

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

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Case No. 2013-CP-43-02286  
Appellate Case No. 2017-001955

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Arrowpoint Capital Corporation/Arrowood Indemnity Co., .....Respondent,

v.

South Carolina Second Injury Fund.....Petitioner,

[In re: C.L. Williams, Employee/Claimant

v.

Yuasa Exide, Incorporated, Employer]

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RETURN IN OPPOSITION TO SOUTH CAROLINA SECOND INJURY  
FUND'S PETITION FOR CERTIORARI

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**STATEMENT OF ISSUES ON APPEAL**

- I. DID THE COURT OF APPEALS PROPERLY FIND THAT RESPONDENT IS ENTITLED TO REIMBURSEMENT FROM THE SOUTH CAROLINA SECOND INJURY FUND, PURSUANT TO § 42-9-400?

Pursuant to Rules 240(e) and 242, SCACR, Respondent opposes Petitioner the South Carolina Second Injury Fund's Petition for Writ of Certiorari ("Petition") of the Lower Court's unanimous decision in favor of Reimbursement. The Second Injury Fund (The Fund or Petitioner) has failed to raise any valid factual or legal issues that warrants this Court's review of Respondent's reimbursement claim and continues to misconstrue decades of South Carolina jurisprudence in its analysis. Because the Fund has failed to present any novel questions of law, show any conflict between the Court of Appeals' decision in this case with a prior decision of this Court, and raises no constitutional issues or federal questions, Respondent requests that its Petition be denied.

#### **STATEMENT OF THE CASE**

This case concerns whether Respondent is entitled to reimbursement from the South Carolina Second Injury Fund pursuant to South Carolina Code Annotated § 42-9-400. This appeal stems from a workers' compensation claim filed by C.L. Williams (Williams), wherein he alleged he suffered lead poisoning in the course and scope of his employment at a battery manufacturing facility in Sumter, South Carolina on or about February 1, 1999.

Williams is an African-American male born on October 3, 1948. ESB, Inc., initially hired him on March 12, 1976, but he was later rehired by Exide Corp. in 1983, and Yuasa-Exide, Inc., in 1991. Yuasa-Exide then changed names to Yuasa, Inc. in April 1998. (For the sake of this brief, the location where Williams worked will hereinafter be referred as the Sumter battery plant.) Williams was ultimately terminated, because he had restrictions stemming from cardiac and pulmonary problems that the employer could not accommodate.

While at the Sumter battery plant, Williams had multiple jobs to include janitorial work, lead plate stacking, finishing, and fabrication of lead posts. Throughout his tenure of employment,

his blood lead levels ranged from 21–93 µg/dL, with many reports noting a blood lead level greater than 50 µg/dL. (R. pp. 217–20.) It is undisputed that Williams was exposed to lead at dangerous levels, while working at the battery plant.

The records from the Sumter battery plant's in house health department reveal that during Williams' tenure of employment, he suffered from a variety of maladies. As early as January 20, 1982, while working for ESB, Inc., the medical department noted that Williams had a history of liver disease, hypertension, and heightened blood lead levels. (R. p. 184.) In fact, as of December 12, 1983, a company document noted that Williams blood lead levels averaged 59 µg/dL over the past six months, and subsequent records also reveal extremely heightened levels of lead in Williams' blood. (R. pp. 184–86, 188, 217–20.) Multiple medical records further reveal that Williams was placed in the medical removal program because of these heightened levels. (R. pp. 192, 194, 196, 198, 200.) Furthermore, Appellants' APA submissions also reveal evidence, in addition to that noted above, of Williams having cardiovascular disease (R. pp. 186, 189, 194, 198, 200, 202, 204, 206–08, 213–15), pulmonary problems (R. pp. 213–14), neurological problems (R. p. 210), and hearing loss (R. pp. 184, 213.) all during his tenure of employment at the Sumter battery plant and all before his date of injury on his workers' compensation claim.

