

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

and

The South Carolina Workers' Compensation Full Commission Appellate Panel

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Appellate Case No. 2015-001704  
Trial Court Case No. 2014-CP-40-05633 and 2014-CP-40-05634

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Yuasa-Exide, Inc. and Arrowpoint Capital Corporation, Petitioners,

v.

South Carolina Second Injury Fund, Respondent,

In Re: 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, Petitioners,

Ex Parte: Liberty Mutual Insurance Company, Petitioner

v.

South Carolina Second Injury Fund

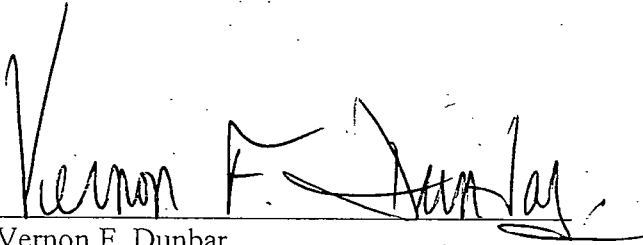
In Re: Robert Billie, Wayne Braxton, David Bunker, John Carter, Allen Clemmons, Roger Conyers, William Copeland, and Vincent Gaillard.

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**PETITION FOR THE SUPREME COURT TO EXERCISE ORIGINAL JURISDICTION  
OR IN THE ALTERNATIVE, PETITION FOR A WRIT OF CERTIORARI**

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Respectfully submitted,



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November 25, 2015

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TABLE OF CONTENTS

Certificate of Counsel .....1  
Questions Presented .....1  
Statement of the Case .....1  
Arguments.....7

I. THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S DECISION TO STAY SECOND INJURY FUND REIMBURSEMENT APPEALS SUA SPONTE AFFECTS THE PUBLIC INTEREST OF THE CITIZENS OF THE SOUTH CAROLINA AND DEPRIVES PETITIONERS OF DUE PROCESS RIGHTS AFFORDED UNDER THE LAWS OF SOUTH CAROLINA AND THE CONSTITUTION AND POSES A NOVEL QUESTION OF LAW.

A. BECAUSE THE SECOND INJURY FUND IS SCHEDULED TO TERMINATE IN FISCAL YEAR 2018, IT IS CRITICAL THAT THE APPEALS ARE PROMPTLY HEARD, WHICH IS THE OBJECTIVE IN ADMINISTRATIVE LAW PROCEEDINGS.

II. THE COURT OF APPEALS COMMITTED ERROR IN DISMISSING PETITIONERS APPEAL AS INTERLOCUTORY WITHOUT THE BENEFIT OF BRIEFS OR ORAL ARGUMENT.

Conclusion .....13

## CERTIFICATE OF COUNSEL

Counsel for Petitioners certify pursuant to Rule 245, SCACR, that Petitioners seek the issuance of an extraordinary writ in the original jurisdiction of the Supreme Court regarding the lifting of a stay on appeals of matters pertaining to Second Injury Fund reimbursement which was imposed *sua sponte* by the South Carolina Workers' Compensation Commission. The extraordinary circumstances pertaining to this Petition involve the public interest and a material prejudice to the rights of the Petitioners if these matters are not timely heard and resolved by virtue of the appellate process.

In the alternative, Counsel for Petitioners seek a review of the decisions of the Richland County Court of Common Pleas and the South Carolina Court of Appeals pursuant to Rule 242(b)(1)(4), SCACR in that the dismissal of Petitioners' request for relief involves a substantial constitutional issue with regard to Petitioners' right to due process and a novel question of law as to what constitutes an interlocutory appeal in view of a state agency ceasing to operate as a funded state entity. The aforesaid issues qualify this case for immediate review of the decisions of the South Carolina Workers' Compensation Commission and the Courts.

### QUESTIONS PRESENTED

- I. Can the Supreme Court pursuant to Rule 245 entertain Petitioners' request for relief in its original jurisdiction because of the projected permanent closure of the South Carolina Second Injury Fund on June 30, 2018; if the issue of reimbursement is decided in Petitioners' favor after 2018, thereby affecting the public interest because the reimbursements would likely be paid by the taxpayers or at the expense of a state agency's budget?
- II. Did the Court of Appeals err in dismissing Petitioners' appeal without the benefit of the Record on Appeal and legal briefs in light of the novel question of law and the constitutional issues raised by the Petitioners in its request that a stay imposed *sua sponte* by the South Carolina Workers' Compensation Commission be lifted?

### STATEMENT OF THE CASE

Yuasa Exide, Incorporated, Employer, and Arrowpoint Capital Corporation, and Liberty Mutual Insurance Company, the workers' compensation insurance carriers [hereinafter "Petitioners"], timely filed an appeal to this Court seeking a reversal of an administrative order issued *sua sponte* by the South Carolina Workers' Compensation Commission on August 13, 2014. (**Exhibit A**). The Order of the South Carolina Workers' Compensation Commission

[hereinafter “the Commission”] stayed the appeals in the above-referenced matters with regard to Petitioners’ request for reimbursement from the South Carolina Second Injury Fund [hereinafter “the Fund” or “Respondent”] for injuries suffered by employees of Yuasa Exide because of occupational exposure to lead during the course and scope of employment at a battery manufacturing facility located in Sumter, South Carolina.<sup>1</sup>

Petitioners filed a Form 54 requesting an adjudicatory hearing regarding its entitlement to reimbursement from the South Carolina Second Injury Fund pursuant to Section 42-9-400. *S.C. Code Ann.* § 42-9-400 (2015). The Second Injury Fund statute provides that an employer/carrier is entitled to reimbursement for compensation benefits paid when prior knowledge of an employee’s permanent impairment is established. The employer and carrier must also establish that the medical condition or permanent impairment is a hindrance or obstacle to employment or reemployment. *S.C. Code Ann.*, § 42-9-400(d) (2015). In the underlying cases, the employees/claimants suffered with prior permanent impairments which are presumed to be a hindrance to employment or reemployment:

- Diabetes (2)
- Cardiac Disease (3)
- Arteriosclerosis (19)
- Heavy Metal Poisoning (22)
- Ruptured Intervertebral Disc (25)
- Brain Damage (27)
- Pulmonary Disease (31)

*S.C. Code Ann.* § 42-9-400(d) (2), (3), (19), (22), (25), (27), and (31) (2015).

