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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Chair for the Commission

Appellate Case No. 2018-000532

Misty A. Morris,

Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank,
and Hartford Accident & Indemnity Co.,

Employer,
Carrier,

IN RE: Attorney's Fee Petition of
David Proffitt,

Appellant,

v.

South Carolina Workers' Compensation
Commission,

Respondent.

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SEP 25 2018
SC Court of Appeals

RECORD ON APPEAL

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S.C. Workers' Compensation Commission
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Appellant

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Misty A. Morris v BB&T Corp dba BB&T Bank
SCWCC: 1600715
Commissioner: Barden

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reinstate**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
 Dismissed as Interlocutory. Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
 Granted. Denied. Dismissed Preserved for hearing

BEFORE THE;
 Hearing Comm. Jurisdictional Comm. Full Commission.

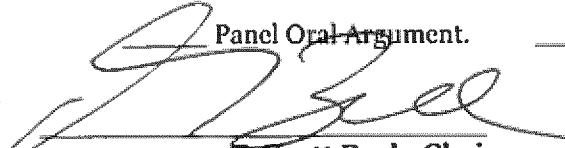
IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

Remand to Panel as indicated below.
 Barden James Taylor
 Beck Campbell Wilkerson
 McCaskill

Remand for Order consistent with the Order of the Court.
 Remand to the Hearing Commissioner.
 Remand to the Jurisdictional Commissioner.
 Other: _____

Remand: Panel Oral Argument. En Banc Oral Argument.

AND IT IS SO ORDERED.


T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

2/20 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 20th day of February, 2018.

By: Valerie D. Deller
SCWCC Judicial Department

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Misty A. Morris v BB&T Corp dba BB&T Bank
SCWCC: 1600715
Commissioner: Barden

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference **Motion for Rehearing**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____ Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. _____ Denied. _____ Dismissed _____ Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____ Jurisdictional Comm. _____ Full Commission.


IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____ Barden _____ James _____ Taylor
_____ Beck _____ Campbell _____ Wilkerson
_____ McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____

_____ Remand: _____ Panel Oral Argument. _____ En Banc Oral Argument.

AND IT IS SO ORDERED.



T. Scott Beck, Chair
For the Commission

Columbia, South Carolina

3/19 2018

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____ x _____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	_____	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 19 day of March, 2018.
By: Valerie D. Deller
SCWCC Judicial Department



Claimant's Name: Misty A. Morris SSN: _____ Employer's Name: BB&T Corporation d/b/a BB&T Bank
Address: 200 Farmhouse Loop Address: 2500 Charleston Hwy.
City: Lexington State: SC Zip: 29072 City: West Columbia State: SC Zip: 29172
Home Phone: _____ Work Phone: _____ Insurance Carrier: _____
Preparer's Name: David Proffitt Law Firm: Proffitt & Cox, LLP Preparer's Phone #: 803-834-7097

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by Claimant Employer (check one) Date of Injury or Illness: 1/18/2016 (m/d/yyyy)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Appellant David Proffitt, counsel for Claimant, appeals the partial denial of his petition for attorney's fees.
Commissioner Susan S. Barden issued her decision on 11/8/2017.
See attached pages for issues on appeal and additional information.

SCW66
SCW66
NOV 15 2017
JUDICIAL

(Check one) Oral argument is is not requested. Appellant's request for oral argument is waived if not indicated on this form.

Mediation
 Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

SCANNED
Date: 11/16/17
Proffitt & Cox, LLP

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See attached certificate of service.
address _____ on the _____ day of _____ 20____,
by first class postage certified mail personal service.

David Proffitt
Preparer's Signature

Claimant's lawyer
Title

dproffitt@proffittcox.com
Email

SCW66
11/9/2017
NOV 15 2017

Check this box if you are not represented by an attorney

JUDICIAL

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov. If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Petitioner,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

ISSUES ON APPEAL

Appellant David Proffitt, counsel for Claimant, raises the following issues for appeal to the Full Commission with regard to his petition for attorney's fees:

1. Did the Single Commissioner err in concluding that an attorney's fee may not be paid on the portion of settlement proceeds allocated to future medical expenses, where the portion was allocated as such solely for purposes of Utica-Mohawk and where all proceeds were fully paid to Claimant in a lump-sum settlement of a contested case?
2. Did the Single Commissioner err in denying Appellant's request that his attorney's fee be paid on an hourly or quantum meruit basis where the Workers' Compensation Act and Regulation 67-1205 allow approval of such a fee and the requested fee is reasonable and appropriate?
3. Did the Single Commissioner err in relying on the South Carolina Rules of Professional Conduct in her order and in concluding that the requested fee was not reasonable under those Rules?

Appellant incorporates by reference the Memorandum in Support of his petition and Exhibits 1 through 12, all of which were submitted to the commissioner, and the transcript of the hearing on July 20, 2017.

A copy of the order of Commissioner Susan S. Barden dated November 8, 2017, is enclosed.

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Petitioner,

In the Matter of Misty A. Morris,
Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

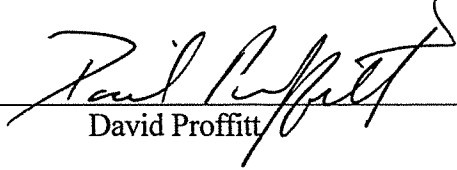
Employer/Carrier.

CERTIFICATE OF SERVICE

I, the undersigned lawyer or employee in the offices of Proffitt & Cox, LLP, attorneys for Claimant, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Form 30 Appeal, Issues on Appeal and Order dated November 8, 2017

Counsel / Parties Served: Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715



David Proffitt

November 9, 2017

**DECISION AND ORDER
OF
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
THE HONORABLE SUSAN S. BARDEN, COMMISSIONER**

SCWCC FILE NO.: 1600715

Misty A. Morris,

Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.,

Employer/Carrier,

Hearing held in Richland County,
South Carolina on July 20, 2017

Appearances: Robert David Proffitt, Esquire, Petitioner on his own behalf.

Purpose of Hearing: To resolve the dispute of Attorney Fees and Costs

Decision and Order: By Susan S. Barden, Commissioner

Filed: November 8, 2017

STATEMENT OF THE CASE

This matter came before the undersigned pursuant to a Form 61, Attorney Fee Petition, filed on April 25, 2017. Claimant's Counsel filed the Form 61 to request approval for the award of attorney fees and costs in workers' compensation proceedings under Regulations 67-1204-07 and Rule 1.5(a) of the Code of Professional Conduct. The Form 61 Fee Petition requested approval of an attorney's fee in the amount of \$36,633.33 and costs in the amount of \$5,134.10. Petitioner was informed by Commissioner Barden on May 15, 2017, that the fee petition would not be approved because "compensation" does not include future medicals, so no contingency fee could be claimed against the \$35,976.88 listed in the Settlement Agreement as "future medical costs".

Petitioner resubmitted the fee petition to Commissioner Barden on May 18, 2017, and included a 21-page invoice showing time spent on Claimant's case on an hourly basis, a copy of the Fee Agreement signed by Claimant, and an affidavit from Claimant asking the Commission to approve the requested attorney's fee regardless of whether it was paid on a contingency or hourly basis. The invoice showed that Petitioner's firm had spent 218.7 hours over a sixteen-month period for a total of \$53,900, but Petitioner sought approval of a fee of \$36,633.33.

Petitioner was informed by the Commission on June 8, 2017, that the fee petition would not be approved on either a contingency or hourly basis unless Petitioner submitted a fee petition which did not include any fee on the amount of \$35,976.88 allocated to future medical costs. Petitioner requested a hearing on the matter of the fee petition.

The case was set for a Hearing before the undersigned on July 20, 2017 to resolve the dispute of attorney fees.

FINDINGS OF FACT

1. The parties entered into a Settlement Agreement and Release Order Approving Settlement on March 15, 2017.
2. The Agreement provided that Defendants would pay to the Claimant the sum of One Hundred Nine Thousand and Nine Hundred Dollars (\$109,900.00). The settlement

after deducting attorney's fees and costs of \$36,633.33 and \$5,134.10, respectively, past out-of-pocket medical costs of at least \$99,876.38 and future medical costs of \$35,976.88, represents future compensation in the amount of \$22,279.31 at a weekly rate of \$757.72, beginning March 15, 2017, and continuing through the Claimant's anticipated lifetime of 42.94 years. Therefore, Employee-Claimant will receive \$9.98 (Nine Dollars and Ninety-Eight Cents) per week in compensation benefits beginning March 15, 2017, for the duration of the Employee-Claimant's lifetime ($\$22,279.31 / 2,232.88 \text{ weeks} = \9.98 per week).

3. Claimant's Counsel filed a Form 61 on April 25, 2017, requesting approval of an attorney's fee in the amount of \$36,633.33 and costs in the amount of \$5,134.10
4. On May 15, 2017, the undersigned informed Petitioner that the fee petition would not be approved because compensation does not include future medicals, so no 1/3 fee is allowable on the \$35,976.88.
5. On May 18, 2017, Petitioner resubmitted the fee petition to Commissioner Barden and included a 21-page invoice showing time spent on Claimant's case on an hourly basis.
6. On June 8, 2017, the undersigned informed Petitioner Claimant Petitioner that the fee petition would not be approved on either a contingency or hourly basis unless Petitioner submitted a fee petition which did not include any fee on the amount of \$35,976.88 purportedly allocated to future medical costs.
7. I find in my discretion that the Petition for Attorney's fees and costs is granted in part and denied in part. The payment of Petitioner's attorney's fees in the amount of \$24,641.04 and reimbursement of costs of \$5,134.10 is hereby approved. By this order, the Commission approves payment of a one-third contingent attorney's fee based on a settlement of \$73,923.12, which does not include \$35,976.88 which was allocated to future medical expenses pursuant to the Utica-Mohawk provision in the approved Settlement Agreement. The approval of an attorney's fee which includes the amount allocated to future medical expenses is denied.
8. I find as a fact that "future medical treatment" is not money allowance payable as described in § 42-1-100, and that any funds allocated for the payment of medical treatment may not be reduced to collect attorneys' fees.
9. Further, the requested fee in this particular case is unreasonable under Rule 1.5 of the South Carolina Rules of Professional Conduct.

10. The Commission requires that requested attorneys' fees comply with the South Carolina Supreme Court Disciplinary Rules on determining a reasonable fee. *See* S.C. Code Ann. Regs. 67-1205(A) and (B).
11. While I acknowledge that Counsel expended time and labor in representing his client, I find based on the totality of the evidence that \$24,641.04 in attorneys' fees and reimbursement costs of \$5,134.10 adequately compensates him for the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly. *See* RPC, Rule 1.5(a)(1), Rule 407, SCACR.
12. I find as a fact that no evidence was submitted to indicate that Counsel's representation of Claimant in this matter served to substantially preclude other employment by Counsel. *See* RPC, Rule 1.5(a)(2), Rule 407, SCACR.
13. I find as a fact that Counsel's requested fee is not the fee customarily charged in this locality for similar legal services. *Id.* at Rule 1.5(a)(3). Specifically, it is not customary or proper in cases before the Workers' Compensation Commission to charge an injured worker a contingency fee against benefits provided to an injured worker for medical treatment, including funds specifically designated for future medical treatment.
14. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to the amount involved and the favorable results obtained, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(4).
15. There is no compelling evidence in this case that Claimant or the circumstances imposed on Counsel extraordinary time limitations not present in any complex workers' compensation claim. *See id.* at Rule 1.5(a)(5).
16. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to the nature and length of the professional relationship with the client, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(6).
17. I find as a fact that the fee of \$24,641.04 and reimbursement costs of \$5,134.10 more than adequately remunerates Counsel in relation to his experience, reputation, and ability, as it is the maximum amount of a contingency fee permitted by law. *See id.* at Rule 1.5(a)(7).

