

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
The Honorable Alison R. Lee
Circuit Court Judge

Appellate Case Number: 2025-02536

South Carolina Workers' Compensation Commission,Petitioner,

v.

WestPoint Home, LLC,Respondent.

BRIEF OF PETITIONER

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S.C. SUPREME COURT

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QUESTIONS PRESENTED

1. Is S.C. Code Ann. §42-11-70 a statute of repose that bars a workers' compensation claim for pulmonary injury two years after the last employment? Specifically:
 - a. Did the Court of Appeals err in reversing the Circuit Court Judge and finding that S.C. Code Ann. § 42-11-70 is a statute of repose?
 - b. Did the Court of Appeals err in attempting to apply rules of statutory construction to a clear and unambiguous statute?
 - c. Did the Court of Appeals fail to recognize the proper statutory scheme for occupational injury whereby § 42-11-70 is a statute requiring medical proof that "an injury was contracted" within two years from last exposure as a prerequisite to establishing a timely claim within S. C. Code Ann. § 42-15-40?
2. Did the Court of Appeals err in reversing the Circuit Court Judge's finding that when WestPoint Home indicated that it was not paying any further self-insured claims, the Commission properly negotiated the letter of Credit protecting WestPoint's employees and holding those funds pending claims?

INTRODUCTION

That which we call a rose by any other name would smell as sweet.¹

The South Carolina Supreme Court is presented with the opportunity to determine that whatever it may have been called, the South Carolina General Assembly did not enact S.C. Code Ann. (2025) § 42-11-70 to be a statute of repose.

As § 42-11-70 is not a statute of repose, the Court can affirm that the Commission had good cause under the facts of this case to negotiate a line of credit and deposit the funds with the State Treasurer in trust for WestPoint Stevens' employees' likely occupational illness claims arising from their exposure to asbestos while employed with WestPoint Stevens.

¹ William Shakespeare, *Romeo and Juliet*, Act 2, Scene 2

This case also affords the Court the opportunity to reaffirm that agencies of the State of South Carolina are not subject to prejudgment interest absent a statute other than the general interest statute or a contractual obligation.

This Court granted certiorari to review the Court of Appeals' reversal of the circuit court's finding that:

- The Workers' Compensation Commission acted properly when it drew down the entire letter of credit pursuant to the Memorandum of Understanding between WestPoint Stevens and the Commission, and was "unquestionably" entitled to draw down the letter of credit. The Commission is entitled to hold and administer the funds held by the State Treasurer for the purpose of paying any future claims arising out of exposure to asbestos as a result of employment with WestPoint Stevens.
- The Court noted that WestPoint Home "lodged no contemporaneous objection to the Commission's decision to draw down the entire amount, even though by that time WestPoint Home had taken ownership of the assets of WestPoint Stevens." The Court also noted that WestPoint Home did not contact the Commission about the issue for several years.
- The Commission exercised reasonable judgment in retaining the balance of the funds because it reasonably believed that future claims for asbestos-related illnesses were quite possible and such claims have an exceptionally long latency period.
- The funds negotiated were the only remaining money from which to pay workers' compensation claims once the Commission was notified that no further payments would be forthcoming.
- The legislative intent behind both § 42-15-40 and § 42-11-70 is clear and unambiguous. In order to bring a claim for occupational disease, a claimant must file a claim within two years

of a definitive diagnosis and notification of that diagnosis of an occupational disease. Under § 42-11-70, a claimant must also prove that the disease was “contracted” within two years of the last exposure to the hazardous condition.

- The record in the case contained evidence that there are likely latent future claims which could arise for up to 50 years after the last exposure to asbestos (the average latency period of mesothelioma is 43.4 years).
- WestPoint Home failed to meet its burden to prove that the funds held in trust by the State Treasurer will not be needed to satisfy future claims.

In reversing the decision of the Circuit Court, the Court of Appeals held that:

- Section 42-11-70 is a statute of repose that bars claims for pulmonary diseases unless contracted within two years after last exposure.
- The South Carolina Workers' Compensation Commission improperly drew down the entire \$1.8 million letter of credit when funds were not needed for payment of pending claims.
- That WestPoint is entitled to return of its deposit plus interest earned as the time period for new claims has expired.
- That WestPoint Home’s claim for prejudgment interest should be remanded for the circuit court's consideration.

