

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM Horry COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge

CASE NO. 2017-CP-26-07775

Kelاهر, Connell & Connor P.C.....Appellant

vs.

South Carolina Workers' Compensation CommissionRespondent

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
C/A No. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,)
)
)

Plaintiff,)

vs.)

South Carolina Workers' Compensation)
Commission,)
)

Defendant.)
)

ORDER PARTIALLY GRANTING AND
PARTIALLY DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION

Before the court is the plaintiff's Motion for Reconsideration of this court's order dated 4/9/2018 granting the defendant's Motion to Dismiss in this case. Pursuant to Rule 59(f), SCRCPP, this motion is decided on briefs without oral arguments.

Based upon the plaintiff's motion filed 4/16/2018, plaintiff's brief in support of its motion filed 6/8/2018, and defendant's brief filed 6/21/2018 in opposition to the motion, the plaintiff's Motion for Reconsideration is granted to the extent that the court granted the defendant's Motion to Dismiss on the grounds that the court lacked jurisdiction in this case. However, the court denies the plaintiff's motion to the extent that it seeks reconsideration of the court's dismissal of this action pursuant to the *South Carolina Tort Claims Act*.

The defendant's Motion to Dismiss was argued 3/1/2018 at the Horry County Judicial Center before the undersigned judge. Defendant was represented by Douglas Charles Baxter, Esquire and J. Keith Roberts, Esquire. Plaintiff was represented by Gene Connell, Esquire. Defendant moved for an Order granting its Motion to Dismiss pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*.

Plaintiff filed a negligence claim against the Defendant, South Carolina Workers' Compensation, alleging in the Complaint that Defendant was negligent in the following particulars: (a) failing to notify Plaintiff of a hearing; (b) failing to recognize and protect Plaintiff's lien; (c) mishandling documents including a Fee Petition which was in fact forwarded to the Commission on four occasions; (d) failing to follow generally accepted practices in notifying Plaintiff after he had been relieved; (e) failing to send written notice to the Plaintiff; (f) failing to handle notice to the Plaintiff of a potential hearing in a businesslike manner; and (g) failing to abide by its employees' emails and notes which indicated that if Plaintiff filed a Form 61 with an Order and cost sheet they would hold until the end of the case. Complaint ¶ 16.

In the case at hand, the defendant argues that the Plaintiff is disputing the payment of attorney's fees for legal work performed for a claimant in a South Carolina Workers' Compensation case (*Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Company*, WCC No. 0708860) and that such disputes are within the exclusive jurisdiction of the South Carolina Workers' Compensation Commission. To the contrary, the Plaintiff does not dispute its entitlement or the payment of attorney fees. Rather, it asserts and argues that employees of the South Carolina Workers' Compensation Commission were negligent in failing to protect Plaintiff's lien and in failing to notify Plaintiff of the hearing so that Plaintiff could assert a claim for attorney's fees. Plaintiff argued that failing to provide an opportunity for it to be heard was a violation of its constitutional rights.

All attorney's fees resulting from claims within the *South Carolina Workers' Compensation Act* are subject to the approval of the Commission as it has original jurisdiction over such claims. S.C. Code Ann. § 42-15-90. However, the plaintiff's claim in this lawsuit is not for attorney fees arising pursuant to a workers' compensation claim under the *South Carolina Workers'*

Compensation Act as contemplated by Code § 42-15-90. It is a negligence action against the Workers' Compensation Commission itself. Certainly the commission does not have exclusive jurisdiction to hear and determine actions against itself. Therefore, the plaintiff's Motion for Reconsideration should be granted to the extent that this court's order dated 4/9/2018 granted the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case and such jurisdiction is exclusively with the South Carolina Workers' Compensation Commission.

Notwithstanding this court's denial of the defendant's Motion to Dismiss on jurisdictional grounds, the Defendant is immune in this lawsuit based on the *South Carolina Tort Claims Act* ("SCTCA") which governs all tort claims against governmental entities and is the exclusive civil remedy available in an action against a governmental entity or its employees. Flateau v. Harrelson, 584 S.E.2d 413, 416 (Ct. App. 2003) (emphasis added). "Governmental entity" is defined as the State and its political subdivisions, and includes its offices, agencies, authorities, departments, commissions, boards, divisions, and instrumentalities. S.C. Code Ann. § 15-78-30. The South Carolina Workers' Compensation Commission is a government entity as contemplated by the SCTCA.

A governmental entity is immune from liability in several enumerated instances. S.C. Code Ann. §15-78-60; see also Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004) (holding the exceptions found in §15-78-60 "significantly limit the tort liability of government entities"). S.C. Code Ann. §15-78-60 states: "the governmental entity is not liable for a loss resulting from (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature."

Here, the South Carolina Workers' Compensation Commission is a governmental entity, and therefore, any claims that Plaintiff has against the Commission are subject to the SCTCA. As

stated in S.C. Code Ann. §15-78-60, a governmental entity is not liable for any loss resulting from an administrative action or inactive of a legislative, judicial, or quasi-judicial nature. Here, the Commission, as set forth by the General Assembly, is a judicial and administrative department of the State (S.C. Code Ann. §42-3-10) and the allegations of negligence in the Complaint all involve administrative actions and/or inactions. As such, the Commission cannot be held liable for any alleged losses as set out in the Complaint. As to any alleged constitutional violations, the South Carolina Workers Compensation Commission has not waived its Eleventh Amendment immunity.

Therefore, it is hereby

ORDERED, ADJUDGED AND DECREED, that the Plaintiff's Motion for Reconsideration is GRANTED to the extent that this court's order dated 4/9/2018 granted the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case and such jurisdiction is exclusively with the South Carolina Workers' Compensation Commission; it is further

ORDERED, ADJUDGED AND DECREED that, upon reconsideration, the defendant's Motion to Dismiss on the grounds that this court lacks jurisdiction in this case is DENIED; it is further

ORDERED, ADJUDGED AND DECREED that the Plaintiff's Motion for Reconsideration is DENIED to the extent that it seeks reconsideration of this court's order dated 4/9/2018 granting the defendant's Motion to Dismiss on the grounds that the defendant is immune in this lawsuit pursuant to the *South Carolina Tort Claims Act*, said ruling as set forth in this court's order dated 4/9/2018 remaining as the order of this court.

AND IT IS SO ORDERED, ADJUDGED AND DECREED.



Horry Common Pleas

Case Caption: Kelaher Connell & Connor PC VS Workers Compensation
Commission South Carolina
Case Number: 2017CP2607775
Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148

Electronically signed on 2018-06-29 12:32:23 page 5 of 5

ELECTRONICALLY FILED - 2018 Jun 29 1:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2607775

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A No. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,

)

)

)

)

Plaintiff,

)

)

vs.

)

)

South Carolina Workers' Compensation
Commission,

)

)

)

Defendant.

)

)

**ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS**

This matter came before the Court by Motion of the Defendant, South Carolina Workers' Compensation Commission, and was argued March 1, 2018 at the Horry County Judicial Center before the Honorable Benjamin H. Culbertson. Defendant was represented by Douglas Charles Baxter, Esquire and J. Keith Roberts, Esquire. Plaintiff was represented by Gene Connell, Esquire. Defendant moved for an Order granting its Motion to Dismiss pursuant to Rule 12 of *the South Carolina Rules of Civil Procedure*.

Plaintiff filed a negligence claim against the Defendant, South Carolina Workers' Compensation, alleging in the Complaint that Defendant was negligent in the following particulars: (a) failing to notify Plaintiff of a hearing; (b) failing to recognize and protect Plaintiff's lien; (c) mishandling documents including a Fee Petition which was in fact forwarded to the Commission on four occasions; (d) failing to follow generally accepted practices in notifying Plaintiff after he had been relieved; (e) failing to send written notice to the Plaintiff; (f) failing to handle notice to the Plaintiff of a potential hearing in a businesslike manner; and (g) failing to

abide by its employees' emails and notes which indicated that if Plaintiff filed a Form 61 with an Order and cost sheet they would hold until the end of the case. Complaint ¶ 16.

A motion to dismiss shall be granted if the Court lacks subject matter jurisdiction. Rule 12(b)(1), SCRCP. The proper procedure to raise a Court's lack of subject matter jurisdiction is through a motion to dismiss. Edens v. Bellini, 359 S.C. 433, 440, 597 S.E.2d 863, 867 (Ct. App. 2004). Additionally, a motion to dismiss shall be granted if the party asserting the claim has failed to state facts sufficient to constitute a cause of action. Rule 12(b)(6), SCRCP. "In considering a motion to dismiss a Complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegation set forth in the complaint." Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The trial court is to construe the complaint in a light most favorable to the non-moving party and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case. Freemantle v. Preston, 398 S.C. 186, 192, 728 S.E.2d 40, 43 (2012).

The right to workers' compensation is wholly statutory, not existing except under the circumstances provided in the South Carolina Workers' Compensation Act (§ 42-1-10 *et. seq.* of the Code of Laws of South Carolina, as amended). Price v. Peachtree, 721 S.E.2d 461 (Ct. App. 2011). Section 42-3-180 of the Code of Laws of South Carolina, as amended, provides that all questions arising under the Workers' Compensation Act, if not settled by agreement of the parties interested thereof with the approval of the Commission, shall be determined by the Commission. James v. Anne's, Inc., 701 S.E.2d 730 (2010). Attorney's fees for claims under this Act are subject to the approval of the Commission. S.C. Code Ann. § 42-15-90.

While the trial court has subject matter jurisdiction over tort claims, certain cases may be taken from the trial court's original jurisdiction by the General Assembly. Sabb v. South Carolina

State University, 350 S.C. 416 (2002) (holding that the circuit court has divested original jurisdiction in the South Carolina Workers' Compensation Commission for personal injury claims arising in the course and scope of one's employment). Disputes which are ancillary to the rights to workers' compensation benefits should be determined by the Workers' Compensation Commission. See Price v. Peachtree, 721 S.E.2d 461 (Ct. App. 2011).

Here, Plaintiff is disputing the payment of attorney's fees for legal work performed for a claimant in a South Carolina Workers' Compensation case (*Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Company*, WCC No. 0708860). Plaintiff asserted and argued that employees of the South Carolina Workers' Compensation Commission were negligent in failing to protect Plaintiff's lien and in failing to notify Plaintiff of the hearing so that Plaintiff could assert a claim for attorney's fees. Plaintiff argued that failing to provide an opportunity for it to be heard was a violation of its constitutional rights.

All attorney's fees resulting from claims within the South Carolina Workers' Compensation Act are subject to the approval of the Commission as it has original jurisdiction over such claims. S.C. Code Ann. § 42-15-90. Therefore, any disputes that Plaintiff has with the payment of attorney's fees are within the jurisdiction and approval of the Commission; not the Circuit Court. Furthermore, even if this Court did have jurisdiction, the Defendant is immune based on the South Carolina Tort Claims Act. The South Carolina Tort Claims Act ("SCTCA") (§15-78-10 *et. seq.*) governs all tort claims against governmental entities and is the *exclusive civil remedy* available in an action against a governmental entity or its employees. Flateau v. Harrelson, 584 S.E.2d 413, 416 (Ct. App. 2003) (emphasis added). "Governmental entity" is defined as the State and its political subdivisions, and includes its offices, agencies, authorities, departments, commissions, boards, divisions, and instrumentalities. S.C. Code Ann. § 15-78-30.

A governmental entity is immune from liability in several enumerated instances. S.C. Code Ann. §15-78-60; see also Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004) (holding the exceptions found in §15-78-60 “significantly limit the tort liability of government entities”). S.C. Code Ann. §15-78-60 states: “the governmental entity is not liable for a loss resulting from (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature.”

Here, the South Carolina Workers’ Compensation Commission is a governmental entity, and therefore, any claims that Plaintiff has against the Commission are subject to the SCTCA. As stated in S.C. Code Ann. §15-78-60, a governmental entity is not liable for any loss resulting from an administrative action or inactive of a legislative, judicial, or quasi-judicial nature. Here, the Commission, as set forth by the General Assembly, is a judicial and administrative department of the State (S.C. Code Ann. §42-3-10) and the allegations of negligence in the Complaint all involve administrative actions and/or inactions. As such, the Commission cannot be held liable for any alleged losses as set out in the Complaint. As to any alleged constitutional violations, the South Carolina Workers Compensation Commission has not waived its Eleventh Amendment immunity.

Therefore, IT IS ORDERED, ADJUDGED AND DECREED, that Defendant’s Motion to Dismiss is granted and this action is hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Benjamin H. Culbertson
Fifteenth Judicial Circuit

Conway, South Carolina
Dated: _____, 2018



Horry Common Pleas

Case Caption: Kelaher Connell & Connor PC VS Workers Compensation
Commission South Carolina
Case Number: 2017CP2607775
Type: Order/Dismissal

Presiding Circuit Judge

s/Benjamin H. Culbertson, Judge Code 2148

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ELECTRONICALLY FILED - 2018 Apr 09 4:20 PM - HORRY - COMMON PLEAS - CASE#2017CP2607775

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**


BRUCE W. NADOLNY,)
)
EMPLOYEE/CLAIMANT)
)
vs.)
)
AVX CORPORATION,)
)
and)
)
LIBERTY MUTUAL INSURANCE,)
)
CARRIER/DEFENDANT)

**ORDER
APPROVING
ATTORNEY'S FEE
WCC File No. 0708860**

After review of the record in the above captioned matter and the controlling legal standards for the award of attorney fees and costs in workers' compensation proceedings under S.C. Reg. 1204-1207 and Rule 1.5(a) of the Code of Professional Conduct, I find the attorney's fee of \$20,000.00 and costs of \$2,446.44 in this matter to be reasonable and hereby approve fees and costs as set forth herein.

AND IT IS SO ORDERED.

Date: 8/22/17



COMMISSIONER
SCWCC

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JAN 02 2013

Division of Claims
Claims Administrator
S.G. Workers' Comp. Comm.

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0708860

Bruce W. Nadolny,
Employee/Claimant,

vs.

AVX Corporation,

Employer,

and

Liberty Mutual Insurance Co.,

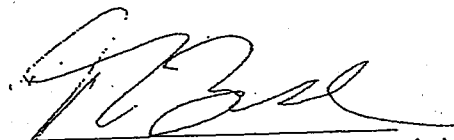
Carrier,
Defendants

ORDER RELIEVING COUNSEL

THIS MATTER COMES BEFORE THE COURT based on the Employee/Claimant's request that Gene M. Connell, Jr. be relieved as counsel. Further, Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has done in this matter. Accordingly

IT IS ORDERED that Gene M. Connell, Jr. be relieved as counsel.

AND IT IS SO ORDERED.



South Carolina Workers' Compensation Commission

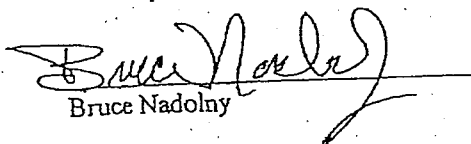
CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

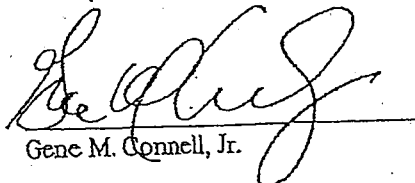
By Amy Bracy on November 9, 2012

11/9, 2012
_____, South Carolina.

WE CONSENT:



Bruce Nadolny



Gene M. Connell, Jr.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26 - 07775

Kelahr, Connell & Connor, P.C.,)
)
Plaintiff,)
)
vs.)
)
South Carolina Workers' Compensation)
Commission,)
)
Defendant.)

SUMMONS

TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Complaint on the subscriber or subscribers at his or their office at Suite 209, The Courtyard, 1500 U.S. Highway 17 North, Post Office Drawer 14547, Surfside Beach, South Carolina 29587 within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid; the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

KELAHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.
Gene M. Connell, Jr. (S.C. Bar No. 1358)
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gconnell@classactlaw.net
Attorney for Plaintiff

November 29, 2017
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26 - 07795

Kelاهر, Connell & Connor, P.C.,)
)
Plaintiff,)
)
vs.)
)
South Carolina Workers' Compensation)
Commission,)
)
Defendant.)

COMPLAINT
(Negligence)
JURY TRIAL

The Plaintiff, complaining of Defendant, would respectfully allege unto this Court as follows:

1. The Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a law firm in South Carolina.

2. The Defendant is a governmental entity which is part of the State of South Carolina and which entity is charged with handling and resolving workers' compensation claims in South Carolina.

3. That on or about July 31, 2007, Plaintiff was retained by Bruce Nadolny to represent him a worker's compensation claim against AVX Corporation and Liberty Mutual Insurance Company with WCC File No. 0708860.

4. Thereafter, Kelاهر, Connell & Connor, P.C., through Gene M. Connell, Jr., represented Bruce Nadolny through numerous hearings before the South Carolina Workers' Compensation Commission and attended depositions and the file contains almost 3,000 pages of medical records.

5. A mediation was held before former Workers' Compensation Commissioner, Tom Marchant, in which the Claimant agreed to accept \$120,000.00 plus a Medicare Set Aside Trust.

6. The Claimant the next day advised Kelaher, Connell & Connor he no longer needed my assistance and Kelaher, Connell & Connor advised the Claimant that Kelaher, Connell & Connor had expended countless hours handling this claim including going to hearings and expending \$2,446.44 for a mediation.

7. Kelaher, Connell & Connor, P.C. was relieved as counsel on November 9, 2012, but pursuant to the Order relieving counsel, Attorney Connell advised the Court that Kelaher, Connell & Connor will file a claim for attorney's fees for the work that he has done in this matter.

8. Kelaher, Connell & Connor, P.C. had previously filed a Form 61 Fee Petition on August 29, 2012 whereupon the Commission advised Attorney Connell that they had not received it.