Records from the Davis Clinic also reveal that Williams suffered from multiple health conditions prior to his date of injury. He initially reported to Dr. Davis complaining of shortness of breath on January 11, 1994. On that same day, he was assessed with mild chronic heart failure (CHF), and the notes reveal that Williams had ongoing problems with the CHF to the extent that he had an intra-coronary defibrillator inserted. (R. pp. 221, 227, 229, 234.) Dr. Davis also noted that Williams has hypertension, had a pleural effusion, and suffered with hemoptysis and diabetes (R. pp. 222–23, 225–26, 229–33.)

As noted above, Williams continued to work around lead at the Sumter battery plant until he was terminated on August 12, 1998. Upon termination, Williams began receiving his disability pension benefits, because Williams' doctor stated that he had "severe depressed left ventricular function" and was unable to do heavy, repetitive labor. (R. p. 207.) The South Carolina Workers' Compensation Commission (the Commission) ordered mediation of this matter and all other lead claims against this facility.

After settlement of Williams' workers' compensation claim, Respondent filed a claim for reimbursement from the South Carolina Second Injury Fund pursuant to South Carolina Code Annotated § 42-9-400. The Fund denied this request, so the reimbursement claim was heard before Commissioner Andrea Roche on August 13, 2012. Commissioner Roche issued an order on November 27, 2012, denying Respondent's request for reimbursement, and in so doing, she issued conclusions of law, which had never been argued by either party and which defied decades of South Carolina jurisprudence. Thus, Respondent appealed the Hearing Commissioner's decision to the Full Commission, which resulted in an affirmation of same.

Because this claim arose before the 2007 amendments to the South Carolina Workers' Compensation Act, Respondent had to first appeal the Commission's decision to the Circuit Court. See Pee Dee Reg'l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007). The appeal was set before Judge W. Jeffrey Young on June 3, 2014. He issued his order affirming the Commission's decision in the case at hand on September 16, 2014. Respondent then appealed to the South Carolina Court of Appeals. After review of the parties' briefs and an oral argument, which took place on January 25, 2017, the Court of Appeals issued its Opinion on May 31, 2017, reversing the Lower Court's decision and finding in favor of Respondent's request for reimbursement. In so doing, the Court of Appeals relied on this Court's prior

decision in State Workers' Compensation Fund v. S.C. SIF, 313 S.C. 536, 443 S.E.2d 546 (1994) and found that the Lower Court erred in its interpretation of South Carolina Code Annotated § 42-9-400. The Court of Appeals also pointed out that substantial evidence in the record established that Respondent was entitled to reimbursement and that part of this evidence was unchallenged by Petitioner.

The Fund filed a Petition for Rehearing with the South Carolina Court of Appeals, and that Petition was denied on August 18, 2017. The Fund then filed a Petition for Writ of Certiorari with this Honorable Court, which Respondent has moved to dismiss.

### **STANDARD OF REVIEW**

Review by this Court is a matter of “sound judicial discretion, and will be granted only where there are special and important reasons.” Rule 242(b), SCACR. Those reasons include, but are not limited to, whether there is a novel question of law, a dissent in the decision of the Court of Appeals, the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court, where substantial constitutional issues are directly involved, or where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the U.S. Supreme Court. Id.

The South Carolina Administrative Procedures Act governs judicial review of decisions by the South Carolina Workers’ Compensation Commission (Commission). Lark v. Bi-Lo, 276 S.C. 130, 136, 276 S.E.2d 304, 307 (1981). South Carolina’s appellate courts can reverse a decision of the Commission when it is affected “by an error of law or is clearly erroneous in view of the substantial evidence on the record. . . . The Court may find the Commission’s findings clearly erroneous if they are based on a mistaken view of the evidence. State Accident Fund v. S.C. Second Injury Fund, 409 S.C. 240, 245, 762 S.E.2d 19, 21 (2014).

Respondent submits that because this claim fails to present any grounds for this Court to issue a review of the Lower Court's decision and because the Lower Court properly analyzed and applied South Carolina Jurisprudence, the Fund's Petition for Certiorari should be denied.

### ARGUMENT

**I. THE SOUTH CAROLINA COURT OF APPEALS PROPERLY FOUND THAT RESPONDENT IS ENTITLED TO REIMBURSEMENT FROM THE SOUTH CAROLINA SECOND INJURY FUND, PURSUANT TO § 42-9-400.**

Respondent asserts that the South Carolina Court of Appeals properly held that it is entitled to reimbursement from the South Carolina Second Injury Fund. The Lower Court properly relied on decades of jurisprudence in its interpretation of § 42-9-400, which outlines the necessary elements for reimbursement. Thus, Respondent requests that the Fund's Petition for Writ of Certiorari be denied.