Employees of Yuasa-Exide suffered with pre-existing conditions of depression, hypertension, and renal kidney failure. In cases where an employee’s prior medical impairment is not subject to the statutory presumption that the condition is permanent and a hindrance or

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<sup>1</sup> Appellants note that there were several different entities that employed the employees listed above. The existence of multiple employers and owners of the battery manufacturing facility is one of the arguments in the instant cases

obstacle to employment or reemployment, Petitioners proved such by submitting expert medical reports into evidence. *S.C. Code Ann.* § 42-9-400 (d) (2015).

The above-referenced matters were heard by Hearing Commissioner Gene McCaskill on January 17, 2013, and August 7, 2013, based upon Petitioners' Request for Hearing or Commission Form 54. The South Carolina Second Injury Fund denied Petitioners' request for reimbursement by virtue of a Form 55.

Commissioner McCaskill issued orders denying reimbursement. Petitioners timely filed appeals or Requests for Commission Review (Form 30). Pursuant to *S.C. Code Ann.* Regulations 67-701 to 706, both parties prepared and submitted briefs to the Full Commission. The Commission scheduled oral arguments in these matters on July 22, 2014 but cancelled such by telephone call on the morning of July 21, 2014. By Administrative Order dated August 13, 2014, the Commission informed the parties that the appeals would be held in abeyance pending **final opinions** in the cases of *Williams v. Yuasa-Exide* and *Huggins v. Yuasa-Exide* by the South Carolina Appellate Courts.

The *Williams* and *Huggins* matters are two of four cases on appeal regarding the Commission's decision to deny Second Injury Fund reimbursement.<sup>2</sup> Petitioners litigated *Williams* and *Huggins* before former Commissioner Andrea Roche, who issued orders on November 27, 2012. Commissioner Roche's orders differ significantly from the orders issued by Commissioner McCaskill in the matters involved in the instant appeal. At the time that the

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that will be argued on appeal.

<sup>2</sup> The Commission lists these matters as *Williams, et. al. v. South Carolina Second Injury Fund*, 2013-CP-43-02286 and *Huggins v. South Carolina Second Injury Fund*, 2013-CP-43-02287. The four case citations are: *Arrowpoint Capital Corporation v. South Carolina Second Injury Fund (In re: C.L. Williams v. Yuasa-Exide, Inc.)*, C.A. No. 2013-CP-43-02286; *Arrowpoint Capital Corporation v. South Carolina Second Injury Fund (In re: James Huggins v. Yuasa-Exide, Inc.)*, C.A. No. 2013-CP-43-02287; *Arrowpoint Capital Corporation v. South Carolina Second Injury Fund (In re: Joe Mathis v. Yuasa-Exide, Inc.)*, C.A. No. 2013-CP-43-02284; and *Arrowpoint Capital Corporation v. South Carolina Second Injury Fund (In re: Mary McConico v. Yuasa-Exide, Inc.)*, C.A. No. 2013-CP-43-02283.

Commission issued the August 13, 2014 Administrative Order, these four cases had been appealed to the Circuit Court in Sumter County but decisions had not yet been issued. Incidentally, on the same day (July 21, 2014) the Commission notified Petitioners that it would not hear oral arguments, Petitioners received an email from Sumter County affirming the Commission's decision denying reimbursement in the four initial cases.

Three of these four cases are now pending before the South Carolina Court of Appeals and may be argued during the February 2016 Term of Court. Petitioners note that the matters pending before the Court of Appeals involve claims arising under Arrowpoint Capital Corporation's period of workers' compensation insurance coverage. A number of the cases in the instant appeal involve Liberty Mutual Insurance Company.

The evidentiary record in the instant cases contains additional evidence that was not presented to the Commission in the *Williams* and *Huggins* cases. Documents and records concerning the corporate history of the Sumter battery plant and the deposition transcript of Dr. Edward Baker, in which Dr. Baker testified in great detail about the health effects of occupational lead exposure, comprise the record in the instant cases, unlike *Williams* and *Huggins*. This information speaks directly to the issue of pre-existing permanent impairments becoming aggravated and/or combining with subsequent injuries, which is at the heart of the Second Injury Fund statute and Petitioners' entitlement to reimbursement.

