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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

Appellate Case No. 2023-001663

South Carolina Workers' Compensation Commission, Respondent,

v.

WestPoint Home, LLC, Appellant.

BRIEF OF AMICUS CURIAE INJURED WORKERS' ADVOCATES

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INTEREST OF AMICUS CURIAE INJURED WORKERS' ADVOCATES

Injured Workers' Advocates (IWA) is a nonprofit association of attorneys dedicated to protecting and advancing the rights and legal remedies for South Carolina workers who are victims of occupational injury or disease. IWA moves for leave to appear as Amicus Curiae in this case pursuant to Rule 213, SCACR.

IWA's members represent workers across South Carolina who have been, or may be, exposed to occupational hazards with long latency periods—including asbestos, silica dust, and other substances common in the state's textile, chemical, and construction industries. No injured worker is a party to this litigation. The case arose as a dispute between a corporate successor and the Workers' Compensation Commission over the disposition of security deposits, yet the Court of Appeals used it as the vehicle for a sweeping reinterpretation of the occupational disease statute that affects the substantive rights of every worker in South Carolina with a latent occupational disease. IWA submits this brief to offer the perspective of the absent class—the workers whose rights are at stake—and to present analytical arguments that the parties' briefing does not develop.

STATEMENT OF THE CASE

IWA adopts the factual recitation in the Commission's Petition for Writ of Certiorari and highlights the following facts that bear on the interests of injured workers. WestPoint Stevens operated textile manufacturing facilities at multiple locations across South Carolina for decades. Six of those locations were on a list of jobsites where asbestos exposure was known to have occurred.[1] Asbestos-related diseases such as mesothelioma and asbestosis have latency periods

[1] The Commission's expert, Christopher Burkhalter, testified that six WestPoint Stevens locations were on a list of jobsites where asbestos exposure was known to have occurred, and that the average latency period for asbestos-related diseases ranged from 10 to 50 years. He stated that a twenty-year-old exposed in 2005 would have a 96.8 percent chance that mesothelioma would not have manifested by the time of trial. 446 S.C. at 631, 922 S.E.2d at 234.

ranging from 10 to 50 years—meaning that a worker exposed to asbestos at a WestPoint Stevens facility in 2005 may not develop symptoms, receive a diagnosis, or become disabled until 2015, 2025, 2040, or beyond.

WestPoint Stevens closed in August 2005. Its corporate successor, WestPoint Home, deposited $1.8 million in security for potential workers' compensation claims. In the litigation below, WestPoint Home sought return of those funds, arguing that section 42-11-70 of the South Carolina Code of Laws is a statute of repose that extinguished all possible occupational disease claims two years after the last exposure—that is by August 2007. S.C. Code Ann. § 42-11-70 (2015). The circuit court rejected that argument. The Court of Appeals reversed, holding that § 42-11-70 is a statute of repose. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 922 S.E.2d 231 (Ct. App. 2025).

The Court of Appeals construed § 42-15-40 in direct contradiction to the Legislature's express language that occupational disease claims do "not begin to run *until* the employee concerned *has been diagnosed definitively* as having an occupational disease and has been notified of the diagnosis." S.C. Code Ann. § 42-15-40 (emphasis added). Practically, this interpretation bars relief for the very diseases—asbestosis, mesothelioma, silicosis—that the Legislature intended to protect.

ARGUMENT

I. The Court of Appeals' Interpretation of § 42-11-70 Cannot Be Reconciled with This Court's Precedent.

This Court's precedents establish two settled propositions. First, in occupational disease cases, "disablement or death" is the event treated as the "injury by accident" for purposes of compensation. S.C. Code Ann. § 42-11-40 (2015). Second, the term "contracted" in Chapter 11 has been defined as a term of art meaning "disablement or death." *Vespers v. Springs Mills, Inc.*,

276 S.C. 94, 97, 275 S.E.2d 882, 884 (1981); *Glenn v. Columbia Silica Sand Co.*, 236 S.C. 13, 20–21, 112 S.E.2d 711, 714 (1960). The Court of Appeals accepted both propositions. 446 S.C. at 637, 922 S.E.2d at 237. It then held that § 42-11-70 is a statute of repose. That conclusion is logically incompatible with the premises on which it rests.

A statute of repose extinguishes liability after a fixed period measured from a specific event that is *unrelated to* the accrual of a cause of action. *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006). In the construction-defect context, for example, the repose period runs from "substantial completion of the improvement"—an event that bears no necessary relationship to when the plaintiff's injury occurs or when the claim accrues. The defining feature of a repose provision is this disconnect between the triggering event and the accrual of the claim.

