

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Commons Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

C.A. No.: 2013-CP-43-02284
Appellate Case No.: 2014-002215

Arrowpoint Capital Corporation/Arrowood Indemnity Co., Appellant,

v.

South Carolina Second Injury Fund, Respondent,

IN RE: Mary McConico, Employee,

v.

Yuasa-Exide, Inc., Employer, and Arrowpoint Capital Corp./Arrowood Indemnity Co., Carrier,

RECEIVED

JUN 28 2017

SC Court of Appeals

**RETURN IN OPPOSITION TO THE SOUTH CAROLINA
SECOND INJURY FUND'S PETITION FOR REHEARING**

Pursuant to Appellate Court rules 221(a) & 240(e), Arrowpoint Capital Corporation, Appellant, [hereinafter "Arrowpoint Capital" or "Arrowpoint"] respectfully responds to the petition of the South Carolina Second Injury Fund for a rehearing. On May 31, 2017, this Court reversed the Decision and Orders of the South Carolina's Workers' Compensation Commission and the Circuit Court, which had denied Arrowpoint's request for reimbursement from the South

Carolina Second Injury Fund. *Arrowpoint Capital Corporation/Arrowood Indemnity Company v. South Carolina Second Injury Fund*, 2017 – UP – 227 (Ct. Appeals filed May 31, 2017).

A cursory examination of the Court of Appeals opinion reflects that its decision was based upon an exhaustive analysis of all relevant statutes and case law pertaining to matters involving reimbursement from the South Carolina Second Injury Fund (“Fund”). Based upon a plain and clear reading of Section 42-9-400, the Court correctly reversed the decisions of the South Carolina Workers’ Compensation Commission and Circuit Court in that the rulings were based upon an erroneous comprehension of the law. S.C. Code Ann. §42-9-400(2017).

Additionally, the Court correctly reversed the decisions of the South Carolina Workers’ Compensation Commission and the Circuit Court in determining that Arrowpoint’s claim for reimbursement was timely filed and was not barred Section 42-7-320(B)(II). S.C. Code Ann. §42-7-320(B)(II)(2017).

As shown below, the opinion of the Court of Appeals is correct and does not conflict with prior decisions of our Supreme Court or any other court with regard to Second Injury Fund reimbursement claims. Accordingly, the Fund’s petition for rehearing should be denied.

STATEMENT PURSUANT TO APPELLATE COURT RULES 221 AND 240

STATEMENT OF THE CASE

Mary McConico, Employee/Claimant, suffered with heavy metal poisoning, a stroke, and hypertension because of chronic and acute lead exposure. Mary McConico [hereinafter “McConico”] worked in the battery manufacturing facility, which exposed her to lead from May 4, 1974 to July 31, 1999. McConico sustained a permanent disabling stroke on her last date of employment in 1999.

Pursuant to a Commission-ordered mediation, McConico resolved her worker's compensation claim against Yuasa-Exide, Inc., Employer, and its Workers' Compensation Insurance carrier, Arrowpoint Capital Corporation/Arrowood Indemnity by virtue of a Settlement Agreement, Release and Order (Clincher). In particular, McConico was paid \$110,000.00 in indemnity benefits to resolve her allegations of a compensable injury or occupational disease. No monies were paid for past, present or future medical treatment.

Arrowpoint Capital subsequently filed a Form 54 requesting reimbursement from the South Carolina Second Injury Fund for indemnity benefits paid. (R. p. 72). The Form 54 stated that McConico had pre-existing conditions of heavy metal poisoning, diabetes, cardiovascular or cardiac disease, arthritis, hypertension, gout and coronary artery disease, which were aggravated by McConico's repeated and/or cumulative exposure to lead on her last day of employment on July 31, 1999. Arrowpoint Capital asserted that the aggravation of the preexisting conditions because of injurious lead exposure qualified it to obtain reimbursement from the South Carolina Second Injury Fund. Arrowpoint Capital also asserted in the Form 54 that McConico's pre-existing conditions were known to the various employers during her twenty-five (25) year employment tenure; and that the preexisting conditions combined with other health maladies to render McConico permanently disabled. (R. p. 72). The Fund filed a Form 55 denying Arrowpoint's request for indemnity reimbursement.

On December 19, 2012, the Workers' Compensation Hearing Commissioner promulgated an Order denying Second Injury Fund reimbursement to Arrowpoint Capital. Specifically, the Hearing Commissioner denied the claim because McConico did not have hypertension or cardiovascular disease or had been exposed to heavy metal poisoning prior to her initial employment and occupational exposure; and that the occupational or heavy metal

exposure constituted one injury.

The Hearing Commissioner, without explanation, chose to ignore the medical opinions of three medical experts in the field of lead toxicology, who opined that McConico's last exposure to lead caused, aggravated, or accelerated her underlying health problems.

The Hearing Commissioner, however, rejected the Fund's argument that its inability to read post-employment medical records contained on a compact disc or CD statutorily barred Arrowpoint Capital's claim for reimbursement.