9. Kelaher, Connell & Connor, P.C. then refiled the Fee Petition on September 11, 2012 whereupon the Commission advised attorney Connell they had not received it.

10. Kelaher, Connell & Connor, P.C. filed the Fee Petition for the third time on September 18, 2012.

11. Thereafter Attorney Connell wrote a letter on November 9, 2012 advising that he was requesting a lien be placed on the file and requesting that Kelaher, Connell & Connor, P.C. be notified.

12. An employee of the Commission, Greg Lyons, wrote back a note which stated "You will need to file a Form 61 with Order & cost sheet & we will hold."

13. Thereafter Attorney Connell received an email from Amy Bracy of the Workers' Compensation Commission on December 13, 2012 indicating Kelaher, Connell & Connor needed to file yet another Fee Petition and it would act as a lien on the file.

14. Thereafter on December 28, 2012, Kelaher, Connell & Connor, for the fourth time filed a Fee Petition asking for attorney's fees of \$20,000.00 and costs of \$2,446.44.

15. The Claimant Bruce Nadolny died in 2016 and the South Carolina Workers' Compensation Commission approved a settlement to his widow on November 3, 2016 without notifying Kelaher, Connell & Connor, P.C.

16. That the South Carolina Workers' Compensation Commission, through its officers, agents and/or employees, was negligent, reckless and willful in one or more of the following particulars:

- a. In failing to notify Plaintiff of a hearing;
- b. In failing to recognize and protect Plaintiff's lien;
- c. In mishandling documents including a Fee Petition which was in fact forwarded to the Commission on four occasions;
- d. In failing to follow generally accepted practices in notifying Plaintiff after he had been relieved;
- e. In failing to send written notice to the Plaintiff;
- f. In failing to handle notice to the Plaintiff of a potential hearing in a businesslike manner;
- g. In failing to abide by its employees' emails and notes which indicated that if Plaintiff filed a Form 61 with an Order and cost sheet they would hold until the end of the case.

17. That as a direct and proximate result, Plaintiff suffered damages in that Plaintiff's fees were \$20,000.00 and costs of \$2446.44.

18. The Plaintiff brings this cause of action against the Defendant for negligence and requests judgment against the Defendant for actual damages in the sum of \$22,446.44.

KELAHER, CONNELL & CONNOR, P.C.

s/ Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No: 1358)

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Attorney for Plaintiff

November 29, 2017

Surfside Beach, South Carolina

ELECTRONICALLY FILED - 2017 Nov 29 10:03 AM - HORRY - COMMON PLEAS - CASE#2017CP2607775

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Kelaher, Connell & Connor, P.C.,)

Plaintiff,)

vs.)

South Carolina Workers' Compensation)
Commission,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A No. 2017-CP-26-07775

**DEFENDANT'S NOTICE
OF MOTION AND MOTION
TO DISMISS**

TO: PLAINTIFF AND ITS ATTORNEY GENE M. CONNELL, JR., ESQUIRE:

YOU WILL PLEASE TO TAKE NOTICE that Defendant, South Carolina Workers' Compensation Commission, hereby moves for an Order dismissing this action on the grounds that the Circuit Court does not have jurisdiction to hear this matter, and additionally, the South Carolina Tort Claims Act provides immunity to the Commission for such claims. Further, Plaintiff has failed to state facts sufficient to constitute a cause of action. This Motion is made pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure* and is more fully set out in the Memorandum submitted with this Motion.

[Signature page to follow]

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

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1333 Main St., Suite 500
PO Box 1715
Columbia, SC 29202-1715

Attorneys for Defendant, South Carolina
Workers' Compensation Commission

January 15, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2017-CP-26-07775
 Kelaher, Connell & Connor, P.C.,)	
)	
)	
)	
Plaintiff,	)	DEFENDANT'S MEMORANDUM
	)	IN SUPPORT OF ITS
vs.	)	MOTION TO DISMISS
)	
South Carolina Workers' Compensation)	
Commission,)	
)	
Defendants.)	

This matter is before the Court upon Motion of the Defendant, the South Carolina Workers' Compensation Commission ("Commission"), requesting that this action be dismissed.

Allegations/Facts

In the Complaint, the Plaintiff alleges that on or about July 31, 2007, Plaintiff was retained by claimant, Bruce Nadolny, to represent him in a worker's compensation action claim against AVX Corporation and Liberty Mutual Insurance Company, WCC File No. 0708860. Plaintiff alleges that at some point in 2012, prior to the final resolution of the claim, Mr. Nadolny informed Plaintiff that he no longer needed Plaintiff's legal assistance.

In September 2012, Plaintiff filed a Form 61 Fee Petition with the Commission for attorney's fees and costs. [Exhibit A, Form 61 dated September 18, 2012] A hearing regarding the Petition was set for November 8, 2012 before the Honorable T. Scott Beck; however, subsequently, Plaintiff withdrew the Petition at the time of the hearing. Commissioner Beck issued an Order relieving Counsel dated November 9, 2012 that stated "[f]urther Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has

done in the matter.” [Exhibit B, Order Relieving Counsel] On December 13, 2012, Amy Bracy, Administrative Assistant to Commissioner Beck, sent an email to Gene Connell’s office requesting a new fee petition be sent by Mr. Connell. [Exhibit C, Email dated December 13, 2012] On December 28, 2012, Mr. Connell sent a letter to the Commission’s Claims Department that stated he was filing a new fee petition. [Exhibit D, Letter from Gene Connell dated December 28, 2012 and Form 61 dated September 18, 2012] However, the fee petition attached to his December 28th letter was the same fee petition dated September 18, 2012 that had been withdrawn and disposed of by the Order of Commissioner Beck dated November 9, 2012.

Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Company, WCC No. 0708860 was fully and finally resolved by a Decision and Order by the Honorable Aisha G. Taylor of the South Carolina Workers’ Compensation Commission on November 1, 2016; however, the Order did not address the attorney’s fees. On August 22, 2017, the Commissioner of the South Carolina Workers’ Compensation Commission signed an Order Approving Attorney’s fees to Plaintiff in the amount of \$20,000.000 and costs of \$2,446.44.

Plaintiff filed a Summons and Complaint in this Court, alleging negligence against the Defendant, South Carolina Workers Compensation Commission for failure to protect Plaintiff’s lien. Defendant files this Motion to Dismiss, requesting that this action be dismissed on the grounds that the Circuit Court does not have jurisdiction to hear this matter, and additionally, the South Carolina Tort Claims Act provides immunity to the Commission for such claims.

Argument

The right to workers’ compensation is wholly statutory, not existing except under the circumstances provided in the South Carolina Workers’ Compensation Act (§ 42-1-10 *et. seq.* of the Code of Laws of South Carolina, as amended). Price v. Peachtree, 721 S.E.2d 461 (Ct. App.

2011). Section 42-3-180 of the Code of Laws of South Carolina, as amended, provides that all questions arising under the Workers' Compensation Act, if not settled by agreement of the parties interested thereof with the approval of the Commission, shall be determined by the Commission. James v. Anne's, Inc., 701 S.E.2d 730 (2010). Attorney's fees for claims under this Act are subject to the approval of the Commission. S.C. Code Ann. § 42-15-90

While the trial court has subject matter jurisdiction over tort claims, certain cases may be taken from the trial court's original jurisdiction by the General Assembly. Sabb v. South Carolina State University, 350 S.C. 416 (2002) (holding that the circuit court has divested original jurisdiction in the South Carolina Workers' Compensation Commission for personal injury claims arising in the course and scope of one's employment). It is apparent that the General Assembly intended for employees to seek a remedy from their employers for their work-related injury only through the Workers' Compensation Commission and not through the trial courts. Posey v. Property Mold, 661 S.E.2d 395 (Ct. App. 2008). Disputes which are ancillary to the rights to workers' compensation benefits should be determined by the Workers' Compensation Commission. See Price v. Peachtree, 721 S.E.2d 461 (Ct. App. 2011).

Here, Plaintiff is disputing the payment of attorney's fees for legal work performed for a claimant in a South Carolina Workers' Compensation case (*Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Company*, WCC No. 0708860). Mr. Nadolny made a claim for injuries sustained in the course and scope of his employment, and as such, the South Carolina Workers' Compensation Commission had original jurisdiction over his claim. As stated in S.C. Code Ann. § 42-15-90, all attorney's fees resulting from claims within the South Carolina Workers' Compensation Act are subject to the approval of the Commission as it has original

jurisdiction over such claims. Therefore, any disputes that Plaintiff has with the payment of attorney's fees is within the jurisdiction and approval of the Commission; not the Circuit Court.

Furthermore, even if this Court determines that it does have jurisdiction to hear this action, the Defendant has immunity pursuant to the South Carolina Tort Claims Act. It is worth noting that in a similar fact pattern, a South Carolina District Court case held that South Carolina has not waived Eleventh Amendment immunity. See Richardson v. S.C. Workers' Comp. Comm'n, No. CIV.A.2:07-1914-PMD, 2007 WL 2477312, at *4 (D.S.C. Aug. 28, 2007) (holding in a suit against the South Carolina Workers' Compensation Commission that South Carolina has not waived Eleventh Amendment immunity and has not consented to suit in a federal district court).

The South Carolina Tort Claims Act ("SCTCA") (§15-78-10 et. seq.) governs all tort claims against governmental entities and is the *exclusive civil remedy* available in an action against a governmental entity or its employees. Flateau v. Harrelson, 584 S.E.2d 413, 416 (Ct. App. 2003) (emphasis added). "Governmental entity" means the State and its political subdivisions and the State includes its offices, agencies, authorities, departments, commissions, boards, divisions, and instrumentalities. S.C. Code Ann. § 15-78-30 "The SCTCA must be liberally construed in favor of the governmental defendant." Doe ex rel. Johnson v. S.C. Dep't of Soc. Servs., 597 F.3d 163, 178 (4th Cir. 2010).

A governmental entity is immune from liability in several enumerated instances. S.C. Code Ann. §15-78-60; see also Hawkins v. City of Greenville, 358 S.C. 280, 293, 594 S.E.2d 557, 564 (Ct. App. 2004) (holding the exceptions found in §15-78-60 "significantly limit the tort liability of government entities"). S.C. Code Ann. §15-78-60 states:

"The governmental entity is not liable for a loss resulting from..."

(2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;

(3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;”

Here, the South Carolina Workers’ Compensation Commission is a governmental entity as it is a State commission, and therefore, any claims that Plaintiff has against the Commission are subject to the SCTCA. As stated in S.C. Code Ann. §15-78-60, a governmental entity is not liable for any loss resulting from an administrative action or inactive of a legislative, judicial, or quasi-judicial nature. Here, the Commission, as set forth by the General Assembly, is a judicial and administrative department of the State. See S.C. Code Ann. §42-3-10. Failure to protect a lien for attorney’s fees is an administrative action or inaction that is quasi-judicial in nature. As such, the Commission cannot be held liable for any alleged loss that stems from attorney’s fees directly associated with a claim governed by the Commission.

Even if the Court finds that it has jurisdiction over the action, and the Commission is not immune, Plaintiff’s claim still fails pursuant to Rule 12(b)(6) of the *South Carolina Rules of Civil Procedure* because Plaintiff has failed to state facts sufficient to constitute a cause of action. In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint. Spence v. Spence, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” Gentry v. Yonce, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999).

Here, viewing the facts in the light most favorable to the Plaintiff, Plaintiff's claim fails as it failed to state facts sufficient to constitute a cause of action. Defendant has failed to identify a duty that Defendant owes to the Plaintiff and therefore, there is no valid claim for relief.

Conclusion

Based upon the foregoing, Defendant, the South Carolina Workers' Compensation Commission requests that this action be dismissed with prejudice.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Douglas Charles Baxter

Douglas Charles Baxter, Esquire, SC Bar No. 6272
Chelsea Lane Monroe, Esquire, SC Bar No. 102636
2103 Farlow Street, Myrtle Beach, SC 29577
Post Office Box 3646, Myrtle Beach, SC 29578
(843) 448-1008 Main; (843) 448-1533 Fax
(843) 443-3580 DCB-Direct
(843) 443-3583 CLM-Direct
dbaxter@richardsonplowden.com
cmonroe@richardsonplowden.com

South Carolina Workers' Compensation Commission
J. Keith Roberts, Esquire, SC Bar No. 100735
1333 Main St., Suite 500
PO Box 1715
Columbia, SC 29202-1715

Attorneys for Defendant, South Carolina
Workers' Compensation Commission

January 15, 2018

South Carolina Workers' Compensation
 Commission
 1333 Main Street, Suite 500
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC File #: 0708860
 Carrier File #: WC550-567678
 Carrier Code #: **RECEIVED**
 Employer FEIN #: _____

MAY 15 2017

Claimant's Name: Bruce W. Nadolny Employer's Name: AVX Corporation
 Address: 613 Mammie Drive Address: PO Box 867
 City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29578
 Home Phone: (843) 293-8649 Work Phone: () - Insurance Carrier: Liberty Mutual Insurance Co.
 Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaker, Connell & Connor, PC Preparer's Phone #: (843) 238-5648

Date Attorney Was Hired: 07/31/07 Date of Injury: 06/30/07
 Compensation Rate: _____ Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A _____ % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) _____. A fee of \$ _____ is requested for approval based on the following:

Date of first Impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
 Attorney for the Claimant
9/18/07
 Date

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$ _____

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client _____ Date _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

Tab3 Detail Work-In-Process Report
Kehler, Connell & Connor, P.C.

Primary Timekeeper: S Gen M. Connell, Jr., Esquire

Secondary Timekeeper: Nadolny/Bruce

Contact: Bruce Nadolny
Business: 902-1978
Home: 253-6649
Mobile: 902-0808

Category: 3 WORKERS' COMPENSATION
1 ETX Draft Template: 0000001 Rate Code: 1
1 ETX Final Template: 0000001 Date Opened: 02/25/2007
Status Balance: 0.00

Da	Year	Cat	Str	H P	T X	B C	R G	Code	Ref #	Rate	Units	Hours Worked	Hours to Bill	Wk-Up/Dwn Hrs	Amount	Wk-Up/Dwn Amt	Description
5/21/2008	5	GMC	A					22	1						38.99		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
5/20/2008	5	GMC	A					22	2						17.50		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
1/12/2009	5	GMC	A					22	3						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
2/19/2008	5	GMC	A					22	4						50.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
5/30/2009	5	GMC	A					22	5						144.00		Stenotype Reporting Service, LLC FOR DEPOSITION
7/11/2009	5	GMC	A					22	6						42.75		FLOWERS & ASSOCIATES FOR TRANSCRIPT
7/10/2009	5	GMC	A					22	7						49.77		Healingart FOR MEDICAL RECORDS
7/19/2009	5	GMC	A					22	8						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
1/30/2010	5	GMC	A					22	9						15.00		GRAND STRAND UROLOGY FOR MEDICAL RECORDS
5/30/2010	5	GMC	A					22	10						18.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
1/23/2011	5	GMC	A					22	11						38.08		(25.00) TRASK & HOWELL, LLC for copies
10/4/2011	5	GMC	A					22	12						167.50		(34.00) Veritek Corporate Services, Inc. for transcript
1/12/2011	5	GMC	A					22	14						184.75		(34.00) Veritek Corporate Services, Inc. FOR TRANSCRIPT
1/24/2011	5	GMC	A					22	15						1,625.00		(894.00) MARCHANT SOLUTIONS FOR MEDIATION
1/27/2012	5	GMC	A					22	17						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
															2,446.44		

Billable Advances

Fees:	0.00	Previous Balance:	0.00
Expenses:	0.00	Payments/Credits:	0.00
Advances:	2,446.44	Balance Due:	0.00
Total WIP:	2,446.44	Total:	2,446.44

APR:	1-30	31-50	51-80	81-120	121-180	181+
	0.00	0.00	0.00	0.00	0.00	0.00

RECEIVED

MAY 15 2017

S. C. WORKERS' COMP. COMM.
EXECUTIVE DIRECTOR

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0708860

RECEIVED

MAY 15 2017

S. C. WORKERS COMP COMM
EXECUTIVE DIRECTOR

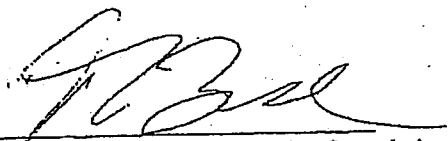
Bruce W. Nadolny,)
Employee/Claimant,)
)
vs.)
)
AVX Corporation,)
)
Employer,)
)
and)
)
Liberty Mutual Insurance Co.,)
)
Carrier,)
Defendants)

ORDER RELIEVING COUNSEL

THIS MATTER COMES BEFORE THE COURT based on the Employee/Claimant's request that Gene M. Connell, Jr. be relieved as counsel. Further, Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has done in this matter. Accordingly

IT IS ORDERED that Gene M. Connell, Jr. be relieved as counsel.

AND IT IS SO ORDERED.



South Carolina Workers' Compensation Commission

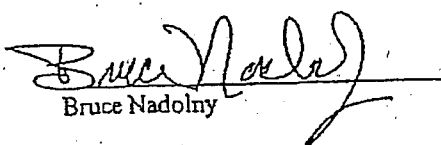
CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to a ny unrepresented party.

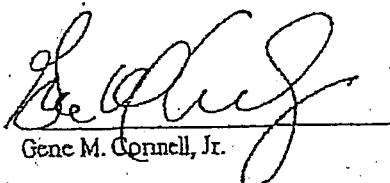
By Amy Bracy on November 9, 2012

11/9, 2012
_____, South Carolina.

WE CONSENT:



Bruce Nadolny



Gene M. Connell, Jr.