**A. Respondent was not required to litigate this claim, thereby ignoring the Commission's Order to mediate, in order to be entitled to reimbursement from the South Carolina Second Injury Fund.**

In the Fund's Petition, it asserts that because there was no formal decision and order with a formal award of benefits granted to Claimant as the result of a litigated hearing, that this claim is not subject to reimbursement. Not only was this argument presented for the first time to the Court of Appeals, but it is also disingenuous considering the fact that the Fund has never taken this position before and has a history of reimbursing claims that have been settled without a formal decision and order (including claims stemming from the lead exposure at the Sumter Battery Plant).

In the case at hand, as well as all other claims stemming from lead exposure at the Sumter Battery Plant, the South Carolina Workers' Compensation Commission ordered that the claims be mediated. *See* Scheduling Order. Thus, there was not an opportunity for Respondent to

acquire a formal decision and order on this case, unless Respondent defied the Commission's order that the claims be mediated in good faith. Additionally, there was no way for Respondent to foresee that Petitioner would take a position that a settlement would negate Respondent's ability to acquire reimbursement from the Fund, given that the Fund has always paid reimbursement on such cases and has never taken a position similar to the one it first presented in its Initial Brief to the Court of Appeals. In fact, the Fund was made a party to these claims, attended a few of the mediations, but never informed anyone that they would assert that the lack of a formal hearing would bar reimbursement.

Section 42-9-400 does not require a formal decision and order with findings of fact and conclusions of law as a prerequisite for reimbursement. In fact, as noted above, the Fund has never argued such until the submission of its Initial Brief to the Court of Appeals. Section 42-9-400 requires that the carrier and employer pay all medical and indemnity benefits in the first instance and that they then seek reimbursement from the Fund. The purpose of this language is not to require a formal decision and order but instead to ensure timely payment of benefits for a claimant's injury by the carrier/employer and for the issue of reimbursement to be handled subsequently.

Furthermore, the Fund relies heavily on South Carolina Code Annotated § 42-9-5 for the proposition that the lack of a formal award results in a bar to Respondent's request for reimbursement. The Fund argues that because there was no formal order with findings of fact and conclusions of law that the compensation received by Claimant was not an award and can therefore not be subject to reimbursement pursuant to § 42-9-400. This argument ignores the fact that § 42-9-5 is only applicable to injuries that occur on or after July 1, 2007. *See* S.C. Code Ann. § 42-9-5 (Supp. 2014). The injury at hand carries a date of accident of February 1, 1999,

which is eight years before the enactment of § 42-9-5. Thus, § 42-9-5 is not even applicable to this claim.

Lastly, the language of the settlement agreement in this matter states that an award has been issued. Specifically, on Page Eleven of the settlement agreement, it states. "IT IS ORDERED AND AWARDED..." (Settlement Agreement, p. 11.) This agreement was approved and executed by a commissioner on November 1, 2010. Thus, the language of the agreement specifically states that an award has occurred.

In light of the above, Respondent requests that this Honorable Court deny the Fund's Petition and reject the Fund's argument that the lack of a formal decision and order bars reimbursement.

**B. The Court of Appeals properly found that Respondent established that Claimant's preexisting conditions constituted a hindrance or obstacle to employment.**

The Court of Appeals properly found that Claimant's preexisting conditions constituted a hindrance or obstacle to employment. Although Petitioner cites § 42-9-400 as the "prevailing statute" to determine whether a hindrance or obstacle to employment or reemployment exist, it ignores the fact that the very same statute outlines conditions that serve as presumptive hindrances or obstacles to employment or reemployment. "When an employer establishes his prior knowledge of the permanent impairment, then there shall be a presumption that the condition is permanent and that a hindrance or obstacle to employment or reemployment exists when the condition is one of the following impairments: . . . (3) cardiac disease . . . (23) heavy metal poisoning . . . (32) pulmonary disease . . . S.C. Code Ann. § 42-9-400 (Supp. 2004).