18. I also weigh against Counsel's request the fact that the requested fee is for a contingency fee to be taken off of funds specifically described as being provided for Claimant's medical treatment. The agreement as written indicates that the portion of the funds in question represent future medical costs. The Commission has never allowed an attorney to claim a contingency fee against funds allocated for medical costs. *See id.* at Rule 1.5(a)(8).
19. Petitioner shall hold the remaining \$11,992.29 in his firm's trust account until this matter is resolved by the Commission or on appeal.
20. It is important to note that this decision does not leave Petitioner bereft of recompense for his labor, as I am awarding him a fee of \$24,641.04 and reimbursement costs of \$5,134.10.

CONCLUSIONS OF LAW

1. Pursuant to 42-1-100 "compensation" is the money allowance payable to an employee or to his dependents.
2. Pursuant to Regulation 67-1205(C) an attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in ... situations where the attorney shall set the fee as instructed." S.C. Code Regs. 67-1205. As used in 67-1205(C), compensation does not include future medicals.
3. The exceptions set forth in 67-1205(C)(1-7) do not apply in this case.
4. The Act requires that "as used in this Title, unless the context otherwise requires, the terms dealt with in §§ 42-1-30 to 42-1-190 shall include the categories or shall have the meanings severally ascribed to them in said sections." S.C. Code Ann. § 42-1-20.
5. The first sentence of R.67-1205(C) states that "[a]n attorney may charge up to, but not more than, 33.3% of the *total amount of compensation*, except in the following situations, where the attorney shall set the fee as instructed." R.67-1205(C) (Emphasis added).
6. Section 42-1-560(b), in its second sentence, also uses the phrase "total amount of compensation".

In such cases the carrier shall have a lien on the proceeds of any recovery from a third party . . . to the extent of *the total amount of compensation*, including medical and other expenses, paid, or to be paid by such carrier,

less reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier.

S.C. Code Ann. § 42-1-560(b).

7. Although Counsel cherry picks language from the Court of Appeals opinion in *Breeden v. TCW, Inc./ Tennessee Express* in an effort to support his argument that future medical expenses are included in the definition of ‘compensation’ as used within § 42-1-100, a broader reading of the South Carolina Supreme Court’s decision in *Breeden* undermines Counsel’s position and illustrates that the court strictly construes § 42-1-560 and describes it specifically as “a subrogation statute.” *Breeden v. TCW, Inc./Tennessee Express*, 355 S.C. 112, 584 S.E.2d 379, 382 (2003)
8. The chief purpose for the statute is to explain the rights and remedies against third parties so that if applicable, “an injured employee may bring an action against a third-party tortfeasor in order to recover from the ultimate wrongdoer under § 42-1-560(b).” *Id.*
9. Further, § 42-1-560(b) states that in actions against third parties, “the carrier shall have a *lien* on the proceeds of any recovery from the third party. . . less the reasonable and necessary expenses, including attorney fees, incurred in effecting the recovery, and to the extent the recovery shall be deemed to be for the benefit of the carrier.” (Emphasis added). S.C. Code Ann. § 42-1-560.
10. The Supreme Court clarifies in *Breeden* that § 42-1-560 defines “the carrier’s lien [a]s a separate pot of money that is not included in the same pool of money creating the fund under subsection (g)” within the statute. *Breeden*, 584 S.E.2d at 383.
11. The court reasoned therefore that, “the statute clearly separates the carrier’s lien from the fund for future reimbursement.” *Id.*, at 384.
12. Section 42-1-560 generally is neither applicable nor instructive of the plain, ordinary meaning of the word ‘compensation’ as used within § 42-1-100 outside of claims involving third parties. There is no third party to the settlement in question, so the application of § 42-1-560 is inapposite to this case as it relates to the January 2014 settlement specifically.

13. When the phrase “total amount of compensation” is read in § 42-1-560(b), the context of the statute requires it to be read in a different manner than it is read in R.67-1205(C). This is because in § 42-1-560(b) “total amount of compensation” is modified by the clauses immediately following it in the same sentence, specifically the clause “including medical and other expenses”. If “compensation” already included medical expenses in its definition, there would be no need to include the modifying clause “including medical and other expenses” immediately after it.
14. The context of § 42-1-560(b) requires us to expand the definition of “compensation” beyond what is provided in § 42-1-100, to include medical and other expenses. This is consistent with § 42-1-20. This is also consistent with the Legislature’s overall scheme in drafting § 42-1-560. For example, in subsection (a) the statute provides “the respective rights and interests . . . of the employer or person, association, corporation or carrier liable for the payment of compensation and other benefits under this title, *herein after called ‘carrier’ . . .*” S.C. Code Ann. § 42-1-560(a). The drafters of § 42-1-560 wrote the context of the statute to require a broader definition of the word “carrier” than is provided for under § 42-1-60.
15. The context of § 42-1-560 requires a different meaning to be placed on the word “compensation” as it is used in that statute than is provided for in § 42-1-100.
16. Likewise, given the lack of any modifying clauses, the context of R.67-1205 does not require the word “compensation” to mean anything other than what is provided for in § 42-1-100.
17. Counsel’s reliance on the North Carolina Court of Appeals opinion in *Palmer v. Jackson* is misguided. In *Palmer I* the North Carolina Court of Appeals clearly found that past medical expenses required to be paid to prior medical providers could not be reduced for attorneys’ fees. *Palmer v. Jackson*, 579 S.E.2d 901 (NC Ct. App. 2003), *discretionary review improvidently granted*, 595 S.E.2d 145 (2004). Further, no “special circumstances” as described in *Palmer* are present in the case at bar. The actions taken on remand in *Palmer II* are hardly informative to the case at bar, as *Palmer II* is an unpublished opinion from a foreign court that involves different facts than are involved in the instant case. *See Palmer v.*

Jackson, Op. No. COA05-1067 (NC App. Filed May 16, 2006)(unpublished opinion).

18. Counsel goes on to cite from myriad opinions from courts around the country that he insists support his position, however, Counsel has not brought to my attention any cases that involve interpretation of a regulation with language similar to Reg. 67-1205. In fact, most of the States whose opinions Counsel cites as favorable to his position in reality have far greater limitations on an attorney's ability to claim a contingency fee than the generous rules provided by South Carolina. *See* New Hampshire Administrative Rules, Lab 207.01(a)(1). (Attorneys' contingency fees limited to 20% of the amount of compensation); *See* Fla. Stat. § 440.34 (Attorneys' contingency fees limited 20% of the first \$5,000, 15% of the next \$5,000, and 10% of the remainder); *See* N.C. Gen. Stat. § 97-90 (Attorneys' contingency fees normally limited to 25% of the total amount of compensation); § 39-71-613, Montana Code Ann, Rule 24.29.3802 (Attorneys' contingency fees limited to 20% of the amount of compensation); Tenn. Code Ann. § 50-6-226 (attorneys' contingency fee limited to 20% of the amount of recovery). New Mexico Statutes § 52-1-54(1) (Attorneys' fees shall not exceed \$22,500.00); PA Code § 131.55 (up to 20% of settlement or award).
19. Counsel is not entitled to a fee on a quantum meruit basis under Reg. 67-1205. The Regulation provides "When *unusual circumstances exist*, the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by quantum meruit." S.C. Code Ann. Regs. 67-1205(C) (2014 Supp.) (Emphasis added). The record is devoid of any evidence indicating unusual circumstances exist. Counsel's allegation that he had to work a lot of hours on this particular case does not meet the standard of "unusual circumstances".
20. Requested attorneys' fees must comply with the South Carolina Supreme Court Disciplinary Rules on determining a reasonable fee. *See* Rule 1.5(A), RPC, Rule 407, SCACR; *See also* R.67-1205(A) and (B).
21. "The decision to award or deny attorneys' fees under a state statute will not be disturbed on appeal absent an abuse of discretion." *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439,445 (2009). "Similarly, the

specific amount of attorneys' fees awarded pursuant to a statute authorizing reasonable attorneys' fees is left to the discretion of the trial judge and will not be disturbed absent an abuse of discretion." *Id.*

ORDER

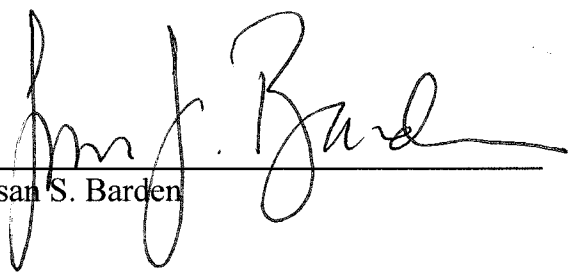
IT IS, THEREFORE, ORDERED that Petitioner's Petition for attorney's fees and costs is granted in part and denied in part;

IT IS ORDERED that the payment of Petitioner's attorney's fees in the amount of \$24,641.04 and reimbursement costs of \$5,134.10 is granted;

IT IS ORDERED that the Commission approves payment of a one-third contingent attorney's fee based on a settlement of \$73,923.12, which does not include \$35,976.88 which was allocated to future medical expenses;

IT IS ORDERED that Petitioner shall hold the remaining \$11,992.29 in his firm's trust account until this matter is resolved by the Commission or on appeal.

IT IS SO ORDERED!



Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Barbara Skarbek on November 8, 2017

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1600715

Carrier File #: 0452 WC 16 0000095

December 15, 2017

FORM 31 BRIEFING SCHEDULE AND NOTICE OF APPELLATE HEARING

BB&T Corp d/b/a BB&T Bank v Misty A Morris

Filing Date for Appellant's Brief: January 14, 2018

Subject: Set on Review.

Date: 02/20/18 at 02:30 PM

**Location: South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201**

You are receiving this notice pursuant to South Carolina Regulation 67-704. This matter is to be set for Full Commission Review on the above date. Regulation 67-705(A) requires the appellant to file a brief which includes a statement of the case, questions presented, argument, and the conclusion by the date above. Pursuant to Regulation 67-205, please submit your brief electronically through the **Upload** functionality in eCase located on the Commission's website at www.wcc.sc.gov.

The claimant must attend when not represented by an attorney or when disfigurement is involved. Corporations must be represented by an attorney, and uninsured employers must attend.

Pursuant to South Carolina Regulation 67-705, the Respondent may file a responding brief within fifteen (15) days of service of Appellant's brief. Appellant may then file a reply brief within ten (10) days of service of Respondent's responding brief. All briefs must be received by the Workers' Compensation Commission at least five (5) days before the scheduled date for review.

