THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

W.C.C. File No. 0725187
Appellate Tracking No. 2012-211392

George W. Thomas, Employee,.....Respondent,

v.

5 Star Transportation, Employer, and S.C. Uninsured Employers Fund, Carrier,

Of whom 5 Star Transportation is the.....Petitioner.

PETITION FOR A WRIT OF CERTIORARI

Michael E. Chase (Bar No. 15230)
Carmelo B. Sammataro (Bar No. 69746)
Turner Padget Graham & Laney P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
ATTORNEYS FOR PETITIONER

Other Counsel of Record:

Malcolm M. Crosland, Jr.
The Steinberg Law Firm
Post Office Box 9
Charleston, SC 29402
Phone: (843) 720-2800
ATTORNEYS FOR RESPONDENT

Lisa C. Glover, Esquire
State Accident Fund
P. O. Box 210039
Columbia, SC 29221-0039
Phone: (803) 798-2722
ATTORNEYS FOR SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

INDEX

CERTIFICATE OF COUNSEL

Counsel for Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the South Carolina Court of Appeals on April 15, 2015. (App. pp. 357-368)

QUESTIONS PRESENTED

Pursuant to Rule 242 of the South Carolina Rules of Appellate Procedure, Petitioner 5 Star Transportation, (hereinafter "5 Star") hereby petitions this Court for a writ of *certiorari* to the Court of Appeals to review that Court's decision in this matter. *Thomas v. 5 Star Transportation*, Op. No. 5298 (S.C.Ct.App. filed Feb. 18, 2015) (Shearouse Adv. Sh. No. 7 at 31), 2015 S.C. App. LEXIS 19 (App. pp. 343-356). That Order affirmed the award of benefits to Emily Thomas (hereinafter "Thomas") as the putative spouse of George W. Thomas (hereinafter "Decedent"). Specifically, the Court of Appeals affirmed the award of benefits for injuries sustained after Decedent suffered an aneurysm that bore no causal connection to his employment. Additionally, the Court of Appeals determined Thomas was Decedent's common law wife because she married with a "good faith" belief Decedent was free to enter into a contract of marriage even though he was already married to another.

In making this petition, 5 Star respectfully asserts that the Court of Appeals erred in affirming the award of benefits, via Order filed April 15, 2015, and that this Court should review the following issues:

1. The Court of Appeals erroneously fashioned and applied a "good faith" exception in violation of the longstanding rule that a bigamous marriage is void *ab initio*.

2. Decedent's injuries did not arise out of his employment.

STATEMENT OF THE CASE

Thomas, proceeding as Decedent's putative surviving spouse, alleged Decedent sustained an accidental death arising out of and in the course and scope of his employment with 5 Star in a fatal collision that occurred November 19, 2007. (App. p. 68) Following compliance proceedings, the South Carolina Uninsured Employer's Fund (hereinafter "the Fund") was joined as a party. 5 Star and the Fund denied the claim on the bases that Decedent's death did not arise from any condition arising out his employment and that Thomas lacked standing to pursue her claim inasmuch as her bigamous union with Decedent was void *ab initio*. (App. pp. 65-67)

On March 30, 2009, the single commissioner granted the motion to dismiss by 5 Star and the Fund on the basis that Thomas lacked standing to pursue her claim. Specifically, the commissioner determined that Decedent was already married to another woman at the time of his ostensible union with Thomas and that his purported union with Thomas was, therefore, void *ab initio*. (App. p. 54, ¶ 3) Further, the single commissioner determined the union between Thomas and Decedent did not thereafter ripen into a valid marriage or common law marriage once the impediment (Decedent's prior marriage) was removed. (App. p. 55, ¶¶ 8-12) In light of this ruling, the single commissioner did not reach the issue of whether Decedent's injuries and death were compensable pursuant to the South Carolina Workers' Compensation Act.

