THE STATE OF SOUTH CAROLINA

In the Supreme Court

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S.C. 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.

PETITIONER'S REPLY TO WESTPOINT HOME'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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OVERVIEW

The South Carolina Court of Appeals wrongly determined that S.C. Code Ann. §42-11-70 is a statute of repose. In making that finding, the Court of Appeals, which reversed the Trial Court's decision, created a circumstance where there were no possible claims that could be asserted against WestPoint Stevens, WestPoint Home's predecessor. As a result, WestPoint Home became entitled to the return of the balance of the funds that are presently unused.

A finding that WestPoint Home is entitled to a refund of the held funds is warranted only if S.C. Code Ann. § 42-11-70 operates as a statute of repose. If the statute is not a statute of repose, refunding the funds would be inconsistent with the record. The unrefuted evidence demonstrates an overwhelming likelihood that valid occupational-injury claims will arise against West Point Stevens. Those claims are likely to exceed the balance currently held by the State Treasurer, which exists to protect the employees of this now-defunct self-insured employer Holding otherwise would leave no source of payment for those claims.

This case did not arise out of and/or address any employee claim, which should be the appropriate circumstance for the Courts to interpret a statute that dramatically alters the judicial analysis of serious disabling and deadly illnesses that arise exclusively from exposure to asbestos-containing materials in the workplace. When it made this radical change to the interpretation of the statutory scheme in the Workers' Compensation Act in a case where no employee claims are involved, the Court of Appeals deprived former employees who have contracted these diseases and have yet to be diagnosed or disabled the right to benefits under the Act that they earned.

A proper finding that S.C. Code Ann. §42-11-70 is a coverage statute, not a statute of repose, requires that those funds be retained, or that WestPoint Home, as the successor of an

uninsured employer with substantially likely liability, be required to post the funds or some equal security to protect the workers whose claims will likely arise under the Act.

WestPoint Home's return to the Petition ignores the points and law made by the Commission's Petition and endeavors to misdirect this Court in an effort to obtain monies that were negotiated and held for one purpose only, to protect its predecessor's employees from occupational illnesses they are likely to experience as a direct result of their employment at WestPoint Stevens.

This Court should grant Certiorari in this case, allow briefing, hear the case, reverse the Court of Appeals, and reinstate the Order of the able Trial Court, which heard the witnesses, reviewed the evidence, and made the correct decision at trial.

I. In its Return, WestPoint Home Failed to Address the Most Important Error that the Court of Appeals Made, that the Court of Appeals failed to Apply this Court's Well-Settled Rules of Statutory Construction in Finding that §42-11-70 is a Statute of Repose.

The Primary issue in this Petition is the proper interpretation of S.C. Code §42-11-70 under the well-settled law of statutory construction. The Respondent never addressed this issue; it never explained why the statute is ambiguous and failed to explain why the Court of Appeals ignored *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Its order impliedly found that the statute was ambiguous and then reconstructed a statute put in place by the Legislative and Executive branches of our government. The plain language of the statute is that you must contract (get) the disease within two years of last exposure. The claim must be filed within 2 years of the diagnosis. Benefits are paid for death and disability. The correct interpretation is that §42-11-70 establishes a requirement that the disease be contracted within two years, creating a medical

question of proof.

Instead, WestPoint Home expresses incredulity that the Commission would argue against it (and the Court of Appeals) misconstruing prior decisions of this Court and the Commission itself and relying on dicta in U.S. District Court decisions to make a plain unambiguous statute something that it never was, and effectively eliminate important rights conveyed to workers in the Act the Commission is sworn to uphold.

WestPoint Home prefers to offer out-of-context arguments about other court and Commission rulings that are neither binding on this Court nor accurately presented instead of addressing the statutory construction analysis dictated by this Court but not followed by the Court of Appeals. The Commission thoroughly distinguished each of the holdings that WestPoint Home relies on in its reply and explained why those do not treat §42-11-70 as a statute of repose.

