

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

RECEIVED

FEB 05 2020

SC Court of Appeals

W.C.C. File No. 0908371

Timothy Hannah, Employee, Claimant Respondent,

v.

MJV, Inc./Butler Trucking, Employer, and
Palmetto Timber S.I. Fund c/o
Walker, Hunter & Associates, Inc., Carrier, Appellants.

**RETURN IN OPPOSITION TO RESPONDENT'S
MOTION TO TAX COSTS PURSUANT TO SCACR 222**

Pursuant to Rules 222 & 240, SCACR, Appellants MJV/Butler Trucking Inc. and Palmetto Timber S.I. Fund c/o Walker, Hunter & Associates, Inc. ("Appellants") hereby oppose Respondent Timothy Hannah's ("Respondent") Motion to Tax Costs Pursuant to SCACR 222 ("Motion"). Respondent's Motion is improper for multiple reasons and should be denied.

First, Rule 222(a) specifically provides that, "[u]nless otherwise ordered by the appellate court or *agreed by the parties*," costs are taxed against the appellant when an appeal is dismissed. Rule 222(a), SCACR (emphasis added). This provision allows the appellate to exercise its discretion in taxing costs and also allows the parties to agree

amongst themselves whether costs should be taxed against the non-prevailing party. Here, the latter applies.

Appellants' appeal to the South Carolina Supreme Court was dismissed specifically because the parties reached a settlement of this case. (*See* Exh. A). As noted in Respondents' December 19, 2019 letter to the Supreme Court, their petition for certiorari review was withdrawn because the parties settled on a clincher basis. The Settlement Agreement and Release, signed by both Respondent and his Counsel and dated December 20, 2019, provides, in pertinent part, that Appellants paid to Respondent the sum of Forty Thousand Dollars (\$40,000.00) and, in exchange, Respondent acknowledged that "the sum set forth above is being paid to, and received by, Claimant [Respondent] in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that Defendants [Appellants] *shall not be liable for any additional payments whatsoever.*" (Exh. B, pp. 2-3) (emphasis added). In addition, the Settlement Agreement and Release provides that "Claimant [Respondent] hereby relinquishes and releases each and every claim which he or anyone on his behalf now has, or may hereafter have, so that he shall not have any other or future claim or demand of any kind or nature as a result of the alleged accident described above." (*Id.* p. 6).

These two broad release provisions preclude Respondent's current Motion, as the parties have agreed that Respondent has relinquished "every claim which he or anyone on his behalf now has, or may hereafter have," and precludes him or any party on his behalf from making any demand on Appellants that stem from his July 14, 2009 accident. As such, the parties have agreed there will be no other claims or demands between them as a result of Respondent's workers' compensation claim. Rule 222(a), SCACR (costs are

taxed against the non-prevailing party “[u]nless otherwise ordered by the appellate court or agreed by the parties”) (emphasis added). Simply put, here the parties have agreed otherwise and this Court should deny Respondent’s Motion.

Second, Rule 240(g) provides that the “[f]ailure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.” Rule 240(g), SCACR (emphasis added). Subsection (d) of Rule 240 requires that any motion “filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court,” which is set forth in footnote 1 to Rule 240 as being \$50.00 “for any motion filed on or after October 14, 2018.” Respondent indicates in his cover letter to the Motion that he enclosed a filing fee of \$25.00, not \$50.00 as is required by Rule 240(d) n.1, SCACR. As such, his Motion should be deemed abandoned.

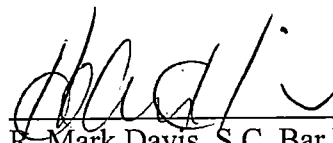
Third, and compounding this error, he seeks to recover his \$25.00 filing fee as one of the appellate costs he seeks to recover. See Itemized Statement of Costs. While filing fees for initiating an appeal under Rule 203, SCACR, are recoverable under Rule 222, SCACR, filing fees for motions to tax appellate costs are not included in the list of recoverable items. At a very minimum, this item should be denied as improperly included.

CONCLUSION

For all the reasons stated herein, this Court should deny Respondent's Motion to Tax Costs Pursuant to SCACR 222. At a very minimum, the amount included on his Itemized Statement of Costs for a \$25.00 filing fee is improper and should be denied.

Respectfully submitted,

February 4, 2020



R. Mark Davis, S.C. Bar No.: 15522
Helen Hiser, S.C. Bar No.: 76124
MCANGUS, GOUDELOCK & COURIE, LLC
Post Office Box 650007
Mt. Pleasant, South Carolina 29465
(843) 576-2900
*Attorneys for Appellants MJV, Inc./Butler
Trucking and Palmetto Timber S.I. Fund c/o
Walker, Hunter & Associates, Inc.*

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 0908371

TIMOTHY HANNAH,
Employee,
Claimant,
vs.
MJV/BUTLER TRUCKING INC.,
Employer,
AND
PALMETTO TIMBER S.I. FUND C/O
WALKER, HUNTER & ASSOCIATES,
INC.,
Carrier,
Defendants.

