

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

WCC NO. E905547

JACK MCCLANAHAN, Employee	CLAIMANT
LLOYD'S TRUCK SERVICE, INC., Employer	RESPONDENT NO. 1
HARCO NATIONAL INS. CO., Carrier	RESPONDENT NO. 1
DEATH & PERMANENT TOTAL DISABILITY TRUST FUND	RESPONDENT NO. 2

OPINION FILED NOVEMBER 25, 2025

Hearing before ADMINISTRATIVE LAW JUDGE GREGORY K. STEWART in Fort Smith, Sebastian County, Arkansas.

Claimant represented by STEPHEN M. SHARUM, Attorney at Law, Fort Smith, Arkansas.

Respondents No. 1 represented by J. MATTHEW MAULDIN, Attorney at Law, Little Rock, Arkansas; although not appearing at the hearing.

Respondent No. 2 represented by CHRISTY L. KING, Attorney at Law, Little Rock, Arkansas.

STATEMENT OF THE CASE

On October 27, 2025, the above captioned claim came on for a hearing at Fort Smith, Arkansas. A pre-hearing conference was conducted on September 10, 2025, and a pre-hearing order was filed on that same date. A copy of the Pre-hearing Order has been marked Commission's Exhibit No. 1 and made a part of the record without objection.

At the pre-hearing conference the parties agreed to the following stipulations:

1. The Arkansas Workers' Compensation Commission has jurisdiction of the within claim.

2. The claimant is permanently totally disabled as a result of a compensable injury on May 7, 1999.

3. The claimant is currently receiving permanent total disability benefits from the Trust Fund at the rate of \$356.25 per week.

4. A Consent Order was filed on August 15, 2007.

The issues to be litigated at the forthcoming hearing are as follows:

1. Lump sum for payment of attorney's fee.

The claimant contends:

“The attorney for the claimant, Stephen Sharum, contends he is entitled to an Order to lump sum the remaining attorney fee previously ordered by the Commission for ½ the attorney fee being paid by the State of Arkansas, Special Fund. This ½ attorney fee has been paid by the Special Fund since the ALJ's Order of March 29, 2007 on a twice a month basis in the amount of \$37.50 per payment. The employer, Respondent #1, has paid it's portion of the fee in lump sum pursuant to the Commission's Consent Order of August 20, 2007. The current calculation for the payment of the balance of the attorney fee due from the Special Fund based on the Claimant's life expectancy is 387.7923 weeks @ \$37.50 per week, discounted @ 10% per annum, for a present value of \$14,541.84, ½ of that calculation equals **\$7,270.92** as the present value of the amount due in lump sum. The calculation is based on the Claimant's life expectancy.

Notwithstanding the calculation above, the attorney is requesting a different lump sum payment from the Fund. This calculation is based on the future payment of the weekly benefits to the claimant for attorney fee calculations based on the left expectancy of this attorney. This calculation will assume the lump sum payment to be based on the age of Stephen Sharum, age 77, pursuant to ACA §11-9-804(b) table life expectancy of 10.04 years (522

weeks) contrasted to Mr. McClanahan's life expectancy of 15.06 years (764 weeks). This is a difference of 242 weeks of future compensation. The present value of ½ the attorney fee lump sum discounted at 10% on the life expectancy of Stephen Sharum is **\$6,028.11**. This is a 17% reduction of lump sum attorney fee requested.

Pursuant to Paula Ard v Death and Permanent Total Disability Trust Fund, 2011 Ark. App. 774, the Arkansas Court of Appeals confirms pursuant to ACA §11-9-716 the Commission must exercise its **discretion** in determining the issue of a lump sum attorney fee. The court stated as follows:

'There is nothing in section 11-9-716 that requires the Commission to approve the lump-sum payment of the entire amount of an attorney's fee or that prohibits the Commission from approving a plan by which an attorney's fee is paid partly by lump sum and partly in installments. Seward v. The Bud Avants Co., 65 Ark. App. 88, 985 S.W.2d 332 (1999). On appeal, we will not interfere with the Commission's determination on the issue of attorney's fees unless there is an abuse of discretion. Littlejohn vs Earle Industries, 239 Ark. 439, 389 S.W.2d 898 (1965), and abuse of discretion is a high threshold that does not simply require error in the decision, but requires that the tribunal act improvidently, thoughtlessly, or without due consideration. See Bailey v. Delta Trust & Bank, 359 Ark. 424, 198 S.W.3d 506 (2004)'

In the Ard case, *supra*, the Funds argument is stated, and we expect the same argument will be submitted in this case, to the Court of Appeals as follows:

'The Fund argues that a lump-sum payment of attorney's fees would force it to assume the risk of overpayment should either the appellant or the attorney die or should the appellant become ineligible to receive benefits pursuant to either Ark. Code Ann. §11-9-519 (Repl. 2002) or §11-9-713 (Repl. 2002) prior to the

Fund's ability to recoup the lump-sum payment out of weekly benefits being paid to the appellant.' Ard, *supra* @ 775.'