ELECTRONICALLY FILED - 2019 Jan 16 4:21 PM Horry Common Pleas Case #2017CP060775

1/7/13 - you mis-
time took com-
the by opening
w/ Steve Symon
Seawec - d
So only 61 for
he to find
30

Frankie Odonnell

From: Bracy, Amy <abracy@wccsc.gov>
Sent: Thursday, December 13, 2012 2:09 PM
To: Frankie Odonnell
Cc: Bost, Mary
Subject: RE: Nadojny WC 0708860
Attachments: copies.re form 61.pdf.pdf

I pulled the file and the documents that you attached were sent in September and are in the file. This was treated as a motion and set for a hearing in front of Commissioner Wilkerson. Gene later withdrew the motion. I think that we need another fee petition sent in to Mary Bost, as a lien since the once in the file was treated as a motion and does not seem to have the order approving attorney's fee. Amy

From: Frankie Odonnell [mailto:modonnell@classactlaw.net]
Sent: Friday, December 07, 2012 10:57 AM
To: Bracy, Amy
Subject: Nadojny WC 0708860

Amy

I need help!!! We have been relieved as counsel and have received a clocked copy of that Order. However, we have sent the Form 61 Attorney Fee Petition, Motion for Attorney Fees, Affidavit of Gene M. Connell, Jr., Cost Statement and Proof of Service three (3) times and have not received a clocked copy of those documents. We sent those documents on August 29, 2012, September 11, 2012 and September 18, 2012. Also, Gene sent a follow up letter just to be certain that our lien will be protected and the letter was sent back to us stating that we needed to file a form 61. This morning I called to be sure that our form 61 had been filed and I was told that the only document they see is our Order to be Relieved as Counsel. I am attaching a copy of each letter with the form 61, etc., for your information. I have also attached a copy of our letter with the note that we need to file a form 61. I can understand one being lost in the mail but not three (3). Please advise me if our letters are maybe in Judicial and haven't been processed.

Thank you in advance for any help you can give me in this matter.

Frankie O'Donnell
Legal Assistant to Gene M. Connell, Jr.

Kelahr, Connell & Connor, PC
P.O. Drawer 14547
Surfside Beach, S.C. 29587
(843)238-5648 fax # (843-238-5050)

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION

This message is intended only for the named recipient. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

CONFIDENTIALITY NOTE: THIS E MAIL HAS BEEN SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF PERSON OR PERSONS NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW
SUITE 209
THE COURTYARD
1500 U.S. HIGHWAY 17 NORTH
P.O. DRAWER 14547
SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

December 28, 2012

RECEIVED

MAY 15 2017

S. C. WORKERS' COMP. COMM.
EXECUTIVE DIRECTOR

Greg Lyons
Claims Department
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

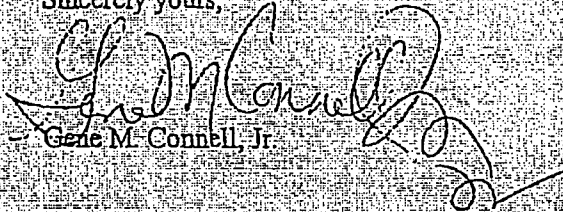
Re: Employee: Bruce Nadolny
Employer: AVX Corporation
Date of Accident: 06/30/07
WCC File Number: 0708860
Our File Number: 2007-0332C

Dear Mr. Lyons:

Enclosed please find the Attorney Fee Petition I am this date submitting in duplicate in the above captioned matter. Pursuant to my conversation with you today, I would ask that you hold this form pending settlement of this case.

With best regards, I am

Sincerely yours,


Gene M. Connell, Jr.

GMC, Jrms
Enclosures

ELECTRONICALLY FILED 2018 Jan 16 4:21 PM Horry COMMON PLEAS CASE#2017CP260775

ELECTRONICALLY FILED - 2018 Jan 16 4:21 PM HARRY COMMON PLEAS CASE#2017CP2607775

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, South Carolina 29202-1715
803-737-5723



WCC File #: 0708860
Carrier File #: WCS50-567678
Carrier Code #
Employer FEIN #

RECEIVED

MAY 15 2017

Claimant's Name: Bruce W. Nadolny
Address: 613 Mammie Drive
City: Myrtle Beach State: SC Zip: 29588
Home Phone: (843) 293-8649 Work Phone: ()
Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaher, Connell & Connor, PC Preparer's Phone #: (843) 238-5648

Employer's Name: AVX Corporation
Address: PO Box 867
City: Myrtle Beach State: SC Zip: 29578
Insurance Carrier: Liberty Mutual Insurance Co

S-C WORKERS COMP COMM
EXECUTIVE DIRECTOR

Date Attorney Was Hired: 07/31/07 Date of Injury: 06/30/07

Compensation Rate: Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R-67-1205C does not apply to the facts of this case. A % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R-67-1205C applicable to this claim is (C) . A fee of \$ is requested for approval based on the following:
Date of first Impairment rating or offer of settlement: _____
Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
Attorney for the Claimant
Date: 4/18/17

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation, and I understand how much money I will receive after I pay my attorney.

Client: _____ Date: _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R-67-1203, R-67-1204, R-67-1205, R-67-1206 and Rule 1:5(a), RPC Rule 407, SCACR.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,)
)
Plaintiff,)
)
vs.)
)
South Carolina Workers' Compensation)
Commission,)
)
Defendant.)
)

PLAINTIFF'S RESPONSE TO
DEFENDANT'S MOTION TO DISMISS

I. BACKGROUND FACTS

This is an action filed pursuant to the South Carolina Tort Claims Act (S.C. Code § 15-78-10, et seq.). The Plaintiff, Kelaher, Connell & Connor, P.C., and its lawyers represented Bruce W. Nadolny in a worker's compensation claim (WCC File No. 0708860). Plaintiff's counsel represented Bruce W. Nadolny after he was seriously injured in an accident which crushed parts of his body on July 31, 2007. The representation lasted over five years and included depositions, at least three court hearings and a mediation before former South Carolina Workers' Compensation Commissioner, Thomas Marchant. At that mediation, the Plaintiff and Defendant AVX Corporation and its insurer, Liberty Mutual Insurance Company, agreed to settle the case for \$120,000.00. Thereafter, Nadolny changed his mind and refused to consummate the settlement. Plaintiff was discharged as counsel by Order dated November 9, 2012 signed by Workers' Compensation Commissioner Beck. The Order provided "Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has done in this matter."

The facts of the case can best be described as follows:

- Plaintiff filed a South Carolina approved Form 61 Fee Petition for the first time on August 29, 2012.

- Plaintiff contacted the South Carolina Workers' Compensation Commission and was told that the Commission had not received the petition.
- Plaintiff resent the Fee Petition on September 11, 2012.
- Plaintiff thereafter contacted the South Carolina Workers' Compensation Commission and was again told the fee petition had not been received; and Plaintiff, for a third time, resent the Fee Petition on September 18, 2012.
- Plaintiff sent a letter on November 9, 2012 to the South Carolina Workers' Compensation Commission advising the Commission the Plaintiff was making a claim for attorney's fees. On that same letter, a handwritten note was returned to counsel which stated: "Gene, you will need to file a Form 61 with order & cost sheet & we will hold. Thanks G. Lyons."
- On December 13, 2012 Plaintiff's assistant received an email from Amy Bracy of the South Carolina Workers' Compensation Commission indicating that "the documents that you attached were sent in September and are in the file." Bracy advised "we need another fee petition sent in, to Mary Bost, as a lien since the one in the file was treated as a motion and does not seem to have the order approving attorney's fees."
- Plaintiff thereafter on December 28, 2012 sent the fee petition for a fourth time asking for attorney's fees of \$20,000.00 and costs of \$2,446.44. Plaintiff was told by Greg Lyons that the Form 61 required by the South Carolina Workers' Compensation would be held and a lien would attach to the file.

Plaintiff's counsel heard nothing else about the case until Plaintiff contacted the South Carolina Workers' Compensation and was informed that a hearing had been held and a settlement approved by the South Carolina Workers' Compensation Commission on November

3, 2016. The Insurer then disbursed all the money to Bruce W. Nadolny's widow and Plaintiff was not notified by the staff of the Workers' Compensation Commission of a hearing nor was its lien protected.

Plaintiff filed a notice of verified claim for damages on May 9, 2017 which was denied by the South Carolina Workers' Compensation Commission. The instant lawsuit was filed thereafter.

Plaintiff asserts and alleges that employees of the South Carolina Workers' Compensation Commission were negligent in failing to protect Plaintiff's lien and in failing to notify Plaintiff of the hearing so that Plaintiff could assert a claim for attorney's fees. Interestingly, after Plaintiff's lawsuit was filed, the same Workers' Compensation Commissioner who approved the settlement approved the attorney's fees in an Order. However, Plaintiff cannot collect any attorney's fees since the monies were disbursed by the insurance carrier to the widow and she has left the state. Defendant has filed a motion to dismiss which is now before the court.

II. STANDARD OF REVIEW

It is well settled in South Carolina that the circuit court in evaluating a motion to dismiss for failure to state facts sufficient to constitute a cause of action must view the facts alleged in the complaint and any reasonable inferences to be drawn therefrom in the light most favorable to the plaintiff. If the facts and inferences would entitle the plaintiff to relief on any theory, then a dismissal for failure to state a claim is improper. *Benedict College v. National Credit Systems, Inc.*, 400 S.C. 538, 735 S.E.2d 518 (S.C. App. 2012).

Further, novel issues should never be dismissed under SCRCF 12(b)(6). Plaintiff asserts that SCRCF 12(b)(6) is inappropriate for this case and that the court should deny the motion.

III. APPLICABLE LAW

This is a simple negligence case brought against the South Carolina Workers' Compensation Commission for failure to notify the Plaintiff of a hearing on a settlement. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) (Due process requires an opportunity to be heard.) Thus, South Carolina Code § 15-78-10, also known as the South Carolina Tort Claims Act, was enacted on June 3, 1986 with the General Assembly declaring "it to be the public policy of the State of South Carolina that the State and its political subdivisions, are only liable for torts within the limitations of the Act and in accordance with the principals established therein." See S.C. Code Ann. § 15-78-20(a) (Supp. 1991).

Under both our state and federal due process clauses 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. Our courts have noted "The fundamental requirements of due process include notice, an opportunity to be heard in a meaningful way and judicial review." *State v. Binnarr*, 400 S.C. 156, 165, 733 S.E.2d 890, 894 (2012). See also *Stono River EPA v. DHEC*, 305 S.C. 90, 406 S.E.2d 340 (1991) (notice and opportunity to be heard is required before an administrative agency makes a final decision). See, also, *South Carolina Ambulatory Surgery Center v. South Carolina Workers' Compensation Commission*, 289 S.C. 386, 699 S.E.2d 143 (2010); and *Ross v. MUSC*, 328 S.C. 51, 492 S.E.2d 62 (1997) (S.C. Code § 1-23-320 requires a notice and opportunity to be heard). See, also, *Fuentes v. Shevin*, 407 U.S. 67 (1972); (Sheriff seized Fuentes stove after she didn't pay. Court ruled due process requires an opportunity and notice to be heard); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601 (1975) (Georgia garnishment procedure struck down since no notice was given to debtor.)

In this case, Plaintiff's petition for attorney's fees was not heard in the normal course. Plaintiff asserts that the staff of the South Carolina Workers' Compensation Commission simply neglected to send Plaintiff a notice and that such failure of the staff is a negligent act which implicates the South Carolina Tort Claims Act.¹ Thus, this is not a dispute under the Workers' Compensation Act by an employee, but a dispute because of a negligent act of an employee of the South Carolina Workers' Compensation Commission. South Carolina Workers' Compensation Regulation 67-607 requires a hearing notice be provided to each party and each party be afforded at least thirty days' notice of a hearing. South Carolina Regulation 67-1203(3) provides that an attorney's fee will be considered upon the final resolution of the claim and South Carolina Regulation 67-1204(f) provides that the Commission upon receiving a Form 61 and an order shall immediately schedule a hearing to consider the fee agreement of counsel.

Finally, no attorney's fee may be allowed by the South Carolina Workers' Compensation Commission unless first approved. See South Carolina Regulation 67-1204(a) (an attorney shall report and obtain approval of any fee for services rendered in a worker's compensation claim).

It should also be noted that Defendant in this case argues that exceptions apply under the South Carolina Tort Claims Act pursuant to S.C. Code § 15-78-60(2) which provides that a governmental entity was not liable for an administrative action or inaction of a legislative judicial or quasi-judicial nature.² Plaintiff asserts that based on the attached affidavit of Virginia Crocker and the case law that this issue this section is not applicable. See *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 743 S.E.2d 109 (S.C. App. 2002) (denying a new trial after verdict regarding licensing decision by the City of Orangeburg concerning the tearing down of a house. The court held S.C. Code § 15-78-60(2) is not a bar to recovery for administrative action.)

¹ In essence, a mistake was made by employees of the Commission.
² This is a simple negligence act by failing to give Plaintiff notice.

In this case, Plaintiff asserts a simple error caused this loss to the Plaintiff. Specifically, the failure to notify Plaintiff of the hearing resulted in a loss of Plaintiff's ability to collect lawfully earned attorney's fees and costs. Plaintiff points to the Affidavit of Virginia Crocker attached hereto as an additional example why this matter is covered under the South Carolina Tort Claims Act and accordingly, the motion to dismiss should be denied.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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February 27, 2018
Surfside Beach, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,)
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Workers' Compensation)
 Commission,)
)
 Defendant.)
)

NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION

TO: DOUGLAS CHARLES BAXTER, ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE, the Plaintiff will, on the tenth day after service hereof, or as soon thereafter as counsel may be heard, move this Court for an Order reconsidering the Order of the Honorable Benjamin H. Culbertson dated and filed April 9, 2018 granting the Defendant's Motion to Dismiss pursuant to SCRCP 59(e) based on the following issues:

1. The Court ruled that it does not have jurisdiction over this matter. The error being that the Worker's Compensation Commission cannot decide claims against itself.
2. The Court failed to consider the Defendant's motion based on SCRCP 12(b)(6) which requires that all inferences be construed in favor of the Plaintiff.
3. The Court ruled that the Defendant is immune from suit under S.C. Code § 15-78-60(2). The error being that the Court cannot make such a ruling without evidence and under a SCRCP 12(b)(6) motion.
4. The Court failed to rule on Plaintiff's argument that notice is required to the Plaintiff under the United States Constitution and the Administrative Procedures Act before its claim can be heard and denied.

5. The Court failed to consider that statutory notice is required by the South Carolina Workers' Compensation Commission to the Plaintiff similar to what is required by a hearing officer to decide a case.

6. The Court failed to hold that the acts of the Defendant in failing to give notice were ministerial and negligent acts and thus covered under the South Carolina Tort Claims Act.

7. The Court failed to rule under S.C. Code § 1-23-320 that all parties must be afforded an opportunity for a hearing of not less than thirty days and that the failure to provide such hearing was negligent as a matter of law.

8. The Court failed to rule that S.C. Code § 15-78-60(2) is not applicable to a clerical mistake.

9. The Court failed to hold that the Plaintiff was entitled to notice of a hearing in the *Nadolny* worker's compensation case to assert its right to attorney fees.

10. The Court failed to hold that the Workers' Compensation Commission was required to give notice to the Plaintiff of a hearing on its property rights (i.e., attorney's fees) and that such does not impact the Eleventh Amendment.

11. The Court failed to hold that a lien attached to the *Nadolny* worker's compensation case and that the Plaintiff had given proper notice on four separate occasions to the Commission.

12. The Court failed to hold that the Defendant's own rules and regulations required it give notice to all interested parties prior to approving a settlement and that the failure to do so violates the South Carolina and United States Constitutions.

WHEREFORE, Plaintiff requests the Court reconsider its Order Granting Defendant's Motion to Dismiss and for such other and further relief as the Court may deem just, necessary and proper.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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Attorney for Plaintiff

April 16, 2018

Surfside Beach, South Carolina

ELECTRONICALLY FILED - 2018 Apr 16 10:37 AM - Horry - COMMON PLEAS - CASE#2017CP2607775

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) C/A No. 2017-CP-26-07775

Kelاهر, Connell & Connor, P.C.,)
)
)

Plaintiff,)

vs.)

South Carolina Workers' Compensation)
Commission,)

Defendants.)

**DEFENDANT'S RESPONSE IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR RECONSIDERATION**

Defendant, South Carolina Workers' Compensation Commission, previously moved for an Order granting its Motion to Dismiss pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*. Said Motion was argued before the Honorable Benjamin H. Culbertson on March 1, 2018. On April 9, 2018, Judge Culbertson signed an Order granting the Motion and dismissing the action with prejudice. Subsequently, on April 16, 2018, Plaintiff filed a Motion for Reconsideration pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure* based on the Court failing to consider and rule on certain issues. Defendant submits this Response in Opposition to Plaintiff's Motion for Reconsideration.

Pursuant to *South Carolina Rule of Civil Procedure 59(e)*, "a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Motions made pursuant to Rule 59 are within the discretion of the Circuit Court. Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to

reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). In its ruling and Order granting Defendant’s Motion to Dismiss, the Court fully considered and ruled on all issues Plaintiff raised in its Motion for Reconsideration.

As previously argued by counsel for the Defendant, and as stated in the Order, this Court does not have jurisdiction over this action. All attorney’s fees resulting from claims within the South Carolina Workers’ Compensation Act are subject to the approval of the Commission as it has original jurisdiction over such claims. S.C. Code Ann. § 42-15-90. Therefore, any disputes that Plaintiff has with the payment of attorney’s fees are within the jurisdiction and approval of the Commission; not the Circuit Court.