Arrowpoint Capital Corporation and the Fund both filed appeals to the South Carolina Workers' Compensation Full Commission.

On November 21, 2013, the Full Commission promulgated a Decision and Order affirming in part the Hearing Commissioner's decision denying Second Injury Fund reimbursement. (R. pp. 22-38). By contrast, the Full Commission Appellate Panel ruled that the Fund's inability to read the post-employment medical records contained on the compact disc barred Arrowpoint's claim for reimbursement pursuant to Section 42-7-320(B)(2). *Id.* Thus, The Full Commission reversed the Hearing Commissioner on this issue.

Arrowpoint Capital timely filed an appeal to the Sumter County Court of Common Pleas. By Order dated September 5, 2014 and filed on November 24, 2014, the Sumter County Court of Common Pleas promulgated an Order affirming the Decision and Order of the South Carolina Workers' Compensation Commission. An appeal was then filed with this honorable Court.

ARGUMENTS

- I. The Fund argues that the Court erred in reviewing the post-employment records because such were purportedly stricken from the record by the Workers' Compensation Commission, and that the Commission's decision**

was not appealed, and thus, not subject to appellate review.

The Fund's argument in this instance is completely erroneous, intentionally misleading and disingenuous. The South Carolina Workers' Compensation Full Commission's decision to exclude the post-employment medical records and deny Arrowpoint's claim for reimbursement, without having the Fund show that the records were necessary, was indeed appealed to the Circuit Court and preserved for review. Because of the Fund's intentionally misleading argument, the undersigned was compelled to go outside of the record to prove that the exclusion of the post-employment records by the Full Commission was in fact appealed and preserved as is reflected in items numbered 20-24 contained in the attached Notice of Intent to Appeal to the Sumter County Court of Common Pleas (Exhibit 1).

Despite the Fund's untruthful argument regarding the non-preservation of an issue, it is absolutely inexplicable why the Fund now argues that a review of the very same post-employment records—which it initially characterized as error by this Court- now warrants denying reimbursement. Either the post-employment medical records support the Fund's position that the claim is not subject to reimbursement or is adverse to the Fund's position. It certainly cannot be both. The Fund failed to persuade the Hearing Commissioner and this Court that the reimbursement claim is statutorily barred. Thus, the Fund now argues that the post-employment medical records it wanted excluded were required and necessary, absent such a showing in hearings before the Commission and the Circuit Court. In short, the Fund's argument is illogical and is not supported by any evidence in the record.

A) The Court correctly ruled McConico suffered with numerous pre-existing conditions, which were permanent in nature and a

hindrance and obstacle to employment and re-employment, and that her last exposure to lead constituted heavy metal poisoning which either combined with her pre-existing health maladies or aggravated such and rendered her permanently disabled based upon the substantial evidence in the record.

The Fund's argument mischaracterizes the expert medical opinions of Dr. Eugene Shippen, Dr. Edward L. Baker and Dr. J. Routt Reigart. (R. pp. 138 – 140 & 146 – 151). These records and expert opinions do not in any way state that heavy metal poisoning was the sole cause of diabetes, hypercholesterolemia, back pain, arm pain, knee pain, vertigo and hypertension. Dr. Reigart's reports indicate that the aforesaid symptoms may have been caused, aggravated or accelerated by occupational exposure to lead, but also by physical demands of McConico's employment duties. The Fund also conveniently ignores the fact that Dr. Reigart only assigned medical impairment ratings associated with lead exposure to cardiovascular disease, hypertension, gout and encephalopathy. Dr. Reigart did not assign medical impairment ratings for diabetes, back pain, arm pain and knee pain.

The Fund further argues that the Court erred in not addressing whether medical costs were substantially greater pursuant to Section 42-9-400. S.C. Code Ann. §42-9-400(2017). In making this argument, the Fund obviously did not review its form pleading document or specifically, the Form 54. The Form 54 does not require a finding by the Commission or the Court that there is an *actual increase* in medical costs in order for the Fund to pay reimbursement. Rather, the language only requires that the combination and aggravation of the pre-existing conditions by subsequent accident or exposure "substantially [increase] the *liability* of the carrier for disability and/or medical." (Emphasis added) (R. p. 72). Arrowpoint's increase

in liability for McConico's medical costs is addressed not only in the medical questionnaires, but also in the initial medical evaluation report. Specifically, Dr. Reigart concluded that McConico's conditions were permanent and would increase in severity over time. As a result, McConico's health status would deteriorate in the future; she would require continued medical care; and her medical costs would increase over time. (R. pp. 139 - 140).

Additionally, Dr. Eugene Shippen expressed the same opinion that the medical costs would substantially increase because of the existence of McConico's pre-existing conditions that were aggravated by lead exposure in his response to question number 6 of the medical questionnaire. (R. p. 147). Dr. Edward L. Baker also affirmatively answered the question regarding Arrowpoint's liability for increased medical costs in his response to question number 6 of the medical questionnaire. (R. p. 150).

