THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-000020

Case No. 2018-CP-23-2580

South Carolina Property and Casualty Insurance Guaranty Association,..... Respondent,

v.

Second Injury Fund Operations of the South Carolina Insurance Reserve Fund f/k/a South Carolina Second Injury Fund,..... Appellant,

In Re:

Michael Quarles,..... Employee/Claimant,

v.

Cryovac Sealed Air Corporation,..... Employer,

and

Lumbermens Mutual Casualty Company in Liquidation/South Carolina Property and Casualty Insurance Guaranty Association,..... Carrier/Defendant.

RESPONDENT'S FINAL BRIEF

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STATEMENT OF ISSUES ON APPEAL

I. Did the Workers' Compensation Commission, as affirmed by the Circuit Court, err in finding and concluding that the South Carolina Property and Casualty Insurance Guaranty Association (SCPCIGA) is the Employer's "insurance carrier" as defined under the Workers' Compensation Act statutorily authorized to make a reimbursement claim against the South Carolina Second Injury Fund (SCSIF) and receive reimbursement for workers' compensation benefits paid for, or on behalf of, the Employee/Claimant?

II. Did the Workers' Compensation Commission, as affirmed by the Circuit Court, err in failing to deny SCPCIGA's reimbursement claim based on any issue connected to the payment of assessments?

III. Did the Workers' Compensation Commission, as affirmed by the Circuit Court, err in finding and concluding that SCPCIGA's reimbursement claim is not barred by a Settlement Agreement and Release entered between SCPCIGA and SCSIF dated June 17, 2013?

STATEMENT OF THE CASE

This matter is before the Court pursuant to a Notice of Appeal filed in accordance with S.C. Code Ann. §1-23-380 (1976, as amended) on behalf of the Appellant, Second Injury Fund Operations of the South Carolina Insurance Reserve Fund f/k/a South Carolina Second Injury Fund (SCSIF), from the judgment/order of the Court of Common Pleas, Greenville County (Circuit Court) filed December 7, 2018 which affirmed the Decision and Order of the South Carolina Workers' Compensation Commission (Commission) filed March 29, 2018.[1] South Carolina Property and Casualty Insurance Guaranty Association (SCPCIGA) seeks affirmation of the Circuit Court's judgment/order.

The Employee/Claimant sustained compensable injuries to his neck and back and a compensable psychological injury as a result of an accident arising out of and in the course of his employment with the Employer, Cryovac Sealed Air Corporation, on December 17, 1999 (R.pp. 439-444). Appropriate medical and temporary disability benefits were provided and the matter was resolved by way of an Order approved by the Commission dated January 6, 2005 pursuant to which the Claimant remains entitled to continuing causally related medical benefits (R.pp. 435-438). An Agreement to Reimburse Compensation entered between Lumbermens Mutual Casualty Company (Lumbermens) and SCSIF dated October 14, 2003 and approved by the Commission on November 21, 2003 provided that Lumbermens shall receive reimbursement in accordance with the terms and provisions of Section 42-9-400 for the cervical spine only (R.p.

[1] S.C. Code Ann. §42-17-60 (1976, as amended) was amended effective July 1, 2007 so as to provide that appeals from the Commission are directly to the South Carolina Court of Appeals. However, the date of accident/loss in the underlying claim for workers' compensation benefits pre-dates the statutory amendment. Therefore, the appeal in this matter was directly to the Court of Common Pleas pursuant to the South Carolina Supreme Court's holding in Pee Dee Regional Transportation v. S.C. Second Injury Fund, 375 S.C. 60, 650 S.E.2d 464 (2007) and venue was proper in Greenville County in light of the injury by accident in the underlying claim occurring in Greenville County and the Employer's residence being in Greenville County.

445) (emphasis added). There is no indication that the approved Agreement to Reimburse Compensation was appealed by any party. SCSIF made reimbursement payments to Lumbermens in accordance with the approved Agreement to Reimburse Compensation in numerous installments from November 25, 2003 through January 26, 2014 (R.pp. 446-488; R.p. 546; and R.pp. 686-687).

Lumbermens was liquidated via an Order of the Circuit Court of Cook County, Illinois, County Department, Chancery Division dated May 8, 2013 (R.pp. 420-430). As a result, SCPCIGA became responsible for the claim pursuant to the terms and provisions of S.C. Code Ann. §38-31-10 et seq. (2019) (the South Carolina Property and Casualty Insurance Guaranty Association Act (Guaranty Act)). According to the deposition testimony of SCPCIGA's Executive Director, J. Smith Harrison, Jr., this matter is a covered workers' compensation claim under the Guaranty Act for which SCPCIGA is fully responsible and paying (R.p. 622).

SCPCIGA

SCPCIGA is a non-profit unincorporated legal entity created pursuant to S.C. Ann. §38-31-40 (2019) (emphasis added). SCPCIGA consists of insurers defined as "member insurers" under S.C. Code Ann. §38-31-20(8) (2019) as a condition of their authority to transact business in South Carolina. Similar to the funding mechanisms of SCSIF as set forth in S.C. Code Ann. §42-7-310(d)(2) and §42-7-320(B)(3) (1976, as amended), SCPCIGA is funded via assessments paid by member insurers pursuant to the terms and provisions of S.C. Code Ann. §38-31-40, §38-31-60 and §38-31-140 (2019).[2]

[2] SCPCIGA acknowledges that §42-7-310(d)(2) and §42-7-320(B)(3) also provide for assessments to be paid to SCSIF by self-insurers and the State Accident Fund.

Pursuant to §38-31-40, SCPCIGA is divided into four separate accounts for purposes of administration and assessment. As provided in §38-31-40(a), one of the separate accounts is the "workers' compensation insurance account." Pursuant to §38-31-60(c), SCPCIGA shall allocate claims paid and expenses incurred among the four accounts separately and assess member insurers separately for each account in amounts necessary to pay: (i) the obligation of the association under item (a) of this section (i.e. payment of covered claims); (ii) the expenses of handling covered claims; and (iii) other expenses authorized by this chapter (i.e. the Guaranty Act). Accordingly, SCPCIGA's workers' compensation member insurers responsible for assessments necessary to fund its workers' compensation liabilities are also responsible for payment of assessments necessary to fund SCSIF on a continuing basis pursuant to §42-7-310(d)(2) and §42-7-320(B)(3). In addition, SCPCIGA is authorized to recover from the assets of an insolvent insurer and in limited circumstances, certain insureds and affiliates of an insolvent insurer pursuant to S.C. Code Ann. §38-31-90(1) and (2)(a) and (b) (2019). Therefore, SCPCIGA asserts that it has a fiduciary responsibility to its member insurers, the receiver/liquidator of the assets of an insolvent insurer and certain insureds and affiliates of an insolvent insurer (R.pp. 604-605, 615-616 and 618-619).