Furthermore, even if this Court did have jurisdiction, the Defendant is immune based on the South Carolina Tort Claims Act (§15-78-10, *et. seq.*) because the Defendant, the South Carolina Workers’ Compensation Commission, is a governmental entity, and therefore, any claims that Plaintiff has against the Commission are subject to the South Carolina Tort Claims Act. As stated in S.C. Code Ann. §15-78-60, a governmental entity is not liable for any loss resulting from an administrative action or inactive of a legislative, judicial, or quasi-judicial nature. Here, the Commission, as set forth by the General Assembly, is a judicial and administrative department of the State (S.C. Code Ann. §42-3-10) and the allegations of negligence in the Complaint all involve administrative actions and/or inactions. As such, the Commission cannot be held liable for any alleged losses as set out in the Complaint.

Because the Court previously considered and ruled on all issues raised by Plaintiff, Defendant respectfully requests that the Court deny Plaintiff’s Motion for Reconsideration.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Chelsea Lane Monroe

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Workers' Compensation Commission

May 2, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,)
)
Plaintiff,)
)
vs.)
)
South Carolina Workers' Compensation)
Commission,)
)
Defendant.)
)

PLAINTIFF'S BRIEF ON
RECONSIDERATION OF THE
ORDER GRANTING DEFENDANT'S
MOTION TO DISMISS

I. BACKGROUND

The Plaintiff is a corporation organized and existing pursuant to the laws of the State of South Carolina and doing business as a law firm in South Carolina. The Defendant is a governmental entity which is part of the State of South Carolina and which entity is charged with handling and resolving workers' compensation claims in South Carolina.

On or about July 31, 2007, Plaintiff was retained by Bruce Nadolny to represent him for a worker's compensation claim against AVX Corporation and Liberty Mutual Insurance Company with WCC File No. 0708860. Thereafter, Kelaher, Connell & Connor, P.C., through Gene M. Connell, Jr., represented Bruce Nadolny through numerous hearings before the South Carolina Workers' Compensation Commission and attended depositions and the file contains almost 3,000 pages of medical records. A mediation was held before former Workers' Compensation Commissioner, Tom Marchant, in which the Claimant agreed to accept \$120,000.00 plus a Medicare Set Aside Trust. The Claimant the next day advised Kelaher, Connell & Connor he no longer needed my assistance and fired the Plaintiff. Kelaher, Connell & Connor advised Nadolny it had expended countless hours handling this claim including going to hearings and expending \$2,446.44 for a mediation.

Kelaher, Connell & Connor, P.C. was relieved as counsel on November 9, 2012, but pursuant to the Order relieving counsel, Attorney Connell advised the Court that Kelaher, Connell & Connor would file a claim for attorney's fees for the work that he has done in this matter. Kelaher, Connell & Connor, P.C. had previously filed a Form 61 Fee Petition on August 29, 2012, whereupon the Commission advised Attorney Connell that they had not received it. Kelaher, Connell & Connor, P.C. then refiled the Fee Petition on September 11, 2012, whereupon the Commission advised attorney Connell they still had not received it. Kelaher, Connell & Connor, P.C. filed the Fee Petition for the third time on September 18, 2012. Thereafter Attorney Connell wrote a letter on November 9, 2012 advising that he was requesting a lien be placed on the file and requesting that Kelaher, Connell & Connor, P.C. be notified. An employee of the Commission, Greg Lyons, wrote back a note which stated: "You will need to file a Form 61 with Order & cost sheet & we will hold." Thereafter Attorney Connell received an email from Amy Bracy of the Workers' Compensation Commission on December 13, 2012, indicating Kelaher, Connell & Connor needed to file yet another Fee Petition and it would act as a lien on the file. On December 28, 2012, Kelaher, Connell & Connor, for the fourth time filed a Fee Petition asking for attorney's fees of \$20,000.00 and costs of \$2,446.44.

The Claimant, Bruce Nadolny, died in 2016 and the South Carolina Workers' Compensation Commission approved a settlement to his widow on November 3, 2016, without notifying Kelaher, Connell & Connor, P.C.¹ South Carolina Workers' Compensation Commission, through its officers, agents and/or employees, was negligent, reckless and willful in one or more of the following particulars:

- a. In failing to notify Plaintiff of a hearing;
- b. In failing to recognize and protect Plaintiff's lien;

¹ Since this litigation was commenced Plaintiff received an Order of the Commission approving its attorney's fees; however, the settlement has been paid to Nadolny's widow and she has left the state.

- c. In mishandling documents including a Fee Petition which was in fact forwarded to the Commission on four occasions;
- d. In failing to follow generally accepted practices in notifying Plaintiff after he had been relieved;
- e. In failing to send written notice to the Plaintiff;
- f. In failing to handle notice to the Plaintiff of a potential hearing in a businesslike manner;
- g. In failing to abide by its employees' emails and notes which indicated that if Plaintiff filed a Form 61 with an Order and cost sheet they would hold until the end of the case.

That as a direct and proximate result, Plaintiff suffered damages in that Plaintiff's fees were \$20,000.00 and costs of \$2446.44.

The Plaintiff brought this cause of action against the Defendant for negligence, which was filed on November 29, 2017, and requested judgment against the Defendant for actual damages in the sum of \$22,446.44. On January 16, 2018, Defendant filed a motion to dismiss pursuant to Rule 12 of the *South Carolina Rules of Civil Procedure*, supplemented by a memorandum in support of its motion to dismiss. Thereafter, on February 27, 2018, plaintiff filed his response to Defendant's motion to dismiss. On April 9, 2018, The Court of Common Pleas, Fifteenth Judicial Circuit submitted an Order granting Defendants motion to dismiss. Following the Court's grant of Defendant's motion to dismiss Plaintiff timely filed its Notice of Motion and Motion for Reconsideration on April 16, 2018.

II. ISSUE

1. Does Defendant, South Carolina Workers' Compensation Commission, have proper jurisdiction to decide a case against itself?
2. Is the Commission liable for failing to notify the Plaintiff of the hearing?

III. DISCUSSION

The Defendant, Workers' Compensation Commission (Commission), contends that they are immune from liability under the South Carolina Tort Claims Act for the negligent acts of their employee, and that the circuit court does not have subject matter jurisdiction over the current claim of negligence in (1) failing to protect Plaintiff's lien and (2) failing to notify Plaintiff of the hearing so that Plaintiff could defend his interest regarding attorney's fees.

A. Opportunity to be Heard

Under both our state and federal due process clauses 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. The fundamental requirements of due process include notice and an opportunity to be heard in a meaningful way. Tant v. S.C. Dep't of Corr., 408 S.C. 334, 340, 759 S.E.2d 398, 401 (2014). Determining whether a person has been denied due process requires that the individual be denied an interest that can be defined as liberty or property under the Due Process Clause. Id. A person's property interests' extend well beyond actual ownership of real estate, chattels, or money. Bd. of Regents v. Roth, 408 U.S. 564, 571-572, 92 S. Ct. 2701 (1972). Furthermore, pursuant to S.C. Code Regs. 67-1204(F), "[i]f the Form 61 and Order do not comply with R.67-1205, the Commissioner reviewing the Form 61 and Order shall immediately schedule a hearing to consider argument of counsel and testimony, if any."

In the present case, Plaintiff was not notified of the hearing on November 3, 2016, and thus, was unable to protect his interest and lien on attorney's fees, which was established on December 28, 2012, after submitting his Fee Petition for the fourth time. The Plaintiff's attorney's fees constitute a constitutionally protected property interest, and but for the negligent acts or omissions of the Commission's officers, agents, and/or employees, Plaintiff would have

been notified of the settlement hearing and would have had the opportunity to properly defend his claim.²

B. Subject Matter Jurisdiction

The Commission claims that it has original jurisdiction over this matter pursuant to Section 42-3-108 of the Code of Laws of South Carolina, which provides that all questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the Commission, shall be determined by the Commission, except as otherwise provided in this title. S.C. Code Ann. 42-3-180. The dispute in question here is not one arising under the Workers' Compensation Act, but rather arises under the common law of South Carolina. Laboureur v. Harleysville Mut. Ins. Co., 302 S.C. 540, 542, 397 S.E.2d 526 (1990). Additionally, the Commission does not have the power to adjudicate this dispute in a meaningful way. Id. at 543. The Commission cannot award damages to Plaintiff if Plaintiff is successful in demonstrating that the Defendants were negligent in their failure to notify and protect Plaintiff's lien. Id.

Here, this is a simple negligence case brought against the Commission for failure to notify the Plaintiff of the hearing and protect Plaintiff's lien. "[O]nly disputes ancillary to an employee's right to compensation arise under the Act." Price v. Peachtree, 396 S.C. 403, 409, 721 S.E.2d 461 (2011). "Claims not affecting the employee's rights to compensation are within the purview of the circuit court, not the Commission." Id. In Laboureur, the court found that "when the employee's rights are not involved, an employer/insured must present all such issues to the circuit court." Id. at 529. The question at issue – negligence in notifying the Plaintiff of the hearing and failure to protect his lien – does not affect Mr. Nadolny's right to compensation. This is not a dispute of payment, but rather concerns the negligence of an employee of the

² Also, motions to dismiss are disfavored and the Court does not consider the Affidavit of Virginia Crocker submitted by the Plaintiff (attached).

Commission in failing to notify the Plaintiff of the hearing. The Commission does not have jurisdiction over tort claims committed by its employees. Thus, the Commission should not have subject matter jurisdiction over this claim and the court should find that the circuit court has proper jurisdiction to hear this claim and this court erred in so ruling in this case. (See page 3 of this Court's Order dismissing this case).

C. South Carolina Tort Claims Act – Government Entity

The Commission argues that because it is a government entity, and therefore subject to the South Carolina Tort Claims Act, it is not liable for any loss resulting from administrative action or inaction of a legislative, judicial, or quasi-judicial nature. *S.C. Code Ann. §15-78-60(2)*. Although it is limited, “[t]he Tort Claims Act waives sovereign immunity for torts committed by the State, its political subdivisions, and governmental employees acting within the scope of their official duties.” *Proctor v. Dep’t of Health & Envtl. Control*, 368 S.C. 279, 291, 628 S.E.2d 496 (Ct. App. 2006). South Carolina Code Ann. Section 15-78-60(1)(2) provides: a “government entity is not liable for a loss resulting from (1) legislative, judicial, or quasi-judicial action or inaction” or (2) “administrative action or inaction of a legislative, judicial, or quasi-judicial nature.” The Court in *Hawkins v. City of Greenville*, 358 S.C. 280, 594 S.E.2d 557 (Ct. App. 2004), addressed Section 15-78-60(1)(2) and instructed that:

The determination of immunity from tort liability turns on the question of whether the acts in question were discretionary rather than ministerial. A finding of immunity under the Act “is contingent on proof the government entity, faced with alternatives, actually weighed competing considerations and made a conscious choice using accepted professional standards.

Wooten ex rel. Wooten v. South Carolina Dep’t of Transp., 333 S.C. 464, 468 511 S.E.2d 355, 357 (1999).

In the case *sub judice*, the Commission did not have a discretionary decision as whether to notify Plaintiff of the hearing held on November 3, 2016. Per the South Carolina Workers’ Compensation Commission regulations, the Commission is required to notify all interested

parties. Therefore, this was a ministerial act rather than a discretionary act and the Commission should not be found to be immune from tort liability. Thus, the Court erred in holding the Commission was immune from suit.

South Carolina also recognizes three exceptions to judicial or quasi-judicial immunity at common law. *Proctor*, 368 S.C. 279, 300 (2006). Judicial immunity is not appropriate for judges and other officials if: “(1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” *Id.* The second exception, which focuses on the importance of the act itself, rather than the actor, is applicable here. *Id.* Under this exception, even judges are not protected by judicial immunity when they act in an administrative capacity. *Id.* To determine if an act is judicial, the court must look to the nature and function of the act itself. *Id.*

Here, the acts or the failure to act, by officers, agents, and/or employees of the Commission (giving proper notice and failing to protect Plaintiff’s lien) was a ministerial and negligent act rather than a judicial act. A “duty is ‘ministerial’ when it is absolute, certain, and imperative, involving merely execution of a specific duty arising from fixed and designated facts.” *Id.* at 308 citing *Jensen v. Anderson County Dep’t of Soc. Servs.*, 304 S.C. 195, 403 S.E.2d 615 (1991). Chapter 67 of South Carolina Workers’ Compensation Regulation 67-210 directs who the Commission shall serve and Regulation 67-213 directs how the Commission shall serve hearing notices. The regulations set forth above establish that there was no judicial nature involved in the act itself, but rather it was a ministerial act, which was “absolute, certain, and imperative,” and involved the execution of a specific duty set forth by Chapter 67 of the South Carolina Workers’ Compensation Commission. Thus, the Court erred in finding the Commission was immune from suit in this case.

D. S.C. Code Ann. § 15-78-60 Exceptions

Additionally, “section 15-78-60(20) provides that a governmental entity is not liable for a loss resulting from the act or omission of a person other than an employee.” *Greenville Memorial Auditorium v. Martin*, 301 S.C. 242, 246, 391 S.E.2d 546 (1990). In *Greenville Memorial Auditorium*, 301 S.C. 242, the plaintiff alleged that defendant, a government entity, was negligent in securing the premises during a concert and created an unreasonable risk of harm that proximately caused the plaintiff’s injury. *Id.* The court held that *Section 15-78-60(20)* would not preclude the government entity of liability for its own conduct. *Id.* at 247. Similarly, in the present case, Plaintiff alleges that the Commission, through one of its employees, was negligent in failing to notify Plaintiff of the hearing, which caused the Plaintiff injury in the amount of \$22,446.44. The Commission should not be precluded from liability for its own conduct/negligence, which proximately caused injury to the Plaintiff.

Furthermore, S.C. Code Ann. section 15-78-60(12) states that a governmental entity is not liable for a loss resulting from certain events including “licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner.” (emphasis added). A potential injured third-party may seek relief under this exception. *Chakrabarti v. City of Orangeburg*, 403 S.C. 308, 317, 743 S.E.2d 109 (2013). Gross negligence is defined as “the intentional conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.” *Id.* citing *Etheredge v. Richland Sch. Dist. One*, 341 S.C. 307, 310, 534 S.E.2d 275 (2000). “Gross negligence has also been defined as a relative term, and means the absence of care that is necessary under the circumstances.” *Id.*

Here, the Court asserts that the Commission is immune under section 15-78-60(2). Although the exception relied on by the Court does not expressly contain a gross negligence standard, the court in Chakrabarti held that when the exception of gross negligence applies to a case, the gross negligence standard is read into any other applicable exceptions. Id. at 319. Therefore, this Court should have held section 15-78-60(12) is applicable to the current case, which would extend the gross negligence standard to the additional exceptions relied on by the Commission. Id.

The intentional conscious failure of the Commission is evidenced by its failure to properly document the fee petition on four separate occasions, protect the Plaintiff's lien, failure to notify Plaintiff of the hearing, as well as the affidavit of Virginia Crocker, who was a South Carolina Workers' Compensation Commissioner for eight years and the Judicial Director at the Commission for an additional eight years. This repeated failure to properly secure the lien coupled with the affidavit of a former Workers' Compensation Commission Employee demonstrates the intentional conscious failure to do something which it is incumbent upon a government entity. Thus, the Court erred in dismissing this case.

IV. CONCLUSION

This is a negligence case brought against the South Carolina Workers' Compensation Commission for their failure to notify Plaintiff of the hearing and failure to protect Plaintiff's lien. The circuit court has proper jurisdiction to hear this claim and the Commission is not immune from liability under the South Carolina Tort Claims Act. Accordingly, Plaintiff requests the Court vacate its prior ruling and set this case for trial.

KELAHER, CONNELL & CONNOR, P.C.

s/Gene M. Connell, Jr.

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June 7, 2018
Surfside Beach, South Carolina

ELECTRONICALLY FILED - 2018 Jun 08 1:12 PM - HORRY - COMMON PLEAS - CASE#2017CP2607775

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	C/A No. 2017-CP-26-07775
Kelاهر, Connell & Connor, P.C.,)	
)	
)	
)	
Plaintiff,	)	DEFENDANT'S REPLY BRIEF
	)	IN OPPOSITION TO PLAINTIFF'S
vs.	)	BRIEF ON RECONSIDERATION
	)	OF THE ORDER GRANTING
South Carolina Workers' Compensation	)	DEFENDANT'S MOTION TO DISMISS
Commission,)	
)	
Defendant.)	

Defendant, South Carolina Workers' Compensation Commission, hereby submits this Reply Brief in Opposition to Plaintiff's Brief on Reconsideration of the Order Granting Defendant's Motion to Dismiss.

FACTS/PROCEDURAL BACKGROUND

On November 29, 2017, Plaintiff filed a Summons and Complaint in this Court, alleging negligence against the Defendant, South Carolina Workers' Compensation Commission for failure to protect Plaintiff's lien. In response, Defendant filed a Motion to Dismiss, requesting that this action be dismissed on the grounds that the Circuit Court does not have jurisdiction to hear this matter, and additionally, the South Carolina Tort Claims Act (§15-78-10, *et. seq.*) provides immunity to the Commission for such claims. Defendant submitted a Memorandum in Support of its Motion. [Exhibit A: Defendant's Motion to Dismiss and Supporting Memorandum] On February 27, 2017, Plaintiff filed a Response Memorandum. [Exhibit B: Plaintiff's Response to Defendant's Motion to Dismiss]

The motion was heard by the Honorable Benjamin H. Culbertson on March 1, 2018, and after listening to oral arguments, reviewing the memorandums, exhibits, and considering the law, on April 9, 2018, Judge Culbertson signed an Order granting Defendant's Motion to Dismiss. [Exhibit C: Order Granting Defendant's Motion to Dismiss] Plaintiff filed a Motion for Reconsideration asking this Court to reconsider its ruling pursuant to Rule 59(e) of the *South Carolina Rules of Civil Procedure*. [Exhibit D: Plaintiff's Notice of Motion and Motion for Reconsideration] Defendant responded and submitted a Response in Opposition on May 2, 2018, arguing that the Court fully considered and ruled on all issues Plaintiff raised in its Motion for Reconsideration. [Exhibit E: Defendant's Response in Opposition to Plaintiff's Motion for Reconsideration]

Pursuant to Judge Culbertson's request, on June 8, 2018, Plaintiff filed a Brief on Reconsideration of the Order Granting Defendant's Motion to Dismiss, alleging the same arguments in his previous memorandums that this Court has already ruled on. [Exhibit F: Plaintiff's Brief on Reconsideration of the Order Granting Defendant's Motion to Dismiss] Defendant submits this Response in Opposition and herein incorporates all arguments made in its previous filings as attached hereto.