For questions regarding this matter, please visit eCase Status at www.wcc.sc.gov or contact the Judicial Department of the South Carolina Workers' Compensation Commission at (803) 737-5739.

The Commission requests your presence thirty minutes prior to your scheduled oral argument.

This matter is set before: Panel B

CERTIFICATE OF SERVICE – This is to certify the undersigned has served this notice in the above entitled action upon all parties to this cause by sending a copy hereof by electronic mail or United States mail. Unrepresented parties were served by United States Postal Service first class postage.

ROA-000016

By:Eugenia Hollmon, SC Workers' Compensation, December 15, 2017

Party

Employee: Misty A Morris

Attorney

David Proffitt
dproffitt@proffittcox.com
803-834-7097

Employer: BB&T Corp d/b/a BB&T Bank
Carrier: Hartford Accident & Indemnity Co
Email:SoutheastClaimCenter.WCEDM@thehartford.com

South Carolina Workers' Compensation Commission

1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5723



WCC File #: 1600715

Date of Injury: 01/18/2016

**ADMINISTRATIVE
ORDER**

Misty Morris v. BB&T Corp d/b/a BB&T Bank
WCC File No: 1600715

The Request for Commission Review in the above captioned case is dismissed. The appellant brief was not timely filed pursuant to R.67-705 H(3).

Amy A. Bracy
2018

Amy A. Bracy
Judicial Director

Date: January 26,

CERTIFICATE OF SERVICE

I hereby certify on January 26, 2018, I served this document on the parties listed below by electronic mail or depositing a copy hereof, postage prepaid, in the United States mail and addressed as follows:

David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
COLUMBIA, SC 29223

BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
WEST COLUMBIA, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512

By: Eugenia C. Hollmon, Judicial Department

PROFFITT & COX

Attorneys at Law

PROFFITT & COX, LLP
140 WILDEWOOD PARK DRIVE, SUITE A
COLUMBIA, SC 29223-4311
TELEPHONE (803) 834-7097
FACSIMILE (888) 711-1057
WWW.PROFFITTCOX.COM

DAVID PROFFITT
dproffitt@proffittcox.com



January 29, 2018

Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

SCANNED

Date: 2-6-18 AA
Proffitt & Cox, LLP

RE: Misty A. Morris v. BB&T Corporation d/b/a BB&T Bank and Hartford Accident & Indemnity Co.
WCC File No. 1600715
PC File No. 1464.01

SCWCC
FEB 01 2018
JUDICIAL

Dear Ms. Hollmon and Ms. Deller:

Please find enclosed for filing a Motion to Reinstate an Appeal. I received a letter from your office on Friday stating that the appeal had been administratively dismissed due to failure to timely file the appellant's brief.

I apologize for the delay. I wrongly believed that the deadline to file the brief was January 31, 2018, when in fact the deadline was January 14. The deadline was not calendared correctly. This matter is set for a hearing on February 20, 2018.

Also enclosed for your information is a copy of the brief which I intend to file if the Commission grants permission for me to do so. I will be happy to file the additional copies of the brief, the single commissioner's order, the previously filed Form 30, the transcript of the hearing before the single commissioner and any other documents necessary to perfect the appeal.

It is my understanding that it is not necessary to refile the exhibits which were submitted previously with my attorney's fee petition because those are already on file with the Commission. I will be happy to refile the exhibits if needed.

As you may recall, Chad Abramson, attorney for Employer/Carrier, sent the Commission a letter on November 21, 2017, stating that his office is not involved in this attorney's fee matter, does not intend to appear and does not need to be served with pleadings or briefs related to the appeal. I have enclosed a copy of Mr. Abramson's letter.

It is my understanding that it is not necessary to serve Employer/Carrier with any pleadings in this appeal. However, since your letter was served on Employer/Carrier, I have also sent them a copy of the motion.

SCWCC
FEB 01 2018
JUDICIAL

ROA-000019

Ms. Hollmon and Ms. Deller

January 29, 2018

Page 2 of 2

Please file the original motion and return a date-stamped copy to me in the enclosed envelope. A check for the \$25.00 filing fee is enclosed.

With kindest personal regards, I remain

Sincerely yours,

PROFFITT & COX, LLP



David Proffitt

RDP/nif
Enclosures

cc:
BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

APPELLANT'S MOTION TO REINSTATE APPEAL

Appellant David Proffitt received by email a letter from the Commission on January 26, 2018, stating that his appeal had been administratively dismissed because Appellant's brief was not timely filed pursuant to Reg. 67-705(H)(3). Pursuant to Reg. 67-705(H)(4), Appellant moves to reinstate the appeal.

The undersigned apologizes for the delay. Appellant wrongly believed that the deadline to file the brief was January 31, 2018, when in fact the deadline was January 14. The deadline was not calendared correctly. This matter is scheduled for a hearing on February 20, 2018.

This matter involves the issue of the calculation of Appellant's attorney's fee and there is no opposing party involved. Chad Abramson, attorney for Employer/Carrier, sent the Commission a letter on November 21, 2017, stating that his office is not involved in this matter, does not intend to appear and does not need to be served with pleadings or briefs related to the appeal. A copy of that letter is enclosed.

It is Appellant's understanding that it is not necessary to serve Employer/Carrier with any further pleadings in this appeal. However, since the Commission's letter administratively dismissing the appeal was served on Employer/Carrier, I have also sent them a copy of the motion.

Appellant has submitted with this motion a copy of the brief he intends to file if the Commission reinstates the appeal and allows him to do so. Appellant will be happy to file additional copies of the brief, the previously filed Form 30, the single commissioner's order, the transcript of the hearing and any other documents necessary to perfect the appeal.

Respectfully submitted,



David Proffitt
Proffitt & Cox, LLP
140 Wildewood Park Drive, Suite A
Columbia, SC 29223
(803) 834-7097
FAX: 1-888-711-1057
dproffitt@proffittcox.com

Attorneys for Claimant

January 29, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

CERTIFICATE OF SERVICE

I, the undersigned lawyer or employee in the offices of Proffitt & Cox, LLP, attorneys for Claimant, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Appellant's Motion to Reinstate Appeal

Counsel / Parties Served: Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512


David Proffitt

January 29, 2018

Reply To
R. CLAIRE OWENS
Direct Dial: (803) 227-2209
claire.owens@mgclaw.com

November 21, 2017

VIA HAND DELIVERY

Valerie Deller
S.C. Workers' Compensation Commission
Judicial Department
P.O. Box 1715
Columbia, South Carolina 29202

RE: Misty A. Morris v. BB&T Corp. and Hartford Accident and Indemnity
Company c/o CorVel
Date of Accident: January 18, 2016
WCC File No.: 1600715
Our File No.: 20577.16010
Claim No.: 0452-WC-16-0000095

Dear Valerie:

Please be advised that our office is not involved in the ongoing issues of this claim, specifically the attorney's fee. Our involvement has ended as this case settled on a clincher on May 4, 2017. It is not necessary for the Claimant's attorney to continue to serve pleadings on the Defense as our file is closed.

If you have any questions, please feel free to give me a call.

Very truly yours,

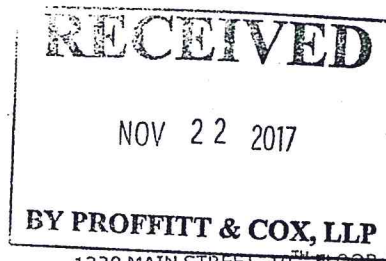


R. Claire Owens
Paralegal to M. Chad Abramson

/rco
Enclosure
cc: David Proffitt, Esquire

SCANNED

Date: 11/21/17
Proffitt & Cox, LLP



1320 MAIN STREET, 10TH FLOOR
POST OFFICE BOX 12519
COLUMBIA, SC 29211

803.779.2300 PHONE
803.748.0526 FAX
WWW.MGCLAW.COM

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris,
Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

Employer/Carrier.

BRIEF OF APPELLANT TO FULL COMMISSION

Appellant David Proffitt, counsel for Claimant Misty A. Morris, submits his brief to the Full Commission with regard to his petition for attorney's fees.

PROCEDURAL AND FACTUAL BACKGROUND

Claimant retained Appellant on January 28, 2016, to represent her in a workers' compensation case. The Fee Agreement provided that "[Claimant] agrees to pay Attorney a contingency fee of 33 1/3% of the total amount recovered for [Claimant] or a fee based on an hourly rate or quantum meruit as approved by S.C. Workers' Compensation Commission, but in any event not to exceed 33 1/3% of the total amount recovered for [Claimant]." (EXHIBIT 1, Fee Agreement; EXHIBIT 11, Aff. of Pet., ¶ 3.)¹

Claimant alleged that she had been unknowingly exposed to toxic levels of mold for several years in her workplace. Claimant alleged that she has suffered numerous physical disabilities,

¹ References to exhibits in this brief are the same exhibits submitted with Attorney's Fee Petition on July 20, 2017, and filed with the Commission.

cognitive dysfunction and a gradual decline in her health, such that she is no longer able to work. Claimant sought all benefits available to her through workers' compensation. (EXHIBIT 2, Form 50 filed Feb. 4, 2016; EXHIBIT 11, Aff. of Pet., ¶ 4.)

Appellant obtained evidence on Claimant's behalf, including proof and documentation of extensive mold contamination and mold remediation and repairs in the workplace which previously were unknown to Claimant, voluminous medical records from 11 physicians, the need for medical care due to the mold exposure, a co-worker's deposition, Claimant's deposition, and the depositions of her treating physician and a physician at the Center for Occupational and Environmental Medicine with expertise in the diagnosis and treatment of persons exposed to toxic levels of mold. (EXHIBIT 3, Powerpoint used at mediation; EXHIBIT 11, Aff. of Pet., ¶ 5.)

Employer/Carrier denied the claim. Employer/Carrier obtained a report from a neurologist and a toxicologist who opined that Claimant's exposure to mold was not the cause of her health problems. (EXHIBIT 11, Aff. of Pet., ¶ 6.)

Claimant's case was mediated and settled on March 15, 2017. Employer/Carrier agreed to pay \$109,900 to Claimant in a full and final, denied and disputed clincher, with the inclusion of Utica-Mohawk language in the settlement agreement if requested by Claimant. (EXHIBIT 4, Mediation Resolution.) Claimant requested the inclusion of Utica-Mohawk language. (EXHIBIT 5, Pet. email to defense counsel; EXHIBIT 11, Aff. of Pet., ¶ 7.)

The parties entered into a written Settlement Agreement and Release that was received and filed by the Commission on May 4, 2017. (EXHIBIT 6.) The Agreement provided, in pertinent part:

Claimant contends that she sustained an accidental injury arising out of and in the course of employment; that the relationship of employer and employee existed at the time of the injury; that she is in need of additional medical examination and treatment; that she has lost compensable time from work and wages; that she has sustained permanent disability

in excess of any ratings by treating physicians; that she has sustained bodily disfigurement; and Defendants dispute the Claimant's allegations and deny that any benefits are due. . . .

In consideration of the sum of One Hundred Nine Thousand Nine Hundred Dollars and No Cents (\$109,900.00), 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, 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 January 18, 2016, 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.

