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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Opinion No. 1216 (S.C. Ct of Appeals filed September 17, 2025)
Petition for Rehearing denied November 21, 2025

South Carolina Workers' Compensation Commission, ………………..Petitioner,

v.

WestPoint Home, LLC, ……………………………………………………..Respondent.

PETITION FOR WRIT OF CERTIORARI

MONTGOMERY WILLARD, LLC
Michael H. Montgomery
S.C. Bar No. 4034
1002 Calhoun Street
Columbia, SC 29201
803-779-3500
mhm@montgomerywillard.com
Counsel for Petitioner

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
J. Keith Roberts
S.C. Bar No. 100735
1333 Main Street, Suite 500
Columbia, SC 29201
keroberts@wcc.sc.gov
Counsel for Petitioner

Other Counsel of Record:
M. Todd Carroll
Womble Bond Dickinson, LLP
1221 Main Street, Suite 1600
Columbia, South Carolina
Attorney for Respondent

December 22, 2025

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INTRODUCTION

The Court of Appeals interpreted § 42-11-70 in a manner inconsistent with the Supreme Court's well-established case law laying out the rules of statutory construction. The Court of Appeals further decided the novel question of law whether § 42-11-70 is a statute of repose for occupational illness claimants, even though the case under review did not involve a dispute between an injured worker and their employer or the compensability of an occupational illness claim. This case involved a dispute between a private business and a government agency over money. The Court of Appeals did not need to decide whether § 42-11-70 is a statute of repose, and its decision affects the substantial rights of injured workers and employers who were not parties to this claim. The Court of Appeals rewrote the South Carolina Workers' Compensation Act and invalidated significant provisions of the Occupational Disease Act by finding that a coverage statute was a statute of repose. The Court of Appeals' decision changes the entire compensation scheme unnecessarily to resolve a dispute ancillary to an employee's right to compensation. It makes it all but impossible for an individual exposed to asbestos who contracts a respiratory cancer or disease related to that exposure to be able to initiate a valid claim, as there is a recognized latency period of decades between contracting one of these pulmonary diseases and the employee becoming disabled by or being diagnosed with the disease. The error is particularly egregious because it occurred in a case that did not involve an occupational injury claim but was brought by a successor to a self-insured employer seeking to recover funds held to protect employees who would have no other source of recovery were those funds released.

The gravamen of the action was Westpoint Home's desire to recover funds paid by NationsBank (now Bank of America) to the South Carolina Workers' Compensation Commission under a letter of credit negotiated in 2005. The action was filed in 2014. The trial court correctly

found that the Commission reasonably negotiated the letter of credit and, most importantly, that there were potential claims to be protected by holding the funds. The Court of Appeals' decision not only adversely affects WestPoint Stevens' employees, but also every employee in South Carolina who has an undiagnosed occupational illness that would have been compensable under the Workers' Compensation Act. The South Carolina Workers' Compensation Commission respectfully asks the Supreme Court to issue a Writ of Certiorari in this case, review the opinion below, and correct the abject errors in the Court of Appeals' decision.

QUESTIONS PRESENTED

The Court of Appeals' decision creates novel questions in South Carolina and misapplies prior precedent so as to make this matter proper for review under Rule 242(b)(1), SCACR. These include:

1. Does the express language enacted by the General Assembly in S.C. Code Ann. § 42-11-70 constitute a statute of response cutting off the ability of a worker exposed to asbestos fibers to file a claim for Compensation benefits two years after he or she leaves employment with the employer where he or she was exposed to the fibers?
2. Did the Court of Appeals misapply precedent from both the Supreme Court and the Workers' Compensation Commission in reaching its decision?
3. Is it appropriate for a Court to use a transitive analysis, substituting words within a statute with other words where the Statute is otherwise unambiguous to ascertain the legislature's intent?
4. Did the Court of Appeals err in determining that there was a question as to whether interest could be charged against the State under the general interest statute?
5. Did the Court of Appeals err in determining that a self-insured employer was not

required to provide funding to protect workers who may need treatment for a latent occupational illness?

