

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY
Kristi Lea Harrington, Circuit Court Judge

Appellate Case No. 2016-001281

RECEIVED

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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.

FINAL BRIEF OF THE RESPONDENTS

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ISSUE ON APPEAL

- I. Did the Respondents commence their claim for reimbursement against the Second Injury Fund within ten years after it accrued?

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 "Respondents") 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. (R. pp. 154-157).

On February 18, 1997, the Respondents sent a letter to the Second Injury Fund "to notify [the Fund] 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. (R. p. 121). The Fund responded in writing that the "case is pending investigation" and asked that the Respondents complete a Second Injury Fund Claim Form and return it with "all requested documents as soon as possible." (R. p. 122). The Respondents filed the requested Claim Form with the Fund on February 16, 2001, and completed all requested fields, including 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. (R. p. 124). 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.” (R. p. 124). In all subsequent correspondence from the SIF to the Respondents, the Fund referred to their ongoing investigation of the reimbursement “claim.” (R. pp. 134, 135, 137). However, the Fund chose not to accept the claim and the Respondents were ultimately forced to file a Form 54 hearing request.¹ (R. p. 152).

After a hearing on July 8, 2008, Commissioner Barden issued a Decision and Order requiring the Fund to reimburse the Respondents in accordance with S.C. Code Ann. § 42-9-400, as the Respondents had met all requirements for reimbursement. (R. pp. 35-41). Commissioner Barden rejected the Fund’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 Fund appealed the statute of limitations issue to the Commission’s Appellate Panel, which issued an order dated April 30, 2009, again requiring the Fund to reimburse the Respondents as set forth in S.C. Code Ann. § 42-9-400. (R. pp. 29-34).

The Fund then appealed to the Court of Common Pleas for Charleston County, and the sole issue on appeal was whether the Respondents commenced a claim within ten years pursuant to S.C. Code Ann. § 15-3-600. During the pendency of the appeal, the Supreme Court issued its decision in Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010), holding

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 Respondents to the SIF prior to the filing of the Form 54.

that S.C. Code Ann. § 15-3-600 applies to administrative claims for reimbursement from the Fund. Because the Commission did not previously make findings of fact or conclusions of law regarding the applicability of Section 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 Respondents commenced their claim for reimbursement against the Fund within ten years. (R. pp. 26-28).

After considering the briefs and memoranda filed by the parties, Commissioner Barden issued a Decision and Order, finding and concluding that the Respondents did not timely claim reimbursement from the Second Injury Fund on the basis that a *hearing request* was not made until more than ten years after notice of the claim was given. (R. pp. 18-25). This decision on remand was affirmed by the Commission's Appellate Panel, and the Respondents appealed to the Court of Common Pleas on January 25, 2013. (R. pp. 13-17).

Oral arguments were originally scheduled for November 6, 2013, before the Honorable Judge J.C. Nicholson, Jr. Prior to oral arguments, the parties agreed that the matter should be continued pending the outcome of Chavis v. AVX Corp., Appellate Case No. 2012-213175, which was pending before the South Carolina Court of Appeals because it presented the identical issue pending before the Court of Common Pleas in the present case. (R. pp. 11-12). The Court of Appeals issued an unpublished decision in the Chavis case on June 4, 2014 (2014-UP-212), holding that filing a claim with the Second Injury Fund constitutes commencing an action for reimbursement. (R. pp. 8-10). Therefore, the Respondents argued that, in accordance with the holding in Chavis, the Court

of Common Pleas should reverse the Commission and conclude, as a matter of law, that the Respondents' claim for reimbursement was timely commenced based upon the undisputed evidence that the Respondents timely filed a claim against the Fund in 1997.

The matter ultimately came before the Honorable Kristi Lea Harrington for hearing in Charleston. By Order dated May 12, 2016, Judge Harrington reversed the Workers' Compensation Commission and concluded that the Respondents timely commenced their reimbursement action and are, therefore, entitled to reimbursement from the Fund. (R. pp. 3-7). The Fund then filed the present appeal to the Court of Appeals.

ARGUMENT

I. The Respondents commenced their claim for reimbursement against the Second Injury Fund within ten years after it accrued.