Pursuant to §38-31-60(b), SCPCIGA is considered the insurer to the extent of its obligation on the covered claims and, to this extent, has all rights, duties and obligations of the insolvent insurer as if the insurer had not become insolvent (emphasis added). "Covered claim" is defined under S.C. Code Ann. §38-31-20(8) (2019) which along with §38-31-60, places various limitations on what is considered a covered claim and SCPCIGA's liability in certain situations. However, §38-31-60(iv) expressly provides that SCPCIGA "...shall pay the full amount of any covered workers' compensation claim." (emphasis added) (R.pp. 616-617).

SCSIF

S.C. Code Ann. §42-7-310 (1976, as amended) provided for the establishment, purpose, administration, funding and staff of SCSIF. A careful reading of §42-7-310(d)(2) reveals that it does not define the term "carrier" or "insurer" nor does it exclude SCPCIGA as an entity entitled to reimbursement. Rather, it provides that the term as used in §42-7-310 includes all insurance carriers, self-insurers and the State Accident Fund (emphasis added). Reimbursements to an "employer" or "insurance carrier" are governed by, and made pursuant to, S.C. Code Ann. §42-9-400 and §42-9-410 (1976, as amended). In this particular case, the approved Agreement to Reimburse Compensation specifically provides that Lumbermens shall receive reimbursement in accordance with the provisions of §42-9-400 for the cervical spine only (emphasis added) (R.p. 445).

The July 1, 2007 amendments to the South Carolina Workers' Compensation Act (Title 42 of the South Carolina Code (1976, as amended)) (Workers' Compensation Act) included the enactment of S.C. Code Ann. §42-7-320 (1976, as amended) providing for the termination of SCSIF and schedule for the same. Under §42-7-320(A), the Budget and Control Board n/k/a the State Fiscal Accountability Authority (hereinafter referred to collectively as "SFAA") was required to provide for the efficient and expeditious closure of SCSIF with the orderly winding down of the affairs of SCSIF so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, lost portfolio transfer, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund (emphasis added). §42-7-320(B)(3) provides that insurance carriers, self-insurers and the State Accident Fund remain liable for SCSIF's assessments, as determined by SFAA, in order to pay accepted claims and SCSIF shall continue reimbursing employers and insurance carriers for claims

accepted by SCSIF on or before December 31, 2011 (emphasis added). §42-7-320 does not define the terms "carrier" or "insurer" nor does it exclude SCPCIGA as an entity entitled to reimbursement.

The record reveals that in executing its statutory responsibilities under §42-7-320, SFAA retained KPMG to provide an actuarial analysis of SCSIF's remaining liabilities and options for funding SCSIF's remaining liabilities. In that regard, KPMG produced its initial actuarial report in March 2013 (R.pp. 385-419). One of the funding options proposed by KPMG was a five year/$60,000,000 per year assessment plan. SFAA adopted and approved a Second Injury Fund Closure Plan with the funding for its remaining liabilities being the five year/$60,000,000 per year assessment plan proposed by KPMG (R.pp. 712-731; R.pp. 646-657; R.pp. 498-499 and 509). Concerning the administration of SCSIF's continuing operations, SFAA assigned responsibility in that regard to the South Carolina Insurance Reserve Fund (SCIRF) which is part of SFAA. SCIRF's administrative responsibilities commenced in May 2013 shortly before SCSIF's programs and appropriations terminated July 1, 2013 pursuant to §42-7-320 (R.pp. 630-638). Chris Lombard is the Assistant Director of Claims for SCIRF and in connection therewith, is responsible for the management of SCSIF's operations (R.pp. 628-630). David Stooksbury is the Business/Finance Manager for SCIRF and in connection therewith, is in charge of SCSIF's ongoing assessments under §42-7-320 (R.p. 638; and R.pp. 495-496).

Prior Litigation

Disputes involving SCPCIGA's entitlement to reimbursement from SCSIF are not new. SCPCIGA and SCSIF extensively litigated many of the same issues in connection with various reimbursement claims made by SCPCIGA for workers' compensation benefits it paid to injured employees as a result of the insolvency of Legion Insurance Company. That litigation resulted in

various decisions and orders issued by the Commission and the Circuit Court. Those decisions and orders determined SCPCIGA to be eligible for, and entitled to, reimbursement. In so doing, the Commission and Circuit Court rejected the arguments that SCPCIGA is not an entity statutorily authorized to receive reimbursement and that SCPCIGA cannot be eligible for reimbursement because it does not pay assessments and/or as a result of the underlying insolvent carrier's default status with respect to payment of SCSIF assessments pursuant to the statutory amendment to §42-7-310(d)(2) effective June 25, 2003 (R.pp. 272-384).

In particular, litigation of the reimbursement claim associated with the claim of Herman Webster, Claimant, v. Webster Plumbing & Gas, Employer, and Subrogation Partners on behalf of Legion Insurance in Liquidation and South Carolina Property and Casualty Insurance Guaranty Association, Carriers, Appellate Case No. 2010-181727, resulted in these issues being presented to this Court on appeal by SCSIF. Prior to a ruling by this Court, SCPCIGA and SCSIF entered into a Settlement Agreement and Release dated June 17, 2013 which resulted in dismissal of SCSIF's appeal (R.pp. 341-342). The settlement agreement, which was approved by a majority of the Commission, defined the terms "Legion" and "Reliance" and effectuated SCPCIGA's release of SCSIF on those reimbursement claims "that are either: (A) related to Legion and/or Reliance or: (B) whether related or unrelated to Legion and/or Reliance and/or American Mutual Insurance Company, any and all claims, on which SCSIF is currently paying to the Guaranty Association as of February 22, 2013, including, but not limited to, the cases of (1) Quick, Grover v. FA Bailey and Sons, Accepted Date: October 1, 1987; Carrier: American Mutual Liability Insurance); (2) Alston, Kenneth v. Bi-lo, (Accepted Date: November 2, 1988; Carrier: American Mutual Liability Insurance); and (3) Lusk, Ray E. v. Bi-lo, (Accepted Date: August 10, 1989; Carrier: American Mutual Liability Insurance) (emphasis added). The

settlement agreement approved by the Commission further states: "The Parties intend this release to be general and comprehensive in nature and to release: (A) all claims related to Legion and/or Reliance and (B) any and all claims, whether related or unrelated to Legion and/or Reliance, on which the SIF is currently paying the Guaranty Association as of February 22, 2013, whether known or unknown, noticed or unnoticed, asserted or not asserted, accepted or not accepted, existing or potential, including, but not limited to, any claims that may arise pursuant to any "large deductible" policies issued and/or administered by Legion and/or Reliance, as well as their administrators, trustees, legal representatives, and successors and assigns to the maximum extent permitted by law for which the Guaranty Association assumed responsibility pursuant to S.C. Code Ann. Title 38 Chapter 31 (the Guaranty Act) subsequent to the respective liquidations of the underlying carrier or carriers" (emphasis added) (R.pp. 732-750).