STATEMENT OF THE CASE

WestPoint Home, LLC ("WestPoint Home", "Respondent") is the successor of an entity that purchased the assets, but not the liabilities, of WestPoint Stevens, Inc. ("WestPoint Stevens") in a bankruptcy sale in 2005. Westpoint Stevens, Inc., and Westpoint Home, LLC, are not the same entity. WestPoint Stevens was created by merger in 1988 when WestPoint Pepperell acquired J.P. Stevens's Abbeville, Calhoun Falls, Clemson, and Seneca plants. At that time, WestPoint Stevens became a self-insured employer under the Workers' Compensation Act. Self-insured employers are required to post security with the South Carolina Workers' Compensation Commission ("Commission") to fulfill the statutory requirement to maintain coverage for their employees. WestPoint Stevens used asbestos fibers in some of its processes. In 2003, WestPoint Stevens filed for Bankruptcy protection under Chapter 11 of the United States Bankruptcy Code. Shortly thereafter, it amended its existing letter of credit to 1.8 million dollars to continue operating as a self-insured employer in South Carolina. In 2005, after it was unable to confirm a reorganization plan, it liquidated its assets. A predecessor of WestPoint Home, LLC, an entity owned and controlled by American Real Estate Holding Limited Partnership, purchased some of those assets, including the Calhoun Falls, Clemson, and Seneca plants. WestPoint Home also collateralized West Point Stevens' various existing letters of credit, which included the 1.8-million-dollar letter of credit provided by WestPoint Stevens to the South Carolina Workers' Compensation Commission to cover its self-insured workers' compensation liability for its South Carolina employees.

On August 15, 2005, WestPoint Stevens notified the commission that "workers'

compensation liabilities asserted against WestPoint Stevens were not liabilities assumed by the Purchaser" and that "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc." Upon receipt of this notification, the Commission, following its regular procedure, drew down the security and deposited it with the State Treasurer.

More than seven years after the Commission drew down the security, WestPoint Home first inquired about the funds that had been drawn down. Thereafter, a dispute arose as to whether WestPoint Home was a proper successor to obtain information about or to have any interest in the funds.

After several rounds of communication with WestPoint Home, the Commission filed a declaratory judgment action on April 17, 2014, regarding its obligations to provide WestPoint Home with the requested information. West Point Home counterclaimed on May 22, 2014, seeking an accounting and an order that it was entitled to receive all monies retained by the State. It thereafter amended its Counterclaim to seek interest on the funds held by the State Treasurer for WestPoint Stevens' former employees' potential claims. Ultimately, the parties reached an agreement under which WestPoint Home was given access to certain information, and additional information was obtained from a third-party contractor of the Commission. Thereafter, the court conducted a bench trial regarding the disposition of the funds. The Trial Court, by Order of September 25, 2023, held that the Commission properly negotiated the letter of credit and that it was proper for the Commission to retain the funds so long as additional claims by former employees exposed to asbestos were actuarially possible. WestPoint Home did not file a Rule 59(e), SCRCP motion. It filed its appeal of the Circuit Court's Order on October 23, 2023.

West Point appealed Judge Lee's determination that the funds were negotiated correctly

and help to protect injured workers. A three-member panel of the court of appeals reversed and remanded, finding *inter alia*, that S.C. Code Ann. § 42-11-70 was a statue of repose barring all occupational injury claims before the statute of limitations even began to run; that the Commission improperly retained funds in its earnest attempt to protect workers with serious occupational medical conditions which had been contracted, but were not yet disabling, and that the court should consider an award of prejudgment interest, which the Commission asserts is barred by sovereign immunity except in limited circumstances that are not applicable here.

The Petition for Rehearing *en banc* was denied on November 21, 2025.

DISEASES ARISING FROM EXPOSURE TO ASBESTOS FIBERS

Mesothelioma is a pulmonary disease caused by inhaling or ingesting microscopic asbestos fibers. Generally, it takes 10 to 60 years from the time of asbestos exposure until symptoms appear or mesothelioma is diagnosed. Asbestosis is a non-cancerous pulmonary disease that, like mesothelioma, only becomes evident some considerable time after a worker exposed to asbestos has contracted the disease. This time is called the latency period. Authorities have recognized that occupational illnesses in general and asbestos-related diseases, in particular, have long latency periods. "The most obvious injustice in the requirement that disability occur within a specified time of exposure occurs in the long-latency cases. In some such cases including, but by no means confined to asbestos-related diseases, disability may not manifest itself until twenty or thirty years after exposure." Vol. IV Lex K. Larson, Larson's Workers' Compensation § 53.03 (Matthew Bender, Rev. Ed.). Larson further notes in South Carolina a "claim must be filed within two years of diagnosis [§ 42-15-40]. But the disease must also be "contracted" within a year of exposure, or two years if pulmonary [§ 42-11-70]. *Id.* at § 53.04[2]. Larson understood and correctly interpreted the requirements to file an occupational illness claim in South Carolina that were misunderstood

