forth grounds for review. Oral arguments were presented before an Appellate Panel on April 23, 2007, and on May 22, 2007, the Appellate Panel issued its Order unanimously affirming the Single Commissioner's Order in its entirety.

Thereafter, Martinez filed an appeal with the Spartanburg County Circuit Court. On February 25, 2009, Judge J. Mark Hayes, II, issued an Order holding that the Appellate Panel's Order lacked sufficient detail to enable the Court to determine whether those findings were supported by substantial evidence. (Order, dated 2/25/2009, p. 3-4). In his Order, Judge Hayes specifically stated that "this Court is left to speculate if the proper analysis was applied by the Commission and whether the factual conclusions upon which the law was applied had a substantial basis in the record." *Id.* at 9-10. As such, Judge Hayes reversed the Appellate Panel's Order and remanded the case back to the Commission for additional findings of fact. *Id.* at 19.

Petitioners timely filed their Notice of Appeal with the South Carolina Court of Appeals on March 16, 2009. On June 15, 2011, the Court of Appeals filed its Order reversing the decision of the Circuit Court.¹⁰ Judge Williams, writing for the majority, concluded that the Appellate Panel's Order was sufficiently detailed to enable appellate review and that the record contained substantial evidence to support the Commission's decision that Martinez did not suffer an unusual or extraordinary condition of her particular employment on April 4, 2005. Because the Court of Appeals concluded that there was substantial evidence that Martinez did not suffer an unusual or extraordinary condition in her particular employment, the majority did not address the issue of

¹⁰ *Martinez v. Spartanburg County*, 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014).

“proximate cause.”¹¹ Martinez timely filed a Petition for Rehearing, which was denied by the Court of Appeals on October 6, 2011.

On November 2, 2011, Martinez filed a Petition for Writ of Certiorari to the South Carolina Supreme Court, and the Petition was granted on February 7, 2013. The Supreme Court heard oral arguments on October 15, 2013. On January 8, 2014, the Supreme Court filed its decision and held that pursuant to Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), the circuit court’s order was not a final judgment and therefore was not appealable. Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014). As such, the Supreme Court vacated the Court of Appeals’ Order and remanded the case to the Commission for further proceedings. Id.

Pursuant to the Commission’s Administrative Order, filed August 15, 2014, the case was remanded to an Appellate Panel to take such action and enter an Order consistent with this Court’s directive. Oral arguments were held before an Appellate Panel on December 15, 2014, and on February 24, 2015, the Appellate Panel issued its Decision and Order and noted:

Because the Circuit Court found that the Commission’s Order lacked an “explicit statement of facts...sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence,” the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court’s consideration.

(SCWCC Decision & Order, dated 2/24/2015, p. 5). The Appellate Panel again denied Martinez’s claim. The Appellate Panel concluded Martinez failed to prove (1) that the work conditions on April 4, 2005 were unusual or extraordinary in comparison to her normal conditions of employment and (2) that her mental health condition was proximately caused by the work incident

¹¹ In a separate opinion, Chief Judge Few concurred with the majority’s holding that there was substantial evidence Martinez did not suffer an unusual or extraordinary condition in her particular employment, but he also opined that “the commission’s determination that the claimant failed to prove proximate cause is supported by substantial evidence.” Id. at 239-240, 715 S.E.2d 347-348.

on April 4, 2005. Id. at 45-46. In support of its decision, the Appellate Panel issued ninety-nine detailed Findings of Fact. See Id. at 6-45.

Subsequently, on March 11, 2015, Martinez filed an appeal to the Spartanburg County Circuit Court. The case was again assigned to Judge J. Mark Hayes, II. On December 3, 2015, Judge Hayes entered an Order reversing the Appellate Panel and remanding the matter to the Commission. (Order dated 12/3/2015, p. 27). Judge Hayes ruled that *he had* established causation of the mental health condition as a matter of law in his previous Order and directed the Commission to find the same. Id. Petitioners filed their Motion to Alter or Amend a Judgment pursuant to Rule 59(e), S.C.R.C.P. on December 11, 2015. Petitioners also filed a Memorandum in Support of their Rule 59(e) Motion raising multiple exceptions, including that the Circuit Court exceeded its scope of review under Section 1-23-380. On May 2, 2016, the Circuit Court issued an Order denying Appellants' Motion.

On May 18, 2016, Petitioners filed their Notice of Appeal with the South Carolina Court of Appeals. On May 20, 2016, Martinez filed a Motion to Dismiss contending the Circuit Court's Order was interlocutory and not immediately appealable. On May 31, 2016, Petitioners filed a Return to the Motion to Dismiss. On July 21, 2016, arguing, inter alia, that the application of Bone v. U.S. Food Service, 404 S.C. 67, 744 S.E.2d 552 (2013), to this case violated Petitioners' equal protection and due process rights and that the issues of appellate review in this case were distinguishable from the issues in Bone. Without specifically addressing the Petitioners' constitutional arguments, the Court of Appeals issued an Order on July 21, 2016 granting Martinez's Motion to Dismiss, and the case was subsequently remitted to the Commission.¹²

¹² Petitioners filed a Petition for Writ of Certiorari with the Supreme Court on August 10, 2016, but the Petition was withdrawn and dismissed by the Supreme Court on August 15, 2016.

On September 19, 2016, the Commissioner's Chairman issued an Order assigning the case to the Appellate Panel. Counsel for Martinez sent a letter to the Chairman on October 31, 2016, requesting oral arguments regarding the remand issues. On December 15, 2016, the Appellate Panel responded with a letter denying Martinez's request for oral arguments and noting that the Circuit Court did not order the Commission to seek additional arguments or evidence from the parties. The Appellate Panel further stated it was continuing to meticulously review the extensive record and the Orders of the Circuit Court.

After considering the issues, the Appellate Panel filed its third Decision and Order in this case on August 22, 2017.¹³ The Appellate Panel specifically noted the instructions from Judge Hayes's December 3, 2015 Order, and the Appellate Panel stated:

In light of these instructions, and after carefully reconsidering and reviewing the whole record, including but not limited to the testimony of the only witnesses who testified at the Hearing, and cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order of February 24, 2015. Because the Circuit Court found that the original Full Commission Order was deficient and not sufficiently detailed in its findings to allow appellate review, the Appellate Panel has complied with the Court's directive. Therefore, based on the entire record, and specifically including the testimony of the witnesses who testified at the Hearing, we make, based on the substantial evidence identified herein, the following findings of fact with our corrections and clarifications.

(SCWCC Decision & Order, dated 8/22/2017, p. 3). The Appellate Panel then issued ninety-nine findings of fact and again concluded that Martinez failed to prove that she encountered unusual or extraordinary work conditions in her employment with the Spartanburg County Sheriff's Department on April 4, 2005, as compared to her normal conditions of employment. *Id.* at 3-30.

¹³ The Appellate Panel initially issued a Decision & Order on August 4, 2017; however, a page was inadvertently excluded when it was served on the parties. As a result, the Appellate Panel vacated the August 4, 2017 Order and issued an Amended Decision & Order, dated August 22, 2017.

The Appellate Panel specifically found that Martinez's relationship with the father of the child-victim (whether by virtue that the father was a fellow law enforcement officer or otherwise) was insufficient to transform the condition of Martinez's employment on April 4, 2005 into the extraordinary and unusual. Id. at 8-10. In addition, the Appellate Panel found that Martinez failed to prove that the accident investigation on April 4, 2005 proximately caused her mental breakdown, and that her breakdown was proximately caused by multiple factors, including her "cousin's" death, the taking of Xanax followed by an abrupt cessation, her "overtaking" of Lortab, and her myriad of health issues. Id. at 31.

On August 29, 2017, Martinez filed a Motion for Rehearing with the Appellate Panel. The Commission issued an Order denying the Motion on September 18, 2017. Martinez then filed a Notice of Appeal and a Petition for Judicial Review with the Spartanburg County Circuit Court on October 12, 2017. For a third time, the case was assigned to Judge J. Mark Hayes, II, who heard the matter on March 12, 2018.

