THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION APPELLATE PANEL

R. Michael Campbell, III, Commissioner

Appellate Case No. 2020-000481
W.C.C. File No. 1205924

Opinion No. 5703
Heard April 1, 2019 – Filed December 31, 2019

David B. Lemon, Employee/Claimant,.....Respondent,

v.

Mt. Pleasant Waterworks, Employer, and State Accident Fund, Carrier,.....Petitioners.

BRIEF OF THE PETITIONERS

Kirsten Leslie Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-1027
kbarr@trask-howell.com
Attorneys for the Petitioners

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Statement of the Case

The Respondent, David B. Lemon, was employed by the Petitioner, Mount Pleasant Waterworks, and sustained permanent injuries to his back and shoulders by accidents arising out of and in the course of this employment in 2009, 2010, and 2011. On May 8, 2012, Lemon sustained another "permanent injury to his back," which affected both legs in an accident arising out of and in the course of his employment. (A. p.77 #4; p.78 #12). The Workers' Compensation Commission concluded that Lemon is

permanently and totally disabled under the general disability statute, S.C. Code Ann. § 42-9-10.

In accordance with S.C. Code Ann. § 42-9-10 and S.C. Code Ann. § 42-9-170(B), the Commission awarded Lemon 179 weeks of additional total disability compensation. Section 42-9-10 strictly limits disability compensation to 500 weeks in all cases, with the sole exception of paraplegia, quadriplegia, or physical brain damage, which are inapplicable here, and § 42-9-170 reaffirms that strict limit. Because Lemon had already received 199 weeks of disability compensation in his four prior claims, as well as 122 weeks of disability compensation for the 2012 claim, the award of 179 additional weeks resulted in Lemon's aggregate disability compensation for his successive injuries totaling the maximum 500 week limit mandated by S.C. Code Ann. § 42-9-10 and reaffirmed in S.C. Code Ann. § 42-9-170. Lemon appealed, arguing that the statutory 500 week maximum does not apply to him.

By Order filed December 31, 2019, the Court of Appeals reversed the Commission and concluded that the statutory 500 week maximum was offset only by the 122 weeks of temporary benefits previously paid in the 2012 claim, ostensibly due to a "strict construction" of S.C. Code Ann. § 42-9-170(B). The Petitioners respectfully contend that the Court of Appeals erred as a matter of law in their application and construction of § 42-9-170(B) and by ignoring the plain meaning of statutory terms of art contained therein, specifically the terms "injury" and "compensation" and "disability." More importantly, the decision of the the Court of Appeals directly contravenes the Supreme Court's holding in Medlin v. Greenville County, which applies irrespective of S.C. Code Ann. § 42-9-170(B) and limits benefits to 500 weeks even in cases of successive injuries. The Court of Appeals otherwise misconstrued the plain language of S.C. Code Ann. § 42-

9-10 and the Claimant's own stipulation that the Respondents were entitled to "a credit for 20.5714 weeks due to a prior back claim" (A. p.4) in reaching what appears to be an admittedly absurd result.

Therefore, the Petitioners respectfully request that the Supreme Court reverse the Order of the Court of Appeals dated December 31, 2019 and affirm the unanimous Decision and Order of the South Carolina Workers' Compensation Commission in accordance with undisputed evidence in the record and the applicable law.

Arguments

I. Lemon stipulated that the Petitioners are entitled to a credit for his prior back claim; however, the Court of Appeals ignored this fact.

According to the Workers' Compensation Commission's January 7, 2015 Order, Lemon

> "*asserts* that Defendant is entitled to only a credit for 20.5714 weeks due to a prior back claim with the Employer." (A. p.4) (emphasis added).

This stipulation was not (and could not be) properly challenged on appeal and is the law of the case. (A. pp.25—29). *See* Reeves v. S.C. Mun. Ins. & Risk Fin. Fund, 427 S.C. 613, 641–42, 832 S.E.2d 312, 327 (Ct. App. 2019), *reh'g denied* (Sept. 19, 2019) (holding that a court must construe a stipulation like a contract that will not be reversed on appeal absent an abuse of discretion).

