

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY

The Honorable Kristi Lea Harrington

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Appellate Case No.: 2013-CP-10-0510

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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.

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**FINAL BRIEF OF APPELLANT**

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## **ISSUES ON APPEAL**

1. Under S.C. Code Ann. § 15-3-600 and the SC Supreme Court's decision in *Transportation Insurance Company v. SC SIF*, did the Circuit Court err in reversing the Commission's decision and finding that Carrier was entitled to reimbursement when Carrier failed to file a Form 54 Request for Hearing within ten (10) years of providing notice to the Fund?

## **STATEMENT OF THE CASE**

The South Carolina Association of Counties requested reimbursement from the South Carolina Second Injury Fund (the "Fund") pursuant to South Carolina Code Ann. § 42-9-400. Employer, Charleston County, and Carrier, South Carolina Counties Workers' Compensation Trust (collectively "Employer/Carrier"), allege that they incurred substantially greater 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.

The Single Commissioner found the claim reimbursable. The Appellate Panel affirmed 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. The South Carolina Supreme Court subsequently issued a ruling in Transp. Ins. Co. and Flagstar Corp. v. SC Second Injury Fund, which held that S.C. Code Ann. § 15-3-600 applied to reimbursement

cases. 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010). After the Supreme Court's Transportation decision, this case was remanded to the South Carolina Workers' Compensation Commission by consent of the parties. On remand, the Appellate Panel reversed its decision and denied Carrier's request for reimbursement. Carrier appealed. The Circuit Court reversed the decision of the Workers' Compensation Commission and held that Carrier was entitled to reimbursement. The Fund now appeals.

### **HISTORICAL BACKGROUND**

The South Carolina Second Injury Fund (the "Fund") is a state agency created in 1972 for the purpose of encouraging employers to hire disabled workers. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 318 S.C. 516, 458 S.E.2d 550 (1995). On June 20, 2007, the South Carolina Legislature passed the Workers' Compensation Reform Act, which became effective July 1, 2007. The Workers' Compensation Reform Act provides for the termination of the Fund on June 30, 2013. Subsequent to the passage of the Workers' Compensation Reform Act, requests for reimbursement for older claims increased and the Fund began denying claims based on S.C. Code Ann. §15-3-600. Section 15-3-600 requires that all civil causes of action for relief not expressly enumerated therein be brought within ten (10) years of when the cause of action accrues. S.C. Code Ann. §15-3-600. In 2010, the Fund petitioned the South Carolina Supreme Court in its original jurisdiction for a decision on the applicability of §15-3-600 to reimbursement causes of action. The result of the Fund's request is Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 699 S.E.2d 687 (S.C. 2010).

In Transp. Ins. Co. v. S.C. Second Injury Fund, the Fund argued that the ten (10) year statute of limitations period applied to reimbursement cases and that the Carrier had ten (10) years to file a Form 54 Request for Hearing. Id. The South Carolina Supreme Court held that

the ten (10) year statute applied to reimbursement cases and 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 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. In that case, Great American was the only the Carrier that filed a Form 54 Request for Reimbursement within ten (10) years of providing notice to the Fund. The other Carriers, those that failed to file a Form 54 Request for Hearing within ten (10) of providing notice to the Fund, were barred from receiving reimbursement. Transportation is the prevailing case law on this issue.

### **STANDARD OF REVIEW**

The Administrative Procedures Act governs the standard of review in workers’ compensation cases. Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 619, 611 S.E.2d 297 (Ct. App.2005). An appellate court may not substitute its judgment for that of the Workers’ Compensation Commission as to the weight of the evidence on questions of fact. Stone v. Traylor Bros. Inc., 360 S.C. 271, 600 S.E.2d 551 (Ct. App. 2004). Courts can reverse the decision of an administrative agency where it is affected by an error of law or not supported by substantial evidence. Lark v. Bi-Lo, Inc., 276 S.C. 130, 133, 276 S.E.2d 304, 305 (1981); Corbin v. Kohler Co., 351 S.C. 613, 617, 571 S.E.2d 92, 95 (Ct. App. 2002). A reviewing court may reverse an agency decision if the findings or conclusions are clearly erroneous in view of the reliable, probative, and substantial evidence in the record. Bass v. Kenco Grp., 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct. App. 2005).