The discretion to be exercised by the Commission in this Petition for Lump Sum Attorney Fee is the current status of the attorney's law practice, i.e., retirement and the Special Fund's position that Fund's assumption of the risk of overpayment created by the lump sum payment by withholding that portion of the attorney fee from claimant's award of benefits. The two considerations being promoted by the Fund is the claimant's death before the Fund can recoup the payment of the attorney fee or the death of the attorney prior to his stated life expectancy.

One issue assumed by the Fund and not decided by the Commission or the Court of Appeals is whether the entitlement of the attorney is based on the attorney's life expectancy or the claimant's life expectancy. We believe the payment due for the attorney fee is based on the claimant's life expectancy and not the attorney's. If the attorney dies before the claimant, the fee should continue to be paid to the attorney's firm or his heirs.

In this case, since Mr. McClanahan is younger than Mr. Sharum by eight (8) years, the risk of the Fund is much less based on the statistics involved. The likelihood of Mr. McClanahan continuing to live past the death of Mr. Sharum gives the Fund amply time to recoup the lump sum payment requested in this case.

Second, the discount rate of 10% as ordered by the Commission is significantly higher than the current market rate of return. If the Commission or the Legislature changes the discount rate to a lower rate of return any time in the future the present value of the lump sum would be much greater. Therefore, the discretion to grant the lump sum request favors approval of the request."

Respondent No. 2 contends that they are bound by the 2007 Consent Order regarding the claimant's portion of attorney's fees. The Trust Fund objects to the lump sum payment of the claimant's portion of attorney's fees.

From a review of the record as a whole, to include medical reports, documents, and other matters properly before the Commission, and having had an opportunity to hear the testimony of the witnesses and to observe their demeanor, the following findings of fact and conclusions of law are made in accordance with A.C.A. §11-9-704:

FINDINGS OF FACT & CONCLUSIONS OF LAW

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 10, 2025, and contained in a pre-hearing order filed that same date are hereby accepted as fact.

2. Claimant attorney's request for a lump sum payment of an attorney fee is denied.

FACTUAL BACKGROUND

A Consent Order was filed in this claim on August 15, 2007, with the parties stipulating that: 1) Claimant is permanently totally disabled; 2) Respondent No. 1, Lloyd's Truck Service and Harco National Insurance Company, have paid permanent total disability benefits to claimant totaling \$75,000.00; 3) Respondent No. 2, The Fund, is currently paying claimant's permanent total disability benefits; 4) Respondent No. 1 has paid appropriate attorney fees to claimant's attorney for permanent total disability benefits paid to claimant by Respondent No. 1 and Respondent No. 2, through June 10, 2007; 5) Claimant's attorney has requested that Respondent No. 1's portion of future attorney fees for the permanent total disability award be paid in a lump sum per A.C.A. §11-9-716 and §11-9-804; 6) Claimant's attorney has requested that claimant's portion

of the attorney's fee be continued to be withheld from claimant's installment permanent total disability payments; 7) As of June 11, 2007, the present value of claimant's permanent total disability award is \$175,821.98; 8) As of June 11, 2007, the present value of claimant's attorney fees, for legal services rendered with respect to claimant's award of permanent total disability benefits is \$17,582.20; and 9) As of June 11, 2007, Respondent No. 1's lump sum portion of the present value of claimant's attorney fees is \$8,791.10.

The Consent Order ordered Respondent No. 1 to pay the lump sum which represented a full and final accord for all present issues concerning Respondent No. 1's portion of the attorney fee. It also ordered that claimant's portion of the attorney fee owed to claimant's attorney continue to be withheld from claimant's permanent total disability benefits and paid to claimant's attorney on an installment basis.

Pursuant to that Consent Order, The Fund has continued to withhold from claimant's permanent total disability benefits, the claimant's portion of the attorney fee and forward it to his attorney, Steve Sharum, on an installment basis. This has resulted in Mr. Sharum receiving an attorney fee in the amount of \$37.50 biweekly.

Mr. Sharum has requested that the remainder of his attorney fee be paid to him in a lump sum. The Fund has objected to that request.

ADJUDICATION

As of the date of the hearing, The Fund continues to pay claimant permanent total disability benefits. Pursuant to the Consent Order, The Fund withholds from claimant's payment, the claimant's portion of Mr. Sharum's fee and forwards it to Mr.

Sharum in the amount of \$37.50 biweekly. Mr. Sharum has retired from the active practice of law and the fee he is receiving in the claim is the only fee he is receiving from his prior law practice. Because this is the only fee he currently receives, Mr. Sharum has requested that the remainder of claimant's portion of his fee be paid to him in a lump sum. The Fund has objected to the lump sum payment, stating that The Fund is at risk of not recouping a lump sum payment if claimant dies or if he becomes no longer eligible to receive permanent total disability benefits. The Fund also contends that it is bound by the prior Consent Order.

Initially, I find that the parties are bound by the prior Consent Order of August 15, 2007. This Consent Order was agreed to by all parties at the time and it includes a specific stipulation that Mr. Sharum requested that claimant's portion of his fee continue to be withheld from the claimant's installment permanent total disability payments. Based upon that stipulation, the Order specifically states that claimant's portion the attorney fee owed to claimant's attorney continue to be withheld from claimant's permanent total disability benefits and paid to claimant's attorney on an installment basis.