LEGAL STANDARD

Pursuant to *South Carolina Rule of Civil Procedure* 59(e), "a motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of the entry of the order." Motions made pursuant to Rule 59 are within the discretion of the Circuit Court. Brinkley v. S.C. Dep't of Corr., 386 S.C. 182, 185, 687 S.E.2d 54, 56 (Ct. App. 2009). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to

reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Elam v. S.C. Dept of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004); see also Southeastern Housing Foundation v. Smith, 380 S.C. 621, 670 S.E.2d 680 (Ct. App. 2008).

A motion to alter or amend a judgment may be granted; “(1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice.” Hutchinson v. Staton, 994 F.2d 1076, 1081 (4th Cir.1993). Mere disagreement with how the law is applied does not support a Rule 59(e) motion. McCall v. Williams, 59 F. Supp. 2d 556, 558 (D.S.C. 1999). Although “a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented,” Elam v. S.C. DOT, 361 S.C. 9, 21, 602 S.E.2d 772 (2004), a Rule 59(e) motion should not be used merely to repeat verbatim arguments previously raised and rejected by the Court. See Quality Trailer Prods. v. CSL Equip. Co., 349 S.C. 216, 221 (S.C. 2002) (ruling that a Rule 59(e) motion which merely recited arguments previously raised and previously ruled upon by the trial court was not appropriate).

Here, Plaintiff’s motion fails to identify a change in law, account for new evidence, or correct a clear error of law. Instead, Plaintiff recites nearly verbatim the same arguments presented in its previous written memorandums and oral arguments. Defendant has already addressed all issues raised by the Plaintiff in its written memorandums or oral arguments. Furthermore, the Court has already fully considered and ruled on all of the issues that the Plaintiff submits before the Court. Plaintiff merely attempts to rehash its same arguments and attempts to re-litigate issues because the Court has ruled in favor of the Defendant. Therefore,

because the Court previously considered and ruled on all of the issues raised by Plaintiff, Defendant respectfully requests that the Court deny Plaintiff's Motion for Reconsideration.

Respectfully submitted,

RICHARDSON, PLOWDEN & ROBINSON, P.A.

s/ Chelsea Lane Monroe

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Attorneys for Defendant, South Carolina
Workers' Compensation Commission

June 21, 2018

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2017-CP-26-07775

Kelaher, Connell & Connor, P.C.,)
)
Plaintiff,)
)
vs.)
)
South Carolina Workers' Compensation)
Commission,)
)
Defendant.)
)

AFFIDAVIT OF
VIRGINIA CROCKER

PERSONALLY APPEARED BEFORE ME, Virginia Crocker, who first being duly sworn, deposes and states as follows:

1. My name is Virginia Crocker and I currently reside in Columbia, South Carolina.
2. I was a South Carolina Workers' Compensation Commissioner for eight years from the period 1984 to 1992. Thereafter, I served as Judicial Director at the South Carolina Workers' Compensation Commission for another eight years. I am currently a retired State employee.
3. I have been asked to review the claim of Kelaher, Connell & Connor, P.C. for attorney's fees which is currently pending against the South Carolina Workers' Compensation Commission.
4. I have reviewed a letter submitted to me by Kelaher, Connell & Connor, P.C. along with documents concerning an attorney's fee petition filed by them in the case of *Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.* (WCC File No. 0708860). The May 9, 2017 letter details that Kelaher, Connell & Connor, P.C. filed the same fee petition with the South Carolina Workers' Compensation Commission on four separate occasions.

5. Once the fee petition was filed with the Commission, a Commission employee was required to give notice of any hearing to Kelaher, Connell & Connor, P.C. South Carolina Workers' Compensation Regulation 67-210 designates who the Commission shall serve as does South Carolina Regulation 67-211. Finally, South Carolina Workers' Compensation Regulation 67-213 directs how the Commission shall serve hearing notices. (See 67-213(B). The Commission serves hearing notices and Form 31, Review Hearing Notices, electronically or by deposit in the United States Postal Service first class postage, addressed to the parties according to R. 67-210. Service is deemed complete upon mailing.)

6. It is also worth noting that all attorneys' fees in workers compensation claims must be approved by the Commission. See Regulation 67-1202, 67-1203, 67-1204 and 67-1205.

7. It is my understanding that Bruce Nadolny died and that his widow was claiming benefits. A hearing was set in 2016, but Kelaher, Connell & Connor, P.C. was not notified of the hearing despite the fact that the South Carolina Workers' Compensation Commission was aware of the lien on the proceeds.

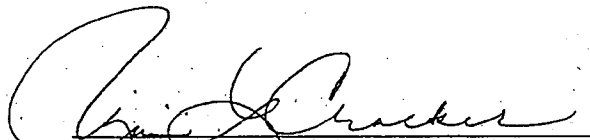
8. An Administrative Assistant of the South Carolina Workers' Compensation Commission made an error in failing to provide Kelaher, Connell & Connor with notice of the settlement hearing between Bruce Nadolny and the AVX Corporation. The Administrative Assistant is required by the South Carolina Workers' Compensation Commission regulations to notify all interested parties either by mail or electronically.

8. It is my opinion that this was really a mistake to attention to detail by a Commission employee.

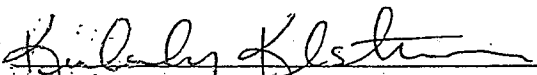
9. The South Carolina Workers' Compensation Commission has original jurisdiction of workers' compensation claims in this state. The South Carolina Workers' Compensation Commission and its Commissioners do not have jurisdiction over torts claims committed by its

employees or staff. The question of whether an employee was negligent in failing to send a notice to the Plaintiff is not the type of dispute that the South Carolina Workers' Compensation Commission or any Commissioner would ever hear. In my years on the Commission and as the Judicial Director, I am not aware of any case in which the South Carolina Workers' Compensation Commission has heard a claim such as this case. The sole issue here is the notification by mail by an employee to the Plaintiff of a hearing to approve benefits in a case in which Plaintiff had performed extensive work.

FURTHER AFFIANT SAYETH NOT.


Virginia Crocker

SWORN AND SUBSCRIBED before me,
this 27 day of February, 2018.


Notary Public for South Carolina.
My Commission Expires: 11-13-25

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State of South Carolina) Court of Common Pleas
County of Horry) 2017-CP-26-07775

Kelاهر, Connell &)
Connor, PC)
vs.) Transcript of Record
South Carolina Workers')
Compensation Commission)

March 1st, 2018
Conway, South Carolina

BEFORE:

Honorable Benjamin H. Culbertson, Judge.

APPEARANCES:

Gene M. Connell, Esq.
Attorney for the Plaintiff

Douglas C. Baxter, Esq.
J. Keith Roberts, Esq.
Attorneys for the Defendant

Teresa J. F. Bautz, RPR
Official Court Reporter

E X H I B I T S

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NO.	DESCRIPTION	ID	EV
4	No exhibits submitted.		

Exhibits retained by Clerk of Court.

1 (WHEREUPON, the hearing commenced at approximately
2 9:41 a.m.)

3 THE COURT: All right. We'll skip on down,
4 2017-CP-26-7775, Kelaher, Connell and Connor versus
5 South Carolina Workers' Compensation Commission.
6 According to my roster the matter is before the Court
7 on a motion to dismiss. If you would please give the
8 court reporter your name and who you represent.

9 MR. CONNELL: Your Honor, Gene Connell, represent
10 Kelaher Connell and Connor.

11 MR. BAXTER: Doug Baxter here on behalf of the
12 South Carolina Workers' Compensation Commission.

13 MR. ROBERTS: And Keith Roberts here on behalf of
14 the Workers' Compensation Commission.

15 THE COURT: All right. Mr. Baxter and
16 Mr. Roberts, this is a defense motion. Who's going to
17 argue it?

18 MR. BAXTER: Your Honor, I will be arguing it.

19 THE COURT: Okay.

20 MR. BAXTER: We have filed a motion to dismiss
21 based upon a couple of grounds. We've submitted a
22 memorandum in support of -- I don't know if you've had
23 an opportunity to review it or not, but it's -- from
24 our standpoint it's relatively simple. First of all,
25 this case involves a lawsuit brought by Kelaher and

1 Connell alleging that the Commission failed to give him
2 notice of a hearing whereby the widow of a previous
3 client of theirs requested a lump sum payment as to
4 remaining disability benefits, and that they're
5 alleging that as a result of that they were unable to
6 fully protect their lien for attorney's fees.

7 The money was paid to the widow of their client,
8 and she has moved to California. And they have an
9 order awarding them the attorney's fees, but it's my
10 understanding that the allegations are that it's now
11 going to be very difficult to collect. And if they had
12 been given notice of the hearing, then their lien would
13 have been properly protected.

14 They bring this lawsuit not looking for any kind
15 of injunctive relief, it's not an appeal of an order.
16 They are suing for damages saying that because of the
17 workers' compensation failing to give them notice,
18 failing to properly protect their lien, that they have
19 been damaged in that they -- it's now going to be very
20 difficult to collect the attorney's fees.

21 We have filed a motion to dismiss, first of all,
22 based upon jurisdiction. The law is clear that matters
23 involving the circuit court does not have jurisdiction
24 over matters involving workers' comp. Any matters that
25 are contained within the workers' comp statute are in

1 the exclusive jurisdiction of the South Carolina
2 Workers' Compensation Commission. The only way it
3 would trigger the circuit court to have jurisdiction
4 would be if there was an appeal of a ruling.

5 In this case they are not appealing the ruling --

6 THE COURT: So excuse me for interrupting, but
7 you're saying lawsuits against the Commission is only
8 within the jurisdiction of the Commission to decide?

9 MR. BAXTER: Well, the questions under the Act are
10 only within the jurisdiction. And this is a -- this is
11 a -- they are saying we violated -- that we didn't
12 follow the procedure under the Act, and therefore they
13 want a circuit court to step in and say, you didn't do
14 it right under the Act.

15 THE COURT: So who do you say is the proper forum
16 for them to get an answer to that question?

17 MR. BAXTER: Well, the proper -- if there is an
18 issue with regards to a ruling or with regards to -- it
19 would be up to the Commission. I mean, here they're --
20 I don't think they are -- they're saying, we're not
21 contesting the ultimate ruling, we're just contesting
22 the fact that you didn't give us proper notice.

23 Now, and the -- so it's our position is that the
24 circuit court does not have jurisdiction to come --
25 basically they are asking you to come in and tell the

1 Workers' Compensation Commission how they should do
2 things.

3 THE COURT: Well, no. I mean, I guess the
4 question is for the sake of argument or viewing the
5 evidence in the light most favorable to the Plaintiff,
6 they do have a claim, if you will, against the Workers'
7 Compensation Commission. What is the proper forum
8 where that is to be brought, according to you?

9 MR. BAXTER: Well, as we'll discuss here in a
10 minute, we don't think they have a claim.

11 THE COURT: I understand that. But for the sake
12 of argument, let's say they do?

13 MR. BAXTER: Well, it's not the circuit court. I
14 mean, I think if you look at the law in South Carolina
15 and the rulings, they are -- I mean, you could argue
16 that maybe the Supreme Court. But it's not in the
17 circuit court.

18 I mean, you don't have jurisdiction. I mean, from
19 now on anybody could say, well, I don't like what they
20 did, so I'm just going to -- I'm going to sue the
21 Workers' Compensation Commission in circuit court. I
22 mean, this is not a -- this is basically you failed to
23 give us notice, you failed to follow what we think
24 should have been the proper procedure. Now, they're --
25 you know, we're disputing that.

1 But for purposes of this hearing we are conceding
2 everything in the claim as far as the facts go. But
3 the circuit court does not have jurisdiction to step in
4 and play that role. And, yeah, it may be unfair, but
5 that's what the law says.

6 THE COURT: So has there ever been a lawsuit
7 against the South Carolina Workers' Compensation
8 Commission by an individual?

9 MR. BAXTER: There have been.

10 THE COURT: And what forum was that?

11 MR. BAXTER: Well, ones that -- there are -- I
12 don't think there have been any in state court, and
13 Keith can correct me on this, where they have sued for
14 damages. Now, again, they are not coming in asking,
15 we're disputing or we should have been given notice or
16 we want to set aside the order. They are suing for
17 damages. I'm unaware of any state circuit court
18 lawsuits against the Commission seeking damages.

19 And part of it is, this indicates where, well,
20 this issue has never -- you know, our position is the
21 reason is you don't have jurisdiction to do that. You
22 don't have jurisdiction to award damages against the
23 South Carolina Workers' Compensation Commission.

24 But there have not been -- there have been a
25 handful of cases in federal court where they have

1 brought action. I'm aware of one. There's been a
2 couple lawsuits in federal court seeking damages. And
3 the outcome of those were that the Workers'
4 Compensation Commission enjoys immunity under the
5 Eleventh Amendment of the US Constitution and cannot be
6 sued for damages.

7 THE COURT: Well, that's a different argument.
8 And that might be right, I don't know. But you're
9 saying that the state circuit court does not have
10 jurisdiction to hear a lawsuit against the Commission.

11 Is there any appellate decision that affirms that?
12 Or is there anything that says you bring a lawsuit
13 against the Commission for damages, you've got to bring
14 it in original jurisdiction of the Supreme Court,
15 federal court, state circuit court has no jurisdiction?

16 MR. BAXTER: Well, Your Honor, there have been a
17 number of cases in which there have been lawsuits in
18 state court for various matters and disagreements, and
19 they're saying we want it heard in circuit court. And
20 all of those -- and we have referenced and cited those
21 cases where they have said no. Anything confined
22 within the Act in any type of dispute within the Act is
23 the exclusive jurisdiction of the South Carolina
24 Workers' Compensation Commission.

25 And here they are saying, well, you didn't follow

1 the procedure as contained within the Act, as contained
2 within the Administrative Procedures Act. So we --
3 it's our position that the circuit court does not have
4 jurisdiction over this kind of case.

5 THE COURT: And I want to make sure I'm
6 understanding your argument. Your argument is that the
7 South Carolina Workers' Compensation Commission has
8 exclusive jurisdiction to decide whether in this case
9 the South Carolina Workers' Compensation Commission
10 followed the proper procedure?

11 MR. BAXTER: And caused damages.

12 THE COURT: And caused damages.

13 MR. BAXTER: Right.

14 THE COURT: So they have to decide, it's a self --
15 you're saying that they self-judge themselves. Did we
16 follow the procedure, and do we owe them damages for
17 not doing it?

18 MR. BAXTER: Well, it would be comparable to the
19 we're suing the circuit court. I mean, and again, it
20 is -- I understand what you're saying is, well, gee,
21 that seems unfair. But that's what the law is.

22 THE COURT: Okay. If that's the law.

23 MR. BAXTER: And sometimes it's not fair.

24 THE COURT: Well, and I don't know, if the law
25 says that, if -- is there any appellate decision that

1 says that's the law, or is that just your
2 interpretation of the South Carolina Workers'
3 Compensation Act?

4 MR. BAXTER: Well, that's my interpretation of the
5 Act. And that's my interpretation of appellate, Court
6 of Appeals and Supreme Court cases saying any issue
7 arising out of or involving the Workers' Compensation
8 Act are within the jurisdiction of the South Carolina
9 Workers' Compensation Commission.

10 THE COURT: But did any of those cases involve
11 lawsuits against the South Carolina Workers
12 Compensation Commission?

13 MR. BAXTER: Not that I'm aware of.

14 THE COURT: Okay.

15 MR. BAXTER: And, again, there are none.

16 THE COURT: All right.

17 MR. BAXTER: I mean, and that would support our
18 position. We think that the fact that there are none
19 supports that.

20 THE COURT: Okay.

21 MR. BAXTER: Yeah, this isn't a case, you know,
22 where it's a -- so, that's the first one. And, again,
23 this is the -- the money, the attorney's fees were owed
24 by the claimant and/or the insurance company, the
25 carrier. Their damages are that we didn't get paid or

1 it's going to be difficult for us to get paid by
2 someone else.

3 THE COURT: They are saying that these people owed
4 them money, they had a lien against these proceeds --

5 MR. BAXTER: Right.

6 THE COURT: -- that there is a notice requirement
7 under the Act, and the purpose of that notice
8 requirement is so that they can come in and protect
9 their lien and that they didn't get noticed?

10 MR. BAXTER: Right.

11 THE COURT: Okay.

12 MR. BAXTER: And, Your Honor, it would be
13 comparable to, you know, there is a minor settlement
14 here, and some lawyer was representing them was
15 relieved of counsel, they still have a lien against
16 that. They are saying, well, gee, the Court didn't
17 notify us of this hearing, and they gave the check to
18 the Plaintiff. And if we had been -- if we'd have
19 known about the hearing, we could have been there, and
20 we could have somehow gotten some of that money. Now
21 we have to sue the Plaintiff to get our money. And so
22 we're going to sue the Court because we didn't collect
23 our attorney's fees.