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**SETTLEMENT AGREEMENT
AND RELEASE**

Timothy Hannah "Claimant" alleges to have injured his cervical spine, left shoulder, left elbow, and lumbar spine, by accident arising out of and in the course of his employment with MJV/Butler Trucking Inc. "Employer" on or about July 14, 2009, when he was involved in a motor vehicle accident.

Claimant's average weekly wage is \$571.95; and the compensation rate is \$381.32.

Claimant contends that he is in need of additional medical examination and treatment; that he has lost compensable time from work and wages; that he has sustained permanent disability in excess of any ratings by treating physicians; that he has sustained bodily disfigurement; and Defendants dispute the Claimant's allegations and deny that any additional

benefits are due.

Claimant has been treated and/or evaluated by James F. Bethea, M.D./ Columbia Orthopaedic Specialists, LLC, who has rated the Claimant's permanent impairment at zero percent (0%) of the cervical spine and left elbow on January 6, 2010, by Doctors Care, who did not rate the Claimant's permanent impairment, by Providence Hospital, who did not rate the Claimant's permanent impairment, by Georgetown Memorial Hospital, who did not rate the Claimant's permanent impairment, by Next Step Rehabilitation Services, who did not rate the Claimant's permanent impairment, by St. James Santee Family Health Center, Inc., who did not rate the Claimant's permanent impairment, by Carolina Orthopaedic Associates, PA, who did not rate the Claimant's permanent impairment and by Grand Strand Primary Care, who did not rate the Claimant's permanent impairment.

In consideration of the sum of Forty Thousand Dollars and No/100's (\$40,000.00), Claimant does hereby release and forever discharge Defendants from any and all claims, demands, actions or causes of action under the South Carolina Workers' Compensation Act, on account of any and all injuries, disability, disfigurement, specific loss, death, operations, mileage reimbursements, medical, hospital or like expense, continuances, recurrences, aggravations, changes of condition, ailments, illnesses, and diseases or other damages, consequences or results, past, present or future in any way connected with, or arising from the alleged injury sustained by Claimant on or about July 14, 2009, and does hereby acknowledge that Defendants have fully, finally and completely paid and discharged all of their obligations, liabilities and responsibilities under the South Carolina Workers' Compensation Act, and that the sum set forth above is being paid to, and received by, Claimant in full and final satisfaction of all claims whatsoever as a result of the alleged accident described above and that Defendants shall not be liable for any

additional payments whatsoever.

Defendants have paid or have agreed to pay authorized and causally related medical expenses through January 6, 2010, for minor injuries to the left elbow and neck incurred as a result of the alleged accident described above, in such amounts as may be approved by the South Carolina Workers' Compensation Commission. All subsequent treatment is expressly denied and Defendants deny responsibility for any other past, present, or future medical expenses. This claim is being settled on a *doubtful and disputed basis* in recognition of, but without Defendants' acceptance of, liability and exposure for past and future medical treatment. Treatment for body parts and the associated medical costs for those body parts, including, but not limited to, the cervical spine and the lumbar spine, are expressly denied by Defendants.

The Claimant is 61 years of age as of the date of the execution of this document, having a date of birth of May 30, 1958. The settlement proceeds payable to the Claimant in the sum of Forty Thousand Dollars and No/100's (\$40,000.00) Dollars shall be allocated as follows: \$10,000.00 for attorney fees; \$3,868.73 in costs prosecuting the claim; and \$26,131.27 in compromise settlement of disputed lost earnings for a period of 1,032.20 weeks at the rate of \$25.31 per month, for the balance of his life, commencing on the date of execution of this Agreement, pursuant to the provisions of South Carolina Code Ann. Sections 19-1-150 (1976) and 42-9-240 (1976), as well as the decisions of the South Carolina Supreme Court in James v. Anne's Inc., 390 S.C.188, 701 S.E.2d 730 (2010), Utica-Mohawk Mills v. Orr, 277 S. C. 226, 87 S.E.2d 589 (1955) and the Third Circuit Court of Appeals in Sciarotta v. Bowen, 837 F.2d 135 (3rd Cir. 1988).

Pursuant to 42 CFR §411.46 and §411.47, the Medicare intermediary manual, the Medicare carriers manual, and the controlling Medicare set-aside memos, the parties to this

settlement believe that any rights or interests Medicare may have in this settlement have been adequately considered and protected by Defendants and the Claimant, Timothy Hannah, by allocating, from the total settlement amount of \$40,000.00, the amount of \$0 for payment of Claimant's future Medicare-covered medical expenses attributed to or settled under this workers' compensation claim.

