

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable W. Jeffrey Young, Circuit Court Judge

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Appellate Case No. 2017-001955

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

v.

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

[In re: C.L. Williams, Employee/Claimant v. Yuasa Exide, Incorporated, Employer]

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**APPENDIX – VOLUME II**

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**INDEX**

Final Brief of Appellant .....457

Final Brief of Respondent .....488

Final Reply Brief of Appellant .....509

SC Court of Appeals Order .....519

Petition for Rehearing of Appellant to SC Court of Appeals .....523

Return in Opposition to Appellant’s Petition for Rehearing to SC Court of Appeals.....533

SC Court of Appeals Order re: Appellant’s Petition for Rehearing .....541

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

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Case No. 2013-CP-43-02286  
Appellate Case No. 2014-002214

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

v.

South Carolina Second Injury Fund, ..... Respondent,

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

v.

Yuasa Exide, Incorporated, Employer]

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FINAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii

STATEMENT OF ISSUES ON APPEAL ..... v

STATEMENT OF THE CASE..... 1

    A. Procedural History of this Case ..... 1

    B. The South Carolina Second Injury Fund..... 2

    C. The Sumter Battery Manufacturing Facility..... 3

STATEMENT OF THE FACTS OF THIS CASE ..... 6

STANDARD OF REVIEW ..... 7

ARGUMENTS

I. The Circuit Court erred in concluding that Appellants are not entitled to reimbursement from the South Carolina Second Injury Fund pursuant to South Carolina Code Annotated § 42-9-400..... 9

    A. The Circuit Court erred in failing to review the Commission’s interpretation of § 42-9-400 under a de novo standard of review and in failing to find that substantial evidence in the record establishes that Williams had preexisting, permanent conditions as required by the statute ..... 10

    B. Substantial evidence in the record establishes that Williams’ preexisting conditions were aggravated by or combined with Williams’ workplace injury of heavy metal poisoning to result in substantially greater disability ..... 19

    C. The Circuit Court erred by failing to remand the case to the Commission for findings of fact consistent with a determination that substantial evidence in the record establishes that Williams’ preexisting conditions constituted a hindrance or obstacle to employment or reemployment ..... 20

    D. Appellants had knowledge of Williams’ preexisting conditions as required by § 42-9-400 ..... 23

CONCLUSION..... 24

TABLE OF AUTHORITIES

CASES

<i>American Motorists Ins. Co. v. S.C. Second Injury Fund</i> , 300 S.C. 17, 386 S.E.2d 276 (Ct. App. 1989).....	2
<i>Bass v. Isochem</i> , 365 S.C. 454, 617 S.E.2d 369 (Ct. App. 2005).....	8, 13
<i>Burnette v. City of Greenville</i> , 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012).....	20
<i>Burnette v. City of Greenville</i> , Op. No. 5059 (S.C. Sup. Ct. filed May 8, 2014) .....	20
<i>Bursey v. South Carolina Dep't of Health &amp; Envtl. Control</i> , 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004) .....	8
<i>Carolinas Recycling Group and Employers Ins. Co. of Wausau v. S.C. Second Injury Fund</i> , 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012).....	20, 22
<i>Drake v. Raybestos-Manhattan, Inc.</i> , 241 S.C. 116, 127 S.E.2d 288 (1962) .....	12
<i>Etheredge v. Monsanto Co.</i> , 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002).....	9
<i>Frame v. Resort Services Inc.</i> , 357 S.C. 520, 593 S.E.2d 491 (Ct. App. 2004).....	8
<i>Glenn v. Columbia Silica Sand Co.</i> , 236 S.C. 13, 112 S.E.2d 711 (1960) .....	12
<i>Greenwood Mills v. Second Injury Fund</i> , 315 S.C. 256, 433 S.E.2d 846 (1993) .....	2
<i>Hunt v. Whitt</i> , 279 S.C. 343, 306 S.E.2d 62 (1983) .....	13
<i>King v. Int'l Knife &amp; Saw - Florence</i> , 395 S.C. 437, 718 S.E.2d 227 (Ct. App. 2011).....	9, 11
<i>Lark v. Bi-Lo</i> , 276 S.C. 130, 276 S.E.2d 304 (1981) .....	8

<i>Liberty Mutual Insur. Co. v. S.C. Second Injury Fund,</i> 363 S.C. 612, 611 S.E.2d 297 (2005) .....	2, 9
<i>Muir v. C.R. Bard, Inc.,</i> 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999).....	13
<i>Pee Dee Reg'l Transp. v. S.C. Second Injury Fund,</i> 375 S.C. 60, 650 S.E.2d 464 (2007) .....	1
<i>Rogers v. Kunja Knitting Mills,</i> 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994).....	13, 14
<i>S.C. Uninsured Employers' Fund v. House,</i> 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004).....	9, 11
<i>Springs Industries, Inc. v. S.C. Second Injury Fund,</i> 296 S.C. 359, 372 S.E.2d 915 (Ct. App. 1988).....	16, 17
<i>State Accident Fund v. S.C. Second Injury Fund,</i> 409 S.C. 240, 247, 762 S.E.2d 19, 23 (2014) .....	22
<i>State Workers' Comp. Fund v. S.C. SIF (In Re: Warren M. Hunt v. S.C. State Forestry Comm'n),</i> 313 S.C. 536, 443 S.E.2d 546 (1994) .....	16, 17
<i>Tiller v. Nat'l Health Care Ctr.,</i> 334 S.C. 333, 513 S.E.2d 843 (1999) .....	8
<i>Transp. Ins. Co. v. S.C. Second Injury Fund,</i> 389 S.C. 422, 699 S.E.2d 687 (2010) .....	11
<i>Wehle v. S.C. Retirement Syst.,</i> 363 S.E. 394, 611 S.E.2d 240 (2005) .....	9

#### STATUTES

S.C. Code Ann. § 1-23-380 (Supp. 2014).....	8
S.C. Code Ann. § 42-7-310 (Supp. 2014).....	3
S.C. Code Ann. § 42-7-320 (Supp. 2014).....	3
S.C. Code Ann. § 42-9-400 (Supp. 2002).....	23

S.C. Code Ann. § 42-9-400 (Supp. 2006).....	19
S.C. Code Ann. § 42-9-400 (Supp. 2014).....	10, 18, 21
S.C. Code Ann. § 42-11-10 (Supp. 2014).....	12
S.C. Code Ann. § 42-11-40 (Supp. 2014).....	12

**REGULATIONS**

29 C.F.R. 1910.1025(k)(1).....	5
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**SECONDARY AUTHORITY**

2 Larson's Workers' Compensation Law § 95.21 .....	12
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**STATEMENT OF ISSUES ON APPEAL**

- I. Did the Circuit Court err in denying Appellants' claim for reimbursement from the South Carolina Second Injury Fund where Appellants met all elements for reimbursement pursuant to S.C. Code Ann. § 42-9-400?

## STATEMENT OF THE CASE

### A. Procedural History of this Case

This appeal stems from a workers' compensation claim filed by C.L. Williams (Williams), wherein he alleged he suffered lead poisoning in the course and scope of his employment at a battery manufacturing facility in Sumter, South Carolina on or about February 1, 1999. The South Carolina Workers' Compensation Commission (the Commission) ordered mediation of this matter and all other lead claims against this facility.

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

Because this claim arose before the 2007 amendments to the South Carolina Workers' Compensation Act, Appellants had to first appeal the Commission's decision to the Circuit Court. See Pee Dee Reg'l Transp. v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007). Four appeals from the Commission were set before Judge W. Jeffrey Young on June 3, 2014. He issued his order affirming the Commission's decision

in the case at hand on September 16, 2014. Appellants timely filed a Notice of Appeal with this Honorable Court on October 6, 2014.

**B. The South Carolina Second Injury Fund**

The South Carolina Second Injury Fund was established to encourage employers to hire disabled or handicapped workers, or to retain employees who become partially disabled in the course and scope of their employment. The Fund provides reimbursement to an insurer or employer for compensation paid to an injured worker, who suffers increased permanent disability as a result of the preexisting condition and a subsequent workplace injury. The Fund was designed to encourage the employment and retention of disabled workers by providing financial relief to employers. Thus, the Fund removed any financial incentive an employer may have had to terminate a disabled worker who may increase the employer's liability. See generally State Workers' Comp. Fund v. S.C. Second Injury Fund, 313 S.C. 536, 538, 443 S.E.2d 546, 547 (1994); Greenwood Mills v. Second Injury Fund, 315 S.C. 256, 257, 433 S.E.2d 846, 847 n.1 (1993); Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 625, 611 S.E.2d 297, 303 (Ct. App. 2005); American Motorists Ins. Co. v. S.C. Second Injury Fund, 300 S.C. 17, 21-22, 386 S.E.2d 276, 278-79 (Ct. App. 1989).

Reimbursement from the Fund is governed by South Carolina Code Annotated Section 42-9-400. In addition to providing timely notice of the reimbursement claim, a carrier/employer must establish four elements in order to be entitled to reimbursement. For a pre-July 1, 2007 claim, these elements include the following: (1) that the claimant had a preexisting permanent physical impairment/condition (§ 42-9-400(a)); (2) that the employer had knowledge of the preexisting impairment prior to the workplace injury (§

42-9-400(c)); (3) that the preexisting impairment was a hindrance/obstacle to employment or re-employment (§ 42-9-400(d)); and (4) that the preexisting impairment combined with or was aggravated by the workplace injury to result in substantially greater disability than that which would have resulted from the subsequent injury alone (§ 42-9-400(a)).

The Fund is funded by annual assessments paid by carriers, self-insurers, and the State Accident Fund. S.C. Code Ann. § 42-7-310(d)(2) (Supp. 2014). In 2007, the Workers' Compensation Act underwent a substantial reformation. As part of the reform, the Second Injury Fund officially terminated on July 1, 2013. S.C. Code Ann. § 42-7-320 (a) (Supp. 2014). The Legislature tasked the State Budget and Control Board with winding down the affairs of the Fund and providing for its "efficient and expeditious closure." *Id.* Despite the fact that insurance carriers are no longer entitled to the benefit of reimbursement from the Fund for payment of second injury benefits, they continue to pay assessments indefinitely to the Fund.

### **C. The Sumter Battery Manufacturing Facility**

In 1961, a battery manufacturing facility began operations in Sumter, South Carolina. The initial owner of the company was ESB, Inc. The facility first produced nickel-plated batteries then, around 1974, it converted its manufacturing operations to the production of lead batteries. In 1983, there was a change of ownership of the plant, as ESB, Inc., was sold off to Exide Corp. Subsequently, on June 10, 1991, Yuasa Battery (America), Inc. (also known as Yuasa-Exide), purchased the industrial division of Exide Corp. Thereafter, the company became Yuasa, Inc. In 2000, Yuasa, Inc., sold off its industrial division to EnerSys. (R. p. 280.) Therefore, most of the employees at the

center of these reimbursement claims worked for at least three different employers. During those tenures of employment, the employees experienced heavy metal poisoning and a plethora of other health maladies.

There is no dispute that employees who worked at the Sumter battery manufacturing facility were exposed to various amounts of lead on a daily basis through inhalation, ingestion, and dermal contact. Employees working in the plant's grid casting, battery assembly, formation, plate cleaning and pasting departments were exposed to the greatest amounts of lead.

Once lead is absorbed into the body, it is stored in the tissues and bones. The mean life of lead in bone is thirty years. Because lead can be stored for such a long period of time, it can cause certain conditions, such as hypertension, heart disease, kidney failure, and cognitive impairment to become worse with age. (R. pp. 294-98.)

Lead exposure can also result in aggravation of hypertension, diabetes, arthritis, and erectile dysfunction. (R. pp. 312-28.) The dangerous health problems associated with lead exposure are numerous. Lead exposure has been associated with various health maladies, such as brain damage and damage to the peripheral nerves of the body, in addition to kidney failure and gout.

Prior to 1980, the Federal Government had not established permissible exposure limits regarding lead. Further, there were no universally recognized industry standards regarding permissible exposure limits to lead. Thus, prior to 1980, chronic exposure to lead often resulted in workers' blood lead levels routinely exceeding 100 micrograms per deciliter of blood ( $\mu\text{g/dL}$ ). (R. pp. 363-92.)

Beginning in 1978, OSHA started recommending permissible exposure limits as measured by blood lead levels. OSHA first promulgated legally enforceable regulations in 1983, and its current permissible exposure limit guidelines require an employer to immediately remove a worker from a lead laden environment when his/her blood lead levels reach sixty micrograms per deciliter of blood. 29 C.F.R. 1910.1025(k)(1), (R. p. 374.) Moreover, if an employee has blood lead levels of fifty micrograms per deciliter of blood or more for two consecutive blood sampling tests, the worker is to be removed from the work environment and placed into a medical removal program ("MRP").

Presently, there is a debate among lead industry experts as to whether the current permissible exposure limit is sufficient to avoid various health maladies associated with chronic lead exposure. A desirable blood lead level for individuals who are not exposed to lead is less than ten micrograms per deciliter of blood, and expert reports state the average blood lead level for the general population is three micrograms per deciliter of blood. (R. pp. 297, 305.) Employees of the Sumter battery plant had blood lead levels as high as 102  $\mu\text{g}/\text{dL}$ , with many whose blood lead concentrations remained above 50  $\mu\text{g}/\text{dL}$  for extended periods of time. (R. p. 297.)

