

# **ATTORNEYS FEES UNDER §65.2-714 OF THE VIRGINIA CODE**

By:

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**Virginia Trial Lawyers Association**

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# **Attorneys Fees under §65.2-714 of the Virginia Code**

## **A. Commission Jurisdiction over Attorneys fees**

The Virginia Workers' Compensation statute is designed to prevent lawsuits against employers and simultaneously provide specified benefits to workers' compensation claimants for lost wages, medical benefits, permanent partial compensation, death benefits and so forth. However, many of those benefits could not exist without a portion of the workers' compensation statute that seldom directly involves injured workers; §65.2-714 of the Virginia Code. This Section specifically provides that both health care providers who care for the claimant and the attorneys who make sure that the claimant's rights are taken care of are paid for their services.<sup>1</sup>

Much like the rest of the workers' compensation statute, the Commission's concern with Section 714 is what is in the best interest of the claimant. Consequently, the Commission is not bound by fee agreements between claimant's and their attorneys. The Commission has repeatedly taken the position that it must instead look at the circumstances surrounding each case in determining reasonable attorney's fees. Green v.

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<sup>1</sup> The Commission has exclusive jurisdiction over fees of health care providers under §65.2-714. While there is no official schedule of charges, those charges are to the prevailing rates in the "same community for similar treatment." §65.2-714, Virginia Code. If a dispute arises, any contest on the reasonableness of the charges can be referred to a peer review committee established pursuant to §65.2-1300 to 1310 of the Virginia Code. Our discussion here will be limited to attorney's fees under Section 714 and/or the topic of attorney's fees as a percentage of contested medical bills. However, the fees of doctors and lawyers are closely intertwined under Section 714.

Keil Plumbing & Heating, 00 WC UNP 1827568 (2000); Blackburn v. Newport News Shipbuilding, 67 Va. WC 251,252 (1988). If an attorney's fee is reduced in a settlement order by the Commission, the carrier's liability is not reduced. Instead, that amendment by the Commission only increases the portion of the proceeds that the claimant will receive. Smith v. Catron Companies, 68 Va. WC 245-247 (1989); See also Osborne v. Powell Mountain Coal Co., 06 WC UNP 2221645 (2006). In determining an appropriate fee, the Commission will consider the complexity of the issues involved, the time expended and the result obtained. Sabic v Koons of Tyson's Corner, 12 WC UNP VA01002421333 (2012); Sauder v. The Times Journal Company, 71 Va. WC 304, 306 (1992); See also, Dillon v. Holiday Inn Tyson's Corner, 64 Va. WC 113, 115 (1985). The Commission maintains jurisdiction over this issue in order to avoid claimants' being overcharged. Bee Hive Min. Co. v. Industrial Commission, 144 Va. 240, 242 (1926). The collection of attorney's fees in excess of an amount awarded by the Commission constitutes contempt and unethical conduct. Smith v. School Board, 64 Va. WC 283, 292 (1984).

## **B. Some Rules of Thumb on Fees**

The Commission has officially recognized two general rules of thumb in regards to the award of attorney's fees. More specifically, the commission has stated that 15% of permanent partial disability awards, Down v. Jim Price Chevrolet, 77 Va. WC 91, 92

(1998), and 20% of lump sum settlements, King v. Boggs & Sloce Municipal Services, 77 Va. WC 160, 161 (1998) are reasonable fee percentages. Compare Marcus v. Foley, 64 Va. WC 224, 225 (1985). The Commission has also ruled that it has the right and authority to set appropriate fees for defense attorneys. However, the Commission normally chooses not to get involved in regards to defense attorney's fees. Hodge v. Great Coastal Express, 63 Va. WC 182, 187 (1984); See also Hudock v. Virginia State Bar, 233 Va. 390, 355 (1987). Normally, an employer has no standing to comment on or complain about the award of a claimant attorney's fees when paid from the claimant's award. Mongold v. Christ Masonry Products, 62 Va. WC 326, 328 (1983). Also, the Commission has held that it will not exercise jurisdiction over a dispute between two claimants' counsel as to the division of the fee. Moore v. Security Storage Company, 76 Va. WC 163, 165 (1997). See Also Mosby v. Washington Metro Area Transit Authority, VWC File No. 216-74-28 (June 16, 2004).

If a final award is vacated on grounds of claimant fraud, claimant's counsel must return the fee to the employer, but may seek his fee directly from the claimant. Gendeloff v. J&D Marketing Corporation, 68 Va. WC 247 (1989). Attorneys fees and expense reimbursement cannot include overhead expenses or such items as postage and photocopying. Smith v. Haverty Furniture Company, VWC File No. 233-15-93 (July 9, 2009). For a time, the Commission held that when claimants receive a lump sum settlement that the portion representing Permanent Partial Impairment may only be subject to a 15% fee. Hilton v. Newport News Shipbuilding and Dry Dock Company, VWC File No. 222-46-43 (January 29, 2007). Also, previously the Commission found that in the portion of a settlement that represents a lien waiver that amount might only be subject to a 10% fee. Correia v. Stafford County School Board, VWC File No. 215-12-

05. The writers hereto have not found these two latter rules to be enforced by the Commission except in a few past or limited instances and do not believe they are the accepted current practice. In the experience of the authors, the Commission will generally award 20%-25% of the disputed medical bills (the amount inuring to the benefits of the provider or carrier) of 714B fees. In rare cases, with compelling reasons, the Commission may award more. If the lawyers effort was minimal, the Commission may award less than 20%.

### **C. Section 714 attorney's fees for collecting medical bills: General Guidelines**

#### **1. There must be a contest regarding the bills**

While fees awarded to attorneys for processing a permanent partial award or lump sum settlement may be satisfactory, fees for attending a hearing are extremely inadequate at best (See Exhibit 1 hereto). As some justification for that, the Commission has indicated that claimant's attorneys often obtain additional funds under §65.2-714. Kerrigan v. The Weekend Furniture Store, 98 WC UNP 179363 (1998). Nonetheless, the difficulties in obtaining such fees are often significant.

Any attorney attempting to obtain Section 714 fees must be extremely familiar with the statute itself (see Exhibit 2 hereto). In particular, each sentence of §65.2-714(b) is fraught with problems. First, the claimant's attorney must be able to establish that the

medical bills were "contested." Pavlicek v. Jerabeck, Inc., 21 Va. App. 58, 58 (1995). There must be documentation to show the contest and/or abandonment of a defense. Randolph v Kamil Management Co., 04 WC UNP 1903023 (2004). The fact that there may have been a delay in investigating bills or providing a Memorandum of Agreement with no specific denial is not considered a contest. Gamble v. PA Cold Company Inc., 71 Va. WC 299, 301 (1992). There is no such thing as a "constructive denial." There must be an actual contested claim as to the bills in question. John Doe v Ukrops Supermarkets Inc., VWC File No. 227-02-55 (November 29, 2007); See also John Doe v. Culpeper Rehabilitation Center, VWC File No. 209-90-39 (November 6, 2007). A claim for medical care that was pre-approved may not be contested. Beard v City of Danville Public Works, 96 Va. App. UN 1261953 (1996). "Contested claim" seems to mean that somehow the carrier affirmatively contested the claim. Discovery of or by the carrier directed to collateral matters or for clarification does not seem to be enough to establish a contest. John Doe v Midatlantic Construction Virginia<sup>2</sup>, VWC File No. 200-92-03 (March 22, 2004).<sup>3</sup> Also, a Section 714 attorney fee may not be awarded if there is neither a hearing on the issue of compensability or an abandonment of defenses prior to a hearing. Thornton v. Virginia Concrete Company, 67 Va. WC 240, 242 (1988). Only medical expenses for services rendered through the date of hearing before the deputy are subject to 714B fees. Eads v. Chick-Fil-A, Inc., File No. VA00000091768 (November 8,

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<sup>2</sup> Throughout this article there are a number of cases where the claimant is named John Doe. There is because the Commission was kind enough to share their research but since the opinions were not published we were asked to keep the claimant anonymous.

<sup>3</sup> **Practice Pointer:** Discovery or a 20-day order denying the claim is probably the best way to establish that a claim is contested, short of the matter being litigated. A 20-day order that simply says "further investigation is being conducted" or something along those lines likely does not establish that a claim is contested. An interrogatory answer that states defenses on a central issue is clearly sufficient. The earlier that you can obtain a denial, the better; otherwise you may not have established that the claim is contested if and when the carrier throws in the towel.

