

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

JOAN BARRA,

Employee,

v.

CHARLESTON COUNTY, SELF-  
INSURED EMPLOYER, THROUGH THE  
SOUTH CAROLINA COUNTIES  
WORKERS' COMPENSATION TRUST  
CARRIER,

IN RE:

CHARLESTON COUNTY AND THE  
SOUTH CAROLINA COUNTIES  
WORKERS' COMPENSATION TRUST,

Appellants,

v.

SOUTH CAROLINA SECOND INJURY  
FUND,

Respondent.

IN THE COURT OF COMMON PLEAS FOR THE  
NINTH JUDICIAL CIRCUIT

2013-CP-10-510  
CASE NO.: 2015-CP-10-5529

RECEIVED

JUN 27 2016

ORDER SC Court of Appeals

FILED  
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JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

THIS MATTER COMES BEFORE THE COURT upon Appellants' Appeal from the  
Workers' Compensation Commission Appellate Panel's Decision, filed January 25, 2013.

The Court hereby **REVERSES** the Appellate Panel's Decision and finds in favor of  
Appellants.

**Factual Background**

Joan Barra sustained a compensable injury on April 30, 1996. Charleston County and the  
South Carolina Counties Workers' Compensation Trust ("Appellants") paid \$51,793.46 in

medical benefits, in addition to temporary total disability compensation. The claim was ultimately settled on March 2, 2000, for \$80,000.00. On February 18, 1997, the Appellants sent a letter to the Second Injury Fund ("SIF") in regards to the employer's claim in the case, which listed the accident date, the claim number, and the location of the accident as Charleston County. The SIF responded in writing that the "case is pending investigation" and asked that the Appellants complete and return a claim form, which was submitted by Appellants on February 16, 2011. The SIF chose not to accept the claim and the Appellants filed a hearing request.

A hearing was held on July 8, 2008, and the Commissioner issued a Decision and Order requiring the SIF to reimburse the Appellants, finding Appellants had met the necessary requirements. The Commissioner rejected the SIF's argument that the claim was barred under the statute of limitations for civil claims, S.C. Code Ann. § 15-3-600. The SIF appealed to the Commission's Appellate Panel, and an order was issued dated April 30, 2009, requiring the SIF to reimburse Appellants. The SIF then appealed to the Court of Common Pleas for Charleston County on the sole issue of whether Appellants commenced a claim within ten years pursuant to S.C. Code Ann. § 15-3-600. During the pendency of the appeal, the South Carolina Supreme Court held that S.C. Code Ann. § 15-3-600 applies to administrative claims for reimbursement from the SIF. *Transportation Insurance Company v. S.C. Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010). Following this decision, the case was remanded to the Worker's Compensation Commission ("WCC"), by order of the Circuit Court, to make findings as to whether Appellants commenced their claim for reimbursement from the SIF within ten years. Commissioner Barden of the WCC concluded that Appellants did not timely make a claim for reimbursement from the SIF because a hearing request was not made until more than ten years

after notice of the claim was given. This decision was affirmed by the WCC's Appellate Panel, and the present appeal was filed with the Court on January 25, 2013.

### Standard of Review

The Administrative Procedures Act sets the standard of review for decisions of the Workers' Compensation Commission. *South Carolina Second Injury Fund v. Liberty Mutual Insurance Company*, 353 S.C. 117, 122; 576 S.E.2d 199, 202 (Ct.App. 2003). In reviewing a decision of the commission, the court will not overturn factual findings unless "clearly erroneous" in view of the "substantial evidence on the whole record," or "evidence which would allow reasonable minds to arrive at the same conclusion reached by the administrative agency." *Id.*

### Law and Analysis

S.C. Code Ann. §15-3-600 states, "An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued." The South Carolina Supreme Court has determined that the ten year statute of limitations of §15-3-600 applies to reimbursement cases and that the causes of action for reimbursement accrue on dates that insurers provide notice to the SIF. *Transportation Insurance Company v. South Carolina Second Injury Fund*, 389 S.C. 422, 699 S.E.2d 687 (2010). An employer or his insurance carrier is required to notify the WCC and the Director of the SIF in writing of any possible claim against the fund as soon as practicable but no later than after the payment of seventy-eight weeks of compensation. S.C. Code Ann. § 42-9-400(f). The written notice must provide the following information: (1) date of accident, (2) employee's name, (3) employer's name and address, (4) insurance carrier's name, address, and the National Council on Compensation Insurance code, and (5) the insurance carrier's claim number, policy number, and policy effective date. *Id.*