On October 3, 2018, Judge Hayes entered an Order reversing the Appellate Panel's August 22, 2017 Order and remanding the matter back to the Commission. (Order, dated 10/3/2018, pp. 9-10). Judge Hayes ruled that he had established causation of the mental health condition as a matter of law in his previous Order and directed the Commission to find the same. Id. at 6 & 9. He also ordered the Commission to find whether the horrific death of an infant run over by her police officer father with whom the Petitioner had a law enforcement relationship made the crime scene investigation unusual and extraordinary. Id. at 9-10.

Petitioners filed a Motion to Alter or Amend Judgment Pursuant to S.C.R.C.P. 59(e) with the Circuit Court on October 12, 2017, and a hearing on the Motion was held on December 20, 2018. On July 15, 2019, Judge Hayes issued an Order denying Petitioner's Motion with the

exception of two grounds.¹⁴ That same day, Judge Hayes filed his Amended Order again reversing the Appellate Panel's Order, ruling that he had established causation of the mental health condition as a matter of law in his previous Order, and directing the Commission to find the same. (Amended Order, dated 7/15/2019, pp. 6-7, 9). He also ordered the Commission to find whether the horrific death of an infant run over by her police officer father with whom the Petitioner had a law enforcement relationship made the crime scene investigation unusual and extraordinary. *Id.* at 10. Judge Hayes further admonished the Appellate Panel against failing "to follow the law and comply with [his] Order," and he threatened the Appellate Panel with the use of his "powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning" for the perceived failure by the Appellate Panel to conform with his Orders. *Id.* at 8.

Petitioners filed a Notice of Appeal with the Court of Appeals on August 12, 2019.

¹⁴ The two grounds from Petitioners Motion to Alter or Amend Judgment that the Circuit Court granted were:

8. The Circuit Court erred in holding that Captain Denton and [Martinez] were the only witnesses who testified at the hearing, the error being that Ramon Martinez (Martinez's father) and Caridad Martinez (Martinez's mother) also testified at the hearing.

9. The Circuit Court erred by finding Captain Denton and [Martinez] were "credible," the errors being that (a) this finding exceeds the Circuit Court's scope of review under Section 1-23-380, S.C. Code Ann. (1976) and (b) the determination of witness credibility is strictly reserved to the Commission. Brown v. Peoplease Corp., 402 S.C. 476, 741 S.E.2d 761 (Ct. App. 2013); O'Banner v. Westinghouse Electric Corp., 319 S.C. 24, 459 S.E.2d 324 (Ct. App. 1995)

ARGUMENTS

I.

THE CIRCUIT COURT EXCEEDED ITS SCOPE OF REVIEW UNDER SECTION 1-23-380 IN ITS ORDERS FROM FEBRUARY 25, 2009; DECEMBER 3, 2015; AND JULY 15, 2019.

The South Carolina Administrative Procedures Act (“APA”) establishes the standard for judicial review of decisions of the workers’ compensation commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In workers’ compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The final determination of witness credibility and the weight to be accorded evidence is reserved to the Appellate Panel. Shealy v. Aiken County, 341 S.C. 448, 535 S.E.2d 438 (2000).

The “substantial evidence” rule of the APA governs the standard of appellate review in a workers’ compensation case. Frame v. Resort Servs., Inc., 357 S.C. 520, 527, 593 S.E.2d 491, 494 (Ct. App. 2004). Pursuant to the APA, the Circuit Court’s review is limited to deciding whether the appellate panel’s decision is unsupported by substantial evidence or is controlled by some error of law. *See* Grant v. Grant Textiles, 361 S.C. 188, 191, 603 S.E.2d 858, 859 (Ct. App. 2004) (“A reviewing court will not overturn a decision by the workers’ compensation commission unless the determination is unsupported by substantial evidence or is affected by an error of law.”); *See also* Lyles v. Quantum Chem. Co. (Emery), 315 S.C. 440, 434 S.E.2d 292 (Ct. App. 1993) (noting that in reviewing decision of workers’ compensation commission, the Court of Appeals will not set aside the Commission’s findings unless they are not supported by substantial evidence or they are controlled by error of law).

A. The Circuit Court's February 25, 2009 Order.

In his first Order, filed February 25, 2009, Judge Hayes held that the Commission's finding that Martinez failed to prove she encountered an unusual or extraordinary condition in her employment on April 4, 2005 lacked sufficient detail to enable the Court to determine (1) whether its findings were supported by substantial evidence and (2) whether the Appellate Panel applied the proper analysis for determining compensability of her mental injury. As such, Judge Hayes reversed the Commission's finding regarding compensability and remanded the case back to the Commission for further review consistent with his Order.

Petitioners contend Judge's Hayes exceeded his scope of review in his February 25, 2009 Order because he improperly substituted his own opinion and view of the evidence for that of the Commission and essentially re-wrote the Commission's findings of fact. In Footnote 3 of the Order, Judge Hayes improperly set out his own rendition of the facts. Judge Hayes never discussed or examined any of the Commission's findings of facts under the substantial evidence rule. Rather, Judge Hayes engaged in re-weighing the evidence and making findings of fact, which was beyond his scope of review. *See Shealy v. Aiken County*, 341 S.C. 448, 535 S.E.2d 438 (2000).

With regard to the Commission's finding that Martinez failed to prove that the accident investigation on April 4, 2005 was the proximate cause of her mental breakdown, Judge Hayes initially declared that the Commission's finding on causation was insufficient for judicial review under S.C. Code Ann. Section 1-23-350. (*See Order*, dated 2/25/2009, pp.8-10). He specifically stated:

Here, even though the orders from the Commission give a summary of some of the testimony presented during the hearing, **no basis for the Findings of Facts 14, 15, and 16 is provided, and thus, *this Court is left to speculate if the proper analysis was applied by the***

Commission and whether the factual conclusions upon which the law was applied has a substantial basis in the record.¹⁵

Id. at 9-10 (emphasis added). Yet, despite his clear assertion that the Commission's finding regarding causation was not sufficient for judicial review, he then went on to perform a judicial review of the same. Judge Hayes stated:

Again, *assuming* the Order is sufficient for judicial review... the Commission's finding is clearly erroneous, applying the substantial evidence standard of review, because the only conclusion that can be drawn from the medical information is that there exists the necessary showing of proximate cause to link the accident investigation of her friend's child's death and her mental breakdown."

Id. at 14-15 (emphasis added). He added that "The Commission's Order does not suggest, implicitly or expressly, that the proximate cause element of the claim fails because of some intervening or superseding act." Id. p. 15. After claiming that "the Commission's Order requires this Court to *speculate* as to how, factually, [Martinez] did not meet her 'burden of proof,'" Judge Hayes concluded that "the only causation conclusion that can be drawn from the record below is that [Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation." Id. at 17.

By making this conclusion regarding causation in his February 25, 2009 Order, Judge Hayes made multiple errors of law. **First, since Judge Hayes initially determined the Commission's finding regarding causation was insufficient for judicial review, it was an error for him to then perform a judicial review.** If the Appellate Panel's finding regarding causation was insufficient, he should have remanded the case back to the Appellate Panel for

¹⁵ The Single Commissioner's Finding of Fact #16, which the Appellate Panel affirmed and adopted, stated "Claimant failed to prove that the accident investigation on April 4, 2005 was the proximate cause of her mental breakdown, said finding being based on all the evidence in the record." (Single Commissioner Order, dated 11/20/2016, p. 22; *See also* Appellate Panel Order, dated 5/22/2007, pp. 2-3)

further findings of fact regarding causation. See Turner v. Campbell Soup Co., 252 S.C. 446, 166 S.E.2d 817 (1969) (“Remand is proper where the Commission has failed to make essential findings of fact, or the findings made are so indefinite or general as to afford no reasonable basis upon which the appellate court can determine whether the findings are supported by the evidence and whether the law has been properly applied to those findings. To hold otherwise in such cases would ... require the appellate court to make the omitted findings of fact which the statute forbids.”).