2011); See also Fritts v. O.N. Mineral Chemstone, File No. 227-40-42 (November 19, 2009).

## **2. The bills must be paid and reasonable notice must be given**

Prior to scheduling a hearing on the issue of attorney's fees under 714B, claimant's counsel must be certain that the provider has been paid or that the third party insurance carrier has been reimbursed. Danville Radiologists Inc. v. Perkins, 22 Va. App. 454, 459 (1996). The claimant's attorney must also seek a Section 714 fee within a reasonable time after entry of the final award or order providing for the medical benefits and give notice to the health care provider or third party carrier of his intention to seek an award for fees; John Doe v Giant Food Inc., VWC File No. 202-77-71 (November 30, 2010) (request for fees in 2010 for medical bills paid in 2006 is not reasonable notice and claim denied); Sines v. Better Homes Realty, Inc., 66 Va. WC 162, 165 (1987); Begley v. Shaw, 64 Va. WC 39, 41 (1985). However, the statute does not require that the health care provider or carrier agree to be represented by the employee's counsel in regard to obtaining payment or reimbursement of the medical bill. Doss v. ARA Group, Inc., 75 Va. WC 79, 82 (1996). As an aside, when the medical provider is a corporation it will not be permitted to submit a position statement contesting the award of 714B fees or file any pleadings as this would constitute the unauthorized practice law. John Doe v N.B. Handy Company, Inc., VWC File No. 156-95-99 (July 15, 2002).

## **D. Some Potential Pitfalls**

### **1. What is a provider or 3rd party health insurance company for purposes of 714B**

There are occasions where medical bills are processed and paid by a "servicing company" with no funds of its own at risk. This type of company may not be considered a third party insurance carrier under Section 714. When this happens, it may be that a 714 fee cannot be collected from that servicing company. This may be a problem with state employees. Eveland v. Commonwealth of Virginia, 74 Va. WC 189, 190 (1995). See also Harris v. Baxter Health Care Corporation, VWC File No. 159-40-55 (December 16, 2002) wherein it was held that an emergency medical service company providing Paramedics and EMTs is not a health care provider under 714. Neither is a supplier of folding walkers. Sullivan v. Verizon North Inc., VWC File No. 217-16-71 (September 26, 2005). But see John Doe v. Virginia Mirror Co. Inc., File No. VA00000177040 (June 5, 2013) (Teamster's Fund is a third party insurance carrier for purposes of 714B and the ERISA Plan language does conflict with or pre-exempt 714-B). And see Haggerty v Crestor, VWC File No. 156-82-48 (1993) (a self-funded plan is a third party insurance carrier for purposes of 714B). The fact that the health insurance company would have paid the bills if the compensability of the medical bill was denied is somewhat irrelevant in terms of entitlement to a Section 714 attorney's fee. The claimant's attorney is still entitled to seek those fees. Shelton v. PA Coal Company, 71 Va. WC 296, 299 (1992).



## **2. Counsel can only obtain fee on the amount that benefits the provider or carrier**

Whenever, a health insurance company (or Medicare or Medicaid) has paid a part of the medical bill, the assessment of an attorney fee against the health care provider may be limited to that portion of the payment which is procured by the claimant counsel's or insurance carrier's efforts. Therefore, in appropriate cases, claimant's counsel will have to determine what portion of the Section 714 fee would be collected against the health care provider and/or third party insurance carrier. Boyd v University of Virginia, File No. VA00000518851 (March 7, 2013); John Doe v Genesis Health Services, VWC File No. 209-54-79 (February 17, 2004); Williams v. Philip Morris, Inc., 69 Va. WC 207, 208 (1990). In one case, claimant's counsel was admonished for not accurately stating the amount which actually inured to the benefit of the providers. Peters v Martha Jefferson Hospital, File No. 237-18-48 (July 20, 2012). It is worth noting that at least one State Supreme Court has ruled that Medicaid is not a third party insurance carrier. Pearson v. C.P. Buckner Steel Erection, 348 N.C. 239, 498 S.E. 2d 818 (1998).

## **3. Which bills can be included**

It has occasionally been argued by workers' compensation insurance companies and health insurance companies that §65.2-714 only applies to an original contested claim as opposed to a contested bill after a claim has been found compensable. This argument is not valid. Avent v. Fleetwood Transportation, 98 WC UNP 1714816 (1998). See also, Murphy v. Woodside Association, 94 WC UNP 1467470 (1994). But, the medical services rendered must have been incurred prior to the time the contest was settled, Pearn v. Service Electrical Contractors, Inc., 00 WC UNP 1851231 (2000) or

before the date of the hearing before the Deputy Commissioner. Huntt v. Absolute Security Inc., VWC File No. 218-21-04 (March 12, 2008). See also VWC Rule 6 and the language of §65.2-714 (Exhibits 2 and 3 hereto).

#### **4. Jurisdiction and standing issues**

Over the years, workers' compensation insurance companies sometimes took the position that once the compensability of a case has been determined and so long as the medical bills have been paid by health insurance or if there are no collection efforts pending against the claimant, the claimant's counsel had no standing to bother the workers' compensation insurance company or Commission with a 714 application. The authors believed this position was without merit. In fact in the case of Brown v. Howmet Corporation, 76 Va. WC 342, 345 (1997) the Commission made it clear that claimant's attorneys have an interest in the payment of certain bills since an attorney's fee may be potentially awarded out of the medical bills. It would also seem that claimant's attorneys and the Commission have an interest in being certain that the workers' compensation insurance companies do not leave the wrong party to pay bills, however small, that the workers' compensation insurance companies should be paying.

However, several months before the 2012 Legislative Session, the Virginia Court of Appeals issued an opinion in the case of Budnick v. Murphy-Brown, LLC, Record No. 2025-10-2 (Va. Court of Appeals, May 10, 2011) in which it was held that so long as all of the medical bills for a provider were fully paid and no unpaid amounts were due and owing by the injured workers, that neither the injured worker or claimant's counsel would have standing to pursue a 714 claim. Also, the commission would not have jurisdiction

to entertain a claim against the workers' compensation insurance company or force that carrier to pay charges which it would normally be required to pay. That case involved payment of the medical bills by Medicaid, but would appear to have equal application to defeating claims on behalf of claimants or their counsel in regards to any bills or amounts whenever there was no balance owed on the bills in question.

Thankfully, in the 2012 session, Va. Code 65.2-714A was amended to overturn Budnick and clarify that even though the bills may be entirely paid, the commission retained jurisdiction and the claimant and counsel would have standing to pursue a 714 claim to make sure that the correct party paid the medical bills related to the otherwise compensable claim.

Acceptance of payment of a bill by a health care provider from a workers' compensation insurance company constitutes acceptance of the Commission's jurisdiction over the provider in reference to those monies. Doss v. The ARA Group, Inc., 75 Va. WC 79 (1996). By this logic, the same applies to out of state providers or health insurance carriers. John Doe v Line Power Manufacturing, VWC File No. 204-41-03 (August 14, 2002); Murphy v Woodside Association, Ltd Partnership, VWC File No. 146-74-70 (November 16, 1994); But see John Doe v. BSI Construction, VWC File No. 200-89-64 (May 30, 2006) (In on the record statement, claimant's counsel failed to address the issue of whether out of the state providers fell within Va. Code §8.01-581.1 and subjected itself to 714B and therefore, the 714B claim was denied).

## **5. Burden of Proof Issues**

The workers' compensation insurance companies have taken the position that they are not required to pay any amounts in the excess of amounts paid by health insurance. This argument was similar to the write off tactics of liability carriers. See Sun v. Advanced Technology Systems, 260 Va.180 (2000). In the case of Acuar v. Letourneau Technology Systems, Inc., 00 WC UNP 1823409 (2000), the Commission held that there was a presumption that the full amount of medical charges as originally billed by the claimant's health care providers is both reasonable and necessary. However, in the case of Melchor v. Trussway, Ltd., 00 WC UNP 1815646 (2000), the full Commission held that, as distinguished from Sun v. Advanced Technology Systems, if there is privity of contact between the workers' compensation carrier and a preferred provider organization (PPO) that the health care provider deals with, that health care provider may be required to accept contractually reduced fees from the workers' compensation carrier. It is worth noting that more often than not, at Section 714 hearings, workers' compensation insurance companies and health insurance companies do not bring in the applicable contracts or have evidence presented at hearings of appropriate related charges in the community. In that instance, the medical bills received by the claimants are presumed to be both reasonable and necessary. Sun v. Advanced Technology Systems. See also, Blevins v. Williamsburg Pottery Factory, 75 Va. WC 103, 104 (1996); Bogle Development Company v. Buie, 19 Va. App. 370 (1994).