24 THE COURT: Well, they would be suing the Clerk of
25 Court or whoever was supposed to give them notice that

1 they didn't give them notice.

2 MR. BAXTER: Right. But, again, if you look at
3 the law, I've seen that happen and they're null
4 lawsuits because -- and that gets to the second part.
5 In their petition they raise, I mean, their memorandum
6 in opposition which we don't think it's time, but
7 again, consider that as much as you want, it doesn't
8 affect our argument.

9 The -- they are raising due process which we don't
10 think this is a due process situation because that's
11 when the State takes something from them. In this case
12 we didn't say, you can't get attorney's fees, you can't
13 get paid. It's just more difficult for them to collect
14 it. So it's not a -- they've not -- we have not taken
15 a property right from them which triggers due process.
16 They are just saying, well, we should get notice of the
17 hearing, and therefore that's due process.

18 I mean, that's kind of blurring the lines. I
19 mean, it sounds good when you say it, but really due
20 process under the state and federal constitution talks
21 about when the State can't -- State action to deprive
22 someone of a property interest, they have to have --
23 there has to be proper process to protect that. That's
24 not what happened here, we didn't take anything. We're
25 just saying, you know, we're going to have a difficult

1 time collecting our money from our client as a result
2 of this.

3 And, in fact, the other reason is the -- as
4 indicated, and we, you know, quoted those cases about
5 the -- where they were sued in federal court. The
6 State actors still enjoy, or state agencies, the State
7 of South Carolina Circuit Court, are protected by the
8 Eleventh Amendment which says you cannot be sued. So
9 the South Carolina Workers' Compensation cannot be sued
10 for federal claims including due process because of
11 eleventh -- the Eleventh Amendment immunity enjoyed by
12 the State.

13 Second of all, and we quote this, under the -- if
14 you're going to bring a lawsuit for damages, you got to
15 do it one of two ways, again, a State agency. One
16 would be a 1983 action for federal claims. And as
17 indicated earlier, we are protected by the Eleventh
18 Amendment immunity.

19 And second of all, if you're going to do it, you'd
20 bring it under the Tort Claims Act. And as Your Honor
21 is aware, the Section 15-78-60 sets out those instances
22 wherein the immunity enjoyed by the State have not been
23 waived. And specifically there is section two, which
24 is administrative action or inaction of a legislative
25 judicial or quasi judicial nature.

1 And three, execution, enforcement, implementation
2 of the order's been to court or execution, enforcement,
3 etcetera, etcetera, clearly giving notice by a Court or
4 judicial -- or quasi judicial agency is within the
5 exceptions to the waiver of immunity. And therefore,
6 we, the South Carolina Workers' Compensation, cannot be
7 sued for failing to give notice of a hearing.

8 Just like I don't think a circuit court could be
9 sued for failing to give notice now for money. I mean,
10 you can come in and say, well, I want to set aside the
11 judgment, or I want the -- you know, I wasn't given
12 proper notice, therefore I'm contesting the ruling.
13 But you can't sue for damages. Just like the example I
14 gave, I don't think you can sue the Clerk of Court and
15 say, well, you didn't give me notice, and therefore,
16 I've now got a difficult time, because they would be
17 protected under the 15-78-60.

18 So we think either, A, you don't have jurisdiction
19 to hear it. If you do have jurisdiction because this
20 is a claim for monetary damages, then the Workers'
21 Compensation Commission has immunity under both the US
22 Constitution as well as under the Tort Claims Act.

23 THE COURT: All right. Mr. Connell.

24 MR. CONNELL: Your Honor, little bit of a
25 background. I represented Mr. Donnelly for

1 approximately six years in this workers' compensation
2 claim. And it was mediated before a former
3 commissioner and a settlement was agreed to. And
4 Mr. Donnelly decided that he did not want to go
5 forward. So I did what the Act provided, I filed a fee
6 petition. And not one fee petition, I filed four
7 separate fee petitions because the Commission kept
8 asking me to file them again and again and again. And
9 you'll see that in the memorandum.

10 And after filing the four fee petitions, I heard
11 nothing for approximately a year and a half until I
12 learned that the Commission had had a hearing, the
13 gentleman had died and his widow had gotten the money
14 and moved to California. And so, Your Honor, I view
15 this case to be a simple tort claims case, South
16 Carolina tort claims case, like any other governmental
17 agency.

18 I have an affidavit from a former commissioner
19 which is attached to the motion that says simply, this
20 was a negligent act, a clerical negligence act. It was
21 not a judicial act, it was not a legislative act. It
22 was a mistake that was made by the, if you would for
23 want of a better word, the clerk of the Workers'
24 Compensation Commission.

25 THE COURT: So how is it not prohibited by

1 15-78-62, administrative action of a quasi judicial
2 nature?

3 MR. CONNELL: Well, if you look at Ms. Crocker's
4 affidavit, she said that was not a judicial act. It
5 was just a clerical act. It was not --

6 THE COURT: It's an administrative act where
7 you've got to send out a notice.

8 MR. CONNELL: If you look at the case law that's
9 been cited, there's a case from Orangeburg County about
10 a licensing and permit issue, and it says that's a jury
11 issue. And so, Your Honor, we argue that this is a
12 motion to dismiss, and all inferences must be in favor
13 of the non-moving party. And the question here is --
14 not the ultimate question, but have I stated enough
15 facts to have a cause of action against the Workers'
16 Compensation Commission.

17 And we argue, Your Honor, that based upon the case
18 law from Orangeburg that I've cited in my brief and
19 Ms. Crocker's affidavit which clearly sets out what
20 happened in this case, and how they -- what they did
21 was fail to notify us.

22 And then the final thing I would notice, Your
23 Honor, this is interesting, after the lawsuit was filed
24 and it was -- it had probably been four or five months,
25 then I get an order from the Workers' Compensation

1 Commission approving the attorney's fee. Of course
2 that was way after they should have given me notice and
3 way after the monies were paid to the widow and moved
4 to California.

5 So, Your Honor, I argue that under the motion to
6 dismiss standard that we have shown enough, more than
7 enough to have a cause of action against them at this
8 point. Thank you, Your Honor.

9 THE COURT: All right. Anything in reply?

10 MR. BAXTER: Your Honor, just a couple of things.
11 It kind of got -- the case, just so you understand --
12 it got sideways because Mr. Connell did not want a --
13 didn't want a hearing on the attorney's fees until
14 there was a, later on, I'm assuming, a lump sum
15 payment. So it wasn't -- it wasn't your normal, you
16 know, this is what we always do. It was a little bit
17 different.

18 Ms. Crocker is also, she's not currently employed,
19 she was formerly employed or affiliated with the
20 Commission. But, again, clearly the case he cites, the
21 Orangeburg case, involves a situation where the State
22 actually went in and took something or depriving them
23 of a property right or interest. It has to do with a
24 licensing situation which is different.

25 I don't know, you know, giving notice and filing

1 and things like that, if that's not an administrative
2 action or inaction of a legislative judicial or quasi
3 judicial nature, I don't know what is.

4 THE COURT: All right.

5 MR. BAXTER: I mean, clearly, that is contemplated
6 and clearly the -- you know, right, wrong, fair or
7 unfair, the -- you know, without the Tort Claims Act we
8 could not be sued, period. We can only be sued because
9 the Tort Claims Act allows us to be sued. And if
10 you're suing us under the Tort Claims Act, then we're
11 still protected by that particular provision with
12 the -- there has not been a waiver of immunity as to
13 administrative action or inaction of a legislative
14 judicial or quasi judicial nature.

15 And as far as the facts of what happened or
16 whatever, you know, it's interesting and you could
17 point fingers, and maybe somebody did screw up or
18 didn't screw up, none of that matters because we are
19 either, A, you don't have jurisdiction. If you do have
20 jurisdiction, we're protected under the workers'
21 comp -- I mean, excuse me.

22 THE COURT: Okay.

23 MR. BAXTER: Under the Tort Claims Act.

24 THE COURT: All right. Mr. Baxley [sic], if you
25 would prepare the order, I'm going to grant the motion.

1 I think the Court does have jurisdiction. I don't
2 follow your argument that the workers' comp has
3 exclusive jurisdiction to decide whether or not they
4 did anything improper and whether or not they have
5 advantages.

6 But I do think the Tort Claims Act specifically
7 excludes, government entity is not liable for any loss
8 resulting from administrative action or inaction. And
9 I think this was they were supposed to send notice,
10 they didn't send notice, that's an administrative
11 inaction by a quasi judicial nature.

12 So I think that it follows under the Tort Claims
13 Act, exclusion or immunity. So that's the reason for
14 my ruling. All right.

15 Now, having said that, I don't know what posture
16 this is going to go. Do you want me to grant it on
17 jurisdictional issues, so if you appeal it then that
18 issue can be decided as well?

19 MR. CONNELL: Yes, sir.

20 THE COURT: All right.

21 MR. CONNELL: I would.

22 THE COURT: Well, then, rather than that, let's go
23 ahead. And then I'll say, put it in there the same
24 thing you want, that I don't have jurisdiction based
25 upon your arguments and your grounds. That way you can

1 appeal both issues. Rather than having it go up, come
2 back, go back up on another issue, we'll just go ahead
3 and I'll rule that way on both issues. That way you
4 can address both issues.

5 MR. CONNELL: Can I also ask for a ruling on the
6 standard for a motion to dismiss, you know, all the --
7 the complaint is supposed to be in the light most
8 reasonable to the Plaintiff.

9 THE COURT: Yeah.

10 MR. CONNELL: So I need some ruling on that also.

11 THE COURT: Right, right. And, I mean, to me, I
12 guess my interpretation is this is an administrative
13 action by a quasi judicial -- or it's an administrative
14 inaction by a quasi judicial agency. Administratively
15 they are to notify all parties of a hearing. They
16 didn't do it. So that's an administrative inaction by
17 the Workers' Compensation Commission.

18 And it just seems wrong, I agree with you, but
19 South Carolina Tort Claims Act says that they are not
20 liable for any loss resulting from that inaction. So
21 all right?

22 MR. BAXTER: And I'll include the language in the
23 order for that as well.

24 THE COURT: Okay. Thank you.

25 MR. BAXTER: Thank you.

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(WHEREUPON, the hearing concluded at approximately
10:04 a.m.)
(End of Transcript of Record)

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

August 29, 2012

Claims Department
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.
WCC File No. 0708860
Our File No. 2007-0332C

Dear Sir or Madam:

Enclosed please find an original and two copies of the following documents for filing in the above-referenced case:

- Order Relieving Counsel
- Form 61 Attorney Fee Petition
- Motion for Attorney Fees
- Affidavit of Gene M. Connell, Jr.
- Cost Statement
- Proof of Service

I also enclose a check in the amount of \$25.00 for the filing fee. Please file the documents and set a hearing on the attorney fees at your convenience. Please also return a filed copy of the documents to this office in the self-addressed, stamped envelope enclosed for your convenience.

I am, by copy of this letter, serving a copy on Roy A. Howell, III, attorney for the Employer/Carrier, and on Bruce W. Nadolny.

Sincerely yours,


Gene M. Connell, Jr.

GMC, Jr.:sm
Enclosures

cc w/enc.: Roy A. Howell, III, Esquire
Mr. Bruce A. Nadolny

South Carolina Workers' Compensation
 Commission
 3 Main Street, Suite 500
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC File #: 0708860
 Carrier File #: WC550-567678
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Bruce W. Nadolny Employer's Name: AVX Corporation
 Address: 613 Mammie Drive Address: PO Box 867
 City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29578
 Home Phone: (843) 293-8649 Work Phone: () Insurance Carrier: Liberty Mutual Insurance Co.
 Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaher, Connell & Connor, PC Preparer's Phone #: (843) 238-5648

Date of Injury: 06/30/07
 Date Attorney Was Hired: 07/31/07
 Compensation Rate: _____ Does this conclude the case? Yes No

CASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A _____ % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:
 Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
 Attorney for the Claimant
8-29-12
 Date

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$ _____

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Claimant _____ Date _____

Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

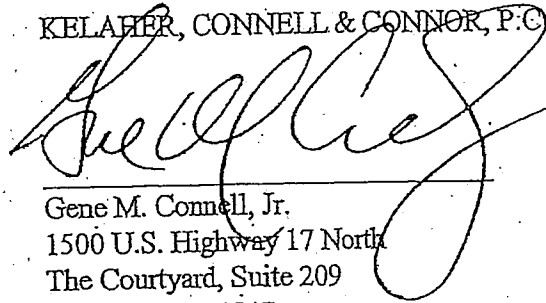
W.C.C. FILE NO. 0708860

Bruce W. Nadolny,
Employee/Claimant,
vs.
AVX Corporation,
Employer,
and
Liberty Mutual Insurance Co.,
Carrier,
Defendants.

MOTION FOR ATTORNEY FEES

YOU WILL PLEASE TAKE NOTICE the undersigned moves the Court to approve attorney's fees pursuant to the Form 61 and the attached Affidavit along with the costs in the amount of \$2,446.44.

KELAFER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
1500 U.S. Highway 17 North
The Courtyard, Suite 209
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Claimant

August 28, 2012
Surfside Beach, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0708860

Bruce W. Nadolny,

Employee/Claimant,

vs.

AVX Corporation,

Employer

and

Liberty Mutual Insurance Co.,

Carrier,

Defendants.

AFFIDAVIT OF
GENE M. CONNELL, JR.

PERSONALLY APPEARED BEFORE ME, Gene M. Connell, Jr., who, being duly sworn,
deposes and states as follows:

1. My name is Gene M. Connell, Jr. and I was the attorney for the Plaintiff in the above captioned matter until I was discharged by him on August 8, 2012.
2. I was hired by Bruce Nadolny after he was involved in an accident on July 31, 2007.
3. Mr. Nadolny had a severe bilateral crush injury to his arms.
4. My representation includes several hearings before the South Carolina Workers' Compensation Commission regarding home modifications which were settled for \$35,000.00 (Thirty Five Thousand Dollars).
5. I have attended two depositions of him and the file contains approximately 3000 pages of medical records.

6. I convinced Mr. Nadolny to have a mediation with a former workers' compensation commissioner, Tom Marchant.

7. At the mediation, the claimant was offered \$120,000.00 (One Hundred Twenty Thousand Dollars) plus a Medicare Set Aside Trust which was refused by him.

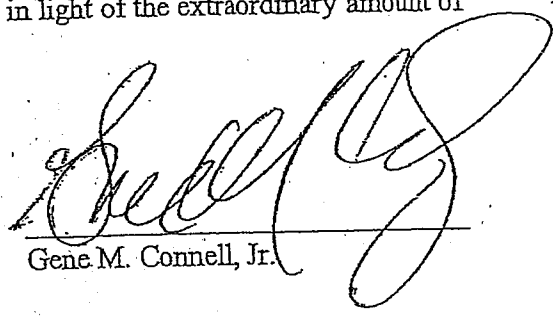
8. I have continued to assist Mr. Nadolny with his ongoing medical treatment. I was informed by Defendant's counsel that they were going to send Mr. Nadolny to Brooks Rehabilitation in Florida. Mr. Nadolny first refused and then said he would go. I was fired the next day for the second time since July 2012.

9. I request that the court award me \$20,000 (Twenty thousand dollars) in attorney's fees plus costs of \$2,446.44 (Two thousand four hundred forty six and 44/100 dollars); the costs of mediation, medical records, and filing fees. A cost statement is attached.

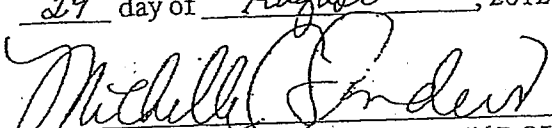
10. The requested fee is much less than the fee agreement of 33 1/3 percent because I believe Mr. Nadonly will need another attorney to help him settle this claim and I want to do everything for his best interest.

11. I have spent countless hours talking to Mr. Nadolny, defense counsel and the insurer. I believe the fee of \$20,000.00 is very reasonable in light of the extraordinary amount of work performed on this case by me.

12. Further the Affiant sayeth not.


Gene M. Connell, Jr.

SWORN TO BEFORE ME THIS
29 day of August, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8-10-21

Tab3 Detail Work-In-Process Report
Kelaher, Connell & Connor, P.C.