In an effort to better protect its employees, the Sumter plant reduced the permissible exposure limit below the OSHA threshold. An employee would be placed in the MRP if a six month lead level average or three samples of blood registered greater than thirty-six micrograms per deciliter of blood. A medical removal program was also indicated if there was a one-time blood lead level reading of forty-four micrograms per deciliter of blood or greater. (R. p. 393.)

## STATEMENT OF THE FACTS OF THIS CASE

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

While at the Sumter battery plant, Williams had multiple jobs to include janitorial work, lead plate stacking, finishing, and fabrication of lead posts. Throughout his tenure of employment, his blood lead levels ranged from 21–93  $\mu\text{g}/\text{dL}$ , with many reports noting a blood lead level greater than 50  $\mu\text{g}/\text{dL}$ . (R. pp. 217–20.) It is undisputed that Williams was exposed to lead at dangerous levels, while working at the battery plant.

The records from the Sumter battery plant's in house health department reveal that during Williams' tenure of employment, he suffered from a variety of maladies. As early as January 20, 1982, while working for ESB, Inc., the medical department noted that Williams had a history of liver disease, hypertension, and heightened blood lead levels. (R. p. 184.) In fact, as of December 12, 1983, a company document noted that Williams blood lead levels averaged 59  $\mu\text{g}/\text{dL}$  over the past six months, and subsequent records also reveal extremely heightened levels of lead in Williams' blood. (R. pp. 184–86, 188, 217–20.) Multiple medical records further reveal that Williams was placed in the medical removal program because of these heightened levels. (R. pp. 192, 194, 196, 198, 200.) Furthermore, Appellants' APA submissions also reveal evidence, in addition to that noted above, of

Williams having cardiovascular disease (R. pp. 186, 189, 194, 198, 200, 202, 204, 206-08, 213-15), pulmonary problems (R. pp. 213-14), neurological problems (R. p. 210), and hearing loss (R. pp. 184, 213.) all during his tenure of employment at the Sumter battery plant and all before his date of injury on his workers' compensation claim.

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

As noted above, Williams continued to work around lead at the Sumter battery plant until he was terminated on August 12, 1998. Upon termination, Williams began receiving his disability pension benefits, because Williams' doctor stated that he had "severe depressed left ventricular function" and was unable to do heavy, repetitive labor. (R. p. 207.)

#### STANDARD OF REVIEW

In the instant case, Appellants submit that the standard of review is bifurcated. The question of statutory interpretation is a question of law for the court, which requires a de novo standard of review, while the question of whether Appellants satisfied their burden of proof in establishing the elements for reimbursement is a question of fact, requiring the application of the substantial evidence standard of review.

Judicial review of a Workers' Compensation Commission decision is governed by South Carolina Code Annotated § 1-23-380 of the Administrative Procedures Act (hereafter "the APA"); Lark v. Bi-Lo, 276 S.C. 130, 276 S.E.2d 304 (1981). Under the APA, a decision of the South Carolina Workers' Compensation Commission should be reversed, modified or remanded if unsupported by substantial evidence, or if substantial rights of the appellant have been affected by an error of law; or if the decision is arbitrary or capricious or characterized by an abuse or unwarranted exercise of discretion. S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2014).

Review of the Commission's factual findings is governed by the substantial evidence standard. "A reviewing court may reverse or modify a decision of an agency if the findings, inferences, conclusions, or decisions of that agency are 'clearly erroneous in view of the reliable, probative and substantial evidence on the whole record.'" Bass v. Isochem, 365 S.C. 454, 467, 617 S.E.2d 369, 376 (Ct. App. 2005), *quoting from* Burse v. South Carolina Dep't of Health & Env'tl. Control, 360 S.C. 135, 600 S.E.2d 80 (Ct. App. 2004); *see also* Tiller v. Nat'l Health Care Ctr., 334 S.C. 333, 513 S.E.2d 843 (1999); *see also* S.C. Code Ann. § 1-23-380(A)(5)(e). "Substantial evidence is not a mere scintilla of evidence; nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached in order to justify its action." Frame v. Resort Services Inc., 357 S.C. 520, 527-28, 593 S.E.2d 491, 495 (Ct. App. 2004); Bass v. Isochem, 365 S.C. at 468, 617 S.E.2d at 376. In particular, workers' compensation awards "must not be based on surmise, conjecture or speculation." Tiller, 334 S.C. at 339, 513 S.E.2d at 845.

In addition, a reviewing court should reverse, remand or modify a decision of the Workers' Compensation Commission if it is affected by an error of law. Etheredge v. Monsanto Co., 349 S.C. 451, 562 S.E.2d 679 (Ct. App. 2002). Case law unequivocally establishes that statutory interpretation is a question of law, and the appellate court "is free to decide matters of law with no particular deference to the fact finder." King v. Int'l Knife & Saw - Florence, 395 S.C. 437, 442, 718 S.E.2d 227, 229 (Ct. App. 2011); S.C. Uninsured Employers' Fund v. House, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004). Likewise, the determination of legislative intent in a statute is a matter of law. Wehle v. S.C. Retirement Syst., 363 S.E. 394, 611 S.E.2d 240 (2005); Liberty Mutual Insur. Co. v. S.C. Second Injury Fund, 363 S.C. 612, 611 S.E.2d 297 (2005). Thus, in summary, an appellate court must review the Commission's interpretation of a statute as a question of law and must review the Commission's application of the facts to the statute as a question of fact under the substantial evidence standard of review. *See King*, 395 S.C. at 442, 718 S.E.2d at 229.

### ARGUMENT

**I. THE CIRCUIT COURT ERRED IN CONCLUDING THAT APPELLANTS WERE NOT ENTITLED TO REIMBURSEMENT FROM THE SOUTH CAROLINA SECOND INJURY FUND PURSUANT TO SOUTH CAROLINA CODE ANNOTATED § 42-9-400.**

Appellants submit that the Circuit Court erroneously affirmed the Commission's decision that Appellants are not entitled to reimbursement from the South Carolina Second Injury Fund pursuant to South Carolina Code Annotated § 42-9-400 for the injuries sustained by C.L. Williams. Therefore, Appellants respectfully request that this Honorable Court reverse the Circuit Court's errors of law and remand this case for additional fact finding, which is consistent with the substantial evidence in the record.

law with no particular deference to the fact finder.” King v. Int'l Knife & Saw - Florence, 395 S.C. 437, 442, 718 S.E.2d 227, 229 (Ct. App. 2011); S.C. Uninsured Employers' Fund v. House, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004). Appellants submit that a de novo standard of review should have been applied by the Circuit Court in construing § 42-9-400(a) and that the plain meaning of this statute coupled with case law in the occupational disease arena lead to the conclusion that the Lower Court and the Commission misinterpreted the statute.

The Lower Court found that none of Williams' preexisting conditions satisfy the requirement of § 42-9-400(a), not because there is a lack of evidence establishing the conditions were present prior to his date of injury or his date of disability, but instead because the preexisting conditions did not exist prior to Williams' first ever day of exposure to lead when he was hired by ESB, Inc. in 1976. According to this reasoning and novel construction of § 42-9-400, Williams' compensable work injury actually occurred on his first date of employment with ESB, Inc., which is impossible, given there was no disability. This logic is unsound, ignores decades of jurisprudence, and is not supported by any evidence or legal authority. Further, the Second Injury Fund made this same argument in the case of Transportation Insurance Co. v. S.C. Second Injury Fund, and the South Carolina Supreme Court rejected the argument, because the Fund did not provide any legal authority for the proposition. Transp. Ins. Co. v. S.C. Second Injury Fund, 389 S.C. 422, 432, 699 S.E.2d 687, 692 (2010). Respondent is yet to provide any authority supporting this novel interpretation of § 42-9-400(a).

In workers' compensation, the date of injury almost always controls, and the conclusion that Williams' preexisting conditions must have been in existence prior to his

first day of work at the Sumter battery plant or first day of exposure to lead is not supported by South Carolina law. The South Carolina Workers' Compensation Act specifically establishes that an occupational disease is treated like an injury by accident and is not a compensable injury until the injured employee suffers a disability as described in Sections 42-9-10, 42-9-20, or 42-9-30. S.C. Code Ann. §§ 42-11-10, 42-11-40 (Supp. 2014). The South Carolina Supreme Court has also drawn this same conclusion in Glenn v. Columbia Silica Sand Co., 236 S.C. 13, 19-20, 112 S.E.2d 711, 714 (1960). In Glenn, the court quoted with approval this statement from Professor Larson's Treatise:

Occupational disease cases typically show a long history of exposure without actual disability, culminating in the enforced cessation of work on a definite date. In the search for an identifiable instant in time which can perform such necessary functions as to start claim periods running, establish claimant's right to benefits, and fix the employer and insurer liable for compensation, the date of disability has been found the most satisfactory. Legally, it is the moment at which the right to benefits accrues; as to limitations, it is the moment at which in most instances the claimant ought to know he has a compensable claim; and, as to successive insurers, it has the one cardinal merit of being definite, while such other possible dates as that of the actual contraction of the disease are usually not susceptible to positive demonstration.

Id. at 19-20, 112 S.E.2d at 714 (quoting 2 Larson's Workers' Compensation Law § 95.21). This same statement was used to support the South Carolina Supreme Court's decision in Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 122-23, 127 S.E.2d 288, 291-92 (1962), *overruled on other grounds by* Hunt v. Whitt, 279 S.C. 343, 306 S.E.2d 621 (1983).

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Additional case law from South Carolina's appellate courts reaffirm that an occupational disease accident does not occur until the point that "the employee becomes disabled and could, through reasonable diligence, discover that his condition is compensable." Muir v. C.R. Bard, Inc., 336 S.C. 266, 519 S.E.2d 583 (Ct. App. 1999); *see also* Bass v. Isochem, 365 S.C. 454, 476, 617 S.E.2d 369 (Ct. App. 2005). For an employee to know that a condition is compensable, it must be definitively diagnosed. Rogers v. Kunja Knitting Mills, 312 S.C. 377, 379-81, 440 S.E.2d 401, 403-04 (Ct. App. 1994). It goes to follow that an occupational disease injury does not exist until an employee has been diagnosed with an occupational disease or until, through reasonable diligence, he could have discovered he had an occupational disease.

In the case at hand, the date of injury is Williams' last official date of employment at the Sumter battery plant.<sup>1</sup> However, Williams had no idea he had an occupational disease until he met with his attorney and was evaluated by medical doctors with expertise in lead exposure on May 22, 2008. He had been to multiple doctors over the years, because of his failing health, but none of his doctors ever linked any of his health conditions to an occupational disease. Thus, in all actuality, Williams did not discover his case was compensable until he had a definitive diagnosis on May 22, 2008. It would therefore follow that pursuant to South Carolina case law, Williams' date of injury or disability as referenced in § 42-9-400(a) most definitely cannot be the first day he ever worked at the Sumter battery plant but was instead when he realized his claim was compensable. *See* Rogers, 312 S.C. at 379-81, 440 S.E.2d at 403-04 (Ct. App. 1994). Given that South Carolina Code Annotated § 42-9-400 provides for reimbursement in

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<sup>1</sup> His last day of exposure to lead at the plant was actually months before his final termination, because he was on disability due to a health condition prior to his termination.

cases where there is a preexisting condition prior to *disability* incurred from a subsequent accident, the preexisting conditions only have to precede the subsequent disability. Unsurprisingly, this disability is also what makes an occupational disease compensable. In this case, there was no real compensable injury until 2008.

In light of the above, Appellants submit that the Circuit Court erred by not reviewing the Commission's construction of § 42-9-400 under a de novo standard of review and by failing to find that substantial evidence supports the conclusion that Williams' preexisting conditions preexisted his ultimate date of disability for this claim. The Circuit Court therefore committed legal error in deciding that Williams' preexisting conditions had to preexist his first day of exposure to lead at the Sumter battery plant. The Lower Court's holdings are both contrary to South Carolina law, and not supported by any statutory or case law. Therefore, Appellants respectfully ask this Honorable Court to reverse the Circuit Court's decision.

- b. Even if this Court determines that the Circuit Court properly interpreted § 42-9-400 to require Williams' preexisting condition(s) to preexist his first day of exposure to lead while working for his liable employer, Appellants have satisfied this burden as the evidence establishes that Williams was not hired by his last employer at the Sumter battery plant until well after his preexisting conditions had manifested.*

Appellants argue that even if this Honorable Court determines that Williams' preexisting conditions had to preexist the first day he was exposed to lead while working for his liable employer, Appellants submit that they have met their burden in establishing this element. Williams' preexisting conditions did, in fact, preexist his first exposure to lead while he was under the employ of his last employer at the Sumter Battery Plant. As noted *supra*, Williams' last employer, the employer he worked for on his date of injury,

was legally known as Yuasa, Inc. However, he was initially hired by ESB, Inc., on March 12, 1976. He was later hired at the Sumter battery plant's location by Exide Corp. in 1983, when the plant changed ownership. In 1991, the division of the Exide plant located in Sumter was purchased by Yuasa Battery and became Yuasa, Inc. The evidence unequivocally establishes that Williams' cardiac disease, liver disease, and lead exposure were noted as early as January 20, 1982, while working for ESB, Inc. (R. p. 184.) His congestive heart failure appears in the employer records first on August 16, 1990, when he was legally employed by Exide Corp., although it is noted at that time that Williams already had a history of CHF. Furthermore, Williams' pulmonary problems are first noted in the employer records on May 24, 1993, and his hearing loss was noted even before that time. (R. pp. 184, 209-10, 213.) The evidence leaves absolutely no doubt that most of Williams' preexisting conditions existed prior to his employment with his last employer at the Sumter battery plant, which began in 1991. Thus, Appellants meet the element of reimbursement, which requires that the injured employee suffer from a preexisting, permanent physical condition prior to his subsequent disability, even if it this Court agrees that the preexisting conditions had to preexist the first day of Williams' exposure to lead while in the employ of his liable employer.

