

- Citation 2, Item 1 (Non-Serious): 29 CFR §1904.4(a) — alleging that Respondent failed to record a work-related injury on its OSHA 300 log; proposed penalty of \$0.00.

Mt. Olive Pickle Co., Inc., OSHANC 2024-6645, Slip Op. at pp 7-8.

Respondent filed a timely Notice of Contest on or about April 24, 2024, and requested formal pleadings. A Complaint and Answer were timely filed on May 21, 2024 and June 3, 2024, respectively. Prior to the evidentiary hearing, Complainant withdrew Citation 2, Item 1. *Id.*, at p1.

An evidentiary hearing was held via videoconference before the undersigned on April 10–11, 2025. The Final Decision and Order, entered August 22, 2025, found that Complainant failed to meet its burden to show that employees were exposed to a hazard in violation of the cited standard and failed to show that Respondent did not comply with 29 CFR 1910.133(a)(1) when employees were conducting quality control checks. Applying *Greb Electric Co.*, 11 OSAHRC 389 (1974), the undersigned concluded that "Complainant may not establish liability based upon speculation of exposure to a hazard," and that the employee statements upon which Complainant relied to support its contention that a violation had occurred were "not credible." The witness' statements were summarized in handwritten notes made by the Compliance Safety & Health Officers ("CSHO"s), were internally inconsistent, and were based on hearsay accounts of supervisory statements. *Id.*, at p 9. Citation 1, Item 1 and its \$2,400.00 penalty was dismissed with prejudice and vacated. Complainant did not petition the full Commission for review, and the Decision and Final Order became the decision of the Commission on September 21, 2025.

On October 9, 2025, Respondent filed a Petition for Attorneys' Fees and Expenses seeking \$192,999.06 in attorneys' fees and \$5,804.56 in expenses, totaling \$198,803.62. Complainant filed its Objection and Response to the Petition on November 26, 2025. Respondent filed a Notice of Intent to Seek Leave to File a Reply and, subsequently, a Motion for Leave to File a Reply, which Respondent filed on December 11, 2025. The Motion for Leave to File a Reply was allowed.

RESPONDENT'S POSITION

Respondent contends that it is entitled to an award of \$192,999.06 in attorneys' fees and \$5,804.56 in expenses, totaling \$198,803.62, as the prevailing party in the underlying citation contest. Respondent advances four principal arguments in support of its Petition.

First, Respondent argues that N.C. Gen. Stat. § 6-19.1 applies to proceedings before this Commission because proceedings here share sufficiently close procedural similarities to civil court actions. Specifically, Respondent points to N.C. Gen. Stat.

§ 95-135(d), which requires Commission proceedings to follow the Rules of Civil Procedure "as nearly as possible," and to Commission Rule .0102(2), which adopts the same standard in the absence of a specific procedural rule. Respondent contends that these procedural similarities, including the availability of depositions, compelled testimony, documentary discovery, and evidentiary rules mirroring those of N.C. State courts, support the conclusion that citation contests before the Commission constitute "civil actions" within the meaning of N.C. Gen. Stat. § 6-19.1. *Resp. Reply Br.* at pp 5-7. Respondent cites to *Colorado Medical Board v. Office of Administrative Courts*, 333 P.3d 70, 76 (Colo. 2014) for the proposition that procedural similarity to civil court proceedings supports classifying an adjudicatory administrative proceeding as a "civil suit" within the meaning of a fee statute.

Second, Respondent argues that Complainant was not substantially justified in issuing Citation 1, Item 1 under 29 CFR §1910.133(a)(1), because CSHO Midyette never observed any employee adjusting the overhead valves during the inspection, never observed a pasteurizer operator conduct a quality control check without eye protection, and relied instead on employee statements that the Hearing Examiner found to lack credibility. Respondent further argues that Complainant was not substantially justified in pursuing Citation 2, Item 1 because CSHO Midyette failed to include a pre-citation email from Respondent's Vice President of Manufacturing containing an updated OSHA 300 log in the official case file, and that Complainant's last-minute withdrawal of that citation on the eve of trial was an implicit acknowledgment of the citation's lack of merit.