STATEMENT OF THE CASE

STATUTES OF REPOSE IN SOUTH CAROLINA

Ultimately, this case turns on whether S.C. Code Ann. § 42-11-70 is a statute of repose. That determination governs the other issues in the case. Were the Court to hold that § 42-11-70 is a statute of repose, it might be appropriate for the State Treasurer to return the funds being held and the accrued interest, but not pre-judgment interest, on those funds to the Employer’s legal

successor. On the other hand, because § 42-11-70 is not a statute of repose, the funds currently held must remain with the state to pay some or all of the inevitable asbestos-related claims from WestPoint Stevens' former employees. For that reason, we believe that a brief discussion of what a statute of repose is, and some examples in the South Carolina Code are appropriate within our Statement of the Case.

A Statute of repose is defined as "a statute barring any suit that is brought after a specified time since the defendant acted, even if this period ends before the plaintiff has suffered a resulting injury." *Capco of Summerville, Inc. v. J.H. Gayle Const. Co., Inc.*, 368 S.C. 137 (2006). Importantly, the test ties it to an action of the defendant. In this case, when the defendant exposed the employee to asbestos in the workplace. A true statute of repose in this instance would read something like the one that our General Assembly included in the Workers' Compensation Act in S.C. Code Ann. § 42-15-40 which states ". . . for a repetitive trauma injury, 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.**" [emphasis added] Section 42-11-70 contains no such language or limitation.

The Court of Appeals held that § 42-11-70 was a statute of repose, without this limit and that the applicable statute of repose ran a mere two years after the last exposure, a period of time not contemplated elsewhere in the Act and truly incomprehensible considering the nature of the type of occupational injury likely to arise among former WestPoint Stevens employees.

Our General Assembly has not enacted any statute of repose without clearly setting an absolute limit as to when a claim may be made. Section 42-11-70 does not do that. Other statutes of repose are clear and unambiguous. Section 42-11-70 is clearly and unambiguously NOT a

statute of repose. For example:

S.C. Code Ann. §15-3-640 :No actions to recover damages based on or arising out of the defective or unsafe condition of an improvement to real **property may be brought more than eight years after substantial completion of the improvement.**

S.C. Code Ann. §15-3-545 Action must be “commenced within three years from the date of the treatment, omission, or operation giving rise to the cause of action or three years from date of discovery or when it reasonably ought to have been discovered, **not to exceed six years from date of occurrence, or as tolled by this section.**

S.C. Code Ann. §42-15-40 The right to compensation under this title is barred unless a claim is filed with the commission within two years after an accident, or if death resulted from the accident, within two years of the date of death. However, **for occupational disease claims 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.** For the death or injury of a member of the South Carolina National Guard, as provided for in Section 42-7-67, the time for filing a claim is two years after the accident or one year after the federal claim is finalized, whichever is later. The filing required by this section may be made by registered mail, and the service within the time periods set forth in this section constitutes timely filing. **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.** This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.

The Court of Appeals' misinterpretation of § 42-11-70 undergirds each of the other issues addressed in this brief.

FACTUAL BACKGROUND

WestPoint Stevens was a textile manufacturer that used natural and asbestos fibers in its textile mills in South Carolina and employed South Carolina Workers. WestPoint Stevens was a self-insured employer pursuant to S.C. Code Ann. §42-5-20.

Employees exposed to asbestos fibers, which they inhale in the workplace, can contract

diseases like mesothelioma and asbestosis. 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. The South Carolina Workers' Compensation Commission was created to ensure that an employee injured on the job in South Carolina receives the proper medical care and compensation for his or her injuries. (R. p.332 ll. 15-18). The Commission also ensures that employers have proper coverage to pay for claims. (R. p. 332 ll. 20-25). Self-insured employers are required to post security for their claims with the commission. Acceptable forms of security include either a surety bond or a letter of credit. (R. p. 334 ll. 13-19) (*See* S.C. Code Ann. §42-11-70; Regs. 67-1504-1507). The Commission uses a formula to determine the required amount of surety, but it applies to an ongoing business. (R. p. 334 ll. 120 – p. 335 ll. 16). Occupational illnesses are treated differently. Once an occupational illness is diagnosed, there is a two-year window to file a claim. (R. p. 336 ll. 5-8).