*c. Pursuant to South Carolina law, Williams' heavy metal poisoning is both a preexisting condition and a subsequent injury.*

Appellants submit that the Circuit Court erred in failing to find that Williams' heavy metal poisoning was a preexisting condition and subsequent injury. This position is supported by substantial evidence in the record, as well as South Carolina statutory and case law. Therefore, Appellants request that this Court reverse the Circuit Court's decision to the contrary.

As discussed *supra*, to establish a claim for reimbursement, an employer/carrier must establish that the injured employee suffered from a permanent, preexisting condition prior to his subsequent disability resulting from a work injury. In this case, Appellants presented evidence of multiple preexisting conditions, which the Lower Court disregarded. Appellants argued that in addition to all of Williams' other preexisting conditions, that heavy metal poisoning served as both a preexisting condition and a subsequent injury. The Circuit Court rejected this position, but it cited absolutely no case law or statutory law in support of its holding and in turn misconstrued the jurisprudence previously promulgated by South Carolina's appellate courts.

A review of South Carolina case law reveals that Williams' heavy metal poisoning is both a preexisting condition and subsequent injury, as required by South Carolina Code § 42-9-400. In the cases of State Workers' Compensation Fund v. S.C. SIF (In Re: Warren M. Hunt v. S.C. State Forestry Commission), 313 S.C. 536, 443 S.E.2d 546 (1994) and Springs Industries, Inc. v. S.C. Second Injury Fund, 296 S.C. 359, 372 S.E.2d 915 (Ct. App. 1988), the South Carolina Supreme Court and the Court of Appeals concluded that an occupational disease, which is aggravated by a work hazard can constitute a preexisting condition and subsequent injury.

In the Hunt case, the claimant's cardiac disease constituted both the preexisting condition and subsequent injury. Hunt was first employed by the Forestry Commission in 1956. In 1973, he was diagnosed with coronary artery disease. However, on January 1, 1986, the claimant's heart disease rendered him totally disabled. The State Workers' Compensation Fund paid the claim relative to the claimant's total disability and sought reimbursement from the SIF and argued that the claimant's preexisting condition was his

heart disease and that his subsequent injury was the worsened heart condition. The court faced the question as to whether the claimant's total disability from the heart disease constituted a subsequent injury. The carrier asserted that the heart disease could not be a second injury, but instead was just one total injury. The South Carolina Supreme Court rejected this argument and concluded that the heart disease was both a preexisting condition and subsequent injury. Hunt, 313 S.C. at 539, 443 S.E.2d at 548. While this case does, in part, address a statute that is particular to certain first responders, contrary to the holding of the Circuit Court, the discussion of that statute in this case had absolutely no bearing on the South Carolina Supreme Court's determination that the occupational disease (cardiovascular disease) could serve as both the preexisting condition and the subsequent injury. The Hunt Court went on to analyze the applicability of a prior appellate court case, Springs Industries, cited *supra*.

In Springs Industries, the claimant's cotton dust exposure served as a preexisting condition to her byssinosis. She worked in cotton mills for around thirty years. In 1970, she began having breathing difficulties. Three years later, her symptoms worsened, and she developed a chronic cough. However, she switched employers and began working for Springs Industries in 1975. Nine months after she was hired, she was deemed totally disabled due to byssinosis. Springs Industries, 296 S.C. at 362, 372 S.E.2d at 917. The Court held that the only logical conclusion was that the claimant's preexisting cotton dust exposure was a preexisting condition under § 42-9-400, especially given the length of the claimant's exposure to the cotton dust. Id. at 363, 372 S.E.2d at 917.

The Circuit Court and Respondent have dismissed the applicability of the Springs Industries case by finding that reimbursement by the petitioners was pursued on a but-for

theory of reimbursement; however, that analysis ignores the fact that the employer/carrier still had to establish as a prerequisite for reimbursement— the existence of a permanent, preexisting condition and subsequent injury. South Carolina Code Annotated § 42-9-400(g) specifically states, “If the employee has a permanent physical impairment, as defined in this section *and the prerequisites for reimbursement have been met*, and if it can be shown that the subsequent injury most probably would not have occurred “but for” the presence of the prior impairment, then reimbursement will be granted. . . .” S.C. Code Ann. § 42-9-400(g) (Supp. 2014) (emphasis added). In Hunt, the cotton dust exposure was the preexisting condition, and the byssinosis was the subsequent injury. This case is nearly on all fours with the case at hand, as in this case, the heavy metal poisoning was one of the initial impairments or conditions that was aggravated by repeated exposure to lead, ultimately culminating in a compensable heavy metal poisoning occupational disease.

In Hunt and Springs Industries, discussed *supra*, the injured employees’ preexisting conditions and subsequent injuries were the same conditions. However, the subsequent injuries were the results of a worsening of the preexisting conditions. Therefore, similar to the Springs Industries case and the Hunt case, Appellants submit that Williams’ preexisting heavy metal poisoning is both a preexisting condition and subsequent injury as required by § 42-9-400 and that both substantial evidence in the record and South Carolina case law supports this position.

Appellants respectfully submit that Williams’ preexisting conditions of cardiac disease, pulmonary disease, diabetes, heavy metal poisoning, and hearing loss did in fact preexist his date of injury, and that the decision of the Commission to the contrary should

be reversed. In the alternative, Appellants submit that given the fact that Williams' last employer at the Sumter battery plant, Yuasa, Inc., did not take over until well after his preexisting conditions manifested, the evidence in the record still overwhelmingly supports the conclusion that Williams' preexisting conditions did in fact preexist his date of injury because they preexisted his first day of employment with Yuasa, Inc.

**B. Substantial evidence in the record establishes that Williams' preexisting conditions were aggravated by or combined with Williams' workplace injury of heavy metal poisoning to result in substantially greater disability.**

Substantial evidence in the record establishes that Appellants carried their burden of proof in establishing the element of reimbursement, which requires that one of Williams' preexisting conditions combined with or was aggravated by the heavy metal poisoning to result in substantially greater disability. *See* S.C. Code Ann. § 42-9-400(a) (Supp. 2006). Appellants submit that the Circuit Court erred in failing to reverse the Commission's decision to the contrary.

Appellants submit that substantial evidence in the record establishes that Appellants met this element for reimbursement. The *only* evidence in the record is that Williams' preexisting conditions did in fact combine with or suffer aggravation by his workplace injury to result in substantially greater disability. (R. pp. 178-83, 275-99.) This is a medical question, and two doctors specializing in occupational medicine and lead exposure have answered the question in the affirmative. (R. pp. 275-99, 178-83.) Respondent took no depositions to rebut these doctors' opinions. They wrote no letters to these doctors requesting them to rebut their opinions. They acquired no opinions from any additional doctors to rebut these specialists' opinions. Moreover, South Carolina's appellate courts have made clear that medical evidence should be entitled to great respect.

and can be disregarded only when there is other competent evidence to the contrary. Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012), *cert. denied* Burnette v. City of Greenville, Op. No. 5059 (S.C. Sup. Ct. filed May 8, 2014). This Court has held that when the Second Injury Fund decides to put up no rebuttable evidence, substantial evidence will prevail on appeal. See Carolinas Recycling Group and Employers Ins. Co. of Wausau v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012). Simply doing nothing and then arguing against the medical evidence provided by Appellants is not an option.

Because the only evidence in the record establishes that Williams' preexisting conditions were aggravated by or combined with Williams' subsequent occupational injury to result in increased disability, Appellants respectfully request this Honorable Court to reverse the Lower Court's affirmation of the Commission's decision.

**C. The Circuit Court erred by failing to remand the case to the Commission for findings of fact consistent with a determination that substantial evidence in the record establishes that Williams' preexisting conditions constituted a hindrance or obstacle to employment or reemployment.**

Appellants submit that the Circuit Court erred in failing to remand this case to the Commission for a determination as to whether Williams' preexisting conditions of cardiac disease, diabetes, pulmonary disease, heavy metal poisoning, and hearing loss constituted a hindrance or obstacle to employment or reemployment as required by 42-9-400. Therefore, Appellants request that this case be remanded for findings of fact relative to this element of reimbursement. In the alternative, Appellants submit that substantial evidence establishes that they carried their burden of proof in establishing this element for reimbursement.

Appellants acknowledge that for them to be entitled to reimbursement, they must prove that substantial evidence in the record proves that at least one of Williams' preexisting conditions constituted a hindrance or obstacle to employment or reemployment. South Carolina Code Annotated § 42-9-400(d) outlines multiple preexisting conditions that are *presumed* to be such a hindrance or obstacle to employment. Among those statutorily imposed *presumptions* are cardiac disease, diabetes, pulmonary disease, and heavy metal poisoning. S.C. Code Ann. § 42-9-400(d) (Supp. 2014). There is absolutely nothing in the record that rebuts these presumptions. In fact, the evidence shows, without question, that it was Williams' cardiac disease that ultimately caused him to miss a great deal of work and also caused his doctor to impose restrictions that resulted in his inability to work at the Sumter battery plant, despite his ongoing desire to do so. (R. pp. 206-08, 228.)

In addition to the above statutory presumptions, the medical evidence in the record also establishes that Williams' preexisting conditions of diabetes, cardiac disease, heavy metal poisoning, pulmonary disease, and loss of hearing constituted a hindrance or obstacle to employment or reemployment. Two separate doctors, who specialize in lead poisoning and occupational injuries, completed SIF questionnaires stating that the aforementioned conditions were hindrances or obstacles to employment or reemployment. (R. pp. 178-83.) These questionnaires are supported by the evaluation performed by Dr. Baker, by the global lead report submitted to the Commission, and by the medical records in evidence.

South Carolina case law makes clear that the Commission's decisions must be supported by substantial evidence. As discussed *supra*, in a recent appellate court case

involving reimbursement from the SIF, the South Carolina Court of Appeals held that when “the only reasonable inference that can be drawn from the substantial evidence in the record is that Claimant’s preexisting condition was a hindrance to his employment...[,]” it must be found that the preexisting condition is a hindrance or obstacle to employment. Carolinas Recycling Group and Employers Ins. Co. of Wausau v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012). Furthermore, this Court has recently held that “[w]hen a presumption shifts the burden of production to the opposing party, that party must present substantial evidence in order to rebut the presumption.” State Accident Fund v. S.C. Second Injury Fund, 409 S.C. 240, 247, 762 S.E.2d 19, 23 (2014).

Similar to the Carolinas Recycling Group and State Accident Fund cases, in the case at hand, the SIF presented absolutely no evidence contradicting the evidence submitted by Appellants. Therefore, the only evidence in the record is that Williams’ preexisting conditions were in fact hindrances or obstacles to employment or reemployment.

Appellants submit that the Circuit Court erred by failing to remand this case to the Commission for findings on this element of reimbursement. Alternatively, Appellants assert that the substantial evidence in the record, and the only evidence in the record, establishes that Williams’ preexisting conditions of cardiac disease, diabetes, pulmonary disease, heavy metal poisoning and loss of hearing were hindrances or obstacles to employment or reemployment. Thus, Appellants request that this Honorable Court remand this case for additional fact finding that is consistent with the substantial evidence.

**D. Appellants had knowledge of Williams' Preexisting Conditions as required by § 42-9-400.**

Appellants submit that the Circuit erred in failing to remand this case to the Commission for a factual finding regarding the knowledge element requirement for reimbursement from the South Carolina Second Injury Fund. Appellants submit that there is no legitimate argument, and no argument has been posed, that Appellants did not carry their burden of proof in establishing the knowledge element required for reimbursement. The evidence overwhelmingly supports Appellants' position that they established that they had knowledge of Williams' preexisting, permanent conditions. Therefore, Appellants respectfully request that this case be remanded to the Commission for findings of fact consistent with the substantial evidence in the record regarding this element of reimbursement.

Due to the fact that there was an in house medical department at the Sumter battery plant, the evidence leaves no doubt that Yuasa had knowledge of Williams' preexisting conditions prior to his date of injury. Given that this case arises out of an injury, which took place prior to 2003, Appellants have to prove one of three things regarding knowledge: (1) that the employer had knowledge of the preexisting conditions before the subsequent injury occurred; (2) that the employee concealed a preexisting condition; or that (3) the employee lacked knowledge of the presence of a preexisting condition. S.C. Code Ann. § 42-9-400(c) (Supp. 2002).

As discussed *supra* in the Facts Section, the battery plant's medical department's notes unequivocally establish knowledge of Williams' preexisting conditions. In 1982, the records began reflecting Williams' hypertension and heightened blood lead levels. (R. p. 184.) The records are also replete of notes acknowledging that Williams had been

exposed to lead at high levels and that he was placed in a medical removal program. (R. pp. 17-20, 184-86, 188, 192, 194, 196, 198, 200) Furthermore, Appellants' evidentiary submissions also reveal evidence, in addition to that noted above, of Williams having cardiovascular disease (R. pp. 186, 189, 194, 198, 200, 202, 204, 206-08, 213-15), pulmonary problems (R. pp. 213-14), neurological problems (R. p. 210), and hearing loss (R. pp. 184, 213) all during his tenure of employment at the Sumter battery plant and all before his date of injury on his workers' compensation claim.