The plain language of the statute does not require interpretation, and the Court of Appeals erred when it replaced the word "contract" with the words "deceased or disabled" to turn §42-11-70 into a statute of repose. When it made this error, the Court of Appeals violated this Court's established precedent, misconstrued the legislative scheme, and failed to address the very reason for the statutory scheme: the long latency period in respiratory diseases arising from workplace exposure to asbestos. This court has repeatedly held that, when engaging in statutory construction, workers' compensation statutes are to be liberally construed in favor of coverage. *Peay v. U.S. Silica Co.*, 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993). In the instant case, the Court of Appeals has done the opposite, it has so narrowly construed the class of persons capable of bringing a claim for an occupational illness as to virtually eliminate any claimant with a disease with a latency period. The Court's decision all but eliminates the chance that any worker can maintain a claim after being diagnosed with mesothelioma or asbestosis from exposure in the workplace. The

failure to interpret the statute in accord with the established precedent in this court is a fatal flaw that overrides every point raised by WestPoint Home in its reply and should compel this Court to grant the Commission's Petition and reverse the Court of Appeals' decision.

Section 42-11-70 is not a statute of repose, and the record is compelling on the point that latent claims will arise for occupational injuries from WestPoint Stevens' employees. The unrefuted evidence in the record supports that fact. Employees must be protected from the consequences of their self-insured employer's bankruptcy. The Commission properly negotiated the letter of credit in good faith, as the Circuit Court determined.

It was an error for the Court of Appeals to reinterpret the statute into something it was not, and WestPoint's Return fails to address the appropriate application of this Court's rules of statutory construction and the Court of Appeals' failure to follow this Court's precedents in its decision.

II. The District Court Cases that the Return Relies on do not Hold That §42-11-70 is a Statute of Repose.

In addition to misconstruing this Court and the Commission's prior decisions, WestPoint Home cites two U.S. District Court opinions that it asserts hold that §42-11-70 is a statute of repose. Not only do those cases fail to make that finding, but, more importantly, the United States District Court lacks subject-matter jurisdiction to determine whether an employee has a compensable claim for an occupational illness under the South Carolina Workers' Compensation Act. (S.C. Code Ann. §42-3-180 (1976)), and is not the agency responsible for administering the Act.

In *Matthews,* the US District Court was charged with determining whether Plaintiff was a statutory employee of DuPont and thus barred from bringing tort litigation against certain defendants by the exclusive remedy in §42-1-540. *Matthews v. E.I. DU Pont*, Civil Action No.:4:16-cv-02934-RBH, 2018 WL 5978111 (D.S.C. Nov. 13th, 2018). Plaintiff asserted that §42-

11-70 was a statute of repose that deprived him of any benefits under the Act in an attempt to avoid his claim being barred by §42-1-540. Judge Hartwell granted summary judgment to Defendants on the grounds that the *tort* claim was barred by S.C. Code Ann. §42-1-540. Judge Harwell made no finding and did not have jurisdiction to find whether Plaintiff was or was not entitled to benefits under the South Carolina Workers' Compensation Act. Notably, Judge Harwell did not certify any question to this Court for an opinion on that issue.

Parker dealt with a motion for summary judgment in a legal malpractice claim. *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094, (D.S.C. June 30, 2015). The legal malpractice claims depended on Plaintiffs proving they had a viable workers' compensation claim. Judge Anderson found Plaintiffs had failed to show the viability of their workers' compensation cases *for purposes of bringing legal malpractice claims*. Judge Anderson did not find and did not have jurisdiction to find whether Plaintiffs were or were not entitled to benefits under the South Carolina Workers' Compensation Act; again, no question was certified to this Court as to the meaning and effect of §42-11-70.

III. <u>WestPoint Home's use and Overreliance on Gary Cannon's Testimony is Misplaced</u>.

WestPoint Home's Return to the Commission's Petition spends almost three pages focusing on the testimony of Gary Cannon, who was the Commission's executive director when this case was heard, but not in 2005 when the decision to protect WestPoint Stevens' workers by negotiating the letter of credit was made. While ignoring Mr. Cannon's testimony that retaining the funds was necessary, which the trial court adopted in its Order, WestPoint Home's return relies almost exclusively on the legal conclusions that its Counsel led Mr. Cannon to agree with. As pointed out in the Commission's Petition, Mr. Cannon's concessions were opinions on the law

elicited by Counsel, which are neither binding on the Commission nor the Court. The trial court, which heard the testimony, correctly applied the law, and Mr. Cannon (or anyone else's, for that matter) accepting Counsel's assertion that "the statute of repose expired in 2007" signifies nothing and has no weight. This Court, not Mr. Cannon or WestPoint Home, is the arbiter of statutory construction and meaning.

