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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY

The Honorable Kristi Lea Harrington

RECEIVED

FEB 21 2017

Appellate Case No.: 2016- 001281

SC Court of Appeals

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, ... Respondents,

v.

South Carolina Second Injury Fund, ...Appellant.

RECORD ON APPEAL

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ATTORNEY FOR APPELLANT

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2013 CP-10-⁵¹⁰~~5529~~

Charleston County and the South Carolina Counties' Workers
Compensation Trust,

South Carolina Second Injury Fund,

Appellants
PLAINTIFF(S)

Respondent
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The decision of the Workers' Compensation Commission's Appellate Panel is reversed.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

If applicable, describe the property, including tax map information and address, referenced in the order:

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

Circuit Court Judge

2151
Judge Code

May 11, 2016
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON
PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

ORDER

FILED
2016 MAY 17 PM 2:42
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.*

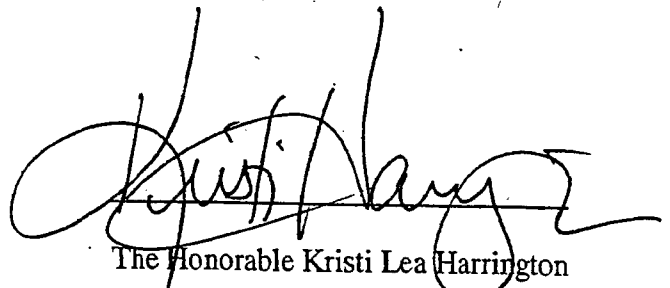
Appellants contend their claim for reimbursement was commenced against the SIF within ten years of its accrual when Appellants served SIF with notice of their claim on February 18, 1997. Appellants argue that the SIF had recognized the claim as commenced as of January 10, 2000, because at that time, 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.

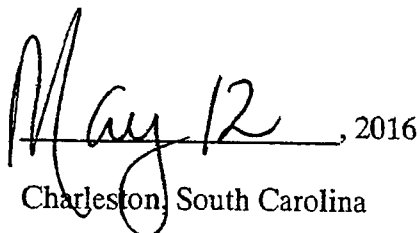
The Court finds that Appellants properly commenced their cause of action within the ten year statute of limitations, which began running February 18, 1997 with the provision of notice to the SIF. Appellant filed a claim pursuant to the requirements of S.C. Code Ann. § 42-9-400 as of February 18, 1997; 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

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Gilbert Chavis, Employee,

v.

AVX Corporation, Employer, and Liberty Mutual
Insurance, Carrier,

In Re: AVX Corporation and Liberty Mutual Insurance
Company, Respondents,

v.

South Carolina Second Injury Fund, Appellant.

Appellate Case No. 2012-213175

Appeal From Horry County
Benjamin H. Culbertson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-212
Heard January 14, 2014 – Filed June 4, 2014

AFFIRMED

Latonya Dilligard Edwards, of Dilligard Edwards, LLC,
of Columbia, for Appellant.

Roy Allen Howell, III, and Kirsten Leslie Barr, both of
Trask & Howell, LLC, of Mt. Pleasant, for Respondents.

PER CURIAM: The South Carolina Second Injury Fund (the "Fund") appeals the circuit court's decision to affirm the South Carolina Worker's Compensation Commission's (the "Commission") decision that AVX Corporation and Liberty Mutual Insurance (collectively, "AVX") timely commenced a claim for reimbursement within the ten-year statute of limitations provided by section 15-3-600 of the South Carolina Code (Supp. 2013). We affirm.

We find AVX timely commenced its claim for reimbursement within the ten-year statute of limitations. Under section 42-9-400 of the South Carolina Code (Supp. 2013), as soon as practicable, an "employer or [its] carrier must notify the [Commission] and the Director of the [Fund] in writing of any possible claim against the [F]und" and provide certain basic information about the potential claim for reimbursement. § 42-9-400(f). An action for reimbursement "must be commenced within ten years" after the carrier provides notice pursuant to section 42-9-400. *See* § 15-3-600 ("An action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued."); *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 430-31, 699 S.E.2d 687, 691 (2010) ("[A] cause of action for reimbursement begins to accrue on the date a carrier provides notice to the Fund [pursuant to section 42-9-400].").

In the instant case, AVX provided notice to the Fund pursuant to section 42-9-400 in August 1999. AVX submitted its claim to the Fund in July 2009, within the ten-year statute of limitations. "Once a claim is submitted, the Fund may agree to reimburse an employer or carrier." *S.C. Second Injury Fund v. Am. Yard Prods.*, 330 S.C. 20, 23 n.1, 496 S.E.2d 862, 863 n.1 (1998). "If the Fund denies a claim for reimbursement, [then] the employer or carrier may request a hearing before the Commission on the claim." *Id.* (citing 25A S.C. Code Ann. Reg. 67-208(D) (1990)). Accordingly, we agree with the Commission's interpretation that filing a claim with the Fund constitutes commencing an action for reimbursement. *See CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (internal quotation marks omitted)).

AFFIRMED.

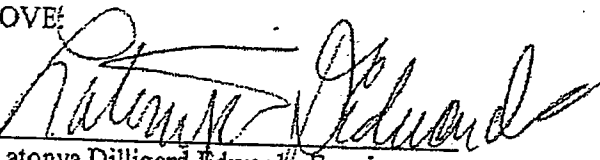
SHORT, WILLIAMS, and KONDUROS, JJ., concur.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2013-CP-10-510
	)	
S.C. Counties Workers' Compensation Trust,	)	
Carrier,	)	
	)	
And	)	
	)	
Charleston County,	)	
Employer,	)	
	)	
Plaintiff/Appellant,	)	NOTICE OF MOTION AND MOTION
	)	FOR CONTINUANCE
vs.	)	
	)	
South Carolina Second Injury Fund,	)	
	)	
Defendant/Respondent.	)	
	)	
(In Re: Joan Barra v. Charleston County)	)	

TO: THE HONORABLE J.C. NICHOLSON, JR., CIRCUIT COURT JUDGE; AND MS. VIRIGINA L. CROCKER, JUDICIAL DIRECTOR, SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION; AND, MS. KIRSTEN L. BARR, ATTORNEY FOR CHARLESTON COUNTY AND S.C. COUNTIES WORKERS' COMPENSATION TRUST

YOU WILL PLEASE TAKE NOTICE, The South Carolina Second Injury Fund (hereinafter referred to as "Respondent") by and through its undersigned Counsel hereby requests that this matter, which is currently scheduled for Wednesday, November 6, 2013 at 2:00 o'clock p.m. at the Charleston County Courthouse, Charleston County, South Carolina, be continued on the grounds that the current issues on appeal are the same as Gilbert Chavis v. AVX Corporation and Liberty Mutual Insurance Co., Appellate Case No.: 2012-213175, in which the parties are also involved and is currently scheduled for oral argument before the South Carolina Court of Appeals on January 14, 2014.

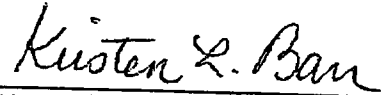
I MOVE:

By: 

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3790 Fernandina Road, Suite 103
Columbia, South Carolina 29210
(803) 750-2214 (telephone)
(803) 750-2377 (facsimile)

ATTORNEY FOR RESPONDENT

I CONSENT:

By: 

Kirsten L. Barr, Esquire
Trask & Howell, LLC
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Mount Pleasant, South Carolina 29465
(843) 881-1027 (telephone)
(843) 881-8784 (facsimile)

ATTORNEY FOR APPELLANT

Columbia, South Carolina

November 11, 2013

**APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 9613486**

South Carolina Association of Counties, ... CARRIER/APPELLANT,

- V -

SC Second Injury Fund, ... DEFENDANT/RESPONDENT.

[In re: Joan Barra v. Charleston County and South Carolina Association of Counties]

Appellate Panel Review held in Columbia,
South Carolina on October 23, 2012 per notices
timely and properly served on all parties.

Appellate Panel Decision and Order filed
12/28, 2012.

APPEARANCES: Carrier/Appellant represented by Kirsten L. Barr, Esquire, of Trask
& Howell, Mt. Pleasant, South Carolina.

Defendant/Respondent represented by Latonya Dilligard Edwards,
Esquire, of Dilligard Edwards, L.L.C, Columbia, South Carolina.

STATEMENT OF CASE

On April 26, 2012, Commissioner Susan S. Barden held a hearing on this matter in Summerville, South Carolina and issued the following Order:

"Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to Carrier's statutory right to appeal."

Within the statutory period, counsel for the Employer and Carrier filed a Request for Commission Review setting forth seventeen (17) grounds for appeal with copies furnished to all interested parties prior to being presented to the Appellate Panel on October 23, 2012. All proffered testimony has been taken and together with all documentary evidence has been delivered to the individual members of the Full Commission and has since been under advisement and consideration.

In accordance with S.C. Code Ann. § 42-17-50, the Appellate Panel shall review the award, and if good and proper grounds are shown, may reconsider evidence, receive further evidence, rehear the parties and amend the award. Furthermore, the Appellate Panel may make its own findings of fact and conclusions of law. Lowe v. Am-Can Transport Services, Inc., 283 S.C. 534, 324 S.E.2d 87 (S.C.App. 1984). After careful review in the instant case, a Majority of the Appellate Panel has determined that all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become the law of the case, and are sustained in their entirety.

FINDINGS OF FACT

Based on the arguments of the parties and the applicable case law, We make the following findings based upon the preponderance of the reliable, probative, and substantial evidence:

1. Pursuant to the Supreme Court's Transportation decision, notice to the Fund triggers the statute of limitations. Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

2. Carrier gave notice to the Fund pursuant to S.C. Code Ann. § 42-9-400(f) on February 18, 1997, which was received by the Fund on February 25, 1997. The cause of action for reimbursement accrued on the date of notice. This finding is based on the stipulations of the parties and the totality of the evidence in the record.

3. We find that the reimbursement cause of action is commenced when Carrier files its Form 54 Request for Hearing. This finding is based upon S.C. Code Reg. 67-208 and the Supreme Court's Transportation decision.

4. Carrier did not file its Form 54 Request for Hearing until July 31, 2007. This finding is based upon the parties' stipulations.

5. We find that the reimbursement cause of action commenced on July 31, 2007, when Carrier filed its Form 54 Request for Hearing. This finding is based on the S.C. Code Reg. 67-208 and the state Supreme Court's decision in Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

6. We find that Carrier has not met the requirements of S.C. Code Ann. § 15-3-600 because its reimbursement cause of action was not commenced until after the ten (10) year statute of limitations expired.

7. Since Carrier has not met the requirements of S.C. Code Ann. § 15-3-600, its request for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is denied.

CONCLUSIONS OF LAW

Based upon the applicable statutory and case law, We conclude as a matter of law:

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

3. To qualify for reimbursement, Carrier had the burden to prove that its claim was filed within ten (10) years pursuant to the statute of limitations period outlined in S.C. Code Ann. §15-3-600. Carrier failed to timely file its claim; and therefore, failed to meet all requirements for reimbursement.

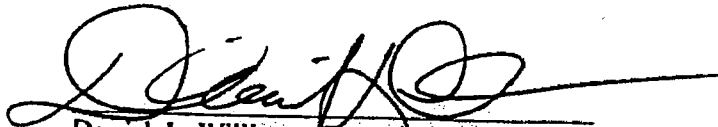
4. Since Carrier did not meet all requirements for reimbursement pursuant to its request for reimbursement from the South Carolina Second Injury Fund is denied.

ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner filed on June 27, 2012, is hereby affirmed by a Majority of the Appellate Panel, and constitutes the Decision and Order of the Full Commission.

IT IS FURTHER ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is **DENIED** and **DISMISSED** with prejudice subject to Carrier's statutory right to appeal.

S.C. WORKERS' COMPENSATION COMMISSION

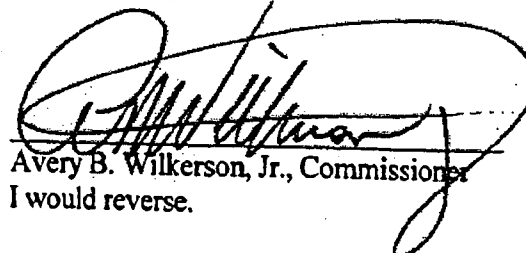

Derrick L. Williams, Commissioner
The Transportation Insurance and Flagstar Corp. v.
SC Second Injury Fund case is directly on point and
Carrier did not file a Form 54 within the required ten
(10) year statute.

MARJORITY AFFIRMATION

CONCUR:


T. Scott Beck, Commissioner

DISSENT:


Avery B. Wilkerson, Jr., Commissioner
I would reverse.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on December 28, 2012

ON REMAND FROM CIRCUIT COURT

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

SCWCC NO.: 9613486; SCSIF NO.: 51595

SOUTH CAROLINA ASSOCIATION OF COUNTIES

V.

SOUTH CAROLINA SECOND INJURY FUND

[In Re: Joan Barra, Employee v. Charleston County, Employer]

HEARING: April 26, 2012, in Summerville, South Carolina.

APPEARANCES: Charleston County Risk Management, Employer
And SC Association of Counties, Carrier,
represented by Kirsten Barr, Esquire, of Trask
& Howell, Mt. Pleasant, South Carolina.

The South Carolina Second Injury Fund represented
Latonya Dilligard Edwards, Esquire, of Dilligard
Edwards, LLC, Columbia, South Carolina.

PURPOSE OF HEARING: To determine issues as set forth On Remand from
the SC Circuit Court regarding S.C. Code Ann.
§ 15-3-600 and § 42-9-400.

OPINION AND AWARD: By Susan S. Barden, Commissioner

FILED: June 27, 2012

ADMINISTRATIVE PROCEDURE ACT (APA) SUBMISSIONS

<u>APA NO.</u>	<u>ITEM</u>	<u>DATE</u>	<u>PAGES</u>
1	Correspondence to SIF from Cathy Anderson, of Sedgewick,	02/18/97	1
2	Correspondence to Harold Trask and SIF's Pete Calamas with Notice of Claim Form	01/10/00	2-3
3	Notice of Possible Second Injury Fund Claim Form	02/16/01	4
4	Correspondence to Second Injury Fund from Companion's Debbie Vaughn with supporting documentation	03/02/04 - 04/30/96	5-12
5	Correspondence from Second Injury Fund from Debbie Vaughn inquiring whether decision had been made	11/01/04	13
6	Correspondence to Companion's Debbie Vaughn to SIF's Pete Calamas requesting additional information and Correspondence to Harold Trask from SIF's Gail Deal requesting clarification	11/08/04 05/02/06	14 15-16
7	Memorandum to Latonya Edwards from SIF's James Lindler with Form 54 filed by Carrier	08/01/07	17
8	Correspondence to WCC's Valerie Deller From Harold Trask with documents to create file	08/20/07	18

STIPULATIONS

The parties stipulated to the following:

1. The South Carolina Workers' Compensation Commission had jurisdiction to hear the case.
2. Venue was proper in Charleston County.
3. Notice was timely and proper.
4. The Commission's file became a part of the record with the exception of self-serving declarations and unstipulated medical reports.

STATEMENT OF THE CASE

This is an appeal by the South Carolina Second Injury Fund ("Fund") from an award of partial reimbursement under South Carolina Code Ann. §42-9-400. Employer, Charleston County Risk Management, and Carrier, South Carolina Association of Counties (collectively "Carrier"), alleged that they incurred increased liability for medical costs and disability when their employee, Joan Barra ("Claimant"), sustained a work injury on April 30, 1996, that either aggravated or combined with her preexisting arthritis, in the form of cervical stenosis and lumbar degenerative spondylolisthesis. The Fund denied the claim was reimbursable, arguing that the claim was not timely filed pursuant to S.C. Code Ann. §15-3-600. The Fund also argued that Claimant's preexisting condition was not serious enough to be a hindrance or obstacle to her employment and did not substantially increase Carrier's liability for medical costs and disability.

Commissioner Susan S. Barden held a hearing on July 17, 2008, in North Charleston, South Carolina. Commissioner Barden's Decision and Order, filed on

November 4, 2008, found the claim reimbursable. Commissioner Barden's decision was affirmed by the Full Commission and the South Carolina Second Injury Fund appealed. The Fund subsequently requested a stay of the Circuit Court proceedings in 2009 because the issue of whether or not the ten (10) year statute of limitations outlined in S.C. Code Ann. § 15-3-600 applied to reimbursement cases was being reviewed by the South Carolina Supreme Court in its original jurisdiction. After the Supreme Court ruled that S.C. Code Ann. § 15-3-600 applied to reimbursement cases, this case was remanded to the South Carolina Workers' Compensation Commission by consent of the parties.

DISCUSSION

In Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, the Fund argued that the ten (10) year statute of limitations period applied to reimbursement cases and that the reimbursement cause of action accrued on the Claimant's date of injury and ended when a Carrier filed its Form 54 Request for Hearing. 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010). The South Carolina Supreme Court agreed that the ten (10) year statute of limitations applied to reimbursement cases, but held that the reimbursement cause of action accrued on the date Carrier placed the Fund on notice of a potential claim for reimbursement pursuant to S.C. Code Ann. §42-9-400(f) rather than the date of Claimant's injury. Id.

Carrier asserted that it commenced its reimbursement cause of action when it submitted a Reimbursement Request Form to the South Carolina Second Injury Fund and relied on S.C. Code Reg. 67-206 (C) to support its argument. Carrier's argument was not persuasive. The appropriate inquiry is not when a claim is filed but rather when the

reimbursement cause of action commenced. This issue is not addressed in S.C. Code Reg. 67-206.

South Carolina Code Regulation 67-208(D) addresses the commencement of a reimbursement cause of action and it states that "to request a hearing between the employer and the Second Injury Fund, file a Form 54 with the Judicial Department and serve the Form 54 on the Second Injury Fund." S.C. Code Reg. 67-208. Regulation 67-208 is clear indicia of when a reimbursement cause of action commences and gives clear direction on the appropriate documents to file. Furthermore, our state's highest court ruled on this issue and held that a reimbursement cause of action commences with the Form 54 Request for Hearing.

Carrier also argued that the Fund should be estopped from denying this claim for reimbursement. The South Carolina Court of Appeals addressed this argument asserted by a Carrier in another Second Injury Fund reimbursement case. In State Accident Fund v. South Carolina Second Injury Fund, State Accident Fund argued that the Fund should be estopped from denying reimbursement for additional costs not contemplated by the signed Agreement to Reimburse. 388 S.C. 67, 693 S.E.2d 441 (S.C.App. 2010). The Court held that equitable estoppel required misrepresentation in action, conduct, words or concealment of material facts that causes one to change his position to his detriment. 388 S.C. 77, 693 S.E.2d 446. The factors required to establish a showing of equitable estoppel were not present in this case. Carrier did not assert misrepresentation and the evidence did not suggest any misrepresentation in the Fund's action, conduct, or words, nor did the Fund conceal any material facts about this case. Thus, Carrier assertion that

the Fund's correspondence and discussion with Carrier's representatives about the case amounts to estoppel was wholly without merit.

FINDINGS OF FACT

Based on the arguments of the parties and the applicable case law, I make the following findings based upon the preponderance of the reliable, probative, and substantial evidence:

1. Pursuant to the Supreme Court's Transportation decision, notice to the Fund triggers the statute of limitations. Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

2. Carrier gave notice to the Fund pursuant to S.C. Code Ann. § 42-9-400(f) on February 18, 1997, which was received by the Fund on February 25, 1997. The cause of action for reimbursement began to accrue on the date of notice. This finding is based on the stipulations of the parties and the totality of the evidence in the record.

3. I find that the reimbursement cause of action is commenced when Carrier files its Form 54 Request for Hearing. This finding is based upon S.C. Code Reg. 67-208 and the Supreme Court's Transportation decision.

4. Carrier did not file its Form 54 Request for Hearing until July 31, 2007. This finding is based upon the parties' stipulations.

5. I find that the reimbursement cause of action accrued on July 31, 2007 when Carrier filed its Form 54 Request for Hearing. This finding is based on the S.C. Code Reg. 67-208 and the state Supreme Court's decision in Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

6. I find that Carrier has not met the requirements of S.C. Code Ann. § 15-3-600 because its reimbursement cause of action was not commenced until after the ten (10) year statute of limitations expired.

7. Since Carrier has not met the requirements of S.C. Code Ann. § 15-3-600, its request for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is denied.

CONCLUSIONS OF LAW

Based upon the applicable statutory and case law, I conclude as a matter of law:

1. Reimbursement from the South Carolina Second Injury Fund is governed by S.C. Code Ann. § 42-9-400.

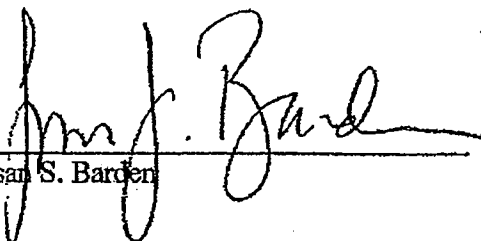
2. The right of Carrier to receive reimbursement from the South Carolina Second Injury Fund depends upon complete compliance with the requirements for recovery. South Carolina Second Injury Fund v. American Yard Products, 496 S.E.2d 862 (S.C. 1998).

3. To qualify for reimbursement, Carrier had the burden to prove that its claim was filed within ten (10) years pursuant to the statute of limitations period outlined in S.C. Code Ann. § 15-3-600. Carrier failed to timely file its claim; and therefore, failed to meet all requirements for reimbursement.

4. Since Carrier did not meet all requirements for reimbursement pursuant to its request for reimbursement from the South Carolina Second Injury Fund is denied.

AWARD

Based upon the foregoing Findings of Fact and Conclusions of Law, IT IS SO ORDERED that Carrier's claim for reimbursement pursuant to S.C. Code Ann. § 42-9-400 is DENIED and DISMISSED with prejudice subject to its statutory right to appeal.


Susan S. Barden

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
June 27, 2012

By: Kristi Love, Administrative Assistant to Commissioner Barden

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NO. 2009-CP-10-003334

W.C.C. No. 9613486

Employee,

CONSENT ORDER

Self-Insured Employer, through the
South Carolina Counties Workers'

Carrier, Respondents

**Charleston County and the South
Carolina Counties Workers'
Compensation Trust,**

South Carolina Second Injury Fund,

FILED
2011 NOV 29 AM 10:11
JULIE J. ARMSTRONG
CLERK OF COURT
PY

This matter was in Charleston County Circuit Court on appeal from the South Carolina Workers' Compensation Commission, pursuant to a Notice of Appeal filed by the Second Injury Fund. Filed concurrently with the Notice of Appeal, the Second Injury Fund also filed a Motion to Stay, requesting that this matter be stayed pending the outcome of the Transportation Insurance Company v. South Carolina Second Injury Fund case which was before the South Carolina

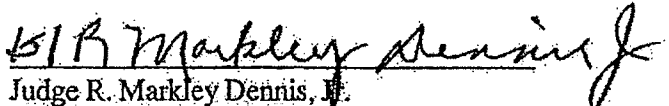
Supreme Court at that time. Judge J. C. Nicholson issued an Order staying the matter pending the outcome of Transportation Insurance Company on December 17, 2009. Following the Supreme Court's September 13, 2010 decision in Transportation Insurance Company, the Second Injury Fund requested reversal of the South Carolina Workers' Compensation Commission's decision in this case. The Respondents then filed a Motion to Restore this matter to the Charleston County Circuit Court docket.

At the October 25, 2011 hearing, the parties notified the undersigned that they agree that this matter should be remanded to the South Carolina Workers' Compensation Commission for an evidentiary hearing in light of the South Carolina Supreme Court's decision in Transportation Insurance Company v. South Carolina Second Injury Fund, to be scheduled at the Commission's earliest date.

The undersigned has reviewed the agreement of the parties and agrees to incorporate the same as an Order of the Charleston County Circuit Court.

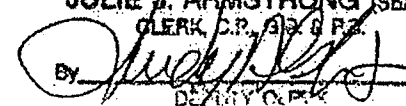
IT IS, THEREFORE, ORDERED that this matter shall be remanded to the South Carolina Workers' Compensation Commission for an evidentiary hearing in light of the South Carolina Supreme Court's decision in Transportation Insurance Company v. South Carolina Second Injury Fund, to be scheduled at the Commission's earliest date.

IT IS SO ORDERED.


Judge R. Markley Dennis, Jr.
Charleston County Circuit Court

November 18, 2011

ATTEST: A TRUE COPY
JULIE A. ARMSTRONG (SEAL)
CLERK, C.P., S.C. & P.Z.

BY 
DEPUTY CLERK

RM 11/2

WE CONSENT:

TRASK & HOWELL, L.L.C.

By: Kirsten L Barr
Kirsten Leslie Barr, Esq.
Attorney for Respondents

BOYKIN & DAVIS, L.L.C.

By: Latonya Dilligard Edwards
Latonya Dilligard Edwards, Esq.
Attorney for Appellant

1165/110 consent order

RME 01/3

APPELLATE PANEL
DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO. 9613486

SC ASSOCIATION OF COUNTIES,

- V -

SC SECOND INJURY FUND,

SELF-INSURED CARRIER,

APPELLANT,

IN RE: JOAN BARRA V. CHARLESTON COUNTY RISK MANAGEMENT

Appellate Panel Review held in Columbia,
South Carolina on February 23, 2009 per
notices timely and properly served on all
parties of interest.

Appellate Panel Decision and Order filed

April 30, 2009.

APPEARANCES:

Appellant/SC Second Injury Fund represented
by Latonya D. Edwards, Esquire, of Columbia,
South Carolina.