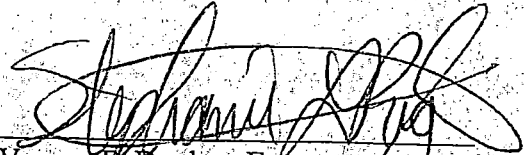
In light of the above, Appellants submit that the only evidence in the record establishes that Appellants had knowledge of Williams' preexisting conditions as required by South Carolina Code Annotated § 42-9-400(c). Therefore, Appellants request that this case be remanded for factual findings consistent with the substantial evidence in the record.

#### CONCLUSION

For all the reasons stated herein, Appellants respectfully request that this Court reverse the Circuit Court's errors of law and remand this case to the Commission for findings of fact consistent with the substantial evidence in the record.

June 23, 2015

Respectfully submitted,



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STATE OF SOUTH CAROLINA  
COURT OF COMMON PLEAS

APPEAL FROM SUMMARY JUDGMENT  
Court of Common Pleas

FILE NO. 2014-0102214

SC Court of Appeals

The Honorable W. Jeffrey Young

Appellate Case No. 2014-0102214

Arrowpoint Capital Corporation/Arrowood Indemnity Co. Appellant

v.

South Carolina Second Injury Fund Respondent

In Re: C.L. Williams, Employee/Claimant

v.

Yuasa Exits Incorporated, Employer

FINAL BRIEF OF RESPONDENT

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**TABLE OF CONTENTS**

Table of Authorities ..... ii

Issue on Appeal ..... 1

Statement of the Case..... 2

Standard of Review..... 3

History of the Claim ..... 3

Arguments.....

I. THIS CLAIM DOES NOT MEET THE REQUIREMENTS OF REIMBURSEMENT  
PURSUANT TO S.C. CODE ANN. § 42-9-400 .....

    A. CARRIER HAS NOT MADE THE REQUISITE PAYMENT OF  
    COMPENSATION AND MEDICAL BENEFITS PURSUANT TO S.C.  
    CODE ANN. § 42-9-400(a)..... 7

    B. CLAIMANT DID NOT HAVE A PREEXISTING CONDITION THAT  
    WAS PERMANENT AND SERIOUS ENOUGH TO CONSTITUTE A  
    HINDRANCE OR OBSTACLE TO EMPLOYMENT ..... 9

    C. CLAIMANT'S LEAD EXPOSURE IS NOT HIS FIRST AND  
    SUBSEQUENT INJURIES..... 10

    D. THE CAROLINAS RECYCLING DECISION WARRANTS  
    AFFIRMATION OF THIS CASE ..... 14

    E. BURNETTE V. CITY OF GREENVILLE IS EASILY DISTINGUISHED  
    FROM THIS CASE ..... 15

Conclusion..... 16

**TABLE OF AUTHORITIES**

**Cases**

Am. Motorists Ins. Co. v. S.C. Second Injury Fund, 300 S.C. 17, 386 S.E.2d 276 (S.C. Ct. App. 1989)..... 5, 12

Anderson et al. v. Campbell Tile Co., 202 S.C. 54, 24 S.E.2d 104 (1943) ..... 15

Ballenger v. S. Worsted Corp., 209 S.C. 463, 467, 40 S.E. 2d 681, 682-83 (S.C. 1946)..... 15

Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (S.C. Ct. App. 2012)..... 15, 16

Carolinas Recycling Grp. v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324, 327 ( Ct. App. 2012) ..... 14

CFRE, LLC v. Greenville Cnty. Assessor, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011)..... 16

Crisp v. SouthCo., 401 S.C. 627, 738 S.E.2d 835 (2013)..... 11

Grant v. South Carolina Coastal Council, 319 S.C. 348, 461 S.E. 2d 388 (1995)..... 3

Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000) ..... 13

Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 318 S.C. 516, 518, 458 S.E.2d 550, 551 (1995)..... 6

Pearson v. JPS Converter & Indus. Corp., 327 S.C. 393, 489 S.E.2d 219 (S.C. Ct. App. 1997) ... 3

Springs Industries, Inc. v. S.C. Second Injury Fund, 296 S.C. 359, 372 S.E.2d 915 (S.C. App. 1988) ..... 13, 14

S.C. Second Injury Fund v. Liberty Mut. Ins. Co., 353 S.C. 117, 576 S.E.2d 199 (S.C. Ct. App. 2003) ..... 3

State v. Jacobs. 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) ..... 12

State Workers' Compensation Fund v. SC SIF, 313 S.C. 536, 443 S.E.2d 546 (1994)..... 13, 14

**Statutes and Regulations**

S.C. Code Ann. § 42-9-5..... 8

S.C. Code Ann. § 42-17-40..... 8

S.C. Code Ann. § 42-9-400.....	1, 2, 5, 7, 8, 11, 12, 14, 16
S.C. Code Ann. § 42-9-400 (Supp. 2006).....	7
S.C. Code Ann. § 42-9-400(a).....	1, 7, 13
S.C. Code Ann. § 42-9-400(a) (Supp. 2011).....	9
S.C. Code Ann. § 42-9-400(d) .....	1, 9
S.C. Code Ann. § 42-9-400(g) .....	14
S.C. Code Ann. § 42-11-30.....	13

**Other Authority**

BLACK'S LAW DICTIONARY 132 (7 <sup>th</sup> ed. 1999).....	8
BLACK'S LAW DICTIONARY 558 (3 <sup>rd</sup> pocket ed. 2006).....	

### ISSUES OF APPEAL

1. Under S.C. Code Ann. § 42-9-400(a), did substantial evidence support the Commission's finding that Claimant did not have any condition prior to his lead exposure and therefore, Carrier was not entitled to reimbursement?
2. Under S. C. Code Ann. § 42-9-400(d), did substantial evidence support the Commission's finding that Claimant's exposure to lead was not the first and subsequent injuries?
3. Under S.C. Code Ann. § 42-9-400, did substantial evidence in the record support the Commission's finding that the Carrier did not incur a substantial increase in liability?
4. Under S.C. Code Ann. §42-9-400, did Claimant have preexisting conditions that were permanent and serious enough to constitute a hindrance or obstacle to employment?

## STATEMENT OF THE CASE

This is a claim for partial reimbursement from the South Carolina Second Injury Fund ("the Fund") by Yuasa Exide Incorporated, Employer, and Arrowpoint Capital Corporation, Carrier (collectively "Carrier"), pursuant to S.C. Code Ann. § 42-9-400. Carrier alleged that they incurred substantially greater liability for compensation and medical benefits when employee C.L. Williams' ("Claimant") preexisting hypertension, diabetes, chronic obstructive pulmonary disease, cardiomyopathy, pulmonary disease, cardiovascular disease, arterial sclerosis, and renal insufficiency were either aggravated by or combined with his February 1, 1999 work related occupational exposure. Carrier further alleged that Claimant's preexisting conditions were permanent and serious enough to constitute a hindrance or obstacle to employment. The Fund denied that Carrier met any of the requirements for reimbursement, specifically asserting that Claimant's heavy metal exposure and brain damage were not preexisting conditions. The Fund further denied that if heavy metal poisoning and brain damage preexisted, they were not permanent and serious enough to constitute a hindrance or obstacle to Claimant's employment as contemplated by S.C. Code Ann. § 42-9-400.

The Hearing Commissioner denied Carrier's reimbursement request pursuant to S.C. Code Ann. § 42-9-400 and the Full Commission, En Banc, affirmed. The Circuit Court affirmed and Carrier appealed to this Court.

## STANDARD OF REVIEW

The standard of review for decisions of the Workers' Compensation Commission is established in the Administrative Procedures Act. S.C. Second Injury Fund v. Liberty Mut. Ins. Co. 353 S.C. 117, 576 S.E.2d 199 (S.C. Ct. App. 2003). A reviewing court must not disturb the Workers' Compensation Commission's findings if those findings are supported by substantial evidence in the record. Pearson v. JPS Converter & Indus. Corp. 327 S.C. 393, 489 S.E.2d 219 (S.C. Ct. App. 1997). The fact that reasonable minds may differ or that there is the possibility of drawing inconsistent conclusions does not prevent an agency's findings from being supported by substantial evidence. Grant v. South Carolina Coastal Council 319 S.C. 348, 461 S.E. 2d 388 (1995).

## HISTORY OF THE CLAIM

Claimant worked for Yuasa Exide, Incorporated for twenty-five (25) years until he was terminated in 1998. Claimant worked in various capacities at Yuasa Exide, Incorporated, now known as EnerSys, until he was terminated in August 12, 1998. In 1983, a company report noted Claimant's blood lead levels but also indicated that "there were no findings of any lead involvement period", that Claimant's "interval history has been completely negative from that standpoint and it is felt that it poses no problem to his health by continuing to work in an area that he has previously been employed." R.p.185.

On May 31, 2011, approximately thirteen (13) years after Claimant was terminated from Yuasa Exide, Incorporated, Dr. Edward Shippen, an expert but not a treating physician, determined that Claimant's health conditions (which included diabetes, hypertension, heavy metal poisoning, chronic obstructive pulmonary disease,

pulmonary hypoventilation syndrome, rectal bleeding, coronary artery disease, pulmonary enema, tinnitus, loss of hearing and vertigo) were permanent and serious enough to constitute a hindrance or obstacle to employment, combined with or were aggravated by Claimant's lead exposure and caused Carrier to incur substantially greater liability for medical costs and permanent disability than that which would have resulted from the work injury alone. R.p.181-183.

On June 26, 2011, approximately thirteen (13) years after Claimant was terminated from Yuasa Exide, Incorporated, Dr. Edward L. Baker, an expert but not a treating physician, completed a questionnaire supporting Second Injury Fund reimbursement. R.p.178-180.

Claimant pursued this claim as a result of alleged exposure to lead at Employer's battery manufacturing plant in Sumter, South Carolina. The underlying case was not adjudicated by any tribunal, including the Commission. Instead, the underlying case was settled by Carrier and Claimant by the payment of a lump sum of money on a doubtful and disputed basis, meaning that Carrier accepted no liability for the payment of benefits, but agreed to pay a lump sum to Claimant in order to avoid litigation. As a result of the money paid pursuant to the doubtful and disputed settlement, Carrier alleged that it incurred substantially greater liability for compensation and medical benefits (neither of which it actually paid) when Claimant's alleged preexisting conditions combined with or were aggravated by the very conditions that it caused.

The Fund asserts that Carrier cannot prove an entitlement to reimbursement because the evidence does not support that Claimant suffered any preexisting condition that combined with or was aggravated by a subsequent injury to substantially increase

medical or indemnity costs; that the alleged preexisting conditions were neither a hindrance nor obstacle to Claimant's employment; and that pursuant to the statute, Carrier has not paid any medical costs or indemnity on this claim, which is prerequisite to reimbursement. S.C. Code Ann. § 42-9-400. The Carrier asserts it is entitled to reimbursement from the Fund because the lead to which it exposed Claimant caused and then subsequently aggravated certain medical conditions in Claimant. As a result of the continued exposure, Carrier seeks to be absolved from all financial responsibility to the Claimant simply because it continued to employ the Claimant after exposing him to lead.

### ARGUMENT

#### I. THIS CLAIM DOES NOT MEET THE REQUIREMENTS OF REIMBURSEMENT PURSUANT TO S.C. CODE ANN. § 42-9-400.

This reimbursement case was all brought before the Commission on the eve of the sunset of the Fund. There has been no adjudication of any facts or issues in this underlying case. This case was settled on a doubtful and disputed basis. According to the settlement agreement, this settlement applies to Yuasa-Exide, Inc. and all of its predecessors. R.p.26.

The Fund began as encouragement for employers to hire and retain employees with disabilities. The Fund was never intended to operate as a safety net for employers, such as Yuasa-Exide, Incorporated, who place their workforce in hazardous working conditions as a part of their business and due to the nature of its business. In Am. Motorists Ins. Co. v. S.C. Second Injury Fund, 300 S.C. 17, 386 S.E.2d 276 (S.C. Ct. App. 1989), the Court of Appeals addressed the purpose and scope of the Fund:

The Second Injury Fund was created in 1972. See Section 42-9-400, Code of Laws of South Carolina (1976). One of the purposes in establishing the Second Injury Fund was to encourage employers to hire handicapped persons by providing reimbursement to the employer or insurer for compensation paid as a result of a second injury. The Fund was designed to compensate handicapped workers fully for subsequent injuries without penalizing employers for hiring them in the first place. The Second Injury Fund granted a new remedy or right of reimbursement to the insurer; and the Legislature could properly impose such reasonable terms and conditions upon the exercise of such right as it deemed appropriate. The right of a claimant to secure reimbursement under the statute depends upon complete compliance with the requirements imposed for recovery. The success and future of the Second Injury Fund depend upon proper and careful application of these statutory requirements.

300 S.C. 17, 21-22, 386 S.E.2d 276, 278 (S.C. Ct. App. 1989) (emphasis added) (internal citations omitted).

The Court of Appeals later wrote that the Fund is intended to "encourage the employment of disabled or handicapped persons without penalizing an employer with greater liability if the employee is injured because of his preexisting condition." Liberty Mut. Ins. Co. v. S.C. Second Injury Fund, 318 S.C. 516, 518, 458 S.E.2d 550, 551 (1995). In this case, Carrier wants reimbursement from the Fund for conditions caused by the exposure to lead that was its very business. If reimbursement is granted, Carrier would realize little or no liability, although it was wholly responsible for the alleged conditions and maladies suffered by Claimant.

