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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. 2025-002536
Court of Appeals Op. No. 6121 (Sept. 17, 2025)

South Carolina Workers' Compensation Commission, Petitioner,

v.

WestPoint Home, LLC..... Respondent.

WESTPOINT HOME'S RESPONSE TO AMICUS BRIEF

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March 2, 2026

TABLE OF AUTHORITIES

Cases

Bishop v. Westinghouse Elec. Corp., No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015 (2007) .. 2
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RESPONSE TO THE INJURED WORKERS' ADVOCATES' AMICUS FILING

If the Court grants the Injured Workers' Advocates' motion and accepts its proposed amicus brief, the Court should disregard its position.

The Injured Workers' Advocates filed an 11-page brief arguing, in essence, that it would be unfair to enforce South Carolina Code § 42-11-70. But that amicus filing never addresses or even acknowledges that the Court of Appeals' ruling is fully aligned with a uniform body of case law enforcing the repose period in South Carolina Code § 42-11-70. *See, e.g., Matthews v. E.I. du Pont de Nemours & Co.*, Case No. 4:16-cv-2934-RBH, 2018 U.S. Dist. LEXIS 193735, at *26 (D.S.C. Nov. 13, 2018) (“Here, the plain reading of the statute of repose [*i.e.*, S.C. Code Ann. § 42-11-70] serves to clearly provide that claims for pulmonary disease arising out of the inhalation of organic or inorganic dusts ***must be brought within two years after the last exposure to the hazard***. Mr. Matthews worked for DuPont throughout the 1960s. He developed his pulmonary disease decades later, well past the period provided for in the statute of repose. While this result may seem unfair, this Court is not tasked with legislating.”) (emphasis added); *Parker v. Asbestos Processing, LLC*, Case No. 0:11-1800-JFA, 2015 U.S. Dist. LEXIS 115094, at *13–24 (D.S.C. June 30, 2015) (confirming that South Carolina Code § 42-11-70 is a statute of repose, citing *Vespers v. Springs Mills, Inc.*, 276 S.C. 94, 275 S.E.2d 882 (1981), for its enforcement of the statute, and holding that the plaintiffs could not bring malpractice claims against their counsel for failing to advise them of potential workers' compensation relief because none “became disabled within two years of their last exposure to asbestos at the Springs Mills plants” and thus had no potential workers' compensation claim), *aff'd sub nom. Southern v. Bishoff*, 675 F. App'x 239 (4th Cir. 2017).

That extensive jurisprudence includes numerous decisions from the Petitioner Workers' Compensation Commission's appellate division as well. *See, e.g., Truax v. Daniel Const./Fluor Daniel*, No. 0411701, 2009 SC Wrk. Comp. LEXIS 30, at *5–6 (2009) (“S.C. Code Ann. § 42-11-70 is abundantly clear in its intent to disallow compensation for disability or death for an occupational disease of a pulmonary nature that is not contracted within two years of the date of the last injurious exposure. Notwithstanding the latency period of asbestos related diseases such as asbestosis, the legislature has never amended this provision and its intent is abundantly explicit.”); *Gibson v. Westinghouse Elec. Corp.*, No. 0319071, 2006 SC Wrk. Comp. LEXIS 895, at *19–21 (2007) (“The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease. The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended.”); *Bishop v. Westinghouse Elec. Corp.*, No. 0318085, 2006 SC Wrk. Comp. LEXIS 1015, at *19–21 (2007) (“The legislature chose to make compensability dependent on their being less than one (or two) year(s) between exposure and contraction of the disease. The Appellate Review Panel finds that the purpose of 42-11-70 is to protect the employer against claims too old to be fairly investigated and defended.”).

None of these decisions—*Matthews, Parker, Truax, Gibson, Bishop*—are even cited in the amicus brief, much less discussed or analyzed. The Court of Appeals' ruling matches this long-settled body of jurisprudence. At bottom, the amicus brief is more akin to a position paper that could be submitted to the General Assembly when lobbying for a legislative rewrite of South Carolina Code § 42-11-70. But that is not a proper request of a court. If the Court grants the motion, it should disregard the arguments contained in the proposed amicus brief, deny certiorari review, and remand this matter so that WestPoint Home can promptly recover its money.

Respectfully submitted,

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