The South Carolina Supreme Court recently addressed this very issue and held that the presumptive hindrances or obstacles to employment or reemployment found in § 42-9-400 shift

the burden to the Fund and require that the Fund establish by substantial evidence that the condition is not entitled to its presumption. State Accident Fund v. S.C. Second Injury Fund, 409 S.C. 240, 247, 762 S.E.2d 19, 23 (2014). In State Accident Fund, Petitioner introduced no evidence rebutting the presumptive hindrances or obstacles to employment but instead took the position that because the claimant's diabetes was well managed at the time of his injury, that diabetes was not entitled to its presumption as delineated in § 42-9-400. Id. at 247, 762 S.E.2d at 23. The South Carolina Supreme Court rejected the validity of that argument and held that the Commission erred by considering the status of the claimant's diabetes at the time of the claimant's accident as opposed to whether the condition constituted a hindrance or obstacle to employment "as the statute requires." Id. at 247, 762 S.E.2d at 23.

In the case at hand, Respondent presented evidence that Claimant had cardiac disease, pulmonary disease, and heavy metal poisoning all before his date of injury. Thus, as the South Carolina Court of Appeals pointed out, Respondent is entitled to the rebuttable presumptions found in § 42-9-400 for these conditions. Further, as in State Accident Fund, the Fund submitted no evidence rebutting the presumptions, and this was noted by the Court of Appeals. Thus, Respondent requests that this Honorable Court affirm the Lower Court's decision.

**C. The Court of Appeals properly found that Respondent carried its burden in establishing that Claimant had preexisting conditions, as required by § 42-9-400.**

The Court of Appeals properly determined that Claimant had preexisting conditions as requirement for reimbursement under § 42-9-400. Respondent submits that the Fund erroneously analyzes the point in time at which a condition must occur for it to satisfy the element of § 42-9-400 that requires the existence of a permanent preexisting condition before the subsequent disability. Because this is an occupational disease claim, the Fund convolutes § 42-9-400 to

require that the preexisting condition preexist the first day Claimant was ever exposed to lead at the Sumter Battery Facility. This position flies in the face of well-established South Carolina law, and Respondent asserts that the Court of Appeals properly reviewed this issue.

The date of injury or disablement controls in occupational disease claims. Thus, the preexisting permanent impairment required by § 42-9-400 most certainly does not have to preexist the first day Claimant was exposed to lead, but instead must preexist the subsequent disability as stated in § 42-9-400. This position is supported by South Carolina authority concerning occupational disease claims. Respondent's position is also supported by South Carolina authority finding an entitlement to reimbursement where the preexisting condition arose out the same employment as the subsequent injury. See, e.g., Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (2012) and State Workers' Compensation Fund v. South Carolina Second Injury Fund (In re: Warren M. Hunt v. S.C. State Forestry Comm'n), 313 S.C. 536, 443 S.E.2d 546 (1994).

In the claim at hand, there is no question that Claimant had cardiac disease, pulmonary disease, and heavy metal poisoning prior to his date of injury or his date of disablement. For that reason, Respondent submits that the Court of Appeals properly found in favor of reimbursement.

**D. The South Carolina Court of Appeals properly analyzed the Carolinas Recycling Group and Burnette cases and in reversing the Lower Court's decision.**

In its Petition, the Fund misinterprets the cases of Carolinas Recycling Group v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (2012), and Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012), *cert. denied* Burnette v. City of Greenville, Op. No. 5059 (S.C. Sup. Ct. filed May 8, 2014). Respondent submits that the proper interpretation of these cases supports the Court of Appeals' decision in favor of reimbursement.

In its brief, the Fund misconstrues the Carolinas Recycling Group case. In Carolinas Recycling Group, the South Carolina Workers' Compensation Commission ignored medical evidence establishing an element of Second Injury Fund reimbursement and cited a piece of evidence that had no bearing on the element in support of its denial of benefits. The South Carolina Supreme Court rejected this erroneous approach and held that substantial evidence supported that the employer and carrier had carried their burden of proof in establishing all prerequisites for reimbursement. Carolinas Recycling Group, 398 S.C. at 484, 730 S.E.2d at 327. Similarly, in the case at hand, as the Court of Appeals pointed out its Opinion, the Fund submitted no reliable evidence of any sort to counter the medical evidence Respondent has submitted establishing its entitlement to reimbursement. Therefore, Respondent submits that the Carolinas Recycling case provides support for their claim for reimbursement.