Prior to receipt of the Commission's administrative order dated August 13, 2014 but after the Commission's telephone call on July 21, 2014 advising that it would not hear the appeals, Petitioners' counsel wrote a letter to the Commission's Judicial Director on August 1, 2014, highlighting an opinion issued by the South Carolina Supreme Court on July 30, 2014. Petitioners' counsel provided the Commission with a copy of the Supreme Court's opinion in

*State Accident Fund v. South Carolina Second Injury Fund, in re: Johnny M. Adger v. City of Manning*, 409 S.C. 240, 762 S.E.2d 19 (2014). In the correspondence, Petitioners' counsel apprised the Commission that the very same arguments made by the Fund in the above referenced cases are the same arguments addressed in the Supreme Court's opinion. In *State Accident Fund, supra*, the Commission had unlawfully denied the employer and carrier's request for reimbursement from the Fund. The Commission had incorrectly found as a fact and erroneously concluded as a matter of law that the employee's permanent impairment (diabetes) was not an obstacle to reemployment, despite the statutory presumption that diabetes is presumed to be a hindrance and obstacle to employment or reemployment. *S.C. Code Ann.*, § 42-9-400(d)(2) (2015).<sup>3</sup>

Petitioners' counsel respectfully requested that the Commission review the Supreme Court's opinion and reschedule the oral arguments that had been stayed by virtue of the Commission's own action. On August 22, 2014, Petitioners filed a Motion for Reconsideration of the Order. *S.C. Code Ann.*, § 1-23-380(a)(1) (2015). *See also Rhame v. Charleston County School District*, Op. No. 27516 (Filed April 22, 2015). The Commission dismissed Petitioners' Motion for Reconsideration by Judicial Conference Decision and Order dated September 15, 2014. As such, the above-referenced claims have been stayed indefinitely without regard to the termination of the South Carolina Second Injury Fund at the end of Fiscal Year 2018. *Second Injury Fund Closure Plan 2.4 and 2.6*.

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<sup>3</sup> Pursuant to *S.C. Code Ann.* § 42-9-400, a carrier/employer must establish four elements in order to be entitled to reimbursement. For a pre-July 1, 2007 claim, these elements include the following: (1) that Claimant had a permanent pre-existing impairment/condition; (2) that the pre-existing impairment was a hindrance/obstacle to employment or re-employment; (3) that the employer had knowledge of the pre-existing condition prior to the workplace accident; and (4) for pre-July 1, 2007 injuries, that the pre-existing condition combined with or was aggravated by the workplace injury to result in substantially greater disability than that which would have resulted from the subsequent injury alone, as well as substantially greater medical expenses, should the carrier seek reimbursement for those expenses within the first seventy-eight weeks following an injury.

Petitioners timely filed an appeal to the Richland County Court of Common Pleas. Petitioners presented arguments regarding the Second Injury Fund's permanent closure in fiscal year 2018 along with the statutory and constitutional right to a hearing under the South Carolina Workers' Compensation laws and the Administrative Procedures Act. Despite the Second Injury Fund's closing presenting a novel issue of law, coupled with the Commission's decision *sua sponte* to stay the appeals, which in turn will certainly deprive Petitioners of its constitutional due process rights and impact the public interest with regard to the state's responsibility to pay for such reimbursement after June 30, 2018, an Order dated June 30, 2015 was promulgated by the Circuit Court dismissing Petitioners appeal. **(Exhibit B)** The Circuit Court found that the Commission's Order granting a Stay was not immediately appealable pursuant to *Edwards v. Suncom*, 613 S.E.2d 529, 369 S.C. 91 (2006). From this decision, Petitioners appealed to the South Carolina Court of Appeals seeking relief.

Petitioners timely appealed the lower court's decision to the South Carolina Court of Appeals. Before the parties could submit the Designation of Matters and Initial Briefs, the Court of Appeals by Order dated October 27, 2015 dismissed Petitioners' request for review deeming such interlocutory and not reviewable. **(Exhibit C)**. From this decision, Petitioners seek redress from this Honorable Court pursuant to Rules 242 and 245 of the South Carolina Appellate Court Rules.

## ARGUMENTS

I. **THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S DECISION TO STAY SECOND INJURY FUND REIMBURSEMENT APPEALS SUA SPONTE AFFECTS THE PUBLIC INTEREST OF THE CITIZENS OF THE SOUTH CAROLINA AND DEPRIVES PETITIONERS OF DUE PROCESS RIGHTS AFFORDED UNDER THE LAWS OF SOUTH CAROLINA AND THE CONSTITUTION AND POSES A NOVEL QUESTION OF LAW.**

The Second Carolina Second Injury Fund (the "Fund") is funded by annual assessments paid by carriers, self-insurers, and the State Accident Fund. *S.C. Code Ann.* § 42-7-310(d)(2) (2015). Tax monies are not provided as revenue for the Fund's operations. It is important to note that the funds used to reimburse carriers who meet the requirements for Second Injury Fund reimbursement do not derive from tax revenue or some other source of state funding, but rather from the assessments paid by carriers. That is, if the carriers meet the requirements for reimbursement, as Petitioners submit they have in this case, they are entitled to reimbursement derived through assessments. Hence, if the Fund is ordered to pay reimbursement to Petitioners after 2018, will South Carolina's taxpayers assume the responsibility or will an agency's budget be reduced to pay the debt? Of course, reimbursement would have to be paid which would in turn involve and impact the public interest.

Moreover, because the instant cases certainly will not be finally adjudicated in 2018 given the current pace of the appellate process, emergency or exigent grounds exist for this Court's action in order to make certain the public interest and Petitioners' constitutional rights are protected.

In 2007, the Workers' Compensation Act underwent a substantial reformation. As part of the reform, the Second Injury Fund officially terminated on July 1, 2013. *S.C. Code Ann.* § 42-7-320(a) (2015). The State Budget and Control Board was then tasked with winding down the

affairs of the Fund and providing for its “efficient and expeditious closure.” *Id.* Despite the closure of the Fund, carriers continue to pay assessments to the Fund. *See, e.g., Approved Second Injury Fund Closure Plan*, available at <http://www.scsif.sc.gov>. (**Exhibit D**). Carriers must continue to pay assessments in order to fund payments and the Second Injury Fund’s administration by equitable assessments through FY 2018.