Defendants/Respondents represented by
Kirsten L. Barr, Esquire, of Mt. Pleasant, South
Carolina.

STATEMENT OF CASE

The parties were heard by Commissioner Susan S. Barden on July 8, 2008 in Charleston, South Carolina. On November 4, 2008, she issued the following Order:

IT IS, THEREFORE, HEREBY ORDERED that the South Carolina Second Injury Fund shall reimburse Charleston County and the South Carolina Association of Counties as set forth in S. C. Code Ann. § 42-9-400.

IT IS SO ORDERED.

Within the statutory period, counsel for the Second Injury Fund filed an Application for Review in the case setting forth her reasons, copies of which were furnished to all interested parties, prior to oral argument presented before the Appellate Panel on February 23, 2009. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to the individual members of the Full Commission and has since been under study and consideration.

By appeal, the Second Injury Fund respectfully submits the following:

1. Did the hearing commissioner err in finding as a fact (Finding of Fact No. 4) that the reimbursement claim was timely filed the error being that the claim was not filed within ten years of when the cause of action accrued pursuant to S. C. Code Ann. § 15-3-600?

2. Did the hearing commissioner err in finding as a fact (Finding of Fact No. 5) that the claim for reimbursement from the Second Injury Fund is not barred by the doctrine of laches and there is no prejudice to the Fund when such finding is against the greater weight of the reliable, probative, and substantial evidence in the record?

3. Did the hearing commissioner err in finding as a fact (Finding of Fact No. 6) that Claimant's April 30, 1996 work accident aggravated or combined with her preexisting conditions and caused substantial increase in her permanent impairment, medical costs, and lost time from work when such finding is against the preponderance of the reliable, probative and substantial evidence in the record?

4. Did the hearing commissioner err in finding as a fact (Finding of Fact No. 7) that Claimant's pre-existing condition was permanent and serious enough to constitute a hindrance or obstacle to her employment prior to the April 30, 1996 injury when such finding is against the greater weight of the reliable, probative, and substantial evidence in the record?

In an appellate review, the Panel shall, pursuant to S.C. Code Ann. § 42-17-50 (1985), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. After careful review in the instant case, the Commission, by majority vote, has determined all of the Hearing Commissioner's Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the law of the case, and; therefore, the Order is sustained in its entirety.

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the S. C. Workers' Compensation Act.

2. The greater weight of the evidence supports a finding the Employer/Carrier is entitled to reimbursement for all benefits paid on this claim by the SC Second Injury Fund based on the testimony and APA submissions.

3. The greater weight of the evidence supports a finding that requirements for reimbursement set forth by S. C. Code Ann. § 42-9-400 have been satisfied based on the opinions of Dr. Khoury and Dr. Johnson.

4. The claim for reimbursement from the Second Injury Fund was timely filed, as the evidence shows the Second Injury Fund was put on notice of the claim in 1997.

5. The claim for reimbursement from the Second Injury Fund is not barred by the doctrine of laches and there is no prejudice to the Fund created by the timing of the hearing. In fact, the record reveals the claim was actively negotiated for years prior to the single commissioner hearing.

6. As required by § 42-9-400, Claimant's cervical stenosis, Grade I spondylolisthesis, and facet hypertrophy existed prior to her work related accident on April 30, 1996. Claimant's work related accident on April 30, 1996 aggravated or combined with these conditions, resulting in substantial increases in her permanent impairment, medical costs, and lost time from work, based on the greater weight of the evidence presented, including the testimony and opinions of the physicians who treated the Claimant.

7. As required by S. C. Code Ann. § 42-9-400, Claimant's pre-existing condition was arthritic in nature and was permanent/serious enough to constitute a hindrance or obstacle to her employment prior to the April 30, 1996 injury based on the

greater weight of the evidence in the record, including the expert testimony and opinions of the physicians who treated the Claimant.

CONCLUSIONS OF LAW

1. Under S. C. Code Ann. § 42-1-130, Claimant was a covered Employee at the time in question and under § 42-1-140, the Employer was a covered Employer at all relevant times.

2. Under S. C. Code Ann. § 42-1-160, Claimant sustained a compensable work related injury to her back on April 30, 1996.

3. Under S. C. Code Ann. § 42-9-400, the Employer/Carrier has timely satisfied the requirements for reimbursement from the S. C. Second Injury fund and is entitled to reimbursement in accordance with the law for all compensation benefits paid after the first seventy-eight weeks and of all medical benefits payments subsequent thereto. This reimbursement shall include all amounts paid under the March 2, 2000 settlement agreement, which has heretofore been found reasonable and adopted as binding order of the Commission.

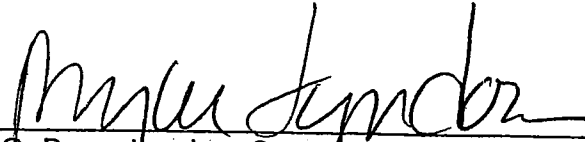
ORDER

IT IS, THEREFORE, ORDERED the Order of the Single Commissioner filed in the above-captioned matter on November 4, 2008 is hereby affirmed by the Panel, and the same shall constitute the Decision and Order of the Appellate Panel.

IT IS FURTHER ORDERED the S. C. Second Injury Fund shall reimburse Charleston County and the S. C. Association of Counties as set forth in S. C. Code Ann. § 42-9-400.

AND IT IS SO ORDERED.

S. C. WORKERS' COMPENSATION COMMISSION

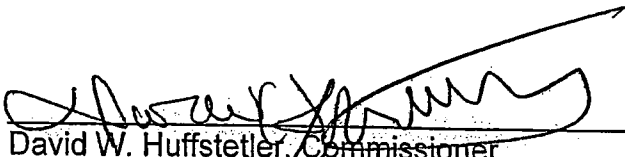

G. Bryan Lyndon, Commissioner

MAJORITY AFFIRMATION

CONCUR:


Andrea C. Roche, Commissioner

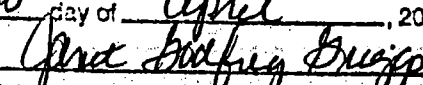
DISSENT:


David W. Huffstetler, Commissioner
I would note laches as an appropriate defense. The Carrier waited well beyond the three (3) year window to affect any benefit to the Employer. Therefore, reimbursement would not achieve the basic purpose of the Fund to encourage employment of people with prior impairments.

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

(L:\96134856.gbl.app.)

This 30 day of April, 2009.
By 
Administrative Assistant to the Commissioner

LDE
KLB

11/18/08

DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO.: 9613486

Charleston County,
Self-Insured Employer, through the
South Carolina Workers' Compensation
Trust,

51595
U

-vs-

The South Carolina Second Injury Fund

IN RE: Joan Barra

HEARING:

Held on July 8, 2008, in Charleston, South
Carolina, per notices timely and properly
served upon all parties in interest.

APPEARANCES:

Latonya Edwards, Esquire, Columbia, South
Carolina, appearing on behalf of the S.C.
Second Injury Fund.

Kirsten L. Barr, Esquire, Trask & Howell,
L.L.C., Mt. Pleasant, South Carolina,
appearing on behalf of the Defendants.

PURPOSE OF THE HEARING:

To determine the issues as set forth in the
Form 54 and by operation of Rule 67-605.

DECISION & ORDER:

By Susan Barden, Commissioner

FILED:

November 4, 2008.

check
Requested

STIPULATIONS

All parties to this proceeding agree to the following:

1. The South Carolina Workers' Compensation Commission has jurisdiction over this claim.
2. Notice of this hearing was properly served upon all parties in interest.
3. Venue, set in Charleston County, is proper as agreed by the parties.

APA SUBMISSIONS

The following items were timely and properly submitted into evidence by pursuant to the Administrative Procedures Act:

<u>APA #</u>	<u>DESCRIPTION</u>	<u>DATES</u>	<u>PAGES</u>
1	George H. Khoury, M.D.	09/21/99-04/26/05	1-3
2	Don R. Johnson, II, M.D.	01/21/05	4
3	Unknown Condition Statements Signed by Claimant	10/19/99-04/28/05	5-6
4	Correspondence with Second Injury Fund	01/10/00-03/02/06	8-14
5	J. C. McIntosh, M.D.	05/23/96-07/16/96	15-18
6	John A. Glaser, M.D.	11/20/96-01/29/97	19-21
7	Donald Johnson, M.D.	07/25/96-10/31/96	22-26
8	Deposition of Dr. George Khoury	11/05/07	27-33

STATEMENT OF THE CASE

This matter is before the undersigned Commissioner pursuant to the filing of a Form 54 by Charleston County and the South Carolina Association of Counties seeking reimbursement from the South Carolina Second Injury Fund for benefits paid in the claim of Joan Barra, W.C.C. File No. 9613486. Charleston County and the Association of Counties contend that, prior to the Barra's April 30, 1996 work-related accident, Barra had preexisting permanent degenerative arthritis in the spine (stenosis, spondylolisthesis, and facet joint hypertrophy), which combined and was aggravated by the April 30, 1996 accident, resulting in substantially increased medical and indemnity liability. Barra's pre-existing arthritic condition was unknown. As such, Charleston County and the Association of Counties argue they have satisfied the requirements for reimbursement from the Second Injury Fund set forth by S.C. Code Ann. 42-9-400.

The Second Injury Fund denied request for reimbursement. The Fund asserted the claim was untimely under S.C. Code Ann. § 15-3-600 and barred by the doctrine of laches. Additionally, it was the Fund's position that the preexisting condition was not a hindrance to employment and did not substantially increase the liability for medical or compensation benefits.

EVIDENCE SUMMARY

On April 30, 1996, Joan Barra sustained a compensable injury to her back following a fall. Following the accident, the Charleston County and the Association of Counties paid \$51,793.46 for medical treatment. Barra was also paid temporary total disability benefits beginning on May 1, 1996. The matter was ultimately settled by a

clincher agreement for \$80,000.00. The settlement was approved by the Commission on March 2, 2000.

On January 10, 2000, the Second Injury Fund acknowledged that they had received a letter in this matter on February 25, 1997. (APA #4, p. 8) The Notice of Claim form was provided to the Defendants in January 2000. (APA #4, p. 8) Between 2004 and 2006, the Second Injury Fund and representatives of Charleston County and the Association of Counites corresponded regarding the nature of the claim. (APA #4)

The record contains questionnaires completed by Barra's treating physician, Dr. Khoury, and a statement from Dr. Don Johnson. By the questionnaire, Dr. Khoury agreed that Barra had preexisting cervical stenosis. He further agreed that Barra's injury on April 30, 1996 aggravated or combined with the Claimant's pre-existing condition and was arthritic in nature. As a result of the aggravation or combination of the conditions, Dr. Khoury believed Barra lost substantially greater time from work and incurred substantially greater disability and medical costs. (APA #1, p. 1) In April 2003, Dr. Khoury clarified that the cervical stenosis is considered a form of arthritis. (APA #1, p. 2) By letter dated April 26, 2005, Dr. Khoury explained "Cervical stenosis is not a condition which results from an accident. However, it is a condition which develops over a number of years. Therefore, I believe that her condition of cervical stenosis pre-existed her injury." (APA #1, p. 3) Dr. Khoury stood by these opinions by his 2007 deposition testimony. (APA #8)

The Claimant also was diagnosed with Grade I Spondylolisthesis and facet hypertrophy. On January 21, 2005, Dr. Khoury agreed that these conditions pre-existed the Claimant's April 30, 1996 accident. He also agreed that the accident in 1996

aggravated or combined with these conditions, and were serious and permanent enough to constitute a hindrance to employment before the injury. As a result of the aggravation or combination, the Claimant lost substantially greater time from work and incurred substantially greater permanent disability and increased the medical costs. (APA #2, p. 4) He also opined that Grade I Spondylolisthesis and facet hypertrophy were considered arthritis. (APA #2, p. 4) Dr. Khoury confirmed these opinions by his deposition testimony taken in 2007. (APA #8) By letter dated March 7, 2008, Dr. Donald R. Johnson agreed with Dr. Khoury's position. (APA #2, p. 5) Both doctors agreed that Barra's pre-existing condition was considered permanent and serious enough to constitute a hindrance or obstacle to employment. (APA p.1, 4, 5).

On October 19, 1999, the Claimant indicated that she was not aware prior to April 30, 1996 that she had cervical stenosis or arthritis. (APA #3, p. 6) On April 28, 2005, the Claimant stated she was not aware prior to her injury on April 30, 1996 that she had Grade I Spondylolisthesis and/or facet hypertrophy. (APA #3, p. 7)

FINDINGS OF FACT

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. The greater weight of the evidence supports a finding that the Employer/Carrier is entitled to reimbursement for all benefits paid on this claim by the S.C. Second Injury Fund based upon the testimony and APA submissions.
3. The greater weight of the evidence supports a finding that the requirements for reimbursement set forth by S.C. Code Ann. § 42-9-400 have been satisfied based on the opinions of Dr. Khoury and Dr. Johnson.

4. The claim for reimbursement from the Second Injury Fund was timely filed, as the evidence shows the Second Injury Fund was put on notice of the claim in 1997.

5. The claim for reimbursement from the Second Injury Fund is not barred by the doctrine of laches and there is no prejudice to the Fund created by the timing of the hearing before the undersigned. In fact, the record reveals that the claim was actively negotiated for years prior to this hearing.

6. As required by § 42-9-400, the Claimant's cervical stenosis, Grade I Spondylolisthesis, and facet hypertrophy existed prior to her work-related accident on April 30, 1996. The Claimant's work-related accident on April 30, 1996 aggravated or combined with these conditions, resulting in substantial increases in her permanent impairment, medical costs, and lost time from work, based upon the greater weight of the evidence presented, including the testimony and opinions of the physicians who treated Barra..

7. As required by S.C. Code Ann. § 42-9-400, the Claimant's pre-existing condition was arthritic in nature and was permanent/serious enough to constitute a hindrance or obstacle to her employment prior to the April 30, 1996 injury, based upon the greater weight of the evidence in the record, including the expert testimony and opinions of the physicians who treated Barra.

RULINGS OF LAW

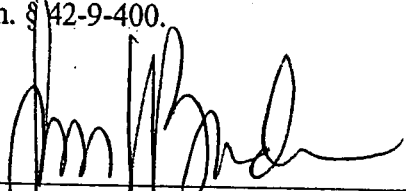
1. Under S.C. Code Ann. § 42-1-130, the Claimant was a covered Employee at the time in question and under § 42-1-140, the Employer was a covered Employer at all relevant times.
2. Under S.C. Code Ann. § 42-1-160, the Claimant sustained a compensable work-related injury to her back on April 30, 1996.
3. Under S.C. Code Ann. § 42-9-400, the Employer/Carrier has timely satisfied the requirements for reimbursement from the S.C. Second Injury Fund and is entitled to reimbursement in accordance with the law for all compensation benefits paid after the first seventy-eight weeks following the injury, in addition to reimbursement of fifty percent of medical payments in excess of three thousand dollars during the first seventy-eight weeks and of all medical benefits payments subsequent thereto. This reimbursement is to include all amounts paid under the March 2, 2000 settlement agreement, which has heretofore been found reasonable and adopted as binding order of the Commission.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the South Carolina Second Injury Fund shall reimburse Charleston County and the South Carolina Association of Counties as set forth in S.C. Code Ann. § 42-9-400.

IT IS SO ORDERED.

Dated: 10/31/08



Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United States mail addressed to the attorney or attorneys for said parties.

This 4th day of November, 2008.

By KRISTI LOVE

Administrative Assistant to the Commissioner

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2013-CP-10-0510

JOAN BARRA,)
)
 PLAINTIFF,) TRANSCRIPT OF RECORD
)
 VS.)
)
)
 CHARLESTON COUNTY,) APRIL 25, 2016
) CHARLESTON, SC
)
 DEFENDANT.)

B E F O R E:

HONORABLE KRISTI HARRINGTON, JUDGE.

A P P E A R A N C E S:

Latonya Dilligard Edwards, Esquire
Attorney for the Plaintiff

Kirsten Barr, Esquire
Attorney for the Defendant

* * * * *

Ruth C. Weese, RDR
Official Court Reporter
Ninth Judicial Circuit

1 (The following proceedings were held
2 April 25, 2016, Charleston County, South Carolina,
3 @ 1:05 p.m.)

4 THE CLERK: The first case at 1:00 to
5 be called is 2013-510, Joan Barra versus County of
6 Charleston.

7 THE COURT: State your name for the
8 record and the party you represent.

9 MS. BARR: Yes, Your Honor. My name is
10 Kirsten Barr. I'm with the firm of Trask and
11 Howell. We represent Charleston County and South
12 Carolina Association of Counties.

13 MS. DILLIGARD EDWARDS: Yes, Your
14 Honor. I'm Latonya Dilligard Edwards with
15 Dilligard Edwards and I represent the Second Injury
16 Fund.

17 THE COURT: And what are we doing here
18 today?

19 MS. BARR: Your Honor, this is an
20 appeal from the South Carolina Worker's
21 Compensation Commission. If I may approach. They
22 no longer send up the records, so we have a record
23 on appeal for you and a copy of the brief that was
24 filed with the court last week.

25 This is a claim for reimbursement

1 against the South Carolina Second Injury Fund
2 related to a worker's compensation claim filed by
3 Joan Barra against Charleston County. Essentially
4 it's a limited legal issue before you today. And
5 that is whether or not our claim for reimbursement
6 was commenced within ten years after that claim
7 accrued.

8 We would submit to you that it was in
9 fact and that the Commission erred as a matter of
10 law. It's a very limited question. Give you a
11 little procedural history on this, because it is
12 rather complicated, Ms. Barra was injured in
13 Charleston County in 1996. A year later in
14 February of 1997 we placed the Second Injury Fund
15 on notice of a claim for reimbursement against the
16 Fund.

17 The Second Injury Fund at that time
18 assigned a claim number, informed Charleston County
19 that a claim was pending investigation and started
20 requesting information from Charleston County. We
21 believe that when claim was filed, when that claim
22 number was assigned and, in fact, the Worker's
23 Compensation Commission entered an unappealed
24 finding which is the law of the case and this claim
25 for reimbursement was filed in 1997 which is well

1 within the ten-year statute of limitations.

2 The hearing was initially heard by
3 commissioner Susan Barton. She awarded the claim
4 for reimbursement finding that we met all elements
5 of the relevant statute which is 42-9-400 and
6 ordered the Second Injury Fund should reimburse
7 Charleston County for all medical and compensation
8 benefits paid in this claim. That decision was
9 affirmed by the Commissions Appellate Panel. The
10 Second Injury Fund then appealed here to the
11 Charleston County Court of Common Pleas, but at the
12 time they filed their appeal, they requested an
13 immediate stay of that appeal pending the outcome
14 of a case then pending in the Supreme Court which
15 is Transportation Insurance which you will see
16 cited in the record and by the Commission.

17 In Transportation Insurance there's a
18 very limited legal holding and that is that the
19 general ten-year statute of limitations under
20 15-6-300 applies to claims for reimbursement
21 against the Second Injury Fund. Because the
22 Commission had not previously addressed the
23 applicability of that general ten-year statute of
24 limitations, the Circuit Court then remanded the
25 claims to the Commission for findings related to

1 that statute. What resulted was a terribly
2 inconsistent order and you will see in the record
3 that I have prepared at page 27 and page 28 styled
4 as finding of fact No. 3 is what is really a vague
5 conclusory legal ruling. We find that
6 reimbursement cause of action is commenced when the
7 carrier files its Form 54 request for hearing.
8 Then on the next page, under conclusions action of
9 law, the Commission concluded to qualify
10 reimbursement -- for reimbursement, the carrier has
11 the burden of proof that its claim was filed within
12 ten years.

13 The Commission then on remand said our
14 claim was barred under the general ten-year statute
15 of limitations. Those are terribly inconsistent
16 things. The question is whether or not a cause of
17 action is commenced when a claim is filed or
18 whether or not it is commenced when a hearing is
19 requested.

20 Now, again, typically a cause of action
21 for general purposes is commenced with a summons
22 and complaint. We don't have that in
23 administrative proceedings. We commence a cause of
24 action with a claim. So two different issues.
25 When is the claim claimed, when is the hearing

1 requested and a hearing was necessitated in this
2 case for years and years and years, because the
3 Second Injury Fund repeatedly and in writing
4 informed Charleston County and the Association that
5 our claim was pending investigation requesting
6 additional information, requesting clarifications
7 from the doctors, requesting affidavits from Ms.
8 Barra, all of which was provided to the Second
9 Injury Fund within ten years.

10 So we would submit to you that we
11 believe it was timely filed. Now, after this
12 remand order was issued we filed our appeal, the
13 one presently pending before you regarding that
14 legal question, that legal interpretation of when
15 the cause of action commenced with Charleston
16 County Court of Common Pleas. It was scheduled for
17 a hearing with Judge Nicholson at which time the
18 Second Injury Fund filed another motion to stay the
19 appeal pending the outcome in the case of Gilbert
20 Chavis v. AVX, another Second Injury Fund case.

21 In the motion filed by the Second
22 Injury Fund they said the Chavis -- the issues in
23 Chavis -- the issues before the court in Chavis
24 were identical to the issues before the Court in
25 this present case.

1 Now, Chavis resulted in an unpublished
2 opinion; however, the Second Injury Fund is on
3 record saying the issues are identical and, in
4 fact, the Chavis case which is attached to my brief
5 and it's made part of the record given the Fund's
6 reference to that case is in line with our position
7 that the court held that a cause of action against
8 the Second Injury Fund for reimbursement is
9 commenced with the filing of a claim. That is the
10 only pronouncement of this issue from our appellate
11 court in South Carolina.

12 The Second Injury Fund would have you
13 believe, in fact, they somehow convinced the
14 Commission that the earlier case Transportation
15 Insurance controlled suggesting it somehow supports
16 its argument that a cause of action of
17 reimbursement is not commenced until a hearing is
18 requested.

19 However, I think if you look at the
20 Transportation Insurance case you'll see that it
21 did no such thing. It doesn't speak at all as to
22 what constitutes the commencement of an action
23 before the Worker's Compensation Commission or the
24 commencement of a reimbursement action. It makes
25 no mention of hearing requests. It makes no

1 mention of a Form 54. It's absolutely silent on
2 that issue.

3 So to the extent that the Commission
4 felt Transportation Insurance somehow controlled
5 this legal issue, it is simply patently false and
6 merits reversal. So it's our position that here
7 today you have a limited narrow question of law,
8 one which the Commission made an inconsistent
9 ruling on. One which the evidence is capable of
10 only one inference and the findings, the facts
11 germane to the issue are otherwise the law of the
12 case. Because we have an unappealed ruling from
13 the initial Commission order affirmed by the
14 Commission, the claim was filed in 1997. I don't
15 think the Second Injury Fund can take any other
16 position because that's when they assigned it a
17 claim number and informed Charleston County that
18 the claim was pending investigation.

19 They had every shred of evidence and
20 proof necessary to adjudicate this claim to deal
21 with our claim well within that ten-year statute of
22 limitations and to simply suggest now that there is
23 some requirement that a hearing be requested as
24 opposed to a claim be filed we believe is untenable
25 and so we would ask for your ruling as a matter or

1 law on that issue.

2 MS. DILLIGARD EDWARDS: Your Honor, may
3 I approach?

4 THE COURT: You may.

5 MS. DILLIGARD EDWARDS: Your Honor,
6 again I represent the Second Injury Fund and I want
7 to first address some of the things Ms. Barr said.
8 Just to be clear, this case has absolutely nothing
9 to do with the underlying claim between the
10 claimant and the carrier. That case is done with.
11 It's not going to affect any monies that the
12 claimant would have been entitled to. All of that
13 is done. The carrier is now requesting
14 reimbursement pursuant to 42-9-400 on whether they
15 need to require this for reimbursement under that
16 statute. There are various requirements. I won't
17 recitate those because I believe Ms. Barr has done
18 a pretty good job in her brief outlining what the
19 requirements are for reimbursement.

20 Now, she is correct on her procedural
21 history as far as the motions. The stays, which
22 they all consented to all of those, so I don't want
23 the Court to think that we just went in and
24 requested. They consented to all of the stays.
25 Transportation is the case that's the prevailing

1 law on that issue. That case was one of my cases
2 also. And the Supreme Court decided that case.

3 That case decided that 15-300 which is
4 a ten-year statute of limitations applied to
5 reimbursement cases and that the reimbursement
6 cause of action accrued on the date the fund
7 received notice. And the citation for that,
8 389 S.C. 422, 699 S.E. 2nd 687, it's a Supreme
9 Court decision that's published and can be relied
10 upon and cited to as precedent unlike Gilbert
11 Chavis which is a Court of Appeals decision that
12 cannot be cited as the basis for a decision. And
13 in case there's any confusion about that, they put
14 it on top of the order. That is not to be used as
15 precedent to decide a case. Transportation is
16 precedent in the case.

17 That case found that again the cause of
18 action accrued the date the fund received notice.
19 And in this particular case I think we all agree
20 that the Fund received notice of the claim in
21 February of 19 -- February 25th of 1997 and I have
22 that cited, I was trying to find citation, but I
23 don't want to take the Court's time in doing that.
24 Judge, if you will give one minute. Let me just
25 find the citation.

1 The record that I passed you up, the
2 carrier received notice of the claim on
3 approximately February 18th, 1997. I think
4 February 25th is the date that was actually cited.
5 That's just a few days. It does not affect the
6 outcome of the case. 'Carrier's Form 54 requested a
7 hearing which we assert commences a reimbursement
8 cause of action. It was filed on July 31st, 2007.
9 That is outside ten years. To be exact, it is ten
10 years and five months after the carrier provided
11 notice to the fund.