The parties have settled these claims on a denied and disputed clincher basis for a lump sum payment of \$109,900 (One Hundred Nine Thousand and Nine Hundred Dollars). The settlement after deducting attorney's fees and costs of \$36,633.33 and \$5,134.10, respectively, past out-of-pocket medical costs of at least \$9,876.38 and future medical costs of \$35,976.88, represents future compensation in the amount of \$22,279.31 at a weekly rate of \$757.72, beginning March 15, 2017, and continuing through the Claimant's anticipated lifetime of 42.94 years (DOB 9/17/1977) based on the life expectancy tables set forth in S.C. Code Ann. § 19-1-150. Therefore, Employee-Claimant will receive \$9.98 (Nine Dollars and Ninety-Eight Cents) per week in compensation benefits beginning March 15, 2017, for the duration of Employee-Claimant's lifetime ($\$22,279.31 / 2,232.88$ weeks = \$9.98 per week). See *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010); *Utica-Mohawk Mills v. Orr*, 87 S.E.2d 589, 227 S.C. 226 (1955); S.C. Code Ann. § 42-3-180, 42-17-40(A) and S.C. Code Reg. 67-709.

(EXHIBIT 6, Settlement Agreement, pp. 1-2; EXHIBIT 11, Aff. of Pet., ¶ 8.)

The Utica-Mohawk provision included in the Settlement Agreement was identical to the provision requested by Claimant. The amount allocated to future medical costs pursuant to the Utica-Mohawk provision was based on the potential cost of eight weeks of mold detoxification treatment at the Center for Occupational and Environmental Medicine and hotel, meal and mileage costs. (EXHIBIT 7, Claimant's demand letter to Employer/Carrier; EXHIBIT 11, Aff. of Pet., ¶ 9.)

The only reason a portion of the proceeds was allocated to potential future medical costs in the Settlement Agreement was for purposes of the Utica-Mohawk provision. The amount of \$68,132.57, which includes the portion allocated to potential future medical costs, was paid to Claimant in a lump sum. Claimant may spend the funds on living or medical expenses as she deems necessary. (EXHIBIT 11, Aff. of Pet., ¶ 10.)

Appellant submitted a Form 61 Petition and Order to the Commission on April 25, 2017. Appellant sought approval of payment of attorney's fees of \$36,633.33 as a one-third contingency fee and costs of \$5,134.10. (EXHIBIT 8.) Appellant was informed by Commissioner Susan Barden on May 15, 2017, that the fee petition would not be approved because "compensation" does not include future medicals, so there is no 1/3 fee on the \$35,976.88." (EXHIBIT 9, Angie Kicklighter email to Appellant; EXHIBIT 11, Aff. of Pet., ¶ 11.)

Appellant on May 18, 2017, resubmitted the fee petition to Commissioner Barden and included a 21-page invoice showing time spent on Claimant's case on an hourly basis, a copy of the Fee Agreement signed by Claimant, and an affidavit from Claimant asking the Commission to approve the requested attorney's fee regardless of whether it was paid on a contingency or hourly basis. The invoice showed that Appellant's firm had spent 218.7 hours over a 16-month period for a total of \$53,900, but Appellant sought approval of a fee of \$36,633.33. (EXHIBIT 10; EXHIBIT 11, Aff. of Pet., ¶ 12.)

Appellant was informed by the Commission on June 8, 2017, that the fee petition would not be approved on either a contingency or hourly basis unless Appellant submitted a fee petition which did not include any fee on the amount of \$35,976.88 purportedly allocated to future medical costs. Appellant requested a hearing on the matter of the fee petition. (EXHIBIT 11, Aff. of Pet., ¶ 13.)

Commissioner Barden held a hearing on the matter on July 20, 2017. (Tr. of Hearing.) Commissioner Barden issued an order on November 8, 2017, granting the petition in part and denying it in part. Commissioner Barden approved the payment of attorney's fees in the amount of \$24,641.04, which represents a one-third contingent fee based on a settlement of \$73,923.12, which does not include the \$35,976.88 that was allocated to future medical expenses. The commissioner also approved reimbursement of costs of \$5,134.10. Commissioner Barden ordered Appellant to hold the remaining \$11,992.29 in his firm's trust account until the matter was resolved by the Full Commission or on appeal. (Order at p. 9.)

Appellant incorporates by reference the Memorandum in Support of his petition and Exhibits 1 through 12, all of which were submitted to the commissioner, and the transcript of the hearing on July 20, 2017.

QUESTIONS PRESENTED

- I. Did the Single Commissioner err in concluding that an attorney's fee may not be paid on the portion of settlement proceeds allocated to future medical expenses, where the portion was allocated as such solely for purposes of Utica-Mohawk and where all proceeds were fully paid to Claimant in a lump-sum settlement of a contested case?

- II. Did the Single Commissioner err in denying Appellant's request that his attorney's fee be paid on an hourly or quantum meruit basis where the Workers' Compensation Act and Regulation 67-1205 allow approval of such a fee and the requested fee is reasonable and appropriate?

- III. Did the Single Commissioner err in relying on the South Carolina Rules of Professional Conduct in her order and in concluding that the requested fee was not reasonable under those Rules?

ARGUMENT

Appellant asks that the Full Commission reverse the Single Commissioner to the extent that the request for the payment of an attorney's fee of \$36,633.33 was denied. Appellant asks that the Full Commission approve the payment of the remaining funds of \$11,992.29 held in his firm's trust account as an attorney's fee paid on a contingent, hourly or quantum meruit basis.

- I. **The Single Commissioner erred in concluding that an attorney's fee may not be paid on the portion of settlement proceeds allocated to future medical expenses, where the proceeds were allocated as such solely for purposes of Utica-Mohawk and where all proceeds were fully paid to Claimant in a lump-sum settlement of a contested case.**

South Carolina Code Ann. § 42-1-100 defines "compensation" in a workers' compensation case as "the money allowance payable to an employee or to his dependents as provided for in this title and includes funeral benefits provided in this title."

South Carolina Code of Regulations 67-1205(C) provides that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in the following situations, where the attorney shall set the fee as instructed. When unusual circumstances exist, the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by quantum meruit." Attorney's fees must be approved by the Commission or a court of competent jurisdiction. S.C. Code Ann. § 42-15-90(A) and (B)(1)(a); S.C. Code Regs. 67-1204 to -1207.²

No statute in Title 42 and no regulation in Title 67 defines or states whether the term "compensation" or the phrase "total amount of compensation," for purposes of calculating an

² Reg. 67-1205 sets out seven types of cases in which an attorney's fee is more limited, none of which apply in the present case.

attorney's fee, includes money allocated to potential future medical expenses solely for purposes of a Utica-Mohawk provision. Appellant has found no South Carolina case directly on point.

Simply put, the funds paid in a lump sum to Claimant pursuant to the Settlement Agreement constitute a "money allowance" as defined in § 42-1-100. Those funds also are the "total amount of compensation" paid to Claimant as stated in Regulation 67-1205(C) on which an attorney's fee is payable.

This contested case does *not* involve future medical expenses or funds which have not yet been paid to a claimant, but involves funds which have been paid in full in a lump sum to Claimant, who may spend the funds as she deems necessary on living or medical expenses.

While there is no case directly on point, the South Carolina Supreme Court in a case involving the third-party lien statute held that "compensation" under Title 42 includes ***both income benefits and medically related benefits***, regardless of whether the term "compensation" is used in the context of benefits paid to date or benefits to be paid in the future. In Breeden v. TCW, Inc., 355 S.C. 112, 584 S.E.2d 379 (2003), a claimant truck driver suffered a traumatic brain injury in a wreck and received lifetime workers' compensation benefits.

In an effort to limit the scope of the carrier's lien, the claimant in Breeden argued that the carrier's lien should not include future medical expenses because "compensation" is defined in § 42-1-100 as "the money allowance payable to an employee or his dependents . . . and funeral benefits," and therefore excludes medical benefits. The Supreme Court explicitly rejected that argument. Breeden, 355 S.C. at 119-20.

The Supreme Court first held that the carrier's lien against a third-party settlement under § 42-1-560(f) includes ***both income benefits and medical benefits*** paid to the date of the third-party settlement, based on the definition of "total amount of compensation, including medical and other

expenses” as defined in § 42-1-560(b). The Supreme Court went on – in like fashion and in a similar view of the inclusive nature of “compensation” in a workers’ compensation case – to hold that the term “future compensation benefits” as defined in § 42-1-560(b) and which may be placed in a fund that established under § 42-1-560(g), from which the insurer is entitled to future reimbursement without reduction of its lien, “*includes not only wage benefits but hospital and medical payments as well.*” Breeden, 355 S.C. at 120 (citing 12 Larson’s Workers’ Compensation Law § 117.03).³

In the present case, Appellant is entitled to recover an attorney’s fee based on the total lump-sum award paid to Claimant, including the portion allocated to future medical expenses for Utica-Mohawk purposes, based on the Supreme Court’s reasoning and result in Breeden. Although Breeden involved the third-party lien statute, the basic principle that presently paid and future “compensation” includes *both income benefits and medical benefits* applies with equal force in this case. The Supreme Court explicitly has rejected the argument that the definition of

³ The Court of Appeals reached the same conclusion in Breeden, holding that “compensation” under Title 42 includes *both income benefits and medically related benefits, including future medical expenses.* Breeden v. TCW, Inc., 345 S.C. 201, 546 S.E.2d 657 (Ct. App. 2001). The Court of Appeals held that “[w]e agree with Employer and Carrier that the legislature intended future medicals to be included in the calculation of the value of Carrier’s lien for the purpose of establishing a fund from excess third party settlement proceeds to pay future medical compensation benefits.” Breeden, 345 S.C. at 213. The Court of Appeals relied on § 42-1-560(b), which provides that the carrier’s lien shall extend to the proceeds of recovery “to the extent of the total amount of compensation, including medical and other expenses, paid, or to be paid by such carrier.” Id. at 214. The Court of Appeals also reasoned that the better public policy was to include future medical expenses in the carrier’s lien because allowing the claimant to recover such expenses from a third party and also from the carrier would result in an impermissible double recovery. Id. at 214. The Court of Appeals also explicitly rejected claimant’s argument that the carrier’s lien should not include future medical expenses because “compensation” is defined in § 42-1-100 as “the money allowance payable to an employee or his dependents . . . and funeral benefits,” and therefore excludes medical benefits. Breeden, 345 S.C. at 213.

compensation in § 42-1-100 and under the Workers' Compensation Act is limited to only income benefits.

Appellant respectfully submits that he has not “cherry pick[ed]” language from Breeden to support his argument (Order, p. 6.) In fact, Appellant has accurately stated the clear result and import of the opinion – that the term “compensation” in the workers' compensation setting includes both income benefits and medical benefits, whether the benefits are presently paid or to be paid in the future. That basic principle holds true whether the question is the scope of the carrier's lien against a third-party recovery or the question of the scope of an attorney's fee where a portion of the money paid in full to a claimant is allocated as future medical expenses solely for purposes of Utica-Mohawk. The Single Commissioner erred in concluding that the “context of § 42-1-560 requires a different meaning to be placed on the word ‘compensation’ as it is used in that statute than is provided for in § 42-1-100” or Reg. 67-1205(C). (Order, p. 7.)