The uncontested medical records confirm that McConico's last exposure to lead substantially increased Arrowpoint's *liability for medical costs and greater disability*. Hence, the Court of Appeals was correct in its analysis, review of the evidence, and in its opinion that reimbursement was legally warranted.

II. The Court of Appeals did not misapprehend the evidence or the law, but rather followed legal precedent as established by the South Carolina Supreme Court in its decision of *State Workers' Compensation Fund v. South Carolina Second Injury Fund*, 313 S.C. 536, 443 S.E.2d, 546 (1994).

The Fund simply wants the Court to ignore the doctrine of *stare decisis* and the numerous Appellate Court holdings regarding Second Injury Fund reimbursement cases.

The Court of Appeals strictly construed the statute and followed judicial precedent in reversing the Decisions and Orders of the Commission and Circuit Court. Moreover, the Fund

provided no evidence-much less substantial evidence- in support of any of the contentions or arguments.

Second, the Fund's argument and challenge of the means by which this case was resolved is without merit. The Fund, McConico, the employer and Arrowpoint Capital were ordered to participate in mandatory mediation in order to resolve this case by the Commission. The settlement agreement reflects that the settlement is an order of the Commission. (R. pp.58-69). More importantly, the Fund's Form 54 not only acknowledges but accepts the legal proposition that a case can be resolved by virtue of an award or agreement. See Form 54, item 3. (R. pp. 72).

Last, the Fund did not plead that the claim should be denied because it was settled by virtue of a settlement agreement and release (clincher) in its Form 55. (R. p. 73) Thus, this argument was not effectively pled below in order to be considered. More importantly, this argument is improper in the context of a petition for rehearing.

CONCLUSION

Arrowpoint Capital Corporation respectfully argues that the Court of Appeals' decision is correct and is in complete accordance with prior Appellate Court decisions. Thus, the Fund's petition for rehearing should be denied.

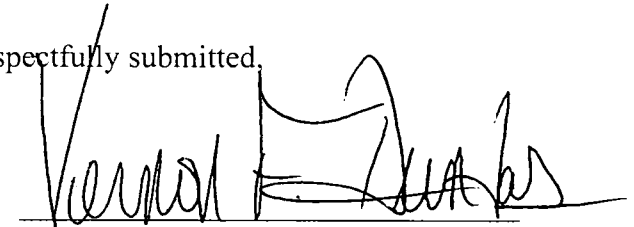
Arrowpoint Capital Corporation also argues that because of the Fund's disingenuous argument asserting the issues surrounding a review of the post-employment medical records was improper by the Court because such ostensibly was not preserved, the Fund should be subject to sanctions for knowingly and willfully advancing a frivolous argument.

Greenville, South Carolina

June 26, 2017

Respectfully submitted,

By:

A handwritten signature in black ink, appearing to read "Vernon F. Dunbar", written over a horizontal line.

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EXHIBIT A

STATE OF SOUTH CAROLINA)

COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS

In Re: Mary C. McConico)
Yuasa Exide, Inc. and Arrowood Indemnity)
Company,)

CIVIL ACTION COVERSHEET

Plaintiff(s))

2013-CP -

vs.)

South Carolina Second Injury Fund)

Defendant(s))

(Please Print)

Submitted By: Vernon F. Dunbar, Esquire
Address: Turner Padgett Graham & Laney, PA
Post Office Box 1509, Greenville, SC 29602

SC Bar #: 7836
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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____ <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input checked="" type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:

Vernon F. Dunbar

Date:

December 19, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2013-CP-_____

YUASA-EXIDE, INC., Employer

- and -

ARROWOOD INDEMNITY COMPANY,
Carrier

Appellants,

vs.

SOUTH CAROLINA SECOND INJURY FUND,

Respondents,

IN RE: MARY C. MCCONICO,

Employee/Claimant,

**NOTICE OF INTENT TO APPEAL AND
PETITION FOR REVIEW OF THE
DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

W.C.C. FILE NO: 9930459

TO: THE HONORABLE JAMES C. CAMPBELL, SUMTER COUNTY CLERK OF COURT;
THE HONORABLE VIRGINIA L. CROCKER, JUDICIAL DIRECTOR OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION; TIMOTHY B. KILLEN,
ESQUIRE, ATTORNEY FOR THE SOUTH CAROLINA SECOND INJURY FUND.

YOU WILL PLEASE TAKE NOTICE that the Petitioners/Appellants, Yuasa-Exide, Inc., and Arrowood Indemnity Company, the respective Employer and Carrier, by and through the undersigned attorney, do hereby appeal to the Court of Common Pleas for Sumter County, South Carolina, from a Decision and Order of the South Carolina Workers' Compensation Commission. The Commission's Order is dated November 21, 2013, and was received by the Undersigned on the same day. The Commission's Order is hereby appealed on the grounds set forth below.

1. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not have preexisting conditions of heavy metal poisoning, hypertension, anemia, cardiovascular disease, arthritis, coronary artery disease, osteoarthritis, or any other health problems prior to the date of accidental injury of July 31, 1999, the error being that the aforesaid preexisting conditions predated claimant's date of alleged accident of July 31, 1999.

2. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not have any impairment that preexisted the last exposure to lead, the error being that Claimant was exposed to lead in varying amounts during the entire course of claimant's employment from 1974 to 1999 (25 years).

3. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law and abused its discretion that even though evidence supports claimant having preexisting medical conditions consisting of heavy metal poisoning, coronary artery disease (cardiovascular/cardiac disease), hypertension, osteoarthritis, etc., predating July 31, 1999, the error being that the aforesaid medical conditions continued to worsen after continuous acute and chronic exposures to varying amounts of lead, which aggravated a preexisting and underlying condition or combined with the preexisting conditions to render claimant disabled.

4. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law and abused its discretion in finding that the medical questionnaires submitted on behalf of the employer and carrier are not supported by medical evidence in the record, the error being that the questionnaires were completed by a competent and immintently qualified physicians who opined and concluded that the lead to which claimant was continuously exposed aggravated underlying health maladies or combined with the aforesaid or aforementioned health maladies to render claimant disabled.

5. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant's heavy metal exposure over a 25 year period constitutes one injury, the error being that such a finding is against the greater weight of the evidence and is contrary to South Carolina law.

6. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the employer and carrier failed to prove that there was no combination or aggravation of the aforesaid preexisting conditions by any subsequent injury or exposure to lead to create substantially greater medical costs and permanent disability, the error being that this finding is contrary to the evidence contained in the record and also constitutes an abuse of discretion.

7. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant's preexisting conditions were not permanent nor serious enough to be a hindrance or obstacle to employment or re-employment, the error being that claimant was eventually declared disabled because of the preexisting conditions in combination with the lead exposure to render claimant disabled from working as of July 31, 1999. Moreover, claimant's aforesaid health maladies are listed conditions under *Section 42-9-400*, which would constitute a presumptive hindrance or obstacle to employment and re-employment and increased medical costs and increased disability.

8. The South Carolina Workers' Compensation Commission legally erred and abused its discretion in denying the employer and carrier's claim for reimbursement in view of the recently promulgated cases of *Carolinas Recycling Group and Employers Insurance of Wausau v. South Carolina Second Injury Fund* and *Burnette v. City of Greenville*, both promulgated by the South Carolina Court of Appeals, the error being that the Commission's decision to ignore the only evidence in the case constitutes an abuse of discretion and error of law.

9. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not suffer an injury by accident or failed to prove the occurrence of an injury by accident with regards to claimant's exposure to lead beginning in 1974 and ending on July 31, 1999, the error being that the cumulative and cascading effect of lead exposure constituted an injury by accident according to *Grayson v. Gulf Oil*, 292 S.C. 528, 357 S.E.2d 479 (1987).

10. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the carrier did not meet all necessary elements for reimbursement pursuant to *Section 42-9-400*, et. seq., the error being that such a finding is against the greater weight of the evidence and contrary to South Carolina law.

11. The South Carolina Workers' Compensation Commission erred and abused its discretion in denying the Employer and Carrier's claim for reimbursement in view of the recent cases of *Carolina's Recycling Group and Employers Insurance Company of Wausau v. S.C. Second Injury Fund*, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012) and *Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012) both promulgated by the South Carolina Court of Appeals, the error being that the Commission's decision to ignore binding authority constitutes an abuse of discretion and an error of law and that the only evidence in the record establishes that Appellants are entitled to reimbursement from the South Carolina Second Injury Fund.

12. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the Carrier has not met all necessary elements for reimbursement pursuant to § 42-9-400, the error being that such a finding is against the greater weight of the evidence and contrary to South Carolina law.

13. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that pursuant to *State Workers' Compensation Fund v. S.C. Second Injury Fund*, 313 S.C. 536, 443 S.E.2d 546 (1994) and *Springs Industries v. S.C. Second Injury Fund*, 296 S.C. 359, 372 S.E.2d 915 (1988) that Defendants are entitled to reimbursement from the South Carolina Second Injury Fund given Claimant sustained heavy metal poisoning before and on or about her date of injury.

14. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Claimant's preexisting conditions/impairments preexisted her 1991 date of hire with Yuasa Exide, Inc., the error being that the evidence in the record establishes that Claimant had preexisting conditions/impairments before her date of hire with Yuasa Exide, Inc., and that the employer had knowledge of the preexisting conditions/impairments.

15. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that even if Claimant did not have separate employers at the Sumter battery plant, the plant retained Claimant in its employment with knowledge of Claimant's preexisting conditions/impairments, the error being that the Commission ignored the statutory language of South Carolina Code Annotated § 42-9-400 in concluding that the employee did not have preexisting conditions/impairments and that the employer had no knowledge of these preexisting conditions/impairments before Claimant's date of injury.

16. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Yuasa Exide, Inc. had knowledge of Claimant's preexisting conditions/impairments of cardiac disease, diabetes, pulmonary condition/disease, heavy metal poisoning, and hearing loss.

17. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that there is no occupational disease injury until an employee becomes disabled and could discover that her condition is compensable, thereby establishing that the date of injury on occupational disease claims is the date of disability, or at the earliest the last date of injurious exposure, the error being that this date of injury establishes the date on which Claimant's preexisting conditions/impairments had to pre-exist.

18. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that Claimant's preexisting impairments/conditions had to preexist Claimant's exposure to lead, as opposed to Claimant's date of injury, when such a finding is an error of law.

19. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that coronary artery disease and hypertension are not cardio vascular diseases, the error being that coronary artery disease, hypertension and cardio vascular disease are cardiac diseases as is contemplated by *Section 42-9-400*.

20. The South Carolina Workers' Compensation Commission erred as a matter of law, abused its discretion in finding that the claim for reimbursement is barred by *South Carolina Code Ann. Section 42-7-320 (b)(2)*, the error being that there was no evidentiary finding that the post Yuasa medical records contained on the disc was

required and compromised the South Carolina Second Injury Fund's ability to accept or deny the claim.

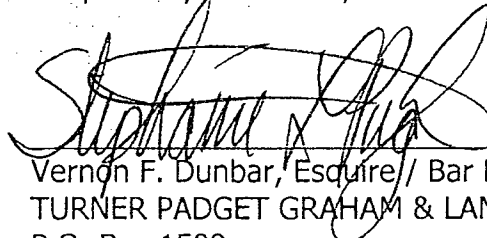
21. The South Carolina Workers' Compensation Commission erred as a matter of law and abused its discretion in finding as a fact that the claim was barred because electronic copies of the post-Yuasa medical records could not be viewed, the error being that no finding of fact supports the Commission's findings and conclusions that the failure to submit all required information was not completed by June 30, 2011, in that the Fund had access to all medical records and other files from the date of Claimant's employment until July 31, 1999 and subsequent total disability.

22. The South Carolina Workers' Compensation Commission erred in finding as a fact that the post Yuasa-Exide medical documents contained on the disc were required by the Fund, the error being that these medical records were not necessary nor required because the request for reimbursement did not involve payment of medical expenses.

23. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding that the Carrier's submission of post Yuasa-Exide medical records on a compact disc bars the claim, the error being that the disc contained only Claimant's medical records subsequent to her employment tenure at Yuasa-Exide and had no impact on Appellants' burden of proof to reimbursement and that the technical error and service was rectified without prejudice.

24. The South Carolina Workers' Compensation Commission erred in finding that the purported untimely submission of the post Yuasa-Exide medical records on disc were not timely submitted and should serve as a bar to this claim and in the alternative that the post Yuasa-Exide medical records should be excluded, the error being that the South Carolina Second Injury Fund abandoned this argument on appeal, and thus, the argument and issue should not have been addressed by the South Carolina Workers' Compensation Commission.

Respectfully submitted,

 For
VFD

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Greenville, South Carolina
December 19, 2013

STATE OF SOUTH CAROLINA)

) **CERTIFICATE OF SERVICE**

COUNTY OF GREENVILLE)

The undersigned employee of the Law Offices of Turner Padgett Graham & Laney P.A. 200 East Broad Street Suite 250 Greenville, SC 29602 does hereby certify that she has served the following named party (or parties) and/or individual(s) with the document(s) indicated below, in accordance with Regulations 67-210, 67-211, 67-213, 67-214 and 67-215, and such other law as may be applicable, by mailing a copy of the same to the party and/or individual in the United States Mail with sufficient first class postage affixed thereto, and a return address clearly marked on the date stated below:

Mary C. McConico vs. Yuasa-Exide, Inc.

WCC No: 9930459

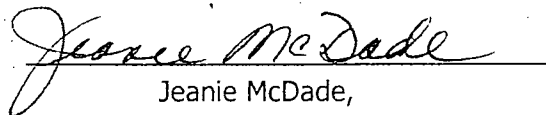
DOCUMENT(S) SERVED: *Defendants/Appellants' Notice of Intent to Appeal and Petition for Review of the Decision and Order of the South Carolina Workers' Compensation Commission and Certificate of Service*

December 19, 2013

VIA REGULAR FIRST CLASS MAIL:

Timothy B. Killen, Esquire
Willson Jones Carter & Baxley, P.A.
4500 Fort Jackson Boulevard
Columbia, SC 29209

Ms. Virginia Crocker, Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202



Jeanie McDade,
Secretary to Vernon F. Dunbar

STATE OF SOUTH CAROLINA)

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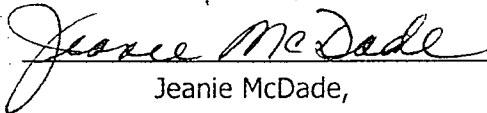
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Jeanie McDade,

Secretary to Vernon F. Dunbar

EXHIBIT A

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF SUMTER)

In Re: Mary C. McConico)
Yuasa Exide, Inc. and Arrowood Indemnity)
Company,)

CIVIL ACTION COVERSHEET

Plaintiff(s))

2013-CP - -

vs.)