Third, Respondent argues that no special circumstances exist rendering a fee award unjust, contending that courts have found special circumstances only in cases involving novel legal issues or a prevailing party's unclean hands, neither of which is present here. Fourth, Respondent argues that its requested fees are reasonable given the time expended, the skill required, the customary rate for like work, and the experience of counsel. Respondent offered to submit detailed itemized records for in camera review, to the extent additional billing documentation is required.

DISCUSSION

I. N.C. Gen. Stat. § 6-19.1 Does Not Apply to Proceedings Before the North Carolina Occupational Safety and Health Review Commission.

A court may award attorneys' fees only as authorized by statute. *Batson v. Coastal Res. Comm'n.*, 282 N.C. App. 1, 4, 871 S.E.2d 120, 124 (2022). The threshold question presented by this Petition is whether N.C. Gen. Stat. § 6-19.1 authorizes an award of attorneys' fees in proceedings before the NC Occupational Safety and Health Review Commission ("Commission"). The undersigned holds that it does not and that the Petition must be denied on this ground as a matter of law.

The plain text of N.C. Gen. Stat. § 6-19.1 authorizes an award of reasonable attorney's fees:

[i]n any civil action, other than an adjudication for the purpose of establishing or fixing a rate, or a disciplinary action by a licensing board, brought by the State or brought by a party who is contesting State action pursuant to G.S. 150B-43 or any other appropriate provisions of law.

N.C. Gen. Stat. § 6-19.1(a). Three textual requirements flow from this language. There must be a civil action brought by the State or a party contesting State action, arising pursuant to N.C. Gen. Stat §150B-43 or other appropriate provisions of law. The Petition fails each requirement.

Commission proceedings are not civil actions. A civil action is defined as "an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right." N.C. Gen. Stat. § 1-2. The General Court of Justice consists of the State's superior, district, and appellate courts. N.C. Gen. Stat. § 7A-4. The North Carolina Supreme Court addressed precisely this point in *Winkler v. N.C. State Board of Plumbing, Heating, & Fire Sprinkler Contractors*, 374 N.C. 726, 843 S.E.2d 207 (2020), holding unequivocally: "[P]roceedings before administrative agencies, including disciplinary actions by a licensing board, are not civil actions." *Winkler*, 374 N.C. at 732–33, 843 S.E.2d at 212. The Court explained that "[n]either the creation nor the initial enforcement of administrative regulations occurs before a 'court of justice,'" and that an agency empowered with discretionary authority "is not a part of the 'general court of justice.'" *Id.* Under *Winkler*, an agency proceeding only becomes a civil action when a party petitions a court for judicial review pursuant to N.C. Gen. Stat. §150B-43. In the instant case, neither party has sought judicial review by a North Carolina Superior Court.

The Commission is an administrative body created by the General Assembly under the Occupational Safety and Health Act of North Carolina ("OSHANC") to enforce compliance with occupational safety and health standards. Citation contests are heard before appointed Hearing Examiners, who do not conduct proceedings in a "court of justice" within the meaning of N.C. Gen. Stat. § 7A-4. See, N.C. Gen. Stat. § 95-137. Respondent's argument that procedural similarities between Commission proceedings and civil court proceedings bring this matter within the statute's reach is directly foreclosed by *Winkler*. The Supreme Court's holding turned not on the procedural attributes of the administrative proceeding but on whether the proceeding was conducted before a court of justice, as defined by the General Statutes. *Winkler*, 374 N.C. at 732–33, 843 S.E.2d at 212. That Commission proceedings are conducted "as nearly as possible" in accordance with the Rules of Civil Procedure, N.C. Gen. Stat. § 95-135(d), does not transform those proceedings

into civil actions. Administrative adoption of civil procedure norms for efficiency, and to act as "gap-fillers," cannot substitute for the constitutional and statutory requirement that a "civil action" occur before a "court of justice."¹ Respondent's reliance on the Colorado Supreme Court's decision in *Colorado Medical Board v. Office of Administrative Courts*, 333 P.3d 70 (Colo. 2014), is unavailing. That case interprets Colorado law, and no North Carolina court has adopted its reasoning. The Commission is bound by the controlling authority of *Winkler*.

