THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Alison R. Lee

Circuit Court Judge

Appellate Case No. 2023-001663

Circuit Court Case No. 2014-CP-40-02496

South Carolina Workers' Compensation Commission, ...Respondent,

v.

WestPoint Home, LLC, ...Appellant.

RESPONDENT'S PETITION FOR REHEARING WITH A SUGGESTION FOR REHEARING EN BANC

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October 1, 2025

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STATEMENT OF PURPOSE

Respondent, South Carolina Workers' Compensation Commission, files this Petition for Rehearing and Rehearing En Banc of the Court's Opinion No. 6121, filed September 17, 2025. In counsels' judgment, rehearing or rehearing en banc are warranted to:

1. *Resolve the conflict created by the Court's determination that S.C. Code Ann. §42-11-70 is a "statute of repose" and, in so deciding, inexplicably altering the legislative intent and direct wording of the statute in a manner that upends the entire Occupational Disease Act and renders the Statute of Limitations for occupational injuries meaningless.*

As the record here reflects, the Commission is currently dealing with 450 claims filed for occupational diseases with dates of exposure dating back to the 1950s. This decision will wreak havoc on the lives of those claimants and undermine the entire administration of claims for care of South Carolinians disabled by devastating occupational diseases. The court's interpretation additionally fails to recognize the uncontradicted testimony in the record that the average latency period of work-exposed mesothelioma is 43.4 years. This latency period is the time when the employee has contracted the disease but has not yet been diagnosed with it. Latency is a unique characteristic of mesothelioma and other occupational diseases. The application of the statute as written takes latency into account. The Court's ruling here guts the entire process for no reason other than to create a basis to return funds that are likely to be required to treat victims of this disease who were exposed to asbestos in WestPoint Stevens plants. Mr. Burkhalter, the Commission's expert, gave uncontroverted testimony that there is a 98.6 percent chance that an employee in one of the Appellant's predecessor's plants currently has contracted mesothelioma and that there is a 50 % chance that the disease would still be latent in 2045. Because the Panel's decision misinterprets the unambiguous statute, thereby threatening benefits for hundreds or even

thousands of victims and potential victims of an occupational disease in South Carolina who were not parties to the case, rehearing or rehearing en banc is warranted to resolve this issue.

2. *Address the fact that the Order relies upon non-persuasive cases and interprets them so that they declare that the word "Contracted" means "Death or Disability" which reflects neither the plain meaning of those words or an accurate interpretation of the Legislative intent inherent in the Occupational Disease Act.*

In holding that South Carolina Courts and the Commission itself recognized or treated S.C. Code Ann. §42-11-70 as a statute of repose and did so to deny benefits, the Court relied on cases that are both inapplicable to and distinguishable from the case before the Court. Because this authority does not provide a justifiable precedent for the Court to interpret S.C. Code Ann. §42-11-70 as a statute of repose rather than the coverage statute that it is, rehearing or rehearing en banc is warranted to resolve this misapprehension.

3. *Address the fact that the Order ignores the latency inherent in a mesothelioma diagnosis such that it effectively eliminates mesothelioma as an occupational disease in contravention of the Occupational Disease Act.*

Both the record and the history of the treatment of occupational diseases arising from the inhalation of fibers establish that a worker can contract the disease long before she becomes disabled by it. That is the basis for the interaction between the coverage statute, S.C. Code Ann. §42-11-70, and the Statute of Limitations in S.C. Code Ann. §42-15-40, which does not begin to run until the worker has been diagnosed with the occupational disease and notified of the diagnosis. Rehearing or rehearing en banc is warranted to address the effective rewriting of the statute to void the Statute of Limitations enacted by the General Assembly.

BACKGROUND

Mesothelioma is a pulmonary disease that results from 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 "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].

WestPoint Home, LLC ("WestPoint") 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 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. Uninsured 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. 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 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, 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 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 uninsured employer workers' comp 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.

After a non-jury trial on the matter the Circuit Court Judge ruled in the Commission's favor. West Point appealed Judge Lee's determination that the funds were negotiated correctly and held to protect injured workers. A three-member panel of this court reversed and remanded, finding inter alia, that S.C. Code Ann. §42-11-70 was a statute of repose which for all intents and purposes barred 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 pre-judgment interest, which the Commission

asserts is barred by sovereign immunity except in limited circumstances that are not applicable here.

The Commission believes that each of these conclusions misapprehended or misapplied the statutory scheme created by the General Assembly and thereby moves that the court reconsider its Order with a suggestion that the entire Court of Appeals hear the matter, en banc.