WestPoint Home's Return relies on irrelevant and inadmissible testimony to support its money grab. The most relevant portion of Mr. Cannon's testimony included in the Return is on Page 5 where he states: "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." (Return p. 5). The Commission's Petition addressed the concessions and correctly characterizes them as a legal conclusion extracted under pressure, not an admission of fact or law. Whether 11 is a statute of repose is a question of law, not fact. The Trial judge recognized this and was in the best position to weigh the evidence presented to her. She correctly determined that the statute is not a statute of repose that absolved WestPoint Stevens of all further liability (although it was erroneously called a statute of repose on several occasions).

IV. The Commission Raised the Question that the Court Improperly Held that the Letter of Credit was Not Properly Negotiated in the Petition, and this Court Should Reverse the Court of Appeals and Reinstate the Trial Court's Correct Decision that the Commission Properly Negotiated the Letter of Credit in Good Faith Without Objection from WestPoint Home.

The Commission both expressly and impliedly raised the issue that the Court of Appeals erred in finding that its negotiation of the letter of credit was improper. The Commission's Petition acknowledges the trial court's finding that the Commission properly negotiated the letter of credit,

and it was proper for the Commission to retain the funds. It further notes that WestPoint Home appealed this specific ruling and that the Court of Appeals reversed, holding that the Commission improperly retained the funds. Petition, p. 8-9.

In its Argument V of the Petition, the Commission directly addressed finding as to properly retaining the funds and the negotiating of the letter of credit; moreover, the Commission addressed the fact that, in the absence of its administrative decision, there was no source of funds from which it could pay WestPoint Stevens' former employees' inevitable claims for the benefits that they were entitled to under the statute. The Commission also notes that the trial court was correct in holding that the Commission reasonably interpreted the August 15, 2005, letter as indicating that benefits would not be paid. WestPoint Home seeks to obtain a windfall in violation of the statute, which directly harms the former employees of WestPoint Stevens, whom the statute directs the Commission to protect. WestPoint Home has neither offered any reason why it did not inquire at the time the letter of credit was negotiated, nor why it waited many years beyond any applicable statute of limitations to make an inquiry and seek information regarding the funds. Moreover, it never filed any petition or sought relief from the Commission.

The Commission did not "seize" WestPoint Home's security. Both the Court of Appeals and WestPoint Home choose to ignore the facts and suggest that the Commission gained some benefit or had some reason to negotiate the letter of credit other than its good faith belief, based on WestPoint's correspondence that it was not responsible for any Workers' Compensation claims moving forward, as justification to move to protect South Carolina workers who worked for a defunct self-insured employer.

The Commission has made clear, from the very beginning of this litigation, this money does not belong to the Commission. Neither principal nor interest may be used to pay the

Commission's salaries or expenses. The Commission's only role with these funds is to function as trustee to ensure that the funds remain available for an injured worker who is found to have a compensable claim arising out of and in the course of their employment with WestPoint Stevens. The Commission has never intended to hold these funds in perpetuity. The Commission's position is, and has always been, there is substantial evidence to indicate this particular employer is at a heightened risk for exposure to occupational illness claims and, given the statute of limitations provided for under §42-15-40 and the well-documented reality that an employee can "contract" a slow developing disease like mesothelioma within one or two years of their employment but not show symptoms, much less be "diagnosed definitively" and "notified of the diagnosis" for many years, it is not yet ripe to determine if the funds should be returned to the remainderman. The Commission's good faith acts were neither a seizure nor a bad faith negotiation of the letter of credit. The only evidence in the record reflects this fact, and the trial judge held that this was the case,

"On August 15, 2005, WestPoint Stevens sent a letter to the Commission indicating that its assets had been purchased by . . . that "workers' compensation liabilities asserted against [WestPoint Stevens] were not liabilities assumed by the Purchaser," and "no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc." (ROA 005 ¶13)