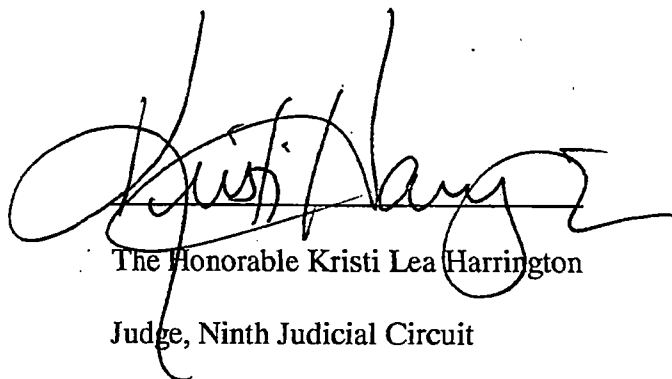
Appellants contend their claim for reimbursement was commenced against the SIF within ten years of its accrual when Appellants served SIF with notice of their claim on February 18, 1997. Appellants argue that the SIF had recognized the claim as commenced as of January 10, 2000, because at that time, the SIF assigned a number to the claim and requested a completed SIF Notice of Claim Form. SIF argues that a claim for reimbursement is commenced when the insurer files a Form 54 Request for Reimbursement pursuant to S.C. Code Ann. § 42-9-400. SIF also cites to a footnote in *Transportation Insurance* that out of multiple insurance carriers, "[t]he result in this case of accrual beginning when notice is provided is that Great American's claims is the only one not precluded...by the statute of limitations." *Transportation Insurance Company v. South Carolina Second Injury Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 n.3 (2010). SIF asserts that in *Transportation Insurance*, Great American was the only carrier to file a Form 54 Request for Hearing within ten years of providing notice to the Fund.

The Order from the Appellate Panel found that the reimbursement cause of action is commenced when the insurance carrier files a Form 54 Request for Hearing, based upon S.C. Code Reg. 67-208 and the South Carolina Supreme Court's decision in *Transportation Insurance*. S.C. Code Reg. 67-208 gives instructions for requesting a hearing between the employer and the SIF by filing the appropriate form, or a Form 54 in this case. S.C. Code Reg. 67-206 provides instructions for "Filing a Claim" with the Commission's Claims Department, through the filing of a form or letter including certain detailed information.

The Court finds that Appellants properly commenced their cause of action within the ten year statute of limitations, which began running February 18, 1997 with the provision of notice to the SIF. Appellant filed a claim pursuant to the requirements of S.C. Code Ann. § 42-9-400 as of February 18, 1997; this section does not state a request for hearing is necessary to commence

a cause of action, as alleged by the SIF. The SIF acknowledged the Appellants' claim as pending by letter dated January 10, 2000. Furthermore, the Appellants completed a SIF Claim Form and submitted documents as requested by the SIF on February 16, 2001, also within ten years of the date of notice. When the claim was still refused, Appellants supplied SIF with further requested information on March 2, 2004 which was confirmed by a letter from the SIF representative on November 8, 2004. The Appellate Panel's citation to *Transportation Insurance* and S.C. Code Reg. 67-208 as the basis for filing a Form 54 Request for Hearing to commence the claim is not clearly supported by either authority or substantial evidence in the record. This Court finds the claim was commenced by its filing with the SIF. A filing was made on February 18, 1997 and an SIF Claim Form containing the information requested by the SIF was served on February 16, 2001. The claim was effectively filed and commenced within the ten year statute of limitations.

The Court hereby **REVERSES** the Appellate Panel's decision and finds that Appellant timely commenced the reimbursement action.



The Honorable Kristi Lea Harrington  
Judge, Ninth Judicial Circuit

May 12, 2016  
Charleston, South Carolina