Additionally, in reaching his conclusion regarding causation of Martinez’s mental condition, Judge Hayes exceeded his scope of review by determining the weight that should be given to certain medical evidence. The weight to be accorded evidence is reserved to the Appellate Panel. See Shealy, 341 S.C. 448, 535 S.E.2d 438 (2000). It is obviously apparent from his Order that Judge Hayes did not consider any of the initial medical records which show:

- On April 7, 2005, *three days after the accident investigation*, Martinez saw her family physician, John R. Wieder, M.D., regarding her high blood pressure and headaches. (APA #1, p. 2). Martinez also reported that she was having stress at work, specifically mentioning having to work alternating shifts. Id. **However, there was no mention in his report of the accident investigation on April 4, 2005. Id.**
- On April 18, 2005, *two weeks after the investigation in question*, Martinez’s “cousin”¹⁶ passed away from AIDS. (Tr. 25).
- The first medical attention that Martinez received for emotional stress was from her family doctor on April 19, 2005, *the day after her cousin died*. In his report from that day, Dr. Wieder specifically noted:

She is very upset and crying. A very close friend and relative, a cousin with whom she was very close over the years, passed away. She is very upset about it. They were very close ever since they were little kids. She is very upset that she did not get to the hospital in time to say goodbye before he passed away.

- As a result of her stress on April 19, 2005, Dr. Wieder took Martinez out of work for a few days because “she is going to be helping with the funeral arrangements, and will want to attend the funeral.” Id. Dr. Wieder also placed Martinez on Xanax “to help her

¹⁶ The “cousin” – actually Martinez’s ex-husband’s cousin – is described by Martinez herself in the medical records as her “cousin,” “brother,” “best friend,” and “very close friend and relative.”

get through this very trying time.” (APA #1, p. 4). **There was no mention of the April 4, 2005 accident investigation in this report.**

- On April 24, 2005, Martinez was transported via EMS to Spartanburg Regional Medical Center (“SRMC”) after having a syncopal episode, and it was noted that she was unconscious for approximately 25 minutes. (APA #2, p. 13). Martinez reported a history of “heart murmur, vasopressor syncope, and atrial tachycardia. *Id.* **Notably, she also reported “increased stress this week due to death in family.” *Id.* at 17. There was no mention of the April 4, 2005 accident investigation in the medical records from SRMC, dated April 24, 2005.**
- The following day, April 25, 2005, Martinez returned to Dr. Wieder with complaints of dizziness, headache, vomiting, and diarrhea, and Dr. Wieder sent Martinez to Mary Black Memorial Hospital. *Id.* (APA #1, p. 4). **There is no mention of the April 4, 2005 accident investigation in Dr. Wieder’s April 25, 2005 report.**
- From April 25, 2005 through April 27, 2005, Martinez was hospitalized on an inpatient basis at Mary Black Hospital. (APA #3, pp. 64-103). **There is no reference to the April 4, 2005 investigation in these hospital records. *Id.*** Instead, the discharge instructions state that she was provided a “referral to mental health therapy *for grieving.*”¹⁷ *Id.* at 81 (emphasis added).
- Martinez returned to Dr. Wieder on ten separate occasions between April 29, 2005 and June 2, 2005 (APA #1, pp. 7-10). **Martinez never mentioned in any of these office visits that she had any stress related to the accident investigation of April 4, 2005.** (APA #1, pp. 7-10). Rather, these records indicate that any stress she was having during this time was due to being out of work for her unrelated health conditions.
- At some point around the first week of August 2005, Martinez abruptly stopped taking the Xanax, which had been prescribed for her after her cousin’s death. (*See* APA #2, p. 23; Tr. 49). On August 7, 2005, Martinez was transported by EMS to Spartanburg Regional Medical Center because of “patient behavior suggesting psychiatric problems.” (APA #7, p. 167). It was noted in the assessment that *the precipitating event* had been:

**My cousin died mid-April 2005 and I took Xanax for my nerves.
I stopped taking Xanax 1-2 weeks ago and became psychotic.**

(APA #8, p. 179)(emphasis added).

- Martinez was hospitalized on an inpatient basis at SRMC from August 7, 2005 through August 9, 2005. During this hospitalization, Martinez was examined by a psychiatrist, Dr. Chris Caston.¹⁸ (APA #2, pp. 23-25). Dr. Caston’s diagnosis was clinical

¹⁷ As the Appellate Panel found the grieving in this report refers to Claimant’s cousin.

¹⁸ In its subsequent Decisions and Orders, the Appellate Panel specifically found that it gave great weight to Dr. Caston’s medical reports. (*See* SCWCC Decisions & Orders, dated 2/24/2015 & 8/22/2017, Finding of Fact #44).

psychiatric disorders, Benzodiazepine withdrawal delirium, and anxiety disorder. Id. In his discharge note, Dr. Caston stated:

The patient is a 46 year old white female who has been admitted due to delirium thought to be related to Benzodiazepine withdrawal symptoms. The patient has not had Xanax in 3 to 5 days.

* * * * *

The patient had no previous history of psychiatric care. The patient apparently had recent problems with uncontrollable hypertension and also had *problems with anxiety, insomnia and depression related to the death of her best friend who apparently was a male cousin.*

(APA #2, p. 35)(emphasis added). **There is no mention of the April 4, 2005 accident investigation in the SRMC records from August 7, 2005 through August 9, 2005.**

- Martinez was treated at Carolina Center for Behavioral Health on an out-patient basis from August 10, 2005, through August 22, 2005 (APA #8, p. 262). Records describe the reason for the admission as follows:

The patient was admitted after being hospitalized briefly at SRMC. She ended up there after having a brief reaction, possibly psychotic in nature to abruptly stopping her Xanax. She started the Xanax 2mg a day six weeks ago **after suffering an acute anxiety reaction to the death of a relative.** She was vulnerable at the time due to stressors at work. She works as a police officer. **She feels she was in an emotionally vulnerable state when the relative died.¹⁹ This heightened her reaction to it. She was placed on Xanax.** She did reasonably well. She felt that she needed to get off the medication. She did so basically by stopping it.

(APA #4, p. 107)(emphasis added). Additionally, Martinez reported that the precipitating events to her mental breakdown were: **“My cousin died mid-April 05 and I took Xanax for my nerves. I stopped taking Xanax 1-2 weeks ago and became psychotic.”** (APA #8, p. 179)(emphasis added).

- The first mention of the April 4, 2005 accident investigation was not until August 10, 2005, *over four months after the accident investigation*, when a nurse at Carolina Center for Behavioral Health Martinez noted the following under the “Lost Something/Someone You Loved” portion of the initial assessment form: “brother [i.e.,

¹⁹ As the Appellate Panel specifically found in its subsequent Decisions & Orders, “This statement demonstrates that Claimant herself believes that the ‘final straw’ was the death of the cousin—not the toddler’s death.” (See SCWCC Decisions & Orders, dated 2/24/2015 & 8/22/2017, Finding of Fact #54).

cousin] – *also* saw 2 yr old child of friend & co-worker on case she worked in job as forensic police officer.” *Id.* at 178 (emphasis added).²⁰

- Martinez did not mention the child’s death until *after* she realized she would not be able to return to her job as a law enforcement officer due to her psychiatric admission. Records from SRMC, dated August 8, 2005 – *two days before the first mention of the child’s death* – note that Martinez was worried about still having a job and that she “**believes that she’ll be fired because of her [psych] admission.**” (APA #2, pp. 52 & 56)(emphasis added). When she presented to Carolinas Center for Behavior Health on August 10, 2005, it was noted on the initial assessment form that she was “**applying for disability**” due to “**job concern.**” (APA #8, p. 177)(emphasis added). On August 12, 2005, Martinez reported that the Sheriff’s Department had “already secured her guns,” that she was “unable to return to work,” and that she would “have to go on disability or early retirement.” *Id.* at 193-194.