Claimant is a Medicare beneficiary; however, per the CMS memoranda and Reference Guide, there are no statutory or regulatory provisions requiring that parties submit a Workers' Compensation Medicare Set Aside (hereinafter "WCMSA") proposal to CMS for review. Despite submission being discretionary, the parties have nonetheless obtained a Medicare Set-Aside in order to ascertain and protect Medicare's interests in the settlement as required under the Medicare Secondary Payer Act. (Attached as Exhibit A). Based upon the review of Claimant's medical records, age, life expectancy, future cost projections, historical treatment trends, and Court Orders governing compensability, a \$0 Set-Aside has been prepared. As Claimant's lumbar spine condition has been denied, the carrier was never primary payer for treatment related thereto and is therefore not responsible for funding future payment related to the lumbar spine. Though the cervical spine and left elbow were accepted under the claim, the medical records confirm resolution of those conditions, with no future treatment necessary.

Additionally, Claimant underwent an unauthorized procedure to the cervical spine, over two years after being released at maximum medical improvement with 0% impairment and no future medical treatment identified, therefore, by Order of the Workers' Compensation Commission, affirmed in part by the Appellate Panel of the Full Commission and South Carolina Court of Appeals (attached as Exhibit B, Single Commissioner Order dated July 2, 2015 & Exhibit C, Full Commission Order dated July 6, 2016), Defendants are not responsible for this

procedure, or any future medical beyond January 6, 2010, for any body part allegedly injured as a result of the subject work-related injury. As a consequence, no future treatment has been included in the WCMSA. The WCMSA analysis and medical record summary has been attached hereto in support of this provision.

Defendants agree to reimburse to Medicare any conditional payments or liens incurred to the date of this settlement agreement only. The expenses subject to reimbursement must be related to the work injury and must be from providers authorized by Defendants. Defendants reserve the right to appeal or dispute any conditional payments that may have been made by Medicare. This provision applies to past conditional payments or liens of Medicare, and shall have no force and effect on future Medicare-covered medical expenses. Claimant further agrees to cooperate in the discharge of any liens, including but not limited to furnishing Defendant/Employer with any correspondence from CMS or its contractors and providing any documentation necessary in order to discharge, appeal or dispute, and liens asserted by CMS.

Claimant agrees to indemnify and/or hold harmless Defendants for any loss of Medicare benefits or for any recovery the centers for Medicare and Medicaid services may pursue, and fees and costs associated with the defense of any recovery attempts. Claimant further agrees to waive any and all potential/future claims against Defendants arising out of the Medicare Secondary Payer statute, 42 USC §1395y *et. al*, whether they be brought in any Federal, State or workers' compensation venue or in any other venue or jurisdiction.

Claimant further agrees to provide Defendants within thirty (30) days of their request any and all information required for compliance with the Medicare Mandatory Insurer Reporting requirement, 42 U.S.C. §1395y (b)(8).

Claimant and his attorney represent that Claimant has been fully advised of his rights

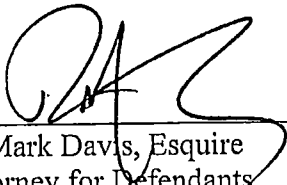
under the South Carolina Workers' Compensation Act and that they are of the opinion that the proposed settlement is reasonable and fair. Claimant's attorney represents that he has reviewed the settlement and has explained the terms fully to Claimant and Claimant voluntarily and without coercion agreed to the terms.

Claimant hereby relinquishes and releases each and every claim which he or anyone on his behalf now has, or may hereafter have, so that he shall not have any other or future claim or demand of any kind or nature as a result of the alleged accident described above.

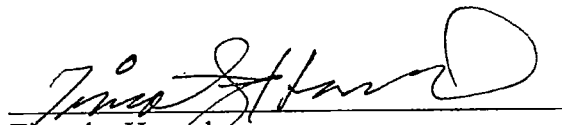
The parties are hereby filing this SETTLEMENT AGREEMENT AND RELEASE with the South Carolina Workers' Compensation Commission as required by *S.C. Code Ann. § 42-9-390*.

WE CONSENT:

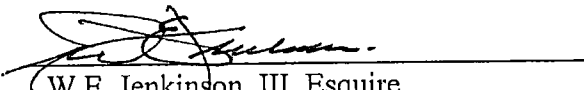
McAngus Goudelock & Courie, L.L.C.