The Second Injury Fund Closure Plan states that reimbursement may be available to carriers only through 2018, a mere two and one-half years away. The current plan requires actuarial valuations to determine if funding is adequate through FY 2018 in order to cover the Fund’s debt obligations. As the Court is aware, the appeals process in any case may take several years. Therefore, it is of utmost importance that the cases currently pending before the Commission be decided at the earliest possible date in order to assess and pay any financial obligations for which it is responsible.

It is obvious that the appeals will not be finally adjudicated by 2018 because of the Commissions’ indefinite Order of Stay. Thus, once the Fund is closed and the Courts ultimately determine that Petitioners are entitled to reimbursement, the State of South Carolina, or more importantly, its citizens will be responsible for satisfying the debt obligation. At this juncture, the State would then be unable to levy annual assessments on employers and carriers in order to satisfy the debt. These circumstances clearly create a novel question of law in terms of financial responsibility because of insufficient resources after the Fund’s closure in 2018.

**A. BECAUSE THE SECOND INJURY FUND IS SCHEDULED TO TERMINATE IN FISCAL YEAR 2018, IT IS CRITICAL THAT THE APPEALS ARE PROMPTLY HEARD, WHICH IS THE OBJECTIVE IN ADMINISTRATIVE LAW PROCEEDINGS.**

In the instant case, the Commission’s action to stay the appeals was not requested by either party. The Order affects Petitioners’ substantial right to obtain a final administrative order

and judgment which could be appealed to the Circuit Court. The Commission's action affects Petitioners' substantial right to have the Hearing Commissioner's decision promptly reviewed and to obtain a judgment so that further relief can be sought.

Unlike the facts in *Edwards v. Suncom*, 369 S.C. 91, 631 S.E.2d 529 (2006) the stay was temporary pending a ruling by the FCC pursuant to Suncom's motion. It stands to reason that if the FCC's decision-making process was unduly delayed, the Plaintiff in *Edwards* could file a motion in the Circuit Court to lift the stay. Unfortunately, in the instant case, the South Carolina Workers' Compensation Commission has exhibited an unwillingness to lift the stay and process the appeals as is required by law. The stay has been in effect since July 21, 2014. Section 42-17-50 states that if an application for review or appeal is timely made, "**the Commission shall review the award....**" S.C. Code Ann. § 42-17-50 (2015). The use of the word "shall" mandates that the Commission process the appeals of parties seeking appellate review. At this juncture-one year and five months-, no review has taken place.

The South Carolina Constitution provides that in procedures before administrative agencies, "no person shall be finally bound by a judicial or a quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard . . ." Art. 1, § 22. The South Carolina Supreme Court has explained that minimum certain elements must be present for procedural due process: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *In re Dickey*, 395 S.C. 336, 360, 718 S.E.2d 739, 751 (2011).

The Administrative Procedures Act (APA) requires that, in a contested case, all parties must be afforded the opportunity for a hearing. S.C. Code Ann. § 1-23-320(A) (2015). The APA also requires that "[o]pportunity must be afforded all parties to respond and present

evidence and argument on all issues involved.” S.C. Code Ann. §1-23-320(E) (2015). Moreover, a court may reverse or modify the decision of an administrative agency if the “substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . characterized by an abuse of discretion or clearly unwarranted exercise of discretion.” S.C. Code Ann. § 1-23-380(A)(5)(f) (2015).

Because of the Commission’s actions, the aggrieved parties were deprived of notice and the opportunity to be heard and explain why such a delay of process the appeals would be prejudicial and potentially detrimental to its right to recovery in clear violation of Petitioners’ constitutional and statutory rights.

The Commission erred in holding in abeyance its decisions in the above-referenced matters pending the outcome of three other cases that are currently pending in the Court of Appeals. The cases which were to be argued before the South Carolina Workers’ Compensation Commission involved different employers and claimants. Although the cases involve the subsequent injuries of heavy metal poisoning resulting from occupational exposure to lead at the Sumter battery plant, the evidence submitted in the instant cases is different than the evidence submitted in the three cases on appeal. Moreover, each case stands on its own merit with respect to the facts surrounding the elements for Second Injury Fund reimbursement and the pre-existing medical conditions for which reimbursement is sought.

**II. THE COURT OF APPEALS COMMITTED ERROR IN DISMISSING PETITIONERS APPEAL AS INTERLOCUTORY WITHOUT THE BENEFIT OF BRIEFS OR ORAL ARGUMENT.**

Petitioners’ appeal of the Commission’s order to stay all action on Second Injury Fund reimbursement requests is not interlocutory and is immediately appealable because the Commission’s *sua sponte* decision and subsequent order is a violation of constitutional due

process rights under South Carolina's constitution and the statutory provisions of the South Carolina Workers' Compensation Act and Administrative Procedures Act. Petitioners also argue that the Commission's order is arbitrary, capricious, and characterized by an abuse of discretion or an unwarranted exercise of discretion in view of the Supreme Court's opinion in the case of *State Accident Fund v. South Carolina Second Injury Fund*. 409 S.C. 240, 762 S.E.2d 19 (2014).

Finally, because the passage of time may deprive Petitioners of a potential substantial right to recover property-obtain reimbursement-, the case is presently subject to review on appeal.

Section 14-3-330 addresses the Court authority to review appeals such as in these cases.

This section states that:

**The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:**

**(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action....**

*S.C. Code Ann. §14-3-330 (2015)*. The Commission's Order prevents Petitioners from obtaining a judgment for which an appeal might be taken because the Commission has discontinued the action for an unknown period of time in view of the Funds pending closure.