## **E. Bullet Summary on 714B**

A summary of bullet points regarding entitlement to attorneys fees against health care providers based on §65.2-714 (Exhibit 2), case law and Rule 6 (Exhibit 3 hereto) of the Commission can be summarized as follows:

### **A) Checklist of elements of proof for a 714 fee**

- Contested claim (meaning initial contested claim for benefits, including medical benefits that are subsequently litigated or after abandonment of a defense by the employer/work comp insurer)
- Held to be compensable (must be award)
- Hearing of the claim on its merits or abandonment of a defense by employer of carrier
- Benefits for medical services are awarded
- And inure to the benefit of a third party medical insurer or health care provider
- Did payment to medical provider or health insurer occur after claimant's counsel noted representation?
- Medical benefits on which 714B fee is based must be rendered prior to the Deputy Commissioner's hearing (not decision) or prior to the abandonment of defense by the compensation insurer
- Were the payments made after the hearing or abandonment of defenses

- Was the entity to which benefits insured a "medical provider" or "third party insurance carriers?"
- Was the provider notified of the claim for 714 fees within a reasonable time, i.e. two years?

B) To file application with the Commission for award of a 714 fee, attorney must

- File a statement including
  - The name and address of each carrier or provider from whom the fee is requested
  - The amount of the medical charge recovered for each carrier or provider and
  - The amount of the fee requested, and
  - Certification that
    - ✓ The claim was contested or that the defense was abandoned
    - ✓ Prior to the filing of a request with the Commission, the attorney and carrier or provider made a reasonable good faith effort to resolve the matter
    - ✓ The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made
    - ✓ A copy of the motion has been sent to each carrier and health care provider identified.
  - If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider.

Then assuming success, the Commission SHALL award to the claimant's lawyer a reasonable fee and other pro rata costs as are appropriate from the sum that insured to the benefit of the third party insurer or health care provider. Fees shall be based on the amount paid (or additional amount if bills are already partially paid) by the workers' compensation carrier (or employer, or Fund) to the third party medical insurer or health care provider through the date of the hearing before the Deputy Commissioner.

#### **F. Section 714 Fees: Forms**

Assuming all the various landmines above discussed can be circumvented, the Section 714 practice can be financially rewarding and allow claimant's counsel to make up for the lack of fees at hearings with occasional percentages of contested medical bills. However, the question of proper handling of that may at times be left to only the more experienced lawyers and staff. Whomever does the work, the forms attached hereto may be of some help.

We normally try to obtain the original bills containing certain appropriate codes making processing of payment or reimbursement on the back end efficient (sample letters at Exhibit 4) and make sure claims are paid (see Exhibit 5) (sample Discovery at Exhibit 5)<sup>4</sup>. Also, in order to avoid undue delay in the fee processing, reaching agreement with providers on the percentage of fees/bill split at the earliest possible time may avoid

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<sup>4</sup> **Practice Pointer:** Requests for Admission almost always generates a quicker response by the carrier than simple interrogatories, based on the largely unsupported concern that the Request will be deemed admitted. In the Commission, a failure to respond is not deemed admitted automatically, but defense counsel tend to know that under the Rules of the Supreme Court in civil courts, RFAs are deemed admitted if not promptly answered. Moreover, RFAs strike fear into the defense, because the carrier is afraid of concessions, especially early in the claim, and they typically deny the RFA. This will suffice to establish the claim is contested. The Commission's referral of the case to the hearing docket is also some evidence of a "contest," but may not be dispositive in and of itself.

problems. Verifying which bills are contested and unpaid prior to negotiation is necessary. The bill must be paid or reimbursed before filing for a Section 714 fee. If agreement with providers or carriers is worked out, a consent order can be forwarded to the Commission but is not necessary to completion of the task (see letters of agreement and agreed order at Exhibit 7). Invoicing the providers and insurers may be helpful, even if an agreement is reached (see Exhibit 8). Finally, for Section 714 cases, filing for a hearing is always an option (see claim letters at Exhibit 9). Be sure to look at Rule 6 of the Rules of the Commission before filing for a hearing<sup>5</sup>. We also enclosed a written statement in support of 714B fees and an opinion awarding the same (Exhibit 10).

## **G. Conclusion**

Section 714 fees for lawyers and doctors are critical to both our ability to represent or the doctors' ability to care for workers' compensation claimants. We must make every effort to prevent workers' compensation carriers or health insurance carriers from unfairly reducing either medical bills or Section 714 fees.

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<sup>5</sup> 714B hearings are generally separate proceedings after compensability of the case or bill is determined. Gable v. PA Coal Company, Inc., 71 Va. WC 299 (1992); See also Blackburn v. Adrian Clevinger, VWC File No. 143-34-32 (June 12, 1992).



## **INDEX OF EXHIBITS**

1. Sample Addendum to Retainer for use of hearings
2. §65.2-714 of the Virginia Code
3. VWC Rule 6
4. Sample Letters to Providers
5. Letters to get bills paid
6. Sample Discovery to Providers
7. Agreement letters and Agreed Order
8. Invoice to Providers for Agreement on Order
9. Claim letters
10. Written Statement in Support of 714B fees and Opinion  
awarding same

# **EXHIBIT 1**

Sample Addendum to Retainer  
for use of hearings

CJM

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March 9, 2011

The Hon. Frederick M. Bruner, Deputy Commissioner  
Virginia Workers' Compensation Commission  
1000 DMV Drive  
Richmond, VA 23220

RE:

Dear Deputy Commissioner Bruner:

Please find enclosed an Addendum to Retainer which has been signed by our client. Once the record has closed and should you rule in the claimant's favor, we hereby request an award of attorney's fees and reimbursement of expenses as outlined in the enclosed Addendum to Retainer.

Thank you for your consideration.

Sincerely,



Andrew J. Reinhardt

AJR/mec  
Enclosure

cc: (w/encl.)

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

Claimant,

Employer, et al.

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) VWC File No.:  
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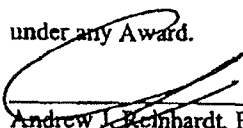
ADDENDUM TO RETAINER AGREEMENT


WHEREAS this case was disputed and the defendants may be ordered to be responsible for the compensability of my claim, payment of all authorized, related, reasonable and necessary medical treatment and payment of temporary total disability wage benefits from October 28, 2008 through the present and continuing; and

WHEREAS my attorney is entitled to obtain a fee that the Workers' Compensation Commission deems as appropriate therefrom; and

WHEREAS I am satisfied with the services of my attorney; and whereas, said attorney is entitled to a fee therefrom up to as much as 20% plus expenses.

NOW THEREFORE, from whatsoever back compensation may be awarded to me from October 28, 2008 through the date of entry of the Deputy Commissioner's Opinion, I authorize payment of 20% of the amount awarded to me by the Commission plus fees and expenses in the amount of \$2,768.95 to my attorney with the balance awarded to me, plus any ongoing benefits and weekly checks as may be due under any Award.