If an insolvent company has claims in excess of its surety amount, the injured worker has no funds from which to be compensated (R. p. 336 ll. 7-9). When a self-insured goes bankrupt, the Commission draws down the letter of credit to calculate potential future claims based on the type of business that the industry or manufacturing plant is. (R. p. 338 ll. 17-20)

The Commission drew down WestPoint Stevens' letter of credit because WestPoint Stevens notified the Commission that it would not be responsible for payment of any further Workers' Compensation Claims. (R. pp. 339 ll. 22 – 340 ll. 1.1). The Memorandum of Understanding that the Commission relied upon expressly provides that "The Commission may, at any time, draw on the Letter of Credit if needed to pay any workers' compensation claim and claims administration expenses which are the responsibility of the Employer." (R. p. 429) The

Exhibit also provides that “If the Commission is notified that the Letter of Credit is being canceled or will not be renewed and a new letter of credit or surety bond acceptable to the Commission is not filed with the Commission, the Commission may, at its discretion, draw on the Letter of Credit” (R. p. 429).

The Commission was familiar with the type of business conducted by WestPoint Stevens and knew that it had potential claims for exposure to respiratory claims for inhaled organic or inorganic fibers. (R. p. 340 ll. 16-19). The Commission interpreted the correspondence from WestPoint Home that said “no further payments will be made with respect to the Workers’ Compensation claims asserted against WestPoint Stevens, Inc.” as meaning that the letter of credit would not be renewed and that the Commission had to draw down the letter of credit to ensure that the funds would be set aside for any future claims to be paid (R. p. 341 ll. 18-19).

Currently, the Commission has 450 claims filed for occupational diseases with dates of exposure dating back to the 1950s. Those cases are currently pending before the Commission. (R. p. 432 ll. 18-22). The Commission derives no benefit from holding the funds from the Letter of Credit – only the potential claimants who may suffer from these occupational diseases do. (R. p. 344 ll. 10-11).

WestPoint did not object to the drawdown of the Letter of Credit in 2005 and first inquired about the funds in 2013. (R. pp. 345 ll. 15 – 346 ll. 13)(R. p. 788). The Commission is bound by statute and regulations to ensure that funds are available to pay claims by employees, including claims for occupational illnesses such as byssinosis and asbestosis. (R. p. 347 ll. 7-23).

The Commission’s Actuary, Mr. Burkhalter, explained how there is a substantial likelihood of future latent claims to be assessed against WestPoint Stevens by its former employees. His

testimony is uncontroverted². He testified that the average latency period of work-exposed mesothelioma is 43.4 years. (R. 384 ll. 22-24) (R. 389 ll. 14-17). To a reasonable degree of actuarial certainty, there are a minimum of 1,929 employees covered by the WestPoint Stevens Workers Compensation liability who are still living and who were exposed to asbestos at the plants in question. (R. p. 388 ll. 12-13). Mr. Burkhalter testified that there is a 98.6% chance that a 20-year-old employee in one of those plants in 2005 who was exposed to asbestos could have mesothelioma and not know about it. Going forward to 2030, there is still a 90.8% chance that the disease will remain latent. Even in the year 2045, there is still about a 50% chance that employees may have the disease, though it remains latent. (R. pp. 390 ll. 8 -. 391 ll. 6). He concludes that there are “thousands of workers who worked at these plants that were exposed to asbestos and are still alive. And that's just the fact that they might not have had claims in 16 years; that’s not an indication that they’re not out there. Our statistics show that this is to be expected. So, we can’t quantify the chance of one of these claims popping up. We can only say that there are a lot of people out there who were exposed. And if they were to contract it, it is very, very likely that sitting here today, we wouldn’t know about it.” (R. p. 391 ll. 7-21). He also notes that, given the latency of mesothelioma, past experience over a number of years has little actuarial credibility. (R. p. 392 ll. 2-6).

There are a number of undisputed facts. The Commission drew down on the Letter of Credit after receiving notice from WestPoint Stevens that it was not paying for any additional Workers’ Compensation Claims. (R. p. 778) The letter of credit was issued originally by NationsBank, which was succeeded by Bank of America. The letter was amended on August 1, 2003 (R. p. 431), to increase the aggregate amount to \$1,800,000.00. On August 15, 2005, WestPoint Stevens wrote

² Mr. Burkhalter’s complete report is included in the record as Trial Exhibit 50.(R. p. 1088)

the South Carolina Workers' Compensation Commission a letter that stated, "Please be advised that pursuant to the Sale Order and APA³, workers' compensation liabilities asserted against the Debtors were not liabilities assumed by the Purchaser. Therefore, no further payments will be made with respect to workers' compensation claims asserted against WestPoint Stevens, Inc." (R. p. 795) The Commission drew down the entire letter of credit after receiving this notice. Funds were placed in a WestPoint Stevens Trust Fund Account 41F170000 in the office of the South Carolina State Treasurer on August 17, 2005.