## ARGUMENT

### I. A CAUSE OF ACTION COMMENCES WHEN A PARTY INITIATES A JUDICIAL PROCESS.

It is well settled in our procedural jurisprudence that statutes of limitation run until a judicial process is commenced. Carl Rose & Sons Ready Mix Concrete, Inc. v. Thorp. Sales Corp., 36 N.C. App. 778, 781, 245 S.E.2d 234, 235 (1978); See also, B-W Acceptance Corp. v. Spencer, 268 N.C. 1, 149 S.E.2d 570 (1966). A civil action is commenced by the filing of a summons and complaint. S.C. Code Ann. §15-3-20(B) and SCRCP 3(a)(1). The North Carolina rules, after which South Carolina rules are fashioned, also indicate that a civil action is commenced by filing a complaint with the court. G.S. 1A-1, Rule 3. North Carolina General Statute §1-56 is identical to S.C. Code Ann. §15-3-600, and that statute states that an action for relief not otherwise limited may not be commenced more than ten (10) years after the cause of action accrued. N.C. Gen. Stat. §1-56 (2011).

Submitting documents to the Fund does not commence a reimbursement cause of action. In reimbursement cases brought pursuant to S.C. Code Ann. §42-9-400, a Form 54 Request for Hearing is the document that commences a judicial process. Workers' Compensation Regulation 67-208(D) clearly instructs how to initiate a judicial process 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 Ann. Regs. 67-208. Regulation 67-208 is clear indicia of when a judicial process is commenced and instructs on the requisite documents to file. Carrier

must file a Form 54 Request for Hearing to initiate a judicial process which commences the reimbursement cause of action.

In this case, Carrier's cause of action accrued on February 18, 1997, which is when it Carrier filed it Notice of a Possible Second Injury Fund claim. R.p.158. Carrier's Form 54 Employer's Request for Hearing, which commences a reimbursement cause of action, was filed on July 31, 2007. R.p.148-149. The July 31, 2007 Form 54 was filed ten (10) years and five (5) months after the Fund received notice of this claim. Carrier filed another Form 54 in this case on December 4, 2007. R.p.151-152. The December 4, 2007 Form 54 was filed ten (10) years and ten (10) months after Carrier provided notice to the Fund. Carrier's claim for reimbursement was not timely filed pursuant to statutory or case law and the Circuit Court erred in reversing the decision of the South Carolina Workers' Compensation Commission.

## II. FILING A CLAIM WITH THE FUND DOES NOT COMMENCE A JUDICIAL PROCESS.

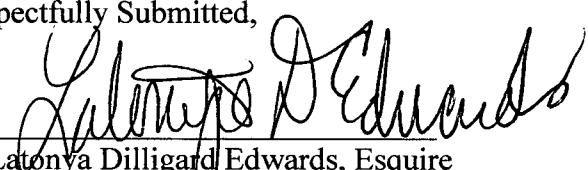
A cause of action is commenced by initiating a judicial process. Carl Rose, 36 N.C. App. at 781, 245 S.E.2d at 235. Filing a claim with the Second Injury Fund does not commence a judicial process. Carrier asserted that the Second Injury Fund recognized that the claim has been commenced on January 10, 2000 when it assigned a claim number. This assertion is clearly erroneous. The applicable statutory and case determines when a judicial process is commenced not the Fund. Furthermore, the Fund does not conduct administrative hearings and thus, submitting forms and other documents to the Fund cannot commence a judicial process. On the contrary, filing a Form 54

Request for Hearing commences a judicial process with the Judicial Department of the South Carolina Workers' Compensation Commission. Regulation 67-208. A Form 54 commences a judicial process because the Form 54 Request for Hearing is filed with the Workers' Compensation Commission, and adjudicated by Commissioners who are quasi-judicial officials subject to the Code of Judicial Conduct. Thus, filing a Form 54 Request for Hearing with the SC Workers' Compensation Commission commences a judicial process and filing a claim and submitting documents to the Second Injury Fund does not and cannot commence a cause of action because this does not initiate the judicial process.

### **CONCLUSION**

For the reasons cited herein including the prevailing statutory and case law, the Fund requests that the Circuit Court's decision be reversed and that the Full Commission's Decision be reinstated.

Respectfully Submitted,

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