

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
South Carolina Workers' Compensation)
Commission,)
Plaintiff)
v.)
WestPoint Home, LLC.,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

DOCKET NO. 2014-CP-40-02496

ORDER

RECEIVED

Oct 23 2023

SC Court of Appeals

This matter comes before the Court on a motion for summary judgment filed on April 1, 2015 by the South Carolina Workers' Compensation Commission (the "Commission") on the first stage of this bifurcated case. A hearing was conducted on November 23, 2015. Present at the hearing were Parkin Hunter, Esq. and Jared Libet, Esq. on behalf of the Commission and Todd Carroll, Esq. and Herbert Beigel, Esq. on behalf of WestPoint Home, LLC. ("WestPoint" or "Defendant").

PROCEDURAL BACKGROUND

The Commission filed its Complaint on April 17, 2014, pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 through § 15-53-140 and Rule 57, SCRCP. The Complaint was filed in response to ongoing requests made to the Commission by WestPoint for certain records ("Records") of WestPoint Stevens, Inc. ("WPS"). WestPoint filed its Answer and Counterclaim on May 22, 2014, wherein WestPoint asked this Court to give it access to the following which constitute the Records at issue:

- (1) the last five years of loss runs for open claims;
- (2) the 2011 actuarial report undertaken for the State;
- (3) the developed discounted loss reserves and confidence level projections for the WPS component of the 2011 actuarial report; and
- (4) an accounting of the use of the \$1,800,000 and any balance remaining on a letter of credit posted by WPS as a self-insurer under the Workers' Compensation Laws of South Carolina.

A Consent Scheduling Order filed on December 17, 2014 (the "Scheduling Order"). In compliance with the Scheduling Order, all discovery with regard to the first issue below has been timely completed and the Commission hereby is timely filing this Motion. As set forth in the Scheduling Order, the two key issues in this matter are: (1) Whether WestPoint is entitled to the

Records and (2) Whether WestPoint is entitled to recover certain monies that are currently in the custody of the State of South Carolina.

The parties agreed to bifurcate the issues; first, to resolve the issue of WestPoint's entitlement to the Records and, then to determine any issue relating to money. At this point in this litigation, the dispute is a purely legal issue regarding whether WestPoint is entitled under South Carolina law to receive the Records. If WestPoint is entitled to the Records, then this case will move to the second stage after the parties engage in further discovery to determine the actuarial and compensation issues in this case. The Commission, in proceedings before this Court, states that there is no 2011 actuarial report. Thus, the records requested in items 2 and 3 are moot. WestPoint is seeking information from the Commission to enable it to determine whether any portion of the \$1.8 million ("1.8M") described hereafter and posted as security for worker compensation claims should be returned based upon its claim that any residual funds are an asset of WPS. The question of whether any money is refundable or whether substitute security for any potential claims may be posted would be determined in Stage 2.

This Order addresses the Records and WestPoint access to those records. After hearing the arguments and reviewing the files, legal memoranda, and exhibits, summary judgment is granted in favor of the Commission denying WestPoint access to the records (as currently requested). It is premature to determine any issues relating to Stage 2.

FACTUAL BACKGROUND

In 1998, several years before filing for bankruptcy protection, WPS entered into an agreement with the Commission under which WPS agreed to be a self-insured business with respect to workers' compensation claims by posting a letter of credit in the amount of \$1.4 million. See Memorandum of Understanding. NationsBank, N.A. (now known as Bank of America) issued the letter of credit. See Standby Letter of Credit. In August 2003 approximately two months after WPS commenced bankruptcy proceedings, the Commission directed WPS to increase its credit amount by \$400,000, resulting in an amended letter of credit for \$1.8 million. See Amendment to Standby Letter of Credit.

Because Bank of America was responsible for this \$1.8M, among other obligations, in the event of a default by WPS, and because WPS was already in bankruptcy proceedings, the Bank sought security for this letter of credit as part of the bankruptcy sale. Accordingly, on

August 8, 2005, WPH, WPS, and Bank of America entered into a Cash Collateral Control Letter Agreement.