12 Our position is based on
13 Transportation, I'm not basing it on Gilbert Chavis
14 because I agree, Gilbert Chavis has similar facts.
15 But Gilbert Chavis is not the law on the issue, I
16 agree with that. That based on Transportation the
17 carrier's claim is not timely filed because they
18 have to file that Form 54 request for a hearing
19 within ten years and they did not do that in this
20 case.

21 And like I said, I totally agree
22 Gilbert Chavis says something different. But,
23 again, that's a court of appeals case. It is
24 unpublished. Transportation is a Supreme Court
25 case that has authority.

1 THE COURT: Well, under Transportation
2 when do you believe notice was given to the Fund?

3 MS. DILLIGARD EDWARDS: Under
4 Transportation we believe just like I indicated was
5 given to the Fund on February 18th of 1997. I
6 think that's even been conceded in other documents.
7 I don't think -- well, let me say February 25th,
8 because I think that's the appropriate date.
9 February 25th, 1997, is when we received notice and
10 that notice is outlined on page 89 of my documents.
11 Is that the question Your Honor asked?

12 THE COURT: Yes.

13 MS. DILLIGARD EDWARDS: Yes. That's
14 the date we received notice, okay? Then the
15 carrier's Form 54 request for a hearing which
16 commences the reimbursement cause of action was
17 filed on July 31st, 2007 which is ten years five
18 months beyond when they provided notice to the
19 Fund. Our position, and we believe Transportation
20 supports that, is that that request for a hearing
21 which commences the reimbursement cause of action
22 has to be filed within ten years of when the Fund
23 receives notice of the claim.

24 THE COURT: Okay. Anything else?

25 MS. DILLIGARD EDWARDS: Unless Your

1 Honor has any questions for me, nothing further.

2 THE COURT: Thank you.

3 MS. BARR: Briefly, Your Honor. Just a
4 few points. Counsel keeps referring to the carrier
5 in this case. There's no carrier and every dollar
6 that has been spent in the pursuit of this
7 recovery, every dollar that was spent for Ms.
8 Barra's medical treatment, her time out of work,
9 her permanent and very serious injuries, those were
10 Charleston County dollars. We have basically a
11 catastrophic insurance policy with the Association
12 Counties. These are very much public resources,
13 not some fictional carrier out there.

14 Number two, counsel repeatedly suggests
15 that somehow Transportation Insurance controls the
16 case. The only legal conclusion reached by the
17 Supreme Court in the Transportation Insurance was
18 that the ten-year statute of limitations applies
19 and that the claim accrues upon giving notice.

20 The Supreme Court did not speak
21 whatsoever as to what constitutes the commencement
22 of that reimbursement claim, that reimbursement
23 cause of action under the statute. Absolutely
24 silent on that issue. It's only ever been
25 addressed by our appellate courts by the Chavis

1 case. And while Chavis is unpublished, you'll see,
2 and it is attached to my brief, the motion Ms.
3 Dilligard Edwards filed with this court saying that
4 the issues in the Chavis case were the same as the
5 issues before the Court here today. With that
6 motion as a part of record identifying this case
7 pending in South Carolina Court of Appeals, it
8 would seem a little odd for us to come here today
9 and not let you know what happened in that case and
10 there the ruling was very clear. It was the first
11 time ever that it was addressed what commences a
12 reimbursement cause of action. And that's the
13 claim.

14 After we put them on notice of the
15 claim they assigned a claim number. They then
16 immediately told us the claim was pending
17 investigation. They requested additional documents
18 to support the claim, all of which was provided to
19 the Fund. There's repeated forms that talk about
20 the date of the claim. Well within ten years. So
21 there was very much an ongoing claim. This claim
22 was very much commenced within ten years. In fact,
23 immediately upon the settlement of the underlying
24 claim with Ms. Barra additional medical evidence
25 was given to the Second Injury Fund. To suggest

1 that there was nothing pending, that nothing had
2 commenced prior to that hearing request, the
3 Form 54, which is again nothing more than a hearing
4 request, is just patently false. You'll see in the
5 record that there's ongoing negotiations with the
6 Fund. The claim was very much pending. And then I
7 would also refer you to the applicable regulations
8 because that's another issue with the Commission's
9 orders. There is a regulation. It is -- I
10 apologize -- 67-2-06. It defines how a claim is
11 filed in the context of worker's compensation.
12 That is very different from requesting a hearing.
13 Two different things. A claim is commenced long
14 before and without the necessity of a hearing
15 request.

16 Because we believe that to be true, and
17 because we believe there's been inconsistencies in
18 the Commission's order and that the analysis from
19 the Chavis case is correct, we would ask that you
20 rule on the issue for us, Your Honor.

21 MS. DILLIGARD EDWARDS: Your Honor, if
22 I may?

23 THE COURT: No, because we will keep
24 going back and forth. Thank you. I will take the
25 matter under advisement. You will have my ruling

1 by the close of business this week. Good luck to
2 you both. Thank you.

3 (These proceedings were concluded at
4 1:18 p.m., April 25, 2016, Charleston County, South
5 Carolina.)

1
2
3 CERTIFICATE OF REPORTER

4 I, Ruth C. Weese, Registered Diplomat
5 Reporter for the State of South Carolina at Large,
6 do hereby certify that the foregoing transcript is
7 a true, accurate, and complete record.

8 I further certify that I am neither related
9 to nor counsel for any party to the cause pending
10 or interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 24th day of June, 2016 at
13 Charleston, Charleston County, South Carolina.

14 *Ruth C. Weese*

15 _____
16 Ruth C. Weese

17 Registered Diplomat

18 Reporter
19
20
21
22
23
24
25

**BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S
APPELLATE PANEL**

Joan Barra	)	W.C.C. No. 9613486
	)	SIF No. 51595
Employee,	)	
-vs-	)	
	)	BRIEF OF THE APPELLANTS
Charleston County,	)	
Self-Insured Employer, through the	)	
South Carolina Counties Workers'	)	
Compensation Trust	)	
Carrier, Defendants	)	
	)	
IN RE:	)	
	)	
Charleston County and the South	)	
Carolina Counties Workers'	)	
Compensation Trust, Appellants,	)	
	)	
v.	)	
	)	
South Carolina Second Injury Fund,	)	
Respondent.	)	

STATEMENT OF THE CASE

Joan Barra sustained a compensable injury to her cervical spine on April 30, 1996. Following the accident, Charleston County and the South Carolina Counties Workers' Compensation Trust (hereinafter the "Appellants") paid \$51,793.46 in medical benefits, in addition to temporary total disability compensation. The claim was ultimately settled pursuant to a clincher agreement for \$80,000.00 on March 2, 2000.

On February 18, 1997, the Appellants sent a letter to the SIF "to notify [the SIF] of the employer's Second Injury Fund claim" in the case of Joan Barra v. Charleston County, which also listed the accident date, the WCC claim number, and the fact that the accident occurred in

Charleston County. The SIF responded in writing that the "case is pending investigation" and asked that the Appellants complete a SIF Claim Form and return it with "all requested documents as soon as possible." The Appellants filed the requested Claim Form with the SIF on February 16, 2011 and completed all requested fields, including the Joan Barra's demographic information, the nature of the second injury, the current status of the underlying claim, the names of the treating physicians, the average weekly wage and compensation rate, the weeks of benefits paid, the medical costs to date, the nature of the prior impairment, and the manner in which the knowledge requirement was satisfied. At the bottom of the Form, which was created by the SIF, there is a field for the "Date of Claim," which is designated as "2/16/01." In all subsequent correspondence from the SIF to the Appellants, the SIF referred to their ongoing investigation of the reimbursement "claim." However, the SIF chose not to accept the claim and the Appellants were ultimately forced to file a Form 54 hearing request.¹

After a hearing on July 8, 2008, Commissioner Barden issued a Decision and Order requiring the SIF to reimburse the Appellants in accordance with S.C. Code Ann. § 42-9-400, as the Appellants had met all requirements for reimbursement. Commissioner Barden rejected the SIF's argument that the claim for reimbursement was time barred under the statute of limitations for civil claims, S.C. Code Ann. § 15-3-600. The SIF appealed the statute of limitations issue to the Commission's Appellate Panel, which issued an order dated April 30, 2009, again requiring the SIF to reimburse the Appellants as set forth in S.C. Code Ann. § 42-9-400.

The SIF then appealed to the Court of Common Pleas for Charleston County and the sole

¹ Note that the Form 54 does not contain any new information that was not already contained on the SIF Claim Form or the documents submitted by the Appellants to the SIF prior to the filing of the Form 54.

issue on appeal was whether the Appellants' commenced a claim within 10 years pursuant to § 15-3-600. During the pendency of the appeal, the Supreme Court issued its decision in Transportation Insurance Company v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010), holding that S.C. Code Ann. § 15-3-600 applies to administrative claims for reimbursement from the SIF. Because the Commission did not previously make findings of fact or conclusions of law regarding the applicability of § 15-3-600, this matter was remanded to the Workers' Compensation Commission pursuant to the Circuit Court's November 30, 2011 Order to make such findings and conclusions as to whether the Appellants commenced their claim for reimbursement against the SIF within ten years.

After considering the briefs and memoranda filed by the parties, Commissioner Barden issued a Decision and Order, finding and concluding that the Appellants did not timely claim reimbursement from the Second Injury Fund. The Appellants respectfully contend that this finding and conclusion is contrary to the greater weight of the evidence in the record and the applicable law and; therefore, should be reversed by the Appellate Panel.

ARGUMENT

- I. The Appellants commenced their claim for reimbursement against the Second Injury Fund within ten years after it accrued and the Hearing Commissioner's contrary conclusion should be reversed.

S.C. Code Ann. § 15-3-600 provides that an "action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued." Pursuant to S.C. Code Ann. § 15-3-20(B), a civil action is brought in a court and is "commenced

when the summons and complaint are filed with the clerk of court..." Of course, S.C. Code Ann. § 15-3-20 does not apply to claims for reimbursement against the Fund and the Appellants were not required to file a summons and complaint against the SIF. Instead, administrative actions under the Workers' Compensation Act are commenced with the filing of a "claim."² Therefore, the question before the Commission is whether the Appellants commenced their reimbursement claim against the Fund within 10 years after placing the Fund on notice of their claim, which according to the South Carolina Supreme Court, is when the reimbursement claim accrues. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010).

In the present case, the Appellants served the Fund with notice of their reimbursement claim on February 18, 1997 in accordance with S.C. Code Ann. § 42-9-400. (APA #1, p. 1) The SIF responded by letter dated January 10, 2000, assigning SIF number 51595 to the reimbursement claim, requesting that the Appellants complete a SIF Notice of Claim Form, and advising that the case was "pending investigation." (APA # 2, p. 2-3) The Appellants respectfully submit that if the reimbursement claim had not yet been commenced as of January 10, 2000, the SIF would not have the need to assign a claim number or otherwise conduct an investigation at that time.

Furthermore, S.C. Code Ann. § 42-9-400(f) requires that:

"An employer or his carrier shall notify the Industrial Commission and the

² In determining what constitutes the filing of a claim, it is almost universally held that the law "does not contemplate the filing of a claim having the same particularity as a formal pleading or stating 'all elements of a cause of action;' and that the law would be sufficiently complied with if the claim in whatsoever form sets forth enough facts to apprise the [defendant] of the time, place, and character of the accident, and the general nature of the injury, so that it may be understood that the Appellants expects to receive the benefits provided by the Act." Hamilton v. Bob Bennett Ford, 336 S.C. 72, 78, 518 S.E.2d 599, 602 (Ct. App. 1999).

Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation."

According to the South Carolina Supreme Court,

"The primary purpose of § 42-9-400(f) is to establish a deadline for perfecting actual claims for reimbursement with the Fund ... Once a claim is submitted, the Fund may agree to reimburse an employer or carrier. In such a case, the Fund must submit the agreement to reimburse to the Commission for its approval. § 42-8-310(b). If the Fund denies a claim for reimbursement, the employer or carrier may request a hearing before the Commission on the claim. 25A S.C. Code Reg. 67-208(D)." S.C. Second Injury Fund v. American Yard Products, 330 S.C. 20, 21, 496 S.E.2d 862, 863 (1998). (emphasis added).

Therefore; the primary purpose of the correspondence dated February 18, 1997 (APA p.1) was to perfect an "actual claim" for reimbursement with the Fund in accordance with S.C. Code Ann. § 42-9-400(f). In fact, the Fund acknowledged that an actual claim for reimbursement had been made by their letter of January 10, 2000, wherein Second Injury Fund Claims Analyst Pete J. Calamas advised that the reimbursement claim was "pending investigation." (APA #2, p. 2). Therefore, the Appellants respectfully contend that the reimbursement claim was commenced within the ten year statute of limitations by their correspondence of February 18, 1997.

On February 16, 2001, a completed SIF Claim Form was served upon the SIF, outlining the details of the Appellants' reimbursement claim. (APA #3, p. 4) In addition to listing the "date of Claim" as "2/16/01," the Claim Form also includes the following details:

- WCC Number
- Carrier Code
- Employer Code
- Carrier File Number
- SIF Number
- Employee Name
- Employee Social Security Number
- Employee Address
- Date of Accident
- Employer Name
- Employer Location
- Carrier Name
- Carrier Address
- Employee's Attorney's Name
- Employee's Attorney's Address
- Carrier's Attorney's Name
- Carrier's Attorney's Address
- Nature of Second Injury
- Current Status
- Treating Physicians
- Average Weekly Wage
- Compensation Rate
- Date of First Temporary Total
- Date Returned to Work
- Weeks of All Benefits Paid
- Medical Costs to Date
- Nature of Prior Impairment (with reference to § 42-9-400)
- Nature of Knowledge Requirement

The Claim Form further specifies that all narrative reports, the Form 12A, the Form 15, a current Form 18, and a WCC Order "must be provided before claims can be processed." The Appellants not only fully and accurately completed the Claim Form on February 16, 2011 as requested by the SIF, but the Appellants also submitted all forms required by the SIF so the claim could be "processed." The SIF's own Claim Form makes no mention of any other documents or

information that was necessary to commence the reimbursement claim. To the contrary, the Appellants satisfied all requirements for the commencement of the claim, in accordance with the SIF's own forms, no later than February 16, 2001, which is well within the 10 year statute of limitations under S.C. Code Ann. § 15-3-600.

Because the SIF still refused to accept the Appellants' pending reimbursement claim, the Appellants supplied the SIF with an updated Claim Form, the Form 15, the Form 17, the Form 19, the Form 16, and the Form 12A under cover of letter dated March 2, 2004. (APA #4, pp.5-12). Pete Calamas, Senior Claims Analyst for the SIF contacted the Appellants by phone on or about March 17, 2004 to discuss the merits of the reimbursement claim, the narrative medical records he had received, and what additional clarification from the doctors the SIF desired. This conversation was confirmed by Mr. Calamas's letter dated November 8, 2004. (APA #6, p.14). Therefore, in addition to the completed SIF Claim Form and the documents the SIF specified were required for claim processing, the SIF also had all of the narrative medical reports to support the reimbursement claim. As such, the Appellants respectfully contend that, not only had a reimbursement claim been commenced well before November 8, 2004 (which is within the 10 year statute of limitations), but that the SIF should be estopped by their conduct to deny that a reimbursement claim had been timely commenced.

Furthermore, it is not necessary that the Appellants file any particular form to commence a reimbursement claim and it is certainly not necessary for the Appellants to request a hearing. Instead, reimbursement claim against the SIF, like any other a workers' compensation claim, can be commenced pursuant to S.C. Code Reg. 67-206(C), which provides:

A letter filed with the Commission also files a claim. The letter should include the information listed in items (1) through (12) below:

- (1) *Appellants's name (and worker's name, if different);*
- (2) *Appellants's address (and workers' address if different);*
- (3) *Appellants's home and work telephone numbers (and workers' home and work telephone numbers, if different);*
- (4) *Appellants's social security number (and workers' social security number, if different);*
- (5) *Employer's name;*
- (6) *Employer's address;*
- (7) *Employer's telephone number;*
- (8) *Employer's insurance carrier, if known;*
- (9) *Date of injury;*
- (10) *The county in which the injury occurred;*
- (11) *Type of injury (to which area of the body);*
- (12) *Description of the accident.*
- (13) *Failure to include any of the information above does not bar the claim if the information necessary to an issue in a claim is given to the Claims Department on request.*

In the present case, the Appellants served the Fund with all information necessary to file a claim under S.C. Code Reg. 67-206 well before the expiration of the ten year statute of limitations applicable to civil claims through its myriad communications, forms, and submissions.³

Furthermore, our Courts have universally held that the Commission "will accept as the equivalent of a statutory claim any paper that contains the substance usually supplied by a formal claim, although the form may be defective." Hamilton v. Bob Bennett Ford, 336 S.C. 72, 86, 518 S.E.2d 599, 606 (1999). The rationale is that a claim, as contemplated by the Workers'

³ Note that the Fund inexplicably argues that R. 67-208 ("Requesting a Hearing, Employer") is somehow the controlling regulation for filing a claim, as opposed to R. 67-206 ("Filing a

Compensation Act, is not necessarily a formal pleading, but must simply set forth enough facts to apprise the defendant of "the time, place, and character of the accident and the general nature of the injury" so that it may be understood that the Appellants expect to receive the benefits (e.g., reimbursement) provided by the Act. Here, it was no later than March 2, 2004 that the SIF was made fully aware that the Appellants expected to reimbursement under S.C. Code Ann. § 42-9-400, by virtue of the SIF Claim Forms and records submitted by the Appellants. Therefore, it is clear that the present reimbursement claim was commenced within ten years after it accrued in accordance with S.C. Code Ann. § 42-9-400 and S.C. Code Reg. 67-206 and; therefore, it is not time-barred by S.C. Code Ann. § 15-3-600.

CONCLUSION

Based on the facts and arguments set forth herein, the Appellants, Charleston County and the South Carolina Association of Counties Workers' Compensation Trust, respectfully request that the Workers' Compensation Commission's Appellate Panel find and conclude that the Appellants commenced their claim for reimbursement from the Second Injury Fund within the 10 year statute of limitations set forth in S.C. Code Ann. § 15-3-600 and that the requirements of S.C. Code Ann. § 42-9-400 have otherwise been satisfied.

Claim"); however, the Fund cites no authority for this argument.

Respectfully submitted,

TRASK & HOWELL, L.L.C.

P. O. Box 2167

Mt. Pleasant, SC 29465

By Kirsten L. Barr

Kirsten L. Barr

Attorney for the Appellants,

Charleston County and the South Carolina
Counties Workers' Compensation Trust

September 7, 2012

Mt. Pleasant, South Carolina

1165\110\appellants brief

CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of September 2012, I have caused a true and correct copy of the Brief of the Appellants to be mailed postage prepaid to the attorney for the Second Injury Fund addressed as follows:

Latonya Dilligard Edwards, Esq.
Dilligard Edwards, LLC
3790 Fernandina Road, Suite 103
Columbia, SC 29210



Kirsten L. Barr

1165\\110\\pos-app. brief

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Association of Counties,	)	
	)	
Carrier/Respondent,	)	SCWCC No. 9613486
	)	SCSIF No. 51595
v.	)	
	)	
South Carolina Second Injury Fund,	)	
	)	
Appellant,	)	RESPONDENT'S BRIEF TO THE
	)	FULL COMMISSION
[In Re: Joan Barra,	)	
	)	
Employee/Claimant,	)	
	)	
v.	)	
	)	
Charleston County Risk Mgmt.	)	
	)	
Employer.]	)	
	)	

STATEMENT OF THE CASE

This is an appeal by the South Carolina Second Injury Fund ("Fund") from an award of partial reimbursement under South Carolina Code Ann. § 42-9-400. Employer, Charleston County Risk Management, and Carrier, South Carolina Association of Counties (collectively "Carrier"), alleged that they incurred increased liability for medical costs and disability when their employee, Joan Barra ("Claimant"), sustained a work injury on April 30, 1996, that either aggravated or combined with her preexisting arthritis, in the form of cervical stenosis and lumbar degenerative spondylolisthesis. The Fund denied the claim was reimbursable, arguing that the claim was not timely filed pursuant to S.C. Code Ann. §15-3-600. The Fund also argued that Claimant's preexisting condition was not serious enough to be a hindrance or obstacle to her employment and did not substantially increase Carrier's liability for medical costs and disability.

Commissioner Susan S. Barden held a hearing on July 17, 2008, in North Charleston, South Carolina. Commissioner Barden's Decision and Order, filed on November 4, 2008, found the claim reimbursable. Commissioner Barden's decision was affirmed by the Full Commission and the South Carolina Second Injury Fund appealed. The Fund subsequently requested a stay of the Circuit Court proceedings in 2009 because the issue of whether or not the ten (10) year statute of limitations outlined in S.C. Code Ann. § 15-3-600 applied to reimbursement cases was being reviewed by the South Carolina Supreme Court in its original jurisdiction. After the Supreme Court ruled that S.C. Code Ann. § 15-3-600 applied to reimbursement cases, this case was remanded to the South Carolina Workers' Compensation Commission by consent of the parties. On Remand, the Hearing Commissioner denied Carrier's request for reimbursement and Carrier appealed asserting various errors of law.

ARGUMENT

- I. THE HEARING COMMISSIONER CORRECTLY DETERMINED THAT CARRIER DID NOT COMMENCE ITS CLAIM PRIOR TO THE TEN (10) YEAR STATUTE OF LIMITATIONS PERIOD OUT LINED IN § 15-3-600.

In Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, the Fund argued that the ten (10) year statute of limitations period applied to reimbursement cases and that the reimbursement cause of action accrued on the Claimant's date of injury and ended when a Carrier filed its Form 54 Request for Hearing. 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010). The South Carolina Supreme Court held that the ten (10) year statute applied to reimbursement cases but that the reimbursement cause of action accrued on the date Carrier placed the Fund on notice of a potential claim for reimbursement per S.C. Code Ann. § 42-9-400(f). Id.

In its holding that the ten (10) year statute of limitations in S.C. Code Ann. § 15-3-600 applies to reimbursement cases, the Court indicates "[t]he result in this case of accrual beginning

when notice is provided is that Great American's claim is the only one that is not precluded by the running of the ten year statute of limitations." Id. at fn.3. Here, Great American was the only Carrier that filed a Form 54 Request for Hearing within ten (10) years of providing notice to the Fund. The other carriers involved in the case failed to file a Form 54 Request for Hearing within ten (10) years of providing notice to the Fund and their reimbursement causes of action were time barred.

II. A REIMBURSEMENT CAUSE OF ACTION IS COMMENCED WHEN CARRIER FILES A FORM 54 REQUEST FOR HEARING.

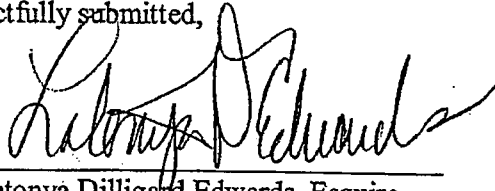
A statute of limitations period runs until a judicial process is commenced. Carl Rose & Sons Ready Mix Concrete, Inc. v. Thorp Sales, 36 N.C. App. 778, 245 S.E.2d 234 (1978). Here, submitting paperwork to the Second Injury Fund cannot be reasonably viewed as a judicial process. However, requesting a hearing via a Form 54 clearly initiates a judicial process because the issues will be determined by a Hearing Commissioner, who is a quasi-judicial official subject to the Code of Judicial Conduct. Carrier asserts that it commenced a cause of action when it submitted its Reimbursement Request Form to the Fund. Carrier's assertion is erroneous in light of the prevailing authority. A Reimbursement Request Form is done for the purpose of requesting reimbursement and does not commence a reimbursement cause of action. Carrier's assertion is also contrary to the applicable statute. Citing § 15-3-600, the South Carolina Supreme Court stated that "reimbursement actions must commence within ten years after the cause of action shall have accrued." Id. at 430, 691. A reimbursement cause of action is not commenced by submitting a Reimbursement Request Form to the Fund, but rather it is commenced by the filing of a Form 54 Request for Hearing to the Judicial Department of the South Carolina Worker's Compensation Commission with a copy to the Fund. See Regulation 67-208.

Carrier relies on Workers' Compensation Commission Regulation 67-206 to support its reimbursement claim. However, Regulation 67-206 does not supersede the South Carolina Supreme Court's recent ruling. Even if we assume arguendo that Regulation 67-206 generally applies in this instance, its application is not appropriate on these specific facts for several reasons. First, Regulation 67-206 applies to the underlying issues of compensability between the employee and the employer via the Forms 50 and 51. Regulation 67-206 does not address Forms 54 and 55 reimbursement issues. Moreover, Regulation 67-206 does not address statute of limitation issues. Regulation 67-206 is inapplicable and does not supersede the South Carolina Supreme Court's interpretation and application of S.C. Code Ann. §15-3-600 to reimbursement cases. The Hearing Commissioner's decision must be affirmed.

CONCLUSION

The Fund requests that the Hearing Commissioner's Decision be affirmed as supported by substantial evidence in the record.