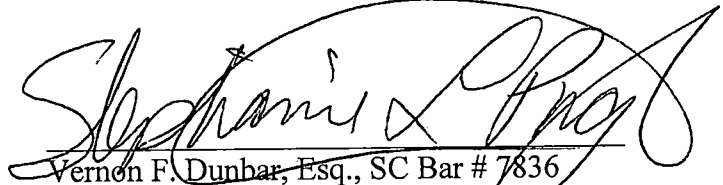
Likewise, in Petitioner's Brief, it argues that because the underlying issue in the Burnette case is one of compensability, that the analysis regarding the substantial evidence standard of review is inapplicable to the reimbursement case at hand. Respondent submits that the analysis under a substantial evidence standard of review does not change depending on the type of case. Furthermore, Respondent believes that Petitioner makes this argument in an effort to minimize the fact that the South Carolina Court of Appeals has previously held that the Commission can ignore medical evidence only when there is other competent evidence in the record upon which it can base its opinion. Burnette, 401 S.C. at 428, 737 S.E.2d at 206. In the case at hand, just as in Burnette, there is no evidence other than that presented by Respondent, and this evidence establishes all of the necessary elements for reimbursement. In light of the aforementioned case law, Respondent requests that this Honorable Court deny the Fund's Petition for a Writ of Certiorari.

**CONCLUSION**

For the foregoing reasons, Respondent respectfully requests that this Court deny The Fund's Petition for Writ of Certiorari.

Respectfully submitted,

McANGUS GOUDELOCK & COURIE, LLC

A large, stylized handwritten signature in black ink, appearing to read "Stephanie Lamb Pugh". The signature is written over a horizontal line.

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October 22, 2017

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

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Appellate Court Tracking No. 2017-001955  
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**PROOF OF SERVICE**

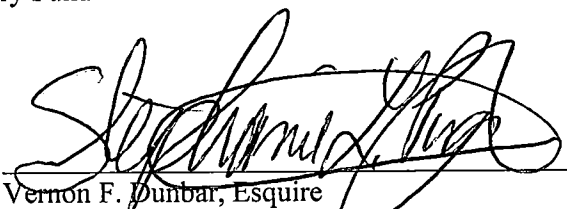
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I certify that I have served the Return in Opposition to the South Carolina Second Injury Fund's Petition for Writ of Certiorari by placing a copy of same in the United States Mail, postage prepaid, on the 23rd day of October, 2017 addressed to:

The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

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October 23, 2017



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SOUTH CAROLINA SUPREME COURT

APPELLATE CASE NO: 2017-001955

C.L. WILLIAMS,

Employee,

Claimant,

vs.

YUASA EXIDE, INC.,

Employer,

AND

ARROWPOINT CAPITAL CORP,

Carrier,

Defendants.

**CERTIFICATE  
OF  
SERVICE**

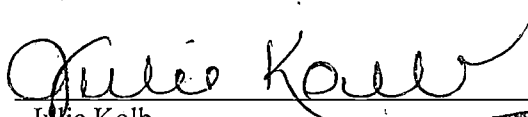
The undersigned certifies that she is an employee at MCANGUS GOUDELCK & COURIE, and that she has served, on the date set forth below, a copy of the document described below, in the above entitled action to the following persons, pursuant to Rule 67-211 of the South Carolina Workers' Compensation Commission,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

TO: The Honorable Daniel E. Shearouse  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, South Carolina 29211

Latonya D. Edwards  
Attorney for South Carolina Second Injury Fund  
3790 Fernandina Rd., Suite 103  
Columbia, South Carolina 29210

DOCUMENT: Respondent's Return in Opposition to Petition for Writ of Certiorari

DATE OF MAILING: October 23, 2017

  
Julie Kolb  
Legal Assistant to Vernon F. Dunbar

**RECEIVED**

OCT 24 2017

**S.C. SUPREME COURT**