By Order dated January 20, 2010, the Appellate Panel of the Full Commission vacated and remanded for a *de novo* hearing because, in its view, the March 30, 2009 Decision and Order violated S.C. Code Reg. 67-215(B)(1) ("The Commission will not address a motion involving the merits of the claim, including, but not limited to, a motion

for dismissal."). (App. pp. 43-47) Following a hearing on December 18, 2010, a second single commissioner concluded Decedent's death was compensable and that Thomas was his common law wife at the time of his death. (App. pp. 18-42) Alternatively, the single commissioner determined Thomas was entitled to benefits pursuant to the "putative marriage doctrine." (*Id.*) 5 Star sought timely review, and the matter was heard by the Appellate Panel of the Full Commission December 19, 2011. The Appellate Panel of the Full Commission affirmed via Order dated March 15, 2012. (App. pp. 4-15)

The Court of Appeals heard oral argument October 6, 2014. In its Opinion, the Court determined Decedent's death arose out of and in the course and scope of his employment "because he was placed in an increased danger by driving a bus at a high rate of speed" and because 5 Star did not refute the medical examiner's causation opinion that Decedent's death resulted from injuries sustained in the motor vehicle collision and not from the aneurysm. Further, while the Court agreed the Appellate Panel of the Full Commission erred in finding Thomas was Decedent's surviving common law spouse or, alternatively, that the putative spouse doctrine applied, it nevertheless found a "good faith exception" existed with regard to the long-standing rule that a bigamous marriage is void *ab initio*. For the reasons set forth with particularity herein, these findings are erroneous, and 5 Star's Petition should be granted.

ARGUMENT

The Court of Appeals, and the Appellate Panel of Full Commission before it, misapplied applicable precedent and mis-characterized the facts. The dispositive issue in this case – whether South Carolina will recognize a second, bigamous marriage under any circumstances – has been answered firmly and repeatedly in the negative. Nevertheless,

the Court of Appeals fashioned a "good faith exception" that is ill-considered, is likely to have far reaching and unintended consequences, and stands as a radical departure from established marital law in this State. Given the Court of Appeals' result oriented diversion from long-standing precedent, this Court should grant *certiorari* to review and correct the erroneous rulings below.

I. THE COURT OF APPEALS ERRONEOUSLY FASHIONED AND APPLIED A 'GOOD FAITH EXCEPTION' IN VIOLATION OF THE LONGSTANDING RULE THAT A BIGAMOUS MARRIAGE IS VOID *AB INITIO.*

In Section II of its Opinion, the Court of Appeals correctly concluded the Appellate Panel of the Full Commission erred in finding Thomas and Decedent were common law spouses when Decedent was already married at the time of their purported union. After noting the existence of a common law marriage is a question of fact, the Court correctly summarized Thomas's testimony that she was ***never aware*** of the impediment to a valid, legal marriage with Decedent (his existing marriage to another at the same time he purported to marry Thomas) until after his death. Further, the Court observed "because [Thomas] did not know of the impediment to marriage, she could not recognize it and agree to continue the relationship once it was removed." So far, so good. Similarly, in Section III of its Opinion, the court correctly noted that this Court has "decline[d] to adopt the putative spouse doctrine, as it is contrary to South Carolina's statutory law and marital jurisprudence." (App. p. 354 (quoting *Hill v. Bell*, 405 S.C. 423, 426, 747 S.E.2d 791, 792-793 (2013)) This should have ended the Court of Appeals' analysis.

After reaching two conclusions that are entirely consistent with well-established precedent, the Court of Appeals inexplicably concluded Thomas nevertheless is entitled

to benefits pursuant to a "good faith exception" to the general rule that a bigamous marriage is void at its inception. Compounding its error, the Court of Appeals improperly shifted the burden to 5 Star to present evidence that Decedent was unaware he could not marry at the time of his purported union with Thomas. This result is an affront to the statutory and common law of this State and should be reversed.

The "good faith exception" invoked by the Court of Appeals stands in stark contrast with earlier quotation of authority in its Opinion expressly foreclosing its precise conclusion. *5 Star*, 2015 S.C. App. LEXIS 19, * 14 (quoting *Callen v. Callen*, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005) ("When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, no common-law marriage may be formed, ***regardless whether mutual assent is present***. . . . For the relationship to become marital, ***there must be a new mutual agreement either by way of civil ceremony or by way of recognition of the illicit relation and a new agreement to enter into a common law marriage.***") (emphasis added)). Further, the rejection of a "good faith" exception, if not stated outright, is at least implicit in this Court's holding in *Hill*, 405 S.C. at 426, 747 S.E.2d at 792 (quoting *Lukich v. Lukich*, 368 S.C. 47, 56, 627 S.E.2d 754, 758 (Ct. App. 2006) ("Even if Wife was acting under a good faith belief, South Carolina will not recognize her bigamous second marriage because to do so would violate public policy.")).