A "stipulation" is defined as "an agreement, admission or concession made in judicial proceedings by the parties thereto or their attorneys." Kirkland v. Allcraft Steel

Co., 329 S.C. 389, 392, 496 S.E.2d 624, 626 (1998) (citations omitted). Certainly, an assertion against one's interest made at a hearing before a Workers' Compensation Commissioner by one's own attorney on the record is properly considered an "admission" or "concession" and thus a "stipulation."

"Stipulations, of course, are binding upon those who make them." Id. Because counsel for Lemon admitted that any award should be offset "for 20.5714 weeks due to a prior back claim," the Court of Appeals erred in failing to regard this fact as being conclusively proved. *See* BLACK'S LAW DICTIONARY 1415 (6th Ed. 1990) (defining a stipulation as a "[v]oluntary agreement between opposing counsel concerning disposition of some relevant point so as to obviate need for proof or to narrow range of litigable issues."); *See also*, Kirkland, *supra* (holding that once a concession is made, it is binding and must be affirmed on appeal).

However, the Court of Appeals concluded that Lemon's total disability award should not be offset by disability benefits he received in prior claims -- including the compensation paid as a result of a 2011 back injury that was settled only 11 days prior to the present claim --despite Lemon's own stipulation to the contrary. (A. p.133). Clearly, the Court of Appeals erred as a matter of law in ignoring this stipulation, as the stipulation is not mentioned in the Court's decision, nor factored into its analysis, nor is there any purported justification for nullifying the binding effect of this stipulation. Therefore, the Petitioners respectfully request reversal of the decision of the Court of Appeals by the Supreme Court and affirmation of the Workers' Compensation Commission, to include a credit for 20.5714 weeks as previously stipulated by Lemon.

II. The Court of Appeals erred as a matter of law by concluding that S.C. Code Ann. § 42-1-170 is "inapplicable" to Lemon's claim.

The Court of Appeals purportedly applied a "strict construction" of S.C. Code Ann. § 42-1-170(B)[1] to reach its conclusion that § 42-1-170(B) is "inapplicable" in the present case and that; therefore, the 500 week maximum prescribed by S.C. Code Ann. § 42-9-10 does not apply to Lemon. This is plain error. Section 42-9-170(B) applies to the case *sub judice* as a matter of law. Furthermore, § 42-1-170(B) is not an exception to the 500 week maximum prescribed by § 42-9-10 and does authorize any award in excess of 500 weeks. According to the plain meaning of its statutorily-defined terms, § 42-9-170(B) governs the payment of compensation in all claims where there are successive permanent injuries in the same employment, prohibits an increase in weekly compensation in successive claims, and extends the period of compensation subject to § 42-9-10's universal 500 week maximum.

A. Application of S.C. Code Ann. § 42-9-170(B)

The first sentence of S.C. Code Ann. § 42-9-170(B) provides:

> "If an employee receives a permanent injury as specified in section 42-9-30 or section 42-9-10(B) after having sustained another permanent injury in the same employment, he is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not

[1] S.C. Code Ann. § 42-9-170(A) was effective until June 30, 2008 and S.C. Code Ann. § 42-9-170(B) applies to injuries after July 1, 2008.

by increasing the amount of weekly compensation and in no case exceeding 500 weeks."

Therefore, S.C. Code Ann. § 42-9-170(B) applies to the case *sub judice* because Lemon (1) sustained an "injury" as a result of the May 8, 2012 accident that is both (2) "permanent" and (3) specified in S.C. Code Ann. § 42-9-30 and (4) after sustaining "another permanent injury in the same employment."

1. "Injury"

Clearly Lemon sustained an "injury" on May 8, 2012, as defined by the South Carolina Workers' Compensation Act, specifically, S.C. Code Ann. § 42-1-160. That statute defines the term "injury" to mean "injury by accident arising out of and in the course of employment." Because it is generally recognized that "identical words and phrases within the same statute should normally be given the same meaning," the term "injury" in S.C. Code Ann. § 42-1-170 also means "injury by accident arising out of and in the course of employment."[2] Not only do both Lemon and the Petitioners agree that

