

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

RECEIVED

Jul 30 2026

S.C. SUPREME COURT

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

v.

WestPoint Home, LLC Respondents.

MOTION FOR LEAVE TO PARTICIPATE IN ARGUMENT

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, amicus curiae Injured Workers' Advocates respectfully request that they be granted leave to participate in oral argument and that ten (10) minutes of oral argument time be allotted to counsel for the named amicus.

The question presented in this case is whether S.C. Code Ann. § 42-11-70 is a statute of repose that extinguishes an occupational disease claim two years after the last injurious exposure, or instead a coverage provision establishing an element of compensability that a claimant must prove.

The briefing of the Petitioner and the Respondent focuses predominantly on whether § 42-11-70 operates as a statute of repose or instead as a coverage provision establishing an element of compensability, and on the related questions of the Commission's drawdown of the letter of credit and the availability of pre-judgment interest against the State.

Injured Workers' Advocates (“IWA”) addressed the construction of § 42-11-70 in its brief as well. But IWA also addressed matters that the parties' briefing does not develop: the consequences of the decision below for the exclusive-remedy provision of S.C. Code Ann. § 42-1-540 and the reciprocal exchange on which the Workers' Compensation Act rests; the absence in § 42-11-70 of the fraud, gross negligence, and concealment exception that accompanies South Carolina's recognized statutes of repose, and the difficulty of supplying such an exception in a system founded on liability without regard to fault; the incentive the decision below creates for prophylactic claim filing by workers who may never develop a compensable condition; and the significance of the procedural posture of this case, in which the substantive rights of workers with latent occupational disease were construed in a declaratory judgment action to which no injured worker was a party.

IWA's brief was filed while the petitions for writ of certiorari were pending and therefore does not address the parties' merits briefing. IWA does not seek to duplicate that briefing or the arguments the parties will present. It seeks a limited opportunity to address the effect of the decision below on the workers its members represent, the absent parties whose substantive rights the opinion governs, and to identify the grounds on which this case may be resolved without adjudicating those rights in their absence.

IWA believes argument on these points will assist the Court by ensuring that all facets of the question presented, including its consequences for workers not before the Court, are explored at oral argument. IWA has consulted with counsel for Petitioner and they have no objection to IWA's request.

Respectfully submitted,



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