  
Andrew L. Reinhardt, Esquire  
REINHARDT AND HARPER  
1809 Staples Mill Rd., Suite 300  
Richmond, VA 23230

  
\_\_\_\_\_, VA 23868  
2/28/11  
Date

1:10 PM

02/25/11

Accrual Basis

Reinhardt & Harper, P.L.C.  
Case Expense Report  
All Expenses

Type	Date	Num	Source Name	Memo	Amount	Balance
Page 1 of 1						
	2010	141	R0812-		933.85	933.85
	2010	1002	Treasur		12.00	945.85
Check	7/13/2010	1044	Healthport		17.00	962.85
Check	7/13/2010	1062	Lawrenceville ...		18.00	980.85
Check	7/13/2010	1071	MCV Physicia...		375.00	1,355.85
Check	7/16/2010	1080	Healthport		14.00	1,369.85
Check	7/28/2010	1122	MCV Physicia...		375.00	1,744.85
Check	9/17/2010	1395	Halasz Report...		535.20	2,280.05
Check	1/6/2011	1856	Thompson Mc...		401.90	2,681.95
Check	2/9/2011	2014	Treasurer of ...		72.00	2,753.95
Check	2/15/2011	2036	Lawrenceville ...		15.00	2,768.95
Total R08124 Kidd, Allen					2,768.95	2,768.95
TOTAL					2,768.95	2,768.95

# **EXHIBIT 2**

§65.2-714 of the Virginia Code

**§ 65.2-714. Fees of attorneys and physicians and hospital charges.**

A. Fees of attorneys and physicians and charges of hospitals for services, whether employed by employer, employee or insurance carrier under this title, shall be subject to the approval and award of the Commission. In addition to the provisions of Chapter 13 (§ 65.2-1300 et seq.), the Commission shall have exclusive jurisdiction over all disputes concerning such fees or charges and may order the repayment of the amount of any fee which has already been paid that it determines to be excessive; appeals from any Commission determinations thereon shall be taken as provided in § 65.2-706. The Commission shall also retain jurisdiction for employees to pursue payment of charges for medical services notwithstanding that bills or parts of bills for health care services may have been paid by a source other than an employer, workers' compensation carrier, guaranty fund or uninsured employer's fund. No physician shall be entitled to collect fees from an employer or insurance carrier until he has made the reports required by the Commission in connection with the case.

B. If a contested claim is held to be compensable under this title and, after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third party insurance carrier or health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate from the sum which benefits the third party insurance carrier or health care provider. Such fees shall be based on the amount paid by the employer or insurance carrier to the third party insurance carrier or health care provider for medical, surgical and hospital service rendered to the employee through the date on which the contested claim is heard before the Deputy Commissioner. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier.

C. Payment of any obligation pursuant to this section to any third party insurance carrier or health care provider shall discharge the obligation in full. The Commission shall not reduce the amount of medical bills owed to the Commonwealth or its agencies without the written consent of the Office of the Attorney General.

D. No physician, hospital, or other health care provider as defined in § 8.01-581.1 shall balance bill an employee in connection with any medical treatment, services, appliances or supplies furnished to the employee in connection with an injury for which an award of compensation is made pursuant to § 65.2-704. For the purpose of this subsection, a health care provider "balance bills" whenever (i) an employer or the employer's insurance carrier declines to pay all of the health care provider's charge or fee and (ii) the health care provider seeks payment of the balance from the employee.

# **EXHIBIT 3**

VWC Rule 6



**Rule 6. Award of Attorney's Fees Under § 65.2-714 of the Code of Virginia.**

*6.1 Agreement Between Parties as to a Fee.* — An attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if agreement is reached and an order, endorsed by counsel and the carrier or provider, identifying the amount of medical charges recovered and the agreed fee, is submitted to the Commission.

*6.2 Parties Fail to Agree on a Fee.* — A. An Attorney's fee shall be awarded from sums recovered for the benefit of a third-party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the parties cannot agree, upon filing of a statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested, and certification that:

1. The claim was contested or that the defense was abandoned;
2. Prior to the filing of a request with the Commission the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;
3. The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made;
4. A copy of the motion has been sent to each carrier and health care provider identified.

B. If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice must state the amount of the medical charge recovered for the carrier or provider, the amount of the attorney's fee requested and the time and place of the hearing.

# **EXHIBIT 4**

Sample letters to Providers

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297



ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT\*  
STEPHEN T. HARPER

W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

[insert date]

Provider  
Patient Accounts

Re: Patient:  
Social Security No.:  
Date of Birth:  
Date of Accident:

Dear

Our office represents the above referenced claimant in regards to injuries that he received while at work on [accident date]. Kindly forward to our office an itemized statement of charges from [accident date] to the present relating to said patient. Also, please include a completed copy of a UB92 or HCFA form showing the appropriate CPT/HCPCS codes. An authorization form is enclosed for the release of this information.

If you have any questions, please contact our office. Thank you for your attention to this matter.

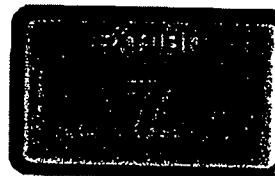
Very truly yours,

Andrew J. Reinhardt

AJR/clm  
Enclosure

RECEIVED BY MAIL 10/10/83

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297



ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT •  
STEPHEN T. HARPER

• ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

[insert workers compensation carrier]  
[address]

RE: Claimant:  
Insured:  
Date of Accident:  
Claim Number:

Dear \_\_\_\_\_:

I would appreciate your providing me with an itemized statement of all payments made on the above case in relation to medical bills paid by your company, whether to providers or reimbursement to other carriers.

Kindly reflect in the itemization: the amount, date of payment, and payee. I need this information in order to pursue my fee requests under Virginia Code Section 65.2-714.

If you have any questions, please contact my office. Thank you for your attention to this matter.

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm

# **EXHIBIT 5**

Letters to get bills paid

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297

ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT \*  
STEPHEN T. HARPER

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

[insert workers compensation carrier]  
[address]

RE: Claimant: VWC File No.:  
Date of Birth: Date of Accident:  
Medical bills for: [insert name of providers]

Dear \_\_\_\_\_:

Attached are medical bills that have been provided by the medical provider(s) listed above for the above work accident. Please execute payment immediately or if there is record of payment made to the provider, please provide photostat copies of the payment record to our office.

We represent this medical provider through the representation of the claimant, [insert name of claimant], under Virginia Code §65.2-714 attorney fee allowance statute.

Please contact, \_\_\_\_\_, at ( ) \_\_\_\_ - \_\_\_\_ to discuss this payment request if your office has any questions.

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm  
Enclosure: Account Statement(s)

cc: Medical Provider(s)

# **EXHIBIT 6**

## Sample Discovery to Providers

Sample RFAs:

- Admit that the pending claim of the claimant is compensable under the Virginia Workers' Compensation Act.

- Admit that the claimant is entitled to all reasonable and necessary medical care, authorized under the Virginia Workers' Compensation Act, that is directly or indirectly causally related to the claimant's accidental injury (or occupational disease) of (DATE).

- Admit that the employer and carrier have no defenses that they are asserting or will assert against the pending claim of this claimant.



VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION

Claimant,

Employer,

)  
)  
)  
)  
) VWC File No.:  
)  
)  
)  
)  
)

**CLAIMANT'S INTERROGATORIES AND REQUEST FOR PRODUCTION OF  
DOCUMENTS TO VCU HEALTH SYSTEM**

COMES NOW claimant, by counsel, and propounds the following Interrogatories to the employer and fund pursuant to the Rules of the Workers' Compensation Commission.

Definitions and Instructions

(a) These Interrogatories are continuing in character so as to require you to file supplementary answers if you obtain further or different information before trial.

(b) Where the name of a person is requested, indicate the full name, home and business address of such person.

(c) Unless otherwise indicated, these Interrogatories refer to the time, place and circumstances of the occurrences mentioned or complained of in plaintiff's Claim for Benefits.

(d) Where information or knowledge and possession of a party is requested, such request includes knowledge of the party's agent, next friend, guardian, representatives, and unless privileged, their attorney.

(e) The pronoun "you" refers to the party to whom these Interrogatories are addressed,

and the person or persons mentioned in clause (d).

### **INTERROGATORIES**

1. Please identify any and all individuals who have any knowledge or information regarding any facts pertinent to the above referenced case and describe in detail what that knowledge or information is.

**ANSWER:**

2. For each expert witness you intend to call at trial, please provide his/her qualifications, the subject matter on which he/she is expected to testify, the substance of the facts and opinions to which he/she is expected to testify and a summary of the grounds for each opinion.

**ANSWER:**

3. Describe in detail any and all defenses to counsel for claimant's request for fees pursuant to Section 65.2-714 of the Code of Virginia and what the basis for those defenses are.

**ANSWER:**

4. Identify your trial witnesses and describe in detail what their testimony will be.

**ANSWER:**

**REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Provide copies of any and all medical bills incurred by the claimant with VCU Health System aka MCV and/or MCV Associated Physicians from the time of the claimant's work related accident of October 28, 2008 through the present and continuing.

**ANSWER:**

2. Please provide a detailed print-out and/or explain the total of the medical bills; the amount of bills that have been paid; the amount of bills written off; the amount of bills unpaid, if any, and as to the bills that were paid, explain in detail by whom they were paid, the date(s) they were paid and provide a copy of all of those bills.