While Judge Hayes decided in his February 25, 2009 Order that “the only causation conclusion that can be drawn from the record below is that [Martinez] established her burden of proof that her mental injuries were proximately caused by the stress from the accident investigation,”²¹ this is simply erroneous based on the initial medical records, which make no mention of the April 4, 2005 investigation and which clearly show the proximate causes of Martinez’s mental breakdown were the death of her “cousin,” her taking of Xanax due to the death of her cousin, and her abrupt cessation of Xanax. Not only does this show that Judge Hayes failed to perform a proper judicial review (i.e., determine whether there was any competent evidence to support the Commission’s findings), but it also shows that he exceeded his authority by substituting his judgement for the judgement of the Commission as to the weight of the evidence and by making his own findings of fact.

Judge Hayes’s February 25, 2009 Order was in clear violation of his appellate authority and scope of review under Section 1-23-380. “The court may not substitute its judgment for the

²⁰ The fact that the child’s death is mentioned *after* the death of her cousin demonstrates which event Martinez considered to be more important.

²¹ Order, dated 2/25/2009, p. 17.

judgment of the agency as to the weight of the evidence on questions of fact.” S.C. Code Ann. §1-23-380(5).

B. The Circuit Court’s December 3, 2015 Order.

As outlined above, Judge Hayes’s first Order was reversed by the Court of Appeals, which held the Commission’s findings of fact were sufficient for judicial review and that substantial evidence supported the Commission’s findings that Martinez did not suffer an “unusual or extraordinary” condition of her particular employment.²² However, the Supreme Court subsequently vacated the Court of Appeals’ Order and remanded the case to the Commission on the grounds that the circuit court’s order was not a final judgment and therefore was not appealable pursuant to Bone.²³

On February 24, 2015, the Appellate Panel issued its Decision and Order and noted:

Because the Circuit Court found that the Commission’s Order lacked an “explicit statement of facts...sufficiently detailed to enable the reviewing Court to determine whether the findings are supported by the evidence,” the Commission withdraws its previous Findings of Fact and hereby substitutes the following Findings of Fact for the Court’s consideration.

(SCWCC Decision & Order, dated 2/24/15, p. 5). The Appellate Panel again concluded that (1) Martinez failed to prove she encountered unusual or extraordinary work conditions in her employment on April 4, 2005 as compared to her normal conditions of employment and (2) Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005. Id. at 45. In support of its decision denying compensability, the Appellate Panel made numerous findings of fact that showed Claimant was performing her ordinary job duties in an ordinary manner as a forensic investigator at the scene of the toddler’s death. While Martinez

²² Martinez v. Spartanburg Co., 394 S.C. 224, 715 S.E.2d 339 (Ct. App. 2011), *vacated*, 406 S.C. 532, 753 S.E.2d 436 (2014).

²³ Martinez v. Spartanburg County, 406 S.C. 532, 753 S.E.2d 436 (2014) (citing Bone, 404 S.C. 67, 744 S.E.2d 552 (2013)).

emphasized the “thin blue line” relationship and contended her relationship with Officer Johnson, a *former* officer with the Spartanburg County Sheriff’s Department, transformed her employment condition on the day of the investigation into the extraordinary and unusual, the Appellate Panel disagreed. The Appellate Panel found that “Claimant only knew the toddler’s father in a ‘law enforcement way’ as a fellow officer who formerly worked for [Spartanburg County]” and that her “relationship” with Officer Johnson “on the date of the toddler’s death was, at most, as an acquaintance (or loosely defined ‘friend’) of a fellow law enforcement officer.” Id. at 13 & 15. In support of its decision, the Appellate Panel found:

- Officer Johnson only worked for Spartanburg County for approximately one year, and during that time, Martinez and Officer Johnson were never partners and worked in different zones;
- Officer Johnson left the Spartanburg County Sheriff’s Office 2 to 3 ½ years prior to the toddler’s death;
- Martinez and Officer Johnson were not close friends;
- Martinez never socialized with Officer Johnson or been to his house prior to the date of the toddler’s death;
- Martinez did not talk to/console Officer Johnson when she arrived on scene on April 4, 2005;
- Martinez had never met Officer Johnson’s child, and there was no evidence that Martinez had ever seen a picture of his child at any point during the child’s life; and
- Martinez was not a friend of Officer Johnson’s wife, and Martinez could not recall ever meeting Officer Johnson’s wife.

Id. at 12-15. The Appellate Panel specifically found that Martinez’s “fellow law enforcement officer relationship” with Officer Johnson was insufficient to make the investigation in question unusual or extraordinary.²⁴ Id. at 13.

²⁴ The Appellate Panel noted in its findings of fact that “Although a friendship (something more abiding or meaningful than simply seeing/exchanging pleasantries with someone at work) or a present--or perhaps even former--law enforcement partnership might produce a different outcome with regard to compensability, those circumstances are not applicable in the case before us.” Id. at 12-14.

With regard to causation, the Appellate Panel again concluded that Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005 and that the proximate cause of her mental breakdown was multifactorial and included the death of her “cousin”, the taking of Xanax followed by abrupt cessation, her “overtaking” of Lortab, and her myriad of health issues. *Id.* at 45-46. In support of its decision regarding causation, the Appellate Panel issued over sixty detailed findings of fact. *Id.* at 15-44.

This case was again appealed to the Circuit Court and for a second time heard by Judge Hayes. On December 3, 2015, Judge Hayes issued his Order in this case, again reversing the Appellate Panel. Judge Hayes held that the Appellate Panel erred because it “did not include any of the quoted testimony supporting compensability” and “ignored the case law on compensability cited” in his previous Order. (Order, dated 12/3/2015, p. 15). However, the Appellate Panel specifically cited to three of the six cases Judge Hayes noted in his prior Order. Furthermore, in its discussion about mental injuries, the Appellate Panel cited the Supreme Court’s more recent decision in Bentley v. Spartanburg County²⁵, which was issued three years *after* Judge Hayes’s first Order. With regard to the testimony of the witnesses, the Appellate Panel clearly considered all the testimony and made several findings regarding the testimony of each or every witness who testified at the hearing. Judge Hayes’s decision to reverse because certain testimony was not quoted in the Appellate Panel’s Order is another example of him going beyond his scope of review and reweighing the evidence.

Importantly, Judge Hayes stated in his second Order, “The only witnesses who testified in this case were Deputy Martinez and Captain Denton, both of whom were law enforcement officers who were found to be credible.” (Order, dated 12/3/2015, p. 22). However, this was clearly

²⁵ 398 S.C. 418, 730 S.E.2d 296 (2012)

erroneous on two grounds. First, Martinez's father and mother also testified at the hearing before the single commissioner. Second, and most notably, the Appellate Panel did not find Martinez or Captain Denton credible as Judge Hayes asserted. Instead, the Appellate Panel found that credibility of Martinez's testimony was diminished by the fact that she attempted to downplay the effect of her "cousin's" death.²⁶ (*See* SCWCC Decision & Order, dated 2/24/2015, p. 41). The Appellate Panel further found Captain Denton had some interest in the compensability of Martinez's workers' compensation case because he had known Martinez through his sister for years before their law enforcement careers, he helped Martinez secure legal counsel for her workers' compensation claim, and Claimant described him in the medical records as part of her social support system and referred to him at the hearing as "Steve" until being asked by her attorney, "Who is Steve?" (*Id.* at p. 40). Judge Hayes's statement that Martinez and Captain Denton were both found to be credible was not only completely inaccurate, but also convincing proof that he exceeded his scope of review by making determinations on witness credibility. *See Shealy*, 341 S.C. 448, 535 S.E.2d 438 (2000).