Between 2005 and 2013, claims totaling almost seven hundred thousand dollars were paid for WestPoint Stevens employees after the drawdown in 2005. (R. p. 816). In addressing the funds after the drawdown, Mr. Smith at the WCC explained that "we are currently holding at the treasurers (sic) office \$1.3 million from the surety requirement of WestPoint Stevens to pay their open workers' compensation claims since their recent bankruptcy and default." (R. p. 875). He explains this as he requests that the Treasurer's office transfer additional funds to Key Risk for the payment of claims. Four claims were made for Asbestosis in 2011⁴. (R. p.847, p. 849, p. 851, p. 852). There have been no other claims since 2011. With interest, the balance in the fund held by the treasurer was \$1,698,630.50 at the end of FY2022 (R. p. 876-877). Claims totaling \$1,709,438.31 were incurred in the claims run provided by the independent administrator⁵. After the drawdown, the first contact from WestPoint home was alleged to be "reaching out in 2013. (R. p. 328 ll. 18-22). The first written inquiry from WestPoint Home was dated February 22, 2013, (R. p. 787), more than seven and one-half years after the funds were drawn.

³ "APA" i.e. Asset Purchase Agreement (R. 464).

⁴ While demonstrating that latent claims are likely to arise, none of these claims were charged against the self-insured WestPoint Stevens, because it was determined that they originated in the Whitmire Plant, which was not a part of the self-insured group.

⁵ This report includes claims that predate the drawdown. (R. p. 810-815)

PROCEDURAL HISTORY

WestPoint Home, LLC (“WestPoint Home”) 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. 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. 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 WestPoint 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 secure the self-insured employer’s 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.” (R. p. 795) Upon receipt of this notification, the Commission, interpreting the letter to include renewal of any letter of credit followed its regular

procedure and 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. (R. p. 787) 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.

A. Circuit Court Proceedings

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. WestPoint Home counterclaimed on May 22, 2024, 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's former employees' potential claims. Ultimately, the parties reached an agreement where WestPoint Home was given access to certain information, and additional information was obtained from the Commission's⁶ third-party contractor. 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 funds were properly negotiated by the Commission and that it was proper for them to be retained so long as additional claims by former employees exposed to asbestos were actuarially possible. WestPoint Home did not file a Rule 59(e), SCRCF motion. WestPoint Home filed its appeal of the Circuit Court's Order on October 23, 2023.

B. Court of Appeals Proceedings

The Court of Appeals heard the matter and issued its Order reversing the circuit court on September 17th, 2025. (R. 166) In summary, the Court of Appeals ruled as follows;

⁶ This was after the Court entered Summary Judgment on this claim in favor of the Workers' Compensation Commission on April 26, 2019.

- Section 42-11-70 is a statute of repose that bars claims for pulmonary diseases unless contracted within two years after last exposure.
- The South Carolina Workers' Compensation Commission improperly drew down the entire \$1.8 million letter of credit when funds were not needed for payment of pending claims.
- That WestPoint is entitled to return of its deposit plus interest earned as the time period for new claims has expired.
- That WestPoint Home's claim for prejudgment interest should be remanded for the circuit court's consideration.

The Commission petitioned for Rehearing with a suggestion for rehearing en banc on October 1, 2025 (R. 180). The Court of Appeals denied that Petition on November 21, 2025. (R. 198). Thereafter, the Commission filed a timely petition for Certiorari to this Court which this Court granted on March 11, 2026.

STANDARD OF REVIEW

The Court reviews questions of statutory interpretation de novo. *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022).