**ANSWER:**

By \_\_\_\_\_

Of Counsel

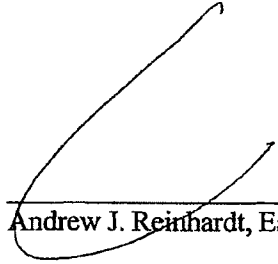
Andrew J. Reinhardt, Esquire  
REINHARDT & HARPER  
1809 Staples Mill Road, Suite 300  
Richmond, Virginia 23230  
(804) 359-5500

**CERTIFICATE OF SERVICE**

I hereby certify that a true and exact copy of the foregoing Claimants' Interrogatories to VCU Health Systems, was emailed and mailed this 9th day of October, 2012 to:

Esquire, Counsel for VCU Health Systems, N

P , Richmond, VA 23236.



\_\_\_\_\_  
Andrew J. Reinhardt, Esquire

VIRGINIA:

IN THE WORKERS COMPENSATION COMMISSION

FIELD(2) FIELD(4?) FIELD(3), )

Claimant,

v.

FIELD(312)

FIELD(80), )

Employer,

and

FIELD(276), )

Insurer.

**CLAIMANT'S INTERROGATORIES AND REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS**

TO: FIELD(80) and  
FIELD(276)  
c/o FIELD(252) FIELD(253?) FIELD(251), Esquire  
FIELD(261)  
FIELD(254)  
FIELD(255?)  
FIELD(256), FIELD(257) FIELD(258)

COMES NOW the Claimant, FIELD(2) FIELD(4?) FIELD(3), by counsel, pursuant to §65.2-703 Code of Virginia, and Rule 1.8(H) of the Rules of the Virginia Workers' Compensation Commission, and serves the following Interrogatories and Requests For Production of Documents on the Employer, FIELD(80), and the Insurer, FIELD(276), answers to which must be made under oath and served on Claimant's counsel within twenty-one (21) days of the date hereof:

**Instructions**

A. Where the name of a person is requested, indicate the full name, residential and business address, and residential and telephone number of such person.

B. Unless otherwise indicated, these interrogatories refer to the time, place, and circumstances of the occurrence mentioned or complained of in the pleadings in this action or claim.

C. Where knowledge or information in possession of a party is requested, such request includes knowledge of the party's or parties' agents, next friend, guardian, representatives, agents, servants, contractors, and, unless subject to claim of privilege, his or their attorneys. Knowledge of a party, as referred to herein, specifically includes all information in the possession, custody,

or control of the party including information of any contract or fee vendor, independent contractor, servant, agent, or representative providing vocational rehabilitation services by, through, or on behalf of the Employer or Insurer in this claim.

D. The pronoun "you" refers to the party to whom these interrogatories are addressed, and the persons mentioned in Clause "C" above.

E. These Interrogatories must be supplemented pursuant to Rule 1.8(D) if you or your attorneys obtain further information between the time the answers are filed and the time of hearing which reasonably may materially affect a prior response.

F. If you withhold any documents on the basis of a claim of privilege, you shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable the Claimant and his/her counsel and the Commission to assess the applicability of the privilege or protection, including a general description of the type of document; the custodian, drafter, and recipients, and; the date thereof, in accordance with Rule 4:1 (B)(6) of the Rules of the Supreme Court of Virginia.

#### **Interrogatories**

1. Identify by line item accounting each and every payment made to date with regard to this claim for *indemnity benefits, wage benefits and ancillary payments*, including but not limited to: temporary total disability benefits; temporary partial disability benefits; statutory penalties; interest; attorney's fees paid to Claimant's counsel [whether deducted from Claimant's benefits or not]; voluntary payments; adjustments; annual compounded cost of living adjustments; or other payments made to the Claimant and/or his counsel with regard to this claim from the date of accident/occupational disease to the present. [This includes post-judgement interest; penalties; sanctions; attorney's fees deducted from compensation; or other payments on account of wage or indemnity] Include in your answer the date each payment was processed; the date each payment was made; the amount of each payment; the type or nature of each payment; the person authorizing or issuing same; the person to whom made; and such other sufficient identifying information as to permit those reviewing this answer to reasonably interpret same. In the alternative, please see Request For Production 1, below.

**ANSWER:**

2. Identify by line item accounting each and every payment made to date with regard to this claim for *medical benefits*, including but not limited to: payments to health care providers, payments for reimbursement to Claimant for out-of pocket medical expenses; reimbursements to health insurance carriers or other insurance carriers; reimbursements to insured(s) for medical expenses, or payments for medical expenses to any other person or entity with regard to this claim from the date of accident to the present. Include in your answer the date each payment was processed; the date each payment was made; the amount of each payment; the type or nature of each payment; the person authorizing or issuing same; the person to whom made; and such other sufficient identifying information as to permit those reviewing this answer to reasonably interpret same. In the alternative, please see Request For Production 2, below.

**ANSWER:**

**Requests For Production of Documents and Things**

Please produce the following documents, or true and accurate copies thereof, at the Law Offices of Wesley G. Marshall PLC, 600 Westwood Office Park, Fredericksburg, Virginia 22401, within twenty-one (21) days of the date hereof. The term "document(s)" as used herein shall refer both to written documents, and any written transcript or printout of any non-written computer record, diary, or system. If you do not produce a document requested herein, please set forth with reasonable particularity the number of pages and date of such document, a description of such document which will allow it to be identified, and the basis of any claim of privilege or other reason for your refusal to produce such:

1. Any document, record, diary, accounting, log, paysheet, or other document of whatever type containing, referring to, or reflecting the information requested to be identified in *Interrogatory 1*, relating to *wage or indemnity payments*, above. This request includes a written transcript or printout of any computerized diary, claims log, payment log or record, or other computerized information in your possession, custody, or control.

**RESPONSE:**

2. Any document, record, diary, accounting, log, paysheet, or other document of whatever type containing, referring to, or reflecting the information requested to be identified in *Interrogatory 2*, relating to *medical payments*, above. This request includes a written transcript or printout of any computerized diary, claims log, payment log or record, or other computerized information in your possession, custody, or control.

**RESPONSE:**

**FIELD(2) FIELD(4?) FIELD(3), Claimant  
By Counsel**

\_\_\_\_\_  
Wesley G. Marshall, Esquire  
Law Offices of Wesley G. Marshall PLC  
600 Westwood Office Park  
Fredericksburg, Virginia 22401  
(540) 371-4444  
Va. Bar No. 28966

*Counsel for Claimant*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing Claimant's Interrogatories and Requests For Production of Documents and Things were forwarded via telefacsimile transmission and mailed, postage prepaid, to FIELD(252) FIELD(253?) FIELD(251), Esquire, FIELD(261), FIELD(254), FIELD(255?), FIELD(256), FIELD(257) FIELD(258) this 2KEYBOARD(ENTER "TH") day of October, 2013.

\_\_\_\_\_  
Wesley G. Marshall



# **EXHIBIT 7**

Agreement letters and Agreed Order

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297

ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT \*  
STEPHEN T. HARPER

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

[insert Deputy Commissioner]  
[Workers' Compensation Commission]

RE: Claimant:  
VWC File No.:  
714 Order

Dear Deputy Commissioner \_\_\_\_\_:

I enclose for entry in this file an order for the payment of fees pursuant to §65.2-714 signed by \_\_\_\_\_, Accounts Representative of [insert provider]. This account has been paid in full to the medical provider.

Our fee requested is \_\_\_\_% of the total paid (\$ \_\_\_\_\_) not to exceed (\$ \_\_\_\_\_).

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm  
Enclosure: 714 Order

VIRGINIA:

IN THE WORKERS' COMPENSATION COMMISSION OF VIRGINIA

Claimant,

V

VWC File No:

Employer,

Insurer.

