

ORDER OF COMMISSION

Injury No.: 98-113992

Employee: Richard Leonard
Employer: Novacare, Inc.
Insurer: Liberty Mutual Insurance Company
Additional Party: Treasurer of Missouri as Custodian
of Second Injury Fund

By an order delivered November 6, 2007, the Missouri Court of Appeals affirmed a Final Award issued by the Labor and Industrial Relations Commission dated February 9, 2007, awarding weekly permanent total disability benefits to employee to be paid by the employer/insurer and allowed an attorney's fee and lien to employee's counsel, John D. Schneider, in the amount of 25% of all payments thereunder.

On July 3, 2017, the Commission received a Suggestion of Death of Attorney and Request to Change the Payee of Attorney Fees to Living Trust of Attorney from the Estate of John D. Schneider (Motion). A copy of the Motion is attached hereto.¹

On December 8, 2017, the Commission issued an Order to Show Cause. No responses have been received.

Substitution of the Personal Representative of Attorney Schneider's Estate as his Successor in Interest pursuant to § 287.580 RSMo.

Section 287.580 RSMo provides:

If any party shall die pending any proceedings under this chapter, the same shall not abate, but on notice to the parties may be revived and proceed in favor of the successor to the rights or against the personal representative of the party liable, in like manner as in civil actions.

Supreme Court Rule 52.13(a) provides for substitution of proper parties after filing of a suggestion of death by any party or person in interest and a motion for substitution within ninety days.

The Motion suggests attorney John D. Schneider's death as evidenced by a copy of his death certificate. It further attaches Letters Testamentary issued by the St. Louis County Circuit Court, appointing Anne M. Golterman personal representative of the Estate of John D. Schneider on April 12, 2017.

¹ The motion incorrectly states, "The above named employee was awarded permanent total disability benefits to be paid by the Treasurer of the State of Missouri as Custodian of the Second Injury Fund (emphasis added)." This clerical error does not affect our ability to properly review this matter.

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Section 287.580, authorizes the Commission to permit attorney Schneider's successor to pursue his attorney lien rights in this matter. We find that Anne M. Golterman is the successor to Mr. Schneider's attorney fee rights. We substitute Ms. Golterman as the proper party to pursue attorney John Schneider's attorney lien rights in this matter.

Request to Change the Payee of Attorney Fees to the Trustee of the John D. and Mary John Schneider Living Trust

As legal authority that a change of attorney fee payee is "permissible and ethical", the Motion attaches an October 30, 2008, informal advisory opinion letter issued by the Legal Ethics Counsel of the Missouri Supreme Court Advisory Committee. Motion, p. 2. The letter advises Robert H. Sihnhold, "From an ethical standpoint, it is permissible for your heirs to receive the fee payments that are due to you." Motion, Exhibit E.

The decade-old Legal Ethics Counsel's opinion letter specifically states it "[i]s non-binding . . . [and] *does not affect the authority of a judge or quasi-judicial officer to rule on any matter* (emphasis added)." *Id.* The letter further advises that the Legal Ethics Counsel's opinion is solely based on the facts presented in the requester's letter and admonishes that "Additional or different facts, other than those presented in your letter, could result in a different conclusion." *Id.* The Motion does not include a copy of the facts upon which the Legal Ethics Counsel based her opinion.

We do not construe the October 30, 2008, letter from Legal Ethics Counsel Sara Rittman as legal authority that would allow us to approve payments of the attorney's fee allowed John Schneider pursuant to the Commission's February 9, 2007, award to be instead paid to Anne M. Golterman as Trustee of the John D. and Mary Joan Schneider Living Trust.

We recognize that prior Commissions have, on occasion, granted similar requests. We are concerned, however, that we lack statutory authority to grant such relief, or to adjudicate disputes that may arise should any party object to the request in the future.

Section 287.260 RSMo defines the scope of Commission authority with regard to an allowance of attorney's fees, and provides, in relevant part, as follows:

[T]he division or the commission may allow as lien on the compensation, reasonable attorney's fees for services in connection with the proceedings for compensation if the services are found to be necessary and may order the amount thereof paid to the attorney in a lump sum or in installments.

All attorney's fees for services in connection with this chapter shall be subject to regulation by the division or the commission and shall be limited to such charges as are fair and reasonable and the division or the commission shall have jurisdiction to hear and determine all disputes concerning the same.

