

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-43-02286
WCC File No. 9930399

73794

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OCT 08 2014

SC Court of Appeals

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

v.

South Carolina Second Injury Fund, Carrier Respondent,

In re:

C.L. Williams, 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. Appellants 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 that the substantial evidence in the record supports that Claimant C.L. Williams did not have "the alleged conditions" (i.e. permanent preexisting impairments as described under S.C. Code Ann. § 42-9-400(a)) 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 February 1, 1999.

2. The Court erred in finding the substantial evidence in the record supported that Claimant did not have alleged conditions prior to 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.

3. The Court erred in its reasoning concerning the evidentiary references regarding Claimant's physical examinations, the error being that the evidence cited is not an accurate or 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.

4. 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.

5. The Court erred in finding that Claimant's exposure to lead over a twenty-five (25) year period constituted one (1) injury that culminated on February 1, 1999, 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.

6. The Court erred in finding that the plain meaning of the statute required that Claimant's alleged preexisting conditions "predate the subsequent injury, which is the occupational exposure and is cumulative," 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 medical evidence and the statutory language support the Commission's determination that Claimant's conditions did not exist prior to 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 State Workers' Compensation Fund v. South Carolina Second Injury Fund, 313 S.C. 536, 443 S.E.2d 546 (1994), Springs Industries, Inc. v. South Carolina Second Injury Fund, 296 S.C. 359, 372 S.E.2d 915 (Ct. App. 1988), 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 Appellants are entitled to reimbursement from the Second Injury Fund.

9. The Court erred in distinguishing State Workers' Compensation Fund and Springs Industries from the instant case in that the "underlying cases were actually adjudicated and Carriers actually paid the claimants' compensation and medical benefits, unlike Carrier in this case," the error being that this finding is against the reliable, probative, and substantial evidence in the record and has no basis in South Carolina law.

10. The Court erred in 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 Appellants, 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.

11. 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 of February 1, 1999, 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. The Court erred in failing to find as a fact and conclude as a matter of law that Appellants were 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.

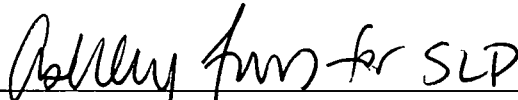
17. The Court erred in failing to find as a fact and conclude as a matter of law that, even if Claimant did not have separate employers at the Sumter battery plant, the plant *retained* Claimant in its employment with knowledge of Claimant's permanent impairments/preexisting

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.

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

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC



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October 6, 2014

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September 19, 2014

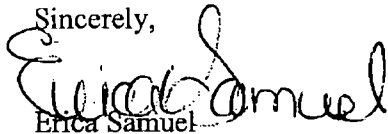
Stephanie L. Pugh, Esquire
McAngus Goudelock & Courie, LLC
Post Office Box 2980
Greenville, South Carolina 29602.

Re: Arrowpoint Capital Corporation v. S.C. Second Injury Fund
(In Re: C.L. Williams v. Yuasa Exide, Inc.)
C/A No.: 2013-CP-43-02286

Dear Ms. Pugh:

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

Sincerely,



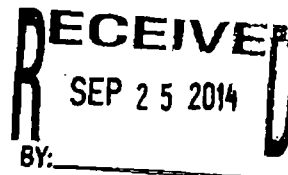
Erica Samuel

Paralegal to Latonya Dilligard Edwards

/ems

Enclosure

cc: Vernon F. Dunbar, Esquire (w/encl.)



THE STATE OF SOUTH CAROLINA
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APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

WCC File Number 9930399

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v.

Yuasa Exide, Inc.,..... Employer,

and

Arrowpoint Capital Corp, Appellants,

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the attorney of record for the Second Injury Fund, by depositing a copy of it in the United States Mail, postage prepaid, on the 6th day of October, 2014 addressed to the Second Injury Fund and the Workers Compensation Commission.

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South Carolina Workers' Compensation Commission
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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Honorable James C. Campbell, Jr.
Clerk of Court for Sumter County
Sumter County Clerk of Court
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October 6, 2014



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Reply To
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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: C.L. Williams v. Yuasa Exide)
CA Case Number: 2013-CP-43-02286

Dear Ms. Kitchings:

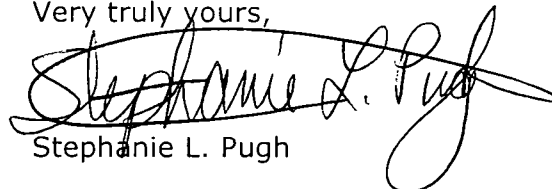
Enclosed for filing in the above referenced matter are a Notice of Appeal and Proof of Service, and the required filing fee together with a copy of the Order being appealed. By copy of this letter, I am filing copies of the same documents with the South Carolina Workers' Compensation Commission and Circuit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

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,

Very truly yours,


Stephanie L. Pugh

/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.
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