**ORDER**

This day comes Claimant, by counsel, respectfully requesting the Commission to AWARD ATTORNEY'S FEES, pursuant to §65.2-714 of the Code of Virginia, in the amount of \_\_\_\_\_ PERCENT (\_\_\_\_%) of any and all sums awarded Claimant for payment of reasonable and necessary medical bills incurred as a result of treatment by [provider] in said amounts which are approximately \$\_\_\_\_\_, for treatment related to Claimant's injury of [accident date]. *Proceeds to be out of amounts received by the medical provider from the Workers' Compensation Carrier.*

UPON CONSIDERATION THEREOF, the Commission, being of the opinion that the best interest of the Claimant will be served by awarding attorneys fees to counsel and being of the opinion that all statutory requirements of §65.2-714 have been met; hereby ORDERS that attorneys fees in the amount of \_\_\_\_\_ PERCENT (\_\_\_\_%) of all sums awarded in this matter for payment of reasonable and necessary medical services. Fee to be paid to Andrew J. Reinhardt, Esquire for services rendered thereof

ENTER: / /

\_\_\_\_\_  
Deputy Commissioner

WE AGREE TO THIS:

\_\_\_\_\_  
[Provider]

\_\_\_\_\_  
[Counsel for Claimant]

ATTEST:

\_\_\_\_\_  
Clerk of Commission

# **EXHIBIT 8**

Invoice to Providers for Agreement Order

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297

ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT \*  
STEPHEN T. HARPER

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

[insert provider]  
Account Representative

RE: Claimant:  
VWC File No.:  
Account No.:

Dear

Enclosed please find the 714 Order & Agreement signed by all parties regarding payment of medical bills and attorney's fees for representation of [claimant] employed by [employer]. [Deputy Commissioner] entered the order [date].

Since your office has received payment, please forward the agreed \_\_\_% of the payment to our office address below. Also please note payment of 714 Order, [claimant], on the check for our records.

The total amount due in this case is: \$\_\_\_\_\_.

Make payments to:

Tax ID#:

Mail Payments to:

Thank you for your prompt payment of this fee. If you have any questions, please notify us immediately.

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm  
Enclosure: 714 Order

# **EXHIBIT 9**

Claim letters

V I R G I N I A:

IN THE WORKERS' COMPENSATION COMMISSION

CLAIMANT,  
Claimant,

v.

EMPLOYER,  
Employer,

and

INSURER ,  
Insurer.

JCN:

VA 000 0000 0000

CLAIM FOR ATTORNEY'S FEE UNDER CODE OF  
VIRGINIA SECTION 65.2-714 AGAINST  
VIRGINIA COMMONWEALTH UNIVERSITY MEDICAL  
CENTER

**APPLICATION FOR HEARING SEEKING AWARD OF ATTORNEY'S FEES**  
**PURSUANT TO CODE OF VIRGINIA § 65.2-714B**

Now comes Malcolm Parks, of Maloney, Parks & Clarke, P.C., counsel for CLAIMANT, claimant herein, and moves the Commission for entry of an ORDER, under the provisions of Code of Virginia § 65.2-714B, compelling Virginia Commonwealth University to pay an attorney's fee to counsel for the claimant herein on the grounds and in the amount hereinafter set forth.

1. CLAIMANT was injured in a motor vehicle accident that occurred on November 1, 2012. It was her position that this accident arose out of and occurred in the course of her employment for EMPLOYER.
2. After initial contact was made with INSURER, the workers' compensation insurer for the employer, the

claimant learned that INSURER declined to agree to be responsible for any benefits to which Ms. CLAIMANT might claim entitlement as a result of her injury of November 1, 2012.

3. Claimant thereupon contacted Malcolm Parks, and retained him to represent her in her claim under the Workers' Compensation Act for benefits arising out of her injuries of November 1, 2012.
4. An investigation was commenced by counsel, who confirmed that the insurer would not agree to accept Ms. CLAIMANT'S claim. Accordingly, a Claim for Benefits was filed with the Workers' Compensation Commission on Ms. CLAIMANT'S behalf, a detailed investigation was begun of the facts and circumstances surrounding the accident, and pre-trial discovery was initiated.
5. Among the discovery propounded to the workers' compensation insurer was a Request for Admission that demanded that INSURER admit or deny its liability for Ms. CLAIMANT'S claim. The insurer responded, denying the claim. (See attached Exhibit 1)
6. Additional discussions and contact took place between counsel for the claimant and counsel for the employer/insurer, and the results of the factual and legal investigation obtained by claimant's counsel were presented to counsel for the employer.
7. At length, the workers' compensation insurer for the employer made the decision that it would not prevail in the claim, and it thereupon abandoned its defense of Ms. CLAIMANT'S claim.
8. Accordingly, agreement forms were completed and endorsed, and as a result, the Virginia Workers'



Compensation entered an Award Order on February 25, 2013 providing, among other things, that INSURER would be responsible for the costs of all reasonable and necessary medical care, authorized under the Act, that was rendered to the claimant as a result of her injuries of November 1, 2012. (Exhibit 2)

9. At the time of her accident, the claimant was not covered by any commercial health insurance.
10. Following the entry of the Award Order, INSURER audited and made substantial payments to the Virginia Commonwealth University Medical Center for reasonable, necessary, and authorized medical care that had been rendered to Ms. CLAIMANT as a result of her compensable injuries. The sums paid by INSURER to the Virginia Commonwealth University Medical Center for that care rendered to the claimant are as follows:

**CLAIMANT      VCU Medical Center Accounts**

Account Number	Dates of Service	Total Charges	Amount Paid by INSURER
1234567	11/01/12-11/16/12	\$ 232,774.90	\$ 197,858.67
2345678	12/18/2012	\$ 379.00	\$ 322.15
3456789	1/8/2013	\$ 807.00	\$ 685.95
4567891	1/23/2013	\$ 114.00	\$ 114.00
TOTAL PAID			\$ 198,980.77

11. The sum which has inured to the benefit of the Virginia Commonwealth University Medical Center is \$198,980.77.
12. Code of Virginia § 65.2-714B provides that:  
"If a contested claim is held to be compensable under this title and, after . . . abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a . . . health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate

from the sum which benefits the . . . health care provider. Such fees shall be based on the amount paid by the employer or insurance carrier to the . . . health care provider for medical, surgical and hospital service rendered to the employee through the date on which the contested claim is heard before the Deputy Commissioner. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier."

13. Counsel for the claimant asserts that he is entitled to the Award of an attorney's fee in the amount of TWENTY-FIVE PERCENT (25%) of the sum that has inured to the benefit of Virginia Commonwealth University, and moves the Commission for entry of an Award to that effect.
14. Counsel certifies that:
  - A. The claim was contested and the carrier's defense of the claim was abandoned;
  - B. Prior to the filing of this request with the Commission, the attorney for claimant made a reasonable good faith effort to resolve the matter with the health care provider, to no avail;
  - C. The health care provider was given reasonable notice that a motion for an award of such fee would be made;
  - D. A copy of this motion has been sent to the health care provider above.

CLAIMANT

By: \_\_\_\_\_  
Counsel

Malcolm Parks (VSB: 14927)  
Maloney, Parks & Clarke, P.C.  
P. O. Box 5578  
Richmond, VA 23220-5578  
Telephone: (804) 342-1400  
Facsimile: (804) 342-1260  
e-mail: mparks@maloneyparks.com

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297

ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT \*  
STEPHEN T. HARPER

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

Workers Compensation Commission

RE: Claimant:  
VWC File No.:

Dear \_\_\_\_\_:

The purpose of this letter is to request a hearing on our request for attorney's fees against [provider] under 65.2-714 of the Virginia Code. As a result of our work, the employer/carrier has paid medical bills in the amount of \$\_\_\_\_\_ to [provider]. We requested that the provider agree to a reasonable fee, but they have failed and refused to pay a reasonable fee. We request the amount of \_\_\_% of the amount paid/reimbursed to [provider]. We enclose herewith copies of the medical bills in question and our correspondence with the provider in regards to same. We also hereby certify that:

- 1) The underlying claim was contested and defenses were later abandoned thereto;
- 2) We made a good faith effort to resolve this fee matter;
- 3) The health care provider was given reasonable notice that an award for fees would be made; and
- 4) The provider is being copied with this hearing request.

Your assistance with this matter is appreciated.

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm  
Enclosures

cc: Provider (w/ enclosures)

LAW OFFICES  
KERNS, KASTENBAUM & REINHARDT  
ATTORNEYS AT LAW  
1809 STAPLES MILL ROAD, SUITE 300  
RICHMOND, VIRGINIA 23230  
TELEPHONE (804) 355-7900  
TELECOPIER (804) 355-9297

ROBERT G. KASTENBAUM  
ANDREW J. REINHARDT \*  
STEPHEN T. HARPER

\* ALSO ADMITTED IN MARYLAND AND  
THE DISTRICT OF COLUMBIA

T.W. GRIFFITH PURCELL  
(1912-1983)  
TREVILIAN A. KERNS, JR.  
(Retired)

[insert date]

[insert provider]  
[address]

RE: Claimant:	VWC File No.:
Date of Birth:	Date of Accident:
Social Security No.:	Account No.:

Dear Patient Account Representative:

We represent your patient in a Workers' Compensation claim for medical benefits. The employer/Workers' Compensation carrier refused to accept liability for payment of your bill related to this claim. Our representation and subsequent resolution with the Virginia Workers' Compensation Commission on \_\_\_\_\_ resulted in an award for medical benefits to be paid including your bills.