ARGUMENT

I. THE COURT OF APPEALS ERRED WHEN IT APPLIED RULES OF STATUTORY CONSTRUCTION TO AN UNAMBIGUOUS STATUTE.

There is no ambiguity in S.C. Code Ann. §42-11-70. Because the statute in question was unambiguous, the Court of Appeals erred in applying any rules of statutory construction. The Statute is clear. It provides: “[N]either an employee nor his dependents shall be entitled to compensation for disability or death from an occupational disease, except that due to exposure to ionizing radiation, unless such disease was contracted within one year after the last exposure to the hazard peculiar to his employment which caused the disease, save that in the case of a

pulmonary disease arising out of the inhalation of organic or inorganic dusts the period shall be two years.” The Statute requires a finding **when a claim is made** under S.C. Code Ann §42-15-40, which provides that for occupational disease, “the two-year period [statute of limitations] 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.” The most notable feature of occupational diseases caused by inhaling compounds is their latency period. Authorities have recognized that occupational illnesses in general and asbestos-related diseases in particular have long latency periods. “In some 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 that 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].” This interpretation is consistent with the legislative scheme in South Carolina. The Commission’s holding in *Truax v. Daniel Construction*, 2009 WL 1433538 demonstrates the way the legislature designed the statutory scheme. There Truax sought coverage for asbestos-related occupational illness. He alleged he was exposed between 1969 and 1972 and became disabled in 2006. There, the commission found no medical evidence supporting the finding that asbestosis was “contracted” within two years of last exposure and held that the claimant had not met the burden of proof required by §42-11-70. This supports the General Assembly’s implicit recognition that you may contract a disease shortly after exposure, but not be symptomatic and thereafter diagnosed until many years later. Hence, § 42-11-70 is a coverage statute setting forth a necessary prerequisite to any award of compensation. When a party files a claim, he or she must present medical evidence that the disease was contracted within two years

of last exposure to a hazard. An employee can have contracted but not been diagnosed with the disease.

Notably, the Court of Appeals never found that the statute was ambiguous. The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011); *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). Under the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29-30, 661 S.E.2d 349, 351-52 (2008). "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *State v. Baucom*, 340 S.C. 339, 342, 531 S.E.2d 922, 923 (2000). Statutes should be read in harmony with their purpose and with other provisions that are part of the same general statutory law in order to determine their effect. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). Only where the language of an act gives rise to doubt or uncertainty as to legislative intent may this Court search

for that intent beyond the borders of the act itself. *Smith v. Tiffany*, 419 S.C. 548, 556, 799 S.E.2d 479, 483 (2017). The best evidence of legislative intent is the text of the statute. *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002); *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. The Court of Appeals never identified a doubt or uncertainty in §42-11-70, instead it engaged in an exercise of substituting dissimilar words (substituting the words “disablement or death” which relates to when an occupational disease becomes compensable (see e.g. *Drake v. Raybestos-Manhattan, Inc.*, 241 S.C. 116, 121, 127 S.E. 2d 288, 291 (1962)) for the word “contracted” in the statute to arrive at a meaning that the Court concluded created a statute of repose. The plain meaning of contracted in this case is the past tense form of “Catch or develop (a disease or infectious agent)”⁷. Thus, the worker caught the disease within two years of exposure.

⁷ The idea that contracted in this sense means to catch or develop a disease makes imminently more sense than defining it as disablement or death. This Court has explained that multiple times. For example,

A claimant must prove the following six elements in order to receive Workers' Compensation benefits for having *contracted* an occupational disease:

1. A disease;
2. The disease must arise out of and in the course of the claimant's employment;
3. The disease must be due to hazards in excess of those hazards that are ordinarily incident to employment;
4. The disease must be peculiar to the occupation in which the claimant was engaged;
5. The hazard causing the disease must be one recognized as peculiar to a particular trade, process, occupation, or employment; and
6. The disease must directly result from the claimant's continuous exposure to the normal working conditions of the particular trade, process, occupation, or employment.

Fox v. Newberry County Memorial Hosp., 319 S.C. 278, 281, 461 S.E.2d 392, 394 (1995). [Emphasis Added].

While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute. *Hodges v. Rainey*, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000). The Court of Appeals completely rewrote the plain meaning of § 42-11-70 when it chose to substitute words unrelated to the terms replaced as a means of interpreting the statute. The words the Court of Appeals used in its interpretation had nothing to do with catching or developing (e.g., “contracting:”) an occupational disease, which is clearly what the General Assembly intended when it passed the Occupational Disease Act. An employee must “catch” or “develop” the disease within two years of exposure, but he or she has no obligation under § 42-15-40 to file a claim at that point because he or she does not know that they have contracted the disease.