In spite of the overwhelming force of precedent, the Court of Appeals relied upon the rationale of the Appellate Panel of the Full Commission, the record evidence, and a misreading of precedent to reach what it viewed as "a correct result." (App. p. 354) This was error, as it simply was immaterial whether Decedent was served with divorce papers

when no one disputes he was already married at the time of his ostensible union with Thomas or that Thomas was not aware of the bigamous state of their union prior to Decedent's death. Further, and contrary to the Court of Appeals' Opinion, it was incumbent on Decedent and Thomas, and not 5 Star, to know whether their union was formed in compliance with South Carolina law. On this score, Thomas testified she was unaware of the impediment to her marriage until her attorney informed her of the issue after Decedent's death. (App. p. 131, lines 12-18) Prior to that discussion, she had "no idea" Decedent was already married at the time of their attempted union. (*Id.*, lines 19-24) Thomas and Decedent never attempted to renew their vows, and they never discussed the divorce after September of 2006. (App. p. 143, line 18 – p. 144, line 2)

Turning to precedent, and notwithstanding reliance by the Court of Appeals on *Davis v. Whitlock*, 90 S.C. 233, 73 S.E. 171 (1911)[1] and extraterritorial authority, the appellate courts of this State have consistently held for more than sixty years that bigamous marriages are void *ab initio* and that additional steps are required once the impediment to a legal union has been removed. *Hill*, *supra*, citing S.C. Code Ann. § 20-1-80 (Supp. 2012) ("All marriages contracted while either of the parties has a former wife or husband living shall be void."); *Day v. Day*, 216 S.C. 334, 338, 58 S.E.2d 83, 85

[1] The *Davis* Court considered whether a wife's second marriage was valid where her former husband had been absent for the requisite seven-year period, an issue that is not presented in the instant case. *Davis* therefore provides little support for the errant holding by the Court of Appeals on this issue. Indeed, *Davis* actually supports 5 Star's position because it adheres to the general rule that, absent statutory exception, the parties to a bigamous marriage must acknowledge the impediment and agree to a marital union once the impediment has been removed. 90 S.C. at 248, 73 S.E. at 176. Likewise, reliance by the Court of Appeals on *Weathers v. Bolt*, 293 S.C. 486, 489, 361 S.E.2d 773, 774 (Ct. App. 1987), is misplaced. In that case, the court rejected appellant's contention that he proceeded in good faith because, among other reasons (and much like Decedent in this case), he "made no effort to verify the divorce . . . ."

(1950) ("A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable."); *Howell v. Littlefield*, 211 S.C. 462, 466, 46 S.E.2d 47, 48 (1947) ("[H]usband's existing marriage in North Carolina incapacitated him . . . to contract another marriage. . . ."); *Prevatte v. Prevatte*, 297 S.C. 345, 349, 377 S.E.2d 114, 117 (Ct. App. 1989) (recognizing that an illicit union may be transformed into a valid common law union provided "the parties . . . agree to enter into a common law marriage ***after*** the impediment is removed.") (emphasis added).

Sound public policy reasons support the general rule. As noted by the *Lukich* Court, the anti-bigamy "statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of S.C. Code Ann. § 20-1-80 would lead to uncertainty and chaos." This includes the "good faith" exception employed by the Court of Appeals in this case. 379 S.C. at 593, 666 S.E.2d at 907. Addressing public policy and legislative intent supporting the denial of compensation benefits, this Court has observed:

> Undoubtedly, to recognize such a bigamous relationship as coming within the purview of the compensation law would be against the public policy of this State . . . . In our opinion, if it had been the intention of the legislature to sanction an adulterous relationship as constituting a basis for dependency, express provision would have been made therefor in the Compensation Act."

