

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

C.A. No. 2013-CP-43-02283  
WCC File No. 9930459

**RECEIVED**

OCT 08 2014

**SC Court of Appeals**

73795

Arrowpoint Capital Corporation/Arrowood Indemnity Co., Carrier ..... Appellant,

v.

South Carolina Second Injury Fund, Carrier ..... Respondent,

*In re:*

Joe Mathis, Employee/Claimant

v.

Yuasa-Exide, Inc., Employer and Arrowpoint Capital Corp./Arrowood Indemnity Co., Carrier.

**NOTICE OF APPEAL**

Pursuant to Rule 203, SCACR, Appellant, Arrowpoint Capital Corporation/Arrowood Indemnity Co. (“Appellant” or “Carrier”), by and through its undersigned attorney, does hereby appeal from the Order of the Honorable W. Jeffrey Young, Circuit Court Judge of the Third Judicial Circuit. Appellant submits that the Court erred in concluding that Appellant’s claim for reimbursement from the South Carolina Second Injury Fund (“Respondent” or “the Fund”)

pursuant to S.C. Code Ann. § 42-9-400 was properly denied by the South Carolina Workers' Compensation Commission. The order of the Circuit Court affirming the decision of the Commission was executed on September 5, 2014. Appellant received a copy of the filed order from the Fund's counsel on September 25, 2014.

The Circuit Court's Order is appealed on the following grounds:

1. The Court erred in finding substantial evidence to support the Commission's decision that Claimant did not have brain damage prior to his occupational exposure [to lead], the error being that the reliable, probative, and substantial evidence in the record, as well as South Carolina case law, supports that Claimant suffered from permanent preexisting impairments prior to his date of accident of November 30, 1998.

2. The Court erred in its reasoning concerning the evidentiary references regarding Claimant's physical examinations, deposition, and vocational assessment, the error being that the evidence cited is not a complete depiction of the evidence in the record and the error further being that the Court disregarded the reliable, probative, and substantial evidence in the record in making its findings.

3. The Court erred in finding that substantial evidence supported the Commission's decision that Claimant's occupational exposure to lead was not his first and subsequent injuries, the error being that such a finding is against the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

4. The Court erred in finding that the Commission's determination that Claimant's exposure to lead over a twenty-three (23) year period constituted one (1) injury that culminated on November 30, 1998, and was supported by the plain meaning of the statute, the error being

that such a finding is against the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

5. The Court erred in finding that the plain meaning of the statute required that the preexisting condition predate the work injury, which in this case is the occupational exposure, the error being that such a finding is against the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

6. The Court erred in finding that “[t]he medical evidence, including a neuropsychological evaluation, indicated that Claimant’s cognitive deficits, lead/heavy metal poisoning and alleged brain damage were caused by the lead/heavy metal poisoning and did not preexist,” the error being that such a finding is against the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

7. The Court erred in finding that the presumption that Claimant’s preexisting conditions were permanent and serious enough to constitute a hindrance to his employment does not apply because the Claimant did not have a preexisting condition before his occupational exposure, the error being that such a finding is against the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

8. The Court erred in its interpretation of several cases cited in its order, including Carolinas Recycling Group and Employers’ Insurance of Wausau v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012), Carolinas Recycling Group and Employers’ Insurance of Wausau v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012) and Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012), the error being that these cases directly support Appellant’s entitlement to reimbursement from the Fund and the error further being that the Court’s decision to ignore

binding authority constitutes an error of law where the only evidence in the record establishes that Appellant is entitled to reimbursement from the Second Injury Fund.

9. The Court erred in relying on Anderson, et al. v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104 (1943) and Ballenger v. Southern Worsted Corp., 209 S.C. 463, 40 S.E.2d 681 (1946) and finding that “[w]hile Carrier submitted medical certificates supporting the elements of reimbursement, the Commission [was] not required to give medical questionnaires conclusive effect to the exclusion of other more compelling medical evidence,” the error being that there was no other more compelling medical evidence in the record as there was no evidence submitted by Respondents to refute the medical questionnaires submitted by Appellant, and the error further being that the questionnaires were completed by competent and imminently qualified physicians who opined and concluded that the lead to which Claimant was continuously exposed aggravated or combined with his underlying preexisting conditions to result in substantially greater disability than that which would have resulted from the lead exposure alone.

10. The Court erred in giving deference to the Commission’s interpretation of its statute, the error being that the Commission ignored the evidence in the record, abused its discretion, and committed an error of law in its decision to deny reimbursement from the Fund and, as such, its interpretation of its statute was erroneous.

11. The South Carolina Workers’ Compensation Commission erred in failing to find as a fact and conclude as a matter of law that pursuant to State Workers’ Compensation Fund v. South Carolina Second Injury Fund, 313 S.C. 536, 443 S.E.2d (1994) and Springs Industries, Inc. v. South Carolina Second Injury Fund, 296 S.C. 359, 372 S.E.2d 915 (Ct. App. 1988), Appellant is entitled to reimbursement from the South Carolina Second Injury Fund.

12. The Court erred in failing to find as a fact and conclude as a matter of law that Claimant suffered from permanent impairments/preexisting conditions, the error being that such permanent impairments/preexisting conditions predated Claimant's date of accident of November 30, 1998?