Current Litigation

SCPCIGA sought reimbursement from SCSIF in accordance with the Agreement to Reimburse Compensation entered between Lumbermens and SCSIF pursuant to the terms and provisions of §38-31-60(b), §42-7-310(b), §42-7-320 and §42-9-400 (R.p. 79). SCSIF disputed SCPCIGA's entitlement to reimbursement contending that SCPCIGA is not an entity statutorily authorized to receive reimbursement; that SCPCIGA does not pay assessments to SCSIF; that the liquidated carrier pursuant to which SCPCIGA asserts its right to reimbursement, Lumbermens, is in liquidation and is (and has been) in default in payment of its statutory assessments to SCSIF thereby barring the claim pursuant to §42-7-310(b)(2); that Lumbermens has not participated in the assessment process subsequent to its liquidation thereby barring the claim under §42-7-310 and §42-7-320; and that SCPCIGA's reimbursement claim is barred by reason of a certain

Settlement Agreement and Release entered between SCSIF and SCPCIGA dated June 17, 2013 (R.pp. 80-82).[3]

SCPCIGA and SCSIF, by and through their respective counsel, appeared before Commissioner T. Scott Beck for the Forms 54/55 hearing on June 21, 2017 in Columbia, South Carolina. The record reflects that various documentary evidence was submitted and included in the record pursuant to the Administrative Procedures Act (APA). In addition to the APA Submissions, the deposition of David Stooksbury dated April 26, 2017 with exhibits; the deposition of Christopher Lombard dated March 8, 2017 with exhibits; and the deposition of J. Smith Harrison, Jr. dated March 8, 2017 were submitted and included in the record. SCSIF's objection to SCPCIGA's APA Submissions Nos. 1 through 5 was overruled by the Single Commissioner. Stipulations were entered concerning jurisdiction, venue and the Commission's file becoming part of the record with the exception of self-serving declarations and unstipulated medical reports. The hearing proceeded in the form of oral argument by counsel (R.pp. 157-223).

The Single Commissioner's Decision and Order was filed and served on October 2, 2017. It appropriately listed the documentary evidence included in the record, recited the stipulations entered by the appearing parties and detailed the pertinent background and evidentiary facts. Following an exhaustive analysis of the evidentiary record and applicable law concerning the issues in dispute, the Single Commissioner made various findings of fact and conclusions of law and ordered that SCSIF shall make reimbursement to SCPCIGA for workers' compensation benefits paid by SCPCIGA in this matter in accordance with the terms and provisions of the approved Agreement to Reimburse Compensation.

[3] SCPCIGA and SCSIF are the only parties who have participated in the current litigation. Counsel for the Employee/Claimant, Kathryn Williams, Esquire, and Lumbermens, Jeff Jones, Esquire, were appropriately served with all pleadings.

SCSIF timely filed and served its Form 30 Request for Commission Review of the Single Commissioner's Decision and Order on October 16, 2017 presenting seven (7) specific questions of alleged error by the Single Commissioner. The Commission issued a Form 31 Briefing Schedule and Notice of Appellate Hearing assigning the matter to a Full Commission Appellate Panel which consisted of Commissioners Aisha Taylor, Susan S. Barden and Gene McCaskill. In its Appellant Brief timely filed and served on December 18, 2017, SCSIF made three arguments. SCSIF asserted that the Single Commissioner erred in ruling that SCPCIGA is statutorily authorized to seek reimbursement, erred in ruling that SCPCIGA is entitled to reimbursement even though it does not participate in SCSIF's assessment process and erred in failing to rule that the Settlement Agreement and Release dated June 17, 2013 does not bar SCPCIGA's reimbursement claim. SCPCIGA timely filed/served its Respondent Brief following which SCSIF filed/served a Reply Brief. Oral argument was held before the Appellate Panel on January 22, 2018 in Columbia, South Carolina per notices timely and properly served upon all parties of interest. Thereafter, the Appellate Panel issued its Decision and Order dated March 29, 2018 wherein it made the following findings of fact and conclusions of law:

Findings of Fact

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

2. SCSIF and Lumbermens entered into an Agreement to Reimburse Compensation in accordance with the provisions of §42-9-400 for the cervical spine only that was approved by the Commission on November 21, 2003 and not appealed by either party.

3. As a result of the liquidation of Lumbermens on May 8, 2013, this workers' compensation claim constitutes a "covered claim" for which SCPCIGA is entirely responsible and considered the insurer having all rights, duties and obligations of Lumbermens as if Lumbermens had not become insolvent.

4. SCPCIGA has paid certain medical benefit expenses for, or on behalf of, the Claimant in connection with this covered workers' compensation claim and remains liable for medical benefits as provided for in the Commission's approved Order dated January 6, 2005.

5. SCSIF made reimbursement payments to Lumbermens in accordance with the approved Agreement to Reimburse Compensation in numerous installments from November 25, 2003 through January 16, 2014.

6. SCPCIGA is a non-profit unincorporated legal entity and is an association authorized to insure liabilities under the South Carolina Workers' Compensation Act and in particular, is authorized to insure the Employer's workers' compensation liabilities to the Claimant in this claim thereby meeting the statutory definition of the terms "carrier" or "insurer" in accordance with §42-1-60 and §42-5-20 as those terms are used in §42-9-400 and §42-7-320.

7. SCPCIGA has never been assessed by SCSIF and is not delinquent or in default with respect to any SCSIF assessments.

8. SCPCIGA, as an unincorporated legal entity, effectively pays assessments to SCSIF via the assessments paid by its workers' compensation member insurers, none of whom are delinquent or in default with respect to assessments payable to SCSIF.

9. Lumbermens is not delinquent or in default with respect to any assessments payable to SCSIF and has paid all assessments owed to SCSIF.

10. SCSIF's liability for reimbursement on this claim was considered and included in the five year/$60,000,000 per year funding mechanism plan adopted by SFAA pursuant to §42-7-320 in connection with which SCPCIGA's workers compensation member insurers have paid assessments to SCSIF to fund reimbursement of this claim.

11. The plain, clear and unequivocal language in the Settlement Agreement and Release entered between SCPCIGA and SCSIF dated June 17, 2013 provides that beyond the Legion and Reliance claims as defined therein; the settlement and release only applied to claims on which SCSIF was paying SCPCIGA as of February 22, 2013 and does not bar this reimbursement claim or release SCSIF from its liability for reimbursement on this claim.