For a Carrier to be entitled to reimbursement from the Fund, it must prove that a claimant's preexisting condition aggravated or combined with a subsequent injury to

create substantially greater permanent disability or medical costs. S.C. Code Ann. § 42-9-400.

The section provides in pertinent part:

Section 42-9-400. Manner in which employer or insurance carrier shall be reimbursed from Second Injury Fund when disability results from preexisting impairment and subsequent injury.

(a) If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater, by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation and medical benefits provided by this Title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund as created by Section 42-7-310 for compensation and medical benefits in the following manner

S.C. Code Ann. §42-9-400, (Supp. 2006).

Thus, Carrier "shall in the first instance pay all awards of compensation and medical benefits" before it can assert a colorable claim for reimbursement.

A. CARRIER HAS NOT MADE THE REQUISITE PAYMENT OF COMPENSATION AND MEDICAL BENEFITS PURSUANT TO S.C. CODE ANN. § 42-9-400(a).

S.C. Code Ann. § 42-9-400 allows for Second Injury Fund reimbursement of "awards of compensation and medical benefits" under certain circumstances. That section subsequently sets forth the manner and operation by which medical and weekly indemnity benefit payments are to be reimbursed in qualified cases. An "award" is "[a] final judgment or decisions, esp. one by an arbitrator or by a jury assessing damages."

BLACK'S LAW DICTIONARY 132 (7th ed. 1999). S.C. Code Ann. § 42-9-5 requires that "[a]n award made pursuant to this Title must be based upon specific and written detailed findings of fact substantiating the award." Under S.C. Code Ann. § 42-17-40, an award is made by the Commission as a result of a dispute between parties. An award is not a "Settlement Agreement, Release and Order."

The Settlement Agreement, Release and Order states in relevant part the following:

Claimant contends that he is in need of an additional medical examination and further medical treatment; that he has sustained injuries to the brain, cardiovascular system, musculoskeletal system, liver, kidneys, pulmonary system, and neuropathic system; and the Employer and Carrier expressly deny that Claimant suffered any disability and assert that there is no need for past, present or future medical treatment. The Employer and Carrier also deny Claimant sustained compensable injuries as a consequent of his employment duties either by accident, repetitive trauma, or exposure to lead, known or unknown chemical and toxins. The Employer and Carrier deny Claimant's allegations and rely upon the report of Dr. Nicholas Lind and other medical providers to refute Claimant's allegations.

R.p. 27.

The Employer and Carrier deny the very contentions for which they now seek reimbursement pursuant to S.C. Code § 42-9-400. It is noteworthy that the reimbursement statute allows Carrier to receive reimbursement for those medical costs and compensation payments that are substantially greater "than that which would have resulted from the subsequent injury alone." S.C. Code Ann. § 42-9-400(a), (Supp. 2011). Here, Carrier did not pay any medical costs or compensation to Claimant.

The Fund presumes that the Settlement Agreement filed on behalf of Carrier and its predecessors were done so in good faith. Thus, there is no basis upon which to allow reimbursement from the Fund. There has been no award, and if these cases are to remain denied by Carrier, and if no medical or compensation benefits have been paid to Claimant, there is not an award for compensable injuries upon which reimbursement can rest.

While the Fund recognizes that there are occasions that a "doubtful and disputed" settlement agreement may benefit the parties to an underlying claim, the Fund is a state agency and a creature of statute. The Fund was created by the Legislature for specific reasons, and none of those reasons include allowing employers and carriers to avoid their statutory responsibilities. Since there is no statutory authority to grant reimbursement on denied claims where no medical costs or weekly benefits are paid, this claim should be denied.

**B. CLAIMANT DID NOT HAVE A PREEXISTING CONDITION THAT WAS PERMANENT AND SERIOUS ENOUGH TO CONSTITUTE A HINDRANCE OR OBSTACLE TO EMPLOYMENT.**

The statutory reimbursement scheme also requires that Carrier establish that Claimant's permanent preexisting impairment was permanent and serious enough to constitute a hindrance or obstacle to employment or reemployment. S.C. Code Ann. §42-9-400(d). Claimant's conditions, if they preexisted, were not permanent and serious enough to constitute a hindrance or obstacle to his employment.

On December 12, 1983, Claimant's physical examination indicated that there were no findings of lead involvement and that he could continue working in his area. R.p.185 .

On January 11, 1984, Claimant's physical examination revealed a past history of hypertension and mild cirrhosis. R.p.186. In February, April and September 1984, Claimant's physical examinations revealed that he could function safely in his present job without complications. R.p.188. Claimant's subsequent physical examinations from 1988 to 1997 revealed hypertension, and a history of elevated lead levels. R.pp.191-192, 194, 196, 198, 200, 202 and 204.

It is important to note that Yuasa Exide, Incorporated had many employees that were exposed to lead, and they all were employed for many years. If the lead exposure was a hindrance or obstacle to employment, Claimant would not have been able to work as he did over the course of twenty-five (25) years.

In its effort to establish that Claimant had a preexisting condition that was permanent and serious enough to constitute a hindrance or obstacle to employment, Carrier relies heavily on the Claimant's blood levels and the OSHA regulations regarding permissible exposure to lead. R.p.363. However, the prevailing statute is S.C. Code Ann. §42-9-400, and this Court is not required to give deference to OSHA regulations. See S.C. Code Ann. § 42-9-400.

#### C. CLAIMANT'S LEAD EXPOSURE IS NOT HIS FIRST AND SUBSEQUENT INJURIES.

In this case, Carrier asserts that both the first and second injuries were the same: the exposure to lead. Carrier's position is that the lead caused the Claimant's conditions, and, subsequent to the development of his maladies, he was further exposed to lead. Carrier alleges that Claimant's continued or subsequent exposure resulted in additional or worsening maladies. Thus, Carrier argues that it is entitled to reimbursement for

payment of a lump sum settlement that neither represents indemnity nor medical payments. However, by statute, the Fund only reimburses for disability benefits and medical payments. S.C. Code Ann. § 42-9-400.

In this case, the only evidence presented is subsequent to the initial exposure to lead. Here, the exposure to lead was coincidental to the beginning of work. Since Carrier must prove that the exposure to lead is the alleged preexisting condition, Carrier is required to show evidence of the condition prior to the initial exposure. See S.C. Code Ann. § 42-9-400.

Carrier submitted questionnaires and medical reports from Dr. Eugene Shippen and Dr. Edward L. Baker, Jr. Dr. Shippen's and Dr. Baker's questionnaires list all of the conditions allegedly suffered by Claimant as "pre-existing conditions," regardless of when the symptoms for those conditions appeared (most of which appeared several years subsequent to Claimant's employment with Yuasa Exide, Incorporated). While Dr. Shippen and Dr. Baker are experts, neither were treating physicians.

Carrier's experts do not support Carrier's position that exposure to lead and its malignant effects on the body become preexisting conditions to continuing exposure to the same substance and continuing malignant effects. Carrier's experts write that

[l]ead poisoning is a chronic illness. It has long been recognized that much of the toxicity of lead poisoning is not reversible by medical therapy. Prevention of exposure is the main aim in lead poisoning management[,] as treatment has little effect on reversing toxicity or preventing toxicity later in life related to lead mobilization from bone. Since lead remains in bone lead stores for many decades, it is considered a chronic illness requiring long term management and observation.

R.pp.294-295.

As a chronic illness, lead poisoning is the illness itself. As a chronic illness, lead poisoning does not stand apart from the maladies it causes. As their experts note, the Claimants' "[c]onditions [were] caused by lead exposure in the workplace." R.p.295. As the doctors write, "Chronic lead poisoning is manifested by a range of damage to various systems of the body." *Id.* They further state, "We also conclude that lead, once absorbed into the body, was distributed to various parts of the body, including the brain, the kidneys and bone, and caused damage to the body of Exide workers." R.p.299. Thus, the manifestations of lead poisoning do not preexist the chronic illness, and the chronic illness is not separate and apart from the conditions to which it leads. They are one and the same. During the short life of the Second Injury Fund, it existed to encourage the hiring of disabled persons. Am. Motorists Ins. Co. v. S.C. Second Injury Fund, 300 S.C. 17, 386 S.E.2d 278 (S.C. Ct. App. 1989). The Second Injury Fund was not created to encourage long term exposure to toxins in the workplace so that employers can go without liability.

Additionally, the finding that Claimant's lead exposure was not Claimant's first and subsequent (or second) injury is supported by the plain meaning of the statutory reimbursement scheme. According to the Supreme Court, "a court must abide by the plain meaning of the words of a statute. When interpreting the plain meaning of a statute, courts should not resort to subtle or forced construction to limit or expand the statute's operation." State v. Jacobs, 393 S.C. 584, 587, 713 S.E.2d 621, 622 (2011) (internal citations omitted). Further, "[w]here the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed

and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E. 2d 578, 581 (2000).

The Commission determined that Claimant's exposure to lead during his twenty-five (25) years of employment constitutes a single occupational exposure based on the plain meaning of the statute. Section 42-9-400(a) references "subsequent disability," "preexisting impairment," and "subsequent injury." The injury for which reimbursement is sought is an occupational disease, which is a chronic illness as previously discussed herein. Since this case involves a chronic illness, the plain meaning of the statute requires that the preexisting condition predate the chronic illness. In this case, the evidence indicates the contrary as Claimant's conditions and the chronic illness and effects thereof are one and the same.

The cases cited by Carrier to support its theory are easily distinguished from this case. In State Workers' Compensation Fund v. SC SIF, 313 S.C. 536, 443 S.E.2d 546 (1994), the South Carolina Supreme Court decided the issues partly based on a statute that applied specifically to law enforcement officers, including firefighters, which presumes that heart disease arises out of and in the course of a firefighter's employment. 313 S.C. 536 at 539; 443 S.E.2d at 548 (1994). See, S.C. Code Ann. § 42-11-30. In addition, the Claimant in that case had a definitive diagnosis of coronary artery disease prior to a subsequent injury. On the contrary, Claimant's chronic illness or occupational exposure is one injury and he was not diagnosed with any condition prior to his chronic illness or exposure.

In Springs Industries, Inc. v. S.C. Second Injury Fund, the issue was whether Claimant sustained a subsequent injury. 296 S.C. 359, 372 S.E.2d 915 (S.C. App. 1988).

In Springs, Claimant worked in the cotton industry for thirty-one (31) years and then became totally disabled after working for another employer for nine (9) months. The Court determined that Claimant's thirty-one (31) years of prior cotton dust exposure was the "but for" cause of the subsequent injury pursuant to S.C. Code Ann. § 42-9-400(g). It is noteworthy that a determination that the preexisting condition is the "but for" cause of the subsequent injury eliminates the need for Carrier to establish that their liability was substantially greater. See S.C. Code Ann. § 42-9-400. In both State Workers' Compensation Fund and Springs, the carriers actually paid the affected claimants compensation and medical benefits, as opposed to Appellant, who settled the claim on a doubtful and disputed basis without paying in the first instance. The Commission's decision was supported by the plain meaning of the statute and must be affirmed. Since Carrier has no evidence of actual preexisting conditions prior to his exposure to lead with Employer or its predecessors, this claim for Second Injury Fund reimbursement should be denied.

D. THE CAROLINAS RECYCLING DECISION WARRANTS AFFIRMATION OF THIS CASE.

Carrier cites Carolinas Recycling Grp v. S.C. Second Injury Fund to support the assertion that the Commission's decision is not supported by substantial evidence. 398 S.C. 480, 73 S.E.2d 324 (Ct. App. 2012). In Carolinas Recycling, the South Carolina Court of Appeals reversed the decision of the Commission because the Appellate Panel "relied exclusively upon an evaluation by a non-treating physician who only met with the Claimant on one occasion." 398 S.C. 480, 485, 730 S.E.2d 324, 327 (Ct.App. 2012). In this case, none of the experts who provided medical opinions were treating physicians on

any occasion. Consistent with the Carolinas Recycling decision, the Commission and the Circuit Court refused to rely on physicians who did not provide any treatment to Claimant.

Moreover, the Commission determines the weight of the evidence. In Anderson et al. v. Campbell Tile Co., the South Carolina Supreme Court held that opinions of medical experts may constitute substantial evidence sufficient to support a judgment. 202 S.C. 54, 24 S.E.2d 104 (1943). Anderson does not require that the opinions of medical experts are the only evidence that may constitute substantial evidence nor does it exclude other sufficiently compelling evidence that would support a judgment. Anderson also held that the Commission determines the weight given to the opinion of medical experts. Id. While Carrier submitted medical certificates supporting the elements of reimbursement, the Commission is not required to give medical questionnaires conclusive effect to the exclusion of other more compelling evidence. Ballenger v. S. Worsted Corp., 209 S.C. 463, 467, 40 S.E.2d 681, 682-83 (1946). The Commission's decision to place little weight on the opinions of physicians that did not actually treat Claimant and place more weight on the totality of the other medical evidence was well within their discretion. The Commission's decision was supported by the substantial evidence in the record.