The Court of Appeals held that "contracted" in § 42-11-70 means "disablement or death." 446 S.C. at 637, 922 S.E.2d at 237. Under § 42-11-40, the cause of action in an occupational disease case accrues at "disablement or death." The triggering event for the purported repose period ("contracted" = disablement) and the event that triggers accrual of the claim (disablement under § 42-11-40) are *the same event*. They are not merely related; they are the same. A time limitation that runs from the same event as accrual is, as this Court has defined the distinction, a statute of limitations—not a statute of repose. *See Capco*, 368 S.C. at 142, 628 S.E.2d at 41 (distinguishing repose from limitation on precisely this ground).

The Court of Appeals sought to resolve this tension by treating "last exposure to the hazard" as the triggering event for its repose analysis, effectively reading "contracted" to mean "exposed." But this Court has expressly rejected such conflation. In *Vespers*, this Court reversed a circuit court that had required the claimant to have "contracted" byssinosis *during* her

employment and held instead that the claimant "contracted" the disease when she became disabled by it—nine months after her employer hired her. 276 S.C. at 98, 275 S.E.2d at 884. In *Glenn*, this Court explained that the date of disability is the most appropriate point at which liability attaches because it "has the one cardinal merit of being definite, while such other possible dates as that of the actual contraction of the disease are usually not susceptible to positive demonstration." 236 S.C. at 20, 112 S.E.2d at 714, *quoting* 2 Arthur Larson, *Larson's Workmen's Compensation Law*, § 95.21 (1961). And in *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 122, 127 S.E.2d 288, 291 (1962)—an asbestosis case in which the claimant was discharged in 1954 and not diagnosed until 1958—the Court held that "in occupational disease cases compensability accrues when disability . . . or death occurs."

The Court of Appeals thus faced an irreconcilable choice: It could follow this Court's definition of "contracted" (disablement or death), in which case the statute cannot be a repose provision because the triggering event is the same as the accrual event; or it could redefine "contracted" to mean "exposed," in which case it departs from *Vespers*, *Glenn*, and *Drake*. The analysis cannot sustain both propositions simultaneously, and the resulting construction conflicts with this Court's precedent. S.C. Const. art. V, § 9 ("The decisions of the Supreme Court shall bind the [c]ourt of [a]ppeals as precedents.").

The more natural reading is that § 42-11-70 establishes a compensability element—a condition that must be satisfied for a disease to be covered under Chapter 11—not a time-based bar that extinguishes rights irrespective of accrual. Read this way, the statute requires proof that the disease was "contracted" (*i.e.*, that disablement or death occurred) within two years of the last injurious exposure, providing an evidentiary bridge between exposure and disease. That reading is also consistent with the Commission's longstanding administrative practice, which for decades has

applied § 42-11-70 as a compensability requirement, an element of proof that the claimant must satisfy, rather than as a temporal bar extinguishing claims irrespective of disablement.

II. The Legislature Knew How to Enact a Statute of Repose in the Workers' Compensation Code and Chose Not to Do So for Occupational Disease.

When the General Assembly intends to impose a statute of repose, it does so in unmistakable terms. *See* S.C. Code Ann. § 15-3-640 (2005) (barring actions arising out of defective improvements to real property "more than eight years after substantial completion"); S.C. Code Ann. § 15-3-545(A) (2005) (imposing a six-year outer limit on medical malpractice claims regardless of discovery). These provisions use explicit language of absolute bar. Section 42-11-70 has no comparable language.

The contrast becomes decisive in light of the 2007 Workers' Compensation Reform Act. In that Act, the General Assembly amended § 42-15-40 to add an express statute of repose for one specific category of claim: "repetitive trauma injury" as defined in § 42-1-172. The statute now provides that such claims are barred unless filed within two years of knowledge "but no more than seven years after the last date of injurious exposure."[2] S.C. Code Ann. § 42-15-40 (emphasis added). That final clause is textbook repose language—an outer limit measured from last exposure, irrespective of accrual.

When the Legislature amended the Act in 2007, it expressly enacted a repose period for repetitive trauma injuries. It did not amend Chapter 11 to include similar language. The deliberate inclusion of repose language in one provision and its omission in another supports the conclusion

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[2] The amended statute provides:

> For a "repetitive trauma injury" as defined in Section 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**.

S.C. Code Ann. § 42-15-40 (2015) (emphasis added).

that the legislature did not intend to impose a repose period for occupational disease. *See Peay v. U.S. Silica Co.*, 313 S.C. 91, 93, 437 S.E.2d 64, 66 (1993) ("[A]ny exception to workers' compensation coverage must be narrowly construed."); *See also, e.g., Isaac v. Onions*, 445 S.C. 525, 915 S.E.2d 492 (2025) ("[t]he canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'").[3]

The Court of Appeals' construction also produces structural conflict within the Act. Section 42-15-40 states that the limitations period for occupational disease claims does not begin to run until definitive diagnosis. Yet under the decision below, § 42-11-70 would extinguish claims years—often decades—before diagnosis and before the limitations period ever begins. A repose period that ends before the limitations period begins is not harmonious statutory design; it is statutory contradiction. Courts do not construe statutes to produce this incoherence. *See Kiriakides v. United Artists Commc'ns, Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (courts will reject a statutory interpretation that leads to a result so plainly absurd it could not have been intended by the Legislature).