13. The Court erred in failing to find as a fact and conclude as a matter of law that Claimant's preexisting conditions only had to preexist his date of injury, not the first day Claimant was ever exposed to lead, the error being that such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

14. The Court erred in failing to find as a fact and conclude as a matter of law that Claimant suffered with permanent physical impairments that constituted hindrances or obstacles to employment or re-employment, the error being that such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

15. The Court erred in failing to find as a fact and conclude as a matter of law that Claimant's permanent impairments/preexisting conditions combined with or were aggravated by his exposure to lead to result in substantially greater disability, the error being that such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

16. The Court erred in failing to find as a fact and conclude as a matter of law that the employer had knowledge of Claimant's permanent impairments/preexisting conditions (or that such conditions were concealed by or unknown to the employee) the error being that such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

17. The Court erred in failing to find as a fact and conclude as a matter of law that Claimant worked for multiple separate employers during his tenure at the Sumter battery plant, the error being that such a finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

18. The Court erred in failing to find as a fact and conclude as a matter of law that Appellant was entitled to reimbursement from the South Carolina Second Injury Fund where Claimant had permanent impairments/preexisting conditions prior to his date of hire at Yuasa Exide, Inc., his last employer at the Sumter battery plant, and that the employer had knowledge of the preexisting impairments/conditions.

19. The Court erred in failing to find as a fact and conclude as a matter of law that, even if Claimant did not have separate employers at the Sumter battery plant, the plant *retained* Claimant in its employment with knowledge of Claimant's permanent impairments/preexisting conditions, the error being that the Court did not consider the plain language of South Carolina Code Section 42-9-400 or case law interpreting the same?

20. The Court erred in affirming the decision of the Commission denying Appellant's claim for reimbursement pursuant to S.C. Code Ann. Section 42-9-400, where the reliable, probative, and substantial evidence in the record proves Appellant met every element required for reimbursement from the Fund.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



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SC Bar # 7836

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Attorneys for Appellant.

October 6, 2014

Other Counsel of Record:

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\* CERTIFIED CIRCUIT COURT MEDIATOR

September 19, 2014

Vernon F. Dunbar, Esquire  
McAngus Goudelock & Courie, LLC  
Post Office Box 2980  
Greenville, South Carolina 29602.

Re: Arrowpoint Capital Corporation v. S.C. Second Injury Fund  
(In Re: Joe Mathis v. Yuasa Exide, Inc.)  
C/A No.: 2013-CP-43-02283

Dear Ms. Pugh:

Enclosed please find a copy of the filed Circuit Court Order in the above-referenced case.

Sincerely,



Erica Samuel  
Paralegal to Latonya Dilligard Edwards

/ems  
Enclosure

**RECEIVED**  
SEP 25 2014  
BY: \_\_\_\_\_

**Reply To**  
VERNON DUNBAR  
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October 6, 2014

**RECEIVED**  
OCT 08 2014  
**SC Court of Appeals**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Arrowpoint Capital Corporation v. Second Injury Fund  
(In Re: Joe Mathis v. Yuasa Exide)  
CA Case Number: 2013-CP43-02283

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter are a Notice of Appeal and Proof of Service, and the required filing fee together with a copy of the Order being appealed. By copy of this letter, I am filing copies of the same documents with the South Carolina Workers' Compensation Commission and Sumter County Court of Common Pleas.

Also, by copy of this letter, I am serving a copy of the same on Latonya Edwards, Esquire, attorney for the Second Injury Fund.

Please return a copy of the filed Notice of Appeal in the self-addressed stamped envelope enclosed. If you have additional questions regarding the enclosed information, please do not hesitate to contact me.

With kind regards, I remain

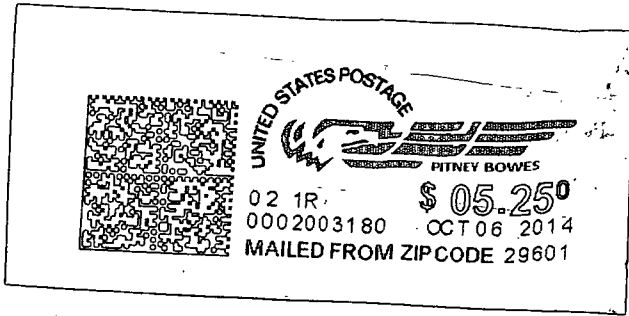
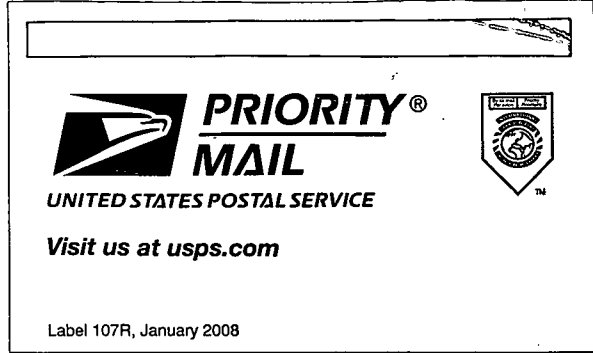
Very truly yours,



Vernon F. Dunbar

/sle

cc: Latonya D. Edwards, Dilligard Edwards, LLC  
Honorable James C. Campbell, Jr., Sumter County Clerk of Court  
Eric Rowell, Arrowpoint Capital Corp  
Timothy B. Killen, Esquire, Willson, Jones, Carter & Baxley, P.A.  
Malcolm M. Crosland, Jr., The Steinberg Law Firm, L.L.P.



**mgc** | **INSURANCE  
DEFENSE**

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