E. BURNETTE V. CITY OF GREENVILLE IS EASILY DISTINGUISHED FROM THIS CASE.

In Burnette v. City of Greenville, this Court reversed and remanded a case to the South Carolina Workers' Compensation Commission so that it could enter findings of fact concerning Claimant's lumbar injury and disability ratings. 401 S.C. 417, 737

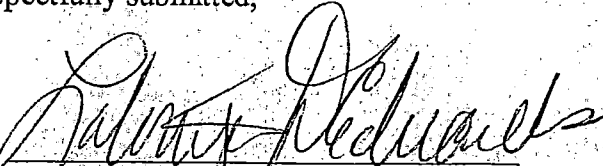
S.E.2d 200 (2012). In Burnette, Claimant was a police officer who sustained two (2) separate back injuries. This Court concluded that Commission's decision, which was affirmed by the Circuit Court, was based on the medical opinion of a Single Commissioner rather than a medical provider. Id. Burnette is easily distinguished from this case. Burnette presents issues of compensability, or (statute) rather than issues of reimbursement or S.C. Code § 42-9-400. Issues of compensability are between a claimant and the employer or carrier while issues of reimbursement are solely between the carrier and the Fund. S.C. Code § 42-9-400. Moreover, the decisions below were not based on a Commissioner's interpretation of medical evidence but rather, the medical evidence provided by the Carrier's compensated experts.

It is well settled that an agency's interpretation of its own statutes will be given great deference unless compelling reasons require otherwise. CFRE, LLC v. Greenville Cnty Assessor, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011). In this case, there are no compelling reasons that require this Court not to give deference to the Commission's interpretation of the applicable statute.

### CONCLUSION

For the reasons cited herein, the South Carolina Second Injury Fund requests that this Honorable Court affirm the decision below as supported by substantial evidence in the record.

Respectfully submitted,

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June 23, 2015  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

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Case No. 2013-CP-43-02286  
Appellate Case No. 2014-002214

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

v.

South Carolina Second Injury Fund..... Respondent,

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

v.

Yuasa Exide, Incorporated, Employer]

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REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii

ARGUMENTS

I. Appellants were not required to litigate this claim to be entitled to Reimbursement.....1

II. Appellants carried their burden of proof in establishing that Claimant's preexisting conditions constituted a hindrance or obstacle to employment or reemployment .....3

III. Appellants established preexisting permanent conditions as required by § 42-9-400.....4

IV. South Carolina case law supports a reversal of the Lower Court's decision .....5

CONCLUSION.....7

**TABLE OF AUTHORITIES**

**CASES**

*Burnette v. City of Greenville*,  
401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012).....5, 6

*Burnette v. City of Greenville*,  
Op. No. 5059 (S.C. Sup. Ct. filed May 8, 2014) .....5

*Carolinas Recycling Group and Employers Ins. Co. of Wausau v. S.C. Second Injury  
Fund*,  
398 S.C. 480, 730 S.E.2d 324 (Ct. App. 2012).....5, 6

*State Accident Fund v. S.C. Second Injury Fund*,  
409 S.C. 240, 762 S.E.2d 19 (2014) .....3

*State Workers' Compensation Fund v. South Carolina Second Injury Fund (In re:  
Warren M. Hunt v. S.C. State Forestry Comm'n)*,  
313 S.C. 536, 443 S.E.2d 546 (1994) .....5

**STATUTES**

S.C. Code Ann. § 42-9-5 (Supp. 2014).....2

S.C. Code Ann. § 42-9-400 (Supp. 2004).....3

## ARGUMENTS

### **I. APPELLANTS WERE NOT REQUIRED TO LITIGATE THIS CLAIM TO BE ENTITLED TO REIMBURSEMENT.**

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

In the case at hand, as well as all other claims stemming from lead exposure at the Sumter Battery Plant, the South Carolina Workers' Compensation Commission ordered that the claims be mediated. (R. pp. 37-43.) Thus, there was not an opportunity for Appellants to acquire a formal decision and order on these cases, unless Appellants defied the Commission's order that the claims be mediated in good faith. Additionally, there was no way for Appellants to foresee that Respondent would take a position that a settlement would negate Appellants' ability to acquire reimbursement from the Fund, given that the Fund has always paid reimbursement on such cases and has never taken a position similar to the one it has presented in its Brief. In fact, the Fund was made a party to these claims, attended a few of the mediations, but never asserted that they would assert that the lack of a formal hearing would bar reimbursement.

Section 42-9-400 does not require a formal decision and order with findings of fact and conclusions of law as a prerequisite for reimbursement. In fact, the Fund has never argued such until the submission of its Initial Brief to this Court. Section 42-9-400

requires that the carrier and employer pay all medical and indemnity benefits in the first instance and that they then seek reimbursement from the Fund. The purpose of this language is not to require a formal decision and order but instead to ensure timely payment of benefits for a claimant's injury by the carrier or employer or for the issue of reimbursement to be handled subsequently.

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

Lastly, the language of the settlement agreement in this matter states that an award has been issued. Specifically, on Page Eleven of the settlement agreement, it states. "IT IS ORDERED AND AWARDED..." (R. p. 34.) This agreement was approved and executed by a commissioner on October 21, 2010. Thus, the language of the agreement specifically states that an award has occurred.

In light of the above, Appellants request that this Honorable Court reverse the decision of the Circuit Court and reject Respondent's argument that the lack of a formal decision and order bars reimbursement.

**II. APPELLANTS CARRIED THEIR BURDEN OF PROOF IN ESTABLISHING THAT CLAIMANT'S PREEXISTING CONDITIONS CONSTITUTED A HINDRANCE OR OBSTACLE TO EMPLOYMENT OR REEMPLOYMENT.**

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

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

of the claimant's accident as opposed to whether the condition constituted a hindrance or obstacle to employment "as the statute requires." Id. at 247, 762 S.E.2d at 23.

In the case at hand, Appellants presented evidence that Claimant had cardiac disease, pulmonary disease, and heavy metal poisoning all before his date of injury. Thus, Appellants are entitled to the rebuttable presumptions found in § 42-9-400 for these conditions. Further, as in State Accident Fund, Respondent submitted no evidence rebutting the presumptions. Thus, Appellants request that this Honorable Court reverse the findings of the Circuit Court to the contrary.

**III. APPELLANTS ESTABLISHED PREEXISTING PERMANENT CONDITIONS AS REQUIRED BY § 42-9-400.**

Respondent erroneously analyzes the point in time at which a condition must occur for it to satisfy the element of § 42-9-400 which requires the existence of a permanent preexisting condition before the subsequent disability. Because this is an occupational disease claim, Respondent convolutes § 42-9-400 to require that the preexisting condition preexist the first day Claimant was ever exposed to lead at the Sumter Battery Facility. This position is not supported by South Carolina law, and Appellants assert that the Circuit Court erred in adopting this new interpretation of the law by the Commission.

As outlined in Appellants' Initial Brief, the date of injury or disablement controls in occupational disease claims. Thus, the preexisting permanent impairment required by § 42-9-400 most certainly does not have to preexist the first day Claimant was exposed to lead, but instead must preexist the subsequent disability as stated in § 42-9-400. This position is supported by South Carolina authority concerning occupational disease

claims. Appellants' position is also supported by South Carolina authority finding an entitlement to reimbursement where the preexisting condition arose out the same employment as the subsequent injury. See, e.g., Carolinas Recycling Group v. South Carolina Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (2012) and State Workers' Compensation Fund v. South Carolina Second Injury Fund (In re: Warren M. Hunt v. S.C. State Forestry Comm'n), 313 S.C. 536, 443 S.E.2d 546 (1994).

In the claim at hand, there is no question that Claimant had cardiac disease, pulmonary disease, hearing loss, and heavy metal poisoning prior to his date of injury or his date of disablement. For that reason, Appellants submit that the Circuit Court's opinion should be reversed as a matter of law.

#### **IV. SOUTH CAROLINA CASE LAW SUPPORTS A REVERSAL OF THE LOWER COURT'S DECISION.**

In its Initial Brief, Respondent misinterprets the cases of Carolinas Recycling Group v. S.C. Second Injury Fund, 398 S.C. 480, 730 S.E.2d 324 (2012), and Burnette v. City of Greenville, 401 S.C. 417, 737 S.E.2d 200 (Ct. App. 2012), *cert. denied* Burnette v. City of Greenville, Op. No. 5059 (S.C. Sup. Ct. filed May 8, 2014). Appellants submit that the correct interpretation of these cases leads to the conclusion that the Circuit Court's decision should be reversed.

In its brief, Respondent misconstrues the Carolinas Recycling Group case. In Carolinas Recycling Group, the South Carolina Workers' Compensation Commission ignored medical evidence establishing an element of Second Injury Fund reimbursement and cited a piece of evidence that had no bearing on the element in support of its denial of benefits. The South Carolina Supreme Court rejected this erroneous approach and held

that substantial evidence supported that the employer and carrier had carried their burden of proof in establishing all prerequisites for reimbursement. Carolinas Recycling Group, 398 S.C. at 484, 730 S.E.2d at 327. Similarly, in the case at hand, the Fund has submitted no reliable evidence of any sort to counter the medical evidence Appellants have submitted establishing their entitlement to reimbursement. Therefore, Appellants submit that the Carolinas Recycling case provides support for their claim for reimbursement.

Likewise, in Respondent's Brief, the Fund argues that because the underlying issue in the Burnette case is one of compensability, that the analysis regarding the substantial evidence standard of review is inapplicable to the reimbursement case at hand. Appellants submit that the analysis under a substantial evidence standard of review does not change depending on the type of case. Furthermore, Appellants believe that Respondent makes this argument in an effort to minimize the fact that this Honorable Court has previously held that the Commission can ignore medical evidence only when there is other competent evidence in the record upon which it can base its opinion. Burnette, 401 S.C. at 428, 737 S.E.2d at 206. In the case at hand, just as in Burnette, there is no evidence other than that presented by Appellants, and this evidence establishes all of the necessary elements for reimbursement. By disregarding this evidence in favor of no other evidence, the Lower Court erred, and Appellants are requesting that this Court reverse that decision.

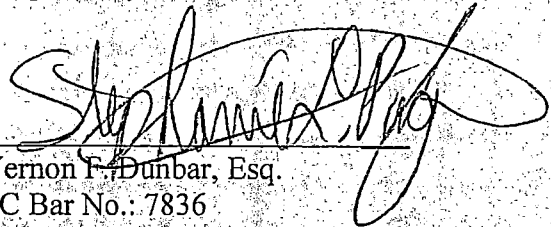
In light of the aforementioned case law, Appellants request that this Honorable Court reverse the decision of the Circuit Court.

CONCLUSION

For the reasons stated, Appellants respectfully request that this Honorable Court reverse the Lower Court's decision.

June 23, 2015

Respectfully submitted,



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**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**

Arrowpoint Capital Corporation/Arrowood Indemnity  
Co., Appellant,

v.

South Carolina Second Injury Fund, Respondent.

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

v.

Yuasa Exide, Incorporated, Employer]

Appellate Case No. 2014-002214

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Appeal From Sumter County  
W. Jeffrey Young, Circuit Court Judge

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Unpublished Opinion No. 2017-UP-228  
Heard January 25, 2017 – Filed May 31, 2017

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**REVERSED**

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

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**PER CURIAM:** Arrowpoint Capital Corporation (Carrier) appeals the circuit court's order affirming the Appellate Panel of the Workers' Compensation Commission's (the Commission's) denial of Carrier's claim for reimbursement from the Second Injury Fund (the Fund).<sup>1</sup> Carrier argues the circuit court erred in denying its claim for reimbursement because Carrier met all elements for Fund reimbursement pursuant to section 42-9-400 of the South Carolina Code (2015). We reverse.

The circuit court committed an error of law in interpreting section 42-9-400(a) to preclude reimbursement. *See Thompson v. S.C. Steel Erectors*, 369 S.C. 606, 612, 632 S.E.2d 874, 878 (Ct. App. 2006) ("The appellate court may reverse or modify the Commission's decision only if the claimant's substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record."); *Springs Indus., Inc. v. S.C. Second Injury Fund*, 296 S.C. 359, 364, 372 S.E.2d 915, 918 (Ct. App. 1988) (holding "the only reasonable conclusion to be drawn from the substantial evidence in the record is that Springs Industries is entitled to reimbursement from the Second Injury Fund").

Section 42-9-400(a) provides,

If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability

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<sup>1</sup> The Legislature funded the Second Injury Fund on a continuing basis through "equitable assessments" upon insurance carriers, self-insurers, and the State Accident Fund. S.C. Code Ann. § 42-7-310(d)(2) (2015). In 2007, the Legislature terminated the Fund effective July 1, 2013, and tasked the State Fiscal Accountability Authority with the "orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund." S.C. Code Ann. § 42-7-320(A) (Supp. 2016).

that is substantially greater and is caused by aggravation of the preexisting impairment than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall pay all awards of compensation and medical benefits provided by this title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund . . . .

In reversing, we are bound by our supreme court's holding in *State Workers' Compensation Fund v. S.C. Second Injury Fund*, 313 S.C. 536, 539–40, 443 S.E.2d 546, 548 (1994) (determining a firefighter's "total disability from heart disease in 1986 qualifie[d] as a subsequent disability arising out of his employment" and reversing this court's denial of reimbursement). There, the State Workers' Compensation Fund successfully pursued Second Injury Fund reimbursement when a Forestry Commission firefighter diagnosed with coronary artery disease in 1974 was subsequently rendered totally disabled due to arteriosclerosis and cardiac disease. *Id.* at 537, 443 S.E.2d at 547. In effect, the supreme court concluded the firefighter's occupational cardiac disease, as aggravated by the hazards of his work, constituted both a preexisting condition and subsequent injury. *See id.* at 539, 443 S.E.2d at 548 (holding separate work-related injuries are not required for reimbursement, and "a 'prior disability' need not result from an industrial accident").