The ionizing-radiation exception within § 42-11-70 confirms that the provision was drafted as a compensability element, not as an absolute temporal bar. The statute exempts diseases "due to exposure to ionizing radiation" from the contraction-period requirement. If § 42-11-70 were truly a statute of repose, this exception would reflect a legislative choice to extinguish long-latency claims arising from asbestos or silica while preserving only radiation claims. Nothing in the Act

[3] Interestingly, the Court of Appeals quoted this maxim in its opinion for an entirely different reason, that is, to highlight the absence of any exceptions to application of a statute other than those expressed. *S.C. Workers' Comp. Comm'n v. WestPoint Home, LLC*, 446 S.C. 625, 633, 922 S.E.2d 231, 235 (Ct. App. 2025).

suggests this hierarchy of hazards. The more natural reading is that the Legislature recognized that certain diseases have latency periods inconsistent with a contraction requirement and adjusted that evidentiary element accordingly. The exception shows the legislature treated § 42-11-70 as a compensability element that can be adjusted for scientific reality—not as an absolute temporal bar.

This Court has consistently held that statutes addressing the same subject matter must be construed together to produce a harmonious result. *Beaufort County v. S.C. State Election Comm'n*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011). The Court of Appeals' construction does the opposite: it converts a compensability element into a repose provision that the legislature never enacted, renders § 42-15-40's occupational disease limitations period superfluous for long-latency diseases and creates an irreconcilable conflict with the Legislature's express decision in 2007 to limit repose to repetitive trauma.

For more than six decades, this Court has construed Chapter 11 as centering compensability on disablement, and the General Assembly's decision to amend other portions of the Workers' Compensation Act without changing that framework reflects legislative acquiescence in this Court's interpretation. *See, e.g., Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 572, 743 S.E.2d 778, 784 (2013) ("There is a presumption that the legislature has knowledge of previous legislation as well as of judicial decisions construing that legislation when later statutes are enacted concerning related subjects.").

III. The Court of Appeals' Construction Undermines the Grand Bargain for Workers Exposed to Long-Latency Hazards.

The Workers' Compensation Act is premised on a reciprocal exchange: workers surrender their common-law right to sue in tort; in return, they receive guaranteed, no-fault compensation when workplace injury or disease causes disability. This exchange—the "Grand Bargain"—depends on the compensation remedy being available when disability occurs. *See Brooks v. Benore*

Logistics Sys., Inc., 442 S.C. 462, 470 n.1, 900 S.E.2d 436, 440 n.1 (2024) (describing the "Grand Bargain" under which employees relinquish tort remedies in exchange for guaranteed compensation for work-related injuries). If the workers' compensation remedy is extinguished before a worker can use it, the exchange becomes one-sided.

The Court of Appeals' construction of § 42-11-70 creates precisely that result for workers exposed to long-latency occupational hazards. Consider the worker at a WestPoint Stevens facility who was exposed to asbestos dust in 2005 and develops mesothelioma in 2030. Under the Court of Appeals' ruling, that worker's right to compensation was extinguished in August 2007, which was twenty-three years before the disease manifested. The exclusive remedy under § 42-1-540 of the South Carolina Code of Laws still applies and the injured worker has no claim in tort, and the workers' compensation benefit itself has been eliminated by a statute of repose that ended before the claim could ever arise.

Under that construction, the worker would have neither a compensation remedy nor arguably a possible tort remedy. The compensation remedy is gone because of the repose period. The worker who was exposed to a deadly substance in the course of employment and who developed a fatal disease as a result has no remedy at all. The bargain under which that worker's tort rights were extinguished has been rendered illusory.

