

**RECEIVED**

**Nov 19 2021**

**SC Court of Appeals**

**STATE OF SOUTH CAROLINA  
IN THE  
COURT OF APPEALS**

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Appeal from the Court of Common Pleas  
For Charleston County  
Honorable J. Durham Cole, Circuit Court Judge  
Civil Action No.: 2017-CP-10-04371  
**Appellate Case No.: 2021-000446**

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CARY E. FECHTER, M.D.,

Appellant,

vs.

LEON MARTIN ORTNER; THE ORTNER  
LAW FIRM, LLC; GERALD ROSENTHAL, and  
ROSENTHAL, LEVY, SIMON and RYLES, P.A.,

Respondents.

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**DESIGNATION OF MATTERS  
TO BE INCLUDED IN THE  
RECORD ON APPEAL**

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*Attorneys for the Appellant,  
Cary E. Fechter, M.D.*

**TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:**

COMES NOW the Appellant, Cary E. Fechter, M.D. (“Dr. Fechter”), pursuant to Rule 209 of the South Carolina Appellate Court Rules, and hereby designates the parts of the transcripts, orders, pleadings, affidavits, exhibits, and/or other materials which he proposes to include in the Record on Appeal.

**ORDERS**

***Charleston County Court of Common Pleas***

1. SCRCP Form 4 Order/Judgment issued by the Honorable J. Derham Cole, Circuit Court Judge, dated 29 March 2021, and filed 30 March 2021 (*denying Dr. Fechter’s two Motions for Reconsideration, to Alter, or Amend Findings/Judgment*);
2. Order Dismissing Plaintiff’s Complaint With Prejudice issued by the Honorable J. Derham Cole, Circuit Court Judge, dated and filed on 4 August 2020 (*granting the Ortner Defendants’ Motion to Dismiss*);
3. Order Granting Gerald Rosenthal’s and Rosenthal, Levy Simon and Ryles’ Joint Motion to Dismiss issued by the Honorable J. Derham Cole, Circuit Court Judge, dated 5 June 2020, and filed 8 June 2020;
4. SCRCP Form 4 Order/Judgment issued by the Honorable J. Derham Cole, Circuit Court Judge, dated and filed on 5 February 2020 (*granting the Rosenthal Defendants’ Motion to Dismiss and granting the Ortner Defendants’ Renewed Motion to Dismiss – formal orders to follow*);
5. Order Denying Motion to Reconsider, Alter, or Amend Judgment issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 26 June 2019, and filed 28 June 2019 (*Ortner Defendants’ Motion to Dismiss*);
6. Order issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 4 April 2019, and filed 5 April 2019 (*denying the Ortner Defendants’ Motion to Dismiss*);

***South Carolina Workers’ Compensation Commission***

7. Order Granting Motion to Release Funds issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 26 January 2016 (*ordering the release of \$500,000.00 in set aside funds*);

8. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 10 December 2015 (*adopting Initial Report of the Special Referee and ordering distribution of settlement funds*);
9. Initial Report of the SCWCC's Special Referee, H. Mills Gallivan, Esquire, dated 13 November 2015 (*addressing funds distribution and setting \$500,000.00 hold back*).
10. Consent Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 22 July 2014 (*acknowledging and approving settlement and allocation procedures*);

## **PLEADINGS**

1. Summons and Complaint 17 August 2017, and filed on 25 August 2017;
2. Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated 5 January 2018, and filed on 8 January 2018;
  - A. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 26 January 2016 (SCWCC File No. 0326995, *et. al*);
  - B. Consent Order dated 22 July 2014 (SCWCC File No. 0326995, *et. al*);
  - C. Initial Report of the SCWCC's Special Referee, H. Mills Gallivan, Esquire, dated 13 November 2015 (SCWCC File No. 0326995, *et. al*);
  - D. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 10 December 2015 (SCWCC File No. 0326995, *et. al*);
  - E. Motion to Release Funds dated 18 November 2015 (SCWCC File No. 0326995, *et. al*);
    - A. Affidavit of Gerald Arthur Rosenthal sworn to on 17 November 2015;
      1. Letter from Rob Cluxton, CFO of Rosenthal & Levy, P.A. to Dr. Cary E. Fechter dated 28 October 2010;
  - F. Reply of Leon Martin Ortner to Motion to Release Funds dated 30 November 2015, and filed 2 December 2015 (SCWCC File No. 0326995);
    1. Deposition of Cary E. Fechter, M.D. sworn to on 2 November (specific pages);