Through that agreement, WPH agreed to deposit cash into an account with Bank of America to be used to cover certain of WPS's obligations, including its letter of credit with the Commission. In so doing, the parties expressly acknowledged that WPH "has assumed the Obligations from Borrowers, and agrees that it shall be liable to Bank of America for all of the Obligations." See Cash Collateral Control Letter Agreement at 1. Shortly thereafter, the Commission drew the entire \$1.8 million of WPH's cash collateral. Workers' Compensation Commission Reply to Counterclaim ¶32.

In February 2013, WPH's General Counsel and Corporate Secretary wrote to the Commission to request information associated with the Commission's use of the \$1.8M it drew, including an accounting of how much had been disbursed and actuarial reports that would project how much of those monies should remain in reserves. Letter from Yevgeny Funder to W.C. Smith (Feb. 22, 2013).

The Commission responded by refusing to provide any of the requested information, taking the position that only WPS could access the requested information. Letter from J. Keith Roberts to Yevgeny Funder (Sept. 10, 2013). WPH wrote the Commission a second letter, this time providing additional background and materials. Letter from Yevgeny Funder to J. Keith Roberts (Oct. 15, 2013). The agency again refused to disclose any materials or information. Letter from J. Keith Roberts to Yevgeny Funder (Nov. 19, 2013).

WPS was self-insured under the South Carolina Workers' Compensation Act (the "Act"). As a self-insurer, WPS provided irrevocable letters of credit issued by Bank of America as security for its obligations to cover claims for employee injuries compensable under the Act. On or about June 1, 2003, WPS and certain affiliates filed a Chapter 11 bankruptcy proceeding in the Southern District of New York: In re WestPoint Stevens Inc., et al., Chapter 11 Case No. 03-13532 (RDD). On or about June 23, 2005, WPS and associated entities entered into an Asset Purchase Agreement wherein Textile Co., Inc., WestPoint's predecessor, purchased the enumerated assets of WPS and its affiliated entities. Ultimately, these assets became the property of WestPoint.

As part of the Asset Purchase Agreement, WestPoint cash collateralized all outstanding letters of credit, including those related to workers' compensation. By agreement, WestPoint

posted a \$1.8M irrevocable letter of credit with Bank of America listing the Commission as beneficiary. After approval of the bankruptcy plan by the court and subsequent communication from WestPoint confirming that WestPoint would not be responsible for any future claims, the Commission drew the entire amount of the letter of credit on August 17, 2005, to secure any claims and potential claims for workers' compensation. The money was transferred to the South Carolina State Treasurer.

WestPoint notified the Commission that it would not be responsible for any workers' compensation claims arising from any employment related to WPS and that it had purchased appropriate insurance to cover any worker employed by WestPoint effective with the transition. Thus, according to WestPoint, it had no liability or responsibility for any claims arising out of a person's employment with WPS. This includes any claims for occupational illnesses or diseases suffered by WPS employees that manifest at a later point. WestPoint bases its claim of entitlement to the Records, not as an employer seeking the confidential records of its employees, to which it would be entitled under South Carolina law, but as a successor in interest as an asset purchaser of WPS having disclaimed obligations to pay future claims.

STANDARD OF REVIEW

To prevail on a motion for summary judgment, the moving party must show that there are no genuine issues of material fact and that it is, therefore, entitled to summary judgment as a matter of law. Rule 56(c), SCRCF. Thereafter, the non-moving party may not rely simply on allegations or its own pleadings, but must instead identify specific facts that demonstrate that a genuine issue remains for trial. *Id.* Rule 56(e). Courts agree that “[t]he purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder.” *George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001). “Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” *Sides v. Greenville Hosp. System*, 362 S.C. 250, 254, 607 S.E.2d 362, 364 (S.C. App. 2004) citing *Lanham v. Blue Cross & Blue Shield of S.C., Inc.*, 349 S.C. 356, 361, 563 S.E.2d 331, 333 (2002).