by the Court of Appeals: you must contract the disease within two years (for a pulmonary disease), and the employee must file a claim within two years of diagnosis. This interpretation works with our general requirement of notice to commence a statute of limitations. The additional coverage requirement addresses the need to demonstrate that the disease resulted from occupational exposure; hence, the requirement that medical evidence show it was contracted within the two years. That interpretation makes sense with the Code, comports with Workers' Compensation law in other states, and is consistent with South Carolina Tort Law. Even the Court of Appeals acknowledged that the uncontradicted testimony in the record was that there is a 96.8 percent chance that a twenty-year-old working for WestPoint Stevens who was exposed to asbestos in 2005 would be alive and undiagnosed and that the "lack of claims in recent years" had minuscule bearing on the likelihood of further claims. (Appx. 000090). The record before the Court of Appeals clearly showed that there was a likelihood that a Westpoint Stevens worker exposed before bankruptcy to asbestos fibers had contracted an occupational disease which would be undiagnosed for a considerable period of time. That is why the Circuit Court properly found that the funds were properly drawn down and noted Westpoint's laches for failing to contact the Commission regarding this issue for several years, (Appx. 000131) as well as finding that the Commission properly held the funds until the possibility of future claims is no longer actuarially possible. A single claim could exhaust all funds held, and if no funds are available, there is no source of compensation for the ill employee.

The court's interpretation recklessly undermines all of those practical and well-established precedents. This court should ultimately reverse the Court of Appeals erroneous decision.

ARGUMENT

I. THE COURT OF APPEALS DID NOT FOLLOW THIS COURT'S PRECEDENTS WHEN IT REINTERPRETED THE MEANING OF S.C. CODE § 42-11-70. THE OPINION CONFLICTS WITH THIS COURT'S DECISIONS

The Court of Appeals grievously misinterpreted the statutory scheme. An analysis of the decisions it cites and relied on reveals that those cases do not support the Court of Appeals' decision. A detailed review of the authority cited to support the "statute of repose" assertion reveals that the cited authority does not support the conclusions that the court derived from those decisions. Neither *Vespers v. Springs Mills, Inc.,* 276 S.C. 94 (1981), nor *Glenn v. Columbia Silica Sand Co*., 236 S.C. 13 (1960), stands for the proposition that § 42-11-70 is a statute of repose. In *Vespers,* Justice Ness reversed the denial of a jurisdictional claim and held that the employee was entitled to compensation. Notably, the employee was disabled by byssinosis some nine months after the employer hired her. She worked for 18 years in the textile industry for other employers. The court's decision in *Vespers* was in line with the statutory scheme that the Court of Appeals abrogated in this case.

Glenn did not deal with the claim itself but rather with determining which carrier should pay it. The court recognized that "contracted" and "disabled" were different concepts. It held "Section 72-253 declares the event to be treated 'as an injury by accident' to be **not the contraction of the occupational disease, but 'disablement or death resulting from it**'". *Glenn, supra* at 236 S.C. 21. [Emphasis Added]. This finding illustrates the Court of Appeals' error in equating contracting the disease with 'death or disablement' resulting from the disease. These reported cases, as well as those cited by the Court of Appeals' opinion at footnote 4, do not treat contracted and disabled as synonyms for the purpose of the Act. The Court of Appeals' decision suggests that five of the Commission's decisions support its construction of § 42-11-70, and two do not.

However, a closer look at these prior decisions shows they do not support the court's conclusion that § 42-11-70 is a statute of repose that bars all occupational illness claims two years after the last date of injurious exposure and/or last date of employment, except claims for ionizing radiation injury brought under Chapter 13 of Title 42, S.C. Code of Laws. Instead, they support the Commission's position that § 42-11-70 is a coverage statute that articulates an element or prerequisite that must be met in order for a disease to become a compensable occupational illness, that the condition must have been "contracted" within one or two years of the last date of injurious exposure or employment. None holds that a claimant must become "dead or disabled" within one or two years from the last date of injurious exposure or employment to recover benefits under the Act. In *Rumsey v. Daniel Island Int'l*, 2003 WL 22380606, the Commission cited § 42-11-70 to support its finding that claimant did not prove his last injurious exposure to asbestos dust was during his employment with Defendants, and cited to *Vespers v. Springs Mills*, 276 S.C. 94, 275 S.E.2d 882 (1981), *Id*. at p. 7. The decision concluded that his disease had not been "contracted" within the time period under § 42-11-70. The Commission did not hold that his claim was barred because he had not been "disabled" within two years of his last date of injurious exposure with Defendants. The Commission noted that the term "contracted" for purposes of § 42-11-70 had never been definitively defined. The Commission noted that *Glenn* and *Vespers* defined "contracted" only in dicta and for the purposes of interpreting other provisions of the Workers' Compensation Act. *Id* at p. 8. The Commission noted *that Glenn referenced the predecessor to § 42-11-70 while determining when* compensability began for purposes of filing a claim under the predecessor to § 42-15-40. The Commission acknowledged "contracted" could not mean "last exposure" or "definitively diagnosed". The opinion illustrates that the Commission treated "last exposure," "contracted," "definitively diagnosed," and "disability" as distinct terms with separate