Even if Commission proceedings could be characterized as civil actions — which they cannot — the 2000 amendment to N.C. Gen. Stat. § 6-19.1 would still not authorize a fee award here for work performed during proceedings before the Commission. That 2000 amendment added the phrase "including attorney's fees applicable to the administrative review portion of the case, ***in contested cases arising under Article 3 of Chapter 150B.***" N.C. Gen. Stat. § 6-19.1(a); S.L. 2000-190. This language reflects a deliberate legislative choice to limit administrative-phase fee availability to cases governed by Chapter 150B's Article 3 contested case procedures. Neither the Commission's enabling statute, Article 16 of Chapter 95 of the N.C. General Statutes, nor its regulations found in Title 24, Chapter 3 of the North Carolina Administrative Code, provide that contested cases before the Commission are brought pursuant to Article 3 of the North Carolina Administrative Procedures Act (N.C. Gen. Stat §150B-23 et seq.).

The contrast with the statutes at issue in the controlling appellate cases is instructive. In *Winkler*, the Plumbing Board's enabling statute, N.C. Gen. Stat. § 87-23, expressly required proceedings to be conducted in accordance with the provisions of Chapter 150B. *Winkler*, 374 N.C. at 731, 843 S.E.2d at 211. In *Batson v. Coastal Resources Commission*, 282 N.C. App. 1, 871 S.E.2d 120 (2022), the statute at issue, N.C. Gen. Stat. § 113A-64, expressly incorporated the contested case procedures of Article 3 of Chapter 150B. *Batson*, 282 N.C. App. at 5, 871 S.E.2d at 124. The Legislature's express incorporation of Chapter 150B procedures in statutes governing other agencies, and its omission of any such incorporation in OSHANC, reflects a considered judgment that OSHANC enforcement proceedings are not "contested cases arising under Article 3 of Chapter 150B."

It is also instructive that the General Assembly authorized fee awards under Chapter 95, Article 2A, The North Carolina Wage and Hour Act. N.C. Gen. Stat. § 95-25.22. Where there is inclusion of an attorneys' fee provision in one article of a statute but not in another we must assume the choice is deliberate. *Expressio unius est exclusio alterius* means that because the legislature expressly authorized attorneys' fee awards under Chapter 95 for one article and did not do so for another, this Commission may not supply the missing authorization by construction. See *Winkler*, 374 N.C. at 737, 843 S.E.2d at 215.

¹ The commission's procedural rule, codified in 24 NCAC 03 .0102, states, "***In the absence of a specific provision***, procedure shall be in accordance with the North Carolina Rules of Civil Procedure." *Emphasis supplied*.

Finally, any remaining doubt regarding the potential applicability of N.C. Gen. Stat. § 6-19.1 is resolved by the sovereign immunity limitation built into the statute itself: "Nothing in this section grants permission to bring an action against an agency otherwise immune from suit." N.C. Gen. Stat. § 6-19.1(a). Waivers of sovereign immunity require explicit statutory authorization and are strictly construed. *Battle Ridge Companies v. N.C. Dep't of Transp.*, 161 N.C. App. 156, 157, 587 S.E.2d 426, 427 (2003). Because OSHANC contains no authorization for attorney fee awards, the Commissioner of Labor retains sovereign immunity from such an award before this Commission. The Petition is denied, as a matter of law, on this threshold ground.