Respectfully submitted,

By: 

Latonya Dilligard Edwards, Esquire
Dilligard Edwards, LLC
3790 Fernandina Road Suite 103
Columbia, South Carolina 29210
(803) 750-2214

September 25, 2012
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

CERTIFICATE OF SERVICE

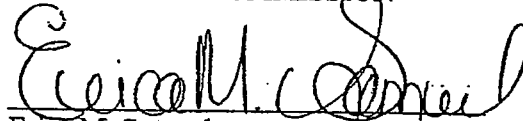
The undersigned employee of Dilligard Edwards, LLC, 3790 Fernandina Road, Suite 103, Columbia, South Carolina 29210, does hereby certify that she has served the following named individual(s) with a copy of the pleading indicated below by mailing a copy of the same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Kristen L. Barr, Esquire
Trask & Howell, LLC
Post Office Box 2167
Mount Pleasant, South Carolina 29465

PLEADING:

S.C. SECOND INJURY FUND'S RESPONDENT'S BRIEF
TO THE FULL COMMISSION


Erica M. Samuel

September 25, 2012

Columbia, South Carolina

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 9613486; SIF No. 51595;
Carrier File # 36516
Carrier Code #
Employer FEIN

Joan Barra Claimant's Name		SSN	Charleston County Employer's Name	
Address		City	State	Zip
Home Phone		958-4271 Work Phone	4050 Bridge View Drive, Suite 400 North Charleston, SC 29405	
Kirsten L. Barr Preparer's Name		(843) 881-4228 Phone #		
S. C. Counties Workers' Compensation Trust Insurance Carrier				

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: April 30, 1996

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ms. Virginia Crocker, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715 and Latonya Dilligard Edwards, Esq., Dilligard Edwards, LLC, 3790 Fernandina Road, Suite 103, Columbia, SC 29210

on the 10th day of July, 2012 by ☒ first class mail; ☐ personal service; ☒ certified mail.

Kirsten L. Barr
Preparer's Signature
Attorney for Defendants
Title
Date July 10, 2012

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Joan Barra v. Charleston County

W.C.C. File No: 9613486; SIF No. 51595; Trial Court No.: 2009-CP-10-003334

Carrier File No: 36516

Date of Accident: April 30, 1996

Attachment to Form 30

1. The Hearing Commissioner's finding that the Carrier gave notice and the cause of action for reimbursement began to accrue on February 18, 1997, as this finding is arbitrary, capricious, internally inconsistent, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.
2. The Hearing Commissioner's "finding of fact" that the "reimbursement cause of action is commenced when Carrier [sic] files its Form 54 Request for Hearing is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, and is otherwise impermissibly vague.
3. The Hearing Commissioner's "finding of fact" that the "reimbursement cause of action accrued on July 31, 2007 when Carrier filed its Form 54 Request for Hearing" Hearing is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, internally inconsistent with the other "findings," and is otherwise impermissibly vague.
4. The Hearing Commissioner's "finding of fact" that "Carrier has not met the requirements of S.C. Code Ann. § 15-3-600 is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, and is otherwise impermissibly vague.
5. The Hearing Commissioner's "finding of fact" that Carrier has not met the requirements of S.C. Code Ann. § 15-3-600 because its reimbursement cause of action was not commenced until after the ten (10) year statute of limitations expired is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, internally inconsistent with the other "findings," and is otherwise impermissibly vague.
6. The Hearing Commissioner erred as a matter of law in concluding that the Defendants failed to timely file its claim, as this conclusion is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, and is otherwise impermissibly vague.
7. The Hearing Commissioner erred as a matter of law in concluding that the Defendants did not meet all requirements for reimbursement, as this conclusion is arbitrary, capricious, contrary to the greater weight of the evidence, contrary to the applicable law, and is otherwise impermissibly vague.
8. The Hearing Commissioner erred in failing to find and conclude that the Defendants met all requirements of the South Carolina Workers' Compensation Act for reimbursement from the Second Injury Fund.

KMB

9. The Hearing Commissioner erred in failing to find and conclude that the Defendants timely filed a claim for reimbursement against the Second Injury Fund.
10. The Hearing Commissioner erred in failing to find and conclude that the claim is not barred by any statute of limitations.
11. The Hearing Commissioner erred in applying the statute of limitations for civil actions in this administrative claim for reimbursement.
12. The Hearing Commissioner erred in failing to make any findings or conclusions with regard to the estoppel argument raised by the Defendants.
13. The Hearing Commissioner erred in failing to find and conclude that the Second Injury Fund should be estopped to deny this claim based upon the statute of limitations and the overwhelming record regarding the SIF's conduct in actively negotiating this claim.
14. The Hearing Commissioner erred in failing to find and conclude that the statute of limitations in a workers' compensation claim, including a reimbursement claim against the Second Injury Fund, is tolled by the filing of a claim for reimbursement.
15. The Hearing Commissioner erred in failing to find and conclude that it is not necessary to request a hearing to toll the statute of limitations.
16. The Hearing Commissioner erred in failing to make any finding or conclusion with respect to when or how the statute of limitations was tolled in this case.
17. The Hearing Commissioner erred as a matter of law in denying and dismissing the claim for reimbursement with prejudice.

KLB

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

SC Association of Counties,

Carrier/Respondent,

v.

South Carolina Second Injury
Fund,

Appellant,

In Re: Joan Barra,

Employee/Claimant,

v.

Charleston County Risk
Management

Employer.]

SCWCC NO. 9613486

SCSIF NO. 51595

LEGAL MEMORANDUM
OF THE SC SECOND INJURY FUND

STATEMENT OF THE CASE

This is an appeal by the South Carolina Second Injury Fund (the "Fund") from an award of partial reimbursement under South Carolina Code Ann. §42-9-400. Employer, Charleston County Risk Management, and Carrier, South Carolina Association of Counties (collectively "Employer/Carrier"), allege that they incurred increased liability for medical costs and disability when their employee, Joan Barra ("Claimant"), sustained a work injury on April 30, 1996, that either aggravated or combined with her preexisting arthritis, in the form of cervical stenosis and lumbar degenerative spondylolisthesis. The Fund denied the claim was reimbursable, arguing that the claim was not timely filed pursuant to S.C. Code Ann. §15-3-600. The Fund also argued that Claimant's preexisting condition was not serious enough to be a hindrance or

obstacle to her employment and did not substantially increase Employer/Carrier's liability for medical costs and disability.

Commissioner Susan S. Barden held a hearing on July 17, 2008, in North Charleston, South Carolina. Commissioner Barden's Decision and Order, filed on November 4, 2008, found the claim reimbursable. Commissioner Barden's decision was affirmed by the Full Commission and the Second Injury Fund appealed. The Fund subsequently requested a stay of the Circuit Court proceedings in 2009 because the issue was being reviewed by the South Carolina Supreme Court in its original jurisdiction. After the Supreme Court ruled that S.C. Code Ann. § 15-3-600 applied to reimbursement cases, this case was remanded to the South Carolina Workers' Compensation Commission by consent of the parties.

ARGUMENT

I. CARRIER'S REQUEST TO ARGUE AGAINST PRECEDENT SHOULD BE DENIED.

In its Prehearing Brief, Carrier requests permission to argue against precedent and maintain that S.C. Code Ann. § 15-3-600 is inapplicable to administrative claims before the South Carolina Workers' Compensation Commission. See Carrier's Prehearing Brief n.6. The Fund respectfully requests that the Commissioner deny Carrier's request and dismiss its reimbursement claim pursuant to Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010), which held that S.C. Code Ann. § 15-3-600 applied to reimbursement cases and that Carrier is barred from reimbursement if a Form 54 Request for Hearing is not filed within ten (10) years of providing notice to the Fund. Id.

II. THE PREVAILING CASE LAW INSTRUCTS THAT A REIMBURSEMENT CAUSE OF ACTION IS COMMENCED WHEN CARRIER FILES A FORM 54 REQUEST FOR HEARING.

In Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, the Fund argued that the ten (10) year statute of limitations period applied to reimbursement cases and that the reimbursement cause of action accrued on the Claimant's date of injury and ended when a Carrier filed its Form 54 Request for Hearing. 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010). The South Carolina Supreme Court held that the ten (10) year statute applied to reimbursement cases, but that the reimbursement cause of action accrued on the date Carrier placed the Fund on notice of a potential claim for reimbursement per S.C. Code Ann. § 42-9-400(f). Id.

In its holding that the ten year statute of limitations in S.C. Code Ann. § 15-3-600 applies to reimbursement cases, the Court indicates "[t]he result in this case of accrual beginning when notice is provided is that Great American's claim is the only one that is not precluded by the running of the ten year statute of limitations." Id. at fn.3. Here, Great American was the only Carrier who had filed a Form 54 Request for Hearing within ten (10) years of providing notice to the Fund. The other carriers involved in the case failed to file a Form 54 Request for Hearing within ten years of providing notice to the Fund and their reimbursement causes of action were time barred because they failed to do so.

III. A REIMBURSEMENT CAUSE OF ACTION IS COMMENCED WHEN CARRIER FILES ITS FORM 54 REQUEST FOR HEARING.

Carrier asserts that it filed a claim for reimbursement when it submitted its Reimbursement Request Form to the Fund. Carrier's assertion misses the point. The issue is not when Carrier filed a claim with the Fund, but rather, when its reimbursement cause of action was commenced. A Reimbursement Request Form forwarded to the Fund is for the purpose of

requesting reimbursement and does not commence a reimbursement cause of action. Carrier's assertion is also contrary to the applicable statute. Citing § 15-3-600, the South Carolina Supreme Court stated that "reimbursement actions must commence within ten years after the cause of action shall have accrued." *Id.* at 430, 691. A reimbursement cause of action is not commenced by submitting a Reimbursement Request Form and related documents to the Fund, but rather it is commenced by the filing of a Form 54 Request for Hearing to the Judicial Department of the South Carolina Worker's Compensation Commission with a copy to the Fund. See Regulation 67-208.

Carrier relies on Workers' Compensation Commission Regulation 67-206 in asserting that Carrier meets the statute of limitations outlined in S.C. Code Ann. §15-3-600. Carrier's position is flawed in various respects. First, Regulation 67-206 addresses filing a claim not commencing a cause of action. Furthermore, Regulation 67-206 applies to the underlying issues of compensability between the employee and the employer via the Forms 50 and 51. In addition, Regulation 67-206 does not address Forms 54 and 55 reimbursement issues. Moreover, Regulation 67-206 does not address statute of limitation issues. Finally, workers compensation regulations are subordinate to a decision of the state's highest court on this issue. Carrier's reimbursement claim is barred by the Supreme Court decision in Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, and, as such, Carrier is not entitled to reimbursement.

IV. CARRIER'S RELIANCE ON HAMILTON V. BOB BENNETT IS MISPLACED.

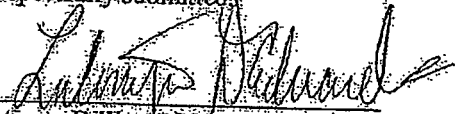
Carrier relies on Hamilton v. Bob Bennett Ford, 336 S.C. 72, 78, 518 S.E.2d 599, 602 (Ct. App. 1999), for its proposition that submitting documents to the Fund constitutes filing a claim and hence, complies with the ten (10) year statute of limitations outlined in S.C. Code Ann. §15-3-600. See Carrier's Memorandum of Law p.3, fn.2. The Fund begs to differ. First,

the Fund reiterates that the inquiry is "when is the cause of action commenced," not "when is a claim filed." Further, Hamilton applies to the statute of limitation regarding underlying claims pursuant to S.C. Code Ann. §42-15-40. Finally, Hamilton has been modified in part (339 S.C. 68, 528 S.E.2d 667 (S.C. 2000)) and reversed in part (394 S.C. 185, 714 S.E.2d 547 (S.C. 2011)).

CONCLUSION

For reasons cited herein, the Fund requests denial of Carrier's reimbursement claim based on Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

Respectfully submitted,



Latonya Dilligard Edwards
Dilligard Edwards, LLC
3790 Fernandina Road Suite 103
Columbia, South Carolina 29210
(803) 750-2214

May 7, 2012
Columbia, South Carolina

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 9613486; SIF No. 51595
Carrier File # 36516
Carrier Code #
Employer FEIN

Joan Barra		Charleston County	
Claimant's Name	SSN	Employer's Name	
		4050 Bridge View Drive, Suite	
		400	North Charleston, SC 29405
Address	City / State / Zip	Address	City / State / Zip
	958-4271	S. C. Counties Workers' Compensation Trust	
Home Phone	Work Phone	Insurance Carrier	
Kirsten L. Barr		(843) 881-4228	
Preparer's Name		Phone #	

☒ Injury by Accident ☐ Occupational Disease ☐ Both Injury by Accident and Disease ☐ Other

1. Date of accident April 30, 1996 2. AWW: \$ Comp. Rate: \$
3. Type of injury and body part(s): Back (aggravation of a pre-existing condition)

4. Facts in controversy: The Commission previously determined that the Defendants are entitled to reimbursement from the SIF under S.C. Code Ann. § 42-9-400 and that the claim for reimbursement was timely filed under the Act. The SIF appealed to the Circuit Court, arguing that S.C. Code Ann. § 15-3-600, the statute of limitations for "civil actions" applied. Because the Commission previously rejected this argument prior to the Supreme Court's decision in *Transportation Insurance*, the Circuit Court has remanded the claim to the Commission to make findings of fact and conclusions of law regarding whether the claim for reimbursement was timely commenced under S.C. Code § 15-3-600. The Defendants respectfully contend that they properly "commenced" their claim for reimbursement against the SIF within 10 years after placing the SIF on notice of their claim by filing detailed claim forms and medical records containing all information required by S.C. Code Reg. 67-206(c). Thereafter, the SIF actively negotiated the reimbursement claim for years, requesting additional information that was supplied by the Defendants. As such, the Defendants believe the SIF should be estopped by their conduct to assert the statute of limitations for civil actions as a defense to this administrative claim for reimbursement.

5. Legal issues involved: Whether the Defendants commenced their reimbursement claim against the Fund within 10 years after placing the SIF on notice of their claim by meeting the requirements of S.C. Code Ann. § 42-9-400(f) and S.C. Code Reg. 67-206(c). Whether the SIF should be estopped to deny the Defendants's reimbursement claim.

6. Unusual problems: Defendants respectfully wish to argue against precedent and, therefore, maintain their denial that S.C. Code Ann. § 15-3-600 is inapplicable to administrative claims for reimbursement before the Workers' Compensation Commission. Instead, that section applies solely to "civil actions" which are created by filing a summons and complaint with the Clerk of the Court of Common Pleas.

7. Witnesses (designate if expert*): None at this time.

8. Exhibits: See attached Notice of Submissions; Commission's file

9. Medical evidence: See attached Notice of Submissions; Commission's file

10. Name, address, and specialty, if any, of the treating physician: N/A

11. Impairment rating(s); body part(s); physician and date of opinion: N/A

SIGNATURE

Kristen L. Ban

DATE OF HEARING: April 10, 2012

TIME OF HEARING: 10:30 a.m.

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.



Employer/Carrier Charleston County v. SC Association of Counties SIF

Defendant's Name: S.C. Second Injury Fund

(In Re: Joan Barra v. Charleston County)

Address: 100 Executive Center Drive, Suite 101

Address: 4 Courthouse Sq.

City: Columbia State: SC Zip: 29210

City: Charleston State: SC Zip: 29401

Carrier: SC Association of Counties SIF

Employer Phone: _____

Preparer's Name: Latonya Dilligard Edwards

Preparer's Phone #: (803) 750-2214

A claim for workers' compensation benefits is made based on the following grounds:

Injury ☐ Illness ☐ Repetitive Trauma ☒ Both Injury by Accident and Disease

1. Compensation Rate: \$221.34 2. AWW: \$332.00 Date of Injury: April 30, 1996

3. Type of Injury and body part(s): Injury to neck, low back, and right arm per Form 54.

4. Facts in controversy: None.

5. Legal issues involved: The Fund asserts that this claim is barred by the Supreme Court's decision in the Transportation case because Carrier did not file a Form 54 within ten (10) years of providing notice to the Fund. The Fund asserts that a reimbursement cause of action is commenced when Carrier files a Form 54.

6. Unusual aspects: This case was stayed in the Circuit Court pending the Supreme Court's decision in Transportation Insur. Co. & Flagstar Corp. v. SCSIF, 389 S.C. 422 (S.C. 2010). The case was remanded back to the Commission in 2011 by consent of the parties.

7. Witnesses (designate if expert):* None.

8. Exhibits: The Fund will object to any of Carrier's APA submissions that were not submitted by June 30, 2011 per 42-7-320(B). The Fund reserves the right to add and amend upon receipt of Carrier's APA submissions.

9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance): Medical records of Dr. J.C. McIntosh, Dr. John Glaser and Dr. Donald Johnson; deposition of Dr. George Khoury. The Fund will object to any of Carrier's APA submissions that were not submitted by June 30, 2011 per 42-7-320(B). The Fund reserves the right to add and amend upon receipt of Carrier's APA submissions.

A. Name, address, and specialty, if any, of the treating physician: _____

B. Impairment rating(s); body part(s); physician and date of opinion: Unknown

12. I am amending my Form 50/51 in the following manner: N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: _____

Email: latonya@dilligardwards.com

Date of hearing: April 10, 2012

Time needed for hearing: _____

On behalf of ☐ Claimant ☐ Employer ☒ SC Second Injury Fund

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Rev. 9/07

58

PRE-HEARING BRIEF

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

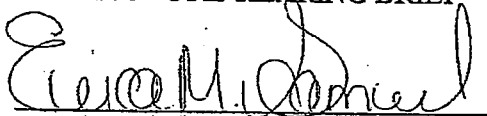
CERTIFICATE OF SERVICE

The undersigned employee of Dilligard Edwards, LLC, 3790 Fernandina Road, Suite 103, Columbia, South Carolina 29210, does hereby certify that she has served the following named individual(s) with a copy of the pleading indicated below by mailing a copy of the same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

COUNSEL SERVED:

Kristen L. Barr, Esquire
Trask & Howell, LLC
Post Office Box 2167
Mount Pleasant, South Carolina 29465

PLEADING: FORM 58 – PRE-HEARING BRIEF


Erica M. Samuel

March 30, 2012

Columbia, South Carolina

RE: Joan Barra
DA: 4/30/96
SS No: 134-30-8268

1 Did the condition/conditions pre-exist the injury of 4/30/96?
A. cervical stenosis Yes ☒ No ☐

2 Did the injury of 4/30/96 aggravate or combine with the pre-existing condition(s)?
A. cervical stenosis Yes ☒ No ☐

3 Is this condition considered arthritic in nature?
A. cervical stenosis Yes ☒ No ☐

Did the aggravation or combination of the below condition(s) result in:

1. Substantially greater lost time from work?
A. cervical stenosis Yes ☒ No ☐

2. Substantially greater permanent disability?
A. cervical stenosis Yes ☒ No ☐

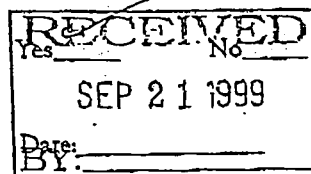
3. Substantially greater medical costs?
A. cervical stenosis Yes ☒ No ☐

Are any of these condition(s) considered permanent and serious enough to constitute a hindrance or obstacle to employment?

A. cervical stenosis

Signature: _____

Dr. Khoury





April 7, 2003

George Khoury, MD
125 Doughty Street, Suite 330
Charleston, S. C. 29403

Claimant: Joan Barra
Loss Date: 04-30-96
SSN: [REDACTED]

Dear Dr. Khoury,

We previously mailed a questionnaire to you regarding the above patient for which you completed and returned on 09-21-99. I have enclosed a copy of that response for your reference.

The Second Injury Fund has recently changed their requirements and I must now ask you for your opinion once again. Under question number three (3), you indicated that cervical stenosis is considered to be an "arthritic condition". Could you please provide me with an explanation as to how cervical stenosis is considered to be arthritis in this case?

*Chronic degenerative arthritis due to
injury with activity*

I apologize for requesting this of you. However, I need this information to conclude my case with the Second Injury Fund. Thank you for your assistance in this matter and please feel free to call me with any questions at (803) 264-5678.

Sincerely Yours,

Diane Ray

Diane Ray
Recovery Analyst II

CHARLESTON NEUROSURGICAL ASSOCIATES, L.L.C.

STEPHEN E. RAWE, M.D., Ph. D.
GEORGE H. KHOURY, M.D.
BRIAN G. CUDDY, M.D.
CINDY W. ANDERSON, R.N., A.N.P.

April 26, 2005

Companion Property & Casualty Group
ATTN: Deborah D. Vaughn
P.O. Box 100165
Columbia, SC 29202

RE: Joan Barra

Dear Ms. Vaughn:

I am writing in response to your letter dated April 14, 2005 regarding Joan Barra. Cervical stenosis is not a condition which results from an accident. However, it is a condition which develops over a number of years. Therefore, I believe that her condition of cervical stenosis pre-existed her injury.

Thank you for your concern regarding Ms. Barra.

Sincerely,


George H. Khoury, M.D.

GHK/smt-42

9275 B MEDICAL PLAZA DRIVE
N. CHARLESTON, SC 29406
(843) 553-9300

143 HENRY TECKLENBURG DR., SUITE 220
CHARLESTON, SC 29414
(843) 723-8823

1341 OLD GEORGETOWN RD., SUITE A
MT. PLEASANT, SC 29484
(843) 856-5722

Re: Claimant: Joan Barra
Date of Accident: 4/30/96
SS No.: 134-30-8268
Recovery Adjuster: Deborah D. Vaughn

1. Did the condition/conditions pre-exist the injury of 4/30/96?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

2. Did the injury of 4/30/96 aggravate or combine with the pre-existing condition(s)?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

3. Were any of these conditions serious and permanent enough to constitute a hindrance or obstacle to employment before the injury?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

4. Did the aggravation or combination of the below condition(s) result in:

A. Substantially greater lost time from work?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

B. Substantially greater permanent disability?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

C. Substantially increase the medical costs?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

5. As it relates to this patient, is the following condition/conditions considered arthritis?

- a. Grade I Spondylolisthesis
b. Facet hypertrophy

Yes ☒ No ☐
Yes ☒ No ☐

Signature: _____

Don R. Johnson, II, M.D.

Date: _____

1/21/05



SPINAL SURGERY
Donald R. Johnson, II, MD
Steven C. Poletti, MD
Thomas F. Roush, MD
Danny Butler, PA-C
Justin Swain, PA-C

CONSERVATIVE SPINE CARE
Leonard E. Forrest, MD
John F. Johnson, MD
G. Robert Richardson III, MD

PAIN MANAGEMENT
Mark D. Netherton, MD
Virginia Blease, PA-C

MAIN OFFICE
1106 Chuck Dawley Blvd., Suite 200
Mt. Pleasant, SC 29464

(843) 849-1551
Fax 884-0629
1-800-432-0274

1941 SAVAGE RD., STE. 100E
CHARLESTON, SC 29407
(843) 763-2720

March 7, 2008

Kirsten Barr, Esquire
P.O. Box 2167
Mt. Pleasant, SC 29465

RE: Joan Barra
Patient #32192

Dear Ms. Barr:

I am writing in regards to patient Joan Barra.

Ms. Barra's x-rays and imaging studies have shown that she did have a pre-existing degenerative condition with facet hypertrophy and arthritis. The type of work that she did was quite strenuous involving lifting, carrying, and riding through different terrains. I do think regardless of any specific injury that with time her arthritic condition would have prevented her from continuing to work. This by its definition therefore is a pre-existing condition, which was exacerbated by her work-related injury necessitating surgery with Dr. George Khoury.

If you have any further questions in this regard, don't hesitate to contact me.

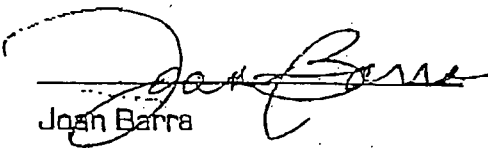
Sincerely,

Donald R. Johnson II, MD
DRJ/dmp

To whom it may concern,

I, Joan Barra, do certify that I ~~was~~/was not aware prior to my injury on 4/30/96 that I had a condition known as cervical stenosis.

I, Joan Barra, do certify that I ~~was~~/was not aware prior to my injury on 4/30/96 that I had a condition known as arthritis. If so what body part? N/A


Joan Barra

10/19/99
Date

Witness/Attorney

Date

To Whom It May Concern:

I, JOAN BARRA, do certify that I was / was not aware prior to my injury on 4/30/1996 that I had a condition known as GRADE I SPONDYLOLISTHESIS. (*cracked vertebrae*)

I, JOAN BARRA, do certify that I was / was not aware prior to my injury on 4/30/1996 that I had a condition known as FACET HYPERTROPHY. (*bone spurs*)

If you answered, "was aware" to any of the above, please state which condition, when you became aware of this condition, and if you told your employer about this before your injury of 4/30/1996, and whom you told about the condition.

Joan Barra
JOAN BARRA

4-28-05
Date

Witness

Date

****Please circle the appropriate answers in each statement and sign. Thank you.**

The South Carolina Second Injury Fund



KOGER CENTER
WINTHROP BUILDING, SUITE 119
220 EXECUTIVE CENTER DRIVE
COLUMBIA, S.C. 29210
01/10/2000

DOUGLAS P. CROSSMAN
DIRECTOR

(803) 798-2722
FAX: (803) 798-5290

HAROLD E. TRASK, ESQ.
SINKLER & BOYD
PO BOX 340
CHARLESTON, SC 29402-0340

RE: JOAN BARRA VS. CHARLESTON CTY.

SIF NUMBER: 51595
WCC NUMBER: 9613486

CARRIER CLAIM NUMBER: 96004027

Dear HAROLD E. TRASK, ESQ.:

Thank you for your letter received 02/25/1997 .

Enclosed is a Notice of Claim Form. Please complete and return it and all requested documents as soon as possible.

Please note that during the course of our investigation, we may be in contact with the employer. Should you have any questions or objections, please advise accordingly.

The above captioned case is pending investigation.