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 Second Injury Fund and the Respondents were not required to file a summons and complaint against the Fund. Instead, administrative actions under the Workers' Compensation Act are

commenced with the filing of a “claim.”² Indeed, the Court of Appeals specifically held in Chavis v. AVX that “filing a claim with the Fund constitutes commencement of the action for reimbursement.”³ Therefore, the question is whether the Respondents commenced their reimbursement claim against the Fund within ten years after placing the Fund on notice of their claim, which according to the South Carolina Supreme Court, is when the reimbursement claim accrues. Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

In the present case, the Respondents served the Fund with notice of their reimbursement claim on February 18, 1997, in accordance with S.C. Code Ann. § 42-9-400. (R. p. 121). The Fund responded by letter dated January 10, 2000, assigning SIF number 51595 to the reimbursement claim, requesting that the Respondents complete a SIF Notice of Claim Form, and advising that the case was “pending investigation.” (R. p. 122-23). The Respondents respectfully submit that if the reimbursement claim had not yet been commenced as of January 10, 2000, the Fund would not have the need to assign a claim number or otherwise conduct an investigation at that time.

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 [Appellant] 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 (S.C. Ct. App. 1999).

³ While unpublished, the Fund previously stipulated that the holding in the Chavis case was controlling in the present case.

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. § 42-7-310(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. Am. Yard Prods., 330 S.C. 20, 23-24 n.1, 496 S.E.2d 862, 863-64 (S.C. 1998). (emphasis added).*

Therefore, the primary purpose of the correspondence dated February 18, 1997 (R. p. 121), 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.” (R. p. 122).

Therefore, the Respondents 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 Fund, outlining the details of the Respondents' reimbursement claim. (R. p. 124). 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 Section 42-9-400)
- ☐ 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 Respondents not only fully and accurately completed the Claim Form on February 16, 2001, as requested by the Fund, but the Respondents also submitted all forms required by the Fund so the claim could be “processed.” The Fund’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 Respondents satisfied all requirements for the commencement of the claim, in accordance with the Fund’s own forms, no later than February 16, 2001, which is well within the ten-year statute of limitations under S.C. Code Ann. § 15-3-600.

Because the Fund still refused to accept the Respondents’ pending reimbursement claim, the Respondents 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. (R. pp. 125-32). Pete Calamas, Senior Claims Analyst for the Fund contacted the Respondents 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 Fund desired. This conversation was confirmed by Mr. Calamas’s letter dated November 8, 2004. (R. p. 134). Therefore, in addition to the completed SIF Claim Form and the documents the Fund specified were required for claim processing, the Fund also had all of the narrative medical reports to support the reimbursement claim. As such, the Respondents respectfully contend that, not only had a reimbursement claim been commenced well before

November 8, 2004 (which is within the ten-year statute of limitations), but that the Fund should be estopped by their conduct to deny that a reimbursement claim had been timely commenced.

Furthermore, it is not necessary that the Respondents file any particular form to commence a reimbursement claim, and it is certainly not necessary for the Respondents to request a hearing. Instead, a reimbursement claim against the Fund, like any other 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 (13) below:

- 1. Claimant's name (and worker's name, if different);*
- 2. Claimant's address (and worker's address, if different);*
- 3. Claimant's home and work telephone numbers (and worker's home and work telephone numbers, if different);*
- 4. Claimant's social security number (and worker's 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 Respondents 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.⁴

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 (S.C. Ct. App. 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 Respondents expect to receive the benefits (*e.g.*, reimbursement) provided by the Act. Here, it was no later than March 2, 2004, that the Fund was made fully aware that the Respondents expected reimbursement under S.C. Code Ann. § 42-9-400, by virtue of the SIF Claim Forms and records submitted by the Respondents. 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,

⁴ 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.

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 Court of Appeals affirm the Order of the Court of Common Pleas, concluding that the Respondents commenced their claim for reimbursement from the Second Injury Fund within the ten-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 based upon the undisputed evidence in the record and the decision of the South Carolina Court of Appeals in the case of Chavis v. AVX Corp.

Respectfully submitted,

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February 17, 2017
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1165\110\Final Brief of Respondents

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CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of the Respondents
complies with Rule 211(b), SCACR, and Supreme Court Order 2007-08-16-02,
dated August 13, 2007, requiring redaction of personal data identifiers.

February 17, 2017

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PROOF OF SERVICE

The undersigned hereby certifies the above-referenced Appellant, the South Carolina Second Injury Fund, was served with three (3) bound copies of the attached Final Brief of the Respondents this the 17th day of February 2017, by depositing the same in the United States Mail, first class postage prepaid, addressed to his attorney of record, as follows:

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February 17, 2017

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