In *Bone v. U.S. Food SERV.*, 404 S.C. 67, 744 S.E.2d 552 (2013), the South Carolina Supreme Court affirmed the decision of the South Carolina Court of Appeals which had dismissed an appeal of U.S. Food Service with respect to a Circuit Court order of remand because the Circuit Court's decision was not a final judgment pursuant to Section 1-23-390. *S.C. Code Ann. § 1-23-390 (2015)*. Section 1-23-390 specifically states that "[a]n aggrieved party may obtain a review of a final judgment of the Circuit Court or the Court of Appeals pursuant to

this article....” *Id.* In the instant case, Petitioners are not seeking a review of a judgment of the Circuit Court or the Court of Appeals, but rather a review of an order of the South Carolina Workers’ Compensation Commission. A plain reading of Section 1-23-390 clearly shows this section is not applicable to the Commission, an administrative agency, as opposed to a Circuit Court and the Court of Appeals.

The Supreme Court noted that the appeal in *Bone* was not immediately appealable from the Circuit Court because the Circuit Court had ordered further proceedings be conducted by the South Carolina Workers’ Compensation Commission, the administrative agency. *Id.* Because the case was remanded for further proceedings by the Circuit Court in *Bone*, the Circuit Court’s decision and order did not constitute a final judgment. The appeal in this case does not involve an order for additional or further proceedings by any judicial tribunal.

In support of its position that the Commission’s order staying the appeal is not immediately appealable, the circuit Court cites the Supreme Court’s decision in the case of *Edwards v. Suncom*, 369 S.C. 91, 631 S.E.2d 529 (2006). The Court’s decision in *Edwards v. Suncom*, *supra*, is distinguishable on its face by the facts. In *Edwards v. Suncom*, Defendant moved for judgment on the pleadings or to stay the action. *Id.* In response to Defendant’s motion, the Circuit Court issued an order staying the matter, but also required Defendant to petition the Federal Communications Commission to seek a declaratory ruling as to whether a termination fee constituted a “rate charge”. The matter was stayed pending the FCC’s ruling. The Court reasoned that because the order did not affect a substantial right of the Plaintiff and did not prevent a judgment from which an appeal might be taken, the appeal was interlocutory.

## CONCLUSION

Petitioners' appeal of the Commission's order to stay all action on Second Injury Fund reimbursement requests is not interlocutory and is immediately appealable because the Commission's *sua sponte* decision and subsequent order is a violation of due process rights under South Carolina's constitution and the statutory provisions of the South Carolina Workers' Compensation Act and Administrative Procedures Act. Petitioners also argue that the Commission's order is arbitrary, capricious, and characterized by an abuse of discretion or an unwarranted exercise of discretion in view of the Fund's closure in 2018 and the Supreme Court's opinion in the case of *State Accident Fund v. South Carolina Second Injury Fund*. 409 S.C. 240, 762 S.E.2d 19 (2014).

The Commission erred in holding in abeyance its decisions in the above-referenced matters pending the outcome of three other cases that are currently pending in the Court of Appeals. The cases which were to be argued before the South Carolina Workers' Compensation Commission involved different employers and employees. Although the cases involve the subsequent injuries of heavy metal poisoning resulting from occupational exposure to lead at the Sumter battery plant, the evidence submitted in the instant cases is different than the evidence submitted in the three cases on appeal. Moreover, each case stands on its own merit with respect to the facts surrounding the elements for Second Injury Fund reimbursement<sup>4</sup> and the pre-existing medical conditions for which reimbursement is sought.

This Honorable Court must entertain this matter in its original jurisdiction because of the closure of the South Carolina Second Injury Fund and determination of assessments on employers and carriers with respect to having a continuous source of income to pay these Second Injury Fund claims if such are deemed reimbursable. If the funding source is not available in the

event these claims are deemed subject to reimbursement from the Fund, the State of South Carolina will be left with the unfortunate choice of assessing taxes to satisfy the outstanding debt, or simply cutting the budget(s) of agencies in order to satisfy the debt.

Accordingly, it is respectfully submitted that this Honorable Court issue an order directing the South Carolina Workers' Compensation Commission to expeditiously process the appeals as is required by statute; and that the appeals be heard by this Court.

IN RE:

*Bossard,* WCC File No. 0031286 )  
*Bradley,* WCC File No. 9930445 )  
*Brunson,* WCC File No. 0128725 )  
*Harvin,* WCC File No. 0031279 )  
*McConico,* WCC File No. 9930447 )  
*Hodge,* WCC File No. 0031294 )  
*Gamble,* WCC File No. 0031272 )  
*Taylor,* WCC File No. 9930448 )  
*Bunker,* WCC File No. 0128696 )  
*Braxton,* WCC File No. 0128692 )  
*Clemmons,* WCC File No. 0128765 )  
*Conyers,* WCC File No. 0128577 )  
*Copeland,* WCC File No. 0128462 )  
*Billie,* WCC File No. 0128460 )  
*Carter,* WCC File No. 0128568 )  
*Gaillard,* WCC File No. 0128589 )  
*Laws,* WCC File No. 9930453 )  
*Davis,* WCC File No. 0128713 )

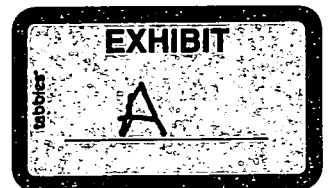
ADMINISTRATIVE ORDER

WHEREAS the above-referenced workers' compensation claims currently pending before the Commission all involve the common issue of a request for reimbursement from the South Carolina Second Injury Fund; and