Sincerely,

PETE J. CALAMAS
SR. CLAIMS ANALYST
Telephone Extension: 115

NOTICE OF POSSIBLE
SECOND INJURY FUND
CLAIM

W.C.C. No. 9613486
Carrier Code 00930
Employer Code 576001289
Carrier File No. 96004027
S.I.F. No. 51595

Employee: **JOAN BARRA**

Social Security No. _____

Address: _____

Date of Accident: **04/30/96**

Employer: **CHARLESTON CTY.**

Carrier: **SC ASSOCIATION OF COUNTIES SIF**

Location: _____

Address: _____

Employee's Attorney: _____

Carrier's Attorney: _____

Address: _____

Address: _____

SUBSEQUENT INJURY:

Nature of Second Injury: _____

Current Status: _____

Treating Physicians: _____

Average Weekly Wage: _____

Compensation Rate: _____

Date of First Temporary Total: _____

Date Returned to Work: _____

Weeks of All Benefits Paid: _____

Medical Costs to Date: _____

NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)

☐ Listed Impairment (1-33): _____

☐ Other (34 a or b): _____

KNOWLEDGE REQUIREMENT:

- ☐ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.)
- ☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, pre-employment physical, etc.)
- ☐ Employee was unaware of existence of pre-existing condition (Please attach affidavit)

THIS NOTICE MUST BE PROVIDED TO
THE WORKERS' COMPENSATION COMMISSION

(1) Attach and submit medical report
(2) Form 10-A
(3) Form 10-B
(4) Current Report
(5) Any other documents

Signature: _____
Mailing Address: _____

Date of Claim: _____

In support of such notice and without precluding the right to establish further facts as may be developed, the
pending allegations are set forth subject to proof at a Hearing.

PLEASE RETURN THIS FORM AND ATTACHMENTS WITHIN 14 DAYS OF RECEIPT. SEND A COPY TO THE
WORKERS' COMPENSATION COMMISSION.



Companion Property & Casualty Group

Companion Property & Casualty
Insurance Company

Companion Commercial
Insurance Company

March 2, 2004

The South Carolina Second Injury Fund
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

Re: Joan Barra for Charleston County
Date of Accident: 4/30/96
SIF #: 51595
WCC #: 96004027

Dear Sir or Madam:

Please find enclosed the completed claim form, and the supporting documents for the Second Injury Fund in reference to the above captioned workers' compensation claim.

If I can be of any further assistance, please advise.

Very truly yours,

Deborah D. Vaughn
Claims Adjuster

(803) 264-6794

Enclosures

P.O. Box 100165 • Columbia, South Carolina 29202-3165 • (803) 735-0672 • (800) 845-2724
Security, Trust and Service. Now and for the Future.
Rated "A" by A.M. Best Company

NOTICE OF POSSIBLE
SECOND INJURY FUND
CLAIMW.C.C. No. 9613486Carrier Code 00930Employer Code 576001289Carrier File No. 96004027S.I.F. No. 51595Employee: JOAN RABBA

Social Security No. _____

Address: _____

Date of Accident: 04/30/96Employer: CHARLESTON CTY.
4 Courthouse Sq., Rm 203
Location: SC 29401Carrier: SC ASSOCIATION OF COUNTIES SIF
Companion Property + Casualty / TPA
Address: P.O. Box 100165
Columbia, SC 29202-3165Employee's Attorney: David T. Pearlman
P.O. Box 9
Address: Charleston, SC 29402Carrier's Attorney: Harold E. Trask
P.O. Box 2167
Address: Mt. Pleasant, SC 29465SUBSEQUENT INJURY:

Nature of Second Injury:

The claimant stepped back falling over a
concrete block.Current Status: This claim has been settled on a
clincher.Treating Physicians: George H. Khoury, M.D.Average Weekly Wage: \$ 332.00Date of First Temporary Total: 5/01/96

Weeks of All Benefits Paid: _____

Compensation Rate: \$221.34Date Returned to Work: N/AMedical Costs to Date: \$51,793.46NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)☒ Listed Impairment (1-33):Cervical Stenosis (Arthritis)☐ Other (34 a or b): _____KNOWLEDGE REQUIREMENT:

- ☐ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.)
- ☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, pre-employment physical, etc.)
- ☒ Employee was unaware of existence of pre-existing condition (Please attach affidavit)

Signature: _____

Mailing Address: _____

Dorothy D. Vaughan
Companion Property + Casualty
P.O. Box 100165
Columbia, SCDate of Claim: 3/02/04

In support of such notice and without precluding the right to establish further facts as may be developed, the preceding allegations are set forth subject to proof at a Hearing.

PLEASE RETURN THIS FORM AND ATTACHMENTS WITHIN 14 DAYS OF RECEIPT. SEND A COPY TO THE WORKERS' COMPENSATION COMMISSION.

The South Carolina Second Injury Fund



(803) 798-2722
FAX: (803) 798-6290

WINTHROP BUILDING, SUITE 119
220 EXECUTIVE CENTER DRIVE
COLUMBIA, S.C. 29210

November 8, 2004

DOUGLAS P. CROSSMAN
DIRECTOR

Ms. Debbie Vaughn
Companion P & C
P. O. Box 100165
Columbia, SC 29202

RE: Joan Barra vs. Charleston County
SIF# 51595 WCC# 9613486

Dear Debbie:

I am in receipt of your letter dated November 1, 2004. According to my file notes it appears I had previously spoken to Brenda Reese on the above captioned case and indicated what additional information we need. My notes reflect I spoke to you on or about March 17, 2004. I will need to know what is the basis for Companion paying the cervical spine portion of this claim. It appears the original injury was to the lumbar spine. I will also need to know the basis for Dr. Khoury's "Yes" response to the spinal stenosis preexisting. According to the narratives this condition was not diagnosed until November 1997, which is approximately a year and a half following the subsequent injury. Are you pursuing the lumbar spine portion of this claim? If so I will need knowledge and the doctors written for the lumbar spine. I will also need a settlement explanation.

If you have any questions please do not hesitate to call.

Sincerely,

Pete Calamas
Sr. Claims Analyst

PC/gs

Workers' Compensation Uninsured Employers' Fund

The South Carolina Second Injury Fund



WILLIAM E. GUNN
INTERIM DIRECTOR

WINTHROP BUILDING, SUITE 119
220 EXECUTIVE CENTER DRIVE
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

May 2, 2006

Harold E. Trask
Trask & Howell
Post Office Box 2167
Mt. Pleasant, S.C. 29465

RE: Joan Barra vs. Charleston County
SIF# 51595 WCC# 9613486

Dear Son:

Thank you for your recent phone call in reference to the above claim. I have reviewed this file in great detail and felt I should write this letter versus calling you since I will be retiring on June 29, 2006.

This initial injury appears to be to the lumbar spine. An MRI done in November of 1996 showed Grade I degenerative spondylolisthesis at L4-5 and significant facet hypertrophy. I don't see where the carrier obtained knowledge or doctor's information on these conditions.

The carrier wrote Dr. Khoury for cervical stenosis and obtained knowledge for this condition. Dr. Khoury also said the cervical stenosis was arthritis.

The first mention of any cervical problems was in August of 1997, after the claimant slipped off a truck and broke some ribs. The Second Injury Fund claims representative wrote the carrier and requested an explanation of how the cervical spine became involved when it appeared to be from a new injury which happened in June of 1997.

We also needed to know why no one had pursued the original lumbar claim.

To bring this to a conclusion we need the following cleared up:

1. How is the cervical spine related to the April 30, 1996 injury versus a new injury in June of 1997?

Harold E. Trask
May 2, 2006
Page Two

2. Is the carrier pursuing the lumbar spine?
3. If #2 is yes, we need doctors written and knowledge obtained.
4. If #2 is no, how much of the clincher was for the lumbar spine versus the cervical spine?

Thank you for your time. Call if you have any further questions.

Sincerely,



Gail Deal
Director of Claims
Extension 122

GD/dgc

96004027

JOAN BARRA

MAY 23, 1996

HISTORY: Ms. Barra is a pleasant 56-year-old retired female who presents for the evaluation of an occult sacral fracture. Ms. Barra works for the mosquito abatement program in Charleston County. On April 30th while filling the truck with gas, she slipped backwards over a concrete block landing on her tail bone. She did not note much pain at the time of the injury. She was able to walk around and resume some of her normal activities but later in the day while attempting to rise from a sitting position she noted intense pain in the lower lumbar and sacral area. She states the pain did radiate into the buttocks. She was sent to Work Site Partners by her supervisor for initial evaluation. She was placed on bed rest and nonsteroidal medications. She continued to have pain and ultimately a bone scan showed the presence of an occult sacral fracture. She states her pain has diminished over the ensuing weeks but she has some difficulty doing lifting or bending at the waist without pain. Her job is very strenuous and involves climbing in and out of several different types of vehicles, carrying objects, and lots of field work. She apparently does very little desk work with her job.

She denies any prior injury to this area in her back. She denies any radicular type symptoms. There has been no change in her bowel or bladder habits.

PHYSICAL EXAMINATION: Shows a well-developed, well-nourished female in no apparent distress. She does have mild tenderness over the sacrum and in the paraspinal musculature. Her muscular and neurologic exams are normal. She has some decreased flexibility of the lumbar spine.

X-RAYS: Her films were not reviewed but the report issued by Roper showed the presence of an occult fracture.

IMPRESSION: Sacral fracture.

PLAN: These types of fractures usually take approximately four to six weeks to heal. She is approximately three weeks out from her fracture at this time. I would recommend that she continue to walk and participate in activities as tolerated. I don't think she is quite ready to climb in and out of trucks or helicopters at this time. I do think she will be able to return to work by the first of June. She will continue the use of nonsteroidal medications as needed. We will see her for re-evaluation in three weeks.

J.C. McIntosh, Jr.
J.C. MCINTOSH, JR., M.D.
JCMjr/slm DICTATED BUT NOT READ.

cc: Work Site Partners

15

[Signature]

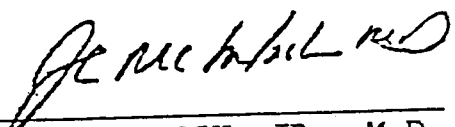
JOAN BARRA

JUNE 13, 1996

HISTORY: Ms. Barra returns for follow-up today. She is making slow progress from the sacral fracture. She has tried a couple of times to return to work but has had a difficult time doing so. She describes pain in the lower lumbar region which radiates out to the side.

She also describes a dull toothache type feeling which radiates to her head. She states she has headaches when she gets up in the morning. I am sure of any connection of this with her sacral fracture. There are no reports of radicular symptoms, numbness, tingling in the lower extremities, nor bowel or bladder incontinence. There is no sign of nerve root impingement.

PLAN: She will continue on range of motion and strengthening exercises for the lumbar spine. We will allow her to return to work in two weeks. We will see her for re-evaluation in three weeks.


J.C. MCINTOSH, JR., M.D.

JCMjr/slm

Dictated but not read.

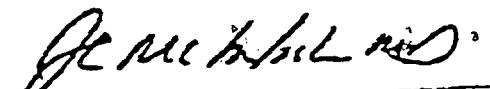
JOAN BARRA

JULY 3, 1996

HISTORY: Ms. Barra returns for follow-up today. She continues to have vague feelings of a throbbing type sensation in the sacrum. Her pain seems to be in the distribution of the lower lumbar area. She has been unable to do any work around the house because of the discomfort.

PHYSICAL EXAMINATION: Reveals that she has no tenderness over the sacrum.

PLAN: She is over eight weeks out from the injury I cannot understand why she is unable to do her work. We will obtain an MRI scan to rule out the presence of a disc although this is a very atypical presentation for a disc. She does not have any radicular symptoms. We will see her after we have obtained the results of the MRI scan.


J.C. MCINTOSH, JR., M.D.

JCMjr/slm

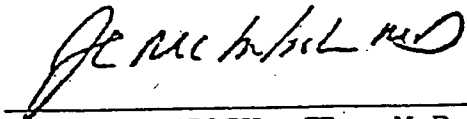
Dictated but not read.

JOAN BARRA

JULY 16, 1996

HISTORY: We went over Ms. Barra's MRI scan which was relatively unremarkable. She ~~did have some facet degeneration which is not unusual for her age.~~ There is no obvious disc herniation or impingement of the nerve roots. She continues to have symptoms overlying the paraspinal muscles.

PLAN: I don't feel I have anything else to offer Ms. Barra at this time. An epidural injection may help her symptoms and I think it is appropriate to refer her to a spine specialist at this time and I have suggested Dr. Don Johnson. We will try to set up therapy through Worksite Partners. She will let me know how things are progressing.


J.C. MCINTOSH, JR., M.D.

JCMjr/slm

Dictated but not read.

18
Sedgwick Rec'd #6 AUG 14

JOAN
030700
/20/96

is is a 56 year old woman who I am seeing at the request of the Worker's Comp. carrier for another opinion regarding her low back pain. She claims to be in generally good health. She is fairly active. She is an inspector for the Mosquito Abatement Program of the county. This apparently involves a fair amount of twisting, lifting, climbing, pushing and pulling. She had a fall in April onto concrete. She had some severe lumbosacral pain on the left side. This resolved during the rest of the day, but when she was sitting in her car at the end of the day, she had recurrence of the pain. She has been in and out of work since then. She has tried to return to work 3 times without success. She saw Dr. MacIntosh and got physical therapy. She saw, initially, the Occupational Health physicians, who had also gotten a bone scan and there was a question of a sacral fracture. She then saw Dr. Johnson and got some more physical therapy. She has had a Medrol-Dosepak, as well as muscle relaxants. These did not help significantly. She denies bowel, bladder, or constitutional symptoms.

past medical history is remarkable only for plantar fasciitis. She is currently on hormone replacements. She does not smoke. She has no allergies. There is no family history for problems such as this. Review of systems is otherwise non-contributory.

On exam, she is a very pleasant, cooperative woman. She has an almost full range of motion of the lumbar spine. Her neurologic status is intact. Straight leg raise does not recreate any pain. She has a positive fabere test and a positive Gaenslen's test. The area of greatest pain seems to be the superior aspect of the left buttock, starting at the SI joint and extending laterally and superiorly.

She brought with her an x-ray of the lumbosacral spine as well as an MRI. To my reading, she has a I degenerative spondylolisthesis at L4-5 with fairly significant facet hypertrophy. I don't see evidence of a sacral fracture. I obtained AP and inlet outlet views of the pelvis today and I still don't see evidence of a sacral fracture.

We talked about things for a while. She, first of all, wanted reassurance that she wouldn't be doing harm if she went back to work and I told her that she most likely would not be, but I could not predict how much pain she was going to have. She also got excellent short term relief from electrical stimulation and physical therapy, so we are trying to get her a home unit to see how this helps. I told her that if she wants to look into other things, it would be quite nebulous and controversial, but it would be something along the lines of facet injections at L4-5, but basically, I wrote a note saying that she can return to work on the 25th of November without restrictions. I told her that if this doesn't work out, then she can call us. Otherwise, I will be seeing her in a month.

John A. Glaser, M.D.
Assistant Professor
Department of Orthopaedics

JAG/pmts:ss

cc: Worker's Comp.
Dr. Don Johnson
Dr. James MacIntosh

Sent by
Foster Moore-Brown RN to:
CR
CLIENT
12/03/96

Sedgwick Health Services

BARRA, JOAN
MUH# 945214
12/18/96

Joan is doing reasonably well. She is working 4 hours a day. She thinks that she can go 4 hours a day with a 25 pound lifting limit and no driving restrictions. She is getting excellent temporary relief from the electrical stimulation unit. Basically, we are going to carry on with things as they are until March. I will see her again then. I told her that if she wants to decrease her restrictions before that, she can call us.

John A. Glaser, M.D.
Assistant Professor
Department of Orthopaedics

JAG/pmts:ss

cc: Sedgwick, Attn: Betty Moore-Brown, RN

Sent by
Betty Moore-Brown RN to:
COL ☒ CR ☐
ATTY ☐ CLIENT ☒
DATE 12/27/96

Sedgwick Re: JAG

DEC 30 1996

BARRA, JOAN
MUH# 945214 -5
01/29/97

Ms. Barra is doing reasonably well. She had some truck modifications and feels she can return to work 8 hours a day. We talked about things and I think it is reasonable for her to return 8 hours a day with a 25 pound lifting limit. We will do this on a permanent basis. She doesn't think there is much else I can do and I agree. I think she may want to purchase the electrical stimulation unit at some point. I think this is reasonable. I will be discharging her from my care at this point. My impression of her impairment rating is that she has a 5% impairment rating according to the AMA Guides to the Evaluation of Permanent Impairment, 4th edition. I believe she fits into DRE Category 2.

John A. Glaser, M.D. #1493
Assistant Professor
Department of Orthopaedics

JAG/pmts:ss

cc: Sedgwick (Attny: Betty Moore-Brown)

Sedgwick Rec'd #3 MAR 26 1997

Carolina Spine Institute

Sedgwick James
Attn: Darlene Frick
PO Box 102110
Columbia SC 29221-5010

BARRA, JOAN
Patient #32192

July 25, 1996

Chief Complaint: Low back pain, midback pain.

History of Present Illness: This patient is a 56-year-old female, kindly referred by Dr. James McIntosh for our evaluation. She is apparently status post a 04/30/96 fall, while pumping gas at the workplace. She fell onto concrete, landing on her back and head. She relates there was a brief loss of consciousness. She did well after her fall and was able to continue with her activities. Sometime thereafter she noted she had severe pain, particularly about the sacral area. She was seen initially at Work Site Partners and then by Dr. McIntosh. She has been through some physical therapy.

There is apparently some question of a coccyx fracture, seen on an x-ray. She now primarily has pain which is axial. This is nonradicular in nature. This occupies the low back musculature and extends into the mid back and even to the base of the neck. She has taken ibuprofen 800mg. per day.

Employment History: She works in the Mosquito Abatement Program for Charleston County. She has not been able to work since 04/30/96. She describes her job as strenuous. She apparently rides through different terrains and does quite a bit of carrying and lifting.

Social History: She does not smoke, but has a 35-pack/year history. She does not drink alcohol.

She has no chronic medical illnesses. Dr. Harold Nicolette is her primary care physician. She is status post carpal tunnel release, tubal ligation, hemorrhoidectomy and appendectomy. She has had six normal deliveries.

Allergies: No known allergies.

Physical Examination: She is diffusely tender along the paralumbar musculature. This is from the lumbar spine, up through the middorsal spine and the base of the neck. She is nontender in the

Carolina Spine Institute

BARRA, JOAN
07/25/96
PAGE TWO

sciatic notches. She has no reflex changes, clonus or long tract findings. She has no sciatic tension signs. She is also diffusely tender in the area of the sacrum.

Review of Past Medical Records: She is accompanied by past medical records from Dr. McIntosh. Apparently there have been some films of the lumbar spine, including the sacrum, with the radiologist's interpretation of a possible occult fracture.

Diagnostic Studies: She is accompanied by a lumbar MRI today, obtained by Dr. McIntosh. I have reviewed this. I do not see any intrinsic, disc, spinal cord, or nerve root pathology.

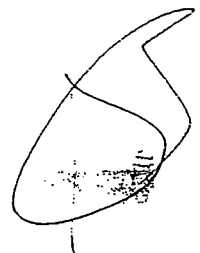
Impression: 1. Severe lumbar strain.
2. Possible occult sacral fracture.

Recommendations: Joan, in my opinion, is in need of physical therapy. Her examination is completely nonradicular. The pains that she has experienced I feel is sure from the long extensor spine muscles. I have given her a referral to physical therapy for a lumbar stabilization home exercise program. I do not think anything more really is indicated and things should resolve with time.

Donald R. Johnson, II, M.D.

cc: South Carolina Worker's Compensation
Sedwick James, Attn: Darlene Frick
James McIntosh, M.D.

DRJII/smt-16
Dictated but not read



Carolina Spine Institute

BARRA, JOAN
Patient #32192

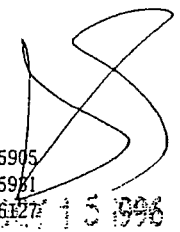
August 27, 1996 Joan returns today, she has been through physical therapy for four weeks. She feels this definitely has helped. She is accompanied by a note from her physical therapist. They are at this point not completely comfortable releasing her. I would like her to progress through therapy for another three weeks or so. At the end of that time she should have a functional capacity evaluation done.

I still feel sure that Joan's problem is muscular in nature, should not require surgery and she should make a recovery at that point, so that we can get her back to work.

Donald R. Johnson, II, M.D.

cc: James McIntosh, M.D.
Sedgwick James, Darlene Frick

DRJII/smt-16
Dictated but not read



15 1996

Calina Spine Institute

Sedgwick James
Attn: Darlene Frick
PO Box 102110
Columbia SC 29221-5010

BARRA, JOAN
Patient #32192

October 9, 1996 Joan returns today, she has finished physical therapy and had a functional capacity evaluation. She is here with her rehabilitation nurse and at this point we would like to get her back to the workplace. We are going to give her limitations in that she cannot lift more than twenty-five pounds at this time. Specifically she has some fifty pound bags at work which she should not lift. She also at this point should not be walking more than one mile at work as this is the most she has demonstrated in therapy that she can do. These limitations I think are temporary, but need to be adhered to so that we can get her back to her regular duties in the future.

There is no further indication for physical therapy or further medical treatment at this point. I feel that she has reached maximum medical improvement. She has sustained primarily a soft tissue injury. Her soft tissue injury was slightly more severe than most. I would note that she has worked hard in physical therapy and on the functional capacity evaluation passed the majority of the validity criteria, letting us know that she is not malingering and is making a full effort. Per the AMA Guides I feel she has sustained an approximate five to ten percent impairment to the spine or to the whole person secondary to this soft tissue injury.

Again, our goal is to get her back to the workplace at this point. I will see her back on an as needed basis.

Donald R. Johnson, II, M.D.

cc: James McIntosh, M.D.
Sedgwick James, Darlene Frick

DRJII/smt-16
Dictated but not read

Sedgwick James OCT 12 1996

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Carolina Spine Institute

BARRA, JOAN
Patient #32192

October 31, 1996 Joan returns today, she apparently only made it about a week and a half back at the workplace. When I last saw her 10/09/96 I placed her at maximum medical improvement and assigned an impairment rating. She has been back at the workplace on light duties, but states that particularly with driving her truck around she has had increasing back pain. Joan has had an MRI, which is clean with no disc pathology. She has additionally had more extensive physical therapy than we usually use, including a functional capacity evaluation. I suspect Joan simply got flared up returning to the workplace.

I am going to place her on a Medrol Dosepak and would hope by next week she could return to the workplace. I continue to feel that she is at maximum medical improvement. Her impairment rating will not change.

Donald R. Johnson, II, M.D.

cc: James McIntosh, M.D.
Sedgwick James, Darlene Frick
Sedgwick, Betty A. Moore-Brown, R.N.

DRJII/smt-16
Dictated but not read

Sedgwick Rec'd #3 NOV 14 1996

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Joan Barra, : WCC NO: 9613486
Employee/Claimant, :
vs. : DEPOSITION OF:
 : Dr. George Khoury
Charleston County, :
Self-Insured :
Employer, :
Through :
S.C. Counties Workers' :
Compensation Trust, :
Defendants. :

DATE: Monday, November 5, 2007
TIME: 4:27 p.m.
REPORTER: Holly Hiott O'Quinn, RPR
LOCATION: Charleston Neurosurgical Associates
2145 Henry Tecklenburg Drive, Ste. 220
Charleston, SC 29414

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APPEARANCES

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DEFENDANT EXHIBITS

NO	DESCRIPTION	ID
1	Clinical Encounter Form Injury	8
2	Clinical Encounter Form Physical	8
3	Questionnaire	9

It is stipulated by and between counsel for the parties that this deposition is taken for the purpose of discovery; that all objections, save as to the form of the question, are reserved until the time of trial; that the deponent was explained his right to read and sign the deposition and waived the right.

MRS. BARR: Latonya, can you hear us okay?

MRS. EDWARDS: I hear you just fine.

MRS. BARR: Okay. We have got the court reporter here and Dr. Khoury, and hopefully this will be pretty short and sweet.

DR. GEORGE KHOURY,

being first duly sworn, testified as follows:

EXAMINATION

BY MRS. BARR:

Q Dr. Khoury, thank you for being here with us today. Again, my name is Kirsten Barr, and I represent Charleston County in the South Carolina Association of Counties in a workers' compensation claim by one of your patients, Joan Barra, concerning an accident in April of 1996. We have just asked you here today to ask you some questions about your treatment of Mrs. Barra and some of the opinions you've rendered in the second injury fund aspect of this claim. It should be pretty straightforward.

1 You do have the right to read and sign your
2 deposition transcript. I will let you decide that at
3 the end, if we get too complicated.
4 A Okay.
5 Q Otherwise, it should be short and sweet.
6 MRS. BARR: Latonya, anything that you need
7 to add?

8 MRS. EDWARDS: I'll wait until you finish.
9 No, add to your introduction, no. I will wait to ask
10 my questions.

11 MRS. BARR: All right.

12 BY MRS. BARR:

13 Q Now, Dr. Khoury, it's my understanding that
14 you initially saw Mrs. Barra on August 25th, 1997; is
15 that correct?

16 A That's correct.

17 Q All right. And did she describe to you any
18 mechanism of injury that preceded her visit to you?

19 A Right. She described an injury where she fell
20 over a block and landed on her buttock and then fell
21 backwards striking her head on concrete in April of
22 1996.