Day, 216 S.C. at 345, 58 S.E.2d at 88. The claimant in *Day*, much like Thomas in this case, proceeded in the *good faith* (but mistaken) belief that she had legal capacity to marry. The Court of Appeals also has previously recognized that such claims must fail, even where one of the parties proceeded in good faith. *See Palm v. General Painting Company, Inc.*, 296 S.C. 41, 50, 370 S.E.2d 463, 468 (Ct. App. 1988) ("If a bigamous

spouse, who mistakenly believed in good faith in the validity of her marriage, is barred from receiving death benefits under the Workers' Compensation Act, surely a person who, while married to another, cohabits with one not his or her spouse with no belief that they are married is likewise not to be considered a dependent within the meaning of the act.").

Here, no evidence refutes the ultimate conclusion that Decedent was married to another when he purported to marry Thomas. Thomas' own testimony makes clear that while the impediment may have been removed prior to Decedent's death (but after his marriage to Thomas), neither party acknowledged the impediment ever existed, nor consciously agreed to enter into a valid union once the impediment was removed. To hold differently, and to apply the "good faith exception" fashioned by the Court of Appeals, stands in stark contrast to the public policy of South Carolina, upends decades of settled case law, and casts a wide net of uncertainty across a wide range of litigated matters[2].

II. DECEDENT'S INJURIES DID NOT ARISE OUT OF HIS EMPLOYMENT.

5 Star takes the position that the question addressed in the preceding section is dispositive of all issues raised in this appeal. Nevertheless, and to the extent this Court is persuaded that a "good faith" exception may apply, 5 Star nevertheless addresses the second issue touching on the merits of Thomas's claim for benefits. To that end, Decedent's ruptured aneurism and the events that followed were not related to the

[2] Consider, for example, the likelihood the Court of Appeals' holding in this case will lead to similar disputes in litigated matters involving marital or probate assets, insurance and pension funds, wrongful death and survival actions, and a host of other claims brought in the state and federal courts of South Carolina.

conditions of his employment and do not give rise to a compensable claim. Neither are they compensable because of an alleged "increased danger" associated with Decedent's employment as a bus driver. In reaching the opposition conclusion, the Court of Appeals misapprehended applicable law, mischaracterized the facts, and improperly shifted the burden of proof to 5 Star.

5 Star does not dispute Decedent sustained a ruptured aneurysm, which is clear from the report of the medical examiner. (App. p. 77 (p. 6, line 21 - p. 7, line 6)) At the same time, however, Dr. Schandel could not state to any reasonable degree of medical certainly that the aneurysm resulted from a degenerative process or congenital defect unrelated to Decedent's employment versus a condition of the employment itself. Indeed, it appears the Court of Appeals overlooked the facts that Dr. Schandel confirmed Decedent's aneurysm was a condition in existence prior to the time of the accident, that she found no indication that it was caused by trauma, and that he was observed slumping over prior to the collision. (*Id.* (p. 6, lines 13-19; p. 8, lines 19-22)) Most critically, Dr. Schandel, the only medical professional to testify in this matter, was unable to state with any certainty what caused the aneurism to rupture. (*Id.* (p. 8, lines 1-3)) Inasmuch as she was not able to testify within a reasonable degree of medical certainty as to causation as required by S.C. Code Ann. § 42-1-160(E), it was error to for the Court of Appeals to affirm the Full Commission's conclusion that Decedent sustained a compensable injury.

This Court's recent decision in *Nicholson v. South Carolina Department of Social Services*, ___ S.C. ___, 769 S.E.2d 1 (2015), is instructive on the "arising out of" analysis. Specifically, the Court clarified that in order to be compensable, a claimant must demonstrate a causal connection between conditions under which the work is

performed and the injury. The Court also determined that *Bagwell v. Ernest Burwell, Inc.*, 227 S.C. 444, 88 S.E.2d 611 (1955), was inapplicable as the claimant in *Nicholson* did not allege the carpet upon which she fell made her injuries worse. Instead, she sustained a non-idiopathic fall during the course of her duties. The Court was not presented with, and did not consider, whether some hazard in the workplace made her injuries worse, and it did not set aside the general rule that an idiopathic injury will not be compensable. Here, 5 Star argues Decedent's injuries followed an idiopathic, internal breakdown, thereby breaking any causal nexus with the events that followed. Thus, this case falls more within the *Bagwell* analysis because there was nothing about Decedent's employment that made the effect of the injuries any greater than if he had been driving his own vehicle along the interstate.