“Whe[n] a word is not defined in a statute; our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Berkeley Cty. Sch. Dist. v. S.C. Dep’t of Revenue*, 383 S.C. 334, 345, 679 S.E.2d 913, 919 (2009) (quoting *Lee v. Thermal Eng’g Corp.*, 352 S.C. 81, 91-92, 572 S.E.2d 298, 303 (Ct. App. 2002)); see also *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 144, 750 S.E.2d 65, 71 (2013) (relying on Black’s Law Dictionary and Merriam-Webster’s Collegiate Dictionary to provide the meaning of a word not defined in the statute). Here, the word “contracted” is easily defined and the Court of Appeals improperly changed its meaning to wrongly make §42-11-70 a statute of repose.

As the S.C. Supreme Court found in *E. M. Matthews Co. v. Atlantic C. L. R. Co.*, 102 S.C. 494, 86 S.E. 1069 (1915):

No doubt the maxim, “*expressio unius est exclusio alterius*,” is helpful as a rule of construction, but it is not inflexible, and it should be applied, as all other rules of construction, as a means of ascertaining the legislative intention, and it should not be allowed to have the effect of defeating that intention which is otherwise plainly discovered.

102 S.C. at 498-499, 86 S.E. at 1070. “The 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.’ The maxim should be used to accomplish legislative intent, not defeat it. The maxim ‘is a rule of statutory construction; it is not a rule of substantive law. Accordingly, [it] ‘should be used with care.’” *State v. Leopard*, 349 S.C. 467, 472, 563 S.E.2d 342, 344 (Ct. App. 2002) (quoting *S.C. Dep’t of Consumer Affairs v. Rent-a-Center, Inc.*, 345 S.C. 251, 256, 547 S.E.2d 881, 883-84 (Ct. App. 2001), *cert. granted* (Nov. 29, 2001)).

II. THE GENERAL ASSEMBLY KNOWS HOW TO CREATE A STATUTE OF REPOSE. IT DID NOT CREATE ONE WHEN IT CRAFTED §42-11-70.

When it wished to place a statute of repose in the Workers’ Compensation Act, our General Assembly did so by amending S.C. Code Ann §42-15-40, which is the Statute of Limitations in the Act. In 2007 when it took this action, the General Assembly added the words,

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. This section applies regardless of whether the employee was aware that his repetitive trauma injury was the result of his employment.”

[Emphasis added] to the Statute of Limitations in §42-15-40. The period of repose was not added in another section of the act, even in the portions dealing with repetitive trauma. When the General Assembly added a deadline for repose for repetitive trauma injuries, it made it clear that there is no claim unless the claim is filed within seven years after the last date of injurious exposure – regardless of when the employee knows his or her injury is compensable. That approach is precisely what the General Assembly would have done had it intended to create a statute of repose for pulmonary injuries. “Congress, we have held, does not alter the fundamental details of a

regulatory scheme in vague terms or ancillary provisions -- it does not, one might say, hide elephants in mouseholes.” See *MCI Telecoms. Corp. v. AT&T*, 512 U.S. 218, 231, 129 L. Ed. 2d 182, 114 S. Ct. 2223 (1994); *FDA v. Brown & Williamson Tobacco Corp.*, supra, at 159-160. *Whitman v. Am. Trucking Ass’ns*, 531 U.S. 457, 468, 121 S.Ct. 903, 149 L.Ed. 2d 1 (2001). Like Congress, the South Carolina General Assembly does not hide elephants in mouseholes, which is exactly what Appellants argue and the Court of Appeals found when it determined that §42-11-70 abrogated the statute of limitations articulated in S.C. Code Ann. §42-15-40. This is particularly true where §42-11-70 lacks the “magic” language of repose that no claim may be made past a certain time regardless of when it is discovered, when it occurred or when the employer exposed the employee to the hazard.

III. NO MATTER WHAT A COMMISSIONER, A JUDGE, A WITNESS OR SOME UNRELATED CASE CALLED 42-11-70 IN DICTA, IT IS NOT A STATUTE OF REPOSE

Here, the Court of Appeals accepted the Appellant’s argument that others had called § 42-11-70 a statute of repose. In our petition for Certiorari and in previous filings with the Commission, we explained that in each instance, regardless of what the Commissioner or Court called § 42-11-70, it has never been used to preclude a claim for an occupational injury not filed within two years of employment. Instead, it imposes an intermediary step that must be fulfilled as a prerequisite to a successful claim. Whether or not the section is a statute of repose must be addressed through a legal lens.