meanings. *See id at* p. 9-10. The Commission held "'contracted' must mean, at the very least, that some event or occurrence demonstrating the existence of an occupational disease must take place within one to two years of a claimant's last exposure to the hazard which caused the disease." *Id* at p. 9. The Commission never held that the claimant must show some event or occurrence demonstrating "disablement or death" from the occupational disease within one to two years of last exposure.

Rumsey cited *Meyer v. Iowa State Penitentiary,* 476 N.W.2d 48 (Iowa Sup. 1991) as persuasive authority. In *Meyer,* the Iowa Supreme Court interpreted a statute substantively similar to § 42-11-70 and found that it was neither a statute of limitations nor a statute of repose. Instead, it stated conditions that must exist before a right to compensation arises.[1] *Meyer* at 476 N.W.2d 60. The court explained, "[l]ike a statute of limitations the section is grounded in time. Unlike a statute of limitations, however, it has nothing to do with when actions must be brought." *Id.* at 476 N.W.2d 60.

This is consistent with the South Carolina Workers' Compensation Act. The Statute of limitations is codified at § 42-15-40. Section 42-15-40 also contains a statute of repose for repetitive trauma injuries.[2] Noticeably absent from § 42-15-40 is a statute of repose for injuries by accident or occupational illnesses. *Expressio unius est exclusion alterius*.

The court mentions, and the Appellant relies heavily on, both in its brief and oral argument, the premise that the Commission's then-current Executive Director conceded that the agency never needed the entire 1.8-million-dollar deposit in the first place and that the repose period for new

[1] As the Commission has advised the Court, S.C. Code Ann. § 42-11-70 is a Coverage Statute setting out a pre-requisite for an employee to establish a covered claim.

[2] ". . . the right to compensation is barred unless a claim is filed with the commission within two years after the employee knew or should have known that his injury is compensable <u>but no more than seven years after the date of last injurious exposure</u>." S.C. Code Ann. § 42-15-40 (2008 Supp.).

claims closed in 2007. App. 000014. First, the claimed admission regarding the Statute of repose is a legal question, not one for the Executive Director to testify about. Second, a complete reading of the colloquy leading to that conclusion reveals a series of argumentative, leading questions that ended only when Mr. Cannon agreed with the questioner. (App. 000016-00018). It was an error to give any weight to that claimed admission. Notably, the Circuit Court, which had the opportunity to view the testimony and hear the arguments in person, did not. Second, WestPoint Home and the Court of Appeals further clouded the issue by trying to treat occupational injuries sustained due to asbestos exposure as if they were physical injuries like broken limbs, cuts, and burns, which are immediately identifiable, and concluding that, referring to the Commission, you haven't needed the funds drawn down. Mr. Cannon testified thereafter that:

> "Well, we have not, but we have examples of similar businesses that claims have been filed where the authorities were – since the '50s. So, we have to look at the businesses, we have to look at the potential claims coming in to ensure that money is available. If it's not available and a claim is filed 40, 50 years later, then the injured employee has no recourse to pay for their medical benefits or compensation.

(Appx. 00016). Mr. Cannon and the lower court both correctly interpreted the purpose of the Act, which is to provide for the needs of workers, who, in the case of asbestos-related injuries, may be sick shortly after exposure, but will not be diagnosed or disabled for many years thereafter. The Court of Appeals misapprehended the Statute to upend the entire system.

As the court held in *Glenn*, the provisions of the Workers' Compensation Act, including § 42-11-70 and § 42-15-40, must be interpreted conjunctively in order to effectuate the full purpose of the Act. To that end, § 42-11-70 sets forth an affirmative period of time during which compensability must accrue, and § 42-15-40 sets forth a statutory period of limitation on the period of time within which a claim for compensation, which is otherwise compensable under § 42-11-70, must be brought. *Rumsey,* at p. 14. Each of the other cases cited was decided on a basis other

than the theory that "contracted" and "disabled" are synonyms. In *Gibson v. Westinghouse Electric Corp*, 2007 WL 869985, the Commission found that Gibson did not contract his occupational disease within two years from his last date of employment under § 42-11-70. It noted that § 42-11-70 was a part of the burden of proof. The Commission found that Gibson's problems were related to his tobacco use and did not use the term "statute of repose."