12. SCPCIGA was not paying this claim as of February 22, 2013.

13. At no time has SCSIF reimbursed SCPCIGA in connection with this claim and specifically, SCSIF was not paying SCPCIGA on this claim as of February 22, 2013.

14. SCPCIGA is statutorily authorized to make a reimbursement claim against SCSIF and receive reimbursement from SCSIF for workers' compensation benefits paid by SCPCIGA in connection with this matter pursuant to, and in accordance with, the

Agreement to Reimburse Compensation approved by the Commission on November 21, 2003 which was not appealed by any party.

Conclusions of Law

1. Under S.C. Code Ann. §42-3-180 (1976, as amended) and §42-7-310(b), the Commission has jurisdiction to determine this dispute between SCPCIGA and SCSIF concerning reimbursement and arising under Title 42.

2. Under §38-31-20(8) and §38-31-60(iv), this matter involves a claim for workers' compensation benefits in connection with which SCPCIGA is responsible for paying the full amount as a result of the liquidation of Lumbermens and specifically, is liable and responsible for paying medical benefits under the Workers' Compensation Act for, or on behalf of, the Claimant in accordance with Commission's approved Order dated January 6, 2005.

3. Under §38-31-60(b), SCPCIGA is considered the insurer on this covered workers' compensation claim and to this extent, has all rights, duties and obligations of Lumbermens as if Lumbermens had not become insolvent and specifically, has the right to reimbursement from SCSIF in accordance with the terms and provisions of the Agreement to Reimburse Compensation approved by the Commission on November 21, 2003.

4. Under §38-31-40, §42-1-60 and §42-5-20, SCPCIGA is an unincorporated association authorized by the Commission to insure liabilities under the Workers' Compensation Act; is, and has been, authorized to insure the remaining workers' compensation benefit liabilities of the Employer to the Claimant in this matter; and is, therefore, the Employer's "insurance carrier" as the term is used in §42-9-400 and §42-7-320. Moreover, the South Carolina Supreme Court's decisions in Brock v. South Carolina Property and Casualty Insurance Guaranty Association, 410 S.C. 361, 764 S.E.2d 920 (2014) (involving a policy of liability insurance rather than a policy of workers' compensation insurance under which SCPCIGA is fully responsible for covered claims) is not applicable to this matter.

5. Under §42-7-310 and §42-7-320, Lumbermens has paid all assessments owed and payable to SCSIF and is not delinquent or in default with respect to payment of any assessments to SCSIF; and its non-participation in the assessment process subsequent to its liquidation is not material given that it is not in default or delinquent with respect to payment of its assessments; the fact that its assessments would go to zero once it went into liquidation and stopped paying claims and the assessments paid by SCPCIGA's member workers' compensation insurers in accordance with the five year/$60,000,000 per year funding plan adopted by SFAA in connection with which SCSIF's liability for reimbursement on this claim was considered and included.

6. Under §42-7-310 and §42-7-320, SCPCIGA, as an unincorporated association, effectively pays assessments to SCSIF via the assessments paid by its workers' compensation member insurers which specifically include assessments levied by SCSIF in accordance with the five year/$60,000,000 per year funding plan adopted by SFAA which considered and included SCSIF's liability for reimbursement on this particular claim.

7. Under §42-7-310 and §42-7-320, none of SCPCIGA's workers' compensation member insurers are delinquent or in default with respect to assessments payable to SCSIF.

8. Based on the plain, clear and unequivocal language contained therein and any reasonable construction thereof, the Settlement Agreement and Release entered between SCPCIGA and SCSIF dated June 17, 2013 does not bar SCPCIGA's claim for reimbursement in this matter nor does it effectuate a release of SCSIF's liability for reimbursement in this matter and the amount of the monetary consideration is of no consequence.

9. Under §38-31-60, the terms and provisions of §38-31-90 and §38-31-100 are not exclusive with regard to SCPCIGA's rights of recoupment and setoff and do not abrogate or limit the rights of Lumbermens under the Workers' Compensation Act which SCPCIGA maintains pursuant to §38-31-60(b).

10. Under §38-31-60, §42-9-400, §42-7-310, §42-7-320, §42-1-60 and §42-5-20; SCPCIGA is an entity statutorily authorized to make a reimbursement claim against SCSIF in this matter and to receive reimbursement from SCSIF for workers' compensation benefits paid for, or on behalf of, the Claimant in this matter and is entitled to reimbursement from SCSIF in accordance with the terms and provisions of the unappealed Agreement to Reimburse Compensation approved by the Commission on November 21, 2003.

11. Under §38-31-60(b), the rights of the liquidated carrier under the Workers' Compensation Act which SCPCIGA maintains are not limited exclusively to matters pertaining to the defense by SCPCIGA of ongoing claims. Alternatively, SCPCIGA's reimbursement claim in inextricably linked to its obligation for payment of this fully covered workers' compensation claim and as such, is part and parcel of SCPCIGA's obligation for payment of this covered claim and its defense thereof.

12. Under §42-7-310 and §42-7-320 and in light of the foregoing Findings of Fact Nos. 7 – 10 and Conclusions of Law Nos. 5 – 8; any assertion that SCPCIGA's reimbursement claim is barred due to a failure to pay assessments, directly or otherwise, is without merit.

Based on the foregoing findings and conclusions, the Appellate Panel affirmed the Decision and Order of the Single Commissioner dated October 2, 2017 in its entirety and ordered that SCSIF shall make reimbursement to SCPCIGA for workers' compensation benefits paid by SCPCIGA

in this matter in accordance with the terms and provisions of the approved Agreement to Reimburse Compensation.

From that Order, SCSIF appealed to the Circuit Court via a Petition/Notice of Appeal filed April 26, 2018 presenting essentially the same grounds for appeal that were presented to the Appellate Panel. The parties were heard before the Circuit Court on October 30, 2018. The Circuit Court issued its order filed December 7, 2018. The Circuit Court held that the Commission's findings of fact and conclusions of law are supported by substantial evidence in the record; are not affected by any error of law; are not clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; are not arbitrary or capricious; and are not characterized by an abuse of discretion or clearly unwarranted exercise of discretion. Accordingly, the Circuit Court affirmed the Commission's findings of fact, conclusions of law and order awarding reimbursement to SCPCIGA. From that order, SCSIF appeals to this Court.