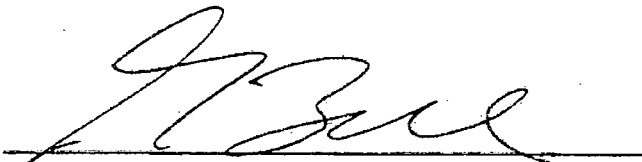
WHEREAS actions are currently pending before the South Carolina courts involving common parties and questions of law similar to those in dispute in the above-referenced workers' compensation claims, specifically, *Williams, et. al., v. South Carolina Second Injury Fund*, 2013-CP-43-02286, and *Huggins v. South Carolina Second Injury Fund*, 2013-CP-43-02287; and

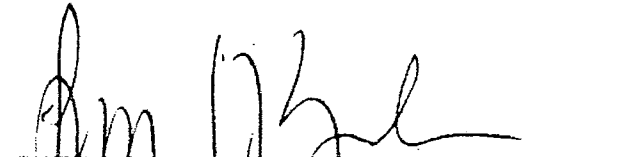
WHEREAS the final decisions of the courts in the *Williams* and *Huggins* matters may establish precedent for the Commission to follow regarding the adjudication of the above-referenced workers' compensation claims;

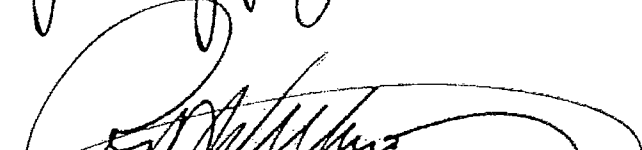
IT IS THEREFORE ORDERED that the above-referenced workers' compensation claims be held in abeyance pending a final opinion from the courts in the *Williams* and *Huggins* matters.

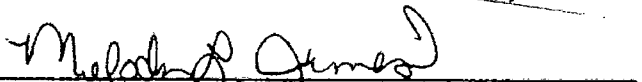



**AND SO IT IS ORDERED!**

  
\_\_\_\_\_  
Commissioner T. Scott Beck, Chairman

  
\_\_\_\_\_  
Commissioner Susan S. Barden

  
\_\_\_\_\_  
Commissioner Avery B. Wilkerson, Jr.

  
\_\_\_\_\_  
Commissioner Melody U. James

  
\_\_\_\_\_  
Commissioner Aisha G. Taylor

  
\_\_\_\_\_  
Commissioner R. Michael Campbell, II

August 13, 2014  
DATE

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on August 13, 2014***

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-5633

Yuasa Exide, Inc.

South Carolina Second Injury Fund

Arrowpoint Capital Corporation

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for:  Plaintiff  Defendant or  Self-Represented Litigant

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  
 Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

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RICHLAND COUNTY

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

**ORDER INFORMATION**

This order  ends  does not end the case.

Additional Information for the Clerk :

The circuit court does not have jurisdiction to compel an expedited decision in a case before the South Carolina Workers Compensation Commission before a final judgment has been entered. "An order granting a stay is not immediately appealable." *Edwards v. Suncom*, 631 S.E.2d 529, 369 S.C. 91 (2006). Defendant's Motion is denied.

**INFORMATION FOR THE PUBLIC INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

*[Signature]*

Judge Code 2161

Date 6-30-15

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

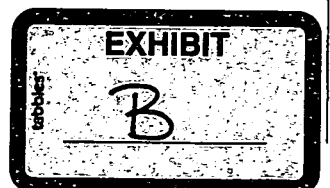
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter \_\_\_\_\_

Clerk of Court

*[Signature: Jeannette W. McBride]*

SCANNED



# The South Carolina Court of Appeals

Yuasa-Exide, Inc., Employer, and Arrowpoint Capital Corporation, Carrier,

v.

South Carolina Second Injury Fund, Respondent,

In Re: 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 Arrowwood Indemnity Company, Carrier, Defendants,

Ex Parte: Liberty Mutual Insurance Company, Appellant.

AND

Yuasa-Exide, Inc., Employer, and Arrowpoint Capital Corporation, Carrier,

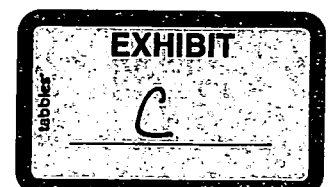
Of whom Arrowpoint Capital Corporation/Arrowwood Indemnity Company is the Appellant,

v.

South Carolina Second Injury Fund, Respondent,

In Re: Robert Billie, Wayne Braxton, David Bunker, John Carter, Allen Clemmons, Roger Conyers, William Copeland, and Vincent Gaillard,

v.



Yuasa-Exide, Inc., Employer, and Arrowood Indemnity  
Company, Carrier, Defendants.

Appellate Case No. 2015-001704

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ORDER

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Liberty Mutual Insurance Company and Arrowpoint Capital Corporation/ Arrowwood Indemnity Company have appealed orders of the circuit court dismissing these actions because the underlying orders of the Workers' Compensation Commission, which stayed the actions, were not final orders. By order dated October 15, 2015, this court consolidated these cases (Appellate Case No. 2015-001704 and 2015-001706). These appeals are dismissed because the underlying orders staying the actions are not final decisions of the Workers' Compensation Commission. *See* S.C. Code Ann. § 1-23-380 (Supp. 2014) (limiting appeals of the commission to those from a "final decision"); *Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013) (same); *Lee v. Bondex, Inc.*, 406 S.C. 97, 103-04, 749 S.E.2d 155, 158 (Ct. App. 2013) (finding this court could not review the decision of the Workers' Compensation Appellate Panel to hold in abeyance a decision about whether the claimant suffered compensable injury to his back, right shoulder, or right arm because it was not a final decision). Further, an immediate review of this decision is not necessary to provide Appellants an adequate remedy. *See* S.C. Code Ann. § 1-23-380 (Supp. 2014) ("A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy."). The remittitur will be sent as provided by Rule 221(b), SCACR.