C.L. Williams's (Claimant's) case is analogous. Section 42-9-400(a) provides for reimbursement if an "employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment." Claimant's medical records—kept internally by his employer—demonstrate that, as early as 1983, Claimant was continually exposed to lead; he was terminated for health-related reasons in 1998. During oral argument, the parties conceded "everything that manifested itself manifested itself and was caused by his twenty-five year exposure to lead." Thus, the circuit court's interpretation of section 42-9-400(a) to preclude reimbursement conflicts with our supreme court's analysis in *State Workers' Compensation Fund*.

Additionally, Carrier satisfies the remaining reimbursement factors that

1. An employee must have a permanent physical impairment from any origin;

2. The employer retains the employee after knowledge of the prior impairment;

3. The employee incurs a subsequent disability from injury by accident arising out of and in the course of his employment;

4. The subsequent injury combines with or aggravates the preexisting condition to cause "substantially greater" disability than would have been caused by the subsequent injury alone, *or*

5. The second injury most probably would not have occurred but for the preexisting condition.

*State Workers' Comp. Fund*, 313 S.C. at 538, 443 S.E.2d at 547-48 (citations omitted).

Relying upon our supreme court's analysis in *State Workers' Compensation Fund*, we conclude the only reasonable inference to be drawn from the substantial evidence in the record here is that Claimant's hypertension, diabetes, chronic obstructive pulmonary disease, cardiomyopathy, pulmonary disease, arterial sclerosis, and renal insufficiency combined with or aggravated the preexisting condition suffered from prolonged heavy metal exposure to cause "substantially greater" disability than would have been caused by any single subsequent condition alone. Such permanent physical impairments as listed in section 42-9-400(d) are presumed to be permanent and "a hindrance or obstacle to employment or reemployment."

Substantial evidence in the form of internal medical records establishes Claimant's employer had knowledge of his lead exposure dating back to the 1980s. Claimant was terminated for health-related reasons in 1998, and two doctors asserted in unchallenged medical questionnaires that Claimant's continued exposure to lead aggravated or combined with his preexisting conditions to render him permanently disabled. Accordingly, we reverse the circuit court's order denying Carrier reimbursement.

**REVERSED.**

**LOCKEMY, C.J., and KONDUROS and MCDONALD, JJ., concur.**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young

Appellate Case No.: 2014-002214

RECEIVED

JUN 15 2017

SC Court of Appeals

Arrowpoint Capital Corporation/Arrowwood Indemnity Co., ..... Appellant,

v.

South Carolina Second Injury Fund, ..... Respondent.

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

v.

Yuasa Exide, Incorporated, Employer)

**PETITION FOR REHEARING OF APPELLANT  
SOUTH CAROLINA SECOND INJURY FUND**

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ATTORNEY FOR SOUTH CAROLINA  
SECOND INJURY FUND

TABLE OF CONTENTS

INTRODUCTION .....1

HISTORY OF THE CLAIM ..... 1

ARGUMENT ..... 3

    I.    THE COURT DID NOT ADDRESS THE FUND’S ARGUMENT THAT CARRIER  
          HAS NOT MADE THE REQUISITE PAYMENT OF COMPENSATION AND  
          MEDICAL BENEFITS PURSUANT TO SC CODE ANN. §42-9-400 ..... 3

    II.   THE COURT FAILED TO ADDRESS THE FUND’S ARGUMENT THAT  
          CLAIMANT DID NOT HAVE A PREEXISTING CONDITION THAT WAS  
          PERMANENT AND SERIOUS ENOUGH TO CONSTITUTE A HINDRANCE OR  
          OBSTACLE TO EMPLOYMENT. ....5

CONCLUSION .....6

## INTRODUCTION

Pursuant to Rule 221(a) and Rule 240(i), SCACR, the Appellant South Carolina Second Injury Fund (the Fund) respectfully petitions this Court for rehearing of Opinion Number 2017-UP-229 dated May 31, 2017. Rehearing is warranted when the Court has overlooked or misapprehended an argument. Kennedy v. SC Retirement Systems, 349 S.C. 531, 564 S.E.2d 322 (2001).

## HISTORY OF THE CLAIM

Claimant worked for Yuasa Exide, Incorporated for twenty-five (25) years until he was terminated in 1998. Claimant worked in various capacities at Yuasa Exide, Incorporated, now known as EnerSys, until he was terminated in August 12, 1998. In 1983, a company report noted Claimant's blood lead levels but also indicated that "there were no findings of any lead involvement period", that Claimant's "internal history has been completely negative from that standpoint and it is felt that it poses no problem to his health by continuing to work in an area that he has previously been employed." R.p. 185.

On May 31, 2011, approximately thirteen (13) years after Claimant was terminated from Yuasa Exide, Incorporated, Dr. Edward Shippen, an expert but not a treating physician, determined that Claimant's health conditions (which included diabetes, hypertension, heavy metal poisoning, chronic obstructive pulmonary disease, pulmonary hypoventilation syndrome, rectal bleeding, coronary artery disease, pulmonary enema, tinnitus, loss of hearing and vertigo) were permanent and serious enough to constitute a hindrance or obstacle to employment, combined with or were aggravated by Claimant's lead exposure and caused Carrier to incur substantially greater

liability for medical costs and permanent disability than that which would have resulted from the work injury alone. R.p.181-183.

On June 26, 2011, approximately thirteen (13) years after Claimant was terminated from Yuasa Exide, Incorporated, Dr. Edward L. Baker, an expert but not a treating physician, completed a questionnaire supporting Second Injury Fund reimbursement. R.p.178-180.

Claimant pursued this claim as a result of alleged exposure to lead at Employer's battery manufacturing plant in Sumter, South Carolina. The underlying case was not adjudicated by any tribunal, including the Commission. Instead, the underlying case was settled by Carrier and Claimant by the payment of a lump sum of money on a doubtful and disputed basis, meaning that Carrier accepted no liability for the payment of benefits, but agreed to pay a lump sum to Claimant in order to avoid litigation. As a result of the money paid pursuant to the doubtful and disputed settlement, Carrier alleged that it incurred substantially greater liability for compensation and medical benefits (neither of which it actually paid) when Claimant's alleged preexisting conditions combined with or were aggravated by the very conditions that it caused.

The Fund asserts that Carrier cannot prove an entitlement to reimbursement because the evidence does not support that Claimant suffered any preexisting condition that combined with or was aggravated by a subsequent injury to substantially increase medical or indemnity costs; that the alleged preexisting conditions were neither a hindrance nor obstacle to Claimant's employment; and that pursuant to the statute, Carrier has not paid any medical costs or indemnity on this claim, which is prerequisite to reimbursement. S.C. Code Ann. § 42-9-400. The Carrier asserts it is entitled to

reimbursement from the Fund because the lead to which it exposed Claimant caused and then subsequently aggravated certain medical conditions in Claimant. As a result of the continued exposure, Carrier seeks to be absolved from all financial responsibility to the Claimant simply because it continued to employ the Claimant after exposing him to lead.

### ARGUMENT

- I. THE COURT DID NOT ADDRESS THE FUND'S ARGUMENT THAT CARRIER HAS NOT MADE THE REQUISITE PAYMENT OF COMPENSATION AND MEDICAL BENEFITS PURSUANT TO SC CODE ANN. §42-9-400.

This reimbursement case was all brought before the Commission on the eve of the sunset of the Fund. There has been no adjudication of any facts or issues in this underlying case. This case was settled on a doubtful and disputed basis. According to the settlement agreement, this settlement applies to Yuasa-Exide, Inc. and all of its predecessors. R. p. 26.

The Court cites §42-9-400 (a) to support its decision. That section reads as outlined below:

If an employee who has a permanent physical impairment from any cause or origin incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical payments liability or either, for disability that is substantially greater, by reason of the combined effects of the preexisting impairment and subsequent injury or by reason of the aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, the employer or his insurance carrier shall in the first instance pay all awards of compensation and medical benefits provided by this Title; but such employer or his insurance carrier shall be reimbursed from the Second Injury Fund as created by Section 42-7-310 for

compensation and medical benefits in the following manner

.....  
S.C. Code Ann. §42-9-400 (2006 Supplement).

The Court determined that Carrier has satisfied the requirements enumerated above. However, Carrier has not complied with §42-9-400(a) because it has not made any payment of compensation or medical benefits which would implicate reimbursement.

Furthermore, the Settlement Agreement states in relevant part the following:

Claimant contends that he is in need of an additional medical examination and further medical treatment; that he has sustained injuries to the brain, cardiovascular system, musculoskeletal system, liver, kidneys, pulmonary system, and neuropathic system; and the Employer and Carrier expressly deny that Claimant suffered any disability and assert that there is no need for past, present or future medical treatment. The Employer and Carrier also deny Claimant sustained compensable injuries as a consequent of his employment duties either by accident, repetitive trauma, or exposure to lead, known or unknown chemical and toxins. The Employer and Carrier deny Claimant's allegations and rely upon the report of Dr. Nicholas Lind and other medical providers to refute Claimant's allegations.

R.p. 27.

The Employer and Carrier deny the very contentions for which they now seek reimbursement pursuant to S.C. Code § 42-9-400. It is noteworthy that the reimbursement statute allows Carrier to receive reimbursement for those medical costs and compensation payments that are substantially greater "than that which would have resulted from the subsequent injury alone." S.C. Code Ann. § 42-9-400(a), (Supp. 2011). Here, Carrier did not pay any medical costs or compensation to Claimant.

The Fund presumes that the Settlement Agreement filed on behalf of Carrier and its predecessors were done so in good faith. Thus, there is no basis upon which to allow reimbursement from the Fund. There has been no award, and if these cases are to remain

denied by Carrier, and if no medical or compensation benefits have been paid to Claimant, there is not an award for compensable injuries upon which reimbursement can rest.

While the Fund recognizes that there are occasions that a "doubtful and disputed" settlement agreement may benefit the parties to an underlying claim, the Fund is a state agency and a creature of statute. The Fund was created by the Legislature for specific reasons and not one of those reasons is to allow employers and carriers avoid their statutory responsibilities. Because there is no statutory authority to grant reimbursement on denied claims where no medical or weekly benefits are paid, this claims should be denied. The Court does not address this argument and rehearing is warranted.

**II. THE COURT FAILED TO ADDRESS THE FUND'S ARGUMENT THAT CLAIMANT DID NOT HAVE A PREEXISTING CONDITION THAT WAS PERMANENT AND SERIOUS ENOUGH TO CONSTITUTE A HINDRANCE OR OBSTACLE TO EMPLOYMENT.**

The statutory reimbursement scheme also requires that Carrier establish that Claimant's permanent preexisting impairment was permanent and serious enough to constitute a hindrance or obstacle to employment or reemployment. S.C. Code Ann. §42-9-400(d). Claimant's conditions, if they preexisted, were not permanent and serious enough to constitute a hindrance or obstacle to his employment.

The Court failed to address the Fund's evidence, which would serve to rebut a presumption, if one existed in this case. On December 12, 1983, Claimant's physical examination indicated that there were no findings of lead involvement and that he could continue working in his area. R.p.185. On January 11, 1984, Claimant's physical examination revealed a past history of hypertension and mild cirrhosis. R.p.186. In

February, April and September 1984, Claimant's physical examinations revealed that he could function safely in his present job without complications. R.p.188. Claimant's subsequent physical examinations from 1988 to 1997 revealed hypertension, and a history of elevated lead levels. R.pp.191-192, 194, 196, 198, 200, 202 and 204.

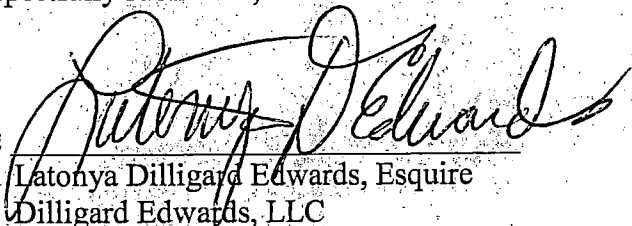
It is important to note that Yuasa Exide, Incorporated was filled with employees that were exposed to lead, and it employed them all for many, many years. If the lead exposure was a hindrance or obstacle to employment, Claimant would not have been able to work as he did over the course of twenty-five (25) years. The Court did not address this argument and a rehearing is warranted.

### CONCLUSION

For the reasons cited herein, the South Carolina Second Injury Fund requests that this Honorable Court grant its petition for rehearing.

Respectfully submitted,

By:



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June 15, 2017  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young

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Appellate Case No.: 2014-002214

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RECEIVED

JUN 15 2017

SC Court of Appeals

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

v.

South Carolina Second Injury Fund, ..... Appellant.

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

v.

Yuasa Exide, Incorporated, Employer)

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**PROOF OF SERVICE**

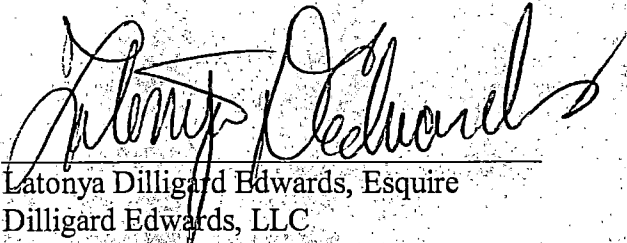
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The undersigned employee of Dilligard Edwards, LLC, Attorney for the Appellant, does hereby certify that service of the **Petition for Rehearing of the South Carolina Second Injury Fund** to South Carolina Court of Appeals in the above-captioned matter was made upon counsel of record for Respondents, Arrowpoint Capital Corporation/Arrowood Indemnity Co., and the South Carolina Workers' Compensation Commission, by placing same in the United States mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope on this 15<sup>th</sup> day of June, 2017, as follows:

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ATTORNEY FOR APPELLANT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable W. Jeffrey Young, Circuit Court Judge

---

Case No. 2013-CP-43-02286  
Appellate Case No. 2014-002214

---

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

v.

