

2

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-43-02284
WCC File No. 9930459

M3797

RECEIVED
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:

Mary McConico, 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 order from the Fund's counsel on September 30, 2014.

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

1. The Court erred in affirming the Order of the Full Commission and concluding that the Appellant's claim for reimbursement was denied and dismissed with prejudice, the error being that such a conclusion is not supported by the reliable, probative, and substantial evidence in the record and is contrary to South Carolina law.

2. The Court erred in finding that the documents [submitted via compact disc to the Fund on June 30, 2011] "were not timely submitted to the Fund" and "were required by the Fund before it could consider reimbursement [because they] were narrative medical reports that would show whether the Claimant's disability or medical expenses were substantially increased due to the alleged pre-existing condition," the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record and has no basis in South Carolina law.

3. The Court erred in finding that the Carrier was notified of the requirement of these documents on April 25, 2011, the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record and has no basis in South Carolina law.

4. The Court erred in concluding that "the Carrier's attempted inclusion of these documents in its APA submissions supports the conclusion that these materials are necessary to recovery," the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record, is not supported by South Carolina law, and is a misstatement of the Carrier's reasoning for providing such documents to the Fund.

5. The Court erred in finding that this case involves statutory construction, erred in basing its opinion on an erroneous interpretation of S.C. Code Ann. § 42-7-320(B), and erred in citing case law that is not applicable to the instant case.

6. The Court erred in finding that Appellant did not point to any case law that lessened strict statutory compliance as a requirement for Second Injury Fund reimbursement, the error being such a finding is not supported by the reliable, probative, and substantial evidence in the record, and is not supported by South Carolina law.

7. The Court erred in finding the Full Commission properly excluded Appellant's APA 10 from evidence because submission of said materials was not made in a timely manner, the error being such a finding is not supported by the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

8. The Court erred in finding that "such medical records were necessary to show an increase in disability and/or medical costs, if any, and because the Fund instructed Carrier that such documents were necessary for consideration, the Carrier failed to timely submit all required documents to the Fund," the error being such a finding is not supported by the reliable, probative, and substantial evidence in the record, is an erroneous statement, and has no basis in South Carolina law.

9. The Court erred in finding that the Full Commission's exclusion of these documents from the record was proper and necessary, the error being such a finding is not supported by the reliable, probative, and substantial evidence in the record, is an erroneous interpretation of the Second Injury Fund reimbursement statute, and is not supported by South Carolina law.

10. The Court erred in finding “in this case, the Employer/Carrier seeks reimbursement from the Fund for conditions caused by the exposure to lead that was its very business,” the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

11. The Court erred in its analysis of the “exposure to lead as both initial and subsequent conditions,” the error being that its analysis was not supported by the reliable, probative, and substantial evidence in the record, is an oversimplification of what was alleged by Appellant in the instant matter, and is contrary to South Carolina law.

12. The Court erred in finding Appellant presented no evidence of an alleged pre-existing condition, the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

13. The Court erred in its interpretation of the opinions of Drs. Shippen and Baker, the error being that there was no other more compelling medical evidence in the record as there was no evidence submitted by Respondent 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 Mary McConico was continuously exposed aggravated or combined with her underlying preexisting conditions to result in substantially greater disability than that which would have resulted from the lead exposure alone.

14. The Court erred in its interpretation of the medical evidence presented, including, but not limited to, the opinion of Dr. Reigart and the Global Report of medical experts, the error being that its interpretation is not supported by the reliable, probative, and substantial evidence in

the record and the error further being that the Court failed to recognize the reason for which the evidence was presented.

15. The Court erred in finding that Claimant's lead exposure was not a hindrance or obstacle to Claimant's employment or reemployment, the error being that such a finding is not supported by the reliable, probative, and substantial evidence in the record and is not supported by South Carolina law.

16. The Court erred in failing to find that the Fund did not notify Appellant of a technical error on the compact disc it submitted until it issued a letter in September of 2011, when such a factual finding is supported by the reliable, probative, and substantial evidence in the record.

17. The Court erred in failing to find that Appellant could have corrected the technical error on the compact disc earlier had the Fund notified them of the error prior to September of 2011, when such a factual finding is supported by the reliable, probative, and substantial evidence in the record.