  
FOR THE COURT

Columbia, South Carolina

**FILED**  
10/27/15

**PLAN**  
**Second Injury Fund Closure**

**1. Introduction**

SC Code Section 42-7-320 terminates the programs and appropriations of the Second Injury Fund effective July 1, 2013 and charges the Budget and Control Board with providing for: (a) the payment of liabilities of the Fund remaining after June 30, 2013, using a mechanism or mechanisms that are determined reasonably necessary to fund the liabilities and (b) appropriate staffing until staff services are no longer required to administer the obligations of the Fund.

In addition, effective July 1, 2013 SC Code Section 42-7-200 establishes the South Carolina Workers' Compensation Uninsured Employers' Fund within the State Accident Fund and transfers all functions related to the Uninsured Employers' Fund from the Second Injury Fund to the State Accident Fund in accordance with the Budget and Control Board's plan for closure of the Second Injury Fund.

To meet its statutory responsibilities the Budget and Control Board adopts the following plan.

**2.0 Plan**

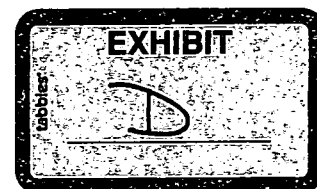
**2.1 Designation of Agency to Administer Remaining Liabilities**

Upon the termination of the Second Injury Fund July 1, 2013, the Budget and Control Board shall administer the winding down of affairs of the Second Injury Fund and payment of its remaining liabilities as provided in this plan.

**2.2 Transfer of Second Injury Fund Accounts, Assets and Liabilities**

In order for the Board to administer the wind down and remaining liabilities, the Second Injury Fund Trust and Administration accounts (Funds 4260 and 4799) together with their associated assets and liabilities, shall be transferred from the Second Injury Fund (R160) to the Budget and Control Board (F030). The Budget and Control Board shall coordinate processing transfers and establishing general ledger accounts within the Board with the Comptroller General and State Treasurer.

The funds shall be transferred and general ledger accounts established under the Board as soon as practicable after FY 2012-2013 closing transactions are processed. The transferred funds shall continue to be held as separate and distinct trust accounts.



Because the Second Injury Fund terminates July 1, 2013, the Board is authorized to act on behalf of the former Second Injury Fund to process its FY 2013 closing transactions and appropriately record the transactions. The Division of State Budget shall provide the Second Injury Fund and Budget and Control Board, as appropriate, other fund spending authority equal to the amount of any remaining administrative expenditures associated with closing the Second Injury Fund, if needed and adequately documented.

### **2.3 Administration and Use of Funds**

The Budget and Control Board shall use funds transferred according to paragraph 2.2, along with additions generated from assessments and earnings, to satisfy the remaining liabilities of the Second Injury Fund and pay expenses necessary to the performance of this and related responsibilities. The executive director of the Budget and Control Board or his or her designee is authorized to employ staff as needed for these purposes.

### **2.4 Mechanisms for Funding Liabilities and Administrative Costs after June 30, 2013**

Unless modified in accordance with the provisions of paragraph 2.6, beginning FY 2014 and continuing through FY 2018, the mechanism for funding payment and administration of Second Injury Fund obligations is by:

- (a) equitable assessments upon each carrier, which shall make annual payments to the fund in an amount equal to that proportion of sixty million dollars (\$60,000,000) which the normalized premium of each carrier bore to the normalized premium of all carriers during the preceding calendar year. Each insurance carrier, self-insurer, and the State Accident Fund shall make payment based upon workers' compensation normalized premiums during the preceding calendar year. The charge to each insurance carrier is a charge based upon normalized premiums. An employer who has ceased to be a self-insurer continues to be liable for any assessments into the fund on account of any benefits paid by him during such calendar year. Any assessment levied or established in accordance with this section constitutes a personal debt of every employer or insurance carrier so assessed and is due and payable when payment is called for by the Budget and Control Board. In the event of failure to pay any assessment upon the date determined, the employer or insurance carrier immediately may be assessed a penalty in an amount not exceeding ten percent of the unpaid assessment. If the employer or insurance carrier fails to pay the assessment and penalty, they shall be barred from any recovery from the fund on all claims without exception until the assessment and penalty are paid in full. The executive director of the Budget and Control Board or his or her designee may file a complaint for collection against the employer or

insurance carrier in a court of competent jurisdiction for the assessment, penalty, and interest at the legal rate, and the employer/carrier is responsible for the Budget and Control Board's attorney's fees and costs. The penalty and interest under this subsection are payable to the Budget and Control Board for deposit to the Second Injury Fund (Fund 4260). At the time of the filing of the complaint, the Budget and Control Board also shall notify the South Carolina Department of Insurance and the South Carolina Workers' Compensation Commission for appropriate legal and administrative action.

- (b) For purposes of this Plan, "carrier" is defined as the State Accident Fund and any person or fund authorized to insure workers' compensation liability under Title 42 of the SC Code of Laws, including self-insurers.
- (c) For purposes of this Plan, "normalized premium" is defined as gross paid losses before salvage and subrogation times a factor representing normalized expenses. Normalized expenses include taxes, licenses, fees, general expenses, profit, contingencies, and other expenses as reported on the Insurance Expense Exhibit of the NAIC Annual Statement blank. This normalized expense factor is computed annually by the Workers' Compensation Commission by August first of each year and is based upon aggregate expense information obtained from the Department of Insurance derived from insurers' most recently filed annual statements.