This is not a theoretical concern. The uncontradicted record evidence establishes that a twenty-year-old worker exposed to asbestos at a WestPoint Stevens facility in 2005 would have a 96.8 percent chance of not yet manifesting mesothelioma by the time of trial. The latency period for mesothelioma ranges from 10 to 50 years, and in some cases as long as 60 years. *See* Vol. IV Lex K. Larson, Larson's Workers' Compensation § 53.03. Across South Carolina, workers in textile mills, chemical plants, construction sites, and other industries were exposed to asbestos,

silica dust, and other hazardous substances over decades of employment. Many have contracted occupational diseases that have not yet manifested as disabling conditions. Under the Court of Appeals' construction, their claims were retroactively extinguished—in many cases, years before they would have any reason to know they were ill. *Cf. Drake*, 241 S.C. at 122 (claimant exposed for 30 years, discharged in 1954, diagnosed with asbestosis in 1958); *Goff v. Mills*, 279 S.C. 382, 308 S.E.2d 778 (1983) (claimant did not learn his byssinosis was compensable until 18 years after onset). The Court of Appeals' construction does not merely narrow the pool of compensable claims. It would foreclose claims by workers exposed to the most dangerous long-latency occupational hazards from the protection of the Act. The Legislature did not intend this result.

The statutory definition of "disablement" underscores the point. Section 42-11-20 defines disablement as "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." That definition contemplates a future event — an employee *becoming* incapacitated. It does not limit when that event must occur relative to exposure.

The legislature defined the compensable injury as the onset of incapacity. The Court of Appeals has imposed a deadline on that onset that the legislature never enacted. Chapter 11 has no clear expression of intent to bar occupational disease claims before the injury the statute designates as the compensable event has even occurred.

The Court of Appeals' reinterpretation of § 42-11-70, read in conjunction with § 42-15-40, undermines the Grand Bargain in two further ways that merit this Court's attention.

First, this new interpretation of § 42-11-70 is either much harsher than South Carolina's recognized statutes of repose, or it would improperly inject 'fault' into the workers' compensation

system. South Carolina's recognized statutes of repose have a safety valve: they do not protect defendants guilty of fraud, gross negligence, recklessness, or concealment of a cause of action. *See* S.C. Code Ann. § 15-3-670(A) (Supp. 2024) ("The limitations provided by Sections 15-3-640 through 15-3-660 are not available as a defense to a person guilty of fraud, gross negligence, or recklessness...or to a person who conceals any such cause of action.") No such safety valve appears to exist for the reading of S.C. Code Ann. § 42-11-70 as a statute of repose. If there were, for example, exceptions to § 42-11-70, as a true statute of repose, for fraud, gross negligence, recklessness, or deceitful concealment by the employer, this would improperly inject "fault" into the system and create the type of litigation the Workers' Compensation Act of South Carolina was specifically meant to avoid. *See Machin v. Carus Corp.*, 419 S.C. 527, 534, 799 S.E.2d 468, 471 (2017) (describing workers' compensation "as founded upon recognition of the advisability, from the standpoint of society as well as of employer and employee, of discarding the common law idea of tort liability in the employer-employee relationship and of substituting therefor the principle of liability on the part of the employer, *regardless of fault"*) (citation omitted; emphasis added).

The other alternative would be that no such exceptions existed to the very harsh bar of § 42-11-70 as interpreted by the Court of Appeals, even for fraud, recklessness, and willful concealment. In this alternative, every employee who worked in such environments would have every incentive to file a workers' compensation claim within two years of last injurious exposure in such workplace environments. This would be the case, no matter the full manifestation of symptoms – whether such diseases ultimately manifested or not. Such a construction could also perversely reduce the incentive for employers to invest in safety measures designed to protect against hazards whose health effects are known to manifest beyond two years since the employer's exposure to liability would end before the disease could present. The practical result would be a

flood of prophylactic claims in every industry involving hazardous exposure, filed by workers who may never develop a compensable condition, to preserve rights that would otherwise be extinguished before disease manifests. This alternative outcome would also be directly contrary to the purposes of the Act, which was meant to limit the amount of litigation between employers and employees, not increase it.

CONCLUSION

The Court of Appeals' construction cannot be reconciled with this Court's precedent or the structure of Chapter 11. Having accepted that "contracted" means disablement, the court cannot plausibly treat § 42-11-70 as a statute of repose; a limitation measured from the event that triggers accrual operates as a statute of limitations, not a statute of repose. The Legislature's actions confirm the point: when it enacted an express repose provision for repetitive-trauma injuries in 2007, it left Chapter 11 unchanged—foreclosing any basis to imply a repose period for occupational disease.

The consequences underscore the error. Because occupational diseases often involve long latency periods, the decision below would bar claims before disablement occurs, leaving workers without compensation and without a tort remedy. The Workers' Compensation Act does not contemplate that result.

IWA respectfully requests that this Court grant the petition for certiorari and reverse the decision of the Court of Appeals.[4]

Respectfully Submitted,

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[4] The unusual procedural posture of this case—a declaratory judgment action in which no injured worker was a party—makes the Court of Appeals' sweeping statutory construction particularly troubling. The opinion reached out to resolve a major question of occupational disease law in a case that did not require it. At a minimum, the opinion should be depublished to prevent its application to actual occupational disease claims.