Additionally, Judge Hayes determined that the Appellate Panel's "finding that Deputy Martinez did not have a law enforcement relationship with Officer Johnson is unsupported by the substantial evidence on the whole." (Order, dated 12/3/2015, p. 23). However, this is completely inaccurate as the Appellate Panel never found that Martinez and Officer Johnson did not have a law enforcement relationship. Instead, as previously outlined, the Appellate Panel made multiple findings regarding the nature of their relationship and specifically found that Martinez's "fellow law enforcement officer relationship" with Officer Johnson was insufficient to make the

²⁶ As previously outlined and discussed in the Petition, Martinez's "cousin" died two weeks after the investigation on April 4, 2005, and the medical records show that Martinez's psychological complaints were initially related to her "cousin's" death, not the toddler's death.

investigation in question unusual or extraordinary. Judge Hayes's decision to remand the case back to the Appellate Panel on an issue that Appellate Panel clearly addressed in its previous Order not only exceeded his scope of review, but also displays the results-oriented nature of his decisions and the unlawful efforts he has made to become the fact finder in this case.

Finally, in his December 3, 2015, Judge Hayes also reversed the Appellate Panel's new findings of fact regarding causation. *Id.* at 27. Judge Hayes held that the Appellate Panel did not have jurisdiction to reconsider the issue of causation because his previous Order established causation as a matter of law. *Id.* at 10. Judge Hayes remanded the case to Commission to enforce his "previous Order ruling that causation was established as a matter of law." *Id.* at 27. Petitioners contend that Judge Hayes's decision regarding causation in his December 3, 2015 was unlawful because (1) it was based on the improper judicial review he performed when issuing his original order on February 25, 2009 and (2) it was a continuation of his previous errors of improperly weighing of the evidence and making findings of fact.

C. The Circuit Court's July 15, 2019 Order.

After Petitioner's appeal to the Court of Appeals was dismissed, again pursuant to Bone, the case was remanded back to the Commission. On August 22, 2017, the Appellate Panel issued its third Decision and Order and specifically noted the instructions from Judge Hayes's December 3, 2015 Order:

In light of these instructions, and after carefully reconsidering and reviewing the whole record, including but not limited to the testimony of the only witnesses who testified at the Hearing, and cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order of February 24, 2015. Because the Circuit Court found that the original Full Commission Order was deficient and not sufficiently detailed in its findings to allow appellate review, the Appellate Panel has complied with the Court's directive. Therefore, based on the entire record, and specifically including the testimony of the witnesses who testified at the Hearing, we make, based on

the substantial evidence identified herein, the following findings of fact with our corrections and clarifications.

(SCWCC Decision & Order, dated 8/22/2017, p. 3). The Appellate Panel again concluded that (1) Martinez failed to prove she encountered unusual or extraordinary work conditions in her employment on April 4, 2005 as compared to her normal conditions of employment and (2) Martinez failed to prove her mental health condition was proximately caused by the work incident on April 4, 2005. Id.

On July 15, 2019, Judge Hayes issued his Amended Order asserting that the Appellate Panel's finding that Martinez had no law enforcement relationship with Officer Johnson must be reversed as unsupported by substantial evidence on the whole record and ordering that "the Commission on remand shall decide whether the tragic and horrific death of the 2 year old infant run over by her police officer father with whom [Martinez] had a law enforcement relationship made the crime scene investigation unusual and extraordinary." (Order, dated 7/15/2019, p. 10). In addition, Judge Hayes again ordered the Commission to delete all of its findings of fact regarding causation and to "substitute a ruling that the crime scene investigation performed by [Martinez] on April 4, 2005 caused [Martinez's] mental injury as a matter of law based on the unanimous opinions of the medical experts, including [Petitioner's] medical expert." Id. at 9.

Much like his second order, Petitioners contend that Judge Hayes's Order of July 15, 2019 was unlawful since it was based on the improper judicial review he performed when issuing his original order on February 25, 2009 and since it is a continuation of his improper weighing of the evidence and making findings of fact. Under the guise of stating that he has ruled on causation "as a matter of law" and instructing the Appellate Panel to *delete* its findings and substitute his ruling on causation, Judge Hayes is making his own findings of fact, which is clearly beyond his appellate review authority.

Judge Hayes has made it abundantly clear that, in his opinion, this case is compensable. On not one, not two, but now three separate occasions Judge Hayes has remanded the case to the Commission. Notably, in his most recent Order, filed July 15, 2019, Judge Hayes admonished the Appellate Panel against failing “to follow the law and comply with [his] Order,” and in what can only be viewed as an attempt to intimidate the Appellate Panel, Judge Hayes threatened the Appellate Panel with the use of his “powers... to punish for civil or criminal contempt...and to refer offending members of the Commission to the appropriate bodies for judicial or professional sanctioning” for the perceived failure by the Appellate Panel to conform with his Orders. Judge Hayes did not remand the claim for further proceedings, additional evidence, or even meaningful review. Instead, he has remanded the case to make a different ruling of law on the same facts that have been in evidence since a decision was first made by the Commission nearly thirteen years ago.

On its face, this posture and demand by Judge Hayes prejudicially precludes the Petitioners from any further meaningful re-review by the Appellate Panel. Given the threats from Judge Hayes, the Appellate Panel cannot be reasonably expected to render any decision contrary to Judge Hayes’s preordained and unlawful findings, despite its providence to do so. Judge Hayes’s declaration of criminal, civil, and professional peril against the individual members of the Appellate Panel if they fail to abrogate their statutory and ethical obligation to weigh the evidence and determine findings of fact, in favor of the Judge Hayes’s factual conclusions, has deprived the Petitioners of any reasonable opportunity for a fair review on remand. Threats coerce, and coercion compels.

Based on the foregoing, Petitioners assert that all three of Judge Hayes’s Orders reversing the Appellate Panel’s Decision and Orders violate Article V, Section 11 of the South Carolina

Constitution and Section 1-23-380 because Judge Hayes clearly exceeded his appellate jurisdiction and scope of review by reweighing the evidence, substituting his judgment for that of the Commission's, determine the credibility of witnesses, and making his own findings of fact.

II.

THE SUPREME COURT'S INTERPRETATION OF SECTION 1-23-390 IN BONE V. U.S. FOOD SERVICE, 404 S.C. 67, 744 S.E.2d 552 (2013) VIOLATES PETITIONER'S EQUAL PROTECTION AND DUE PROCESS RIGHTS.

A. The issues raised by Petitioners are issues of first impression for this Court.

In Bone, this Court held that an "order remanding the matter to the Commission for further proceedings does not constitute a final judgment as required by section 1-23-390 and, therefore, is not immediately appealable." 404 S.C. at 84, 744 S.E.2d at 562. While the Court in Bone addressed the applicability of the Administrative Procedures Act and interpreted the meaning of a "final judgment" as used in section 1-23-390, the Court did not consider the defendants' equal protection rights or their due process rights. As such, Petitioners believe the constitutional issues raised in the present case are issues of first impression for this Court.²⁷

B. Bone's application of Section 1-23-390 to Workers' Compensation Employers and Carriers violates their Equal Protection Right under the law.

Depending on the disposition of the issues by the Circuit Court, and Court of Appeals, Bone's application of Section 1-23-390 creates an impermissible distinction between claimants and defendants, which violates equal protection as provided by Article I, Section 3 of the South Carolina Constitution. First, equal protection is applicable in workers' compensation appellate proceedings. See Howard v. Owen Steel Co., 303 S.C. 304, 400 S.E.2d 149 (1991) (analyzing

²⁷ Assuming arguendo that Bone's interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners' due process and equal protection rights provided by Article I, Section 22 of the South Carolina Constitution.

appeals to the Full Commission under equal protection). Therefore, Petitioners' equal protection rights extend to the current proceeding.

The equal protection analysis has been set forth in multiple cases:

The equal protection clauses of our federal and state constitutions declare that no person shall be denied the equal protection of the laws. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3. Equal protection "requires that all persons be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting). "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013).