Primary Timekeeper: 5 Gene M. Connell, Jr., Esquire

70070332005 Nadolny/Bruce
Nadolny/Bruce

Contact: Bruce Nadolny
Business: 902-1976
Home: 293-8649
Mobile: 902-0808

Category: 3 WORKERS COMPENSATION
Draft Template: 0000001 Rate Code: 1
Final Template: 0000001 Date Opened: 09/25/2007
Previous Balance: 0.00

Invoice	Trkr	Cat	Src	H P	T X	B C	R G	Tcode	Ref#	Rate	Units	Hours Worked	Hours to Bill	Write-Up/ Down Hrs	Amount	Write-Up/ Down Amt	Description
027/2008	5	GMC	A					22	1						38.99		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
020/2008	5	GMC	A					22	2						17.60		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
112/2009	5	GMC	A					22	3						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
119/2009	5	GMC	A					22	4						50.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
130/2009	5	GMC	A					22	5						144.00		Stenotype Reporting Service, LLC FOR DEPOSITION
111/2009	5	GMC	A					22	6						42.75		FLOWERS & ASSOCIATES FOR TRANSCRIPT
110/2009	5	GMC	A					22	7						49.77		Healthport FOR MEDICAL RECORDS
115/2009	5	GMC	A					22	8						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
130/2010	5	GMC	A					22	9						15.00		GRAND STRAND UROLOGY FOR MEDICAL RECORDS
130/2010	5	GMC	A					22	10						18.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
128/2011	5	GMC	A					22	11						38.08		(859.00) TRASK & HOWELL, LLC for copies
104/2011	5	GMC	A					22	12						167.50		(34.00) Veritext Corporate Services, Inc. for transcript
112/2011	5	GMC	A					22	14						164.75		(34.00) Veritext Corporate Services, Inc. FOR TRANSCRIPT
124/2011	5	GMC	A					22	16						1,625.00		(894.00) MERCHANT SOLUTIONS FOR MEDIATION
127/2012	5	GMC	A					22	17						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
															2,446.44		

Billable Advances

Fees:	0.00	Previous Balance:	0.00
Expenses:	0.00	Payments/Credits:	0.00
Advances:	2,446.44	Balance Due:	0.00
Total WIP:	2,446.44	Total:	2,446.44

A/R:	0-30	31-60	61-90	91-120	121-180	181+
	0.00	0.00	0.00	0.00	0.00	0.00

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
Employee/Claimant,)
vs.)
AVX Corporation,)
Employer,)
and)
Liberty Mutual Insurance Co.,)
Carrier,)
Defendants)

PROOF OF SERVICE

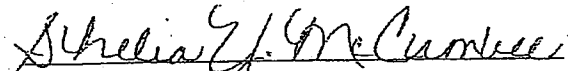
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has mailed, on the date set forth below, a copy of the document described below, in the above entitled action to the following with proper postage affixed thereto:

Roy A. Howell, III, Esquire
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465

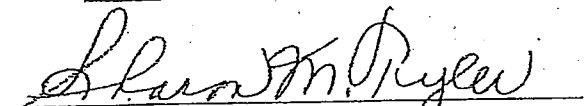
Bruce A. Nadolny
1613 Mammie Drive
Myrtle Beach, SC 29588

DOCUMENTS: Order Relieving Counsel; Form 61 Attorney Fee Petition; Motion for Attorney Fees; Affidavit of Gene M. Connell, Jr.; Cost Statement.

DATE: August 30, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 30th day of August, 2012.


Notary Public for South Carolina

My Commission Expires: 2-25-19

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW
SUITE 209
THE COURTYARD
1500 U.S. HIGHWAY 17 NORTH
P.O. DRAWER 14547
SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS
* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

September 11, 2012

Claims Department
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.
WCC File No. 0708860
Our File No. 2007-0332C

Dear Sir or Madam:

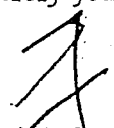
Enclosed please find an original and two copies of the following documents for filing in the above-referenced case:

- Order Relieving Counsel
- Form 61 Attorney Fee Petition
- Motion for Attorney Fees
- Affidavit of Gene M. Connell, Jr.
- Cost Statement
- Proof of Service

I also enclose a check in the amount of \$25.00 for the filing fee. Please file the documents and set a hearing on the attorney fees at your convenience. Please also return a filed copy of the documents to this office in the self-addressed, stamped envelope enclosed for your convenience.

I am, by copy of this letter, serving a copy on Roy A. Howell, III, attorney for the Employer/Carrier, and on Bruce W. Nadolny.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Roy A. Howell, III, Esquire
Mr. Bruce W. Nadolny (Via Certified Mail)

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0708860

Bruce W. Nadolny,)
Employee/Claimant,)

vs.)

AVX Corporation,)
Employer,)

and)

Liberty Mutual Insurance Co.,)
Carrier,)
Defendants)

ORDER RELIEVING COUNSEL

THIS MATTER COMES BEFORE THE COURT based on the Employee/Claimant's request that Gene M. Connell, Jr. be relieved as counsel. Further, Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has done in this matter. Accordingly

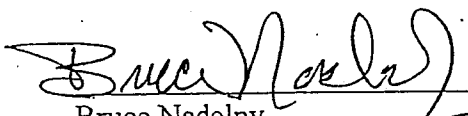
IT IS ORDERED that Gene M. Connell, Jr. be relieved as counsel.

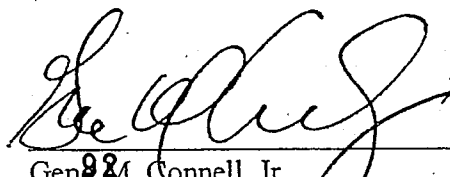
AND IT IS SO ORDERED.

South Carolina Workers' Compensation Commission

_____, 2012
_____, South Carolina.

WE CONSENT:


Bruce Nadolny


Gene M. Connell, Jr.

South Carolina Workers' Compensation Commission
 33 Main Street, Suite 500
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC File #: 0708860
 Carrier File #: WC550-567678
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Bruce W. Nadolny Employer's Name: AVX Corporation
 Address: 613 Mammie Drive Address: PO Box 867
 City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29578
 Home Phone: (843) 293-8649 Work Phone: () - Insurance Carrier: Liberty Mutual Insurance Co.
 Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelahaer, Connell & Connor, PC Preparer's Phone #: (843) 238-5648

Date Attorney Was Hired: 07/31/07 Date of Injury: 06/30/07

Compensation Rate: _____ Does this conclude the case? Yes No

EASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A _____ % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
 Attorney for the Claimant
8-29-12
 Date

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

 Date

Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

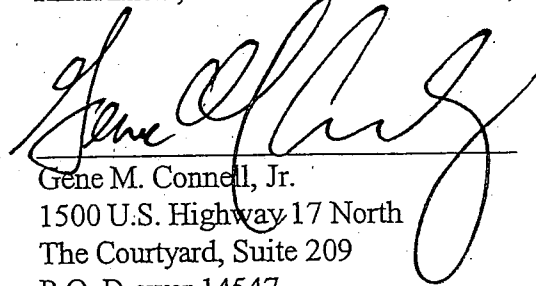
W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
)
 Employee/Claimant,)
)
 vs.)
)
 AVX Corporation,)
)
 Employer,)
)
 and)
)
 Liberty Mutual Insurance Co.,)
)
 Carrier,)
)
 Defendants.)
 _____)

MOTION FOR ATTORNEY FEES

YOU WILL PLEASE TAKE NOTICE the undersigned moves the Court to approve attorney's fees pursuant to the Form 61 and the attached Affidavit along with the costs in the amount of \$2,446.44.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
1500 U.S. Highway 17 North
The Courtyard, Suite 209
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Claimant

August 28, 2012
Surfside Beach, South Carolina

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
)
 Employee/Claimant,)
)
 vs.)
)
 AVX Corporation,)
)
 Employer)
)
 and)
)
 Liberty Mutual Insurance Co.,)
)
 Carrier,)
)
 Defendants.)

**AFFIDAVIT OF
GENE M. CONNELL, JR.**

PERSONALLY APPEARED BEFORE ME, Gene M. Connell, Jr., who, being duly sworn,
deposes and states as follows:

1. My name is Gene M. Connell, Jr. and I was the attorney for the Plaintiff in the above captioned matter until I was discharged by him on August 8, 2012.
2. I was hired by Bruce Nadolny after he was involved in an accident on July 31, 2007.
3. Mr. Nadolny had a severe bilateral crush injury to his arms.
4. My representation includes several hearings before the South Carolina Workers' Compensation Commission regarding home modifications which were settled for \$35,000.00 (Thirty Five Thousand Dollars).
5. I have attended two depositions of him and the file contains approximately 3000 pages of medical records.

6. I convinced Mr. Nadolny to have a mediation with a former workers' compensation commissioner, Tom Marchant.

7. At the mediation, the claimant was offered \$120,000.00 (One Hundred Twenty Thousand Dollars) plus a Medicare Set Aside Trust which was refused by him.

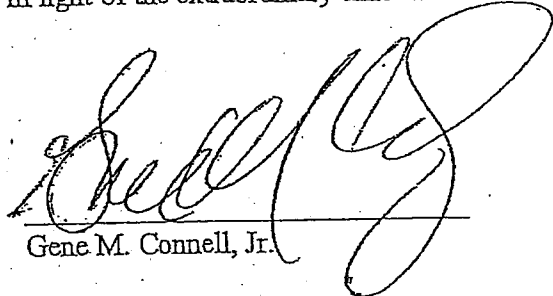
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9. I request that the court award me \$20,000 (Twenty thousand dollars) in attorney's fees plus costs of \$2,446.44 (Two thousand four hundred forty six and 44/100 dollars); the costs of mediation, medical records, and filing fees. A cost statement is attached.

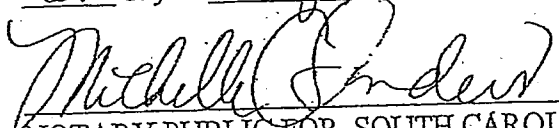
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11. I have spent countless hours talking to Mr. Nadolny, defense counsel and the insurer. I believe the fee of \$20,000.00 is very reasonable in light of the extraordinary amount of work performed on this case by me.

12. Further the Affiant sayeth not.


Gene M. Connell, Jr.

SWORN TO BEFORE ME THIS
29 day of August, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8-10-21

Tabs3 Detail Work-In-Process Report
 Kelaher, Connell & Connor, P.C.

ry Timekeeper: 5 Gene M. Connell, Jr., Esquire

20070332.000 Nadolny/Bruce
 X

Nadolny/Bruce

Contact: Bruce Nadolny
 Business: 902-1976
 Home: 293-8649
 Mobile: 902-0808

y Timekeeper: 5 GMC Category: 3 WORKERS' COMPENSATION
 ary Timekeeper: 1 ETK Draft Template: 00000001 Rate Code: 1
 ating Timekeeper: 1 ETK Final Template: 00000001 Date Opened: 09/25/2007
 us Balance: 0.00

	Tmkr	Cat	Src	H P	T X	B C	R C	Tcode	Ref #	Rate	Units	Hours Worked	Hours to Bill	Write-Up/ Down Hrs	Amount	Write-Up/ Down Amt	Description
nces																	
27/2008	5	GMC	A					22	1						38.99		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
20/2008	5	GMC	A					22	2						17.60		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
12/2009	5	GMC	A					22	3						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
19/2009	5	GMC	A					22	4						50.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
30/2009	5	GMC	A					22	5						144.00		Stenotype Reporting Service, LLC FOR DEPOSITION
11/2009	5	GMC	A					22	6						42.75		FLOWERS & ASSOCIATES FOR TRANSCRIPT
10/2009	5	GMC	A					22	7						49.77		Healthport FOR MEDICAL RECORDS
15/2009	5	GMC	A					22	8						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
30/2010	5	GMC	A					22	9						15.00		GRAND STRAND UROLOGY FOR MEDICAL RECORDS
30/2010	5	GMC	A					22	10						18.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
28/2011	5	GMC	A					22	11						38.08		(859.00) TRASK & HOWELL, LLC for copies
04/2011	5	GMC	A					22	12						167.50		(34.00) Veritext Corporate Services, Inc. for transcript
12/2011	5	GMC	A					22	14						164.75		(34.00) Veritext Corporate Services, Inc. FOR TRANSCRIPT
24/2011	5	GMC	A					22	16						1,625.00		(894.00) MERCHANT SOLUTIONS FOR MEDIATION
27/2012	5	GMC	A					22	17						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
Billable Advances															2,446.44		

RECAP

Fees:	0.00	Previous Balance:	0.00
Expenses:	0.00	Payments/Credits:	0.00
Advances:	2,446.44	Balance Due:	0.00
Total WIP:	2,446.44	Total:	2,446.44
A/R:	0-30	31-60	61-90
	0.00	0.00	0.00
			91-120
			0.00
			121-180
			0.00
			181+
			0.00

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
Employee/Claimant,)
vs.)
AVX Corporation,)
Employer,)
and)
Liberty Mutual Insurance Co.,)
Carrier,)
Defendants)

PROOF OF SERVICE

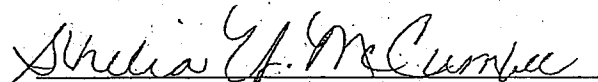
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has mailed, on the date set forth below, a copy of the document described below, in the above entitled action to the following with proper postage affixed thereto:

Roy A. Howell, III, Esquire
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465

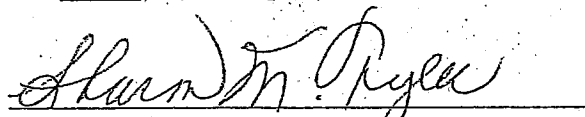
VIA CERTIFIED MAIL
Bruce W. Nadolny
613 Mammie Drive
Myrtle Beach, SC 29588

DOCUMENTS: Order Relieving Counsel; Form 61 Attorney Fee Petition; Motion for Attorney Fees; Affidavit of Gene M. Connell, Jr.; Cost Statement.

DATE: September 11, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 11th day of September, 2012.



KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

Copy

September 18, 2012

Original Sent

September 11, 2012

Claims Department
S. C. Workers' Compensation Commission
Attn: Amanda M. Young
Post Office Box 1715
Columbia, SC 29202-1715

Re: Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.
WCC File No. 0708860
Our File No. 2007-0332C

Dear Sir or Madam:

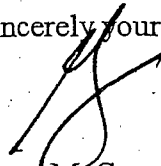
Enclosed please find an original and two copies of the following documents for filing in the above-referenced case:

- Order Relieving Counsel
- Form 61 Attorney Fee Petition
- Motion for Attorney Fees
- Affidavit of Gene M. Connell, Jr.
- Cost Statement.
- Proof of Service

I also enclose a check in the amount of \$25.00 for the filing fee. Please file the documents and set a hearing on the attorney fees at your convenience. Please also return a filed copy of the documents to this office in the self-addressed, stamped envelope enclosed for your convenience.

I am, by copy of this letter, serving a copy on Roy A. Howell, III, attorney for the Employer/Carrier, and on Bruce W. Nadolny.

Sincerely yours,



Gene M. Connell, Jr.

GMC,Jr.:sm
Enclosures

cc w/enc.: Roy A. Howell, III, Esquire
Mr. Bruce W. Nadolny (Via Certified Mail)

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 0708860

Bruce W. Nadolny,)
 Employee/Claimant,)
)
 vs.)
)
 AVX Corporation,)
)
 Employer,)
)
 and)
)
 Liberty Mutual Insurance Co.,)
)
 Carrier,)
 Defendants)
)
)
)

ORDER RELIEVING COUNSEL

THIS MATTER COMES BEFORE THE COURT based on the Employee/Claimant's request that Gene M. Connell, Jr. be relieved as counsel. Further, Attorney Connell has advised the Court that he will file a claim for attorney's fees for the work he has done in this matter. Accordingly

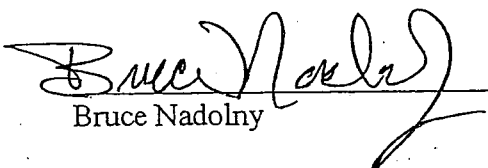
IT IS ORDERED that Gene M. Connell, Jr. be relieved as counsel.

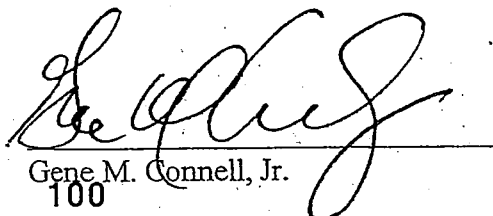
AND IT IS SO ORDERED.

South Carolina Workers' Compensation Commission

_____, 2012
 _____, South Carolina.

WE CONSENT:


 Bruce Nadolny


 Gene M. Connell, Jr.



Claimant's Name: Bruce W. Nadolny Employer's Name: AVX Corporation
 Address: 613 Mammie Drive Address: PO Box 867
 City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29578
 Home Phone: (843) 293-8649 Work Phone: () Insurance Carrier: Liberty Mutual Insurance Co.
 Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaheer, Connell & Connor, PC Preparer's Phone #: (843) 238-5648

Date Attorney Was Hired: 07/31/07 Date of Injury: 06/30/07
 Compensation Rate: _____ Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

A. R.67-1205C does not apply to the facts of this case. A _____ % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.

B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:

Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____

C. Admitted Death Claim - \$2,500.

D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
 Attorney for the Claimant
9/18/07
 Date

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$ _____

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client _____ Date _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

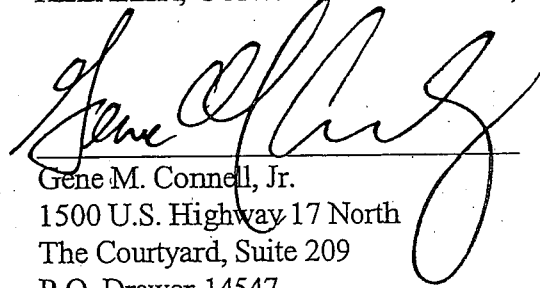
W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
)
Employee/Claimant,)
)
vs.)
)
AVX Corporation,)
)
Employer,)
)
and)
)
Liberty Mutual Insurance Co.,)
)
Carrier,)
)
Defendants.)

MOTION FOR ATTORNEY FEES

YOU WILL PLEASE TAKE NOTICE the undersigned moves the Court to approve attorney's fees pursuant to the Form 61 and the attached Affidavit along with the costs in the amount of \$2,446.44.

KELAHER, CONNELL & CONNOR, P.C.



Gene M. Connell, Jr.
1500 U.S. Highway 17 North
The Courtyard, Suite 209
P.O. Drawer 14547
Surfside Beach, SC 29587
(843) 238-5648
Attorney for Claimant

August 28, 2012
Surfside Beach, South Carolina

6. I convinced Mr. Nadolny to have a mediation with a former workers' compensation commissioner, Tom Marchant.

7. At the mediation, the claimant was offered \$120,000.00 (One Hundred Twenty Thousand Dollars) plus a Medicare Set Aside Trust which was refused by him.