- G. Letter from C. Tex Davis, Jr. of the Supreme Court of South Carolina's Office of Disciplinary Counsel to Dr. Cary E. Fechter dated 2 March 2016;
  - H. Agreement Approving Award of Special Referee dated 27 April 2017 (SCWCC File No. 0326828);
3. Affidavit of Service by Certified Mail sworn to by Melvin D. Bannister, Esquire on 8 January 2019 (Service on Rosenthal Levy Simon & Ryles);
  4. Affidavit of Service by Certified Mail sworn to by Melvin D. Bannister, Esquire on 8 January 2019 (Service on Leon Martin Ortner and Ortner Law Firm);
  5. Affidavit of Cary E. Fechter, M.D. sworn to on 7 January 2019 (with attached exhibit);  
Exhibit      Typed Statement of Cary Fechter MD;
  6. Memorandum in Opposition to Motion to Dismiss dated 8 January 2019, and filed 9 January 2019:
    - Schedule A      USPS Tracking Report for Tracking No. 70032260000504408448 showing delivery of item on 7 December 2017;
    - Schedule B      USPS Tracking Report for Tracking No. 70151730000142889532 indicating "Return to Sender" notification dated 10 November 2017;
    - Schedule C      USPS Tracking Report for Tracking No. 70151730000142289398 showing delivery of item on 12 October 2017;
    - Schedule D      USPS Return Receipt Card for Article 7015 1370 0001 4288 9388 postmarked 12 October 2017;
    - Schedule E      Letter from Leon Martin Ortner, Esquire to Cary D. Fechter, M.D. dated 4 June 2003;
    - Schedule F      Letter from J. Keith Roberts, Esquire of South Carolina Workers' Compensation Commission to Melvin D, Bannister, Esquire dated 2 January 2018;
  7. Gerald Rosenthal's and Rosenthal, Levy, Simon and Ryles' Joint Motion to Dismiss dated 13 May 2019, and filed on 14 May 2018;
    - A. Charleston County Court of Common Pleas Docket Sheet (1 May 2019);
    - B. Affidavit of Cary E. Fechter, M.D. sworn to on 7 January 2019;

- C. Affidavits of Service by Certified Mail sworn to by Melvin D. Bannister, Esquire on 8 January 2019 (Service on Rosenthal Levy Simon & Ryles; Leon Melvin Ortner, and Ortner Law Firm);
  - D. Affidavit of Gerald Arthur Rosenthal sworn to on 10 May 2019;
  - E. Affidavit of Jonathan Todd Levy sworn to on 6 May 2019;
  - F. Affidavit of Ed Elder sworn to on 6 May 2019;
  - G. USPS Return Receipt Card for Article 7015 1370 0001 4288 9388 postmarked 12 October 2017;
8. Renewed Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated and filed on 19 December 2019;
- Attachment Order Denying Motion to Dismiss issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 26 June 2019, and filed 28 June 2019;
9. Affidavit of Default signed by Melvin D. Bannister, Esquire sworn to on 19 December 2019;
10. Motion for Enlargement of Time on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated and filed 23 December 2020;
11. Memorandum in Support of Renewed Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated and filed on 10 January 2020;
- A. Consent Order dated 22 July 2014 (S.C. Workers' Compensation Commission File No. 0326995, *et. al*);
  - B. Initial Report of the SCWCC's Special Referee, H. Mills Gallivan, Esquire, dated 13 November 2015 (SCWCC File No. 0326995, *et. al*);
  - C. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 10 December 2015 (SCWCC File No. 0326995, *et. al*);
  - D. Affidavit of Cary E. Fechter, M.D. sworn to on 7 January 2019;
  - E. Affidavit of Service by Certified Mail by Melvin D. Bannister, Esquire sworn to on 8 January 2019 (Service on Leon Martin Ortner and Ortner Law Firm);
  - F. Affidavit of Leon Martin Ortner sworn to on 10 January 2020;
    - A. Envelope addressed to Leon M. Ortner, Enquire with USPS Return Receipt (unsigned and undated);