II. Even If N.C. Gen Stat § 6-19.1 Could Be Construed As Authorizing An Award Of Attorneys' Fees For Administrative Proceedings Before The Commission, Respondent's Petition Should Still Be Denied Because Complainant Acted With Substantial Justification In Seeking To Enforce Citation 1, Item 1.

N.C. Gen. Stat. § 6-19.1 provides that for "cases arising under Article 3 of Chapter 150B," a court is required to find "that the agency acted without substantial justification in pressing its claim against the party." § 6-19.1(a)(1). Even if the Commission was required to reach this element, a holding that is expressly declined based upon the preceding analysis that OSHANC proceedings do not arise under Article 3 of Chapter 150B, the undersigned would find that Complainant acted with substantial justification in issuing and pressing Citation 1, Item 1, and would deny the Petition on this additional alternative ground.

Before analyzing the facts as they relate to the standard for finding substantial justification, the undersigned will first address the central issue posed by the Respondent: whether the Hearing Examiner's Conclusion of Law #8 that "Complainant may not establish liability based upon speculation of exposure to a hazard" is equivalent to a finding that Complainant lacked substantial justification under N.C. Gen. Stat. § 6-19.1. See, *Mt. Olive Pickle Co., Inc.*, OSHANC 2024-6645, Slip Op. at p 9. It is not. These conclusions operate from fundamentally different vantage points and serve entirely distinct legal purposes.

Conclusion of Law #8 was based upon the rule cited in *Greb Electric Co.*, 11 OSAHRC 389 (1974) and pertains to the Complainant's burden of proof at the evidentiary hearing to show, by a preponderance of the evidence, a necessary element of the violation alleged. It is a retrospective determination that the evidence presented at the full adversarial hearing, following the presentation of both documentary evidence and live witness testimony subjected to cross-examination, failed to establish by a preponderance of the evidence that an actionable hazard existed. The Hearing Examiner concluded that the Complainant did not prove its case at trial.

The substantial justification inquiry is categorically different. North Carolina courts have adopted a "middle-ground objective standard" that asks whether the agency's position, "at and from the time of its initial action, was rational and legitimate to such a degree that a reasonable person could find it satisfactory or justifiable in light of the circumstances then known to the agency." *Crowell Constructors v. State ex rel. Cobey*, 342 N.C. 838, 844, 467 S.E.2d 675, 679 (1996); *Winkler*, 374 N.C. at 735, 843 S.E.2d at 213. The standard does not require the agency to demonstrate the infallibility of its citation, nor is it satisfied merely by showing the citation was not frivolous. *Winkler*, 374 N.C. at 735, 843 S.E.2d at 213. Most critically, the North Carolina Supreme Court and Court of Appeals have held consistently that the fact that an agency did not prevail at trial does not mean it lacked substantial justification. See *Winkler*, 374 N.C. at 735–36 (Board lost on the merits but was substantially justified); *Williams v. N.C. Dep't of Env't & Natural Res.*, 166 N.C. App. 86, 90, 601 S.E.2d 231, 234–35 (2004); *Daily Express, Inc. v. Beatty*, 202 N.C. App. 441, 455, 688 S.E.2d 791, 802 (2010); *Joyner v. N.C. HHS*, 214 N.C. App. 278, 715 S.E.2d 498 (2011). A finding of "speculation" at trial is a finding that the evidence fell short of the preponderance standard. It does not establish that the agency's position was irrational or illegitimate at the time it was taken. These are separate inquiries that must be kept analytically distinct.

The relevant inquiry is not what the evidence showed at trial, but what circumstances were known to the agency at the time it issued the citation. *Crowell*, 342 N.C. at 845, 467 S.E.2d at 680. At that time, Complainant possessed the following:

There was a documented injury and a formal complaint from Respondent's supervisor that triggered a mandatory investigation. The supervisor suffered a first-degree burn injury when hot water erupted from a pasteurizer reservoir as he adjusted an overhead valve. A compliance officer who opens an inspection in response to a documented burn injury from the exact task and equipment subsequently cited is not speculating; he is investigating a reported hazard.