DISCUSSION

This Court agrees that access to the information WestPoint seeks at this point is prohibited by S.C. Code Ann. § 42-19-40. Section 42-19-10 provides:

The records of the commission, in so far as they refer to accidents, injuries and settlements, shall not be open to the public, but only to parties satisfying the commission of their interest in such records and of the right to inspect them.

This section prohibits access by the public to records of the Commission "in so far as they refer to accidents, injuries and settlements." *Id.* The statute allows access "only to parties satisfying the commission of their interest in such records and of the right to inspect them." *Id.* The information sought by WestPoint on loss runs for all open claims of WPS fall within this category. Under the statute, the term "parties" has been interpreted to allow only employers and employees to obtain such information. *Blue Cross and Blue Shield v. South Carolina Indus. Commission*, 74 S.C. 204, 262 S.E.2d 35 (1980). "Nowhere is the Act is there a provision to allow any party, other than the employee and the employer to participate, except in the case of death or direct involvement of the employer's Workmen's Compensation carrier." *Id.*

WestPoint does not fit this narrow definition of a "party" to the workers' compensation claims covered by WPS. On August 15, 2005, WPS informed Mr. W.C. Smith, III, Director, Self-Insurance, by letter from Lester D. Sears, Responsible Officer, dated August 15, 2005, of the bankruptcies filed on June 1, 2003, and:

Please be advised that pursuant to the Sale Order and the APA [Asset Purchase Agreement], **workers' compensation liabilities asserted against the Debtors were not liabilities assumed by the Purchaser. Therefore, no further payments will be made with respect to workers' compensation claims** asserted against WestPoint Stevens Inc. (emphasis added).

WestPoint was not the employer of these employees at the time they worked for WPS and, importantly, WestPoint has specifically denied that an employee of WPS could now assert a claim against WestPoint for injury or occupational illness suffered while employed by WPS. Since WestPoint is not a "party" to any claim asserted by an employee against WPS, under the precedent set by *Blue Cross*, it cannot be entitled to records excluded from the public by S.C. Code Ann. § 42-19-40.

Additionally, WestPoint is not the successor corporation to WPS. While WestPoint may have purchased assets, including the employee files of WPS, that information does not make WestPoint a successor to WPS under the Act, especially in light of WestPoint's denial of any liability arising from employees' claims against WPS. The Asset Purchase Agreement and the

Bankruptcy Court's Order appear to support WestPoint's position that it is not liable for any such claims; and therefore would not be entitled to review records of the Commission. The personnel files of the WPS employees that WestPoint obtained through the asset purchase agreement would not contain the same type of information as the records of the Commission relating to specific injuries, accidents, and claims of those employees who pursued any workers compensation benefits. The Commission informed WestPoint, during this proceeding, that there are no claims pending from former WPS employees that would affect the money deposited by WPH in the letter of credit.¹

It is clear from the Asset Purchase Agreement dated June 23, 2005 (with the exclusion of capital stock and equity interests) that WestPoint is not the corporate successor and did not step into the shoes of WPS. The records show that WPS was dissolved on May 15, 2006. There was no corporate successor interest transferred from WPS to WestPoint. Furthermore, in the Memorandum of Understanding ("MOU") between WPS and the Commission, the terms of the draws under the Letter of Credit state that the Commission may "draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expense which are the responsibility of the Employer [WPS]." Memorandum of Understanding between WestPoint Stevens, Inc. and the Commission, Paragraph 4. WestPoint has denied responsibility for the claims and is not the successor by merger, and therefore is estopped from claiming that it is the employer in this context. WestPoint, through its acts and representations and the nature of the asset sale, waived any claim it may have had, if any, to any access to the Records. The MOU defines WPS as the employer and further states in Paragraph 7 that "'Employer' means the following entities which have been approved to self-insure in South Carolina (parent and subsidiaries)" and then lists WPS. There is no reference to successors in interest of any type. WestPoint, the purchaser of an asset, having disclaimed any responsibility cannot now seek access to confidential records to try to reduce funds provided by a self-insurer to protect workers with regard to health claims.²

WestPoint argues that the decision of the Maine Department of Professional and Financial Regulation, Bureau of Insurance supports its position that it has standing to the

¹ It is unclear to this Court whether "no pending claims" mean no claims at all, no open claims pending disposition or no claims since August 2005 when the Commission drew the proceeds under the Letter of Credit.