- G. Affidavit of Ortner Law Firm, LLC sworn to on 10 January 2020;
  - H. Affidavit of Karen Ortner sworn to on 10 January 2020;
    - A. Envelope addressed to Leon M. Ortner, Enquire with USPS Return Receipt (unsigned and undated);
  - I. Memorandum in Opposition to Motion to Dismiss of Cary E. Fechter, M.D. dated 8 January 2020, and filed on 9 January 2020
    - Schedule A USPS Tracking Report for Tracking No. 70032260000504408448 showing delivery of item on 7 December 2017;
    - Schedule B USPS Tracking Report for Tracking No. 70151730000142889532 indicating "Return to Sender" notification dated 10 November 2017;
    - Schedule C USPS Tracking Report for Tracking No. 70151730000142289398 showing delivery of item on 12 October 2017;
    - Schedule D USPS Return Receipt Card for Article 7015 1370 0001 4288 9388 postmarked 12 October 2017;
    - Schedule E Letter from Leon Martin Ortner, Esquire to Cary D. Fechter, M.D. dated 4 June 2003;
    - Schedule F Letter from J. Keith Roberts, Esquire of South Carolina workers' Compensation Commission to Melvin D, Bannister, Esquire dated 2 January 2018;
12. Motion to Reconsider Order Granting Gerald Rosenthal's and Rosenthal Levy Simon & Ryles' Motion to Dismiss dated and filed 17 June 2020;
- A. Affidavit of Service by Certified Mail by Melvin D. Bannister, Esquire sworn to on 8 January 2019 (Service on Rosenthal Levy Simon & Ryles);
    - Schedule C USPS Tracking Report for Tracking No. 70151730000142289398 showing delivery of item on 12 October 2017;
    - Schedule D USPS Return Receipt Card for Article 7015 1370 0001 4288 9388 postmarked 12 October 2017;

- B. Affidavit of Service by Certified Mail by Melvin D. Bannister, Esquire sworn to on 8 January 2019 (Service on Leon Martin Ortner and The Ortner Law Firm);
  - Schedule A USPS Tracking Report for Tracking No. 70032260000504408448 showing delivery of item on 7 December 2017;
- C. Motion to Dismiss by the Ortner Defendants dated 5 January 2018, and filed on 8 January 2018 (with attached exhibits)
  - A. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 26 January 2016 (SCWCC File No. 0326995, *et. al*);
  - B. Consent Order dated 22 July 2014 (SCWCC File No. 0326995, *et. al*);
  - C. Initial Report of the SCWCC's Special Referee, H. Mills Gallivan, Esquire, dated 13 November 2015 (SCWCC File No. 0326995, *et. al*);
  - D. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 10 December 2015 (SCWCC File No. 0326995, *et. al*);
  - E. Motion to Release Funds dated 18 November 2015 (SCWCC File No. 0326995, *et. al*);
    - A. Affidavit of Gerald Arthur Rosenthal sworn to on 17 November 2015;
      - 1. Letter from Rob Cluxton, CFO of Rosenthal & Levy, P.A. to Dr. Cary E. Fechter dated 28 October 2010;
  - F. Reply of Leon Martin Ortner to Motion to Release Funds dated 30 November 2015, and filed 2 December 2015 (S.C. Workers' Compensation Commission File No. 0326995;
    - 1. Deposition of Cary E. Fechter, M.D. sworn to on 2 November (specific pages);
  - G. Letter from C. Tex Davis, Jr. of the Supreme Court of South Carolina's Office of Disciplinary Counsel to Dr. Cary E. Fechter dated 2 March 2016;
  - H. Agreement Approving Award of Special Referee dated 27 April 2017 (SCWCC File No. 0326828);