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While the foregoing clearly authorizes the Commission to allow a fair and reasonable attorney's fee in a workers' compensation case, the statute is silent with regard to Commission authority to *modify* a previously allowed fee. While the statute does reference Commission authority to "regulate" and to resolve "all disputes" concerning attorney's fees, the courts have clarified that "the statute authorizes the Commission to resolve disputes *concerning the fairness and the reasonableness of the fees charged, nothing more* (emphasis added)." *Hunt v. Laclede Gas Co.*, 869 S.W.2d 770, 773 (Mo. App. 1993). In *Hunt*, the court reversed a Commission decision that purported to resolve a dispute between two attorneys as to how an attorney fee should be split in the context of the dissolution of a law firm. *Id.* at 774.

In holding that the Commission lacked authority to resolve that particular dispute, the court provided the following comments, which we deem instructive herein:

The Commission is an administrative agency created by statute and limited in its jurisdiction by the terms of the statute. It is not a court of general jurisdiction. ... The quasi-judicial power conferred upon an executive agency is limited to the ascertainment of facts and the application of existing law in order to resolve issues within the given area of agency expertise. ... [T]he Commission exceeded its jurisdiction by attempting to resolve the dispute between the shareholders of the professional corporation. Such issues should be addressed in a court of general jurisdiction.

Hunt, 869 S.W.2d at 773-74.

As in *Hunt*, the question now posed to the Commission (whether an attorney is entitled to transfer to a living trust agreement his right to payment of a previously allowed attorney fee) would appear to implicate numerous legal issues, such as contractual rights between attorney and client, that go beyond the scope of the Commission's expertise in workers' compensation matters. Applying the reasoning of the *Hunt* court, such questions should therefore be addressed, instead, in a court of general jurisdiction.

More recently, in the case of *Keaney v. Treasurer of Mo.*, 415 S.W.3d 774 (Mo. App. 2013), the court reversed a Commission decision that purported to modify an attorney fee lien previously granted in a 1995 award, so that it would instead be paid in a lump sum to the attorney's estate following the attorney's death in 2012:

Although we find that section 287.260 allowed the Commission to determine the reasonableness of the lien and the manner of payment in 1995, we note that the plain language of the statute does not provide further authority to modify the fees after the award became final. ... We construe the Commission's authority to grant an attorney lien and determine the manner of payment under section 287.260 in conjunction with the finality limits under section 287.495. Although no temporal limits to the Commission's authority are expressly stated in 287.260, under

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section 287.495 the final award of the Commission is conclusive and binding unless appealed within thirty days.

Id. at 777.

We find the foregoing analysis and holding from *Keaney* dispositive. To the extent that the Motion asks the Commission to enter an order modifying the allowance of attorney fees to direct that same be paid to an individual and/or entity other than John Schneider, we conclude that the Commission lacks authority to grant the relief requested. We conclude that the appropriate forum for such a request is a court of general jurisdiction over the various legal issues that may be implicated by the Motion.

We note that any final award or approved settlement may be registered as a judgment pursuant to § 287.500 RSMo by filing a certified copy of same with the circuit court of the county in which the accident occurred. Thereafter, the parties may petition the court to grant the relief requested, and/or to resolve any disputes that may be implicated by, the Motion.

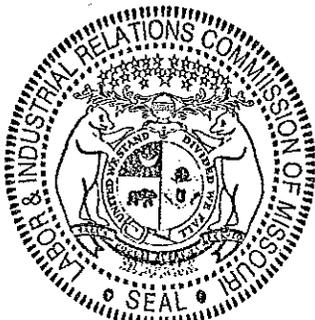
Order

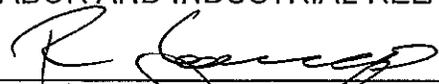
Pursuant to § 287.580, we substitute Anne M. Golterman as attorney John D. Schneider's successor in interest to pursue Mr. Schneider's attorney fee rights in this matter:

Because the Labor and Industrial Relations Commission's Award of February 9, 2007, is final, and because the Commission lacks statutory authority to modify the allowance of attorney's fees set forth in same, the Motion's request to change the payee of attorney's fees to Anne M. Golterman as trustee of the John D. Schneider and Mary John Schneider Living Trust is dismissed for lack of jurisdiction.

Given at Jefferson City, State of Missouri, this 30th day of November 2018.

LABOR AND INDUSTRIAL RELATIONS COMMISSION

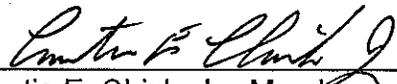




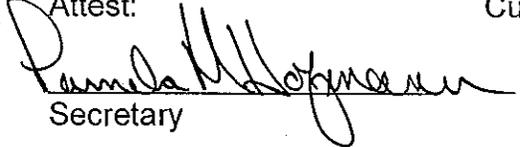
 Robert W. Cornejo, Chairman



 Reid K. Forrester, Member



 Curtis E. Chick, Jr., Member

Attest:

Secretary

Attachments not included with this posting.