Since we filed a claim(s) with the Virginia Workers' Compensation Commission to hold the employer or carrier liable for all bills related to your treatment and that claim was successful, Virginia law provides that the claimant's attorney is entitled to a fee for obtaining payment of a disputed bill from the moneys collected on the bill (see enclosed statute Virginia Code 65.2-714). I suggest a fee of \_\_\_% of the amount paid by the insurance carrier. If you agree with this attorney's fee, kindly read and sign the attached order and return it to me. For questions regarding this fee, please contact, \_\_\_\_\_. If you do not agree and I succeed in collecting your bill, I will request a hearing for the Workers' Compensation Commission to set my fee. You will be notified to appear at this hearing.

Very Truly Yours,

Andrew J. Reinhardt

AJR/clm

Enclosure: 714 Order, 714 Statute, and Account Statement

# **EXHIBIT 10**

Written Statement in Support of 714B fees

and Opinion awarding same

V I R G I N I A:

IN THE WORKERS' COMPENSATION COMMISSION

CLAIMANT,  
Claimant,

v.

EMPLOYER,  
Employer,  
and

INSURER,  
Insurer.

JCN:  
VA 000 0000 0000

CLAIM FOR ATTORNEY'S FEE UNDER CODE OF  
VIRGINIA SECTION 65.2-714 AGAINST  
VIRGINIA COMMONWEALTH UNIVERSITY MEDICAL  
CENTER

**WRITTEN STATEMENT OF MALCOLM PARKS  
IN SUPPORT OF APPLICATION FOR AWARD OF ATTORNEY'S FEE  
AGAINST VIRGINIA COMMONWEALTH UNIVERSITY MEDICAL CENTER  
PURSUANT TO CODE OF VIRGINIA SECTION 65.2-714(B)**

In accordance with the June 11, 2013 Notice of On-the-Record Hearing issued by the Commission, Malcolm Parks, counsel for CLAIMANT, submits this Written Statement of his position in connection with his June 10, 2013 claim for an award of attorney's fees against Virginia Commonwealth University Medical Center pursuant to the provisions of Code of Virginia § 65.2-714(B).

## **STATEMENT OF THE FACTS**

CLAIMANT was injured in an automobile accident of November 1, 2012. This accident arose out of CLAIMANT'S work for EMPLOYER. Ms. CLAIMANT was driving her employer's vehicle between two of the employer's locations, and Ms. CLAIMANT asserted that her injuries arose out of and occurred in the course of her employment.

Ms. CLAIMANT'S injuries were extensive. She was transported from the accident scene to the Virginia Commonwealth University Medical Center (VCUMC) in Richmond. There, she was admitted and treated for her serious injuries. She remained an inpatient at VCUMC until November 15, 2012, at which time she was transferred to a nursing facility in West Point, Virginia, where she resides.

The charges of VCUMC for the treatment and care rendered to Ms. CLAIMANT totaled some \$232,774.90. (Exhibit 1)

Malcolm Parks was retained to represent the claimant in connection with her rights under the Virginia Workers' Compensation Act. Upon being so engaged, counsel undertook an investigation of the facts surrounding the accident and of the applicable law that might pertain to this mishap. A number of telephone conversations took place between relevant individuals and counsel, a private investigator was hired to obtain facts



pertinent to the accident, and counsel met with the claimant at the nursing facility where she was a patient.<sup>1</sup>

On December 20, 2012, counsel filed a Claim for Benefits with the Commission seeking an award of benefits under the Act. (Exhibit 2). On that same date, counsel propounded to the employer and workers' compensation insurer a Request for Admission, as follows:

"Admit or deny that the employer and its carrier are liable to the claimant for benefits under the Virginia Workers' Compensation Act as a result of her injury of November 1, 2012."

On January 10, 2013, counsel for the workers' compensation insurer responded to the Request for Admission, denying liability to the claimant for benefits under the Workers' Compensation Act. (Exhibit 3). The case was referred to the Commission's hearing docket. (Exhibit 4)

Additional investigation and research and services to the claimant were undertaken, and further communication took place between counsel for the claimant and counsel for the workers' compensation insurer. At length, the employer abandoned its defenses and denial of this claim, and an agreement was reached between the claimant and the workers' compensation insurer concerning Ms. CLAIMANT'S entitlement to benefits under the

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<sup>1</sup> This request for Section 714(B) fees does not include a request for pro rata costs advanced on behalf of the claimant, though the statute clearly permits such a request.

Workers' Compensation Act. An Award Agreement form was completed, endorsed, and was duly filed with the Commission on February 12, 2013. (Exhibit 5)

The disputed claim was removed from the hearing docket by Deputy Commissioner Bruner, and an Award was ultimately entered by the Commission on February 25, 2013. (Exhibit 6)

Thereafter, the workers' compensation insurer issued payment to VCUMC in satisfaction of its charges for care rendered to the claimant between November 1, 2012 and January 23, 2013, in the amount of \$198,866.77.<sup>2</sup> (Exhibit 7)

At the time of the accident, the claimant was not covered by any medical insurance. No payment had been made to VCUMC by any person, firm or insurer, until the payments were made by the applicable workers' compensation insurer following the abandonment of its defenses in this case.

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<sup>2</sup> Exhibit 7 consists of the workers' compensation insurer's "Total Medical Paid" report. Page two of Exhibit 7 includes a number of entries, but the three entries relevant to this matter are marked. These entries confirm (1) the amount of the payments made by the workers' compensation insurer in the column on the far right, (2) the payee as VCU Health System, (3) the dates of service being paid for - all of which precede the date of abandonment of the defenses and entry of the medical award, and (4) the date of payment to VCUMC. There are other payments shown to VCUMC, but counsel is not, at this time, requesting a Section 714(B) fee as to those particular payments.

It should also be noted that counsel's application for a fee alleged total payments to VCUMC of \$198,980.77; this written statement clarifies that the correct amount is, instead, \$198,866.77. The reason for the \$114.00 disparity is that subsequent to the filing of the application, the undersigned learned that a \$114.00 bill from VCUMC was "written off" rather than having been paid by the workers' compensation insurer. Accordingly, that \$114.00 bill has been removed from this claim since that \$114.00 did not "inure to the benefit" of VCUMC.

Accordingly, payment in the amount of \$198,866.77 has inured to the benefit of VCUMC from the time of the accident and through the date of the abandonment of the insurer's defenses, and entry of the Award based on the agreement of the parties.

Counsel for Ms. CLAIMANT communicated with the VCUMC by letter of May 15, 2013, directed to Cynthia Simmons, Assistant Director of Patient Accounting. (Exhibit 8) This letter and its enclosures were sent to VCUMC by counsel as a good faith effort to resolve the question of the attorney's fee entitlement of the undersigned. Counsel requested in the letter that VCUMC advise of its position within fifteen days. To date, VCUMC has not responded in any way to the demand for payment or for an agreement concerning the attorney's fee. Moreover, in that letter, VCUMC was advised that in the absence of a response from VCUMC within fifteen days, the undersigned would file a claim for attorney's fees with the Commission.

Well after the expiration of the fifteen day deadline, counsel filed the pending application, and a copy of the June 10, 2013 Application for attorney's fee was sent to each carrier and medical provider. (Exhibit 9) Additionally, in accordance with the provisions of Rule 6.2(B), on June 13, 2013, a notice was sent to each medical provider and carrier advising of the time and place of the July 1, 2013 On-the-Record hearing, stating the amount of the medical charge recovered for VCUMC and stating the

amount of the attorney's fee requested. (Exhibit 10) This notice was sent in an effort to provide full and fair notice to VCUMC, notwithstanding that Rule 6.2(B) appears to be applicable only to matters referred to the evidentiary, as opposed to the On-the-Record, hearing docket.

#### **ARGUMENT**

Code of Virginia § 65.2-714(B) states as follows:

B. If a contested claim is held to be compensable under this title and, after . . . abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a . . . health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate from the sum which benefits the . . . health care provider. Such fees shall be based on the amount paid by the employer or insurance carrier to the . . . health care provider for medical, surgical and hospital service rendered to the employee through the date on which the contested claim is heard before the Deputy Commissioner. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier.