23 Q And did she explain to you what symptoms she
24 had following that incident?

25 A Right. Severe low back pain, pain in her mid

1 MRS. EDWARDS: That's fine, or do you want to
2 just have them included in the deposition?

3 MRS. BARR: That will be just fine.

4 MRS. EDWARDS: That will be fine then. You
5 don't have to fax them to me. That will be fine.

6 MRS. BARR: Good. Thank you.

7 (WHEREUPON, Defendant's Exhibits Nos. 1 AND 2 were
8 marked for identification only.)

9 BY MRS. BARR:

10 Q Now, it's my understanding that Mrs. Barra
11 also had an MRI of her cervical spine in August of
12 1997?

13 A She did.

14 Q And did you have an opportunity to review
15 that MRI scan?

16 A I did.

17 Q What were the significant findings, in your
18 mind, on that MRI?

19 A She had cervical stenosis as one of the main
20 findings. She had two level problems with the disk
21 disease at five and six and six and seven.

22 Q All right. Help us understand, those of us
23 in the non-doctor world, what is cervical stenosis?

24 A Cervical stenosis is a degenerative change of
25 the cervical spine where they just kind of wear out and

1 back and pain all the way up to her neck and into her
2 head.

3 Q All right. Now, was it your understanding
4 that she had treated conservatively with Worksite
5 Partners prior to her visit with you?

6 A Right. She had seen them and had treatment
7 for these complaints before they turned her over to me.

8 Q All right. Have you had an opportunity to
9 review any of the reports from Worksite Partners?

10 A Right. There are two reports that I had
11 looked at in the past: One from 6/13/96 and one from
12 1/8/97.

13 Q Now, based on those reports, anything that
14 you find significant regarding the history with respect
15 to her neck complaints that she saw you in August of
16 1997?

17 A Right. These just kind of collaborate what
18 she told me. Both of them speak of back pain, neck
19 pain and headache. The 6/13/96 says throbbing pain
20 radiating from the bottom of the spine all the way to
21 the back of the head. And then the 1/8/97 report says
22 injury in '96, back, neck and head contusion.

23 MRS. BARR: Let's go ahead and mark these as
24 Defense Exhibits 1 and 2. And, Latonya, I can just fax
25 this to you afterwards.

1 the bones get arthritic and develop spurs. It happens
2 over a period of time. And disk disease can be acute
3 or chronic, as well, where the disk ligaments weaken
4 and the disk bulges.

5 Q Okay. Now, the stenosis itself, you said it
6 develops over a number of years?

7 A That's correct.

8 Q Okay. Can it be part of the normal aging
9 process?

10 A It can.

11 Q And you said it was arthritic in nature?

12 A Yes.

13 Q Now, you had...

14 MRS. BARR: Latonya, I think you have all of
15 these.

16 BY MRS. BARR:

17 Q But you had issued a questionnaire on
18 September 21st of 1999.

19 MRS. BARR: And I guess we can mark that as
20 number three, just for purposes of clarity.

21 (WHEREUPON, Defendant's Exhibit No. 3 was marked
22 for identification only.)

23 BY MRS. BARR:

24 Q You were asked some questions here. Do you
25 stand by your opinions in this report dated

1 September 21, 1999, which will be Defense Exhibit
 2 Number 3?
 3 A I do.
 4 Q All right. Now, you were asked initially did
 5 the cervical stenosis preexist the injury of April 30,
 6 1996?
 7 A Yes.
 8 Q And did the injury of April 30, 1996,
 9 aggravate or combine with the preexisting cervical
 10 stenosis?
 11 A Right. And I answered yes to that as well.
 12 Q All right. And what is the basis for your
 13 opinion there? How would it have aggravated or how did
 14 the injury of 1996 aggravate that condition?
 15 A Right. Cervical stenosis and disk disease
 16 makes the neck weaker, and so an injury can aggravate
 17 it and make it -- if it was asymptomatic, make it more
 18 symptomatic. If it was symptomatic, make it even more
 19 symptomatic and make it harder to treat. And
 20 eventually, it could lead to more treatment and/or
 21 surgery as in her case.
 22 Q Now, the records that we have indicate that
 23 she had a disk herniation at C6-7.
 24 A That's right.
 25 Q The preexisting -- did the preexisting

1 little less. You know when you fuse two disks, you
 2 have a little bit increased morbidity with loss of
 3 range of motion and slightly stiffer neck and maybe a
 4 little bit more pain syndrome and that could be an
 5 aggravating path that can last for a while.
 6 Q Okay. Now, back to the September 21, 1999,
 7 report, you stated that -- you were asked did the
 8 aggravation of the preexisting condition and the
 9 April 30, 1996, accident result in greater loss time
 10 from work and you replied?
 11 A Yes.
 12 Q Okay. And you stand by that opinion?
 13 A I do.
 14 Q You were also asked if it resulted in
 15 substantially greater permanent disability?
 16 A Yes.
 17 Q And you stand by that opinion?
 18 A I do.
 19 Q All right. And you were -- it resulted in
 20 substantially greater medical costs?
 21 A Yes.
 22 Q And do you stand by that opinion?
 23 A I do.
 24 Q All right. You were also asked on this
 25 report whether or not the cervical stenosis was

1 cervical stenosis play a role in your treatment
 2 decisions that you made for this disk herniation?
 3 A Not -- only in the sense of that when you --
 4 people have a weak spine, you really would look at the
 5 disk above and below the main area of stenosis, and
 6 those have some wear and tear too. So if you are going
 7 to treat the stenosis part, you would also treat the
 8 disk part as well.
 9 Q Okay. Well, let me ask it this way. If you
 10 had a patient with a one level cervical disk herniation
 11 who did not have any preexisting or underlying
 12 arthritic changes like Mrs. Barra did, would you have
 13 different treatment options than you did for
 14 Mrs. Barra?
 15 A Right. It is possible certainly. I mean,
 16 you know, once we decided that surgery was necessary,
 17 you wouldn't have left the stenosis or the disk rupture
 18 there. If you were treating for the other treatment,
 19 you would go ahead and treat both while you were there
 20 at the surgery.
 21 Q Okay. Now, if she had had a simple
 22 discectomy to address that one level disk herniation,
 23 would she have had a different prognosis following the
 24 surgery?
 25 A I think her morbidity might have been a

1 considered permanent and serious enough to constitute a
 2 hinderance or obstical to employment, and how did you
 3 reply?
 4 A Yes.
 5 Q And help us understand the basis for your
 6 opinion in that regard.
 7 A You know, she -- theoretically, suppose she
 8 didn't have an accident and she came to me with these
 9 x-rays and stuff. I probably would have said you need
 10 to be careful how you lift and bend and reach over your
 11 head and, you know, you may need to have to adjust your
 12 work habits or your lifestyle to accommodate your
 13 physical problems.
 14 Q All right. Now, given that the history of
 15 her symptoms -- given the history of symptoms given to
 16 you by Mrs. Barra and considering the mechanism of the
 17 April 30, 1996, accident, do you have an opinion within
 18 a reasonable degree of medical certainty whether or not
 19 her cervical problems were causally related to the
 20 April 30, 1996, accident?
 21 A I think they combine with an underlying
 22 condition to make her symptomatic and were the reason
 23 that she came to see me, yes.
 24 Q And so we're clear for the record, do you
 25 have an opinion within a reasonable degree of medical

1 certainty whether or not the cervical stenosis that you
2 noted in August of 1997 whether or not that stenosis
3 preexisting the April 30, 1996, accident?

4 A Yes, I believe that it did.

5 MRS. BARR: Dr. Khoury, I believe that is all
6 the questions I have for you. Please answer any
7 questions that Mrs. Edwards might have.

8 EXAMINATION

9 BY MRS. EDWARDS:

10 Q Yes, Dr. Khoury, I'm Latonya Edwards, and I
11 represent the second injury fund. And the purpose of
12 my questions will just allow me to determine what
13 amount of reimbursement, if any, the second injury fund
14 owes to the carrier in this particular case. It does
15 not affect the claimant's workers' compensation claim
16 or any benefits or any medical treatment or any
17 agreement that the claimant signed. And I just will
18 ask you some follow-up questions based on the responses
19 you gave to Mrs. Barr.

20 What type of work did this claimant do?

21 A What type of work? I'm not positive what she
22 did.

23 Q Okay. One of the things that you indicated
24 to Mrs. Barr when she asked you a question was that --
25 I think you said that the claimant would have to alter,

1 would have to alter or modify her work habits as a
2 result of the -- either the preexisting condition -- I
3 think the preexisting condition. Did I misunderstand
4 that?

5 A Well, she was asking me and I was giving a
6 hypothetical answer.

7 Q Oh, okay, okay.

8 A That she -- she was asking me if a patient
9 came to me with these conditions --

10 Q Okay.

11 A -- what would you have said about her work or
12 what she would do, and I would have said her work would
13 have to take into account, you know, her lifting and
14 reaching above her shoulders --

15 Q Okay, okay.

16 A -- using her arms. And so whether she was
17 doing that or no, I don't know. But it was an example
18 as a hypothetical.

19 Q Okay, okay, I'm sorry. Also, did you treat
20 this patient prior to the 1996 injury?

21 A I don't -- I don't think I did.

22 Q Okay. Also, one of the questions that was
23 posed to you regarded the combination or aggravation
24 factor. In other words, I think the questionnaire that
25 is referenced indicates that you stated to a reasonable

1 degree of medical certainty that the preexisting
2 condition did combine with or was aggravated by the
3 work injury?

4 THE COURT REPORTER: I'm sorry, aggravated by
5 the?

6 MRS. BARR: Work injury.

7 THE COURT REPORTER: Thank you.

8 THE WITNESS: Yes, I still believe that.

9 BY MRS. EDWARDS:

10 Q Okay. And another thing that you responded
11 positively to was in reference to the substantial
12 increase in medical costs. And so I guess I want to
13 kind of get some more information from you about that.
14 Because one of the things that is required for
15 reimbursement is that the preexisting condition -- the
16 medical expenses has to be substantially increased due
17 to the presence of the preexisting condition. And I
18 think that one of the things you indicated was that
19 that was the case.

20 Do you have a -- how do you make that
21 determination about the preexisting condition causing a
22 substantial increase in medical costs as opposed to
23 just saying that the work injury alone was severe
24 enough to create the medical expenses?

25 A Right, okay. This is how I would answer

1 that. Cervical stenosis is not an injury.

2 Q Okay.

3 A Cervical stenosis is a condition.

4 Q Right.

5 A However, an injury can aggravate it. So if a
6 patient comes to me with cervical stenosis, you can
7 treat that a lot of ways or you don't have to treat it
8 at all.

9 But when they come to me with cervical
10 stenosis and a ruptured disk and you more or less have
11 to treat the ruptured disk, you would treat the
12 cervical stenosis so the patient wouldn't have to come
13 back for further treatment.

14 So in other words, the cervical stenosis made
15 it more likely that she would have surgery and more
16 likely that the surgery would be more extensive than it
17 might have been if she didn't have the cervical
18 stenosis.

19 Q Okay.

20 A So it's an indication of a weak spine --

21 Q Okay.

22 A -- in that you would have to do a little bit
23 more work on it then you might not have done if the
24 cervical stenosis wasn't there.

25 Q Okay. And did this patient actually have

1 surgery?
 2 A She did.
 3 Q Okay. Did you perform the surgery?
 4 A I did.
 5 Q And could you tell me what the surgery --
 6 what type of surgery it was?
 7 A Right. We did what is called a cervical
 8 diskectomy and fusion. We operated on the ruptured
 9 disk, which was at 6-7 and we operated on the stenosis,
 10 which was at 5-6. And what we did at surgery was take
 11 out the disk, get rid of the stenosis and then fuse the
 12 neck with two pieces of bone and a metal plate.
 13 Q Okay. That comes to my next question. After
 14 you perform the surgery is the surgery for the purpose
 15 of eliminating the stenosis? Is it done for that
 16 purpose?
 17 A At the level we operated on it, it can
 18 potentially and it does -- I mean, that's part of what
 19 we would try to do is eliminate the stenosis. Because
 20 the stenosis is a physical abnormality in the bone.
 21 Q Okay. And so --
 22 A So you can eliminate stenosis at that level
 23 by surgery.
 24 Q Okay. And I'm sorry, did you say that in
 25 this particular patient was the stenosis eliminated?

1 Q Okay. Do you know whether or not this
 2 claimant's cervical stenosis was symptomatic prior to
 3 this work injury?
 4 A I would say she didn't say it was.
 5 Q Okay.
 6 A And she didn't indicate on any records that
 7 it was, but I don't say that I know that for sure.
 8 Q Okay. And it is possible -- is it possible
 9 for someone to have cervical stenosis and be
 10 asymptomatic?
 11 A Yes, it is.
 12 Q Okay. Now, did you give this patient any
 13 impairment rating?
 14 A I did eventually.
 15 Q Can you tell me what that is?
 16 A 15 percent to her neck.
 17 Q Fifteen?
 18 A Fifteen, one-five.
 19 Q Okay, percent to the neck. And does that
 20 impairment rating take into account the preexisting
 21 cervical stenosis and the effects of the work injury?
 22 A It describes her neck at the time I looked at
 23 it. So the cervical stenosis at C5-6 has been sort of
 24 resolved.
 25 Q Okay.

1 A At that level that we operated on, it was.
 2 Q At that level?
 3 A Yes.
 4 Q In your examination of this patient, did you
 5 observe any stenosis at any other level?
 6 A She does have some stenosis at other levels.
 7 nothing as severe as it was at C5 and C6.
 8 Q Okay. One of the other things you mentioned
 9 was the treatment options, and I guess I just want some
 10 clarification. Would the treatment options have been
 11 any different if the patient had not had cervical
 12 stenosis?
 13 A It would have kind of gone along with how
 14 much complaining and how much success you might have
 15 had with different options. The cervical stenosis
 16 always makes patients a little tougher to treat because
 17 you can't really get rid of it. Once it aggravates or
 18 it becomes symptomatic, it has been my experience that
 19 it is hard to settle that down, although you will try.
 20 Q Okay.
 21 A And so I think the cervical stenosis sort of
 22 puts you in a different ballpark than it might be if
 23 you just say, oh, I hurt my neck and my neck hurts.
 24 The cervical stenosis makes it likely that you are
 25 going to need something more.

1 A So in a sense, it probably does take it in
 2 and also has something to say about her work injury,
 3 probably both things together.
 4 Q Let me ask you another question.
 5 A Okay.
 6 Q Cervical stenosis, if the cervical stenosis
 7 is unknown by the patient and asymptomatic prior to the
 8 work injury, would you consider that to be a hindrance
 9 to the claimant's employment before the work injury?
 10 A It would depend on a little bit on what she
 11 was -- what kind of work she is doing. Now, I see
 12 something in here. She was a mosquito abater or
 13 sprayer. I guess. It depends on how much she had to
 14 lift and stuff. You know, it's rare you see patients
 15 with no complaints and have an x-ray of an area where
 16 they are not complaining of.
 17 Q Okay.
 18 A So that's a pretty -- that's not the usual
 19 thing. Usually, you see an x-ray of a patient who is
 20 complaining of something. But if you, for instance,
 21 had an x-ray that showed severe cervical
 22 stenosis, someone asked me what could this person
 23 would say -- I would say they could do
 24 that, or I would recommend doing that.
 25 You know, but that might be temporary.

1 patient was complaining about.
 2 Q Okay. Well, how about hypothetically let's
 3 assume that --
 4 A For instance, if it was a football player and
 5 somebody had cervical stenosis, I would say they can't
 6 play football.
 7 Q Okay. And let's assume in my hypothetical
 8 that a football player or this patient did not know
 9 that they had stenosis and they were not experiencing
 10 any physical manifestations from that stenosis, would
 11 that affect their work or abilities in any way given --
 12 under those circumstances, under that narrow set of
 13 circumstances about --
 14 A Probably not if there was no x-ray and nobody
 15 knew about it.
 16 Q Right.
 17 A And they weren't symptomatic.
 18 Q Right.
 19 A Then it may not -- that is kind of how people
 20 operate.
 21 Q Okay.
 22 A They kind of work until they become
 23 symptomatic.
 24 Q Okay. Oh, let me ask you another question.
 25 Can we go off the record just for one minute

1 other ways?
 2 A Neck pain or neck and arm pain or just arm
 3 pain.
 4 Q Okay. Do you ever have patients who have arm
 5 pain and never in their wildest dreams thought it might
 6 be a neck problem?
 7 A Right. That happens a lot. In fact, when I
 8 tell them it's a neck problem, they look at me kind of
 9 cross-eyed sometimes like it's my arm hurting, not my
 10 neck.
 11 Q Okay. So is it uncommon then to have
 12 patients who have burning arms or strange sensations in
 13 their hands who have been treating with hand doctors or
 14 their family doctors never thinking they needed to see
 15 an orthopedist or a neurosurgeon?
 16 A That is common.
 17 Q Okay. Now, getting back to the surgical
 18 options that we have discussed, if we assume for the
 19 sake of argument that this accident caused the C6-7
 20 disk herniation and a C5-6 bulging disk, would it be
 21 possible that one option would be to simply do a
 22 discectomy at C6-7?
 23 A That would have been one option, yes.
 24 Q And would it have also been an option to just
 25 do a one level fusion at 6-7?

1 please?
 2 THE WITNESS: Sure.
 3 (Off the record at 4:47 p.m.)
 4 MRS. EDWARDS: We can go back on the record.
 5 (On the record at 4:48 p.m.)
 6 MRS. EDWARDS: I have no future questions for
 7 Dr. Khoury.
 8 EXAMINATION
 9 BY MRS. BARR:
 10 Q Just a few, Dr. Khoury, just so I can make
 11 sure, and I apologize to drag this on.
 12 A Sure.
 13 Q If the records were to indicate that
 14 Mrs. Barra had symptoms of tingling and numbness in her
 15 arms and hands prior to April -- excuse me, April 1996,
 16 would that tell you anything about possible cervical
 17 problems that she may have had prior to this accident?
 18 A Right. If her symptoms were similar or had
 19 sort of a classical nature of problems to do with the
 20 neck and was, you know, neck pain and tingling down the
 21 arm, then you might be suspicious that there was
 22 something going on with her neck.
 23 Q Do patients with cervical stenosis or other
 24 abnormalities in their cervical spine, do they
 25 necessarily have neck pain or can it manifest itself in

1 A It would have been an option. I don't think
 2 it would have been necessarily a beneficial option for
 3 the patient. I think she would have come back and had
 4 the surgery at the 5-6 level pretty soon afterwards.
 5 Q Okay. And help us -- help me understand that
 6 or help us understand for the record what happens to
 7 the disks above a fused vertebra?
 8 A Right. When you fuse a level of the disk
 9 above or the disk below, for that matter, both have to
 10 work a little harder. So if you already know you have
 11 a disk that is not good above it and it has stenosis in
 12 it, it just would be a surgical option. You don't have
 13 to do it, you know, and you could have the patient come
 14 back in a year or two and do it later.
 15 I think most of those patients would
 16 eventually have to come back and have surgery. So
 17 most -- I think most people who practice in this city
 18 would tend to go ahead and do both.
 19 Q All right. Now, would in Mrs. Barra's case
 20 the fact that she had the stenosis at the levels above
 21 play into yourself decision to do a two-level cervical
 22 fusion as opposed to a less invasive or less drastic
 23 surgery?
 24 A That's right. That was the reason we did it.
 25 Q And this may seem obvious. But is a

1 two-level cervical fusion more expensive than a
2 one-level cervical fusion or a simple disectomy?
3 A It's not double, but it is about a third to a
4 half more.
5 Q I assume it takes a lot more of your time; is
6 that right?
7 A It takes another 45 minutes to an hour.
8 MRS. BARR: Okay. Well, thank you. I
9 appreciate your time.
10 Latonya, anything else?
11 MRS. EDWARDS: Not on the record.
12 MRS. BARR: Okay, great. Thank you,
13 Dr. Khoury.
14 (WHEREUPON, the deposition was concluded at
15 4:52 p.m.)
16
17
18
19
20
21
22
23
24
25

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON
3
4 I, Holly Mott McQuinn, Independent Court Reporter
5 and Notary Public for the State of South Carolina,
6 certify that I did have Dr. George Khoury to appear
7 before me at 4:00 p.m. on November 5, 2007, in the
8 Offices of Charleston Neurosurgical Associates,
9 Charleston, South Carolina; that the witness was duly
10 sworn and cautioned to tell the truth, the whole truth
11 and nothing but the truth; that the foregoing pages
12 constitute a true and accurate transcript of testimony
13 given at the time and place.
14 I do further certify that I am not of counsel or
15 kin to any of the parties to this cause of action, nor
16 am I interested in any manner of its outcome.
17 IN THE WITNESS WHEREOF I have hereunto set my
18 hand and seal this the 20th day of November, 2007.
19
20
21
22 Notary Public for South Carolina
23 My Commission Expires March 21, 2016
24
25



Sedgwick James of the Carolinas, Inc.
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PC110
FS6
576001289
134-30-8268
00930

February 18, 1997

Mr. Douglas P. Crossman
South Carolina Second Injury Fund
Koger Center
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

RE: Joan Barra vs. Charleston County
D/A: 04/30/96
WCC #: 9613486
Carrier Code: 930
Our Claim #: 96004027

Dear Doug:

This letter is to notify you of the employer's Second Injury Fund claim on the above captioned case.

The employee's injury occurred in Charleston County.

If additional information is needed, please let me know.

Sincerely,

Cathy Anderson
Recovery Specialist

✓cc: South Carolina Workers' Compensation Commission

The South Carolina Second Injury Fund



DOUGLAS P. CROSSMAN
DIRECTOR

KOGER CENTER
WINTHROP BUILDING, SUITE 119
220 EXECUTIVE CENTER DRIVE
COLUMBIA, S.C. 29210
01/10/2000

(803) 798-2722
FAX: (803) 798-5290

HAROLD E. TRASK, ESQ.
SINKLER & BOYD
PO BOX 340
CHARLESTON, SC 29402-0340

RE: JOAN BARRA VS. CHARLESTON CTY.

SIF NUMBER: 51595
WCC NUMBER: 9613486

CARRIER CLAIM NUMBER: 96004027

Dear HAROLD E. TRASK, ESQ.:

Thank you for your letter received 02/25/1997 .

Enclosed is a Notice of Claim Form. Please complete and return it and all requested documents as soon as possible.

Please note that during the course of our investigation, we may be in contact with the employer. Should you have any questions or objections, please advise accordingly.

The above captioned case is pending investigation.

Sincerely,

PETE J. CALAMAS
SR. CLAIMS ANALYST
Telephone Extension: 115

NOTICE OF POSSIBLE
SECOND INJURY FUND

Carrier Code 00930

Employer Code 576001289

Carrier File No. 96004027

S.I.F. No. 51595

Employee: **JOAN BARRA**

Social Security No. _____

Address: _____

Date of Accident: **04/30/96**

Employer: **CHARLESTON CTY.**

Carrier: **SC ASSOCIATION OF COUNTIES SIF**

Location: _____

Address: _____

Employee's Attorney: _____

Carrier's Attorney: _____

Address: _____

Address: _____

SUBSEQUENT INJURY:

Nature of Second Injury: _____

Current Status: _____

Treating Physicians: _____

Average Weekly Wage: _____

Compensation Rate: _____

Date of First Temporary Total: _____

Date Returned to Work: _____

Weeks of All Benefits Paid: _____

Medical Costs to Date: _____

NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)

☐ Listed Impairment (1-33): _____

☐ Other (34 a or b): _____

KNOWLEDGE REQUIREMENT:

☐ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.)

☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, pre-employment physical, etc.)

☐ Employee was unaware of existence of pre-existing condition (Please attach affidavit)

Signature: _____
Mailing Address: _____

Date of Claim: _____

In support of such notice and without precluding the right to establish further facts as may be developed, the preceding allegations are set forth subject to proof at a Hearing.

PLEASE RETURN THIS FORM AND ATTACHMENTS WITHIN 14 DAYS OF RECEIPT. SEND A COPY TO THE WORKERS' COMPENSATION COMMISSION.

SECOND INJURY FUND
CLAIM

Carrier Code 00930
Employer Code 576001289
Carrier File No 96004027
SIF No 51595

Employee: Joan Barra

Social Security
No:

Address PO Box 342
Charleston, SC 29407

Date of Accident 4/30/96

slit
82

Employer: Charleston County

Carrier:

Companion P&C / TPA

Location: 4 Courthouse Sq., Rm 203
Charleston, SC 29407

Address:

PO Box 100159
Columbia, SC 29202

Employee's Attorney: David T. Pearlman

Carrier's Attorney

Harold E. Trask

Address: PO Box 9
Charleston, SC 29402

Address:

PO Box 2167
Mt. Pleasant, SC 29465

SUBSEQUENT INJURY

Nature of Second Injury: Clmt fell over concrete block

Current Status Settled - Form 19 & Form 16 Attached

Treating Physicians Dr. George H. Khoury, MD

Average Weekly Wage 332.00

Compensation Rate 221.34

Date of first Temporary Total 5/1/96

Date Returned to work

Weeks of All Benefits Paid: 138 6/7

Medical Costs to Date \$51,793.46

NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, paragraph (d)

- ☒ Listed Impairment (1-33): Cervical Stenosis - Arthritic
☐ Other (34 a or b)

KNOWLEDGE REQUIREMENT:

- ☐ Employer knew about the pre-existing condition. (please attach affidavit, application, etc.)
☒ Employee withheld existence of pre-existing condition from employer. (Please attach application, pre-employment physical etc.)
☐ Employee was unaware of existence of pre-existing condition (Please attach affidavit)

Signature Diane Ray
Mailing Address PO Box 100159
Columbia, SC 29202

Date of Claim 2/16/01

DRay

 Companion Property & Casualty Group

Companion Property & Casualty
Insurance Company

Companion Commercial
Insurance Company

PC

March 2, 2004

The South Carolina Second Injury Fund
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

Archive
76

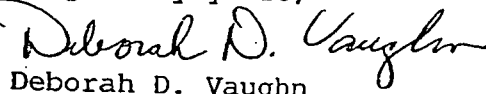
Re: Joan Barra for Charleston County
Date of Accident: 4/30/96
SIF #: 51595
WCC #: 96004027

Dear Sir or Madam:

Please find enclosed the completed claim form, and the supporting documents for the Second Injury Fund in reference to the above captioned workers' compensation claim.