In *Truax v. Daniel Construction*, 2009 WL 1433538, Truax sought coverage for asbestos-related occupational illness. He alleged he was exposed between 1969 and 1972 and became disabled in 2006. The Commission neither denied the claim on the grounds of the Statute of limitations nor on the grounds of Statute of repose. Instead, it found no medical evidence supporting the finding that asbestosis was "contracted" within two years of last exposure, and that the claimant had not met the burden of proof required by § 42-11-70. In *Bishop v. Westinghouse Electric Corp., 2007 WL 904837,* the commission did not apply § 42-11-70, as it found that the claimant was totally and permanently disabled as a result of a non-work-related condition.

In *Bethea v. City of Myrtle Beach*, 2019 WL 742840, the Court of Appeals cited a single Commissioner's decision. The single Commissioner found § 42-11-70 precluded a finding of compensability because the medical evidence indicated the claimant likely did not contract lung cancer within two years of his last date of employment. *Id* at 12. As the Commission did in other cases, the single Commissioner did not find that § 42-11-70 was a statute of repose but instead found a failure of proof on coverage due to a lack of medical evidence.

Neither *Rumsey*, *Gibson*, *Truax*, *Bishop*, nor *Bethea* includes a holding that § 42-11-70 "creates a substantive right in those protected to be free from liability after a legislatively determined of time" or rules the "expiration of the time extinguishes not only the legal remedy but also all causes of action, including those which may later accrue as well as those already accrued."

See, e.g., Capco, supra 368 S.C. 137, 142 (2006). Instead, these cases support the Commission's position that § 42-11-70 is a condition precedent that must be met, an element that must be satisfied in order for a disease to be covered by the Act as an occupational illness.

The *Powell v. Yeargin Const. Co.,* 2008 WL 5066354 and *Bowers v. Sea Island Staffing,* 2009 WL 1425599 decisions further illuminate the court's misapprehension of § 42-11-70. In *Powell*, the Commission found this to be a compensable occupational illness claim despite the claimant's last date of employment. Thus, the last possible date of injurious exposure was in 1986, yet the claimant was not "definitively diagnosed" with mesothelioma until 2006. In *Bowers*, the claimant alleged he was exposed to asbestos fibers prior to his retirement in 1994. He was definitively diagnosed in October 2002. Claimant was awarded partial disability under § 42-9-30 and Reg. 67-1101 for loss and or loss of use of each lung and sinus. *Bowers, Id.* at p. 5. The Commission held that § 42-11-70 defines and discusses the time during which an occupational disease must have been contracted. The Commission noted "[a]sbestos-related lung disease often develops 20 years after exposure." *Bowers, Id* at p. 4. *Powell* and *Bowers* illustrate how the statutory scheme is correctly applied, showing that a disease can be contracted within one or two years of the last date of exposure but not definitively diagnosed until many years later. This is why the Commission believes, in good faith, that it needs to retain the security until all reasonable latency periods have passed.

The Court of Appeals misapplied the law in this matter, and the Supreme Court should grant Certiorari and correct the lower court's error.

II. THE COURT OF APPEALS' DECISION IS INCONSISTENT WITH PRIOR CASE LAW CONSTRUING THE ACT IN FAVOR OF COVERAGE.

In *Mauldin v. Dyna-color/ Jackrabbit*, the Supreme Court examined the two-year Statute

of limitations for an injury by accident contained in § 42-15-40 and found that the two-year Statute of limitations did not begin to run until the claimant discovered she had a meniscus tear. *Mauldin v. Dyna-color/ Jackrabbit*, 308 S.C. 18, 416 S.E.2d 639 (1992). The court reached this conclusion by reasoning that the Workers' Compensation Act should be construed in favor of coverage of an injury rather than exclusion. It favorably cited *Santee Portland Cement v. Daniel Int'l Corp.* as follows.

> One policy behind the Statute of limitations is the protection of a defendant from false or fraudulent claims that might be difficult to disprove if not brought until after relevant evidence has been lost or destroyed and witnesses have become unavailable ... It affords defendants an opportunity to gather evidence while facts are still fresh ... This concern must be balanced against a plaintiff's interest in prosecuting an action and pursuing his rights. **Plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed** ... "[S]tatutes of limitation which are susceptible to judicial construction should not be applied mechanically but rather construed in the manner most consistent with both their underlying purposes and the requirements of substantial justice for all parties involved." [Quoting *Gattis v. Chavez,* 413 F.Supp. 33, 39 (D.S.C.1976).]