- D. Order issued by the Honorable Aisha Taylor, SCWCC Commissioner, dated 26 January 2016 (SCWCC File No. 0326995, *et. al*);
- E. Motion to Reconsider, Alter, or Amend Order Denying Motion to Dismiss On Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm (Only pages 1 and 7);
- F. Order Denying Defendants' Motion to Reconsider, Alter, or Amend Judgment issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 26 June 2019, and filed 28 June 2019;
- G. Notice of Appeal to the South Carolina Court of Appeals dated 22 July 2019, and filed 23 July 2019;
- H. Gerald Rosenthal's and Rosenthal, Levy, Simons and Ryles' Joint Motion to Dismiss dated 13 May 2019, and filed 14 May 2019;
  - A. Charleston County Court of Common Pleas Docket Sheet (1 May 2019);
  - B. Affidavit of Cary E. Fechter, M.D. sworn to on 7 January 2019;
  - C. Affidavits (Melvin D. Bannister, Esquire) of Service by Certified Mail sworn to on 8 January 2019 (Service on Rosenthal Levy Simon & Ryles; Leon Melvin Ortner, and Ortner Law Firm);
  - D. Affidavit of Gerald Arthur Rosenthal sworn to on 10 May 2019;
  - E. Affidavit of Jonathan Todd Levy sworn to on 6 May 2019;
  - F. Affidavit of Ed Elder sworn to on 6 May 2019;
  - G. USPS Return Receipt Card for Article 7015 1370 0001 4288 9388 postmarked 12 October 2017;
- I. Letter from Michael E. Kozlarek, Esquire to the Honorable Jenny Abbot Kitchings, Clerk of the South Carolina Court of Appeals dated 17 September 2019;
- J. Order Issued by the South Carolina Court of Appeals dated and filed 25 October 2019, and Remittitur from the South Carolina Court of Appeals to the Charleston County Court of Common Pleas dated 13 November 2019;

13. Motion to Reconsider Order Dismissing Plaintiff's Complaint With Prejudice dated and filed 13 August 2020 (Only pages 1 and 13);
  - A. Affidavit of Service by Certified Mail by Melvin D. Bannister, Esquire sworn to on 8 January 2019 (Service on Leon Martin Ortner and The Ortner Law Firm);  
Schedule A      USPS Tracking Report for Tracking No. 70032260000504408448 showing delivery of item on 7 December 2017;
  - B. Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm dated 5 January 2018, and filed on 8 January 2018 (*Only pages 1 and 17*);
  - C. Transcript of Record for Hearing held on 9 January 2019, before the Honorable Deadra L. Jefferson, Circuit Court Judge;
  - D. Order Denying Motion to Dismiss issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 26 June 2019, and filed 28 June 2019;
  - E. Motion to Reconsider, Alter, or Amend Order Denying Motion to Dismiss On Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm (*Only pages 1 and 7*);
  - F. Order issued by the Honorable Deadra L. Jefferson, Circuit Court Judge, dated 4 April 2019, and filed 5 April 2019;
  - G. Notice of Appeal to the South Carolina Court of Appeals dated 22 July 2019, and filed 23 July 2019;
  - H. Order Issued by the South Carolina Court of Appeals dated and filed 25 October 2019, and Remittitur from the South Carolina Court of Appeals to the Charleston County Court of Common Pleas dated 13 November 2019;
  - I. Renewed Motion to Dismiss on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated and filed on 19 December 2019;
  - J. Motion for Enlargement of Time on Behalf of Defendants Leon Martin Ortner and The Ortner Law Firm, LLC dated and filed 23 December 2020;
  - K. Transcript of Record for Hearing held on 27 January 2020, before the Honorable J. Derham Cole, Circuit Court Judge;

## **TRIAL OR HEARING TRANSCRIPTS**

1. Transcript of Record for Hearing held on 9 January 2019, before the Honorable Deadra L. Jefferson, Circuit Court Judge:  
Pages - 1 through 37
2. Transcript of Record for Hearing held on 27 January 2020, before the Honorable J. Derham Cole, Circuit Court Judge:  
Pages – 1 through 24;

## **EXHIBITS**

1. All as previously set forth in the various paragraphs and subparagraphs of the **PLEADINGS** section

I, Stephen P. Groves, Sr., Esquire, hereby certify pursuant to Rule 209(c), SCACR, the *Designation of Matter to be Included in the Record on Appeal* submitted by the Appellant, Cary E. Fechter, M.D., does not contain any matter and/or items which are not relevant to this appeal.