In *Barnes v. Charter 1 Realty*, ___ S.C. ___, 768 S.E.2d 651 (2015), decided the same day as *Nicholson*, this Court again clarified the idiopathic exception to compensation under the Workers Compensation Act. Like the claimant in *Nicholson*, the claimant in *Barnes* tripped and fell at work, and there was "no evidence that her fall was precipitated by an internal condition -- such as her legs giving out or her fainting . . . ." *Id.*, 678 S.E.2d at 652. Thus, both of these cases make clear that "an idiopathic fall arises from an internal breakdown personal to the employee, thus negating any causal connection." *Id.*, 678 S.E.2d at 654.

The idiopathic rationale applies to the facts of this case where there is no causal connection between Decedent's aneurism and the conditions of his employment with 5 Star. Here, there is no dispute as to the critical operative facts. Decedent suffered a pre-collision ruptured aneurysm, veered off of the roadway, and sustained life ending injuries

resulting from the collision. Just as in *Bagwell*, the cause of the rupture, Decedent's slumping into his seat, and the setting in motion of the unfortunate events that followed, are unexplained. Indeed, the only medical professional to testify in this case could not explain why the aneurysm ruptured or establish the required link between the medical condition and the conditions of Decedent's employment as a bus driver. In keeping with the holding of *Bagwell*, and more recently *Nicholson* and *Barnes*, this Court should reject Thomas's contention that driving a bus along an interstate highway is a special condition that would afford compensation benefits to a claimant who sustains an otherwise unexplained condition that bears no relationship to the nature of his employment.

In the absence of medical evidence supporting a connection between the conditions of Decedent's employment (driving a bus) and the condition (a ruptured aneurysm), it was error to affirm an award of benefits, and rehearing is warranted.

CONCLUSION

For all of the reasons stated herein, Petitioner asks the Court to grant its petition for a writ of *certiorari* and to reverse the Opinion by the South Carolina Court of Appeals.

Respectfully submitted,

May 14, 2015 By: _____

Michael E. Chase (Bar No. 15230)
Carmelo B. Sammataro (Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR PETITIONER

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

W.C.C. File No. 0725187
Appellate Tracking No. 2012-211392

George W. Thomas, Employee,.....Respondent,

v.

5 Star Transportation, Employer, and S.C. Uninsured Employers Fund, Carrier,

Of whom 5 Star Transportation is the.....Petitioner.

PROOF OF SERVICE

I certify this 14th day of May 2015 that I have served copies of the PETITION FOR A WRIT OF CERTIORARI upon other counsel of record, by mailing same, postage prepaid in the United States mail, addressed to the following:

Malcolm M. Crosland, Jr., Esquire
The Steinberg Law Firm
P. O. Box 9
Charleston, SC 29402-00009

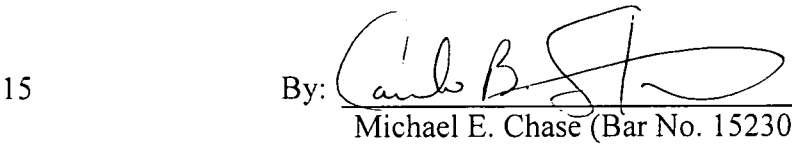
ATTORNEYS FOR RESPONDENT

Lisa C. Glover, Esquire
State Accident Fund
P. O. Box 210039
Columbia, SC 29221-0039

COUNSEL FOR DEFENDANT SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

May 14, 2015

By: 

Michael E. Chase (Bar No. 15230)
Carmelo B. Sammataro (Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
Post Office Box 1473
Columbia, SC 29202
Phone: (803) 254-2200
Fax: (803) 799-3957

ATTORNEYS FOR PETITIONER