There were also corroborating physical conditions. During the December 6, 2023 walk-through, CSHO Midyette confirmed that three of Respondent's four pasteurizers relied on manual overhead valve adjustment because the automatic steam valves were not functional, a condition that was confirmed by Respondent's own Maintenance Manager during the inspection. These were observable, documented conditions that corroborated the initial complaint.

CSHO Midyette then obtained employee statements from two pasteurizer operators that he reasonably understood to indicate employees were wearing prescription glasses rather than ANSI-rated safety glasses while operating the pasteurizers. He also interviewed Plant Manager Cameron Cottle during the walk-through. Midyette memorialized Cottle's statement as reflecting that prescription glasses satisfied the employer's eye protection requirement on the production floor. CSHO

Midyette was not necessarily required to credit a later email message from the manager providing a different description of the facts. However, the live testimony and cross-examination at a full evidentiary hearing revealed that the employee and management statements were ambiguous and not subject to the single interpretation applied by the CSHO. That the investigator's interpretation was shown to be problematic following cross-examination does not mean that he acted unreasonably in recommending the citation. A compliance officer may reasonably rely on contemporaneous employee and management statements during an inspection, even if those statements later prove susceptible to contrary interpretation at trial.

Respondent's substantial justification argument conflates what the agency could prove at trial with what it could rationally believe at the time it issued the citation. The entire purpose of the *Winkler/Crowell* standard is to prevent that conflation. In *Winkler*, the NC Supreme Court reversed an attorneys' fees award even though the Board's legal interpretation was ultimately held to be incorrect, because the Board's position was "not irrational or illegitimate in light of the facts." *Winkler*, 374 N.C. at 736, 843 S.E.2d at 214. Here, the citation rested on a real burn injury, corroborating physical evidence of malfunctioning automatic valves, employee statements about prescription glasses, and a management statement the inspector reasonably interpreted as acknowledging that prescription glasses were sufficient for inspection. A reasonable compliance officer could find this evidence to be a justifiable basis for issuing a citation, even if the evidence ultimately failed at trial.

The cases cited by the respondent are distinguishable. In *Early v. Dep't of Soc. Svcs*, 193 N.C. App. 334, 667 S.E.2d 512 (2008), DSS was found to have lacked substantial justification because it persistently misconstrued both the State Personnel Commission's recommended order and the Court's prior ruling. *Id.*, at 347–48, 522. This case presents no analogous pattern. Complainant issued a citation based on a documented injury and field investigation, litigated the matter in a single proceeding, and the citation was vacated on evidentiary grounds after a full hearing. That outcome is materially different from the persistent institutional misconstruction of known authority at issue in *Early*.

Respondent also relied on the principle articulated in *Tay v. Flaherty*, 100 N.C. App. 51, 394 S.E.2d 217 (1990), as discussed in *Batson*, 282 N.C. App. at 17, 871 S.E.2d at 133, that knowledge of a contrary legal position undermines substantial justification. But *Tay* involved an agency that knew the applicable law did not support its position. Here, the record contains no evidence that CSHO Midyette or his superiors knew, at the time of citation issuance, that the evidence gathered would prove insufficient to establish a cognizable hazard at trial. CSHO Midyette's admissions about the limitations of his hazard theory, including his concession that steam from overhead valves would rise upward and did not create an eye hazard, were first made on cross-examination at the April 2025 hearing. An agency is not required to anticipate the evidentiary weaknesses that will only emerge through

adversarial examination at a full hearing. See *Crowell*, 342 N.C. at 845, 467 S.E.2d at 680.

For all of the foregoing reasons, the Commission would find that Complainant acted with substantial justification in issuing Citation 1, Item 1 and the Petition would be denied on this additional ground.