R. Mark Davis, Esquire
Attorney for Defendants



Timothy Hanjah
Claimant



W.E. Jenkinson, III, Esquire
Attorney for Claimant

Charleston, South Carolina

Date: 12/20/2019



Claimant's Name: Timothy Hannah SSN: - - - Employer's Name: Butler Trucking /MJV Inc.
 Address: 532 East Highway 378 Address: P.O. Box 698
 City: Johnsonville State: SC Zip: 29555 City: Georgetown State: SC Zip: 29442
 Home Phone: () - Work Phone: () - Insurance Carrier: Palmetto Timber Fund SI
 Preparer's Name: Mike Hainley Law Firm: _____ Preparer's Phone #: (803) 798-4353

Compensation Paid:	Number of Weeks	From	To	Amount
1. Number of Weeks T.T.	<u>109</u>	<u>07/15/09</u>	<u>08/15/11</u>	\$ <u>41,572.88</u>
2. Number of Weeks T.P.	_____	_____	_____	\$ _____
3. Number of Weeks P.P.	_____	_____	_____	\$ _____
4. Disfigurement	_____	_____	_____	\$ _____
5. Agreement and Final Release	_____	_____	_____	\$ <u>40,000.00</u>
Total Compensation Paid				\$ <u>81,572.88</u>
6. Total Medical Benefits* Paid	_____	_____	_____	\$ <u>14,468.77</u>
7. Funeral Benefits	_____	_____	_____	\$ _____

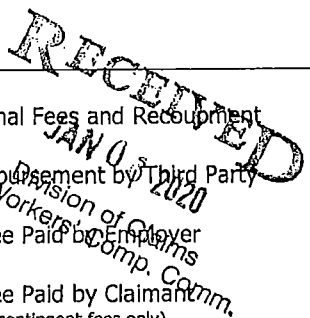
Case Denied Date of Injury: 07/14/09
 (m/d/yyyy)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: *Timothy Hannah* Claimant By: *[Signature]* Employer's Representative Date: 11/27/19
 (m/d/yyyy)

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____
 Report of Additional Fees and Recoupment
 A. Carrier Reimbursement by Third Party _____ \$ _____
 B. Attorney's Fee Paid by Employer _____ \$ _____
 C. Attorney's Fee Paid by Claimant _____ \$ _____
 (Non-contingent fees only)



File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. * Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within 16 days of final payment of compensation. Form 19 must be filed when a claim is denied.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Court of Appeals

Commissioners Melody L. James, T. Scott Beck, and Aisha Taylor

W.C.C. File No. 0908371

Timothy Hannah, Employee, Claimant Respondent,

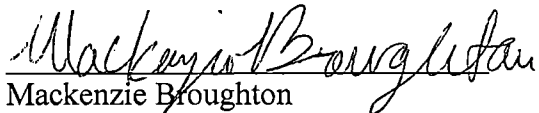
v.

MJV, Inc./Butler Trucking, Employer, and
Palmetto Timber S.I. Fund c/o
Walker, Hunter & Associates, Inc., Carrier, Appellants.

PROOF OF SERVICE

I certify that I have served the Appellants' **Return in Opposition to Motion to Tax Costs Pursuant to SCACR 222** on Respondent Timothy Hannah by depositing a copy of it in the United States Mail, postage prepaid, on the 4th day of February 2020, addressed to his counsel of record as follows:

W.E. Jenkinson, III, Esquire
Jenkinson, Jarrett & Kellahan, PA
Post Office Drawer 669
Kingstree, South Carolina 29556



Mackenzie Broughton
Legal Assistant to Helen F. Hiser
McAngus, Goudelock & Courie LLC
735 Johnnie Dodds Blvd., Suite 200
P.O. Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
*Attorneys for Appellants MJV, Inc./Butler Trucking
and Palmetto Timber S.I. Fund c/o Walker, Hunter
& Associates, Inc.*



Reply To

HELEN F. HISER
Direct Dial: (843) 576-2930
helen.hiser@mgclaw.com

February 4, 2020

Via U.S. Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Timothy Hannah v. MJV/Butler Trucking, Inc. and Palmetto Timber S.I.
Fund c/o Walker, Hunter & Associates, Inc.
Date of Accident: July 14, 2009
WCC File No.: 0908371
Our File No.: 2069.10005
Claim No.: 0001-0593-09-0002
Appeal No.: 2016-001643

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FEB 05 2020

SC Court of Appeals

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellants' Return in Opposition to Motion to Tax Costs Pursuant to SCACR 222, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return the clocked-in copies in the enclosed, self-addressed stamped envelope. If you have any questions, please contact me.

If you have any questions, please contact me.

Yours truly,



Helen F. Hiser

Enclosures



cc: W.E. Jenkinson, III, Esq.

McANGUS GOUDELICK & COURIE LLC

735 JOHNNIE DODDS BLVD, STE 200
POST OFFICE BOX 650007
MT. PLEASANT, SC 29465

843.576.2900 PHONE
843.534.0605 FAX
WWW.MGCLAW.COM

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SC Court of Appeals

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HONORABLE JENNY ABBOTT KITCHINGS CLERK OF COURT SC COURT OF APPEALS PO BOX 11629 COLUMBIA SC 29211-1629				
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