18. The Court erred in failing to find that, upon notification from the Fund of the technical error on the compact disc, Appellant immediately rectified the problem, submitting a disc with the readable documents within three days after the Fund notified Appellant that the records and documents contained on the disc were illegible, when such a factual finding is supported by the reliable, probative, and substantial evidence in the record.

19. The Court erred in failing to find that the Fund was not prejudiced by the technical error on the compact disc submitted on June 30, 2011, because the Fund did not even review the disc until September of 2011, when such a factual finding is supported by the reliable, probative, and substantial evidence in the record.

20. The Court erred in failing to find as a fact and conclude as a matter of law that, even if the Fund took the position that it would not consider the evidence contained on the compact disc, consisting of Appellant's APA submission number ten (10), that Appellant submitted volumes of other evidence to the Fund proving their entitlement to reimbursement under S.C. Code Ann. § 42-9-400, when such a factual finding is supported by the reliable, probative, and substantial evidence in the record and by South Carolina law.

21. The Court erred in failing find that the Commission made no evidentiary ruling as to what was "required information" as set forth in S.C. Code Ann. § 42-7-320(B)(2), where "required information" is not defined in the Act, where Appellant complied with the Fund's requests for documents, and where the Commission's ultimate decision to bar the claim rested on Appellant's submission a compact disc that contained an inadvertent technical error.

22. 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 July 31, 1999.

23. The Court erred in in failing to find as a fact and conclude as a matter of law that Claimant's preexisting conditions only had to preexist her 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.

24. 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.

25. 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 her 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.

26. 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.

27. 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 her 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.

28. 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 her date of hire at Yuasa Exide, Inc., her last employer at the Sumter battery plant, and that the employer had knowledge of the preexisting impairments/conditions.

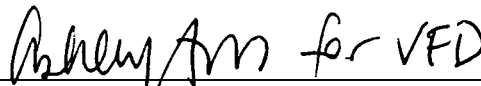
29. The Court erred in failing to find as a fact and conclude as a matter of law that, even if Claimant did not have separate employers at the Sumter battery plant, the plant *retained* Claimant in its employment with knowledge of Claimant's permanent impairments/preexisting

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.

30. 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



Vernon F. Dunbar
SC Bar # 7836
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

Attorneys for Appellant

October 6, 2014

Other Counsel of Record:

Timothy B. Killen, Attorney for SC Second Injury Fund
Willson, Jones, Carter & Baxley
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE RALEIGH ATLANTA

Timothy B. Killen
Direct (803) 227-2894
Fax (803) 782-2527
tbkillen@wjlaw.net

4500 Fort Jackson Boulevard
Columbia, SC 29209
www.wjcbjlaw.net

September 25, 2014

Ms. Amy Bracy
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

RECEIVED
OCT 08 2014

Re: Mary McConico vs Yuasa Exide
WCC File No.: 9930459 DOI: 7/31/1999
Carrier: Second Injury Fund - Claim No.: 147569
WJC&B File No.: 0142.00011

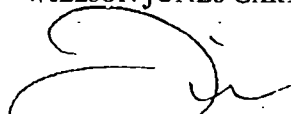
SC Court of App

Dear Ms. Bracy:

Enclosed for filing please find an original and one copy of the completed Order from the Court of Common Pleas which has been signed by the Honorable W. Jeffrey Young on September 5, 2014 in the above-referenced matter. Please return a date-stamped copy to our office in the enclosed self-addressed stamped envelope. If you have any questions, please do not hesitate to contact our office.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.


Timothy B. Killen

TBK/igd

Enclosures

cc: Vernon Dunbar, Esquire
Stephanie Pugh, Esquire
David Pearlman, Esquire

RECEIVED
SEP 30 2014
BY: _____

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 9930459

RECEIVED

OCT 08 2014

SC Court of Appeals

Mary McConico,)
Employee,)
Claimant,)
vs.)
Yuasa-Exide, Inc.,)
Employer,)
and)
Second Injury Fund,)
Carrier,)
Defendants.)