This Consent Order was filed on August 15, 2007, more than 18 years ago and is final and binding on the parties. While Mr. Sharum is now requesting a lump sum payment of the claimant's portion of the attorney fee, The Fund does not agree. Absent an agreement by The Fund to pay this fee in a lump sum, Mr. Sharum has cited no authority which would permit this Commission to reverse or modify an order that was entered more than 18 years ago.

Furthermore, even if the prior Consent Order could be modified, I would nevertheless find that the lump sum payment being requested in this case should be denied. While the Commission does have discretion to award a lump sum payment, the Commission is not required to do so particularly under the circumstances presented.

This issue has previously been addressed by the Arkansas Court of Appeals on two occasions. The first was *Ard v. Death & Permanent Total Disability Trust Fund*, 2011 Ark. App. 774. In that case the claimant was found to be permanently totally disabled. Claimant's attorney filed a request for payment of his fee in a lump sum. The carrier agreed to pay its share of the fee in a lump sum; however, The Fund which was paying the claimant's portion of the fee out of the compensation that it was paying to the claimant, objected. The Fund argued that a lump sum payment would force it to assume the risk of overpayment should the claimant or the attorney die or should the claimant become ineligible to receive benefits prior to the Fund's ability to recoup the lump sum payment out of weekly benefits being paid to claimant. The Court affirmed the Full Commission decision which noted that approval of a fee was discretionary with the Commission and finding that there was no compelling reason to order The Fund to pay the fee in a lump sum. In affirming the Commission, the Court noted that the employer was the only party that had controverted the claim, and no attorney fee had been awarded against The Fund. The Court also noted that there is nothing in A.C.A. §11-9-716 that requires the Commission to approve a lump sum payment or that prohibits the Commission from approving a plan that pays the attorney fee partly by lump sum and partly in installments. Accordingly, the Court found that the Commission did not abuse

its discretion in declining to order The Fund to pay claimant's attorney fee in a lump sum.

The second case is *O'Hara v. J. Christy Constr. Company*, 2012 Ark. App. 89. In that decision, the Court first noted that it had previously ruled that the Commission does have the authority to order The Fund to pay a claimant's portion of their attorney fee in a lump sum (*O'Hara v. Death & Permanent Total Disability Trust Fund*, 2010 Ark. App. 685). That claim was remanded to an administrative law judge for further proceedings regarding how the claimant's fifty-percent portion of his attorney fee was to be paid.

On remand, the administrative law judge denied claimant's request that The Fund pay his portion of the attorney fee in a lump sum. In reaching his decision, the administrative law judge stated that his reasons included:

The Fund risks not recouping a lump-sum payment if the claimant dies or becomes no longer entitled to benefits before The Fund has time to recoup a lump-sum payment,

The Fund objects to paying the claimant's one-half fee in a lump sum because of the risk of not recouping the payment, and

The claimant's attorney had an opportunity in 2008 to request that the claimant's one-half of a lump sum fee be paid out of the claimant's accrued benefits, but claimant's attorney waited until 15 months after the last disbursement of accrued benefits to the claimant before requesting a lump-sum payment of his remaining fees.

The administrative law judge's decision was affirmed and adopted by the Full Commission and claimant appealed that decision to the Court of Appeals. The Court cited the administrative law judge's reasoning in denying the lump sum payment and then stated:

We hold that this case is controlled by our court's decision in *Ard v. Death & Permanent Total Disability Trust Fund*, 2011 Ark. App. 774, handed down on December 14, 2011, after both parties had filed their briefs. In *Ard*, the employer agreed to pay its one-half share of the attorney's fee in a lump sum, but The Fund, which was paying Ard's portion of the attorney's fees out of the benefits that were being paid to her, did not agree to paying a lump sum, arguing that a lump-sum payment would force it to assume the risk of overpayment if the claimant or her attorney died or for some reason the claimant became ineligible for benefits before The Fund could recoup its lump-sum payment from her benefits.

The Court then held that the Commission did not abuse its discretion in denying the lump sum request.

Likewise, in this claim, The Fund risks not recouping its lump sum payment if the claimant dies or for some reason is no longer entitled to benefits. For that reason, The Fund objects to making a lump sum payment.

Accordingly, based upon the fact that The Fund would have to assume the risk for overpayment if a lump sum were approved, as well as the decisions in *Ard* and *O'Hara*, I find that a lump sum is not appropriate under the circumstances presented. Therefore, I find that Mr. Sharum's request for a lump sum payment of the claimant's portion of his attorney fee should be denied.

ORDER

I find that Mr. Sharum's request for a lump sum payment of the claimant's portion of his attorney fee should be and hereby is denied. Respondents are liable for payment of the court reporter's charges for preparation of the hearing transcript in the amount of \$250.00.

IT IS SO ORDERED.

GREGORY K. STEWART
ADMINISTRATIVE LAW JUDGE