STANDARD OF REVIEW

The standard of review in an appeal from a final decision of an administrative agency is governed by S.C. Code Ann. §1-23-380 (1976, as amended) (commonly known as the Administrative Procedures Act). Pringle v. Builders Transport, Inc., 298 S.C. 494, 381 S.E.2d 731 (1989) and Lark v. Bi Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981). The Appellate Court can reverse or modify a decision if the findings and conclusions of the agency are affected by error of law, clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion." Gray v. Club Group, Ltd., 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000), *citing* S. C. Code Ann. §1-23-380(g) (1986 and Supp. 1998). In considering an

appeal from a Decision and Order of the South Carolina Workers' Compensation Commission, the Court's role is appellate and is limited to deciding whether the Commission's decision is supported by substantial evidence or is controlled by some error of law. Rogers v. Kunja Knitting Mills Co., 312 S.C. 377, 440 S.E.2d 401 (Ct. App. 1994) (Rehearing Denied). In an appeal from the Workers' Compensation Commission, the Court may not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact, but may reverse where the decision is affected by an error of law. Gibson v. Spartanburg School Dist. No. 3, 338 S.C. 510, 526 S.E.2d 725 (Ct. App. 2000) *construing* S.C. Code Ann. §1-23-380(A)(6) (1976, as amended). A decision of the Workers' Compensation Commission must be affirmed if factual findings are supported by substantial evidence. Stokes v. First National Bank, 306 S.C. 46, 410 S.E.2d 248 (1991). Substantial evidence is that evidence which would require refusal to direct a verdict if the matter were before a jury and is something less than the weight of the evidence. Hoxit v. Michelin Tire Corporation, 304 S.C. 461, 405 S.E.2d 407 (1991). The possibility of drawing two inconsistent conclusions from the evidence does not prevent administrative findings from being supported by substantial evidence. Id. If the factual findings of the Workers' Compensation Commission are supported by substantial evidence, the Commissions' conclusions must be affirmed. Ross v. American Red Cross, 298 S.C. 490, 381 S.E.2d 728 (1989).

ARGUMENTS

I. THE WORKERS' COMPENSATION COMMISSION, AS AFFIRMED BY THE CIRCUIT COURT, MADE NO ERROR IN FINDING AND CONCLUDING THAT SCPCIGA IS THE EMPLOYER'S "INSURANCE CARRIER" AS DEFINED UNDER THE WORKERS' COMPENSATION ACT STATUTORILY AUTHORIZED TO MAKE A REIMBURSEMENT CLAIM AGAINST SCSIF AND RECEIVE REIMBURSEMENT FOR BENEFITS PAID FOR, OR ON BEHALF OF, THE EMPLOYEE/CLAIMANT.

The cardinal rule of statutory construction is that words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation. Wright v. Colleton County, 301 S.C. 282, 391 S.E.2d 564 (1990). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. Multi-Cinema, Ltd. v. S.C. Tax Commission, 292 S.C. 411, 357 S.E.2d 6 (1987). Statutes dealing with same subject matter are *in pari materia* and must be construed together if possible to produce a single harmonious result. Beaufort County v. S.C. State Election Commission, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) *citing* Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

§38-31-60 provides for the powers and duties of SCPCIGA. In addition to conferring upon SCPCIGA the rights of the insolvent insurer (to the extent of its obligation on the covered claims), §38-31-60(d) directs that SCPCIGA "shall investigate claims brought against the Association and adjust, compromise, settle and pay covered claims to the extent of the Association's obligation and deny all other claims." Among its enumerated affirmative powers, §38-31-60(l) authorizes it to perform any other acts necessary and proper to effectuate the purpose of the Guaranty Act (emphasis added); *see also* Farmer v. CAGC Insurance Company, 424 S.C. 579, 587-588; 819 S.E.2d 142, 146 (Ct. App. 2018) (rehearing denied) (motion to dismiss petition for cert. granted April 25, 2019) *holding* the statutory directive under §38-31-

60(d) (2018) requiring that SCPCIGA "shall investigate claims brought against the association and adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims..." and §38-31-60(l) authorizing SCPCIGA to "perform any other acts necessary or proper to effectuate the purpose of [the Guaranty Act]," allows SCPCIGA to take an affirmative/offensive action not specifically enumerated under the Guaranty Act with respect to its handling and payment of a covered claim.

As set forth above, this matter involves a covered workers' compensation claim for which SCPCIGA is fully responsible pursuant to §38-31-60. As part of adjusting the claim, and its obligation to pay the claim, SCPCIGA is entitled to assert Lumbermens' existing right of reimbursement. It is self-evident that SCPCIGA would have no reason to assert the Lumbermens' right to reimbursement but for its obligation to pay the claim imposed by §38-31-60(b). Therefore, SCPCIGA's reimbursement claim is inextricably linked to its obligation for payment of the claim and is clearly a necessary and proper action to effectuate the Guaranty Act's purpose of paying this fully covered workers' compensation claim.

There is no language in §38-31-90 or S.C. Code Ann. §38-31-100 (1976, as amended) which abrogates the insolvent insurer's rights under the Workers' Compensation Act which SCPCIGA assumes pursuant to §38-31-60(b) or SCPCIGA's powers pursuant to §38-31-60(l). SCSIF fails to reference any language to that effect. Instead, SCSIF references the statutory construction principle of "expression unius est exclusion" to support its assertion that SCPCIGA's rights of recoupment and offset as provided in §38-31-90 and §38-31-100 are exclusive. This is a misguided argument. SCPCIGA's rights of recoupment and offset as provided for in §38-31-90 and §38-31-100 are not dispositive in determining whether SCPCIGA is statutorily authorized to receive reimbursement from SCSIF. SCSIF's argument ignores the clear, unequivocal and broad

language in §38-31-60(b) conferring upon SCPCIGA all rights of the insolvent insurer to the extent of its obligation on this covered workers' compensation claim and its authorization under §38-31-60(l) to perform any other acts necessary and proper to effectuate the payment of this fully covered workers' compensation claim.

As stated above, §42-7-310 provided for the establishment, purpose, administration, funding and staff of the SCSIF. Contrary to SCSIF's assertion, §42-7-310 does not define the term "carrier" nor does it exclude SCPCIGA as an insured carrier or entity to reimbursement. Rather, it merely provides that the term as used in §42-7-310(d)(2) includes all insurance carriers, self-insurers and the State Accident Fund in the context of the payment of assessments to SCSIF (emphasis added). In this instance, the approved Agreement to Reimburse Compensation specifically provides that reimbursements are to be made in accordance with the provisions of §42-9-400 (emphasis added). §42-9-400(a) states in pertinent part that "...such employer or insurance carrier shall be reimbursed from the Second Injury Fund as created by §42-7-310..." (emphasis added). §42-7-320(B)(3) requires SCSIF to continue reimbursing employers and insurance carriers for claims accepted by SCSIF on or before December 31, 2011.