CERTIFICATE OF SERVICE

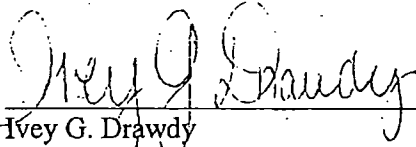
I, Ivey G. Drawdy, do hereby certify that I am the paralegal for Timothy B. Killen, Esquire, attorney for the defendants with WILLSON JONES CARTER & BAXLEY, P.A. in Columbia, South Carolina, and that on the 25th day of September, 2014, I mailed the foregoing Order from Court of Common Pleas to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

Ms. Amy Bracy
South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715

David T. Pearlman, Esquire
The Steinberg Law Firm, L.L.P.
P. O. Box 9
Charleston, SC 29402-0009

Stephanie L Pugh, Esquire
McAngus Goudelock & Courie LLC
Post Office Box 2980
Greenville, SC 29601

Vernon F. Dunbar, Esquire
McAngus Goudelock & Courier, LLC
PO Box 2980
Greenville, SC 29602-2980



Ivey G. Drawdy
Paralegal to Timothy B. Killen, Esquire
WILLSON JONES CARTER & BAXLEY, P.A.
4500 Fort Jackson Boulevard
Columbia, SC 29209

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

OCT 08 2014

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

WCC File Number 9930459

Second Injury Fund..... Respondent,

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.

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

Honorable James C. Campbell, Jr.
Clerk of Court for Sumter County
Sumter County Clerk of Court
141 North Main Street Rm 308
Sumter, SC 29150-4965

Ms. Amy Bracy
South Carolina Workers' Compensation Commission
Post Office Box 1715

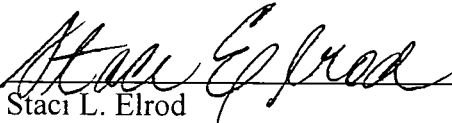
Columbia, South Carolina 29202-1715

Latonya D. Edwards
Dilligard Edwards, LLC
3790 Fernandina Rd., Suite 103
Columbia, South Carolina 29210

Timothy B. Killen, Esquire
Willson, Jones, Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, South Carolina 29209

Malcolm M. Crosland, Jr.
The Steinberg Law Firm, L.L.P.
Post Office Box 9
Charleston, South Carolina 29402-0009

October 6, 2014


Staci L. Elrod
Paralegal for Vernon F. Dunbar
McAngus, Goudelock & Courie LLC
Post Office Box 2980
55 East Camperdown Way, Suite 300 (29601)
Greenville, South Carolina 29602
(864) 239-4000

Attorneys for Appellant

Reply To

VERNON DUNBAR
Direct Dial: (864) 239-6735
Vernon.dunbar@mgclaw.com

October 6, 2014

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

RECEIVED
OCT 08 2014
SC Court of Appeals

RE: Arrowpoint Capital Corporation v. Second Injury Fund
(In Re: Mary McConico v. Yuasa Exide)
CA Case Number: 2013-CP43-02284

Dear Ms. Kitchings:

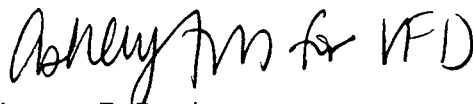
Enclosed for filing in the above referenced matter are a Notice of Appeal and Proof of Service, and the required filing fee together with a copy of the Order being appealed. By copy of this letter, I am filing copies of the same documents with the South Carolina Workers' Compensation Commission and Circuit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

Also, by copy of this letter, I am serving a copy of the same on Timothy Killen, 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,



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.

55 E. CAMPERDOWN WAY, SUITE 300
POST OFFICE BOX 2980
GREENVILLE, SC 29602

864.239.4000 PHONE
864.242.3199 FAX
WWW.MGCLAW.COM

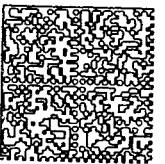
mgc | **INSURANCE
DEFENSE**


POST OFFICE BOX 2980
GREENVILLE, SC 29602

20113.14171/VFD/sle
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
OCT 08 2014

SC Court of Appeals



UNITED STATES POSTAGE
 THIRTY BOWLES
02 1R \$ **03.500**
0002003180 OCT 06 2014
MAILED FROM ZIP CODE 29601