If I can be of any further assistance, please advise.

Very truly yours,


Deborah D. Vaughn
Claims Adjuster

(803) 264-6794

Enclosures

56
Service: 1/5/2005
PULL

NOTICE OF POSSIBLE
SECOND INJURY FUND
CLAIM

Carrier Code 00730
Employer Code 576001289
Carrier File No. 96004027
S.I.F. No. 51595

Employee: JOAN BARRA Social Security No. _____
Address: _____ Date of Accident: 04/30/96

Employer: CHARLESTON CTY. Carrier: SC ASSOCIATION OF COUNTIES SIF
4 Courthouse Sq., Rm 203 Companion Property + Casualty / TPA
Location: Charleston, SC 29401 Address: P.O. Box 100165
Columbia, SC 29202-3165

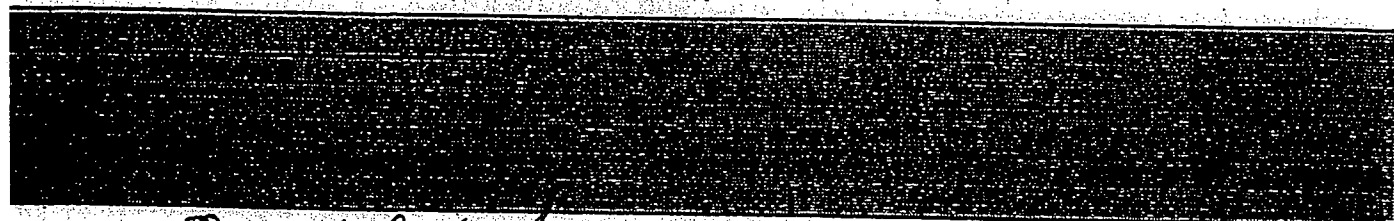
Employee's Attorney: David T. Pearlman Carrier's Attorney: Harold E. Trask
P.O. Box 9 P.O. Box 2167
Address: Charleston, SC 29402 Address: Mt. Pleasant, SC 29465

SUBSEQUENT INJURY: Nature of Second Injury: The claimant stepped back falling over a concrete block.
Current Status: This claim has been settled on a clincher.
Treating Physicians: George H. Khoury, M.D.

Average Weekly Wage: \$332.00 Compensation Rate: \$221.34
Date of First Temporary Total: 5/01/96 Date Returned to Work: N/A
Weeks of All Benefits Paid: _____ Medical Costs to Date: \$51,743.46

NATURE OF PRIOR IMPAIRMENT: Refer to Section 42-9-400, Paragraph (d)
☒ Listed Impairment (1-33): Cervical Stenosis (Arthritis)
☐ Other (34 a or b): _____

KNOWLEDGE REQUIREMENT:
☐ Employer knew about the pre-existing condition. (Please attach affidavit, application, etc.)
☐ Employee withheld existence of pre-existing condition from employer. (Please attach application, pre-employment physical, etc.)
☒ Employee was unaware of existence of pre-existing condition (Please attach affidavit)



Signature: Doroth D. Vaughn
Mailing Address: Companion Property + Casualty
P.O. Box 100165
Columbia, SC

Date of Claim: 3/02/04

support of such notice and without precluding the right to establish further facts as may be developed, the preceding allegations are set forth subject to proof at a Hearing.

RETURN THIS FORM AND ATTACHMENTS WITHIN 14 DAYS OF RECEIPT. SEND A COPY TO THE WORKERS' COMPENSATION COMMISSION.

Box 1/15 - 1612 Marion Street
Columbia, South Carolina 29202-1715
(3) 737-5700

Carrier File# 96004027
Carrier Code# 930
Employer FEIN 576000145

Barra
Name SSN
3022 Charleston SC 29407
City State Zip
Phone # Work Phone#
Cindy M. Vodila
Preparer's Name (803) 772-1111
Phone#

Charleston County
Employer's Name
4 Crthse Sq, Rm 203 Charleston SC 29407
Address City State Zip
Administrator - Sedgwick of the Carolinas
Insurance Carrier

Date of Injury: 04/30/96 Date of Notice to Employer of Injury: 04/30/96
month day year month day year

Payment of Temporary Compensation (choose A, B, or C) Check one: ☐ Initial Period ☒ Additional Period ☐ Corrected compensation rate

A. Temporary Total at the compensation rate of 221.54 per week. For this period of disability, disability began on 10/29/97 and the date of first payment was 11/04/97

3. Temporary Partial at the compensation rate of per week. Note: When Temporary Partial compensation rate will vary, report first payment here. Supplement throughout the period of Temporary Partial compensation by filing Form 15S with the Form 18, which shall be filed six months after the date of injury and each six months thereafter until the file is closed. For this period of disability, disability began on and the date of first payment was

Calculation of Temporary Partial rate:
Average weekly wage before injury \$
Current weekly wage \$
Difference in wages before the injury and now \$
x .6667 x
Temporary Partial Compensation Rate \$

PROCESSED

2. Salary in lieu of temporary total / temporary partial (circle one) compensation in the amount of per week. For this period of disability, disability began on and the date of first payment was

SECTION MAY BE USED ONLY WITHIN 150 DAYS AFTER NOTICE TO EMPLOYER OF THE INJURY.
WH DOCUMENTATION AS TO THE REASON FOR THE TERMINATION.

Termination of Temporary Compensation Temporary compensation payments were stopped on for the following reasons.
☐ Claimant has returned to work at least 15 days and no temporary partial compensation is due.
☐ Claimant agrees he/she is able to return to work and has signed a Form 17.
☐ Based on a good faith investigation, the claim is denied. Reason for denial:
☐ Claimant has been released to return to work without restrictions and employment has been offered.
☐ Claimant has been released to return to work at limited duty and the employer has provided limited duty work consistent with the terms upon which the employee has been released
☐ Claimant has refused medical treatment, examination, or evaluation. Note: Benefits must be resumed if claimant accepts the treatment, examination, or evaluation.
Additional report must be filed if compensation is resumed.

fy that this form has been served on the claimant per R.67-211.

Signature of Claims Administrator Date

Notice to Injured Worker or Legal Representative when Temporary Compensation Has Been Stopped:
The employer's representative may stop temporary compensation within 150 days of the date of notice of injury for the above reasons. However, if you believe that temporary compensation should not have been stopped, you may request a hearing by signing below and returning this form to the SCWCC Judicial Department at the address on the top of the form. A hearing will be held within 60 days of receipt of your request to determine if temporary compensation has been properly terminated.

IF SIGNATURE BELOW INDICATES THAT I DO NOT AGREE WITH THE TERMINATION OF TEMPORARY COMPENSATION. I REQUEST A HEARING TO DETERMINE WHETHER I AM ENTITLED FURTHER TEMPORARY COMPENSATION PAYMENTS.

one: Form 15 (II) ☐ has ☐ has not been received.

Sedgwick Rec'd #8 NOV 20 1997

Signature of claimant or legal representative Date

Employer's representative must complete and file Form 15 with Claims Department within ten days after compensation begins or is terminated. Employers' representative must serve Form 15 on the claimant when compensation begins per R.6-211. Employer's representative must prepare and serve Form 20 within thirty days of beginning compensation per R.6-211. Employer's representative must serve per R.67-211 two copies of the Form 15 on claimant immediately on termination of compensation with documentation attached as for the termination. Injured worker may contest termination of compensation by completing section III of the Form 15 and filing it with the Judicial Department.

Box 1715 - 1612 Marion Street
mbia, South Carolina 29202-1715

Carrier Code # 930
Employer FEIN 576000145

N BARRA

CHARLESTON CNTY

SSN
342 CHAS SC 29407
City State Zip

Employer's Name
4 COURTHOUSE SQ CHAS SC 29401
Address City State Zip

Phone # Work Phone #

Administrator - Sedgwick of the Carolinas
Insurance Carrier

RON BRANDT
Preparer's Name

(803) 772-1111
Phone #

Date of Injury: 4/30/96

Temporary Compensation
Paid

Number of Weeks	From	To	Amount
21 5/7	5/15/96	10/13/96	\$ 4806.21
3 4/7	11/8/96	12/2/96	\$ 790.50
9	12/3/96	2/3/97	\$ 996.03

(Complete the applicable sentence):

The claimant returned to work without restriction on 02 04 1997
month day year

The claimant agrees he or she was able to return to work on 02 04 1997
month day year

e that I was disabled for the period indicated and I was paid compensation as shown above. I UNDERSTAND THAT I GIVE UP
O RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR
[CAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should
m this form until 15 days after I have returned to work without restriction or agreed I was able to return to work.

Signature
ant's Signature

Signature
Employer's Representative

Witness
Claimant's Attorney
(Check One)

FEB 1997
Received
Risk
Management

3/29/97
Date of Agreement

Sedgwick 24 1997

s form with the Claims Department no later than 31 days from the Date the claimant returned to work without restriction or agreed he or she was able to
n work. The employer's representative is to insert the WCC File number, Carrier Code number, Carrier File number, and the Employer's FEIN. Refer to
additional information.

Form # 17.

Receipt of Compensation.

Joan Barra
Claimant's Name
SSN
Charleston County
Employer's Name
Address
City State Zip
Charleston, SC 29407
4 Courthouse Square, Charleston SC 2940
Sedgwick James of the Carolinas
Insurance Carrier
Home Phone #
Work Phone #
Preparer's Name
Phone #
Ron Brandt
(803) 772-1111

1. Date of injury: 4/30/96
month day year

2. Temporary Compensation Paid:

Number of Weeks	From	To	Amount
21-5/7	5/15/96	10/13/96	\$ 4806.21
3-4/7	11/8/96	12/2/96	\$ 790.50
			\$
			\$

The claimant returned to work on 12/3/96
month day year

☐ With restrictions but at a salary not less than before the injury.
☐ Without restrictions.

The claimant agrees he or she was able to return to work on
month day year

I agree that I was disabled for the period indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work without restriction or agreed I was able to return to work.

Joan Barra
Claimant's Signature

Employer's Representative

Witness ☐ Claimant's Attorney
(Check one)

1/9/97
Date Agreement Signed

Sedgwick Rec'd \$5 JAN 10 1997

This form with the Claims Department no later than 31 days from the date the claimant returned to work without restriction or agreed he was able to return to work. The employer's representative is to insert the WCC File number, Carrier Code number, Carrier File number, and the Employer's FEIN. Refer to R.67-504 for additional information.

JOAN BARRA

CHARLESTON COUNTY

Claimant's Name

SSN

Employer's Name

CHARLESTON, SC 29407

4 COURTHOUSE SQ. RM. 203, CHARLESTON, SC 294

Address

City

State

Zip

Address

City

State

Zip

SEDGWICK JAMES OF THE CAROLINAS

Home Phone #

Work Phone #

Insurance Carrier

RON BRANDT

(803) 772-1111

Preparer's Name

Phone #

1. Date of Injury: 04/30/96

2. Temporary Compensation Paid:

Number of Weeks

From

To

Amount

21 5/7

05/15/96 - 10/13/96

\$ 4,806.21

\$

\$

\$

\$

3. The claimant returned to work on 10/14/96

month date year

☐ with restrictions but at a salary not less than before the injury.☐ without restrictions.

The claimant agrees he or she was able to return to work on

I agree I was disabled for the period(s) indicated and I was paid compensation as shown above. I UNDERSTAND THAT MY WEEKLY TEMPORARY COMPENSATION CHECKS WILL STOP; HOWEVER, I GIVE UP NO RIGHTS TO COMPENSATION FOR FUTURE DISABILITY, FOR PERMANENT DISABILITY, DISFIGUREMENT, OR MEDICAL CARE. The effect of this form has been fully explained to me, and I have received a copy of it. I understand that I should not sign this form until 15 days after I have returned to work or agree I was able to return to work.

Claimant's Signature

Employer's Representative's Signature

Witness

Claimant's Attorney

(check one)

Date Agreement Signed

Sedgwick Rec'd # DEC 19 1996

File this form with the claims department no later than 31 days from the date claimant returned to work or agreed he or she could return to work to terminate temporary compensation after the first 150 days after employer's notice of the injury according to 29-67-505. Within the 150 day period, submit a Form 17 to document that claimant agrees he or she is able to return to work.

WCC Form # 17 Rev Date 9/96

17

Receipt of Compensation

Form for use with Emergency Regulations 9/96

Sedgwick Rec'd # DEC 12

Box 1715 - 1612 Marion Street
Columbia, South Carolina 29202-1715

Carrier Code # 930
Employer FEIN 576000145

Post Office
Name
SSN
Charleston, SC
City State Zip
Phone # Work Phone #

Charleston County
Employer's Name
4 Courthouse Sq. Room 203 Charleston, SC
Address City State Zip
Administrator - Sedgwick of the Carolinas
Insurance Carrier
(803) 772-1111
Preparer's Name Phone #

parties named above agree to pay and accept compensation for temporary total disability based on the following facts:

Date of Injury: 4-30-96
Month Day Year

3. Date disability began: 5-1-96
Month Day Year

Part of Body Injured:

4. Average weekly wage \$ 332.00

Low Back

5. Compensation rate: \$ 221.34

The claimant shall receive weekly payments at the compensation rate beginning on 5-1-96
Month Day Year
until terminated in accordance with the Workers' Compensation Act and R.67-504 or R.67-507.

The employer and its insurance carrier will pay for authorized medical care only. The compensation rate is subject to adjustment and correction according to R.67-508.

Jan Barra
Claimant's Signature

Carol E. Drifts
Employer's Representative

Jan Barra
Witness Claimant's Attorney
(Check One)

5-28-96
Date of Agreement

Attorney's Name

RESERVED FOR COMMISSION'S USE

Key's Address

APPROVED

JUN 07 1996

Key's Telephone Number

S. C. Workers' Comp. Comm.
Perfunctory Award

Sedgwick Rec'd #4 JUN 03 1996

in duplicate with the Claims Department within 15 days of the date of the agreement. The employer's representative is to insert the WCC File
r, Carrier File number, Carrier Code number, and Employer's FEIN. Refer to R.67-501 through R.67-510.

Form # 15.

Agreement for Compensation.

WORKERS' COMPENSATION CLAIM FORM

CHARLESTON COUNTY RISK MANAGEMENT
COURTHOUSE SQUARE - ROOM 203
CHARLESTON, SOUTH CAROLINA 29401
96004027

EMPLOYEE INFORMATION
NAME: SEDGWICK JAMES OF THE CAROLINAS
P O BOX 21804, COLUMBIA, SC 29221
TELEPHONE (803) 772-1111
FACSIMILE (803) 750-2885

EMPLOYER INFORMATION
NAME: CHARLESTON COUNTY MOSQUITO ABATEMENT
4370 AZALEA AVENUE
N. CHARLESTON, S. CAROLINA 29405-7439
PHONE NUMBER (WC, No. Ext.) 803 720 7117

EMPLOYEE DETAILS
NAME: JOAN
ADDRESS: CHARLESTON, SOUTH CAROLINA 29407
DATE OF BIRTH: 03/16/40
MARITAL STATUS: Married
SOCIAL SECURITY NUMBER: [REDACTED]
DATE HIRED: 03/01/94
HOW LONG AT CURRENT JOB: 2 years
DEPT.: 1340

ACCIDENT INFORMATION
DATE OF ACCIDENT: 04/30/96
TIME OF OCCURRENCE: 1:30 PM
LOCATION: Azalea Avenue Fuel Pump, N. Charleston, SC
NATURE OF INJURY: Lower back strain
DESCRIPTION: Getting gas in county vehicle (2nd tank), stepped back and fell over the conc. block

EMPLOYEE'S ACTIVITY AT TIME OF INJURY
GETTING GAS IN COUNTY VEHICLE (2ND TANK), STEPPED BACK AND FELL OVER THE CONC. BLOCK

EMPLOYEE'S MEDICAL INFORMATION
PHYSICIAN: Dr. Capazy
2750 Speissegger Drive
N. Charleston, SC 29405-8294
HOSPITAL: Roper North Hospital
2750 Speissegger Drive
North Charleston, SC 29405-8294

DATE MAILED TO INSURER: MAY 15 1996
PREPARED BY: [Signature]
SECRETARY I



Companion Property & Casualty Group

Companion Property & Casualty
Insurance Company

Companion Commercial
Insurance Company

PC

November 1, 2004

The South Carolina Second Injury Fund
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

Re: Joan Barra for Charleston County
Date of Accident: 4/30/96
SIF #: 51595
WCC #: ~~28284229~~ 9613486

Dear Sir or Madam:

I am writing to determine if you have made a decision on the above captioned claim.

If I can be of any further assistance, please advise.

Very truly yours,

Deborah D. Vaughn

Deborah D. Vaughn
Claims Adjuster
Dv

Enclosures

PULL



November 8, 2004

Ms. Debbie Vaughn
Companion P & C
P. O. Box 100165
Columbia, SC 29202

RE: Joan Barra vs. Charleston County
SIF# 51595 WCC# 9613486

Dear Debbie:

I am in receipt of your letter dated November 1, 2004. According to my file notes it appears I had previously spoken to Brenda Reese on the above captioned case and indicated what additional information we need. My notes reflect I spoke to you on or about March 17, 2004. I will need to know what is the basis for Companion paying the cervical spine portion of this claim. It appears the original injury was to the lumbar spine. I will also need to know the basis for Dr. Khoury's "Yes" response to the spinal stenosis preexisting. According to the narratives this condition was not diagnosed until November 1997, which is approximately a year and a half following the subsequent injury. Are you pursuing the lumbar spine portion of this claim? If so I will need knowledge and the doctors written for the lumbar spine. I will also need a settlement explanation.

If you have any questions please do not hesitate to call.

Sincerely,


Pete Calamas
Sr. Claims Analyst

PC/gs

May 2, 2006

Harold E. Trask
Trask & Howell
Post Office Box 2167
Mt. Pleasant, S.C. 29465

RE: Joan Barra vs. Charleston County
SIF# 51595 WCC# 9613486

Dear Son:

Thank you for your recent phone call in reference to the above claim. I have reviewed this file in great detail and felt I should write this letter versus calling you since I will be retiring on June 29, 2006.

This initial injury appears to be to the lumbar spine. An MRI done in November of 1996 showed Grade I degenerative spondylolisthesis at L4-5 and significant facet hypertrophy. I don't see where the carrier obtained knowledge or doctor's information on these conditions.

The carrier wrote Dr. Khoury for cervical stenosis and obtained knowledge for this condition. Dr. Khoury also said the cervical stenosis was arthritis.

The first mention of any cervical problems was in August of 1997, after the claimant slipped off a truck and broke some ribs. The Second Injury Fund claims representative wrote the carrier and requested an explanation of how the cervical spine became involved when it appeared to be from a new injury which happened in June of 1997.

We also needed to know why no one had pursued the original lumbar claim.

To bring this to a conclusion we need the following cleared up:

1. How is the cervical spine related to the April 30, 1996 injury versus a new injury in June of 1997?

Harold E. Trask
May 2, 2006
Page Two

2. Is the carrier pursuing the lumbar spine?
3. If #2 is yes, we need doctors written and knowledge obtained.
4. If #2 is no, how much of the clincher was for the lumbar spine versus the cervical spine?

Thank you for your time. Call if you have any further questions.

Sincerely,



Gail Deal
Director of Claims
Extension 122

GD/dgc

MEMORANDUM

1/4/08

TO: Latonya Edwards
FROM: James Lindler for Marla
DATE: August 1, 2007
RE: Joan Barra vs. Charleston County
SIF# 51595 WCC# 9613486

135277

The attached Form 54 was received on Wednesday, August 1, 2007. Harold Trask filed the 54 on behalf of the employer and the carrier.

This claim has neither been accepted nor denied by the Fund. We have been awaiting additional information from the carrier.

It has been unclear to the Fund if the carrier is pursuing the lumbar spine, the cervical spine or both. It appears the claimant sustained an injury to the lumbar spine on 04/30/1996 for which the claimant was out of work 33 weeks and received a 5% rating.

The claimant was involved in another injury on 06/01/1997, which involved some fractured ribs and cervical issues came into play. The claimant ultimately had surgery to the cervical spine.

Both the 1996 claim and 1997 claim settled on a clincher for \$80,000.00. We do not have notice of the 1997 claim. It is our position that the cervical spine is related to the 1997 claim and the 1996 claim is for the lumbar spine only for which the carrier has not pursued.

Marla has requested the carrier to advise how the cervical spine is related to the 1996 claim and if they are pursuing the lumbar spine as it appears the lumbar spine is below SIF thresholds.

/jl

TRASK & HOWELL, L.L.C.

HAROLD E. TRASK
ROY A. HOWELL, III
KIRSTEN L. BARR

ATTORNEYS AT LAW
763 JOHNNIE DODDS BOULEVARD
P. O. BOX 2167
MT. PLEASANT, SC 29465

PHONE
(843) 881-4228

FAX
(843) 881-8784

JAMIE C. GUERRERO
KATHRYN C. THOMPSON
ALLISON C. NUSSBAUM
JILL W. KING
JONATHAN H. DUNLAP

E-MAIL
HTRASK@TRASK-HOWELL.COM

August 20, 2007

Valerie Deller
S.C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

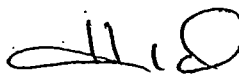
S1595
ll

Re: Joan Barra v. Charleston County
W.C.C. File No.: 9613486 and 9730296
Carrier File No.:
Date of Accident: April 30, 1996, and June 1, 1997

Dear Valerie:

Pursuant to your request, enclosed are copies of Joan Barra's workers' compensation documents to create a file. These copies are sent to comply with your request in reference to our Form 54 which we recently filed. If you need any additional information or have any questions, please do not hesitate to contact me.

Yours very truly,


Harold E. Trask

HET/CZW/les

Enc.

cc: Ms. Carrie Caudle, Companion Property and Casualty
Marla Rehborn, S. C. Second Injury Fund (w/enc.)
1165\110\l-wcc documents

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Joan Barra

Employee,

-vs-

Charleston County,

Self-Insured Employer, through the
South Carolina Counties Workers'
Compensation Trust
Carrier, Defendants

IN RE:

Charleston County and the South
Carolina Counties Workers'
Compensation Trust, Claimants,

v.

South Carolina Second Injury Fund,
Defendant.

) W.C.C. No. 9613486

) SIF No. 51595

) MEMORANDUM OF LAW

STATEMENT OF THE CASE

Joan Barra sustained a compensable injury to her cervical spine on April 30, 1996. Following the accident, Charleston County and the South Carolina Counties Workers' Compensation Trust (hereinafter the "Claimants") paid \$51,793.46 in medical benefits, in addition to temporary total disability compensation. The claim was ultimately settled pursuant to a clincher agreement for \$80,000.00 on March 2, 2000.

On February 18, 1997, the Claimants sent a letter to the SIF "to notify [the SIF] of the employer's Second Injury Fund claim" in the case of Joan Barra v. Charleston County, which also listed the accident date, the WCC claim number, and the fact that the accident occurred in Charleston County. The SIF responded in writing that the "case is pending investigation" and

asked that the Claimants complete a SIF Claim Form and return it with "all requested documents as soon as possible." The Claimants filed the requested Claim Form with the SIF on February 16, 2011 and completed all requested fields, including the Joan Barra's demographic information, the nature of the second injury, the current status of the underlying claim, the names of the treating physicians, the average weekly wage and compensation rate, the weeks of benefits paid, the medical costs to date, the nature of the prior impairment, and the manner in which the knowledge requirement was satisfied. At the bottom of the Form, which was created by the SIF, there is a field for the "Date of Claim," which is designated as "2/16/01." In all subsequent correspondence from the SIF to the Claimants, the SIF referred to their ongoing investigation of the reimbursement "claim." However, the SIF chose not to accept the claim and the Claimants were ultimately forced to file a Form 54 hearing request.¹

After a hearing on July 8, 2008, Commissioner Barden issued a Decision and Order requiring the SIF to reimburse the Claimants in accordance with S.C. Code Ann. § 42-9-400, as the Claimants had met all requirements for reimbursement. Commissioner Barden rejected the SIF's argument that the claim for reimbursement was time barred under the statute of limitations for civil claims, S.C. Code Ann. § 15-3-600. The SIF appealed the statute of limitations issue to the Commission's Appellate Panel, which issued an order dated April 30, 2009, again requiring the SIF to reimburse the Claimants as set forth in S.C. Code Ann. § 42-9-400.

The SIF then appealed to the Court of Common Pleas for Charleston County and the sole issue on appeal was whether the Claimant's commenced a claim within 10 years pursuant to § 15-3-600. During the pendency of the appeal, the Supreme Court issued its decision in

¹ Note that the Form 54 does not contain any new information that was not already contained on the SIF Claim Form or the documents submitted by the Claimants to the SIF prior to the filing of

Transportation Insurance Company v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010), holding that S.C. Code Ann. § 15-3-600 applies to administrative claims for reimbursement from the SIF. Because the Commission did not previously make findings of fact or conclusions of law regarding the applicability of § 15-3-600, this matter is now before the Workers' Compensation Commission pursuant to the Circuit Court's November 30, 2011 Order of remand to make such findings and conclusions as to whether the Claimants commenced their claim for reimbursement against the SIF within ten years.