Mauldin 416 S.E.2d at 640 (Emphasis added).

"Any reasonable doubts as to construction of the Act should be resolved in favor of coverage." *Ost v. Integrated Products, Inc.,* 296 S.C. 241, 371 S.E.2d 796 (1988). The Court of Appeals should have construed § 42-11-70 broadly to cover as many potential occupational illness claims as possible, consistent with the benevolent purposes of the Act. Instead, it significantly narrowed the category of claimants who could bring an occupational illness claim to only those who experience disability or death within one or two years after exposure to the hazard. *See also Peay v. U.S. Silica Co.,* 313 S.C. 91, 93, 437 S.E.2d 64, 66 (1993) ("Workers' compensation laws were intended by the Legislature to relieve workers of the uncertainties of a trial for damages by providing sure, swift recovery for workplace injuries regardless of fault. To give effect to this legislative intent, workers' compensation statutes are construed liberally in favor of coverage. It

follows that any exception to workers' compensation coverage must be narrowly construed.") (Internal citations omitted).

When it determined that § 42-11-70 is a statute of repose, the Court of Appeals undermined the entire scheme of the Workers' Compensation Act. This court described a statute of repose in *Langley v. Pierce*, 313 S.C. 401, 404, 438 S.E.2d 242, 243 (1993) (stating "[a] statute of repose constitutes a substantive definition of rights," while a statute of limitations provides only "a procedural limitation" (citation omitted)). Here, the very premise of the Statute of limitations for occupational disease, which recognizes latent illness and the fact that contracting the illness is not equivalent to dying or being disabled, is thwarted by the court's improper interpretation of the Statute. No language in § 42-11-70 indicates the Legislature intended to substantively allow a self-insured employer (or any other employer) to be free from liability for an occupational disease two years after an employee's exposure ceased. In making that legal determination, the Court of Appeals failed to follow the well-established precedent set by this court.

III. THE COURT ERRONEOUSLY RECONSTRUCTED AN UNAMBIGUOUS STATUTORY SCHEME IN A MATTER THAT NEGATES CLEAR LEGISLATIVE MEANING, WHICH CONFLICTS WITH PRIOR DECISIONS OF THIS COURT.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Yet that is precisely what the Court of Appeals did in this case. It did not find that § 42-11-70 or any of its terms were ambiguous. Instead, it chose to change the Statute by inserting words with clearly

different meanings into its reading of the Statute[3]. The court appears not to have considered that disablement or death has a specific statutory definition. As used in Chapter 11 of the Workers' Compensation Act, "disablement" "means the event of an employee becoming actually incapacitated, partially or totally, because of an occupational disease, from performing his work in the last occupation in which injuriously exposed to the hazards of such disease". S.C. Code Ann. § 42-11-20 (1976, as amended). More generally, the Workers' Compensation Act defines "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment." S.C. Code Ann. § 42-1-120 (1976, as amended). Both statutes focus on an inability to earn wages as the starting point for disability. Neither Statute limits when the condition leading to disablement must be "contracted". The court should not have modified the definition of "disablement" under § 42-11-20 to begin when the illness is "contracted," when the plain language of § 42-11-20 does not warrant modification.

IV. THE COURT'S INTERPRETATION OF SC CODE ANN. § 42-11-70 PRODUCES AN ABSURD RESULT THAT ELIMINATES VIRTUALLY EVERY POSSIBLE CLAIM FOR MESOTHELIOMA AND OTHER RESPIRATORY DISEASES UNDER THE OCCUPATIONAL DISEASE ACT. THE DECISION UPSETS THE "ECONOMIC BALANCE" STRUCK BY THE LEGISLATIVE BODY.

When it decided that S.C. Code Ann. § 42-11-70 is a statute of repose, the Court of Appeals all but eliminated the opportunity for a claimant to recover for this type of occupational injury. Now, a claimant must not only contract but must also become disabled by a disease that is recognized to have a latency period of decades in order to recover medical and disability care for a condition caused by their exposure during employment. Neither the historical treatment of

[3] No statute, dictionary, or thesaurus that we could find holds that contract or contracted is synonymous with death or disability.