In addition, the sole purpose of a Utica-Mohawk⁴ provision in a workers' compensation award or settlement agreement is to maximize a workers' compensation award and minimize the impact of a potential reduction in future Social Security disability benefits. Workers' compensation benefits paid in a lump sum are deemed prorated over a claimant's lifetime pursuant to the statutory life expectancy tables, thereby reducing the potential offset made by Social Security when paying disability benefits. See James v. Anne's, Inc., 390 S.C. 188, 200-01, 701 S.E.2d 730 (2010) (holding that “Commission has the authority to prorate a lump sum award over

⁴ The South Carolina Supreme Court has explained that Utica-Mohawk Mills v. Orr, 227 S.C. 226, 87 S.E.2d 589 (1955), although it did not expressly address the issue for which it was regularly cited, had by custom and practice over the years been accepted by litigants, the Commission and the Social Security Administration as a valid means of maximizing a workers' compensation award or settlement. James v. Anne's Inc., 390 S.C. 188, 196-97, 701 S.E.2d 730 (2010).

a claimant's expected lifetime" and "[t]he purpose of allocating a lump sum disability award over the claimant's lifetime is to make sure a claimant is not being economically penalized by the Social Security Administration's calculation of an offset").

The allocation of a portion of a lump-sum award or settlement proceeds to future medical expenses, done solely for purposes of a Utica-Mohawk provision, does not in any way prevent or restrict the claimant's use of the funds. In this case, Claimant received the entire amount of the award in a lump sum and may spend any or all of the funds on any expenses she deems necessary, including living expenses or medical expenses. Claimant is not required to use the money to pay future medical expenses.

Moreover, if the Commission denies the payment of attorney's fees from an amount allocated to future medical expenses solely for purposes of a Utica-Mohawk provision, that position likely will lead claimants' attorneys to avoid making any such allocation. That avoidance will result in a disadvantage to claimants and reduce claimants' ability to maximize their workers' compensation award by reducing the Social Security offset. For example, in this case, if the Utica-Mohawk provision had not allocated any of the settlement proceeds to potential future medical expenses, it would have provided as follows:

The parties have settled these claims on a denied and disputed clincher basis for a lump sum payment of \$109,900 (One Hundred Nine Thousand and Nine Hundred Dollars). The settlement after deducting attorney's fees and costs of \$36,633.33 and \$5,134.10, respectively, and past out-of-pocket medical costs of at least \$9,876.38, represents future compensation in the amount of \$58,256.19 at a weekly rate of \$757.72, beginning March 15, 2017, and continuing through the Claimant's anticipated lifetime of 42.94 years (DOB 9/17/1977) based on the life expectancy tables set forth in S.C. Code Ann. § 19-1-150. Therefore, Employee-Claimant will receive \$26.09 (Twenty-Six Dollars and Nine Cents) per week in compensation benefits beginning March 15, 2017, for the duration of Employee-Claimant's lifetime ($\$58,256.19 / 2,232.88 \text{ weeks} = \26.09 per week). See *James v. Anne's, Inc.*, 390 S.C. 188, 701 S.E.2d 730 (2010); *Utica-Mohawk Mills v. Orr*, 87 S.E.2d 589, 227 S.C. 226 (1955); S.C. Code Ann. § 42-3-180, 42-17-40(A) and S.C. Code Reg. 67-709.

Calculated in this manner, the prorated weekly amount over Claimant's lifetime would have been 260% higher, rising from \$9.98 per week to \$26.09 per week. Such an outcome is neither necessary nor desirable as a matter of public policy. The statutes and workers' compensation law should be construed in a manner which maximize the benefit of workers' compensation to claimants. See e.g. James, 390 S.C. at 198, 701 S.E.2d at 735 (stating "general rule that workers' compensation law is to be liberally construed in favor of coverage in order to serve the beneficent purpose of the Act; only exceptions and restrictions on coverage are to be strictly construed"); Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960) (observing the courts nationwide universally have viewed workers' compensation law as being enacted for the benefit of employees and that the law is to be liberally construed for the employees' protection).

In North Carolina, the Court of Appeals has held that an attorney's fee may be paid on past medical expenses obtained in a contested case.⁵ In Palmer v. Jackson, 579 S.E.2d 901 (N.C. Ct. App. 2003), discretionary review improvidently granted, 595 S.E.2d 145 (2004) ("Palmer I"), the claimant, a migrant worker, suffered a heatstroke and was permanently disabled. The claimant's counsel sought a 25% contingent fee on \$410,000 in past medical expenses which were to be paid by the workers' compensation carrier to previously unpaid medical providers. The Commission denied the attorney's fee, ruling that "compensation paid to plaintiff is limited to indemnity compensation and penalties and sanctions added to such compensation [which in this case amounted to about \$24,000], but does not include expenses related to medical care and treatment."

⁵ Courts give great weight to North Carolina's decisions in workers' compensation cases because the South Carolina statutes were fashioned after North Carolina's. Anderson v. Baptist Medical Center, 343 S.C. 487, 541 S.E.2d 526 (2001). However, South Carolina is not bound by North Carolina precedent. Parrott v. Barfield Used Parts, 206 S.C. 381, 34 S.E.2d 802 (1945).

Id. at 903-04. The trial court, recognizing counsel's extensive efforts in the case and the inherent unfairness of the situation, reversed and awarded a contingent attorney's fee to be paid from the amount awarded for medical expenses.

The North Carolina Court of Appeals reversed, holding that workers' compensation law did not allow past medical expenses required by statute to be paid to prior medical providers to be reduced for attorney's fees. Id. at 905-06. ***However***, the Court of Appeals held that the Commission and trial court had the authority to require the carrier in cases involving special circumstances to pay an additional amount above and beyond the medical expenses as a fee to the claimant's attorney.

On appeal from the Industrial Commission, the trial court, in its discretion pursuant to § 97-90(c), could determine that the appellees should be further compensated. Upon the proper findings of fact as to the work and the special nature of the case, the trial court could order that the defendant carrier should further pay appellees an amount based upon a percentage (be it 1%, 5%, 10% or so on) of the \$410,000.00 medical compensation. This amount would be over and above what was ordered by the Industrial Commission to be paid by defendant carrier. Such a result appears to be within the power of the trial court as prescribed by § 97-90(c) and reviewable only for an abuse of discretion.

This matter is therefore vacated and remanded to the trial court for a determination of an appropriate attorney fee. The trial court is not prohibited from utilizing a percentage of the medical compensation as a basis for a fee. The trial court may not, however, reduce the compensation paid to medical providers in order to fund the fee award. In making its determination, the trial court should be guided by the factors set forth in the N.C. Gen.Stat. § 97-90(c).

Palmer I, 579 S.E.2d at 909.

The North Carolina Court of Appeals recognized that inappropriate denials or limitations on attorney's fees inevitably will limit claimant's access to counsel. "In contested workers' compensation cases today, access to competent legal counsel is a virtual necessity. . . . Leaving injured employees without the representation they need to obtain the complete and total amount of their workers' compensation award would defeat the purposes of the Act." Palmer I, 579 S.E.2d

at 907 (citing Church v. Baxter Travenol Laboratories, 409 S.E.2d 715, 717-18 (N.C. Ct. App. 1991)).

On remand in Palmer I, the trial court awarded a 25% contingent attorney's fee to claimant's counsel on the past medical expenses paid to medical providers, and ordered that amount to be paid by the workers' compensation carrier above and beyond the amounts paid to the medical providers. The Court of Appeals affirmed the trial court's ruling in Palmer II. Palmer v. Jackson, Op. No. COA05-1067 (N.C. Ct. App. filed May 16, 2006) ("Palmer II") (unpublished opinion) (EXHIBIT 12). See also Reed v. Carolina Holdings, Op. No. COA15-1034 (N.C. Ct. App. filed Feb. 7, 2017) (affirming Commission's award of attendant care services and payment of contingent 25% attorney's fees on all accrued retroactive attendant care services, but denying award of attorney's fees on portion of future attendant care services that had not yet paid to claimant; court also noted that defendant had failed to preserve argument regarding attorney's fees) (EXHIBIT 12).

Contrary to the Single Commissioner's conclusion that the Palmer cases are inapposite, these cases and the Reed case support Appellant's argument that an attorney's fee may be paid on settlement proceeds allocated to future medical expenses solely for purposes of Utica-Mohawk when those proceeds are paid in a lump sum to the claimant. The overriding theme of the reasoning and outcome in the Palmer cases is that the money would not have been available to pay the claimant or any medical provider if not for the efforts of claimant's lawyer, and the lawyer is entitled to the usual contingent fee for his or her efforts.

That same theme is reflected in cases nationwide. Numerous courts in other states have held that a contingent attorney's fee may be awarded on medical benefits obtained on behalf of a claimant in a contested case, including future medical benefits. See e.g. In Re Phillips, 144 A.3d

882 (N.H. 2016) (reversing worker's compensation appeals board ruling that it could not award a contingent fee based on medical benefits to be paid in the future because such a fee was "based upon hypotheticals" and was per se unreasonable, and holding that attorney may recover a contingent fee on future medical benefits that have not yet been paid in appropriate cases, although the fee must be deemed reasonable); Couture v. Mammoth Groceries, Inc., 371 A.2d 1184 (N.H. 1977) (holding that contingent attorney's fee in workers' compensation case may be based on one-third of "any benefits received to date as well as for future benefits"); Bayer v. Panduit Corp., 63 N.E.3d 890, ¶¶ 9, 16-41 (Ill. 2016) (Illinois Supreme Court explained that "[i]n this case, there was no question that [claimant's] lawyers were entitled to fees equal to 25% of the amount [employer/carrier] had paid for lost wages, medical expenses, and other compensable items under the Workers' Compensation Act prior to the time the workers' compensation payments were suspended" in connection with a third-party settlement; Court further held that employer/carrier had to pay contingent attorney's fees "on the future medical expenses it will be spared from having to pay as a result of the successful third-party action brought by [claimant]"); Brown v. C&S Wholesale Services, Inc., No. 2016-CA-0072 (La. App. Ct. October 4, 2016) (holding that Workers' Compensation Office abused its discretion in refusing to award usual contingent attorney's fees on amount allocated to future medical expenses in settlement, where claimant received lump sum settlement of \$135,000 with \$125,00 "allocated to future medical treatment"; Court of Appeals noted there was no jurisprudential or statutory authority providing that attorney cannot be paid a fee from funds allocated to future medical expenses) (unpublished opinion) (EXHIBIT 12); Lockhart v. N.H. Ins. Co., 984 P.2d 744, ¶ 25 (Mont. 1999) (reversing Workers' Compensation Court and holding that contingent attorney's fee may be paid based on medical benefits paid to claimant and recovered due to efforts of attorney; Montana Supreme Court stated