South Carolina Second Injury Fund)

Defendant(s))

(Please Print)

Submitted By: Vernon F. Dunbar, Esquire
Address: Turner Padgett Graham & Laney, PA
Post Office Box 1509, Greenville, SC 29602

SC Bar #: 7836
Telephone #: 864-552-4601
Fax #: 864-552-4620
Other:
E-mail: VDunbar@turnerpadgett.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

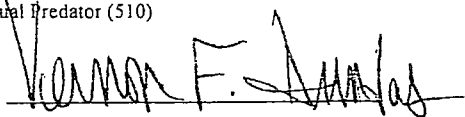
*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

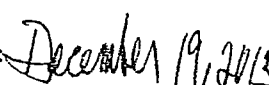
NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input checked="" type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Administrative Law Judge (980) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature:



Date:



Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No.: 2013-CP-_____

YUASA-EXIDE, INC., Employer

- and -

ARROWOOD INDEMNITY COMPANY,
Carrier

Appellants,

vs.

SOUTH CAROLINA SECOND INJURY FUND,

Respondents,

IN RE: MARY C. MCCONICO,

Employee/Claimant,

**NOTICE OF INTENT TO APPEAL AND
PETITION FOR REVIEW OF THE
DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**

W.C.C. FILE NO: 9930459

TO: THE HONORABLE JAMES C. CAMPBELL, SUMTER COUNTY CLERK OF COURT;
THE HONORABLE VIRGINIA L. CROCKER, JUDICIAL DIRECTOR OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION; TIMOTHY B. KILLEN,
ESQUIRE, ATTORNEY FOR THE SOUTH CAROLINA SECOND INJURY FUND.

YOU WILL PLEASE TAKE NOTICE that the Petitioners/Appellants, Yuasa-Exide, Inc., and Arrowood Indemnity Company, the respective Employer and Carrier, by and through the undersigned attorney, do hereby appeal to the Court of Common Pleas for Sumter County, South Carolina, from a Decision and Order of the South Carolina Workers' Compensation Commission. The Commission's Order is dated November 21, 2013, and was received by the Undersigned on the same day. The Commission's Order is hereby appealed on the grounds set forth below.

1. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not have preexisting conditions of heavy metal poisoning, hypertension, anemia, cardiovascular disease, arthritis, coronary artery disease, osteoarthritis, or any other health problems prior to the date of accidental injury of July 31, 1999, the error being that the aforesaid preexisting conditions predated claimant's date of alleged accident of July 31, 1999.

2. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not have any impairment that preexisted the last exposure to lead, the error being that Claimant was exposed to lead in varying amounts during the entire course of claimant's employment from 1974 to 1999 (25 years).

3. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law and abused its discretion that even though evidence supports claimant having preexisting medical conditions consisting of heavy metal poisoning, coronary artery disease (cardiovascular/cardiac disease), hypertension, osteoarthritis, etc., predating July 31, 1999, the error being that the aforesaid medical conditions continued to worsen after continuous acute and chronic exposures to varying amounts of lead, which aggravated a preexisting and underlying condition or combined with the preexisting conditions to render claimant disabled.

4. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law and abused its discretion in finding that the medical questionnaires submitted on behalf of the employer and carrier are not supported by medical evidence in the record, the error being that the questionnaires were completed by a competent and imminently qualified physicians who opined and concluded that the lead to which claimant was continuously exposed aggravated underlying health maladies or combined with the aforesaid or aforementioned health maladies to render claimant disabled.

5. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant's heavy metal exposure over a 25 year period constitutes one injury, the error being that such a finding is against the greater weight of the evidence and is contrary to South Carolina law.

6. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the employer and carrier failed to prove that there was no combination or aggravation of the aforesaid preexisting conditions by any subsequent injury or exposure to lead to create substantially greater medical costs and permanent disability, the error being that this finding is contrary to the evidence contained in the record and also constitutes an abuse of discretion.

7. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant's preexisting conditions were not permanent nor serious enough to be a hindrance or obstacle to employment or re-employment, the error being that claimant was eventually declared disabled because of the preexisting conditions in combination with the lead exposure to render claimant disabled from working as of July 31, 1999. Moreover, claimant's aforesaid health maladies are listed conditions under *Section 42-9-400*, which would constitute a presumptive hindrance or obstacle to employment and re-employment and increased medical costs and increased disability.

8. The South Carolina Workers' Compensation Commission legally erred and abused its discretion in denying the employer and carrier's claim for reimbursement in view of the recently promulgated cases of *Carolinas Recycling Group and Employers Insurance of Wausau v. South Carolina Second Injury Fund* and *Burnette v. City of Greenville*, both promulgated by the South Carolina Court of Appeals, the error being that the Commission's decision to ignore the only evidence in the case constitutes an abuse of discretion and error of law.

9. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that claimant did not suffer an injury by accident or failed to prove the occurrence of an injury by accident with regards to claimant's exposure to lead beginning in 1974 and ending on July 31, 1999, the error being that the cumulative and cascading effect of lead exposure constituted an injury by accident according to *Grayson v. Gulf Oil*, 292 S.C. 528, 357 S.E.2d 479 (1987).

10. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the carrier did not meet all necessary elements for reimbursement pursuant to *Section 42-9-400*, et. seq., the error being that such a finding is against the greater weight of the evidence and contrary to South Carolina law.

11. The South Carolina Workers' Compensation Commission erred and abused its discretion in denying the Employer and Carrier's claim for reimbursement in view of the recent cases of *Carolina's Recycling Group and Employers Insurance Company of Wausau v. S.C. Second Injury Fund*, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012) and *Burnette v. City of Greenville*, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012) both promulgated by the South Carolina Court of Appeals, the error being that the Commission's decision to ignore binding authority constitutes an abuse of discretion and an error of law and that the only evidence in the record establishes that Appellants are entitled to reimbursement from the South Carolina Second Injury Fund.

12. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that the Carrier has not met all necessary elements for reimbursement pursuant to § 42-9-400, the error being that such a finding is against the greater weight of the evidence and contrary to South Carolina law.

13. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that pursuant to *State Workers' Compensation Fund v. S.C. Second Injury Fund*, 313 S.C. 536, 443 S.E.2d 546 (1994) and *Springs Industries v. S.C. Second Injury Fund*, 296 S.C. 359, 372 S.E.2d 915 (1988) that Defendants are entitled to reimbursement from the South Carolina Second Injury Fund given Claimant sustained heavy metal poisoning before and on or about her date of injury.

14. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Claimant's preexisting conditions/impairments preexisted her 1991 date of hire with Yuasa Exide, Inc., the error being that the evidence in the record establishes that Claimant had preexisting conditions/impairments before her date of hire with Yuasa Exide, Inc., and that the employer had knowledge of the preexisting conditions/impairments.

15. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that even if Claimant did not have separate employers at the Sumter battery plant, the plant retained Claimant in its employment with knowledge of Claimant's preexisting conditions/impairments, the error being that the Commission ignored the statutory language of South Carolina Code Annotated § 42-9-400 in concluding that the employee did not have preexisting conditions/impairments and that the employer had no knowledge of these preexisting conditions/impairments before Claimant's date of injury.

16. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that Yuasa Exide, Inc. had knowledge of Claimant's preexisting conditions/impairments of cardiac disease, diabetes, pulmonary condition/disease, heavy metal poisoning, and hearing loss.

17. The South Carolina Workers' Compensation Commission erred in failing to find as a fact and conclude as a matter of law that there is no occupational disease injury until an employee becomes disabled and could discover that her condition is compensable, thereby establishing that the date of injury on occupational disease claims is the date of disability, or at the earliest the last date of injurious exposure, the error being that this date of injury establishes the date on which Claimant's preexisting conditions/impairments had to pre-exist.

18. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that Claimant's preexisting impairments/conditions had to preexist Claimant's exposure to lead, as opposed to Claimant's date of injury, when such a finding is an error of law.

19. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding as a matter of law that coronary artery disease and hypertension are not cardio vascular diseases, the error being that coronary artery disease, hypertension and cardio vascular disease are cardiac diseases as is contemplated by *Section 42-9-400*.

20. The South Carolina Workers' Compensation Commission erred as a matter of law, abused its discretion in finding that the claim for reimbursement is barred by *South Carolina Code Ann. Section 42-7-320 (b)(2)*, the error being that there was no evidentiary finding that the post Yuasa medical records contained on the disc was

required and compromised the South Carolina Second Injury Fund's ability to accept or deny the claim.

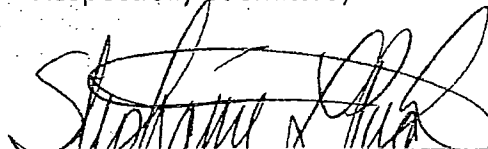
21. The South Carolina Workers' Compensation Commission erred as a matter of law and abused its discretion in finding as a fact that the claim was barred because electronic copies of the post-Yuasa medical records could not be viewed, the error being that no finding of fact supports the Commission's findings and conclusions that the failure to submit all required information was not completed by June 30, 2011, in that the Fund had access to all medical records and other files from the date of Claimant's employment until July 31, 1999 and subsequent total disability.

22. The South Carolina Workers' Compensation Commission erred in finding as a fact that the post Yuasa-Exide medical documents contained on the disc were required by the Fund, the error being that these medical records were not necessary nor required because the request for reimbursement did not involve payment of medical expenses.

23. The South Carolina Workers' Compensation Commission erred in finding as a fact and concluding that the Carrier's submission of post Yuasa-Exide medical records on a compact disc bars the claim, the error being that the disc contained only Claimant's medical records subsequent to her employment tenure at Yuasa-Exide and had no impact on Appellants' burden of proof to reimbursement and that the technical error and service was rectified without prejudice.