In this claim, Bone requires that opposing litigants in the *same* litigation receive disparate treatment in a workers' compensation appeal. Specifically, in cases in which compensability is disputed, such as the instant case, Bone would *allow* a claimant's appeal when compensability is denied by the Court, but would *deny* defendants an appeal when compensability is decided in the claimant's favor. This inequity is the logical progression of Bone's requirement that the "final judgment" required by Section 1-23-390 be a "final judgment disposing of the *entirety of the action*." Bone, 404 S.C. at 78, 744 S.E.2d at 559.

As contemplated by Bone, workers' compensation claims often require multiple hearings to determine issues and entitlement to certain benefits: compensability, temporary disability, permanent disability, and medical treatment. This Court has recognized that "workers' compensation benefits accrue along a time continuum." Curiel v. Env'tl. Mgmt. Services, 376 S.C. 23, 655 S.E.2d 482 (2007). Because of the nature of the benefits available, defining a final judgment as requiring the disposal of the whole action *impermissibly requires* the government to treat a defendant in the claim differently than a claimant. To illustrate, consider the following

table in which the defendants to a workers' compensation claim dispute compensability, but the claimant asserts entitlement to benefits.²⁸ Assume that there is an injury, but the defendants assert a legal defense, such as in the instant case²⁹:

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Defendants	Yes	Yes
Court of Appeals	Substantial Evidence/ Error of Law	Defendants	Yes	Yes

In the above example, where the defendants prevail at every level, the claimant has every chance to prove the claim, and then to have the claim reviewed by the next reviewing body for errors of law. No one would dispute that the fairness of the judicial review as set forth in the above table. However, consider the following table, in which the defendants initially prevail on their legal argument that the claim is not compensable, but the Circuit Court remands, and, in doing so, makes an error of law:

²⁸ The Tables illustrate the prior law, which applies in this case, that required an appeal from the Commission to be made first to the circuit court. Such appeals are now directed to the Court of Appeals for all injuries occurring on or after July 1, 2007. S.C. Code Ann. § 42-17-60 (Supp. 2012).

²⁹ Petitioners (1) deny Martinez's mental injury arose out of unusual or extraordinary conditions of her employment and (2) deny the investigation in question was the proximate cause of her mental injury.

Deciding Body	Standard of Review	Prevailing Party	All issues Decided	Can Aggrieved Party Appeal/ Petition for Review?
Single Commissioner	Fact Finder	Defendants	Yes	Yes
Full Commission	De Novo	Defendants	Yes	Yes
Circuit Court	Substantial Evidence/ Error of Law	Claimant	No	No
Court of Appeals	Substantial Evidence/ Error of Law			

Indeed, the second chart represents what happened in this case. Petitioners now assert that the Circuit Court, sitting as an appellate court, has made several errors of law. However, even if the Circuit Court has in fact made a clear error of law in Martinez's favor, because of the nature of the proceeding, Bone deprives Petitioners of a *reasonably timely* appeal. Timeliness of an appeal notwithstanding, when Petitioners are required to provide medical treatment and disability payments until all issues are finally decided by the fact finder, significant deprivation of property arguments arise. (*See Due Process Argument, infra.*) Therefore, Bone's interpretation of Section 1-23-390 essentially requires disparate treatment of litigants to the same workers' compensation claim.

This disparate treatment impermissibly infringes on a fundamental right guaranteed by the South Carolina Constitution: the right to access to the Courts. Article I, Section 9 of the South Carolina Constitution provides that "All courts shall be public, and every person shall have speedy

remedy therein for wrongs sustained.” In Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922), the Supreme Court recognized that the right to a speedy remedy includes the right of a speedy appeal.³⁰

The inequity of appealability in this case offends the constitutional guarantee in two ways. First, Article I, Section 9 guarantees the right to “every person.” Therefore, if the right to court access is guaranteed to every person, it is guaranteed to every person equally. The inequity of the availability of the appeal cannot stand. Second, because the speedy remedy requires a speedy appeal, the equity of the parties should require an appeal of equal speed for both parties. A claimant has access to an immediate appeal; however, should the current construction of Bone stand, then there is absolutely no speedy remedy or appeal for Petitioners in the instant case. Petitioners could be subject to provide disability benefits and medical treatment until the time of maximum medical improvement and a hearing before the Commission to determine all issues. Only at that time are Petitioners able to argue that the claim is not compensable for legal reasons that were readily available, and able to be litigated, prior to Petitioner’s provision of benefits.

Given that disparate treatment required by Bone implicates a constitutional right of access to the Courts, the appropriate equal protection analysis is strict scrutiny, and the Bone construction of Section 1-23-390 cannot stand. Legislation restricting or impairing a fundamental right “is subject to ‘strict scrutiny’ in determining its constitutionality.” In re Treatment and Care of Luckabaugh, 568 S.E.2d 338, 351 S.C. 122 (2002) (citing Hamilton v. Board of Trustees, 282 S.C. 519, 319 S.E.2d 717 (Ct. App. 1984)). “To survive strict scrutiny the Act must meet a compelling state interest and be narrowly tailored to effectuate that interest.” Id. In the instant case, there is no *compelling* state interest. Indeed, the primary discernable policy interest identified in Bone is

³⁰ “A lax observance of the very reasonable regulations prescribed by statute and the rules of court for perfecting appeals can but lead to unnecessary delay in the final disposition of causes in our courts, and thus work infringement of the constitutional guaranty (Section 15, Art I, Const. 1895) that ‘every person shall have speedy remedy therein for wrongs sustained.’” Rylee v. Marett, 121 S.C. 366, 113 S.E. 483 (1922).

“undue delay and waste of judicial resources caused by interlocutory appeals.” Conserving judicial resources cannot be compared to a *compelling* interest such as national security, protecting the lives of citizens from threats of harm, etc. This matter of preference is not “compelling” when balanced with defendants’ right to have the same appeal right as a claimant. A one-sided bar to appeal is insufficiently tailored to accomplish the stated goal of preventing “undue delay and waste of judicial resources” when there is no data or legislative history indicating that a contemporaneous appeal actually wastes judicial resources. Furthermore, as Justice Hearn specifically noted in her dissent in Bone, “the interests of judicial economy demand a rejection of the majority’s view. Taken to its logical conclusion, the majority’s position could have cases trapped in a cycle of remands for year.” Bone, 404 S.C. at 92, 744 S.E.2d at 566. That is exactly what has happened in the present case. Despite over fourteen years having passed since the date of the alleged accident, there is still no decision on compensability. Due to the application of Bone, this case has since been stuck in a perpetual cycle of remands, with no end in sight. Accordingly, Bone’s interpretation of Section 1-23-390, and its application to Petitioners, impermissibly burdens the constitutional right of Petitioners to a speedy appeal.

Moreover, even absent the protection in the South Carolina Constitution for access to the courts, any order denying the right to appeal and subjecting Petitioners to an undetermined period of benefit payments burdens a fundamental property right:

[I]t is arguable that this case should be analyzed under the strict scrutiny test as the reduction of a parent’s income clearly impinges upon a **fundamental property right**. See Wingfield v. S.C. Tax Comm’n, 147 S.C. 116, 152, 144 S.E. 846, 858 (1928) (“The court appreciates the earnest plea that every person is entitled to the enjoyment of life, liberty, and property, and to the equal protection of the laws guaranteed by the federal and state Constitutions, and will protect and safeguard these fundamental rights to the extent, if necessary, of declaring invalid any legislative enactment clearly shown to be in violation of them.”).

McLeod v. Starnes, 396 S.C. 647, 723 S.E.2d 198 (2012) (Beatty, J., dissenting) (emphasis added).

