

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

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable DeAndrea G. Benjamin, Circuit Court Judge

and

The South Carolina Workers' Compensation Commission Full Commission Appellate Panel

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

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

v.

South Carolina Second Injury Fund, Respondent,

In Re: Glinda Boassard, 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 Co., Carrier, Petitioners,

Ex Parte: Liberty Mutual Insurance Co., 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.

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Respondent, SOUTH CAROLINA SECOND INJURY FUND (Fund), hereby submits this Return pursuant to Rule 242, SCACR, in response to the Petition for the Supreme Court to Exercise Original Jurisdiction or in the Alternative, Petition for a Writ of Certiorari filed by Appellants, Yuasa Exide, Inc. and Arrowpoint Capital Corporation. Respondent previously filed a Return to the Complaint in the Original Jurisdiction. This Return is filed in response to the Petition for Writ of Certiorari in the appellate jurisdiction of the Supreme Court. Appellants' Petition for Writ of Certiorari follows the dismissal of their Appellants' interlocutory appeals by the Court of Appeals. This Return is filed relative to the matters involving only the following Claimants: Glinda Boassard, Odell Bradley, Vernice Brunson, David Davis, Century Gamble, Harold Harvin, Sidney Hodge, David Laws, Richard McConico, and Johnnie Lee Taylor.

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 all 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 all 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.

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

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.

ARGUMENT

The Fund respectfully requests that the Appellants' Petition for Writ of Certiorari be denied. Since this matter is limited to the Commission's issuance of an order staying the matters pending the outcome of the Carrier's first round of cases (hand-picked by the Carrier to be tried before those at bar), this Return will not wade into the merits of the claims.²

The Supreme Court's decision in Bone v. U.S. Food Service, 744 S.E.2d 552, 404 S.C. 67 (S.C. 2013), requires 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). "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if

² However, contrary to Appellants' position as set for the in their Petition, 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, 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.

review of the final agency decision would not provide an adequate remedy.” S.C .Code Ann. § 1–23–380(A).

It is patently clear that the order staying these matters is not a final order, nor are the Orders of the Circuit Court and Court of Appeals. 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 that “an order granting a stay is not immediately appealable.” Edwards v. Suncom, 631 S.E.2d 529, 369 S.C. 91 (2006).

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.

Next, Petitioners appear to misconstrue the Legislature’s plan for Second Injury Fund closure. The Petitioners’ repeatedly reference the Approved Second Injury Fund Closure Plan, attached to their Petition as Exhibit D, as support for its allegation that the Second Injury Fund is scheduled to terminate in fiscal year 2018. In no way does the “Plan state that reimbursement may be available to carriers only through 2018 . . .” Petition, p. 8. A fair reading of the Closure Plan acknowledges that the Fund will continue to have liabilities subsequent to 2018. In section 2.5, Actuarial Valuations, it is noted that Budget and Control Board is required to perform an actuarial valuation to determine if “funding as provided in paragraph 2.4 is adequate to generate sufficient funds by physical year end 2018 to satisfy the Fund’s remaining liabilities without further assessment” or if “sufficient funding has been accumulated to transfer the Fund’s remaining liabilities and administration to a third party at a more economical cost and continuing assessments as provided in paragraph 2.4” or if “funds are being generated in excess of the

amount reasonably needed to satisfy the Fund’s liabilities and administrative costs.” Approved Second Injury Fund Closure Plan, Petitioners’ Exhibit D (emphasis added).

S.C. Code Ann. § 42-7-320, the section of the Code closing Respondent, specifically requires the Budget and Control Board to

provide for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund.

Now that the Budget and Control Board has been dismantled per Title 1, Chapter 11 of the South Carolina Code of Laws, as of July 1, 2015, the Insurance Reserve Fund-Second Injury Fund Operations has been transferred to the State Fiscal Accountability Authority.

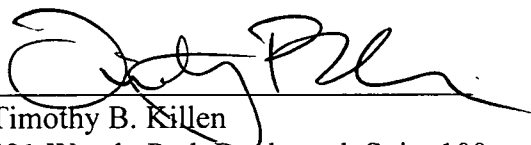
Accordingly, the allegation that Respondent will disappear at the end of fiscal year 2018 is without merit. Therefore, the Petition should be denied.

CONCLUSION

Forth the reasons set forth above and those that may be argued at the hearing of this matter, the Second Injury Fund respectfully requests that the Appellants’ appeal be dismissed.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.


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December 22, 2015
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In Re: Robert Billie, Wayne Braxton, David Bunker, John Carter, Allen Clemmons, Roger Conyers, William Copeland, and Vincent Gaillard.

PROOF OF SERVICE

I, Michelle Adams, do hereby certify that I am the Paralegal for Timothy B. Killen, Esquire, attorney for the SIF with **WILLSON JONES CARTER & BAXLEY, P.A.** in Mt. Pleasant, South Carolina, and that on the 22nd day of December, 2015, I mailed the foregoing **RETURN OF PETITION FOR WRIT OF CERTIORARI** to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

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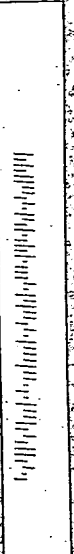
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