An issue regarding statutory interpretation is a question of law. *Jeter v. S.C. Dept. of Transp.*, 369 S.C. 433, 438, 146, 633 S.E.2d 143, 146 (2006); *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) (“[d]etermining the proper interpretation of a statute is a question of law, and this Court reviews questions of law de novo.”). While this

Court will generally give deference to an agency's interpretation of an applicable statute or its own regulation, where the plain language of a statute is contrary to the agency's interpretation, this Court will reject the agency's interpretation. *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 439, 581 S.E.2d 836, 838 (2003). Deference to an agency's interpretation is not mandatory. *Davis v. S.C. Dep't of Corr.*, 444 S.C. 138, 906 S.E.2d 569 (2024).

WestPoint will again argue that the Court of Appeals' analysis is consistent with the Commission's language when it has previously addressed this issue. While the argument is incorrect and the Commission has not ever treated § 42-11-70 as a statute of repose, WestPoint (and to a point, Court of Appeals) appears to try asserting judicial estoppel against the Commission "Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). "The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." *Id.* Judicial estoppel only relates to matters of fact, not law. *Id.* For the doctrine of judicial estoppel to apply, the following elements must be satisfied: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. *Id.* at 215-16, 592 S.E.2d at 632. Because the interpretation of South Carolina Code § 42-11-70 is a matter of law, and WestPoint fails to meet the required 5 elements of judicial estoppel, WestPoint's argument that the Commission is bound by its prior interpretations of South Carolina Code § 42-

11-70 is not supported.

This Court is the final arbiter of the meaning of any statute if there is a question about that meaning. Here, there should be none, as the statute is clear and unambiguous and is incorporated into the occupational injury scheme effortlessly.

IV. THE COMMISSION PROPERLY RETAINED THE DEPOSIT TO PROTECT WESTPOINT'S EMPLOYEES

Were the Court to find that § 42-11-70 is a statute of repose which terminates the right to make an occupational disease claim for asbestos (and other) related occupational diseases two years after exposure, the Commission might agree that WestPoint Home would be entitled to the balance held by the State Treasurer, but not any pre-judgment interest. However, that is not the case. First as we have explained, §42-11-70 is not a statute of repose. Second, the Circuit Court properly found that the Commission was within its authority in negotiating the letter of credit. And explained its reasoning in detail. It is important to note that the Commission did not “seize” WestPoint Home’s security.

In the case of self-insured employers, the Commission is charged with protecting the employees by ensuring their compensation is secured. S.C. Code Ann. §42-5-20. There is no evidence in the record to even 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 Steven’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’s good faith acts were neither a seizure nor a bad faith negotiation of the letter of credit. As the record reflects, and the trial judge held,

“On August 15, 2005, WestPoint Stevens sent a letter to the Commission indicating 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 relationship between WestPoint and the Commission was governed by a Memorandum of Understanding (“MOU”) (R. 429).

The MOU allowed the commission to draw down the letter of credit “if needed to pay any Workers’ Compensation claim or claims of administration expense which are the property of the employer.” The Commission’s regulations also allowed the drawdown in this unique circumstance where the employer gave notice that it was not paying any further claims, which was interpreted at the time as an intent to cancel the letter of credit. Reg. 67-1507(D)(4) provides “When the self-insurer fails to replace the letter of credit with another accepted proof of compliance, the Commission may demand payment of the letter of credit and deposit the proceeds in the South Carolina State Treasurer’s Office to guarantee payment of any claim occurring during the self-insured period.” Reg. 67-1507(D)(5) provides “The Commission may exercise the letter of credit at any time if the proceeds are needed for payment of a claim that occurred during the self-insured period.” The Commission’s actions of drawing on the letter of credit and using the funds to pay workers’ compensation claims that were the responsibility of Westpoint Stevens demonstrate that the proceeds were needed for the payment of a claim.

The Court also significantly noted that “WestPoint Home lodged no contemporaneous objection to the Commission’s decision to draw down the entire amount” (R. 212); WestPoint home did not contact the Commission regarding this issue for several years” (R. 212) 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.” (R. 212). 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.’ reasonably 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.” (R. 212), 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 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.”

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. (R. p. 816) There is no dispute that these claims were paid and drawdowns to pay them were proper. The record is clear that claims have been paid from the funds negotiated, and there is a high probability that employees have contracted occupational disease related to their exposure at WestPoint Stevens and will have claims that can easily exhaust all of the funds the State Treasurer holds.

