

# State of South Carolina

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## Workers' Compensation Commission

### ASC Lawsuit Update Commission Pursuing Case in Circuit Court August 1, 2007

On September 29, 2006. Plaintiffs, who are either outpatient surgery centers or an association of such centers, filed a lawsuit challenging the revised schedule for maximum allowable payments approved by the Defendant Workers' Compensation Commission on June 26, 2006, and which took effect on October 1, 2006.

The outpatient surgery centers assert that the schedule of maximum allowable payments was adopted in violation of the Administrative Procedures Act, *S.C. Code Ann.* § 1-23-10, et seq. The Commission, on the other hand, contends that no law requires this schedule of maximum payments to be considered by the Commission pursuant to the Administrative Procedures Act.

The Commission changed the schedule in 2006 in an effort to contain the mushrooming charges extracted by outpatient surgery clinics. Even so, the revised payment schedule permits providers to charge as much as 140% of Medicare-approved charges, a substantial benefit to the providers, since they actually accept Medicare charges without this 40% enhancement.

The outpatient surgery centers also sought a preliminary injunction requiring the Commission to follow the payment schedule that had previously been in effect, even though that schedule was adopted using the same procedures used by the Commission in adopting the new schedule. A hearing was held on this motion in October 2006, and eventually, in March 2007, the Circuit Court issued the preliminary injunction requested by the plaintiffs.

The Commission requested that the Court of Appeals stay the preliminary injunction pending an appeal by the Commission from the Circuit Court's decision to grant the injunction. This request was denied without comment by a single judge of the Court of Appeals, and then by a three-judge panel of that court, after the Commission requested consideration by the full three-judge panel.

The Commission has now decided that this case would proceed more expeditiously toward a final conclusion if the Commission discontinues its appeal of the preliminary injunction and pursues the case on its merits in the Circuit Court. The order granting a preliminary injunction is not binding on future proceedings in the Circuit Court. The Commission will seek to have the case heard as soon as all necessary information has been received through discovery.