asbestos-related illness in the Workers' Compensation Act nor the tort system supports such an interpretation. In so altering the plain language of the statutory scheme to require death or disability rather than merely medical evidence that the disease manifested within two years of exposure, the court has undermined the entire scheme and invalidated Chapter 11 of Title 42 of the South Carolina Code. The result of this decision is that any disease arising out of the course and scope of employment that is peculiar to the occupation in which the employee is engaged must now result in disability within one year after the last exposure or two years if the illness arises out of the inhalation of organic or inorganic dusts. The court has now defined "contracted" as to become disabled or deceased, when the clear definition of contracted is "to become affected with[4]" This invalidates the Statute of limitations in S.C. Code Ann. § 42-15-40 which expressly provides that "**the two-year period does not begin to run until the employee concerned has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.**" [Emphasis added]. In doing so, the court has likely destroyed the protection the Workers' Compensation Act provides to both employers and employees regarding injuries and illnesses from exposure to asbestos fibers. The employees lose medical benefits and compensation from these horrible work-related diseases, and the employer may well be subject to liability outside of Workers' Compensation if the exclusive remedy is non-existent, unavailable, or illusory.

V. THE COMMISSION DOES NOT BENEFIT FROM HOLDING DEFUNCT SELF-INSURED EMPLOYERS' FUNDS. THE ONLY BENEFICIARIES OF THOSE FUNDS ARE THE WORKERS WHO HAVE CONTRACTED OCCUPATIONAL DISEASES AND HAVE NOT BEEN DIAGNOSED.

"A state workers' compensation commission or board is, in the first instance,

[4] Mirriam-Webster defines the transitive verb "contracted" as a. "to bring on oneself especially inadvertently" or b. "to become affected with". This is the basis for the proper interpretation of S.C. Code Ann. § 42-11-70. One must contract the disease within two years in the case of a pulmonary disease, but one does not have a workers' compensation claim until one becomes disabled.

> responsible for effectuating the purposes of the workers' compensation act by administering, enforcing, and construing its provisions in order to secure its humane objectives." 100 C.J.S. *Workers' Compensation* § 706 (2000). "Such commission, board, or bureau is vested with the authority to formulate policies and standards for administering the workers' compensation act."

James v. Anne's, Inc., 390 S.C. 188, 201-02, 701 S.E.2d 730, 737 (2010)

In 2005, the Commission's Self-Insurance Director determined that WestPoint Stevens' declaration that it would not pay further workers' compensation claims posed a hazard to its workers, with both existing and latent claims, and negotiated a letter of credit to secure its obligations. WestPoint Home waited almost eight years before making any inquiry about WestPoint Stevens' funds. Meanwhile, the funds were, according to applicable law, deposited with the office of the State Treasurer, where funds were required to be deposited. The funds have been retained in the Treasurer's accounts pursuant to applicable law, subject to claims that have been paid in the interim. Those funds should remain on deposit to protect those workers who, the record reflects, currently have a more than 98 percent chance of having contracted an asbestos-related occupational injury that may not present to disable or kill them until after 2040. They have this disease now – it simply has not caused them to be diagnosed with it or to suffer death or disability yet, although the record reflects a very high probability that it will. Were this an insured claim, the coverage would always be present. Only this unique circumstance brings the availability of coverage into question.

Notably, this issue coming to light has prompted the Commission to propose a change to its regulation to address the concern that there is no end date for retaining funds in this situation. An Amendment to Reg. 67-1507 is published in the December 2025 State Register. That amendment confirms an administrative process to review situations like this one and provides a

procedure for appeal within the commission.[5]

VI. SOVEREIGN IMMUNITY BARS CLAIMS FOR INTEREST AGAINST THE STATE. IT IS AN ERROR TO FIND OTHERWISE AND REMAND THE MATTER FOR A DETERMINATION.

The Court of Appeals further rejected this court's holdings regarding the entitlement of any party to collect pre- or post-judgment interest against the State. Our courts have repeatedly found that the general interest statute, S.C. Code Ann. § 34-31-20, is not applicable to the State. Neither the Court nor the Appellants have referenced any statute or case that specifically allows the recovery of interest against the State in this circumstance. Here, the Commission does not hold the funds in question; they are deposited in an account within the State Treasurer's office. In its Answer and Counterclaim, WestPoint Home requests "that Defendant be awarded all monies owed and improperly retained by the State, including all pre- and post-judgment interest allowed by South Carolina law, . . ." (Rec 060). The Respondents raised each of these defenses below (See Reply to Counterclaim, Thirteenth, Fourteenth, and Fifteenth Defense (Rec 076).

> Judgments, it is true, are by the law of South Carolina, as well as by Federal legislation, declared to bear interest. Such legislation, however, has no application to the government, and the interest is no part of the amount recovered.