ARGUMENT

I. The Court's Interpretation of S.C. 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.

S. C. Code Ann. §42-11-20 defines "Disablement" and "Disability." it provides "As used in this chapter, "disablement" means the event of an employee's becoming actually incapacitated..., because of an occupational disease, from performing his work in the last occupation in which he was exposed to the hazards of such disease. . . . The disablement and disability of an employee from an occupational disease shall be determined as provided in this chapter." This definition is consistent with the definition of disability in S.C. Code Ann. §42-11-20. S.C. Code Ann. §42-15-40 is the statute of limitations for workers' compensation claims. It provides that "for occupational disease claims, the two-year period does not begin to run **until the employee has been diagnosed definitively as having an occupational disease and has been notified of the diagnosis.**" [emphasis added]

The framework of the Code, articulated by the General Assembly, is logical and has been adopted by the Commission since the Occupational Disease Act was incorporated into the Workers' Compensation laws in 1949. First, a worker must be exposed to a substance that creates an additional risk of occupational injury. Second, the worker must contract the disease within two

years of exposure. Finally, the worker must be disabled by the disease and file a claim within two years after being definitively diagnosed and having been notified of the diagnosis. The statute recognizes that long-duration diseases have a latency period (the record here reflects that mesothelioma can have a latency period of more than forty years). That practice makes logical sense because otherwise, the Legislature included a meaningless statute of limitations in the Act. The Court's interpretation protects neither employers[1] nor employees under the Workers' Compensation scheme.

The General Assembly understands how to write a statute of repose. In §42-15-40 it did just that. "For a 'repetitive trauma injury" as defined in §42-1-172, 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 **but no more than seven years after the last date of injurious exposure**. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment." S.C. Code Ann. §42-15-40 (2024 Supp.) [emphasis added].

The test for a statute of repose that the clause creates a substantive right in those protected [i.e. the employer] to be free from liability after a legislatively determined period of time". *See Capco of Summerville, Inc. v. JH Gayle Const. Co.*, 368 S.C. 137, 142 (2006); *see also* §42-15-40. The Legislature chose to include such explicit language, creating a statute of repose for repetitive trauma injuries, and did not include such language for occupational illnesses. This evinces a legislative intent that no statute of repose applies to occupational illness claims.

II. The Court Erroneously Reconstructed an Unambiguous Statutory Scheme in a Matter that Negates Clear Legislative Intent.

[1] It stands to reason that if the Workers' Compensation Act makes recovery impossible for a defined group of injured workers, its exclusivity will come into play as a matter of public policy.

"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 exactly 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[2]. 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 incapacity 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.

III. The Authorities the Court Relied On To Reinterpret the Meaning of S.C. Code §42-11-70, Do Not Support The Court's Reinterpretation of the Statute.

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

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

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 denial of a jurisdictional claim and held that the employee was entitled to compensation. Notably, the employee, was disabled from byssinosis some nine months after the employer hired her. She had worked 18 years in the textile industry for other employees. The court's decision there was in line with the statutory scheme abrogated by the Panel here.

Glenn did not deal with the claim itself, but rather with determining which carrier should pay the claim. 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. These reported cases, as well as those cited by the Court's opinion at footnote 4 do not treat contracted and disabled as synonyms for the purpose of the Act. The panel implies 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 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 that must be met 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 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 *Glenn* referenced the predecessor of §42-11-70 while determining the time 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 or repose. Instead, it stated conditions that must exist before a right to compensation arises.[3] *Meyer* at 476 N.W.2d 60. The

[3] As the Commission has advised the Court, S.C. Code Ann. § 42-11-70 is a Coverage Statute

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.[4] Noticeably absent from §42-15-40 is a statute of repose for injuries by accident or occupational illnesses. *Expressio unius est exclusion alterius.*

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, were 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

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setting out a pre-requisite for an employee to establish a covered claim.

[4] ". . . 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 but no more than seven years after the date of last injurious exposure." S.C. Code Ann. § 42-15-40 (2008 Supp.).

disabled in 2006. The Commission neither denied the claim on the grounds of 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 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 §42-11-70 was a statute of repose, but rather that there was a failure of proof in 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 1425599decisions 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, and thus 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 in 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.

IV. The Commission Does Not Benefit From Holding Defunct Self-Insured Employer's Funds. The Only Beneficiaries of those Funds are Workers who have Contracted Occupational Diseases and have Not Been Diagnosed.

The Workmen's Compensation Act should be given a liberal interpretation because the purpose of the Act is remedial and humanitarian. *Hines v. Hendricks Canning Co., et al.*, 263 S.C. 399, 211 S.E. (2d) 220 (1975); *Simpkins v. Lumbermens Mutual Casualty Co.*, 200 S.C. 228, 20 S. E. (2d) 733 (1942). The right to compensation under the Act is wholly statutory and subject to the restrictions contained therein. *Owens v. Herndon*, 252 S.C. 166, 165 S.E. (2d) 696 (1969). *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 96, (1981). This Court should interpret the statutes and acts of the Commission in accordance with that notion.