## **2.5 Actuarial Valuation(s)**

The executive director of the Budget and Control Board or his or her designee shall cause to be conducted an actuarial valuation of the Fund's remaining liabilities and funding based on data as of June 30, 2014, and at such other times as the executive director or designee determine appropriate, but not less than every two years. Actuarial valuations shall be conducted to determine if: (a) funding as provided in paragraph 2.4 is adequate to generate sufficient funds by fiscal year end 2018 to satisfy the Fund's remaining liabilities without further assessment, (b) sufficient funding has been accumulated to transfer the Fund's remaining liabilities and administration to a third party at a more economical cost than continuing assessments as provided in paragraph 2.4, or (c) funds are being generated in excess of the amount reasonably needed to satisfy the Fund's liabilities and administrative cost.

## **2.6 Termination or Revision of Funding**

The executive director of the Budget and Control Board or designee must advise the five member Budget and Control Board, as appropriate, if an actuarial valuation indicates funding generated in accordance with paragraph 2.4: (a) is insufficient to satisfy the Fund's liabilities by fiscal year end 2018 without further assessment, (b) has reached or is projected to reach a balance potentially sufficient to transfer the Fund's remaining

liabilities and administration to a third party at a more economical cost, or (c) will produce funding exceeding the amount needed to satisfy Fund liabilities and administrative cost. The Board shall take such action as it considers appropriate to modify the funding mechanism, amount or duration, to suspend or terminate the assessment, or to cause a transfer of liabilities or administration or both to a third party.

## **2.7 Rebate of Excess Assessments**

If funds derived from the Second Injury Fund assessment remain after all of the Fund's liabilities and expenses are extinguished or satisfied, the remaining funds shall be returned to those who paid a Second Injury Fund assessment. The amount rebated to each carrier, self-insurer and the State Accident Fund shall be determined by the percentage of the total assessment each paid. For purposes of a rebate, "total assessment" means the aggregate assessment during the last fiscal year in which assessments are collected. For purposes of determining the "total assessment" and share due each carrier, self-insurer and the State Accident Fund, the rebate shall be based upon amounts actually paid and received as Second Injury Fund assessments during the relevant fiscal year.

## **2.8 Uninsured Employers' Fund**

Pursuant to section 42-7-200, effective July 1, 2013 the powers, duties, obligations and responsibilities of the Second Injury Fund that relate to the South Carolina Workers' Compensation Uninsured Employers' Fund are devolved upon the South Carolina Workers' Compensation Uninsured Employers' Fund within the State Accident Fund. In addition, in accordance with this plan's closure of the state agency administering the Second Injury Fund and Uninsured Employers' Fund, and by operation of section 42-7-200, all functions within the Second Injury Fund related to the Uninsured Employers' Fund, including all allied, advisory, affiliated, or related entities, as well as employees, funds, property, and all contractual rights and obligations associated with the Uninsured Employer' Fund are transferred to the Uninsured Employers' Fund within the State Accident Fund. The following positions, along with the employees, are associated with the Uninsured Employers' Fund and transferred pursuant to section 42-7-200: Administrative Assistant 60025625; Administrative Assistant 60025637; Insurance Claims Examiner 60025634; Insurance Claims Examiner 60025632; Claims Analyst I 60025635; Claims Analyst I 60025628; Attorney II 60025640; Attorney III 60025636; Administrative Coordinator I 60025547; Administrative Manager I 60025641; Administrative Coordinator II 60025546; Administrative Specialist II 60025626; Administrative Manager I 60025630; Administrative Specialist II 60025548; and Program Manager II 60025642.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

NOV 30 2015

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

S.C. Supreme Court

and

The South Carolina Workers' Compensation Full Commission Appellate Panel

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Appellate Case No. 2015-001704  
Trial Court Case No. 2014-CP-40-05633 and 2014-CP-40-05634

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Yuasa-Exide, Inc. and Arrowpoint Capital Corporation, Petitioners,

v.

South Carolina Second Injury Fund, Respondent,

In Re: 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, Petitioners,

Ex Parte: Liberty Mutual Insurance Company, Petitioner

v.

South Carolina Second Injury Fund

In Re: Robert Billie, Wayne Braxton, David Bunker, John Carter, Allen Clemmons, Roger Conyers, William Copeland, and Vincent Gaillard.

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**PROOF OF SERVICE**

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I certify that I have served the Complaint and Petition for the Supreme Court to Exercise its Original Jurisdiction or in the Alternative Petition for a Writ of Certiorari on the attorneys of record for the South Carolina Second Injury Fund by depositing a copy of same in the United States Mail, postage prepaid, on the 25th day of November, 2015 addressed to its attorney of record:

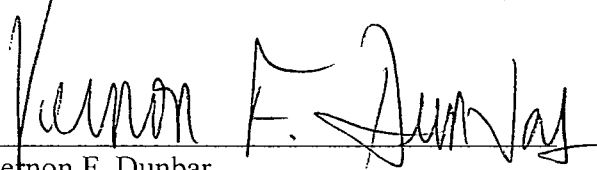
Timothy Blair Killen, Esquire  
Willson, Jones, Carter & Baxley, P.A.  
4500 Fort Jackson Boulevard  
Columbia, South Carolina 29209

Attorney for Respondent Second Injury Fund re: Arrowpoint Capital Corporation

Latonya Dilligard Edwards, Esquire  
Dilligard Edwards, LLC  
3790 Fernandina Road, Suite 103  
Columbia, South Carolina 29210

Attorney for Respondent Second Injury Fund re: Liberty Mutual Insurance Company

McANGUS GOUDELOCK & COURIE, LLC



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

November 25, 2015

Attorneys for Petitioners

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