The application of Bone in the present case will clearly deprive Petitioners of a fundamental property right. Consider the following:

- Petitioners prevailed on compensability before the Commission, but the Commission's decision was reversed by the Circuit Court;
- Under Bone, Petitioners are without recourse for immediate appeal, and the case is remanded to the Commission, which will have little choice but to adopt the Circuit Court's improper findings of fact and award benefits to Martinez;
- Petitioners begin paying temporary total disability benefits at a compensation rate of \$462.92, and provide Martinez with psychiatric treatment.
- It takes 2.5 years and \$60,000 in medical care and prescription drugs costs to attain maximum medical improvement.
- Permanency is determined, and future medical is ordered.
- The case works its way to the Supreme Court, and shortly before oral argument, Petitioners pay the 500th week of disability, totaling \$231,460.00 (with medical treatment Appellants have now spent close to \$300,000.00).
- The Supreme Court then decides that Petitioners' legal case against compensability has merit and rule that the case is not compensable as a matter of law.

Assuming this case unfolds as above, Martinez will have received a benefit of nearly \$300,000, to which she was never entitled. That certainly implicates a significant property right, and, practically, there is no way for Petitioners to recover this money through the workers' compensation claim that gave rise to the requirement to pay it. Bone would reason that the Petitioners' \$300,000 loss is merely the price of using judicial resources wisely; however, that outcome is untenable.

Fundamental rights aside, Bone cannot pass a rational basis test. "To prevail under the rational basis standard, a movant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013). Petitioners assert that there is *no legitimate* purpose in providing vastly different appeal rights to

claimants and defendants in the *same* litigation. Other cases discussing rational basis review discuss issues such as insurance required to drive on public roadways,³¹ regulating relationships between physicians and physical therapists,³² and regulation of on-site alcohol sales and consumption on a commercial premises.³³ As a generalization, the legitimate purpose test broadly relates to the state's police power in protecting its citizens and promoting public order. Petitioners assert there is *no legitimate* interest in parties to the same litigation having different appeal rights, as the appeal rights between two parties have no discernable impact on the public as a whole.

Bone states that depriving defendants of an immediate right to appeal may improve judicial economy by reducing appeals in individual cases. However, this evidentiary basis for this assertion is far from clear. The defendants shoulder the *entire* burden of this scheme, and, in a case such as the present case, the state would essentially facilitate a transfer of assets from defendants to a claimant, without qualification of whether and how much this scheme truly impacts judicial economy. Furthermore, the Courts should not be in a position to limit appeals based on an *outcome* as they decide, as this necessarily brings into question the neutrality of the Court in a manner that is not proper. Accordingly, there is no legitimate state interest, and this statutory interpretation fails a rational basis analysis. Bone's interpretation of Section 1-23-390 offends equal protection and cannot be saved.

C. Bone's Application of Section 1-23-390 Violates the Due Process Rights of Workers' Compensation Employers and Carriers.

Article I, Section 22 of the South Carolina Constitution provides certain rights regarding procedures before administrative bodies:

³¹ Marley v. Kirby, 271 S.C. 122, 245 S.E.2d 604 (1978) (finding contributory negligence statute failed rational basis review and impermissibly classified injured parties).

³² Sloan v. S.C. Bd. of Physical Therapy Examiner, 636 S.E.2d 598, 370 S.C. 452 (2006).

³³ Denene, Inc. v. City of Charleston, 359 S.C. 85, 596 S.E.2d 917 (2004)

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he **shall have in all such instances the right to judicial review.**

(emphasis added). Judicial review of a workers' compensation proceeding is a constitutional right in South Carolina. The rights provided under Article I, Section 22 extend to the limits of due process:

[W]hen discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions.

S.C. Coastal Conservation League v. S.C. Dep't. of Health and Env'tl. Control, 380 S.C. 349, 669 S.E.2d 899 (Ct. App. 2008). Due process necessarily includes the right to *meaningful* judicial review:

The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right **to meaningful judicial review.**

Dangerfield v. State, 376 S.C. 176, 656 S.E.2d 352 (2008) (emphasis added). No South Carolina case has clearly defined what particular process is required for "meaningful" judicial review, but other cases discussing "meaningful" point to the *temporal* nature of due process. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" S.C. Nat. Bank v. Central Carolina Livestock Market, Inc., 345 S.E.2d 485, 289 S.C. 309 (1985) (citing Armstrong v. Manzo, 380 U.S. 545 (1965)). In Armstrong, a father's parental rights were terminated without any notice to him, although his whereabouts were easily ascertainable. When the subsequent adoption was finalized, and the natural father sought to set

aside the proceedings, he had multiple burdens of proof placed on him at that point that would not have been placed on him had proper notice been give. The Supreme Court of the United States noted that “A fundamental requirement of due process is ‘the opportunity to be heard.’ It is an opportunity which must be granted at a meaningful time and in a meaningful manner.” Armstrong, 380 U.S. at 552 (internal citations omitted). The Supreme Court held that the father’s due process rights were violated because he was not provided timely notice and as a result, additional burdens were placed on him. Id. at 551.

In S.C. Dep’t of Social Services v. Wilson, 352 S.C. 445, 574 S.E.2d 730 (2002), there was a litigated allegation of child abuse against the minor’s father. The minor requested to testify outside of the presence of the father, over the objection of the father. The father was excluded from the courtroom but could still hear the testimony and had the opportunity to briefly conference with his lawyer prior to cross-examination. However, this Court found that this process did not comport with due process:

[I]f the child testifies at an intervention proceeding, the due process right to confrontation requires the child testify in the presence of her parent/defendant unless special circumstances are established. Wilson’s ability to hear the minor’s testimony, discuss her testimony with counsel, and cross-examine her were insufficient to satisfy due process without the determination the minor would be traumatized by testifying in her father’s presence. As conceded by DSS at oral argument, the minor was the key witness against Wilson and she may have been less credible if she had testified in his presence. Because Wilson did not have the opportunity to be heard in a meaningful manner, his due process right was violated.

Id. 352 S.C. at 458, 574 S.E.2d 730.

Armstrong illustrates meaningful (temporal) notice, and Wilson illustrates meaningful (temporal) opportunity to be heard. Therefore, the right to meaningful judicial review must include contemporaneity. This temporal requirement is reflected in Section 1-23-380, the companion statute of Section 1-23-390: “A preliminary, procedural, or intermediate agency action or ruling is

immediately reviewable if review of the final agency decision would not provide an adequate remedy.” S.C. Code Ann. 1-23-380. Looking at the plain language of 1-23-380, the provision for immediate appeal is provided when an appeal after the passage of time is not adequate. The policy embedded in Section 1-23-380 is what Petitioners’ seek here.

Petitioners are further burdened because the application of the standard of review changes. In workers’ compensation cases, the Commission is the ultimate finder of fact. Hunter v. Patrick Const. Co., 289 S.C. 46, 47, 344 S.E.2d 613, 614 (1986); Ross v. American Red Cross, 298 S.C. 490, 492, 381 S.E.2d 728, 730 (1989). The Appellate Court’s review of these findings of fact is limited to determining whether the findings are supported by substantial evidence in the record. *See* Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). In the present case, the Appellate Panel issued its final order concluding that Martinez did not sustain a compensable mental injury under the Act and that the proximate cause of her mental condition was not the investigation in question, but rather the subsequent death of a relative. Since the Appellate Panel’s Order finally decided compensability, the issue on appeal should be whether substantial evidence supports the Commission’s findings that Martinez did not sustain a compensable injury. However, if the appeal in this claim is deferred and the Appellate Panel is forced to adopt the unlawful “findings” of the Circuit Court and issue an Order finding the claim compensable, then the issue on appeal in the future becomes whether substantial evidence supports the Commission’s findings that Martinez sustained a compensable injury. This clearly places an additional burden on Petitioners. *See* Tiller v. Nat’l Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999)(the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency’s findings from being supported by substantial evidence).

Bone's interpretation of Section 1-23-390 violates Petitioner's due process because it allows for potential of forcing them to pay benefits over the course of several years before having a meaningful opportunity to be heard on appeal and because it changes the ultimate question on appeal once the case is finally before an appellate court.

D. Given the perpetual cycle of remands, Petitioners are left without an adequate remedy on appeal from a final judgement under Section 1-23-390.