S.C. Code Ann. §42-1-60 (1976, as amended) defines the term "carrier" or "insurer" as "any person or fund authorized under S.C. Code Ann. §42-5-20 (1976, as amended) to insure under this title (Title 42) and includes self-insurers." §42-5-20 states in pertinent part that "[e]very employer who accepts the provisions of this title relative to the payment of compensation shall insure and keep insured his liability thereunder in any authorized corporation, association, organization or mutual insurance association formed by a group of employers so authorized..." (emphasis added). The term "insure" is defined in Black's Law Dictionary, Abridged Fifth Edition, as "[t]o make sure or secure, to guarantee, as to insure safety to anyone. To engage to

indemnify a person against pecuniary loss from specified perils or possible liability." Under §38-31-60(b), SCPCIGA is considered the insurer to the extent of its obligation on the covered claims and as set forth above, the uncontradicted record establishes that this matter involves a covered workers' compensation claim for which SCPCIGA is responsible for paying the full amount under §38-31-60(iv).

Concerning whether SCPCIGA is authorized under §42-5-20 to insure liabilities under the Workers' Compensation Act thereby meeting the statutory definition of the term "carrier" or "insurer" under §42-1-60 and as used in §42-9-400 and §42-7-320; it is self-evident that SCPCIGA would not be responsible for paying this claim and would have no reason to be seeking reimbursement if it was not so authorized. Substantial evidence in the record establishes that the Commission has authorized SCPCIGA to insure liabilities under the Workers' Compensation Act and there is no evidence in the record to the contrary (R.pp. 620-622). In this regard, it was also appropriate for the Commission to take judicial notice of routine decisions and actions by the Commission with respect to SCPCIGA's data reporting obligations and benefit liabilities on covered workers' compensation claims in carrying out the Commission's administrative and adjudicative responsibilities under Chapters 3 and 5 of the Workers' Compensation Act. In short, the uncontradicted and substantial evidentiary record, and applicable statutory provisions, establish SCPCIGA as an association authorized to insure liabilities under the Workers' Compensation Act and in particular, authorized to insure the Employer's liabilities in this fully covered workers' compensation claim.

In connection with its argument that SCPCIGA is not an insurance carrier authorized to receive reimbursement, SCSIF cites the South Carolina Supreme Court's decision in South Carolina Property and Casualty Insurance Guaranty Association v. Brock, 410 S.C. 361, 764

S.E.2d 920 (2014) for the proposition that SCPCIGA is not an insurance carrier entitled to reimbursement.[4] Notably, SCSIF has previously conceded that Brock was decided in a different context (R.p. 93; and R.p. 126). Reliance on Brock is misplaced. The Court's statement in Brock that SCPCIGA is "...neither the wrongdoer nor the insurer of a wrongdoer, but it is instead a statutory entity that exists to provide some protection for the insureds of insolvent insurance companies" was made in the context of its analysis of SCPCIGA's rights to certain offsets provided under the Guaranty Act in connection with a policy of liability insurance. 764 S.E.2d at 922 – 923. Brock did not involve a workers' compensation claim or a policy of workers' compensation insurance in connection with which SCPCIGA would be responsible for paying the full amount and, therefore, is clearly distinguished from the current matter. More specifically, Brock did not involve a workers' compensation claim in connection with which §42-1-60 and §42-5-20 would apply.[5]

SCSIF's assertion that S.C. Code Ann. §42-1-560(a) shows that the General Assembly understood that the general definition of the term "carrier" in §42-1-60 does not include SCPCIGA is misguided and without merit. As a threshold matter, the text of §42-1-560(a) was enacted in 1969, two years prior to enactment of the Guaranty Act and creation of SCPCIGA in 1971. S.C. Code of Laws Ann. §42-1-560 (1976, as amended) and S.C. Code of Laws §72-126.1 (1962, as amended). Therefore, it is self-evident that the General Assembly had no intentions with respect to SCPCIGA when it enacted the text of §42-1-560(a). In addition and similar to SCSIF's erroneous assertion that the term "carrier" is defined by §42-7-310(d)(2), §42-1-560(a)

[4] In its Appellant Brief filed with this Court, SCSIF correctly asserts that SCPCIGA has conceded it is not an "insurance company" but erroneously asserts that it claims a statutory entitlement reserved only for insurance companies (SCSIF's Appellant Brief at page 9). SCPCIGA only conceded that it is not an "insurance company" but maintains, as was held by the Commission and affirmed by the Circuit Court, that it is the Employer's "insurance carrier" as the term is defined under §42-1-60 and §42-5-20, and used in §42-9-400 and §42-7-320.

[5] SCSIF's reliance on the South Carolina's Supreme Court holding in Buchanan v. South Carolina Property and Casualty Insurance Guaranty Association, 424 S.C. 542, 819 S.E.2d 124 (2018) for the same proposition is also misplaced as Buchanan is distinguishable and inapplicable to the current matter for the same reasons.

does not "re-define" the term "carrier." Rather, by use of the term "hereinafter," §42-1-560(a) merely specifies those entities, including the employer, to which the term "carrier" refers in §42-1-560 (emphasis added). §42-1-560 is the subrogation provision of the Workers' Compensation Act setting forth the rights and remedies of the parties in connection with a claim involving third party liability. Reimbursement from SCSIF in connection with this claim is governed by §42-9-400 and §42-7-320 not §42-1-560.

Moreover, SCSIF acknowledges at page 8 of its Appellant Brief that SCPCIGA would qualify as a "carrier" under §42-1-560 because §42-1-560 includes the term "association." This is a particularly damning concession by SCSIF. SCSIF's Appellant Brief conspicuously fails to mention the cross-reference in §42-1-60 to §42-5-20. As set forth above, §42-1-60 defines the term "carrier" or "insurer" as "...any person or fund authorized under §42-5-20 to insure under this title..." §42-5-20 clearly and unequivocally permits an "association" to insure liabilities under the Workers' Compensation Act provided it is authorized to do so by the Commission. In this instance, the Commission has specifically found and concluded that SCPCIGA is an "association" authorized to insure liabilities under the Workers' Compensation Act and specifically, authorized to insure the Employer's liability to the Employee/Claimant in this claim. In fact, it is a much more plausible argument that the General Assembly specifically intended that SCPCIGA be considered an "insurance carrier" within the meaning of §42-1-60, §42-9-400 and §42-7-320 given its directive in §38-31-60(iv) that SCPCIGA pay the full amount of any covered workers' compensation claims (which in addition to the Commission's authorization, indicates authorization by the General Assembly for SCPCIGA to insure under the Workers' Compensation Act) and have all the rights of the insolvent insurer in connection with its obligations on a fully covered workers' compensation claim to include reimbursement from

SCSIF. Accordingly, SCPCIGA is the Employer's "insurance carrier" entitled to reimbursement pursuant to §42-9-400, §42-7-320 and the approved Agreement to Reimburse Compensation.