that “[t]here is no question that an attorney representing an injured claimant is entitled to collect an attorney fee based upon the amount of disputed medical benefits ultimately paid by the insurer”; Supreme court noted that it previously had held that term “compensation benefits” includes medical benefits when considering the application of a penalty statute, citing Carlson v. Cain, 700 P.2d 607, 612 (Mont. 1985)); Bustell v. AIG Claims Service, Inc., WCC No. 2000-0201 (Workers’ Comp. Court of Montana filed July 18, 2003) (citing Lockhart and holding that the “efforts of the claimant’s attorney secured not only the payment of past medical expenses but also established respondent’s obligation to pay future medical benefits. Thus, the [attorney’s fee] lien in this case applies to *all* medical benefits, *past and future*) (emphasis in original) (EXHIBIT 12); Langford v. Liberty Mutual Ins. Co., 845 S.W.2d 100 (Tenn. 1993) (holding that contingent attorney’s fee may be calculated based on contested medical expenses because they are part of the recovery and award to claimant; Tennessee Supreme Court noted that most courts in other states have reached the same conclusion); Ringling Bros.-Barnum & Bailey Comb. Shows v. Jones, 134 So.2d 244, 246 (Fla. 1961) (attorney’s fee may be awarded where the compensation recovered is solely medical expenses; “[t]o hold that payment of compensation benefits was a prerequisite to an award of attorneys’ fees in the face of the entry of an award benefitting the claimant, such as was entered herein, would amount to nullification of [a statute], despite the requirement that we are required to resolve any doubts that may be shown to exist in favor of the working man”); Schiller v. Southwest Air Rangers, Inc., 535 P.2d 1327, 1329 (N.M. 1975) (medical expenses are “compensation” and attorney’s fee can be awarded thereon); Raulston v. Workmen’s Compensation Appeal Board, 606 A.2d 668 (Pa. Cmwlth. Ct. 1992) (attorney’s fee may be awarded against medical expenses recovered); John A. Miller & Assoc. v. Workmen’s Compensation Appeal Board, 616 A.2d 131 (Pa. Cmwlth. Ct. 1992) (for purpose of attorney’s fee award, statutory language of “amount

awarded” includes medical expenses); Wommer v. Workmen’s Compensation Appeal Board, 479 A.2d 661 (1984) (in appropriate circumstances, it is proper to award attorney’s fee based upon medical expenses); Workmen’s Compensation Appeal Board v. Leuschen, 342 A.2d 810 (1975) (statute allows reasonable attorney’s fees not exceeding 20 percent against claimant’s award, including medical expenses); General Accident Fire & Life Assurance Corp. v. Hames, 416 S.W.2d 894 (Tex. Civ. App. 1967) (statutory language of “claim” includes medical expenses so as to allow a reasonable attorney’s fee thereon).

Appellant submits that the Single Commissioner’s observation that certain states may provide for a contingent attorney’s fee percentage is less than South Carolina law misses the point. A one-third contingent fee in workers’ compensation cases is allowed by statute and regulation in South Carolina. The issue at hand is whether the fee – regardless of the contingent percentage amount – may include a portion of a settlement allocated to future medical expenses solely for purposes of Utica-Mohawk when the proceeds are paid in a lump sum to the claimant.

An attorney’s fee must, of course, be reasonable and a one-third contingent fee is presumed reasonable in a workers’ compensation case. The fee requested by Appellant is reasonable and appropriate in this case. See also Glasscock v. Glasscock, 304 S.C. 158, 403 S.E.2d 313 (1991) (establishing factors to determine whether attorney’s fee is reasonable: (1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services).

Under the Glasscock analysis, claimant’s case was a difficult and complicated case which was denied by Employer/Carrier; nearly 219 hours in attorney and paralegal’s time were spent on the case during a 16-month period; Appellant is an experienced attorney; Appellant’s firm took a

risk on the case as a contingency matter; a favorable result was obtained for Claimant in a difficult contested case; and Appellant seeks to be paid the customary legal fee in a workers' compensation case.

Accordingly, Appellant asks that the Full Commission approve the payment of a contingent attorney's fee of \$36,633.33.

II. The Single Commissioner erred in denying Appellant's request that his attorney's fee be paid on an hourly or quantum meruit basis where the Workers' Compensation Act and Regulation 67-1205 allow approval of such a fee and the requested fee is reasonable and appropriate.

Regulation 67-1205(C) provides that "[a]n attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in the following situations, where the attorney shall set the fee as instructed. When unusual circumstances exist, the attorney may attach to the Form 61 a short memorandum supporting approval of a fee calculated on an hourly rate or by quantum meruit."

Appellant on May 18, 2017, resubmitted the fee petition to Commissioner Barden and included a 21-page invoice showing time spent on Claimant's case on an hourly basis, a copy of the Fee Agreement signed by Claimant, and an affidavit from Claimant asking the Commission to approve the requested attorney's fee regardless of whether it was paid on a contingency or hourly basis. The invoice showed that Appellant's firm had spent 218.7 hours over a 16-month period for a total of \$53,900, but Appellant sought approval of a fee of \$36,633.33. (EXHIBIT 10; EXHIBIT 11, Aff. of Pet., ¶ 12.)

Appellant asks that the Commission approve an attorney's fee calculated on an hourly or quantum meruit basis not to exceed \$36,633.33. The requested attorney's fee is reasonable and justified by Appellant's extensive efforts in Claimant's case.

The fee requested by Appellant on an hourly basis is reasonable and appropriate in this case. See also Glasscock, supra, and the analysis described above.

III. The Single Commissioner erred in relying on the South Carolina Rules of Professional Conduct in her order and in concluding that the requested fee was not reasonable under those Rules.

Appellant submits that the Rules of Professional Conduct are not implicated and have no application or relevance in this case. The Rules are intended to guide lawyers in acting ethically and provide boundaries to decide when they have acted unethically. See e.g. Preamble of the Rules and Scope of the Rules, ¶ 7 (“The Rules are designed to provide guidance to lawyers and to provide a structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability.”).

Applying the Rules as stated in the Single Commissioner’s order puts the cart before the horse. The Rules would apply only after an attorney allegedly collected an unreasonable or improper fee; they do not apply when an attorney seeks the required permission to be paid a given fee and there is a dispute about whether the fee should be calculated based on all or part of settlement proceeds.

Any suggestion or implication that Appellant has acted unreasonably, unethically or improperly under the Rules by requesting a one-third contingent attorney’s fee in a workers’ compensation case – where such a contingent fee is explicitly allowed by statute and regulation – is absolutely incorrect.

There should be no dispute that a request for a one-third contingent attorney’s fee in a workers’ compensation case is reasonable and lawful. The issue at hand is simply whether a portion of the settlement proceeds should or should not be included in the calculation of the fee. Disputing the Commission’s position on whether an attorney’s fee may be charged on future

medical expenses allocated as such solely for purposes of Utica-Mohawk does not somehow transform a fee petition into an unreasonable request under the Rules. Any determination of the reasonableness of the fee should proceed under the Glasscock factors, not the Rules of Professional Conduct. See Glasscock, supra, and the analysis described above.

There is no conflict with the Rules in Appellant's request and the fee in this case meets all requirements of Reg. 67-1205.⁶ The Single Commissioner's order finds that the fee is unreasonable and purportedly in conflict with the Rules only by repeatedly stating that the contingent fee as approved "is the maximum amount of a contingency fee permitted by law." (Order, pp. 3-5.) Again, that is the legal issue at hand and a disagreement about it, or a ruling on it under the circumstances of this case, does not in any way implicate the Rules or make the fee request unreasonable. It is simply unnecessary and inappropriate to state or imply that the fee requested by Appellant is unreasonable or improper under the Rules of Professional Conduct.

⁶ Regulation 67-1205 provides, in pertinent part:

- A. If the parties fix the fee by contract and base the fee on an hourly rate and/or a retainer, the fee is deemed reasonable unless it conflicts with the South Carolina Supreme Court Disciplinary Rule on determining reasonable fees.
- B. If the parties agree to a contingent fee contract, the fee is deemed reasonable when the following requirements are met and the requested fee does not conflict with the South Carolina Supreme Court Disciplinary Rule on determining a reasonable fee.
 - (1) The attorney fully explains the fee agreement to the client and informs the client of the total dollar amount of the fee that will be deducted from the client's benefits; and
 - (2) The client agrees to the fee by signing a completed Form 61; and
 - (3) The attorney calculates the fee according to C below.
- C. An attorney may charge up to, but not more than, 33.3% of the total amount of compensation, except in the following situations, where the attorney shall set the fee as instructed. . . .

In any event, Appellant submits that the requested attorney's is proper under Rule 1.5, SCRPC, just as it is proper under Glasscock. Nearly 219 hours of attorney's and paralegal time were spent on a difficult, complex workers' compensation case in which coverage was denied by Employer/Carrier; Appellant necessarily did not accept or work on other potential cases because any attorney's caseload is limited by his firm's size and resources; Appellant's fee request is the standard, established contingency fee in workers' compensation case; a favorable result was obtained for Claimant in a difficult contested case; Appellant is an experienced attorney; and Appellant's firm took a risk on the case as a contingency matter.

Accordingly, the requested fee is reasonable and appropriate regardless of the particular method by which it is analyzed.

CONCLUSION

For all the foregoing reasons, Appellant asks that the Full Commission reverse the Single Commissioner to the extent that the request for the payment of an attorney's fee of \$36,633.33 was denied. Appellant asks that the Full Commission approve the payment of the remaining funds of \$11,992.29 held in his firm's trust account as an attorney's fee paid on a contingent, hourly or quantum meruit basis.

Respectfully submitted,



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Attorneys for Claimant

January 29, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

CERTIFICATE OF SERVICE

I, the undersigned lawyer or employee in the offices of Proffitt & Cox, LLP, attorneys for Claimant, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Appellant's Brief

Counsel / Parties Served: Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715



David Proffitt

January 29, 2018

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February 22, 2018

Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

RE: Misty A. Morris v. BB&T Corporation d/b/a BB&T Bank and Hartford Accident &
Indemnity Co.
WCC File No. 1600715
PC File No. 1464.01

Dear Ms. Hollmon and Ms. Deller:

Please find enclosed for filing a Motion for Rehearing with regard to the Full Commission's denial of my Motion to Reinstate an Appeal, which I received on February 20, 2018.

Please file the original motion and return a date-stamped copy to me in the enclosed envelope. A check for the \$25.00 filing fee is enclosed.

With kindest personal regards, I remain
Sincerely yours,

PROFFITT & COX, LLP


David Proffitt

RDP/nif
Enclosures

cc:
BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512

SCANNED

Date: 2/28/18
Proffitt & Cox, LLP

RECEIVED

FEB 28 2018

BY PROFFITT & COX, LLP

SCWCC
FEB 26 2018
JUDICIAL

ROA-000047

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.

APPELLANT'S MOTION FOR REHEARING

Appellant David Proffitt submits his motion for rehearing to the Full Commission.