V. SOVEREIGN IMMUNITY PRECLUDES ANY CLAIM OF WESTPOINT HOME TO PREJUDGMENT INTEREST AND THIS COURT SHOULD MAKE A CLEAR STATEMENT TO AFFIRM ITS PRIOR DECISIONS

It is undisputed that the Workers’ Compensation Commission is an administrative agency of the State of South Carolina and that the South Carolina Tort Claims Act (S.C. Code of Laws §15-78-10 et seq.) applies to it. A long chain of state and federal cases affirms that there is no

prejudgment interest chargeable against the State, as a sovereign, absent a statutory or contractual basis. The record here is void of either.

The only authority discussed in this case is the general-interest statute. Case law is clear that §34-31-20 does not permit the assessment of prejudgment interest against the State. Justice Pleicones concurrence⁸ in *Ellis Don Constr., Inc. v. Clemson Univ.*, 391 S.C. 552, 556-557, 707 S.E.2d 399 (2011) illustrates a long chain of legal precedent 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

⁸ Justice Pleicones makes clear his view of the law here.

I find, however, that appellant is barred from recovering prejudgment interest by the doctrine of sovereign immunity. It is well-settled that the doctrine 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 S.E.2d 741 (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.³ Since § 34-31-20 does not allow for recovery of interest against the State, and because the parties' contract is silent as to this type of interest, I find that appellant's request for prejudgment interest is barred by the doctrine of sovereign immunity. *Ulmer, supra; Monarch Mills, supra*. For this reason, I concur in the result reached by the majority.
EllisDon Constr., Inc. v. Clemson Univ., 391 S.C. 552, 556-57, 707 S.E.2d 399, 402 (2011)

recovered.” [emphasis added]. We note 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 cannot adduce any 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, supra* and reiterated by Justice Pleicones in his concurrence in *Ellis Don., supra*.

There was no need for the Court to remand this matter for a determination as to whether prejudgment interest would apply or could be calculated. Nothing in the statutes or the record supports such a finding, and §34-31-20 clearly does not apply to the government as a matter of law.

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.

This issue (a bankrupt self-employer who indicated an unwillingness to pay further claims that resulted in the negotiation of a letter of credit) is one of first impression for the courts. The Commission recognizes that the funds ultimately (after the possibility of all claims has expired) belong to the successor to the now-bankrupt self-insured employer. However, there needs to be a process to make that determination and return the funds, which were not previously contemplated by the General Assembly or the Commission. In that light, it has published a regulation designed to address this gap in administering this portion of the Act and has introduced an amendment to

Regulation 67-1507. (R. p. 1178-1181) This amendment will be effective May 10, 2026 and addresses the issue presented by WestPoint that has never occurred before. The amended regulation provides a procedure for any held funds to be released in whole or in part when “the Commission determines that all contingent liability arising during the period of self-insurance has expired (Reg. 67-1507 E(1)) and provides a means for the self-insured employer, fund or issuing bank to request a return of funds held. Reg 67-1507 E(3). The enactment of this regulation eliminates concerns about funds being held perpetually. The Commission believes that this regulation resolves the troubling issues contemplated by the Circuit Court in its Order regarding a process for determining that no further claims are available and to whom the funds should be returned.

CONCLUSION

A statute of repose, like the lovely *Rosa odorata*, which has a pleasing smell, has unique and identifiable characteristics. A statute of repose expressly bars any action after a specified time and provides a reasonable period to bring claims, considering the circumstances. That is why, for example, the General Assembly set different repose periods for construction and medical malpractice claims. Here, other than some choosing to call § 42-11-70 a statute of repose, there is nothing in its verbiage or legislative history or its placement in the code to demonstrate that its purpose was to function as a statute of repose. Because §42-11-70 is not a statute of repose, the Commission is required to hold funds to protect workers who are likely to have already been afflicted with an occupational disease as a result of their exposure to asbestos fibers while employed at WestPoint Stevens, but who have not yet been diagnosed with the disease they suffer from.

The Commission acted reasonably in 2005 when it negotiated the letter of credit and placed

the funds in trust with the State Treasurer. The Court should overturn and vacate the decision of the Court of Appeals in this matter and reinstate the Circuit Court's decision denying WestPoint Home the relief it sought.

The Court also has the opportunity here to unambiguously declare the law as it relates to the recovery of prejudgment interest against the State pursuant to the general interest statute.

The Court should reverse the Court of Appeals.

Respectfully submitted:

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