SCSIF's assertion that the funding mechanisms of it and SCPCIGA provide "an eminently rational basis" for its contention that SCPCIGA is not statutorily authorized to make a reimbursement claim demonstrates a fundamental lack of understanding or acknowledgement of the undisputed facts of this case. SCSIF argues that allowing reimbursement by SCPCIGA would be "circuitous action that is largely a meaningless exercise and a waste of resources that substantially originate from the same source" and that the General Assembly "obviously did not intend to allow for such circuitous litigation that fosters only administrative inefficiencies." While SCSIF is correct in noting that it and SCPCIGA are funded in a similar fashion, it fails to disclose to the Court in its Appellant Brief the uncontradicted and undisputed fact (as briefed in more detail in Argument II below) that SCSIF has collected, and continues to collect, assessments from SCPCIGA's workers' compensation member insurers for SCSIF's reimbursement obligation on this particular claim (R.p. 432; and R.pp 546 – 549, 552 and 554; *see also* Commission's unappealed finding of fact no. 10 and conclusions of law nos. 5 and 6). SCSIF is essentially arguing that it be allowed to collect assessments from SCSIF's workers' compensation member insurers to fund reimbursement of the claim but retain the money without making reimbursement while SCPCIGA's workers' compensation member insurers are forced to pay assessments to SCPCIGA to fund payment of benefits on the claim with no right to the reimbursement. In other words, SCSIF's argument, if accepted, would require SCPCIGA's workers' compensation member insurers to fund the claim twice. Such is hardly "circuitous action that is largely a meaningless exercise and a waste of resources." SCSIF's argument in this regard is baseless and without merit.

In sum, it is SCSIF's argument that is circuitous and a contortion of the applicable statutes and logic. Contrary to SCSIF's assertion, the Commission, as affirmed by the Circuit Court, focused its analysis on the powers and duties of SCPCIGA and the express provisions of the Workers' Compensation Act (emphasis added). Both provide an overwhelming legal and statutory authorization basis for SCPCIGA's reimbursement claim. The Commission's findings and conclusions on this issue should be affirmed under the applicable standard of review.

II. THE WORKERS' COMPENSATION COMMISSION, AS AFFIRMED BY THE CIRCUIT COURT, MADE NO ERROR IN FAILING TO DENY SCPCIGA'S REIMBURSEMENT CLAIM BASED ON ANY ISSUE CONNECTED TO THE PAYMENT OF ASSESSMENTS.

SCSIF now posits its argument connected to the payment of assessments as a "corollary" to its statutory authorization and legislative intent argument addressed hereinabove. This represents yet another shift in SCSIF's evolving position as it relates to this issue. Previously in its Form 55, SCSIF asserted that SCPCIGA was barred from reimbursement because it does not pay assessments and pursuant to §42-7-310(d)(2) as a result of Lumbermens' alleged default in payment of assessments. Subsequent discovery in the way of the deposition testimony of David Stooksbury, SCIRF's business manager in charge of SCSIF's operations as it relates to assessments, testified clearly and unequivocally that Lumbermens is not in default or delinquent with respect to payment of its assessments and that Lumbermens has paid all amounts assessed (R.p. 535). He also testified that if a carrier goes under and stops paying claims, the assessment goes to zero (R.p. 535). SCSIF made no assertion of the claim being barred under §42-7-310(d)(2) as a result of Lumbermens purported default in payment of assessments during oral argument before the Hearing Commissioner and has effectively abandoned that position given its failure to include such in its Form 30 exceptions from the Single Commissioner's Decision and

Order. Ham v. Mullins Lumber Co., 193 S.C. 66, 7 S.E.2d 841 (1940). During oral argument before the Single Commissioner, SCSIF reasserted its position that SCPCIGA was barred from reimbursement because it does not pay assessments and also asserted that the reimbursement claim is barred under §42-7-310 and §42-7-320 as a result of Lumbermens non-participation in the assessment process subsequent to its liquidation. In the proceedings before the Full Commission, which it also maintained before the Circuit Court, SCSIF modified its position on the issue by asserting that SCPCIGA's failure to "directly" participate in the assessment process barred the reimbursement claim.

The uncontradicted and substantial evidentiary record reflects that SCSIF has never assessed SCPCIGA (R.pp. 702-703; R.p. 589; and R.p. 556). Pursuant to §38-31-40, SCPCIGA is an unincorporated entity and its workers' compensation member insurers pay assessments to SCSIF (R.p. 616; and R.pp. 538-539). In connection therewith, it should also be noted that any theoretical assessment on SCPCIGA would not alter or affect the total sum of assessments raised on an annual basis by SCSIF under the pre-July 1, 2013 funding mechanism set forth in §42-7-310 or the post-July 1, 2013 funding mechanism plan adopted by SFAA pursuant to §42-7-320. Rather, the only variable would be what entities were paying and in what amounts (R.pp. 702-706; and R.pp. 563-564). The record further reflects that SCPCIGA's workers' compensation member insurers have paid assessments in accordance with the five year/$60,000,000 per year funding mechanism plan adopted by SFAA in connection with which SCSIF's liability for reimbursement on this particular claim was considered and included (R.p. 387; and R.pp. 546-579, 552, 554). There is no indication that any of SCPCIGA's workers' compensation insurers are delinquent in payment of assessments to SCSIF (R.pp. 537-539). SCSIF has assessed, and will continue to assess, SCPCIGA's workers' compensation member insurers for its obligations

on this claim. The foregoing clearly establishes that SCPCIGA, as an unincorporated entity, effectively pays assessments to SCSIF via the assessments paid by its workers' compensation member insurers. There is no delinquency in payment of those assessment including payment of the assessments associated with the five year $60,000,000 per year funding plan adopted by SFAA which considered and included SCSIF's liability for reimbursement on this particular claim.