While the Panel's incorrect construction of the Workers' Compensation statutes would eliminate the possibility of any claim against WestPoint Stevens or its successor, a correct statutory interpretation leaves open the possibility of potentially numerous future claims. Since there is no

backup for a shortage of funds from a self-insured employer, such claims could not be paid, and the employees, who the Act is designed to protect, will suffer. The Court should reconsider any decision that would allow WestPoint to avoid being responsible for claims arising against it as a self-insured employer. Notably, WestPoint never objected to the negotiation of the letter of credit until almost eight years after it was drawn down. Had it not been negotiated, since it cannot be cancelled without the Commission's approval, the letter of credit would remain in place, thereby protecting West Point's employees. The decision ignores the plight of the employees that the statute was enacted to protect. As long as there is liability for potential claims, WestPoint is responsible for those claims. "All employers conducting business in South Carolina must secure the payment of compensation to their injured employees." S.C. Code Ann. §42-5-10 (2015). This may be accomplished either by purchasing workers' compensation liability insurance or by qualifying as a "self-insured" employer. To become self-insured, an employer must demonstrate to the Commission that it has the "financial ability to pay directly the compensation in the amount and manner and when due as provided" by the Act. S.C. Code Ann. §42-5-20 (2015)." *Patterson v. Witter*, 425 S.C. 213, 219 (2018).

Thus, in the event that the Court determines, as it should, that the possibility of claims remains from WestPoint's exposing its employees to microscopic asbestos fibers, it must either allow the Commission to retain the disputed funds or require WestPoint to post security according to its status as a self-insured employer under the Act.

V. The Court Misapprehended any Right to Prejudgment Interest and its Determination to Remand was Improper and Unnecessary

The Workers' Compensation Commission is an Agency of the State.

> It is well settled that the doctrine [of sovereign immunity] bars recovery of interest against the State "unless [the State has been] bound by an act of the Legislature or by a lawful contract of its executive officers ... Monarch Mills v. S.C. Tax C'n., 149 S.C. 219, 146 S.E. 870 (1929); see also, e.g., Div. of Gen. Serv. v. Ulmer, 256 S.C. 523, 183 S.E.2d 315 (1971)."
>
> In 1985, this Court prospectively abrogated the doctrine of sovereign immunity insofar as that doctrine had insulated state and local governments from tort liability. *McCall v. Batson*, 285 S.C. 243, 329 (1985). *McCall* included Appendix A, a list of 122 cases, and provided that these cases were "overruled to the extent that they hold that an action may not be maintained against the State without its consent." Although *Monarch Mills* and *Ulmer* are on that list, their holdings that the State is not liable for prejudgment interest except when bound by statute or by contract remain unaffected as the right to this interest is not a matter of tort liability.

C.J. Pleicones, concurring in *EllisDon Contsr., Inc. v. Clemson University,* 391 S.C. 552, 556, 557 (2011).

Since there is no lawful contract or act of the legislature which would afford WestPoint Home pre-judgment interest in this matter, the Court misapprehended the law in remanding the case for such a determination.

CONCLUSION

Based on the foregoing, this Court should grant Respondent's Petition, rehear the matter and substitute a new opinion affirming the Circuit Court's Order.

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IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Alison R. Lee
Circuit Court Judge

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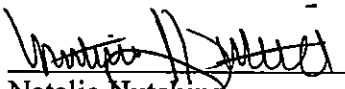
v.

WestPoint Home, LLC, ... Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent's Petition for Rehearing with a Suggestion for Rehearing En Banc on WestPoint Home, LLC by deposition a copy of it in the mail in the United States Mail, postage prepaid, on October 1, 2025, addressed to their attorneys of record, Matthew Todd Carroll, 1221 Main Street, Suite 1600, Columbia, South Carolina and Herbert Beigel, 5641 N. Chieftan Trail, Tuscon, AZ 85750



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October 1, 2025

South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Westpoint Home, LLC v. South Carolina Workers' Compensation Commission
Appeals No. 2023-001663

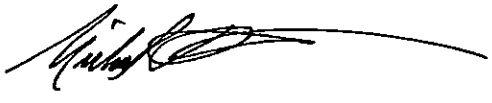
To whom it may concern,

Pursuant to Rules 219 and 221 please find enclosed Respondents Motion for Rehearing with a Suggestion for Rehearing En Banc along with 9 copies for the Court of Appeals. Please also find enclosed 3 additional copies, which we ask are clocked and returned to us.

If you have any questions or concerns, please do not hesitate to contact our office at 803-779-3500 or me directly at 803-753-6484.

Respectfully,

MONTGOMERY WILLARD, LLC



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Enclosures