PROCEDURAL POSTURE

Appellant on November 15, 2017, timely filed a Form 30 Request for Commission Review of Commissioner Susan S. Barden's order denying in part his petition for attorney's fees. The Commission on December 15, 2017, issued a Form 31 Briefing Schedule and Notice of Appellate Hearing. Appellant's brief was due to be filed on January 16, 2018, and the hearing was scheduled for February 20, 2018.¹

Appellant received by email a letter from the Commission on January 26, 2018, stating that the appeal had been administratively dismissed because Appellant's brief was not timely filed pursuant to Reg. 67-705(H)(3). Pursuant to Reg. 67-705(H)(4), Appellant moved on January 29, 2018, to reinstate the appeal, and his motion was filed on February 1, 2018.

¹ The Form 31 stated the brief was due on January 14, 2018, but January 14 was a Sunday and January 15 was a holiday.

In his motion, Appellant apologized for the delay. Appellant wrongly believed that the deadline to file the brief was January 31, 2018, when in fact the deadline was January 16. The deadline was not calendared correctly.

This appeal involves the issue of the calculation of Appellant's attorney's fee and there is no opposing party involved. Chad Abramson, attorney for Employer/Carrier, sent the Commission a letter on November 21, 2017, stating that his office is not involved in this matter, does not intend to appear and does not need to be served with pleadings or briefs related to the appeal. Appellant has provided the Commission with a copy of that letter.

Appellant also submitted with the motion to reinstate a copy of the brief he intended to file if the Commission reinstated the appeal and allowed him to do so. Appellant informed the Commission that he would be happy to file additional copies of the brief, the previously filed Form 30, the single commissioner's order, the transcript of the hearing and any other documents necessary to perfect the appeal.

Appellant on February 20, 2018, received by email a copy of the Full Commission's form order denying his motion to reinstate. See Affidavit of Appellant attached as EXHIBIT A.

STANDARD OF REVIEW

"The South Carolina Administrative Procedures Act governs judicial review of a decision of the workers' compensation commission." Lark v. Bi-Lo, Inc., 276 S.C. 130, 134, 276 S.E.2d 304, 306 (1981); Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005); Hargrove v. Titan Textile Co., 360 S.C. 276, 288, 599 S.E.2d 604, 610 (Ct. App. 2004). Pursuant to the APA, an appellate 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. Grant v. Grant Textiles, 372 S.C. 196, 200, 641 S.E.2d 869, 871 (2007); S.C. Code Ann. § 1-23-380(A)(5).

Pursuant to S.C. Code Ann. § 1-23-380(5), the decision of the Commission may be reversed or modified “if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by an abuse of discretion or clearly unwarranted exercise of discretion.”

MOTION

Appellant moves for rehearing before the Full Commission on the following grounds:²

- I. The Full Commission’s denial of Appellant’s motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal on the merits is arbitrary, capricious and constitutes an abuse of discretion, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which could have been prejudiced by granting the motion, and Appellant was ready,**

² See Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015) (holding that party may file motion for rehearing with Full Commission and the motion stays the deadline for serving notice of appeal with Court of Appeals for thirty days from receipt of decision on the motion for rehearing).

willing and able to immediately submit his brief to the Commission 13 days after the original due date and 22 days before the scheduled hearing date.

The Commission's regulations explicitly contemplate and allow an extension of time to file an appellate brief. "With the consent of the opposing party, the time for filing a brief may be extended if a letter acknowledging the agreement is filed with the Commission on or before the original filing date." 25A S.C. Code Ann. Reg. 67-705(H). There is no opposing party in this in this appeal.

While the filing of the Form 30 Request for Review is jurisdictional, as stated in 25A S.C. Code Ann. Reg. 67-701(A), other deadlines for filing a brief and perfecting the appeal are not jurisdictional. See Skinner v. Westinghouse Elec. Corp., 380 S.C. 84, 668 S.E.2d 795, 796-97 (2008) (teaching that jurisdictional appealability issues are governed by statute, not by rules of civil procedure; therefore, under former APA statute then in effect, notice of appeal was not required to be served on Workers' Compensation Commission and so failure to serve it on Commission did not deprive circuit or appellate courts of jurisdiction); cf. Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985) (service, but not filing, of notice of appeal is jurisdictional requirement for appellate court and appellate court may not extend the time for doing it); Rule 203(b)(1), SCACR (stating that "[a] notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment."); Rule 263(b), SCACR ("time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof").

The Commission regulations require that “[a]ll briefs must be filed at least five days before the scheduled date of review.” 25A S.C. Code Ann. Reg. 67-705(H)(1). Appellant was ready, willing and able to file his brief 22 days before the scheduled date of review.

“An appeal which is administratively dismissed by the Judicial Department may be reinstated for good cause shown to the Commission.” 25A S.C. Code Ann. Reg. 67-705(H)(4). See also Matute v. Palmetto Baptist Hosp., 391 S.C. 291, 705 S.E.2d 472, 474-75 (Ct. App. 2011) (affirming Commission’s decision to reinstate employer’s appeal for good cause after it was administratively dismissed because Form 30 was filed after the 14-day deadline to appeal single commissioner’s order, where record showed order had been timely served on employer but employer asserted it did not receive the order until it inquired to the single commissioner a month later).

Appellant submits that he has shown good cause to reinstate the appeal. Appellant candidly admitted that he calendared the wrong due date for the brief, which resulted in the missing of a non-jurisdictional deadline and a slight delay that prejudiced no one. Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018. See attached affidavit of Appellant, stating same.

There is no opposing party in this matter which could have been prejudiced by granting the motion because, as counsel for Employer/Carrier has informed the Commission, Employer/Carrier has no opinion or role and has not appeared in this attorney’s fee matter.

Appellant was ready to file his brief, as shown in the proposed brief submitted to the Commission with his motion to reinstate the appeal. Appellant was ready and willing to submit his brief, perfect the appeal and proceed to the hearing on February 20. Conversely, Appellant had

no objection to continuing a hearing on the appeal until a later date if the Commission deemed it necessary.³

The Full Commission in its form order denying the motion gave absolutely no reason for the denial. The Commission made no findings of fact and stated no conclusions of law. The Commission offered Appellant no opportunity to be heard before denying the motion, as Appellant was informed the Commission would simply consider the written motion at a judicial conference.

“An abuse of discretion occurs when the judge’s ruling is based upon an error of law or, when based upon factual conclusions, is without evidentiary support.” Fontaine v. Peitz, 291 S.C. 536, 354 S.E.2d 565 (1987). The Commission’s ruling in this instance is based on an error of law because the law certainly cannot condone the outright dismissal of an appeal when a party is 13 days late in filing a brief.

The Commission’s decision also is without evidentiary support. If it is the Commission’s position that a single, non-jurisdictional calendaring mistake by counsel, which results in a single, non-jurisdictional missed deadline, is a “death sentence” for a case or an appeal, Appellant respectfully submits that such a position must be deemed arbitrary, capricious and an abuse of discretion. Such a position would only be tenable in a world where every lawyer was perfect and unerring, every claimant an angel, every employer and insurer a demi-god, and every

³ Appellant is at a loss to understand the Commission’s ruling or apparent displeasure at the missing of a non-jurisdictional deadline and a mere 13-day delay, given the fact that a hearing by the single commissioner on Appellant’s petition was held on July 20, 2017, and the order denying the petition in part was filed 3½ months later on November 8, 2017. Appellant is *not, repeat, not* in any way criticizing the Commission for the length of time it took to obtain a ruling because Appellant is aware of the Commission’s heavy workload. However, the slow and steady pace of the Commission’s work does indicate that a slight delay in the filing of a brief should not completely derail an appeal from proceeding to a decision on the merits.

commissioner a saint. Such a world does not exist, and Appellant is the first to admit he is far from perfect or unerring.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

II. The Full Commission's denial of Appellant's motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal on the merits violates Appellant's constitutional and statutory right to due process, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which could have been prejudiced by granting the motion, and Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date and 22 days before the scheduled hearing date.

Procedural due process imposes constraints on governmental decisions which deprive individuals of liberty or property interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution. Mathews v. Eldridge, 424 U.S. 319, 332 (1976). "The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws." S.C. Const., art. I, § 3.

The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way, and judicial review. Stono River Env'tl. Protection Ass'n v. S.C. Dep't of Health and Env'tl. Control, 305 S.C. 90, 94, 406 S.E.2d 340, 342 (1991). "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.” S.C. Const. art. 1, § 22.

The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual’s property or liberty interest, generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. In re Vora, 354 S.C. 590, 595, 582 S.E.2d 413, 416 (2003); S.C. Dept. of Soc. Servs. v. Wilson, 352 S.C. 445, 452-53, 574 S.E.2d 730, 733-34 (2002) (quoting Morrisey v. Brewer, 408 U.S. 471, 481, 92 S. Ct. 2593, 2600, 33 L.Ed.2d 484, 494 (1972)); Cameron Barkley Co. v. S.C. Procurement Review Panel, 317 S.C. 437, 440, 454 S.E.2d 892, 894 (1995).

Due process does not require a trial-type hearing in every conceivable case of government impairment of a private interest. First Fed. Sav. & Loan Ass’n of Walterboro v. Bd. of Bank Control, 263 S.C. 59, 65, 207 S.E.2d 801, 804 (1974) (quoting Cafeteria and Restaurant Workers Union v. McElroy, 367 U.S. 886, 894 (1961)). Rather, due process is flexible and calls for such procedural protections as the particular situation demands. S.C. Dep’t of Soc. Servs. v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730, 733 (2002); In re Vora, 354 S.C. at 595, 582 S.E.2d at 416. The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. S.C. Dept of Soc. Servs. v. Beeks, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

In this case, the Commission's denial of the motion to reinstate and failure to consider the appeal on the merits constitutes a violation of procedural due process. Appellant has a property interest in the attorney's fee charged in this case. Appellant has been denied the right to adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to meaningful review by the Commission and the right to meaningful judicial review.

Moreover, the Commission's decision has denied Appellant his right to substantive due process.

No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law. Sunset Cay, LLC v. City of Folly Beach, 357 S.C. 414, 430, 593 S.E.2d 462 (2004); Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657 (2000).

"The purpose of the substantive due process clause is to prohibit government from engaging in arbitrary or wrongful acts regardless of the fairness of the procedures used to implement them." In re Treatment and Care of Luckabaugh, 351 S.C. 122, 140, 568 S.E.2d 338, 347 (2002) (internal quotes omitted).

"The right to hold specific employment and the right to follow a chosen profession free from unreasonable governmental interference come within the liberty and property interests protected by the Due Process Clause [of the Fourteenth Amendment]. The liberty interest at stake is the individual's freedom to practice his or her chosen profession; the property interest is the specific employment." Brown v. S.C. State Bd. of Educ., 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Greene v. McElroy, 360 U.S. 474, 79 S.Ct. 1400, 3 L.Ed.2d 1377 (1959); Baird v.