DISCUSSION

S.C. Code Ann. § 15-3-600 provides that an "action for relief not provided for in this chapter must be commenced within ten years after the cause of action shall have accrued." Pursuant to S.C. Code Ann. § 15-3-20(B), a civil action is brought in a court and is "commenced when the summons and complaint are filed with the clerk of court..." Of course, S.C. Code Ann. § 15-3-20 does not apply to claims for reimbursement against the Fund and the Claimants were not required to file a summons and complaint against the SIF. Instead, administrative actions under the Workers' Compensation Act are commenced with the filing of a "claim."² Therefore, the question before the Commission is whether the Claimants commenced their reimbursement claim against the Fund within 10 years after placing the Fund on notice of their claim, which

the Form 54.

² In determining what constitutes the filing of a claim, it is almost universally held that the law "does not contemplate the filing of a claim having the same particularity as a formal pleading or stating 'all elements of a cause of action;' and that the law would be sufficiently complied with if the claim in whatsoever form sets forth enough facts to apprise the [defendant] of the time, place, and character of the accident, and the general nature of the injury, so that it may be understood that the claimant expects to receive the benefits provided by the Act." Hamilton v. Bob Bennett Ford, 336 S.C. 72, 78, 518 S.E.2d 599, 602 (Ct. App. 1999).

according to the South Carolina Supreme Court, is when the reimbursement claim accrues. Transportation Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (2010).

In the present case, the Claimants served the Fund with notice of their reimbursement claim on February 18, 1997 in accordance with S.C. Code Ann. § 42-9-400. (APA #1, p. 1) The SIF responded by letter dated January 10, 2000, assigning SIF number 51595 to the reimbursement claim, requesting that the Claimants complete a SIF Notice of Claim Form, and advising that the case was "pending investigation." (APA # 2, p. 2-3) The Claimants respectfully submit that if the reimbursement claim had not yet been commenced as of January 10, 2000, the SIF would not have the need to assign a claim number or otherwise conduct an investigation at that time.

Furthermore, S.C. Code Ann. § 42-9-400(f) requires that:

"An employer or his carrier shall notify the Industrial Commission and the Director of the Second Injury Fund in writing of any possible claim against the fund as soon as practicable but in no event later than after the payment of the first seventy-eight weeks of compensation."

According to the South Carolina Supreme Court,

"The primary purpose of § 42-9-400(f) is to establish a deadline for perfecting actual claims for reimbursement with the Fund ... Once a claim is submitted, the Fund may agree to reimburse an employer or carrier. In such a case, the Fund must submit the agreement to reimburse to the Commission for its approval. § 42-8-310(b). If the Fund denies a claim for reimbursement, the employer or carrier may request a hearing before the Commission on the claim. 25A S.C. Code Reg. 67-208(D)." S.C. Second Injury Fund v. American Yard Products, 330

S.C. 20, 21, 496 S.E.2d 862, 863 (1998). (emphasis added).

Therefore; the primary purpose of the correspondence dated February 18, 1997 (APA p.1) was to perfect an "actual claim" for reimbursement with the Fund in accordance with S.C. Code Ann. § 42-9-400(f). In fact, the Fund acknowledged that an actual claim for reimbursement had been made by their letter of January 10, 2000, wherein Second Injury Fund Claims Analyst Pete J. Calamas advised that the reimbursement claim was "pending investigation." (APA #2, p. 2). Therefore, the Claimants respectfully contend that the reimbursement claim was commenced within the ten year statute of limitations by their correspondence of February 18, 1997.

On February 16, 2001, a completed SIF Claim Form was served upon the SIF, outlining the details of the Claimant's reimbursement claim. (APA #3, p. 4) In addition to listing the "date of Claim" as "2/16/01," the Claim Form also includes the following details:

- WCC Number
- Carrier Code
- Employer Code
- Carrier File Number
- SIF Number
- Employee Name
- Employee Social Security Number
- Employee Address
- Date of Accident
- Employer Name
- Employer Location
- Carrier Name
- Carrier Address
- Employee's Attorney's Name
- Employee's Attorney's Address
- Carrier's Attorney's Name
- Carrier's Attorney's Address
- Nature of Second Injury
- Current Status
- Treating Physicians

- Average Weekly Wage
- Compensation Rate
- Date of First Temporary Total
- Date Returned to Work
- Weeks of All Benefits Paid
- Medical Costs to Date
- Nature of Prior Impairment (with reference to § 42-9-400)
- Nature of Knowledge Requirement

The Claim Form further specifies that all narrative reports, the Form 12A, the Form 15, a current Form 18, and a WCC Order “must be provided before claims can be processed.” The Claimants not only fully and accurately completed the Claim Form on February 16, 2011 as requested by the SIF, but the Claimants also submitted all forms required by the SIF so the claim could be “processed.” The SIF’s own Claim Form makes no mention of any other documents or information that was necessary to commence the reimbursement claim. To the contrary, the Claimants satisfied all requirements for the commencement of the claim, in accordance with the SIF’s own forms, no later than February 16, 2001, which is well within the 10 year statute of limitations under S.C. Code Ann. § 15-3-600.

Because the SIF still refused to accept the Claimant’s pending reimbursement claim, the Claimants supplied the SIF with an updated Claim Form, the Form 15, the Form 17, the Form 19, the Form 16, and the Form 12A under cover of letter dated March 2, 2004. (APA #4, pp.5-12). Pete Calamas, Senior Claims Analyst for the SIF contacted the Claimants by phone on or about March 17, 2004 to discuss the merits of the reimbursement claim, the narrative medical records he had received, and what additional clarification from the doctors the SIF desired. This conversation was confirmed by Mr. Calamas’s letter dated November 8, 2004. (APA #6, p.14). Therefore, in addition to the completed SIF Claim Form and the documents the SIF specified

were required for claim processing, the SIF also had all of the narrative medical reports to support the reimbursement claim. As such, the Claimants respectfully contend that, not only had a reimbursement claim been commenced well before November 8, 2004 (which is within the 10 year statute of limitations), but that the SIF should be estopped by their conduct to deny that a reimbursement claim had been timely commenced.

Furthermore, it is not necessary that the Claimants file any particular form to commence a reimbursement claim and it is certainly not necessary for the Claimants to request a hearing. Instead, reimbursement claim against the SIF, like any other a workers' compensation claim, can be commenced pursuant to S.C. Code Reg. 67-206(C), which provides:

A letter filed with the Commission also files a claim. The letter should include the information listed in items (1) through (12) below:

- (1) Claimant's name (and worker's name, if different);*
- (2) Claimant's address (and workers' address if different);*
- (3) Claimant's home and work telephone numbers (and workers' home and work telephone numbers, if different);*
- (4) Claimant's social security number (and workers' social security number, if different);*
- (5) Employer's name;*
- (6) Employer's address;*
- (7) Employer's telephone number;*
- (8) Employer's insurance carrier, if known;*
- (9) Date of injury;*
- (10) The county in which the injury occurred;*
- (11) Type of injury (to which area of the body);*
- (12) Description of the accident.*
- (13) Failure to include any of the information above does not bar the claim if the information necessary to an issue in a claim is given to the*

In the present case, the Claimants served the Fund with all information necessary to file a claim under S.C. Code Reg. 67-206 well before the expiration of the ten year statute of limitations applicable to civil claims through its myriad communications, forms, and submissions.³

Furthermore, our Courts have universally held that the Commission "will accept as the equivalent of a statutory claim any paper that contains the substance usually supplied by a formal claim, although the form may be defective." Hamilton v. Bob Bennett Ford, 336 S.C. 72, 86, 518 S.E.2d 599, 606 (1999). The rationale is that a claim, as contemplated by the Workers' Compensation Act, is not necessarily a formal pleading, but must simply set forth enough facts to apprise the defendant of "the time, place, and character of the accident and the general nature of the injury" so that it may be understood that the Claimants expect to receive the benefits (e.g., reimbursement) provided by the Act. Here, it was no later than March 2, 2004 that the SIF was made fully aware that the Claimants expected to reimbursement under S.C. Code Ann. § 42-9-400, by virtue of the SIF Claim Forms and records submitted by the Claimants. Therefore, it is clear that the present reimbursement claim was commenced within ten years after it accrued in accordance with S.C. Code Ann. § 42-9-400 and S.C. Code Reg. 67-206 and; therefore, it is not time-barred by S.C. Code Ann. § 15-3-600.

CONCLUSION

Based on the facts and arguments set forth herein, the Claimants, Charleston County and the South Carolina Association of Counties Workers' Compensation Trust, respectfully request

³ Note that the Fund inexplicably argues that R. 67-208 ("Requesting a Hearing, Employer") is somehow the controlling regulation for filing a claim, as opposed to R. 67-206 ("Filing a Claim"); however, the Fund cites no authority for this argument.

that the Workers' Compensation Commission find and conclude that the Claimants commenced their claim for reimbursement from the Second Injury Fund within the 10 year statute of limitations set forth in S.C. Code Ann. § 15-3-600 and that the requirements of S.C. Code Ann. § 42-9-400 have otherwise been satisfied.

Respectfully submitted,

TRASK & HOWELL, L.L.C.

P. O. Box 2167

Mt. Pleasant, SC 29465

By Kirsten L. Barr

Kirsten L. Barr

Attorney for the Claimants,

Charleston County and the South Carolina

Counties Workers' Compensation Trust

April 9, 2012

Mt. Pleasant, South Carolina

1165\1110\memo of law

TRASK & HOWELL, L.L.C.

HAROLD E. TRASK
ROY A. HOWELL, III
KIRSTEN L. BARR

ATTORNEYS AT LAW
763 JOHNNIE DODDS BOULEVARD
P. O. Box 2167
MT. PLEASANT, SC 29465

PHONE
(843) 881-4228

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(843) 881-8784

E-MAIL
HTRASK@TRASK-HOWELL.COM

JAMIE C. GUERRERO
KATHRYN C. THOMPSON
ALLISON C. NUSSBAUM
JILL W. KING
JONATHAN H. DUNLAP

51595
51596
pk
MDR
July 31, 2007

CERTIFIED

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

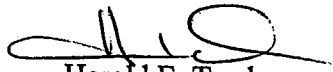
Re: Joan Barra v. Charleston County
W.C.C. File No.: 9613486 and 9730296
Carrier File No.:
Date of Accident: April 30, 1996, and June 1, 1997

Dear Ms. Crocker:

I am enclosing a duly executed Form 54, Request of Employer/Carrier for a Hearing solely between the Employer and the Second Injury Fund to determine entitlement to reimbursement in the above-referenced workers' compensation claim, with the request that the same be filed with the other papers in this action. Also enclosed is our check in the amount of \$25.00 for the filing of this Form 54.

By Proof of Service to the Second Injury Fund, I am serving a copy of our Request for a Hearing on it as required by the Rules of the Commission.

Yours very truly,


Harold E. Trask

HET/CZW/les

Enc.

cc: Ms. Carrie Caudle, Companion Property and Casualty (w/enc.)
S. C. Second Injury Fund (w/enc.)

1165\110\1-F54

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 9613486 and 9730296

Carrier File # _____

Carrier Code # _____

Employer FEIN _____

Joan Barra

Claimant's Name

SSN

Leesville, SC 29070

Address

City

State

Zip

958-4271

Home Phone

Work Phone

Charleston County

Employer's Name

4 Courthouse Square

Charleston, SC 29401

Address

City

State Zip

S. C. Counties Workers' Compensation Trust

Insurance Carrier

Harold E. Trask

Preparer's Name

(843) 881-4228

Phone #

Check applicable claims and complete all blanks.

1. The Employee sustained a compensable accidental injury to the Neck, low back and right arm
on April 30, 1996 in Charleston, South Carolina
Date County State
2. That the Second Injury Fund was put on notice of the claim on January 6, 2007
Date
3. That the Carrier concluded the disability claim by (Award) (Agreement) on March 2, 2000
Date
4. That the subsequent injury combined with or was aggravated by the below-named permanent impairment under S.C. code §42-9-40 (d):
 - a. Listed Impairment - (1) - (33) Arthritis (cervical stenosis) and lumbar degenerative spondylothesis (arthritis) and facet hypertrophy (arthritis)
 - b. (34) (a) _____
 - c. (34) (b) _____
5. ☒ a. That the impairment pre-existed;
☒ b. That the impairment was permanent; and
☒ c. That the impairment is a physical condition.
6. ☒ That the prior impairment combined with or was aggravated by the subsequent injury
7. ☒ That the combination/aggravation substantially increased the liability of the Carrier for (disability), (medical) or (both).
8. ☒ That the prior impairment was a hindrance or obstacle to employment or re-employment.
9. ☐ a. That the Employer has knowledge of the prior impairment;
☒ b. That the impairment was unknown to the Employee and the Employer; or
☐ c. That the Employee concealed the prior impairment from the employer.
10. ☐ That the subsequent injury would not have occurred "but for" the prior impairment.
11. That the above claim qualifies for reimbursement under S.C. code §42-9-410 because _____

12. Other grounds for claim: Reserve the right to amend.

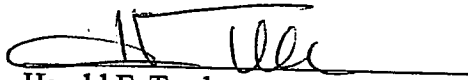
Signature

July 31, 2007
Date

PROOF OF SERVICE

I hereby certify that on this 31st day of July 2007, I served a copy of the attached Form 54, Request of Employer/Carrier for a Hearing solely between the Employer and the Second Injury Fund to determine entitlement to reimbursement, by mailing a copy of the same first-class, postage prepaid, to the S. C. Second Injury Fund addressed as follows:

Second Injury Fund
Koger Center, Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210



Harold E. Trask
TRASK & HOWELL, L.L.C.
Mt. Pleasant, South Carolina

1165\110\POS-f54

HAROLD E. TRASK
ROY A. HOWELL, III
KIRSTEN L. BARR

JAMIE C. GUERRERO
KATHRYN C. THOMPSON
ALLISON C. NUSSBAUM
JILL W. KING
JONATHAN H. DUNLAP
WILLIAM H. LYON

TRASK & HOWELL, L.L.C.

ATTORNEYS AT LAW
763 JOHNNIE DODDS BOULEVARD
P. O. Box 2167
MT. PLEASANT, SC 29465

PHONE
(843) 881-4228

FAX
(843) 881-8784

E-MAIL
KBARR@TRASK-HOWELL.COM

December 4, 2007

CERTIFIED

Ms. Virginia Crocker
Judicial Director
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

Re: Joan Barra v. Charleston County
W.C.C. File No.: 9613486; SIF No. 135277
Carrier File No.:
Date of Accident: April 30, 1996

Dear Ms. Crocker:

I am enclosing a duly executed Form 54, Request of Employer/Carrier for a Hearing solely between the Employer and the Second Injury Fund to determine entitlement to reimbursement in the above-referenced workers' compensation claim, with the request that the same be filed with the other papers in this action. Also enclosed is our check in the amount of \$25.00 for the filing of this Form 54.

By Proof of Service to the Second Injury Fund, I am serving a copy of our Request for a Hearing on it as required by the Rules of the Commission.

Yours very truly,



Kirsten L. Barr

KLB/CZW/les

Enc.

cc: Ms. Carrie Caudle, Companion Property and Casualty (w/enc.)
Latonya Edwards, Esq. S. C. Second Injury Fund (w/enc.)

1165\110\1-F54#2

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 9613486; SIF No. 135277

Carrier File #

Carrier Code #

Employer FEIN

Joan Barra

Claimant's Name

SSN

Leesville, SC 29070

Address

City

State

Zip

958-4271

Home Phone

Work Phone

Charleston County

Employer's Name

4 Courthouse Square

Charleston, SC 29401

Address

City

State Zip

S. C. Counties Workers' Compensation Trust

Insurance Carrier

Kirsten L. Barr

Preparer's Name

(843) 881-4228

Phone #

Check applicable claims and complete all blanks.

1. The Employee sustained a compensable accidental injury to the Neck, low back and right arm
on April 30, 1996 in Charleston, South Carolina
Date County State
2. That the Second Injury Fund was put on notice of the claim on January 6, 2007
Date
3. That the Carrier concluded the disability claim by (Award) (Agreement) on March 2, 2000
Date
4. That the subsequent injury combined with or was aggravated by the below-named permanent impairment under S.C. code §42-9-40 (d):
 - a. Listed Impairment - (1) - (33) Arthritis (cervical stenosis) and lumbar degenerative spondylosis (arthritis) and facet hypertrophy (arthritis)
 - b. (34) (a) _____
 - c. (34) (b) _____
5. ☒ a. That the impairment pre-existed;
☒ b. That the impairment was permanent; and
☒ c. That the impairment is a physical condition.
6. ☒ That the prior impairment combined with or was aggravated by the subsequent injury
7. ☒ That the combination/aggravation substantially increased the liability of the Carrier for (disability), (medical) or (both).
8. ☒ That the prior impairment was a hindrance or obstacle to employment or re-employment.
9. ☐ a. That the Employer has knowledge of the prior impairment;
☒ b. That the impairment was unknown to the Employee and the Employer; or
☐ c. That the Employee concealed the prior impairment from the employer.
10. ☐ That the subsequent injury would not have occurred "but for" the prior impairment.
11. That the above claim qualifies for reimbursement under S.C. code §42-9-410 because _____

12. Other grounds for claim: Reserve the right to amend.

Kirsten L. Barr
Signature

December 5, 2007
Date

PROOF OF SERVICE

I hereby certify that on this 57 day of December 2007, I served a copy of the attached Form 54, Request of Employer/Carrier for a Hearing solely between the Employer and the Second Injury Fund to determine entitlement to reimbursement, by mailing a copy of the same first-class, postage prepaid, to the S. C. Second Injury Fund addressed as follows:

Latonya Edwards, Esq.
Second Injury Fund
Koger Center, Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

Kirsten L. Barr
Kirsten L. Barr
TRASK & HOWELL, L.L.C.
Mt. Pleasant, South Carolina

1165\110\POS-f54

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Joan Barra,)
)
Employee/Claimant,)
)
-vs-)
)
Charleston County,)
)
Self-Insured Employer, through)
S. C. Counties Workers')
Compensation Trust,)
a Self-Insurers' Fund,)
)
Defendant.)
_____)

W.C.C. FILE NO. 9613486 and 9730296

FINAL LUMP SUM
AGREEMENT AND RELEASE

Approved as related to
benefits under WC
date of accident or this claim
only.

APPROVED
MAR 2 2000
S.C. Workers' Comp. Comm.

The Claimant, Joan Barra, while in the employ of Charleston County, sustained bodily injuries in an accident arising out of and in the course of her employment on or about April 30, 1996, and June 1, 1997, in the County of Charleston, State of South Carolina.

At the time in question the Claimant and the Self-Insured Employer were subject to the Workers' Compensation Law of South Carolina (hereinafter called "Act").

Following said accident, the Self-Insured Employer paid temporary total compensation and medical costs or expenses for or on behalf of the Claimant.

Disputes exist between the parties as to Claimant's entitlement to further medical care, further payments of temporary disability compensation, and the extent of any causally related permanent disability.

The parties hereto now advise that, in view of the aforementioned disputes, an agreement has been reached to settle this matter in its entirety, subject to the approval of the South Carolina Workers' Compensation Commission.

Under the proposed settlement, the Self-Insured Employer has agreed to pay, and the Claimant has agreed to accept, the sum of Eighty Thousand and 00/100 (\$80,000.00) Dollars in full settlement and satisfaction of every liability under the Act and otherwise growing out of or in any way connected with any injury and/or accident occurring on or about April 30, 1996, and June 1, 1997, as well as any other injury and/or accident at any other time.

As an integral part of this settlement agreement, it is expressly understood and agreed that the Defendant is only responsible for medical treatment which they authorized and which was incurred on or before December 30, 1999. The Defendants have no liability for any other medical expenses past, present, or future and specifically are not liable for treatment and/or evaluations by Dr. Randy Waid and/or Dr. Elizabeth Rittenburg.

The Claimant hereby asserts that she has been fully advised of all her rights under the South Carolina Workers' Compensation Act, and she is of the opinion that the proposed settlement is reasonable and fair and in this opinion the Claimant's attorney concurs, and they respectfully request that this Commission approve the settlement as set forth above. The Claimant hereby asserts that she recognizes that her consent to, and the approval of, this settlement is a final determination and adjudication of all benefits under the South Carolina Workers' Compensation Act and otherwise, growing out of, or in any way connected with, any injury and/or accident occurring on or about April 30, 1996, and June 1, 1997, or any other injury and/or accident at any other time.

NOW, THEREFORE, in consideration of the payment to the Claimant of the sum of Eighty Thousand and 00/100 (\$80,000.00) Dollars, and in further consideration of the mutual covenants, stipulations, and releases herein contained, the Claimant hereby releases and discharges Charleston County and S. C. Counties Workers' Compensation Trust, and binds Claimant's heirs, executors,

administrators, dependents, next of kin, privies, and assigns under the Act and otherwise and agrees to release, discharge, defend, and indemnify Charleston County, S. C. Counties Workers' Compensation Trust, and their respective agents, servants, insurers, physicians, privies, and their successors, from any and all debts, claims, demands, causes of action, rights of action, and liabilities whatsoever of any injury and/or accident on or about April 30, 1996, and June 1, 1997, or at any other time and including, but not limited to, any right which the Claimant might otherwise have to demand employment or benefits for disability, disfigurement, bodily impairment, medical treatment, medicine or drugs, lost time or death, under the Act or otherwise and specifically including any right which Claimant might otherwise have to demand further benefits by way of compensation or medical care under the Act because of a change in condition hereinafter (which is expressly waived, released and renounced) whether or not arising out of, or directly or indirectly in any way conceivably attributable to any injury and/or accident occurring on or about April 30, 1996, and June 1, 1997, or any other injury and/or accident at any other time and each and every consequence thereof, whether known or unknown.

The Claimant hereby requests that the South Carolina Workers' Compensation Commission approve the allocation of the aforementioned proposed settlement sum as follows:

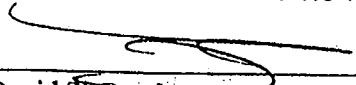
1. Fifty-one Thousand Nine Hundred Fifty-seven and 34/100 Dollars (\$51,957.34) in compromise settlement of future disability benefits for future wage loss at the rate of Two Hundred Three and 75/100 Dollars (\$203.75) per month for a period of 21.25 years thereafter, the Claimant's life expectancy, pursuant to the South Carolina Supreme Court's decision in the case of *Utica-Mohawk Mills v. Orr*, 227 S.C. 226, 87 S.E.2d 589 and §19-1-150 of the S.C. Code (1976, as amended);

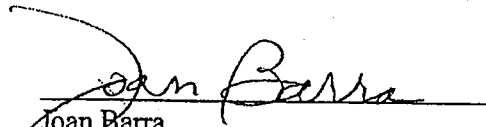
2. Twenty-eight Thousand Forty-two and 66/100 Dollars (\$28,042.66) for attorneys' fees and costs.

This Agreement shall be subject to the approval of the Commission and it is stipulated and agreed between the parties that, upon such approval, this Agreement shall not be subject to review, modification, or amendment by the Commission or the Courts of this State. Each party prays the approval of this Agreement by the Commission as being her or its best interest.

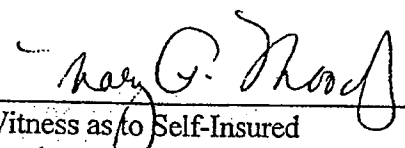
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed as of 2/17, 2000.

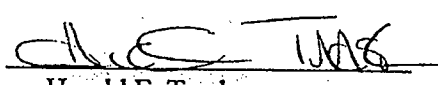
WITNESSED AND APPROVED:


David T. Pearlman
Attorney for Claimant


Joan Barra
Claimant

Charleston County, Self-Insured Employer, through
S. C. Counties Workers' Compensation Trust, a Self-
Insurers' Fund, Defendant


Witness as to Self-Insured
Employer

By: 
Harold E. Trask
Attorney for the
Self-Insured Employer

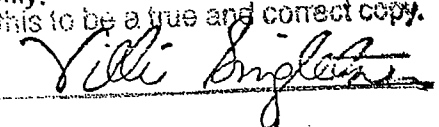
The foregoing Agreement and Release is adopted and approved as an award of the South Carolina Workers' Compensation Commission finally ending this matter this ____ day of _____, 2000.

/s/ Sherry Shealy Martschink

COMMISSIONER

1165\110\CLINCHER

Approved as related to
benefits under WC Act & for
date of accident of this claim
only.
I certify this to be a true and correct copy.





Sedgwick

Sedgwick James of the Carolinas, Inc.

2000 Center Point Drive, Suite 2350, Columbia, South Carolina 29210, PO Box 21804, Columbia, South Carolina 29221
Telephone 803 772-1111. Facsimile 803 772-6361

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February 18, 1997

Mr. Douglas P. Crossman
South Carolina Second Injury Fund
Koger Center
Winthrop Building, Suite 119
220 Executive Center Drive
Columbia, SC 29210

RE: Joan Barra vs. Charleston County
D/A: 04/30/96
WCC #: 9613486
Carrier Code: 930
Our Claim #: 96004027

Dear Doug:

This letter is to notify you of the employer's Second Injury Fund claim on the above captioned case.

The employee's injury occurred in Charleston County.

If additional information is needed, please let me know.

Sincerely,

Cathy Anderson
Recovery Specialist

✓cc: South Carolina Workers' Compensation Commission