III. As An Additional Alternative Ground, Respondent's Petition Is Denied Because Respondent Has Failed To Provide Adequate Documentation To Support A Determination Of Reasonableness.

Even if N.C. Gen. Stat. § 6-19.1 were applicable to these proceedings — which this decision expressly holds it is not — the Petition would be denied in the alternative because Respondent has failed to furnish the evidentiary foundation necessary for required findings on the reasonableness of the requested fee award.

North Carolina Courts have long held that, before awarding attorneys' fees under any statutory authorization, the Court must make findings of fact as to: the time and labor expended; the skill required to perform the services rendered; the customary fee for like work; and the experience and ability of the attorney(s). *N.C. Department of Corrections v. Myers*, 120 N.C. App. 437, 442, 462 S.E.2d 824, 828 (1995); *Early v. Dep't of Soc. Svcs.*, 193 N.C. App. 334, 347–48, 667 S.E.2d 512, 522–23 (2008). These findings are mandatory prerequisites to any fee award, not mere formalities. *McKinnon v. CV Industries*, 228 N.C. App. 190, 200, 745 S.E.2d 343, 351 (2013). Additionally, courts may not award compensation for hours that are "excessive, redundant, or otherwise unnecessary to the litigation of the claims." *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983).

The materials submitted in support of the Petition do not permit the undersigned to make these findings. Respondent's supporting documentation consists solely of a summary table listing the names of timekeepers, their titles, hours worked, and billing rates, resulting in a total fee request of \$192,999.06. The Petition contains no itemized billing records describing specific tasks performed, no fee agreement or engagement letter between Respondent and its counsel, and no breakdown by which one could distinguish necessary work from work that was excessive or redundant. The supporting affidavit states, in conclusory terms, that the fees are "fair, reasonable, and necessary" without providing the task-specific, experience-specific, and market-specific analysis that controlling authority requires. Such a submission does not permit the Commission, or any reviewing court, to make the granular findings that NC law demands.

The inadequacy of the evidentiary record is compounded by the pronounced disparity between the fees sought and the penalty at issue. Respondent contested a single remaining citation item carrying a proposed penalty of \$2,400.00. The Petition seeks \$192,999.06 in fees, approximately eighty times the contested

penalty amount. While proportionality is not itself a statutory requirement, the stark imbalance between the amount at stake and the fees claimed makes a task-by-task assessment of necessity and reasonableness all the more essential. Without itemized billing records it is impossible to assess whether specific expenditures of time and labor were warranted by the complexity and stakes of the matter. Without such an assessment, no fee award can be properly calculated.

Respondent has offered to submit additional billing records in camera upon the Commission's request. This offer confirms that adequate documentation exists but has not been placed in the record. The offer also confirms that Respondent was on notice, at least via the Complainant's Objection and Response to its Petition, that such documentation was required by our appellate case law. Respondent moved the court to allow a Reply brief, citing new arguments raised by the Complainant in its response, but then failed to fully respond to those arguments. The burden of establishing the reasonableness of the requested fees rests with Respondent, not with the Commission to request the evidence needed to satisfy that burden. *N.C. Alliance for Transportation Reform, Inc. v. U. S. Dep't of Transp.*, 168 F. Supp. 2d 569 (M.D.N.C. 2001). Having failed to submit documentation sufficient to support the required findings, the Petition fails on this alternative ground.

IV. Further Alternative Grounds For Denying The Petition Would Be That Special Circumstances Exist That Render A Fee Award Unjust Under N.C. Gen. Stat. § 6-19.1(a)(2).

Even if the Commission were to conclude that § 6-19.1 applies to these proceedings and that Complainant lacked substantial justification — holdings which are expressly declined — the Petition would be independently denied because special circumstances exist rendering a fee award unjust pursuant to N.C. Gen. Stat. § 6-19.1(a)(2).