The Court also significantly noted that "WestPoint Home lodged no contemporaneous objection to the Commission's decision to draw down the entire amount" (ROA 008); WestPoint home did not contact the Commission regarding this issue for several years (ROA 008) and most importantly that "the Commission appropriately drew down the full amount of the letter of credit because it was entitled to treat the August 2005 letter as a cancellation or revocation of the letter

of credit." (ROA 008). The Court reasoned, "While the August 2005 letter did not specifically cancel the letter of credit, it likewise did not specify that the letter of credit would remain in force." The pronouncement in the last sentence that 'no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens Inc.' certainly indicated to the Commission that the letter of credit was ending. The testimony at trial also reiterated and supported the action. See. Tr. Trans. P. 57-58." (ROA 008), The trial judge, who had the opportunity to observe the witnesses and review the case, certainly determined that negotiating the entire letter of credit was reasonable and done in good faith. The Commission did not seize anything. It negotiated the letter of credit when it reasonably understood that the self-insured employer was refusing to pay future claims to protect workers, as required by law. The trial court also noted that "WestPoint Home offered no evidence to contradict the Commission's interpretation of this language." WestPoint Home's repeated assertions that the Commission seeks to retain the funds permanently are false and unsupported by any evidence in the record.

Moreover, the Commission cannot have improperly negotiated the letter of credit as a matter of law because, as the record reflects, it utilized funds from that event to pay more than $600,000.00 in claims[1]. (ROA p. 665-667). WestPoint Home wishes to attach some nefarious intent or action to the Commission's action. That argument is misplaced and unsupported by the record. Had the Commission not drawn on the letter of credit when it did, there is no evidence that these claims could have been paid. The record is clear that claims have been paid from the funds negotiated, and there is a high probability that employees have contracted occupational

[1] On August 26, 2005, $500,000 was drawn from the fund and remitted to Key Risk. On April 5, 2006, another $500,000 was remitted to Key Risk. $364,000 was returned to the fund by Key Risk in 2009. So at least $1,000,000.00 was determined to be "needed" from the fund contemporaneously and $836,000.00 has been paid on claims to date. An argument that the funds were seized is hyperbolic.

disease related to their exposure at WestPoint Stevens and will have claims that can easily exhaust all the funds being held.

The Commission's Petition challenged the Court of Appeals' determination that the funds were *improperly* retained (which is synonymous with the "unlawful seizure" terminology used by WestPoint Home) and asked the Supreme Court to overturn that specific finding.

V. WestPoint Home offers this Court no Authority to support its Claim that it is Entitled to Collect Pre-Judgment Interest Against the State Under the General Interest Statute.

Sovereign immunity insulates the State from exposure to claims for pre-judgment interest. WestPoint Home ignores the well-settled law raised in the Petition in the historical context that it is not entitled to pre-judgment interest under the general interest statute. WestPoint Home misconstrues *Ellis-Don Constr. Inc., v. Clemson Univ.,* 391 S.C. 552, 707 S.E.2d 399 (2011) as holding that the general interest statute permits charging pre-judgement interest against the State. Justice Pleicones' concurrence was illustrative that the long chain of legal precedent cited in the Petition (starting at Page 17) including authority of this Court beginning with *Gilliland v. Phillips*, 1 S.C. 152 (1869), addressing the express holding in *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.") that "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." [emphasis added]. We noted that the U.S. Supreme Court also held that a general-interest statute was not applicable against the government unless it was express and that such statutes must be strictly construed. *United States*

v. N.Y. Rayon Importing Co., 329 U.S. 654, 658-59, 67 S.Ct. 601, 91 L.Ed. 577 (1947). There is no express statute awarding pre-judgment interest against the State, and WestPoint Home has cited no legal authority for its interpretation that the general interest statute affords it a right to recover interest against the State in abrogation of both sovereign immunity and well-settled law articulated by Monarch Mills and reiterated by Justice Pleicones in his concurrence in *Ellis Don*.

The Commission did not secret away any funds, does not receive any benefit therefrom, and only holds those funds for the benefit of the employees until it can reasonably be determined that no claims will arise. The unrefuted evidence in the record establishes that the time period is sometime after 2040. As we mentioned in the Petition, the Commission has published a regulation to address this gap in the Act's administration.

CONCLUSION

For the foregoing reasons, as well as for the reasons set forth previously in the Petition for Writ of Certiorari, Petitioners respectfully request that this Court grant the Petition for Writ of Certiorari, obtain briefing, and reverse the Court of Appeals' decision.

Respectfully submitted:

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