South Carolina Second Injury Fund.....Respondent,

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

v.

Yuasa Exide, Incorporated, Employer]

---

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

---

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Attorneys for Appellant

Pursuant to Rules 221 and 240, SCACR, Arrowpoint Capital Corporation/Arrowood Indemnity Company (Arrowpoint) hereby opposes the South Carolina Second Injury Fund's (Petitioner) Petition for Rehearing. This Court did not overlook or misapprehend any points raised by Petitioner, but instead properly considered all arguments of both parties. *Arrowpoint Capital Corp./Arrowpoint Indem. Co. v. South Carolina Second Injury Fund*, No. 2017-UP-228, S.C. Ct. App. App. filed May 31, 2017. Therefore, Petitioner's Petition for Rehearing should be denied.

Argument

**I. THIS COURT PROPERLY DISMISSED PETITIONER'S ARGUMENT THAT ARROWPOINT WAS REQUIRED TO LITIGATE THE UNDERLYING MATTER IN ORDER FOR IT TO BE ENTITLED TO REIMBURSEMENT FROM THE SECOND INJURY FUND.**

Petitioners incorrectly assert that Arrowpoint was required to litigate this matter in order to be entitled to reimbursement from the Second Injury Fund. As an initial note, Petitioner did not present this preposterous argument until it filed its Initial Brief with this Honorable Court. For that reason, Arrowpoint asserts that this argument is not preserved for appeal. Furthermore, Arrowpoint submits that Petitioner misconstrues its interpretation of § 42-9-400, cites no case law to support its interpretation, ignores the Commission's directive that this claim be mediated, and ignores years of practice by the Second Injury Fund granting reimbursement on claims that were settled.

**A. This issue is not preserved for appeal.**

Arrowpoint asserts that Petitioner's argument that Arrowpoint is not entitled to reimbursement from the Second Injury Fund because Arrowpoint settled the case at a Commission ordered mediation is not preserved for appeal. To preserve an issue for appeal, the issue must be raised and the fact finder must rule upon it. See *Stone v. Roadway Express*, 367 S.C. 575, 582, 627 S.E.2d 695, 698 (2006); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998); *Smith v. NCCI, Inc.*, 369 S.C. 236, 256, 631 S.E.2d 268, 279 (Ct. App. 2006). Where a party raises an issue, but the issue is never ruled on by the trial court, and the party fails to file a motion to alter or amend the judgment, the issue is not preserved. *South Carolina Farm Bureau Mut. Ins. Co. v. S.E.C.U.R.E. Underwriters Risk Retention Group*, 347 S.C. 333, 554 S.E.2d 870 (Ct. App. 2001). The purpose of post-trial motions is to preserve such issues for appeal. *Wilder Corp.*, 330 S.C. at 256, 631 S.E.2d at 279. In the case at hand, Petitioner did not raise this argument until it filed its Initial Brief with this Court. Final Brief of Arrowpoint at 7, *Arrowpoint Capital Corp./Arrowpoint Indem. Co. v. S.C. Second Injury Fund*, No. 2017-UP-228 (Ct. App. May 31, 2017). At no point did Petitioner raise this issue at the Commission or at the Circuit Court. There are no findings of fact or of law on this issue by the Commission or the Circuit Court. (See R. pp. 1-24.) Furthermore, Petitioner never filed any post-hearing motions. Therefore, Arrowpoint submits this issue is not preserved for appeal and should be dismissed by this Honorable Court.

**B. Petitioner misconstrues § 42-9-400 and cites no authority for its interpretation of the statute.**

If this Court finds this issue is preserved for appeal, Arrowpoint submits that Petitioner has misinterpreted § 42-9-400 to require parties to litigate all claims where a carrier plans to seek reimbursement. There is no authority for this argument, as § 42-9-400 does not, on its face, require all parties to litigate an underlying claim when a carrier seeks reimbursement from the South Carolina Second Injury Fund. In fact, such an interpretation would be contrary to the policy of judicial economy and also to the past practices of Petitioner.

If a party presents an argument that is merely conclusory and cites no supporting authority for the position, the argument is deemed abandoned. *See State v. Garner*, 389 S.C. 61, 67, 697 S.E.2d 616, 618 (Ct. App. 2010). Petitioner cites no authority for the proposition that settling a claim on a doubtful and disputed basis eliminates a carrier's ability to seek reimbursement. Instead, it seeks to convince this Court that Arrowpoint paid no compensation for Claimant's disability or medical benefits by pulling out language from a portion of the settlement agreement. First, the Commission required that Arrowpoint mediate this claim with Claimant, and the Second Injury Fund was a party to this scheduling order and was invited to attend all mediations. (R. pp. 37-43.) Further, this claim was settled for \$185,000; therefore, to say that Arrowpoint, Claimant's employer's workers' compensation insurance carrier, paid Claimant no benefits under the South Carolina Workers' Compensation Act is disingenuous of Petitioner. Next, there is little doubt that resolving this claim at mediation reduced the exposure for Petitioner and for Arrowpoint; therefore, to use a court

mandated resolution that benefitted both Petitioner and Arrowpoint as an attempt to escape responsibility for reimbursement is manifestly unjust. Not only is it unjust, but to adopt this position would mean that Arrowpoint should have defied the Commission's order to mediate and instead backlog the Commission's docket with hearings. Lastly, the Second Injury Fund has always reimbursed cases that met the elements for reimbursement, even if they were settled on a doubtful and disputed basis and has even done so in other lead claims, such as the one at hand. In fact, Petitioner made an offer to resolve this claim when reimbursement was initially sought. (R. p. 266.) Petitioner never presented the argument or informed Arrowpoint or the Commission that it would take such a position relative to the ordered mediations but instead signed off on the Commission's Order requiring the claims to be mediated. (R. pp. 37-43.) Arrowpoint submits that this is Petitioner's Hail Mary at denial of this reimbursement claim.

In light of all of the above, Arrowpoint submits that this Court properly dismissed Petitioner's argument that Arrowpoint had to litigate the underlying claim to finality, thereby ignoring the Commission's order to the contrary, in order to be entitled to reimbursement pursuant to § 42-9-400.

**II. THIS COURT PROPERLY DETERMINED THAT ARROWPOINT MET ALL ELEMENTS FOR REIMBURSEMENT FROM THE SOUTH CAROLINA SECOND INJURY FUND, INCLUDING THE ELEMENT REQUIRING THAT CLAIMANT HAVE A PREEXISTING CONDITION THAT WAS SERIOUS ENOUGH TO CONSTITUTE A HINDRANCE OR OBSTACLE TO EMPLOYMENT OR REEMPLOYMENT.**

The Court properly found that Arrowpoint proved all elements required for reimbursement under § 42-9-400, including the element requiring Arrowpoint

to prove that Claimant suffered a preexisting condition that constituted a hindrance or obstacle to employment or reemployment under § 42-9-400. Arrowpoint submits that the Record is replete of evidence that Claimant suffered multiple, preexisting conditions, and that under § 42-9-400(d), these conditions constitute presumptive hindrances or obstacles to employment that were not rebutted by a shred of evidence.

Prior to his date of injury or disability, Claimant suffered from cardiac disease, diabetes, pulmonary disease, and heavy metal poisoning. Given all of these conditions have been briefed, cited, and argued previously, Arrowpoint will use Claimant's cardiac disease for purposes of this Return, as Arrowpoint only has to prove the existence of one. *See* R. pp. 186, 189, 194, 198, 200, 202, 204, 206-08, 213-15, 221, 227, 229, and 234; Final Brief of Appellant at 20, *Arrowpoint Capital Corp./Arrowpoint Indem. Co. v. S.C. Second Injury Fund*, No. 2017-UP-228 (Ct. App. May 31, 2017). However, all of the aforementioned conditions, including the cardiac disease, constitute statutorily imposed presumptive hindrances or obstacles to employment or reemployment, and none of these presumptions were refuted by a single piece of evidence from Petitioner. *See* S.C. Code Ann. § 42-9-400(d) (Supp. 2004). In fact, Petitioner submitted no evidence to the Commission in this matter, other than a one page letter withdrawing an offer of reimbursement. (R. pp. 270-72.) Further, despite Petitioner's disingenuous attempt to selectively point out Claimant's medical records from the 1980's, Claimant worked at the Sumter Battery Plant well into the late 1990's. Records from the late 1990's reveal that Claimant's cardiac

disease caused him to miss a significant amount of work, go on disability, and ultimately lose his job because his cardiac work restrictions could not be met. (R. pp. 206–08, 228.) Therefore, there is no question that Claimant’s cardiac disease constituted a preexisting condition that was a hindrance or obstacle to employment or reemployment, as required by § 42-9-400, given it was this condition that ultimately caused Claimant to miss a great deal of work and lose his job.

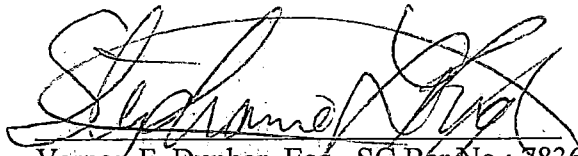
Additionally, Petitioner submitted no evidence rebutting the medical evidence Arrowpoint presented establishing that Claimant’s diabetes, cardiac disease, heavy metal poisoning, hearing loss, and pulmonary disease constituted a hindrance or obstacle to employment or reemployment. Two separate doctors, who specialize in lead poisoning and occupational injuries opined these conditions constitute hindrances or obstacles to employment or reemployment, and these opinions are supported by the global lead report and other evidence submitted by Arrowpoint. Arrowpoint again points out that Petitioner never took these experts’ depositions. It never hired its own experts. To the contrary, Petitioner submitted no evidence to counter the evidence submitted by Arrowpoint or to rebut the presumptions in § 42-9-400(d). As the South Carolina Supreme Court recently explained, once Arrowpoint invoked these presumptions, the burden was on Petitioner to “present substantial evidence in order to rebut the presumption.” *State Accident Fund v. S.C. Second Injury Fund*, 409 S.C. 240, 247, 762 S.E.2d 19, 23 (2014). It failed to do so in this case.

In light of the above, Arrowpoint submits that it has proven beyond a preponderance of the evidence that Claimant suffered preexisting conditions prior to the disability from this claim and that all of the aforementioned medical conditions constituted hindrances or obstacles to employment or reemployment. In fact, there is absolutely no evidence to the contrary to rebut this presumption.

**Conclusion**

For the foregoing reasons, Arrowpoint respectfully requests this Court to deny Petitioner's Petition for Rehearing.

Respectfully submitted,



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June 26, 2017

The South Carolina Court of Appeals

*briefed*  
9-18, 2017

Arrowpoint Capital Corporation/Arrowood Indemnity Co., Appellant,

v.

South Carolina Second Injury Fund, Respondent.

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


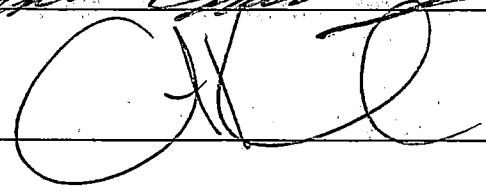
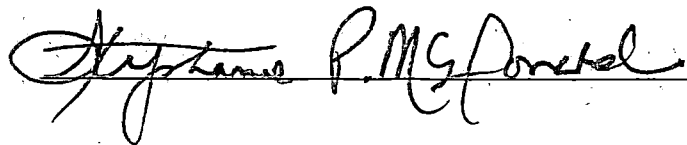
v.

Yuasa Exide, Incorporated, Employer]

Appellate Case No. 2014-002214

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 C.J.  
 J.  
 J.

Columbia, South Carolina

**FILED**

August 18, 2017

cc:

Latonya Dilligard Edwards, Esquire

Stephanie Lamb Pugh, Esquire

Vernon F. Dunbar, Esquire

Ashley R. Forbes, Esquire

The Honorable W. Jeffrey Young

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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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MAR 02 2018

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

S.C. SUPREME COURT

The Honorable W. Jeffrey Young, Circuit Court Judge

Appellate Case No. 2017-001955

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

v.

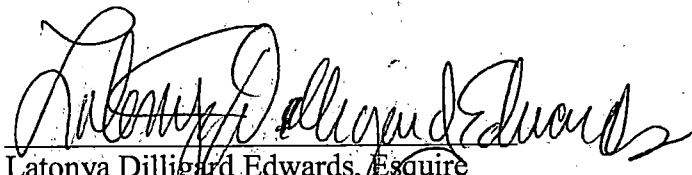
South Carolina Second Injury Fund, ..... Petitioner.

[In re: C.L. Williams, Employee/Claimant v. Yuasa Exide, Incorporated, Employer]

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Appendix contains all material proposed to be included by any of the parties and not any other material. The undersigned further certifies that the Appendix filed in this matter complies with the South Carolina Supreme Court's August 13, 2007 Order re: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in the Appellate Court Filings.

March 1, 2018



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