In this case, each element of Code Section 65.2-714(B) has been met:

1. There was a claim (Exhibit 2)
2. It was contested and denied (Exhibit 3)

3. The defense was abandoned by the employer and its carrier (Exhibit 5)
4. Medical benefits were awarded (Exhibit 6)
5. Payment was made to VCUMC thereafter by the workers' compensation insurer in the amount of \$198,866.77, and this sum therefore inured to the benefit of VCUMC. (Exhibit 7)
6. This sum was paid for medical charges rendered to the claimant prior to the date of the carrier's abandonment of its defenses and entry of the Award for medical benefits.

Rule 6.2 of the Commission states:

**Rule 6.2 Parties Fail to Agree on a Fee**

A. An attorney's fee shall be awarded from sums recovered for the benefit of a third party insurance carrier or a health care provider pursuant to § 65.2-714 of the Code of Virginia, if the parties cannot agree, upon filing of a statement including the name and address of each carrier or provider from whom the fee is requested, the amount of the medical charge recovered for each carrier or provider and the amount of the fee requested, and certification that:

1. The claim was contested or that the defense was abandoned;
2. Prior to the filing of a request with the Commission the attorney and carrier or provider made a reasonable good faith effort to resolve the matter;
3. The insurance carrier or health care provider was given reasonable notice that a motion for an award of such fee would be made;
4. A copy of the motion has been sent to each carrier and health care provider identified.

B. If the request is referred to the evidentiary hearing docket, counsel must provide notice of the hearing to each carrier or provider. The notice must state the amount of the medical charge recovered for the carrier or provider, the amount of the attorney's fee requested and the time and place of the hearing.

All of the mandates of Commission Rule 6 have likewise been observed and followed.

The amount of the attorney's fee, under § 65.2-714(B) "shall be based on the amount paid" to the medical provider."

While legal precedent clearly reflects that the Commission does not use benchmark figures for lawyers' fees, nearly all of the decisions reviewed by the undersigned deal with fees charged to injured claimants, not to institutional medical providers with budgets in the hundreds of millions of dollars. In the initial correspondence with VCUMC, counsel offered to agree to an attorney's fee of 15% of \$198,980.77 if an accord could promptly be reached without the need for initiating litigation. VCUMC was informed without ambiguity that failing such a prompt agreement, that offer to accept 15% would be withdrawn and that the issue would be left to the Commission with a request for a fee award exceeding the initial 15% offer. VCUMC chose not to respond at all, without even a courtesy call asking for time to review the matter. That VCUMC is sophisticated in such matters is beyond doubt, and there can be no question whether it understood the import of the issue presented to it. But VCUMC opted to hold

onto the \$198,866.77 that the efforts of counsel obtained for it, without any response to a request for payment whatsoever.

This claimant had no insurance, was not qualified for Medicare or Medicaid or anything else at the time she was hurt. Whether or from whence any payment would or could ever be made to VCUMC was completely unknown when this patient was wheeled into the hospital. Likely, she was another of the uncountable people who had no way to see to payment of medical expenses, and who end up before the Bar of Bankruptcy Court.

But her workers' compensation lawyer fixed that problem, relying on decades of experience, knowledge, skill and efficiency, and through the application of hard work. The claimant was saved from bankruptcy and VCUMC ended up with nearly a fifth of a million dollars it would otherwise not have.

Given the dispatch with which VCUMC was paid, given the large percentage of VCUMC's total charges that was actually paid (as opposed to the typical 20 or 30% payment negotiated with third party health insurers), and given the sum that has actually inured to the benefit of VCUMC, the undersigned moves the Commission to award to him an attorney's fee of 25% of \$198,866.77, or \$49,716.69, to be paid by VCUMC.

/s/ Malcolm Parks

Malcolm Parks  
Counsel for CLAIMANT

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CERTIFICATE

I hereby certify that I mailed a true copy of the foregoing, together with all enclosures, via first class postage prepaid mail, to: Virginia Commonwealth University Medical Center, 1601 Willow Lawn Dr., Suite 275, Richmond, VA 23230; \*\*Defense Counsel\*\* and WORKERS' COMP INSURER on this 14<sup>th</sup> day of June, 2013.

*/s/ Malcolm Parks*



VIRGINIA:  
IN THE WORKERS' COMPENSATION COMMISSION

Opinion by C. C. MERCER  
Deputy Commissioner

JULY 23, 2013

[REDACTED]  
[REDACTED], Insurance Carrier  
[REDACTED], Claim Administrator  
Jurisdiction Claim No. V [REDACTED]  
Docket ID No. V [REDACTED]  
Claim Administrator File No. [REDACTED]  
Date of Injury: November 1, 2012  
Claim of Malcolm Parks, Esq., against VCU Medical Center, medical provider

Submitted on the record before Deputy Commissioner C. C. Mercer in Richmond, Virginia, on July 12, 2013.

PROCEDURAL HISTORY

The claimant sustained an injury by accident to multiple ribs, her sternum, and her right leg on November 1, 2012, resulting in the Commission's February 25, 2013, award order which provides medical benefits along with temporary total compensation benefits in the weekly amount of \$47.17 beginning November 1, 2012.

PRESENT PROCEEDING

Claimant's counsel filed a claim on June 10, 2013, alleging that, by reason of his representation of his client, is entitled to an award of attorney fees in the amount of 25% of the sum of \$198,980.77<sup>1</sup>, which inured to the benefit of VCU Medical Center.

FINDINGS OF FACT AND RULINGS OF LAW

The medical provider failed to file a timely position statement in response to the

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<sup>1</sup> Claimant's counsel, in his June 14, 2013, position statement, indicated that the payments to VCU Medical Center totaled \$198,866.77.

Commission's June 11, 2013, scheduling notice.

Section 65.2-714 (B) provides as follows:

If a contested claim is found to be compensable under this title and, after a hearing on the claim on its merits or after abandonment of a defense by the employer or insurance carrier, benefits for medical services are awarded and inure to the benefit of a third party insurance carrier or health care provider, the Commission shall award to the employee's attorney a reasonable fee and other reasonable pro rata costs as are appropriate from the sum which benefits the third party insurance carrier or health care provider. Such fees shall be based on the amount paid by the employer or insurance carrier to the third party insurance carrier or health care provider for medical, surgical and hospital service rendered to the employee through the date on which the contested claim is heard before the Deputy Commissioner. For the purpose of this subsection, a "contested claim" is an initial contested claim for benefits and claims for medical, surgical and hospital services that are subsequently contested and litigated or after abandonment of a defense by the employer or insurance carrier.

A review of the position statement filed by claimant's counsel and of other evidence contained in the Commission's file reveals that counsel has complied with the requirements of § 65.2-714, along with the requirements of Rule 6.2 of the Rules of the Workers' Compensation Commission. The evidence establishes that the defendants contested the compensability of the underlying claim. Specifically, in their Response to Request for Admissions, the defendants stated, "Deny" in response to the following statement, "Admit or deny that the employer and its carrier are liable to the claimant for benefits under the Virginia Workers' Compensation Act as a result of her injury of November 1, 2012." Finally, on January 29, 2013, the Commission issued a Notice of Referral of Application to Docket concerning the claimant's December 20, 2012, claim for benefits. As set for above, the claim resulted in the necessity for the scheduling of a hearing before a deputy

commissioner. However, prior to the hearing, the parties reached an agreement on February 12, 2013.

An inspection of documentary evidence contained in our file reveals that the relevant medical services were rendered from November 1, 2012, through January 23, 2013. Accordingly, we find that these services were rendered prior to defendants abandoning their defenses. The carrier failed to pay the charges until March 5, 2013, March 27, 2013, and May 1, 2013. Thus, we find that claimant's counsel is entitled to an award of attorney's fees with respect to payments totaling \$198,866.77.

Considering the effort involved, the benefit derived, and other relevant considerations, we find that the claimant's counsel is entitled to an award against the medical provider in the amount of \$40,000.00. An appropriate award shall enter.

#### AWARD

A fee in the amount of \$40,000.00 is hereby awarded to Malcolm Parks, Esquire, against VCU Medical Center.

This matter is hereby removed from the docket.

#### REVIEW

You may appeal this decision to the full Commission by filing a Request for Review with the Commission within thirty (30) days of the date of this Opinion.

cc: See attached list