Remarkably, SCSIF asserted before the Circuit Court, and apparently continues to assert before this Court, that the foregoing substantial evidence is not relevant despite raising the issue of SCPCIGA's non-participation in the assessment process as a defense to the reimbursement claim. SCSIF, confronted with the overwhelming evidence of participation in the assessment process by SCPCIGA's workers' compensation member insurers to include payment of assessments to fund SCSIF's liability on this particular claim, apparently bases this assertion on SCPCIGA not "directly" paying assessments notwithstanding the fact that it has never assessed SCPCIGA. As set forth hereinabove, SCSIF's argument, if accepted by the Court, would allow it to retain the money it raised via assessments on SCPCIGA's workers' compensation member insurers for the specific purpose of reimbursing this claim and require SCPCIGA's workers' compensation member insurers to fund the claim twice. In the final analysis, the only statutory provision which conditions reimbursement upon payment of assessments is the amendment to §42-7-310(d)(2) which became effective June 25, 2003. In light of David Stooksbury's uncontradicted testimony that neither Lumbermens or any of SCPCIGA's workers' compensation member insurers are in default or delinquent with respect to payment of

assessments, any argument that SCPCIGA's reimbursement claim is barred because of an issue connected to assessments is baseless and without merit.[6]

III. THE WORKERS' COMPENSATION COMMISSION, AS AFFIRMED BY THE CIRCUIT COURT, MADE NO ERROR IN FINDING AND CONCLUDING THAT THE JUNE 17, 2013 SETTLEMENT AGREEMENT AND RELEASE DOES NOT BAR SCPCIGA'S REIMBURSEMENT CLAIM.

SCSIF asserts that the Settlement Agreement and Release entered between it and SCPCIGA dated June 17, 2013 bars SCPCIGA's claim for reimbursement or otherwise releases SCSIF from its liability for reimbursement on this claim (R.pp 258-271). In this regard, SCSIF notes provisions in the Settlement Agreement and Release that the language therein should be construed as a whole and not strictly for or against any party and that the terms are to be given the broadest understanding. SCSIF also notes SCPCIGA's knowledge of the Lumbermens' claims to specifically include this claim as of June 17, 2013 and the fact that SCPCIGA had set up reserves and paid benefits on this particular claim prior to execution and Commission approval of the June 17, 2013 Settlement Agreement and Release (R.pp. 431-434). In a fashion similar to its arguments on the statutory authorization and assessment issues addressed hereinabove, SCSIF distorts the context and ignores critical and specific limiting language included in the Settlement Agreement and Release that is clear and unambiguous.

SCSIF asserts that the Commission and Circuit Court erred as matter of law in failing to recognize the parties' express intent that the Settlement Agreement and Release was "general and comprehensive in nature," erred in failing to give it the "broadest meaning" and erred in

[6] As a result of the uncontradicted record establishing that neither Lumbermens or any of SCPCIGA's workers' compensation member insurers are in default or delinquent with respect to payment of assessments, it was not necessary for the Commission to address whether the pertinent statutory amendment to §42-7-310(d)(2) effective June 25, 2003 should be applied retroactively in this claim with an underlying date of accident/injury on December 17, 1999. Moreover, SCSIF has abandoned any position in that regard as such was not included in its Form 30 exceptions. Ham, supra, and Green v. City of Columbia, 311 S.C. 78, 427 S.E.2d 685 (Ct. App. 1993).

focusing on the phrase "on which the SIF is currently paying the Guaranty Association as of February 22, 2013." SCSIF argues that the Commission and Circuit Court gave undue preference to this single modifying phrase in a series of co-equal modifying phrases. SCSIF erroneously asserts that the Commission and Circuit Court concluded that only claims already known to SCSIF on which payments were being made by February 22, 2013 fell within the scope of the release. This erroneous assertion exposes the flaw in SCSIF's argument on this issue.

SCSIF also erroneously asserts that the alleged legal errors by the Commission and Circuit Court led to "reading key language entirely out of the release" thus rendering the language in the Settlement Agreement and Release relied on by SCSIF meaningless or superfluous. However, a careful reading of the Settlement Agreement and Release reveals that the Commission and the Circuit Court's findings and conclusions on this issue do no such thing. As set forth hereinabove, the Settlement Agreement and Release specifically defined the "Legion" and "Reliance" claims. SCPCIGA would concede that the language relied on by SCSIF would apply to all "Legion" and "Reliance" claims as defined in the Settlement Agreement and Release so as to release all "Legion" and "Reliance" claims regardless. However, the current claim is not a "Legion" or "Reliance" claim. It is precisely claims that are not "Legion" or "Reliance" claims to which the limiting phrase "on which the SIF is currently paying the Guaranty Association as of February 22, 2013" applies. To accept SCSIF's argument, this Court would be required to "read entirely out" the phrase "on which SIF is currently paying the Guaranty Association as of February 22, 2013" and render it meaningless and superfluous. As SCSIF points out, such would constitute an error of law. The Commission's findings and conclusions on this issue as affirmed by the Circuit Court do not read out, or render meaningless or superfluous, the language relied on by SCSIF; and are not affected by any error of law.

The plain, clear and unequivocal language in the agreement reflects that beyond the Legion and Reliance claims as defined therein; the settlement and release applied only to those claims on which SCSIF was paying SCPCIGA as of February 22, 2013 (emphasis added). The uncontradicted evidentiary record reflects that Lumbermens was not liquidated until May 8, 2013; that SCPCIGA was not paying this claim as of February 22, 2013 and that at no time has SCSIF reimbursed SCPCIGA in connection with this claim (R.pp. 661-664; and R.pp. 613-614). Based on the plain, clear and unequivocal language in the Settlement Agreement and Release, and any reasonable construction thereof; it does not effectuate a bar to SCPCIGA's reimbursement claim in this matter or release SCSIF from its liability for reimbursement on this claim. Whether SCPCIGA was aware of this claim or had set up reserves as of June 17, 2013 is of no relevance or consequence.

CONCLUSION

For the foregoing reasons, SCPCIGA respectfully requests that the Circuit Court's Order filed December 7, 2018, which affirmed the Workers' Compensation Commission's Decision and Order dated March 29, 2018 in its entirety, be affirmed under the applicable standard of review.

Respectfully submitted,

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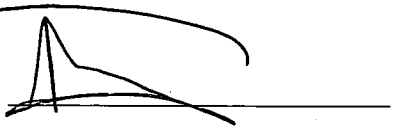
By: 

J. Hubert Wood, III
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Date: October 16, 2019
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Robin B. Stilwell, Circuit Court Judge

Appellate Case No. 2019-000020

Case No. 2018-CP-23-2580

South Carolina Property and Casualty
Insurance Guaranty Association,..... Respondent,

v.

Second Injury Fund Operations of the South Carolina Insurance
Reserve Fund f/k/a South Carolina Second Injury Fund,..... Appellant,

In Re:

Michael Quarles,..... Employee/Claimant,

v.

Cryovac Sealed Air Corporation,..... Employer,

and

Lumbermens Mutual Casualty Company in Liquidation/South Carolina
Property and Casualty Insurance Guaranty Association,..... Carrier/Defendant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Respondent's Final Brief complies with Rule 211(b) of the South Carolina Appellate Court Rules.

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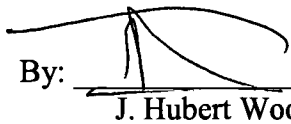
By: 

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Charleston, South Carolina
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