Charleston County, 333 S.C. 519, 537, 511 S.E.2d 69, 79 (1999) (recognizing same principle); Ezell v. Ritholz, 188 S.C. 39, 46-49, 198 S.E. 419, 422-23 (1938) (discussing same principle). “It cannot be doubted that a man’s trade or profession is his property.” Byrne’s Adminstrs. v. Stewart’s Adminstrs., 3 S.C. Eq. (3 Des. Eq.) 466, 479 (1812); see also Sloan v. S.C. Bd. of Physical Therapy Examiners, 370 S.C. 452, 636 S.E.2d 598, 611-12 (2006), overruled other grounds by Joseph v. S.C. Dept. of Labor, Licensing & Regulation, 417 S.C. 436, 790 S.E.2d 763 (2016) (stating “[t]here is no reasonable doubt that the rights of those who have been duly licensed to practice medicine or other professions are property rights of value which are entitled to protection”) (citing Dantzler v. Callison, 230 S.C. 75, 92, 94 S.E.2d 177, 186 (1956)). A duly licensed attorney’s right to practice law and make his living doing so, of course, also is a property right of value which is entitled to protection.

In this case, Appellant has a property interest in the attorney’s fee charged in this case. The Commission’s denial of the motion to reinstate and failure to consider the appeal on the merits constitutes a violation of substantive due process and an unlawful deprivation of Appellant’s property interest.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

III. The Full Commission’s denial of Appellant’s motion to reinstate the appeal after it was administratively dismissed and failure to consider the appeal in the merits was made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, where Appellant has shown good cause to reinstate the appeal after mistakenly calendaring the wrong due date for the brief, there is no opposing party which

could have been prejudiced by granting the motion, and Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date and 22 days before the scheduled hearing date.

As previously stated, Appellant candidly admitted that he calendared the wrong due date for the brief, which resulted in a slight delay that prejudiced no one. Appellant was ready, willing and able to immediately submit his brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018.

There is no opposing party in this matter which could have been prejudiced by granting the motion because, as counsel for Employer/Carrier has informed the Commission, Employer/Carrier has no opinion or role and has not appeared in this attorney's fee matter.

Appellant was ready to file his brief, as shown in the proposed brief submitted to the Commission with his motion to reinstate the appeal. Appellant was ready and willing to submit his brief, perfect the appeal and proceed to the hearing on February 20. Conversely, Appellant had no objection to continuing a hearing on the appeal until a later date if the Commission deemed it necessary.

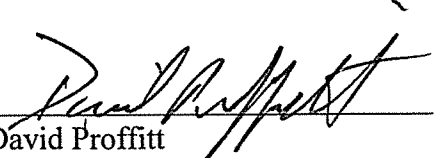
Given these factual circumstances, the Commission's denial of the motion to reinstate and failure to consider the appeal on the merits was made upon unlawful procedure and is clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.

Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

CONCLUSION

For all the foregoing reasons, Appellant asks that the Commission reconsider its ruling, grant his motion to reinstate the appeal and consider the appeal on the merits.

Respectfully submitted,



David Proffitt
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dproffitt@proffittcox.com

February 22, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

In the Matter of Misty A. Morris,
Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank
and Hartford Accident & Indemnity Co.

Employer/Carrier.

CERTIFICATE OF SERVICE

I, the undersigned lawyer or employee in the offices of Proffitt & Cox, LLP, attorneys for Claimant, do hereby certify that I have served the counsel or parties specified below in this action with a copy of the specified pleadings by causing a copy of the same to be X mailed by United States Mail, postage prepaid; ___ e-mailed; ___ faxed; ___ hand-delivered, to the following address:

Pleading: Appellant's Motion for Rehearing

Counsel / Parties Served: Eugenia Hollmon and Valerie Deller
S.C. Workers' Compensation Commission
ATTN: JUDICIAL DEPARTMENT – APPEALS
P.O. Box 1715
Columbia, SC 29202-1715

BB&T Corp d/b/a BB&T Bank
2500 Charleston Hwy
West Columbia, SC 29172

Hartford Accident & Indemnity Co
SE Workers' Comp. Claim Center
PO Box 14473
Lexington, KY 40512


David Proffitt

February 22, 2018

STATE OF SOUTH CAROLINA

WORKERS' COMPENSATION COMMISSION

COUNTY OF LEXINGTON

WCC File No. 1600715

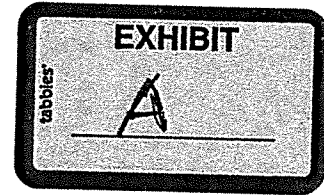
IN RE: Attorney Fee Petition of David Proffitt, Petitioner,

In the Matter of Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank and Hartford Accident & Indemnity Co.

Employer/Carrier.



AFFIDAVIT

I, the undersigned, David Proffitt, being duly sworn, state under oath as follows:

1. I am the attorney for Claimant Misty A. Morris in this case. I am over the age of eighteen years.
2. I have personal knowledge of the facts set forth in this affidavit to the extent specified herein and, if called as a witness, I could competently testify to these facts.
3. On November 15, 2017, timely filed a Form 30 Request for Commission Review of Commissioner Susan S. Barden's order denying in part my petition for attorney's fees.
4. The Commission on December 15, 2017, issued a Form 31 Briefing Schedule and Notice of Appellate Hearing. Appellant's brief was due to be filed on January 16, 2018, and the hearing was scheduled for February 20, 2018.¹

¹ The Form 31 stated the brief was due on January 14, 2018, but January 14 was a Sunday and January 15 was a holiday.

5. On January 26, 2018, I received by email a letter from the Commission which stated that the appeal had been administratively dismissed because the Appellant's brief was not timely filed pursuant to Reg. 67-705(H)(3). Pursuant to Reg. 67-705(H)(4), I moved on January 29, 2018, to reinstate the appeal, and the motion was filed on February 1, 2018.

6. In my motion, I apologized for the delay. I wrongly believed that the deadline to file the brief was January 31, 2018, when in fact the deadline was January 16. The deadline was not calendared correctly.

7. This appeal involves the issue of the calculation of my attorney's fee and there is no opposing party involved. Chad Abramson, attorney for Employer/Carrier, sent the Commission a letter on November 21, 2017, stating that his office is not involved in this matter, does not intend to appear and does not need to be served with pleadings or briefs related to the appeal. I have provided the Commission with a copy of that letter.

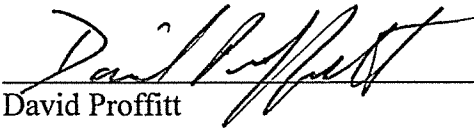
8. On January 29, 2018, I also submitted with the motion to reinstate a copy of the brief I intended to file if the Commission reinstated the appeal and allowed me to do so. I informed the Commission that I would be happy to file additional copies of the brief, the previously filed Form 30, the single commissioner's order, the transcript of the hearing and any other documents necessary to perfect the appeal. See email correspondence attached as EXHIBIT A.

9. On February 20, 2018, I received by email a copy of the Full Commission's form order denying the motion to reinstate the appeal.

10. I was ready, willing and able to immediately submit Appellant's brief to the Commission 13 days after the original due date of January 16, 2018, and 22 days before the scheduled hearing date of February 20, 2018.

Further affiant sayeth not.

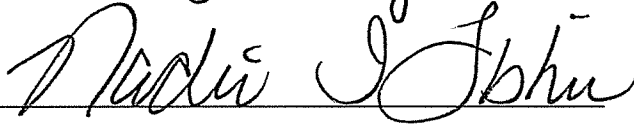
WITNESS my hand this 22nd day of February, 2018, at Columbia, South Carolina.



David Proffitt

SWORN TO and subscribed before me this

22 day of February, 2018.

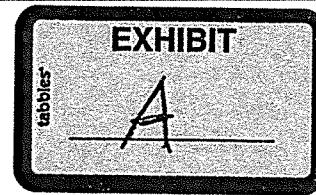


Notary Public for the State of South Carolina

My commission expires 1-24-27

David Proffitt

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Thursday, February 8, 2018 10:22 AM
To: Robert D. Proffitt
Cc: Nadine Fisher
Subject: RE: Status of appeal in WCC # 1600715 – Morris



Yes, the appeal hearing scheduled for this month has been postponed. The Motion request will go to Judicial Conference on February 20th. You should have an answer by the 21st.

Genia Hollmon

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

From: David Proffitt [<mailto:dproffitt@proffittcox.com>]
Sent: Thursday, February 08, 2018 8:53 AM
To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Cc: Nadine Fisher <nfisher@proffittcox.com>
Subject: Status of appeal in WCC # 1600715 – Morris

Ms. Hollomon:

We received the copy of our motion to reinstate the appeal filed 2/1/2018. In our earlier conversation, you indicated that the Full Commission would review the motion this month and the appeal may be rescheduled for March.

I just wanted to confirm the status of the appeal and whether the appeal hearing set for Feb. 20 is continued to a later date. If the hearing is going forward on Feb. 20, I want to ensure we have filed the additional copies of the brief and all other documents needed to perfect the appeal.

Thanks.
David

David Proffitt
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Website: www.proffittcox.com
[Show Me a Map to Proffitt & Cox, LLP](#)

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From: David Proffitt [<mailto:dproffitt@proffittcox.com>]
Sent: Monday, January 29, 2018 11:20 AM
To: 'Hollmon, Eugenia' <EHollmon@wcc.sc.gov>
Cc: Nadine Fisher (nfisher@proffittcox.com) <nfisher@proffittcox.com>
Subject: RE: Admin Dismissal

Ms. Hollmon,
OK, we'll send the motion to reinstate today to your office.
Thanks.
David

David Proffitt
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From: Hollmon, Eugenia [<mailto:EHollmon@wcc.sc.gov>]
Sent: Monday, January 29, 2018 10:54 AM
To: Robert D. Proffitt <dproffitt@proffittcox.com>
Cc: nfisher@proffittcox.com
Subject: RE: Admin Dismissal

Mr. Proffitt,

Because the brief was due by January 16 you will need to do a Motion to Reinstate. We can take it to Judicial Conference next month and if it is reinstated add it back for March.

Genia

Eugenia Hollmon
SC Workers' Compensation Commission
Judicial Docketing Director
803-737-5737
ehollmon@wcc.sc.gov

From: David Proffitt [<mailto:dproffitt@proffittcox.com>]
Sent: Friday, January 26, 2018 5:53 PM
To: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Cc: nfisher@proffittcox.com
Subject: Re: Admin Dismissal

Ms. Hollomon,

I apologize for the delay. I was out of the office all day today at a deposition. The brief is ready to file and I can file it on Monday.

I will need to file a motion for an extension and to reinstate the appeal. Please let me know if I should direct the motion to your office.

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On Jan 26, 2018, at 3:53 PM, Hollmon, Eugenia <EHollmon@wcc.sc.gov> wrote:

Attached is an Administrative Dismissal for Wcc # 1600715 – Morris.

Thank you.
Genia

Eugenia Hollmon
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Judicial Docketing Director
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ehollmon@wcc.sc.gov

<Letters1 [Compatibility Mode].docx>

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM S.C. WORKERS' COMPENSATION COMMISSION

T. Scott Beck, Chair for the Commission

Appellate Case No. 2018-000532

Misty A. Morris, Claimant,

v.

BB&T Corporation, d/b/a BB&T Bank, Employer,
and Hartford Accident & Indemnity Co., Carrier,

IN RE: Attorney's Fee Petition of David Proffitt, Appellant,

v.

South Carolina Workers' Compensation Commission, Respondent.

RECEIVED
SEP 25 2018
SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



David Proffitt, SC Bar # 11193
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Appellant

September 24, 2018