In reality, there is a final decision in this case. Despite Judge Hayes's continued reversals and remands, which Petitioner's maintain were unlawful, the Appellate Panel has repeatedly insisted that it has complied with the Circuit Court's directive. The Appellate Panel specifically noted in its August 22, 2017 Decision and Order that "cognizant of our role as fact finders, we are unable to reach any other factual conclusions than those that were made in our Decision and Order for February 24th, 2015." (SCWCC Decision & Order, dated 8/22/2017, p. 3). At this point, the parties are trapped in a perpetual cycle of remands. By continually remanding a case back to the Commission, a circuit court judge, who wants a denied case found compensable, can set an impenetrable bar to defendants having immediate access to a higher court for review of the lower court's improper appellate review. That is exactly what has happened in this case. The case will be subjected to endless remands by the Circuit Court until the Appellate Panel finally succumbs to the Circuit Court's wishes.

This case is analogous to this Court's recent decision in Russell v. Wal-Mart Stores, Inc., Op. No. 27875 (S.C. Sup. Ct. filed April 3, 2019). In Russell, the appellate panel remanded the claimant's change of condition claim to a single commissioner for a third time. The claimant appealed to the Court of Appeals, and in an unpublished decision, the Court of Appeals held the appellate panel's remand order was not immediately appealable and dismissed the appeal. The claimant then filed a petition for writ of certiorari, which was granted. This Court reiterated that

“One primary goal of the Workers’ Compensation Act is to provide quick and efficient resolution of work-related injury claims so neither employers nor employees become bogged down in complicated and protracted litigation.” This Court determined that “the commission’s unnecessary delays and repeated remands over the almost eight years since Russell filed her change of condition claim frustrated the goals of the Workers’ Compensation Act.” This Court held the Commission’s unreasonable delay in making a final decision left the claimant without an adequate remedy on appeal from a final decision under Section 1-23-380, and as such, held that the appellate panel’s remand order was immediately appealable.

Petitioners acknowledge that Russell dealt with an appeal under Section 1-23-380 and remands by the Commission, and not Section 1-23-390 and remands by the circuit court. However, Petitioners contend that the same reasoning applied in Russell should be applied to the present case and any other case where an appeal may fall under Section 1-23-390. If continuous remands and appeals over an eight-year period in Russell frustrated the goals of the Act, then it is more than obvious that those same goals are frustrated in the present case. It is unconscionable that a single circuit court judge can continuously break the chain of appealability, leaving Petitioners with no recourse or method to appeal.

Further, while the Supreme Court held that the defendants in Bone had an “adequate remedy” because they could raise the issue of compensability on appeal from a final award from the Commission, that remedy is simply non-existent in this case. In the present case, despite the Circuit Court’s attempts to unilaterally find the case compensable, the Appellate Panel has consistently held, and has made extremely detailed findings supporting its decision, that it does not believe this case is compensable. This is clearly the Appellate Panel’s final decision/judgment. The only adequate remedy Petitioners have to challenge the Circuit Court’s improper appellate

review is to appeal the case to a higher court. Failure to allow such appeal would be a clear violation of Petitioners' due process rights.

Petitioners assert that Bone's interpretation and application of Section 1-23-390 violates the due process and equal protection rights of workers' compensation defendants as a whole. However, assuming arguendo that Bone's interpretation of Section 1-23-390 is not unconstitutional on its face, its application to Petitioners in the present case violates Petitioners' due process and equal protection rights provided by Article I, Section 22 of the South Carolina Constitution. Furthermore, the decision in Bone, and its application in this case, has locked this case into a continuous cycle of remands, prevented Petitioners - as well as Respondent - from obtaining any type of finality, and spoiled any possible interest in judicial economy. The only remedy available to the parties is a review by this Court.

CONCLUSION

For the reasons stated above, Petitioners respectfully ask the Court to grant their Petition, review all of the prior Orders of the Circuit Court and Appellate Panel, permit oral arguments, reconsider this Court's previous decision in Bone and its application to the present case, and issue a decision finding: (1) that the Circuit Court has repeatedly exceed his scope of review, (2) that these errors nullify the Circuit Court's prior Orders, and (3) that substantial evidence supports the Commission's consistent decision to deny the claim.

BY: 

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(864) 527-3292
Attorneys for Petitioners

Date: August 14, 2019

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Mark Hayes, II, Circuit Court Judge

Case No. 2017-CP-42-3726

Raquel Martinez,

v.

Respondent,

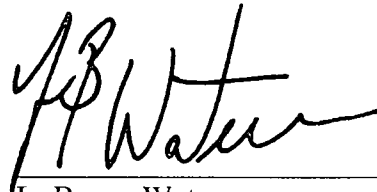
Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Petitioners.

NOTICE

Pursuant to Rule 245(c), SCACR, Respondent has twenty (20) days from the date of service to serve and file a return to the Petition.

August 14, 2019



L. Brenn Watson
Willson Jones Carter & Baxley, P.A.
872 S. Pleasantburg Drive
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(864) 527-3292
Attorney for Appellants

RECEIVED
AUG 16 2019
SC Court of Appeals

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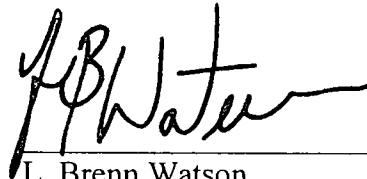
Spartanburg County and
S.C. Association of Counties
Self-Insurance Fund,

Petitioners.

PROOF OF SERVICE

I hereby certify that I have served the Petition for A Writ of Certiorari and Notice on Raquel Martinez by depositing a copy of it in the United State Mail, postage prepaid, on August 14, 2019, addressed to her attorneys of record, Chadwick D. Pye, Esquire, Chadwick D. Pye, LLC, P.O. Box 6346, Spartanburg, South Carolina 29304 and J. Kevin Holmes, Esquire and David T. Pearlman, Esquire, The Steinberg Law Firm, P.O. Box 9, Charleston, South Carolina 29402-0009, and on The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals, P.O. Box 11629, Columbia, South Carolina 29211; The Honorable Amy W. Cox, Spartanburg County Clerk of Court, P.O. Box 3483, Spartanburg, South Carolina 29304; and the South Carolina Workers' Compensation Commission Judicial Department, P.O. Box 1715, Columbia, South Carolina 29202.

August 14, 2019



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August 14, 2019

The Honorable Daniel E. Shearouse
The South Carolina Supreme Court
P.O. Box 11330
Columbia, SC 29211

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SC Court of Appeals

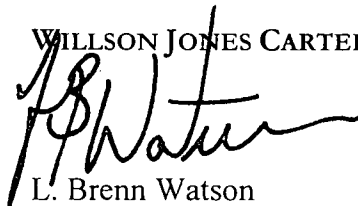
Re: Raquel Martinez vs. Spartanburg County
Case No.: 2017-CP-42-3726
WCC File No.: 0515098 DOI: 4/4/2005
Carrier: South Carolina Association Of Counties - Claim No.: 58-218332
WJC&B File No.: 0560.00114

Dear Mr. Shearouse:

Enclosed please find an original and seven (7) copies of a common law Petition for Certiorari and Notice relative to the above-captioned matter, as well as a filing fee check in the amount of \$50.00 and a Proof of Service indicating the Petition has been served on opposing counsel. At this time, I would greatly appreciate your filing these documents and returning one (1) clocked copy of the Petition to me in the enclosed self-addressed stamped envelope.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



L. Brenn Watson

Enclosures

cc: Chadwick D. Pye, Esq.
J. Kevin Holmes, Esq.
David T. Pearlman, Esq.
S.C. Court of Appeals
Spartanburg County Clerk of Court
S.C. Workers' Compensation Commission Judicial Dept.

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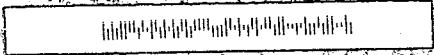
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JENNY ABBOTT KITCHINGS
SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SC 29211



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