24. The South Carolina Workers' Compensation Commission erred in finding that the purported untimely submission of the post Yuasa-Exide medical records on disc were not timely submitted and should serve as a bar to this claim and in the alternative that the post Yuasa-Exide medical records should be excluded, the error being that the South Carolina Second Injury Fund abandoned this argument on appeal, and thus, the argument and issue should not have been addressed by the South Carolina Workers' Compensation Commission.

Respectfully submitted,



for
VFD

Vernon F. Dunbar, Esquire / Bar No.: 7836
TURNER PADGET GRAHAM & LANEY P.A.
P.O. Box 1509
Greenville, SC 29602
(864) 552-4601
Attorneys for the Employer/Carrier

Greenville, South Carolina
December 19, 2013

STATE OF SOUTH CAROLINA)

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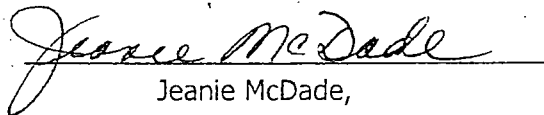
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Secretary to Vernon F. Dunbar

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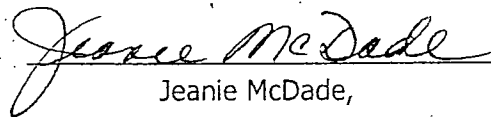
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Ms. Virginia Crocker, Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202



Jeanie McDade,
Secretary to Vernon F. Dunbar

Reply To

VERNON F. DUNBAR
Direct Dial: (864) 239-6735
vernon.dunbar@mgclaw.com

June 26, 2017

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED

JUN 28 2017

SC Court of Appeals

RE: Arrowpoint Capital Corporation/Arrowood Indemnity Co. v. South Carolina
Second Injury Fund
In Re: Mary McConico v. Yuasa-Exide, Inc.
Appellate Court Tracking No.: 2014-002215
Civil Action No.: 2013-CP-43-02284

Dear Ms. Kitchings:

Enclosed for filing in the above referenced matter are the following:

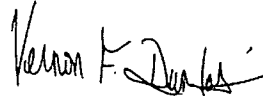
1. Appellant Arrowpoint Capital Corporation's Response to the Fund's Petition for Re-hearing (original and six copies);
2. An original and one copy of the Proof of Service reflecting service of the Response on Timothy Killen, attorney for the South Carolina Second Injury Fund.
3. Seven copies of Exhibit A which are attached to each return.

I would appreciate it if you would return a clocked copy of the Response and Proof of Service in the envelope provided for your convenience.

Please call me if you have any additional questions regarding the enclosed information. With kindest regards, I remain...

Very truly yours,

McAngus Goudelock & Courie, LLC

A handwritten signature in black ink that reads "Vernon F. Dunbar". The signature is written in a cursive style with a prominent initial "V".

Vernon F. Dunbar

VFD/jck
Enclosures

cc: Timothy Killen, Esquire *via mail*
Eric Rowell, Arrowpoint Capital Corp *via email*
Renee Wray *via email*
Ronald Mazariegos *via email*

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO: 9930459

MARY MCCONICO,
Employee,
Claimant,
vs.
YUASA EXIDE, INC.,
Employer,
AND
ARROWPOINT CAPITAL CORP,
Carrier,
Defendants.

**CERTIFICATE
OF
SERVICE**

RECEIVED

JUN 28 2017

SC Court of Appeals

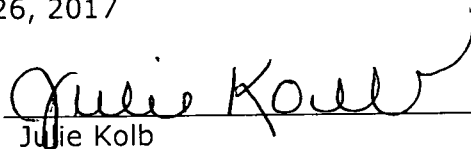
The undersigned certifies that she is an employee at MCANGUS GOUDELOCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Rule 67-211 of the South Carolina Workers' Compensation Commission, by depositing a copy of same in the United States Mail, postage prepaid, addressed to:

South Carolina Court of Appeals
1051 Sumter Street
Columbia, South Carolina 29211

Timothy Killen, Esquire
Willson, Jones, Carter & Baxley - Mount Pleasant
421 Wando Park Boulevard Ste 100
Mount Pleasant, South Carolina 29464

DOCUMENT: Response to Fund's Petition for Re-hearing

DATE OF MAILING: June 26, 2017



Julie Kolb

Legal Assistant to Vernon F. Dunbar

P

06/26/2017
From 29601
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Zone 2

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Pitney Bowes
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Julie Koib
McAngus Goudelock & Courie
55 East Camperdown Way, Suite 300
Greenville SC 29601

Delivery Date: 06/29/2017

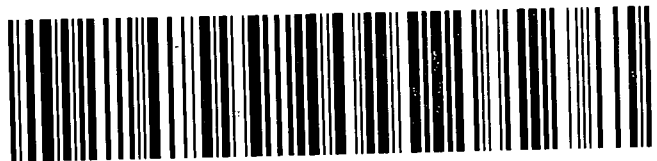
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The Honorable Jenny Abbott Kitchings
SC Court of Appeals
PO Box 11629
Columbia SC 29211-1629

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