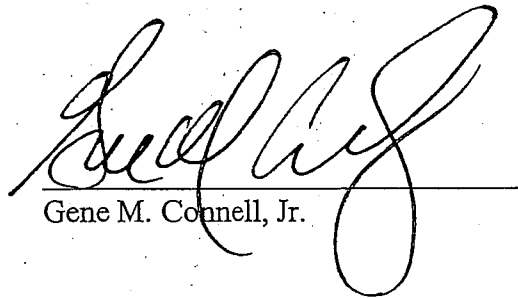
8. I have continued to assist Mr. Nadolny with his ongoing medical treatment. I was informed by Defendant's counsel that they were going to send Mr. Nadolny to Brooks Rehabilitation in Florida. Mr. Nadolny first refused and then said he would go. I was fired the next day for the second time since July 2012.

9. I request that the court award me \$20,000 (Twenty thousand dollars) in attorney's fees plus costs of \$2,446.44 (Two thousand four hundred forty six and 44/100 dollars); the costs of mediation, medical records, and filing fees. A cost statement is attached.

10. The requested fee is much less than the fee agreement of 33 1/3 percent because I believe Mr. Nadonly will need another attorney to help him settle this claim and I want to do everything for his best interest.

11. I have spent countless hours talking to Mr. Nadolny, defense counsel and the insurer. I believe the fee of \$20,000.00 is very reasonable in light of the extraordinary amount of work performed on this case by me.

12. Further the Affiant sayeth not.


Gene M. Connell, Jr.

SWORN TO BEFORE ME THIS
18 day of September, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 8-10-21

ary Timekeeper: 5 Gene M. Connell, Jr., Esquire

1:52007093320003: Nadolny/Bruce
 VX
 ary Timekeeper: 5 GMC Category: 3 WORKERS' COMPENSATION
 ndary Timekeeper: 1 ETK Draft Template: 00000001 Rate Code: 1
 ating Timekeeper: 1 ETK Final Template: 00000001 Date Opened: 09/25/2007
 ious Balance: 0.00

Contact: Bruce Nadolny
 Business: 902-1976
 Home: 293-8649
 Mobile: 902-0808

date	Tmkr	Cat	Src	H P	T X	B C	R G	Tcode	Ref #	Rate	Units	Hours Worked	Hours to Bill	Write-Up/ Down Hrs	Amount	Write-Up/ Down Amt	Description
ances																	
3/27/2008	5 GMC	A						22	1						38.99		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
3/20/2008	5 GMC	A						22	2						17.60		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
1/12/2009	5 GMC	A						22	3						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
2/19/2009	5 GMC	A						22	4						50.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
3/30/2009	5 GMC	A						22	5						144.00		Stenotype Reporting Service, LLC FOR DEPOSITION
3/11/2009	5 GMC	A						22	6						42.75		FLOWERS & ASSOCIATES FOR TRANSCRIPT
7/10/2009	5 GMC	A						22	7						49.77		Healthport FOR MEDICAL RECORDS
3/15/2009	5 GMC	A						22	8						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
3/30/2010	5 GMC	A						22	9						15.00		GRAND STRAND UROLOGY FOR MEDICAL RECORDS
3/30/2010	5 GMC	A						22	10						18.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
2/28/2011	5 GMC	A						22	11						38.08		(859.00) TRASK & HOWELL, LLC for copies
1/04/2011	5 GMC	A						22	12						167.50		(34.00) Veritext Corporate Services, Inc. for transcript
3/12/2011	5 GMC	A						22	14						164.75		(34.00) Veritext Corporate Services, Inc. FOR TRANSCRIPT
3/24/2011	5 GMC	A						22	16						1,625.00		(894.00) MARCHANT SOLUTIONS FOR MEDIATION
3/27/2012	5 GMC	A						22	17						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
I Billable Advances															2,446.44		

Fees:	0.00	Previous Balance:	0.00
Expenses:	0.00	Payments/Credits:	0.00
Advances:	2,446.44	Balance Due:	0.00
Total WIP:	2,446.44	Total:	2,446.44

A/R:	0-30	31-60	61-90	91-120	121-180	181+
	0.00	0.00	0.00	0.00	0.00	0.00

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0708860

Bruce W. Nadolny,)
Employee/Claimant,)
vs.)
AVX Corporation,)
Employer,)
and)
Liberty Mutual Insurance Co.,)
Carrier,)
Defendants)

PROOF OF SERVICE

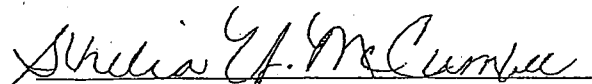
PERSONALLY appeared before me, Shelia Y. McCumbee, who being duly sworn, deposes and says that she is an employee of Kelaher, Connell & Connor, P. C., Attorneys at Law, and that she has mailed, on the date set forth below, a copy of the document described below, in the above entitled action to the following with proper postage affixed thereto:

Roy A. Howell, III, Esquire
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465


VIA CERTIFIED MAIL
Bruce W. Nadolny
613 Mammie Drive
Myrtle Beach, SC 29588

DOCUMENTS: Order Relieving Counsel; Form 61 Attorney Fee Petition; Motion for Attorney Fees; Affidavit of Gene M. Connell, Jr.; Cost Statement.

DATE: September 11, 2012


Shelia Y. McCumbee

SWORN AND SUBSCRIBED before me,
this 11th day of September, 2012.


Notary Public for South Carolina

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

November 9, 2012

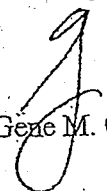
Claims Department
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.
WCC File No. 0708860
Our File No. 2007-0332C

Dear Sir or Madam:

I am writing you this letter in regard to the above-referenced case in that I am making a claim for attorney's fees on this matter and request that this letter be placed in the file as a lien against the case should a settlement occur. I would ask that I be notified as soon as possible. The attorney's fee that I claim in this matter is \$20,000.00 plus costs of \$2,446.44 for mediation and other miscellaneous costs.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm

cc: Roy A. Howell, III, Esquire
Bruce Nadolny

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SEASIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*
GENE M. CONNELL, JR.
L. SIDNEY CONNOR, IV
LISA POE DAVIS

* OF COUNSEL

AREA CODE 843
238-5648
FAX: 238-5050

November 9, 2012

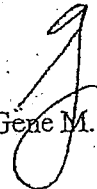
Claims Department
S. C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202-1715

Re: Bruce W. Nadolny v. AVX Corporation and Liberty Mutual Insurance Co.
WCC File No. 0708860
Our File No. 2007-0332C

Dear Sir or Madam:

I am writing you this letter in regard to the above-referenced case in that I am making a claim for attorney's fees on this matter and request that this letter be placed in the file as a lien against the case should a settlement occur. I would ask that I be notified as soon as possible. The attorney's fee that I claim in this matter is \$20,000.00 plus costs of \$2,446.44 for mediation and other miscellaneous costs.

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr.:sm

cc: Roy A. Howell, III, Esquire
Bruce Nadolny

Gene,
you will need to file
a Form 61 with order
& cost sheet & we will
hold
Phib
D. Lewis

109

South Carolina Workers' Compensation Commission

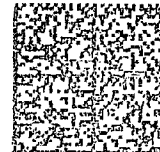
1333 MAIN STREET, SUITE 500

P.O. Box 1715

COLUMBIA, SOUTH CAROLINA 29202-1715

RETURN SERVICE REQUESTED

PRESORTED
FIRST CLASS



UNITED STATES POSTAGE

02 1R

0006559493

METER PRINTS

\$ 00.424

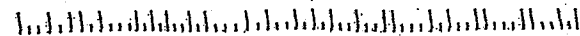
NOV 27 2012

MAILED FROM ZIP CODE 29201

11/29/12

*Atty Gen Cornell
P.O. Drawer 14547
Surfside Beach, SC
29587*

29587#4547



Frankie Odonnell

From: Bracy, Amy <abracy@wcc.sc.gov>
Sent: Thursday, December 13, 2012 2:09 PM
To: Frankie Odonnell
Cc: Bost, Mary
Subject: RE: NadoIny WC 0708860
Attachments: copies re form 61.pdf.pdf

1/7/13 - per ms -
Gene took care of
this by opening
w/ Sean Lyons at
SE WCC - d
Sandy 61 for
her to total.
30

I pulled the file and the documents that you attached were sent in September and are in the file. This was treated as a motion and set for a hearing in front of Commissioner Wilkerson. Gene later withdrew the motion. I think that we need another fee petition sent in, to Mary Bost, as a lien since the once in the file was treated as a motion and does not seem to have the order approving attorney's fee. Amy

From: Frankie Odonnell [mailto:modonnell@classactlaw.net]
Sent: Friday, December 07, 2012 10:57 AM
To: Bracy, Amy
Subject: NadoIny WC 0708860

Amy:

I need help!!! We have been relieved as counsel and have received a clocked copy of that Order. However, we have sent the Form 61 Attorney Fee Petition, Motion for Attorney Fees, Affidavit of Gene M. Connell, Jr., Cost Statement and Proof of Service three (3) times and have not received a clocked copy of those documents. We sent those documents on August 29, 2012, September 11, 2012 and September 18, 2012. Also, Gene sent a follow up letter just to be certain that our lien will be protected and the letter was sent back to us stating that we needed to file a form 61. This morning I called to be sure that our form 61 had been filed and I was told that the only document they see is our Order to be Relieved as Counsel. I am attaching a copy of each letter with the form 61, etc., for your information. I have also attached a copy of our letter with the note that we need to file a form 61. I can understand one being lost in the mail but not three (3). Please advise me if our letters are maybe in Judicial and haven't been processed.

Thank you in advance for any help you can give me in this matter.

Frankie O'Donnell
Legal Assistant to Gene M. Connell, Jr.

Kelahr, Connell & Connor, PC
P. O. Drawer 14547
Surfside Beach, S. C. 29587
(843)238-5648 fax # (843-238-5050)

ATTORNEY-CLIENT PRIVILEGED; DO NOT FORWARD WITHOUT PERMISSION

This message is intended only for the named recipient. If you are not the intended recipient you are notified that disclosing, copying, distributing or taking any action in reliance on the contents of this information is strictly prohibited.

CONFIDENTIALITY NOTE: THIS E MAIL HAS BEEN SENT FROM A LAW FIRM. IT MAY CONTAIN PRIVILEGED AND CONFIDENTIAL INFORMATION AND IS INTENDED SOLELY FOR THE USE OF PERSON OR PERSONS NAMED ABOVE. IF YOU ARE NOT AN INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION OR DUPLICATION OF THIS E MAIL IS PROHIBITED AND THAT THERE SHALL BE NO WAIVER OF ANY PRIVILEGE

KELAHER, CONNELL & CONNOR, P.C.

ATTORNEYS AT LAW

SUITE 209

THE COURTYARD

1500 U.S. HIGHWAY 17 NORTH

P.O. DRAWER 14547

SURFSIDE BEACH, SOUTH CAROLINA 29587

EDWARD T. KELAHER*

GENE M. CONNELL, JR.

L. SIDNEY CONNOR, IV

LISA POE DAVIS

* OF COUNSEL

AREA CODE 843

238-5648

FAX: 238-5050

December 28, 2012

Greg Lyons
Claims Department
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

Re: Employee: **Bruce Nadolny**
 Employer: **AVX Corporation**
 Date of Accident: **06/30/07**
 WCC File Number: **0708860**
 Our File Number: **2007-0332C**

Dear Mr. Lyons:

Enclosed please find the Attorney Fee Petition I am this date submitting in duplicate in the above captioned matter. Pursuant to my conversation with you today, I would ask that you hold this form pending settlement of this case.

With best regards, I am

Sincerely yours,


Gene M. Connell, Jr.

GMC,Jr:ms
Enclosures

South Carolina Workers' Compensation
 Commission
 1333 Main Street, Suite 500
 Post Office Box 1715
 Columbia, South Carolina 29202-1715
 803-737-5723



WCC File #: 0708860
 Carrier File #: WC550-567678
 Carrier Code #: _____
 Employer FEIN #: _____

Claimant's Name: Bruce W. Nadolny Employer's Name: AVX Corporation
 Address: 613 Mammie Drive Address: PO Box 867
 City: Myrtle Beach State: SC Zip: 29588 City: Myrtle Beach State: SC Zip: 29578
 Home Phone: (843) 293 - 8649 Work Phone: () - Insurance Carrier: Liberty Mutual Insurance Co.
 Preparer's Name: Gene M. Connell, Jr. Law Firm: Kelaker, Connell & Connor, PC Preparer's Phone #: (843) 238 - 5648

Date Attorney Was Hired: 07/31/07 Date of Injury: 06/30/07
 Compensation Rate: _____ Does this conclude the case? Yes No

PLEASE CHECK AND COMPLETE ONLY ONE: (A, B, C or D)

- A. R.67-1205C does not apply to the facts of this case. A _____ % fee of the award or settlement (excluding medical costs) and the costs of this action, as shown by the attached Settlement of Costs, are requested for approval.
- B. The subsection of R. 67-1205C applicable to this claim is (C) (____). A fee of \$ _____ is requested for approval based on the following:
 Date of first impairment rating or offer of settlement: _____
 Impairment Rating given and/or Settlement amount offered prior to date attorney hired: _____
 Impairment Rating given and/or Settlement amount offered after date attorney hired: _____
 Authorized Health Care Provider's Name: _____
- C. Admitted Death Claim - \$2,500. D. Admitted Lifetime Compensation Claim - \$2,500.

I certify that this form and the attached Statement of Costs are accurate.

[Signature]
 Attorney for the Claimant
9/18/07
 Date

Summary	
Total Amount of Compensation	\$ 120,000.00
Attorney's Fee	\$ 20,000.00
Costs	\$ 2,446.44
Total Fees and Costs	\$ 22,446.44
Client Will Receive	\$ _____

I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney.

Client _____ Date _____

A Statement of Costs must be attached before costs may be approved. File this form in duplicate with the Claims Department. Enclose a self-addressed, stamped envelope. For further information, refer to R.67-1203, R.67-1204, R.67-1205, R.67-1206 and Rule 1.5(a), RPC Rule 407, SCACR.

Tab3 Detail Work-In-Process Report
 Kelaher, Connell & Connor, P.C.

Primary Timekeeper: 5 Gene M. Connell, Jr., Esquire

~~09/25/2007~~ Nadolny/Bruce
 WX
 Primary Timekeeper: 5 GMC Category: 3 WORKERS' COMPENSATION
 Secondary Timekeeper: 1 ETK Draft Template: 00000001 Rate Code: 1
 Billing Timekeeper: 1 ETK Final Template: 00000001 Date Opened: 09/25/2007
 Unapplied Balance: 0.00

Contact: Bruce Nadolny
 Business: 902-1978
 Home: 293-8649
 Mobile: 902-0808

date	Tmkr	Cat	Src	H P	T X	B C	R G	Tcode	Ref #	Rate	Units	Hours Worked	Hours to Bill	Write-Up/ Down Hrs	Amount	Write-Up/ Down Amt	Description
5/27/2008	5 GMC	A						22	1						38.99		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
5/20/2008	5 GMC	A						22	2						17.60		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
1/12/2009	5 GMC	A						22	3						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
5/19/2009	5 GMC	A						22	4						60.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
5/30/2009	5 GMC	A						22	5						144.00		Stenotype Reporting Service, LLC FOR DEPOSITION
5/11/2009	5 GMC	A						22	6						42.75		FLOWERS & ASSOCIATES FOR TRANSCRIPT
5/10/2009	5 GMC	A						22	7						49.77		Healthport FOR MEDICAL RECORDS
5/15/2009	5 GMC	A						22	8						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
5/30/2010	5 GMC	A						22	9						15.00		GRAND STRAND UROLOGY FOR MEDICAL RECORDS
5/30/2010	5 GMC	A						22	10						18.00		STRAND REGIONAL SPECIALTY ASSOCIATES LLC FOR MEDICAL RECORDS
5/28/2011	5 GMC	A						22	11						38.08		(859.00) TRASK & HOWELL, LLC for copies
5/04/2011	5 GMC	A						22	12						167.50		(34.00) Veritext Corporate Services, Inc. for transcript
5/12/2011	5 GMC	A						22	14						164.75		(34.00) Veritext Corporate Services, Inc. FOR TRANSCRIPT
5/24/2011	5 GMC	A						22	16						1,625.00		(894.00) MERCHANT SOLUTIONS FOR MEDIATION
5/27/2012	5 GMC	A						22	17						25.00		S.C. WORKERS COMPENSATION COMMISSION FOR FILING FEE
| Billable Advances															2,446.44		

Fees:	0.00	Previous Balance:	0.00
Expenses:	0.00	Payments/Credits:	0.00
Advances:	2,446.44	Balance Due:	0.00
Total WIP:	2,446.44	Total:	2,446.44

A/R:	0-30	31-60	61-90	91-120	121-180	181+
	0.00	0.00	0.00	0.00	0.00	0.00

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM HORRY COUNTY
Court of Common Pleas

FEB 14 2019

Benjamin H. Culbertson, Circuit Court Judge

SC Court of Appeals

CASE NO. 2017-CP-26-07775

Kelaher, Connell & Connor P.C.....Appellant

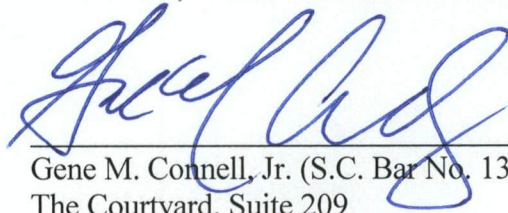
vs.

South Carolina Workers' Compensation Commission.....Respondent

CERTIFICATE OF COUNSEL

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

KELAHER, CONNELL & CONNOR, P.C.



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February 1, 2019
Surfside Beach, South Carolina