Respectfully submitted:

Signed: **Stephen P. Groves., Sr.**

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*Attorneys for the Appellant,  
Cary E. Fechter, M.D.*

Charleston, South Carolina

19 November 2021

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**STATE OF SOUTH CAROLINA  
IN THE  
COURT OF APPEALS**

**RECEIVED**

**Nov 19 2021**

**SC Court of Appeals**

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Appeal from the Court of Common Pleas  
For Charleston County  
Honorable J. Durham Cole, Circuit Court Judge  
Civil Action No.: 2017-CP-10-04371  
**Appellate Case No.: 2021-000446**

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CARY E. FECHTER, M.D.,

Appellant,

vs.

LEON MARTIN ORTNER; THE ORTNER  
LAW FIRM, LLC; GERALD ROSENTHAL, and  
ROSENTHAL, LEVY, SIMON and RYLES, P.A.,

Respondents.

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**PROOF OF SERVICE FOR THE APPELLANT'S  
INITIAL BRIEF AND DESIGNATION OF MATTER TO BE  
INCLUDED IN THE RECORD ON APPEAL**

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*Attorneys for the Appellant,  
Cary E. Fechter, M.D.*

I, Stephen P. Groves, Sr., Esquire, hereby certify that on **19 November 2021**, I served a copy of the **INITIAL APPELLANT'S BRIEF**, as well as a copy of the **DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL** submitted on behalf of the Appellant, Cary E. Fechter, M.D., via e-mail and, in addition, also on **19 November 2021**, via electronic mail to the e-mail addresses noted below:

**Justin P. Novak, Esquire**  
*BARNWELL WHALEY*  
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Charleston, South Carolina 29402  
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Leon Martin Ortner and The Ortner Law Firm, LLC*

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*Attorneys for the Respondents,  
Gerald Rosenthal and Rosenthal, Levy, Simon & Ryles, LLC*

Signed: **/s/Stephen P. Groves, Sr.**  
Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

19 November 2021  
62181133.v1

Nov 19 2021

SC Court of Appeals

19 November 2021

Via E-Mail: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
SOUTH CAROLINA COURT OF APPEALS  
Post Office Box 11629  
Columbia, South Carolina 29211

**Re: Cary E. Fechter, M.D. v. Leon Martin Ortner; The Ortner Law Firm, LLC; Gerald Rosenthal; and Rosenthal, Levy, Simon and Ryles, P.A.**

Appeal for the Charleston County Court of Common Pleas

Civil Action No.: 2017-CP-10-04371

Appellate Case No.: 2021-000446

B/S File No.: 056705-224343

Dear Clerk Kitchings:

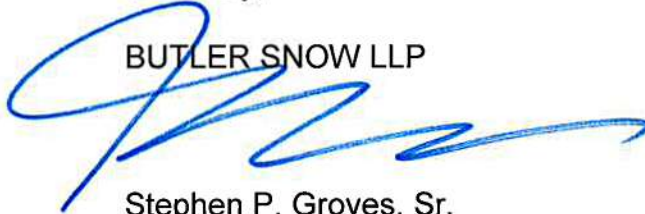
Please find attached the Initial Brief of the Appellant, the Designation of Matters to be Included in the Record on Appeal, and Proof of Service in the above-referenced matter. These are being filed on behalf of the Appellant, Cary E. Fechter, M.D. Should the Court of Appeals need hard copies of these documents, please let me know and I will be glad to provide the same.

In any case, please feel free to contact me if you need anything else or if I otherwise may be of any service to you, your office, or the Court of Appeals.

With kindest regards, I remain

Sincerely,

BUTLER SNOW LLP



Stephen P. Groves, Sr.

CC: Justin P. Novak, Esquire (via e-mail: [jnovak@barnwell-whaley.com](mailto:jnovak@barnwell-whaley.com))  
Michael E. Kozlarek, Esquire (via e-mail: [michael@kozlareklaw.com](mailto:michael@kozlareklaw.com))  
Cary E. Fechter, M.D. (via e-mail: [caryfechter@comcast.net](mailto:caryfechter@comcast.net))  
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