Monarch Mills v. South Carolina Tax Commission, 149 S.C. 219, 146 S.E. 870, 871-72 (1929), overruled by *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985), superseded by Statute, South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-20(b) ("All other immunities applicable to a governmental entity . . . are expressly preserved.") as recognized in *Murphy v. Richland Memorial*

[5] WestPoint Home should have filed a claim with the Commission even under current law*, see e.g., Martin v. Kentucky Individual Self-Insurance Guaranty Fund, et. al.*, 2018 WL 4050539 (unpublished, KY App. 2018) where a bankrupt self-insured employer was required to make a request for the a refund of self-insured security held by the Commission to the Commissioner. "All questions arising under this title, if not settled by agreement of the parties interested therein with the approval of the commission, shall be determined by the commission . . . ." S.C. Code Ann. § 42-3-180 (1976, as amended).

Hospital, 317 S.C. 560, 563, 455 S.E.2d 688, 690 (1995) ("The [Tort Claims] Act first completely restores sovereign immunity. S.C. Code Ann. § 15-78-20(b). The Act then provides specific waivers and limitations on actions against governmental entities.") and *Giannini v. S.C. Department of Transportation*, 378 S.C. 573, 664 S.E.2d 450 (2008) (citing *McCall v. Batson* as "superseded by statute").

Section 34-31-20 originally became law in the 19th Century. *See Gilliland v. Phillips*, 1 S.C. 152 (1869) (noting the enactment of the Act of 1866 (13 Stat. at Large, 429)). At that time and at least through the first three quarters of the Twentieth Century, sovereign immunity precluded any suit against the State not specifically authorized by Statute. *Unisys Corp. v. S.C. Budget & Control Board*, 346 S.C. 158, 551 S.E. 2d 263 (2001) ("At the time our constitution was adopted in 1868, the State was immune from suit on a contract. *Treasurers v. Cleary*, 37 S.C.L. (3 Rich. Law) 372 (1832) (action on debt against the State): *see also Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578 (2000) (observing that in 1924 the State was protected by total sovereign immunity and could be sued in tort or contract only when it consented.").

As a general principle, the doctrine of sovereign immunity "prevents the assessment of interest on debts of the state without the state's consent." 72 Am. Jur. 2d States, Territories, and Dependencies §93 (2007). Likewise, state government entities are not liable for interest on their debts "unless the constitution, a statute, or a contract calls for it." *Id*. *See also*, 81 C.J.S., States §§524 and 526 (2004) (with the latter section noting that a claim of prejudgment interest against the state cannot be implied). Because statutes granting such consent are in derogation of sovereign immunity, they must be narrowly construed. *Unisys Corporation v. South Carolina Budget & Control Board*, 346 S.C. 158, 551 S.E.2d 263 (2001) ("[A] statute waiving the State's immunity from suit, being in derogation of sovereignty, must be strictly construed.") In other words, unless

such statutes expressly apply to the government, they do not. *United States v. N.Y. Rayon Importing Co.*, 329 U.S. 654, 658-59, 67 S.Ct. 601, 91 L.Ed. 577 (1947) ("Nor can an intent on the part of the framers of a statute or contract to permit the recovery of interest suffice where the intent is not translated into affirmative statutory or contractual terms. The consent necessary to waive the traditional immunity must be express, and it must be strictly construed."). See also *Schortmann v. U.S.*, 82 Fed. Cl. 1 (2008). Because § 34-31-20 was enacted at a time when sovereign immunity prevented the assessment of interest on debts of the state without the state's express consent and because it does not expressly provide such consent, S.C. Code Ann. § 34-31-20 cannot be read to apply in this case, and the Court of Appeals erred in remanding the case for consideration of any prejudgment interest.

Since there is no express statute imposing an obligation for recovery of interest against the State in this situation and such recovery is otherwise barred by sovereign immunity, it was error for the Court of Appeals to remand the case for consideration of this issue.

CONCLUSION

The court should grant the petition, obtain briefing, and reverse the Court of Appeals' decision.

Respectfully submitted:

MONTGOMERY WILLARD, LLC

s/ Michael H. Montgomery
Michael H. Montgomery
S.C. Bar No. 4034
1002 Calhoun Street
Columbia, SC 29201
803-779-3500
e-mail mhm@montgomerywillard.com

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

s/ J. Keith Roberts
J. Keith Roberts
S.C. Bar No. 100735
1333 Main Street, Suite 500
Columbia, South Carolina
e-mail keroberts@wcc.sc.gov

Columbia, South Carolina
December 22, 2025