

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

) FIFTH JUDICIAL CIRCUIT

YUASA-EXIDE, INC.,

Employer,

and

ARROWPOINT CAPITAL CORPORATION,

Carrier,

Appellants,

Civil Action No. 2014-CP-40-05633

v.

SOUTH CAROLINA SECOND INJURY FUND,

Defendant,

Respondent.

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AUG 27 2015

SC Court of Appeals

[IN RE

DECISION AND ORDER

Glinda Bossard, Odell Bradley, Vernice Brunson, David Davis, Century Gamble, Harold Harvin, Sidney Hodge, David Laws, Richard McConico, and Johnnie Lee Taylor,

v.

Yuasa-Exide, Inc.,

Employer,

and

Arrowood Indemnity Company,

Carrier,

Defendants.]

Appellants, Yuasa Exide, Inc., Employer, and Arrowpoint Capital Corporation, Carrier, filed an appeal to this Court seeking a reversal of the South Carolina Workers' Compensation Commission's Administrative Order dated August 13, 2014, staying the appeals in the above-referenced matters.

APB

STATEMENT OF THE CASE

These are claims for reimbursement from the Fund by Yuasa Exide Incorporated, Employer, and Arrowpoint Capital Corporation, Carrier (Carrier), pursuant to S.C. Code Ann. § 42-9-400.

By Order dated August 13, 2014, the South Carolina Workers' Compensation Commission, sitting en banc, stayed the above-referenced matters pending before the Commission.¹

These claims involve Claimant's that spent years working for Yuasa Exide, Inc., and who were allegedly all exposed to lead during their tenure there. These claims involve denials of reimbursement, as the Single Commissioner found the claims to be barred by S.C. Code Ann. § 42-7-320 and its subsections, particularly § 42-7-320(B)(2), which requires the Carrier to submit all materials necessary to perfect the claim on or prior to June 30, 2011. Alternatively, the claims all involve denials for reimbursement because the Single Commissioner found that Carrier failed to meet the requirements for reimbursement, per S.C. Code Ann. § 42-9-400.

LEGAL ARGUMENTS

The Appellants' appeal shall be dismissed, as the order under appeal is not a final judgment of the Workers' Compensation Commission.

Since this appeal is limited to the Commission's issuance of an order staying the matters pending the outcome of the first round of cases the Carrier picked to be tried before at the Commission those at bar, this Order will not wade into the merits of the claims.²

¹ The Commission's Order also stayed WCC File Numbers 0128460, 0128692, 0128696, 0128568, 0128765, 0128577, 0128462, and 0128589.

² However, contrary to Appellants' position, it should be noted that the Fund asserts that the issues presented in the above-referenced matters are identical to the issue in Arrowpoint Capital Corporation v. South Carolina Second Injury Fund [IN RE: Mary McConico v. Yuasa-Exide, Inc., and Arrowpoint Capital Corporation], C.A. No. 2013-CP-43-02283. The Mary McConico case was heard in oral argument before the Honorable W. Jeffrey Young on June 3, 2014, who affirmed the Full Commission's decision. Respondents have appealed to the Court of Appeals,

Regardless of the merits, the Supreme Court's decision in Bone v. U.S. Food Service, 744 S.E.2d 552, 404 S.C. 67 (S.C. 2013), and S.C. Code Ann. § 1-23-380 (2015) require that this interlocutory appeal be dismissed. As an appeal from the Workers' Compensation Commission, the Administrative Procedures Act (APA) governs "judicial review after the exhaustion of administrative remedies." Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981). Pursuant to Section 1-23-380(A) of the APA, "[a] party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review" S.C. Code Ann. § 1-23-380(A). Further, if the merits of a contested case are not reached by an agency decision, the decision "is not a final agency decision subject to judicial review" S.C. Baptist Hosp. v. S.C. Dep't of Health & Env't'l Control, 291 S.C. 267, 270, 353 S.E.2d 277, 279 (1987).

It is patently clear that the order staying these matters is not a final order. It cannot even be argued that the order staying these cases disposes of the entirety of the actions leaving nothing else for determination or that it terminates terminate the proceedings. Accordingly, it's not a final order and cannot be appealed. Not insignificantly, the Supreme Court flatly held previously that "an order granting a stay is not immediately appealable." Edwards v. Suncom, 631 S.E.2d 529, 369 S.C. 91 (2006). Appellants' arguments that the Second Injury Fund is scheduled to terminate in Fiscal year 2018 is purely speculative; the Approved Second Injury Fund Closure Plan relates to the actual closure of the Fund, which took place in 2013. The references to Fiscal Year 2018 in the Plan reflect the financing plan for the first five (5) years after the 2013 closure. It should be noted that the Plan also references the Budget and Control Board, which ceased

where the matter is pending (Appellate Case No.: 2014-002215). The ultimate decision in that case will determine whether the cases at bar will be denied or subject to reimbursement in the cases herein.

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operations on June 30, 2015. Nevertheless, the Fund continues under the State Fiscal Accountability Authority.

Further, it's patently clear that when the cases are ultimately heard and decided, any party will be able to appeal the outcomes, thus providing adequate remedy.

ORDER

IT IS HEREBY ORDERED that the Appellants appeal is hereby dismissed.

AND IT IS SO ORDERED!



The Honorable DeAndrea Gist Benjamin
Judge, Fifth Judicial Circuit

July 31, 2015
Columbia, South Carolina