² WestPoint seeks to explore alternative methods of providing security for any potential claims other than the \$1.8M held by the Commission. It has failed to demonstrate that it has reviewed any of the WPS personnel files it received to identify former WPS employees now employed with WestPoint who may be potential claimants.

information requested. The Bureau of Insurance issued a Decision and Order on a request for reconsideration by WestPoint and WPS that terminated their workers' compensation self-insurance authority based upon the cessation of business operations, administrative insolvency, among other things. WPS was a self-insurer to provide workers' compensation coverage in the State of Maine through its self-insurance program. That authority was terminated by Maine upon the bankruptcy of WPS. As in this case, Maine was notified that WestPoint had secured commercial workers' compensation insurance and also that worker compensation liabilities against WPS were not being assumed by WestPoint. WPS workers' compensation liabilities were secured by a surety bond issued in favor of the Treasurer of the State of Maine in the amount of \$1.6M. The Maine Workers' Compensation Board demanded payment of the entire sum to the Treasurer of Maine, received in August 2005, and held in a trust account to be used to "discharge any and all legitimate, outstanding workers' compensation claims incurred during the periods of WestPoint's self-insurance authority." Unlike South Carolina, Maine contracted with a third party administrator to "administer, pay and settle outstanding claims related to [WPS's] self-insured periods". The moneys would be held for a fixed period of time that could be extended. At the end of the applicable period any remaining fund balances could be given to "persons with a legitimate reversionary interest in the funds or revert to the general fund as unclaimed property".

The question arose whether WestPoint had standing to claim a "possible 'return of excess security'" under the bond. The Bureau of Insurance analyzed the applicable documents including the WPS termination plan, the asset purchase agreement, and the bond. The Bureau of Insurance stated "it remains an open question what interests in the bond proceeds the WPS estate did or did not hold at the time of the asset sale." Further, it ruled that "any determination ... of rights to possible 'excess security' in the form of remaining fund balances ... shall be by adjudication conducted at some undetermined future point in time following the period of repose as defined above." Thus, the Bureau of Insurance specifically stated that any determination of rights to funds would be determined at a later date.

WestPoint may have standing to receive any residual funds from the letter of credit proceeds. At this point however, any rights to "excess security" are premature. As set forth by the Commission in this case, the two year statute of limitations on claims relating to occupational illnesses or diseases begins to run when the employee receives notice of a definitive diagnosis of

an occupational disease. S.C. Code Ann. § 42-15-40. This statute acts as the period of repose until the time period for the filing of any such claim has been extinguished, WestPoint is not entitled to any "excess security". WestPoint may have an interest, to be determined, at a later time. This Court understands that WestPoint is not seeking access to any funds at this point.

WestPoint may have an interest in obtaining some information from the Commission to explore an alternative method to secure payment for any future claims filed by WPS employees. West Point may be able to establish, to the satisfaction of this Court, of its interest to access or inspect certain records. However, based upon the information as requested by WestPoint, it has not established its right to inspect the records under Section 42-19-40.³

ORDER

Based upon the foregoing, **IT IS ORDERED** that the Commission's Motion for Summary Judgment is **GRANTED** and WestPoint's request to examine the non-public records of the Commission is currently **DENIED**.

AND IT IS SO ORDERED.

³ Despite numerous conference calls with the attorneys on behalf of the parties, there have been no discussions with the Court about alternative methods to reach the objectives sought by the parties. This Court remains open to any such discussions.



Richland Common Pleas

Case Caption: South Carolina Workers Compensation vs Westpoint Home LLC

Case Number: 2014CP4002496

Type: Order/Summary Judgment

IT IS SO ORDERED!

s/ Alison Renee Lee