Respondent contends no special circumstances are present because courts have found them only in cases involving novel legal issues or a prevailing party's unclean hands, neither of which is present here. Respondent relies on *N.C. Alliance for Transportation Reform, Inc. v. U.S. Dep't of Transp.*, 151 F. Supp. 2d 661, 699 (M.D.N.C. 2001), for the proposition that special circumstances require one of those two bases. However, North Carolina courts have not adopted this rigid categorical two-condition limitation on what constitutes "special circumstances" under this statute. The *N.C. Alliance* Court applied the federal Equal Access to Justice Act, not N.C. Gen. Stat. § 6-19.1. The statutory inquiry as to whether an award would be "unjust" is an equitable, fact-specific inquiry. N.C. Gen. Stat. § 6-19.1(a)(2).

First, NCDOL is statutorily compelled to issue citations whenever it has reasonable grounds to believe a violation occurred, and has no discretion to ignore a formal employee complaint. N.C. Gen. Stat. § 95-137(a) provides that when the

Commissioner or authorized representative has "reasonable grounds to believe that an employer has not fulfilled its duties," the Commissioner shall issue a citation with reasonable promptness. As explained *Supra*, this inspection was initiated in direct response to a formal complaint from a supervisor who had suffered a documented burn injury from the equipment that was the subject of the recommended citation. Imposing attorneys' fees on an agency performing a non-discretionary regulatory function mandated by the Legislature would perversely penalize compliance with a statutory duty. The purpose of § 6-19.1 is "to curb unwarranted, ill-supported suits initiated by State agencies." *Winkler*, 374 N.C. at 735, 843 S.E.2d at 213. An administrative action initiated in direct compliance with a legislative mandate and in response to a documented employee injury is not "unwarranted."

Second, the application of § 6-19.1 to NCOSHRC proceedings is a matter of first impression before this Commission, and the novel legal question of whether the statute applies to these proceedings at all constitutes a special circumstance of the precise type recognized in the case law. Both parties acknowledged that this Petition presents issues of first impression; Respondent's own counsel represented that "the Petition likely presents an issue of first impression before the Commission" and that "the Commission would benefit from additional briefing." Courts applying the special circumstances framework have recognized that an agency confronting genuinely unsettled law, including unsettled questions about the very applicability of the fee-shifting statute invoked against it, cannot fairly be said to have acted in a manner making a fee award just. There is no controlling North Carolina precedent governing the application of § 6-19.1 to NCOSHRC proceedings. Awarding fees against the Commissioner of Labor in the first case to squarely present this question would be unjust.

Based upon the foregoing, and in the further alternative, the Petition would also be denied because special circumstances exist making a fee award unjust.

Finally, Respondent contends that Complainant's withdrawal of Citation Two constitutes an independent basis for awarding fees. First, the previously explained holding based on the statutory interpretation of N.C. Gen. Stat. § 6-19.1 governs disposition of Respondent's request for fees with respect to Citation Two. Second, N.C. Gen. Stat. § 8C-1, Rule 408 provides that evidence of compromise is not admissible to prove liability for, or invalidity of, a claim, or the amount claimed. Therefore, Complainant's withdrawal of the citation cannot be used to argue that the Complainant acted without substantial justification. Commission Rule .0701(a) states that settlement is encouraged at any stage of the proceedings. In addition, the lack of documentation in the record which prevents the Court from making required findings as to the reasonableness of the requested fee is also applicable to the Respondent's request regarding Citation Two.

For the foregoing reasons, it is hereby **ORDERED, ADJUDGED AND DECREED** that Respondent Mount Olive Pickle Company, Inc.'s Petition for Attorneys' Fees and Expenses is **DENIED** in its entirety.

This the __16th__ day of March 2026.

Mary-Ann Leon

Mary-Ann Leon
Hearing Examiner
North Carolina Occupational Safety and
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have this date served a copy of the foregoing FINAL ORDER ON PETITION FOR ATTORNEY'S FEES Upon:

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THIS THE 16th DAY OF March 2026.

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