[2]*See* Travelscape, LLC v. South Carolina Dep't. of Revenue, 391 S.C. 89, 100, 705 S.E.2d 28, 34 (2011) (quoting Powerex Corp. v. Reliant Energy Serv., Inc., 441 U.S. 224, 232, 127 S.Ct. 2411, 2417, 168 L.Ed.2d 112 (2007)); *see also* Busby v. State Farm, 280 S.C. 330, 333, 212 S.E.2d 716, 718 (Ct. App. 1984) (*citing* Pampanga Sugar Mills v. Trinidad, 279 U.S. 211, 218, 49 S.Ct. 308, 310, 73 L.Ed. 665 (1929) for the proposition that "[w]here the same word is use more than once in a statute it is presumed to have the same meaning throughout."); *see also* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (holding that "[w]here the statute's language is plain and unambiguous, and

Lemon sustained an "injury" on May 8, 2012 as defined by the Act, the parties agree that this "injury" involved his back and both legs. Therefore, the first element of S.C. Code Ann. § 42-9-170(B) is satisfied as a matter of law.

2. "Permanent"

Furthermore, the Commission concluded that these back and leg injuries were "permanent" by specifically finding

> "[t]he Claimant has sustained permanent injuries to more than one body part, namely, his back and both legs." (A. p.13 #1) (emphasis added).

This finding is unappealed and is, therefore, the law of the case. ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 489 S.E.2d 470 (1997) (unappealed ruling is law of the case); Buckner v. Preferred Mut. Ins. Co., 255 S.C. 159,161, 177 S.E.2d 544, 544 (1970) (an unchallenged ruling, "right or wrong, is the law of this case and requires affirmance."). Therefore, the second element of S.C. Code Ann. § 42-9-170(B) is satisfied as a matter of law.

3. "Specified" in S.C. Code Ann. § 42-9-30

In addition, it is undisputed that both the "back" and "leg" injury are of the type of injury "specified" in S.C. Code Ann. § 42-9-30. As noted above, the fact that Lemon

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conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.").

sustained "permanent injuries to ... his back and both legs" is the law of the case. (A. p.13 #1). In addition, the "leg" is an injury specified under S.C. Code Ann. § 42-9-30(16) and the "back" is specified under S.C. Code Ann. § 42-9-30(21). Therefore, the third element of S.C. Code Ann. § 42-9-170(B) is satisfied as a matter of law.

4. Successive injuries

The law similarly compels an affirmative answer the fourth question -- whether the May 8, 2012 injuries were "receive[d]...after having sustained another permanent injury in the same employment" -- because Lemon admittedly sustained successive injuries by accidents arising out of and in the course of his employment with Mount Pleasant Waterworks, involving his shoulder in 2010 and 2011 and his back in 2009 and 2011, resulting in the payment of permanent disability benefits. The fact that these four prior claims resulted in "permanent injury" is undisputed, as Lemon admits that "the awards that he had received for prior unrelated injuries" was "pursuant to S.C. Code Ann. § 42-9-30." (*See* A. 154, ¶1). Therefore, the fourth and final element of S.C. Code Ann. § 42-9-170(B) is satisfied as a matter of law.

Because Lemon sustained "a permanent injury as specified in section 42-9-30" (*i.e.*, injuries to his back and legs, which are scheduled body members) "after having sustained another permanent injury in the same employment" (involving his back and shoulders in 2009, 2010, and 2011), S.C. Code Ann. § 42-9-170(B) clearly applies and the Court of Appeals erred as a matter of law in concluding otherwise. Therefore, in accordance with S.C. Code Ann. § 42-9-170(B), Lemon "is entitled to compensation for both injuries, but the total compensation must be paid by extending the period and not

by increasing the amount of weekly compensation and in no case exceeding 500 weeks" as mandated by the clear and unequivocal language of that statute.

B. Construction of S.C. Code Ann. § 42-9-170(B)

Despite the undisputed facts and the plain language of S.C. Code Ann. § 42-9-170(B), the Court of Appeals inexplicably concluded that "§ 42-9-170 applies only to § 42-9-10(B) awards." (A. p.69) (emphasis added). However, § 42-9-170(B) does not employ the term "award" whatsoever and plainly requires something altogether different:

> "an injury as specified in Section 42-9-30 or the second paragraph of Section 42-9-10" (emphasis added).

The terms "injury" and "award" are not synonymous, but wholly distinct concepts statutorily-defined by separate statutes. *See* S.C. Code Ann. § 42-1-160 (titled "'Injury' and 'personal injury' defined") and § 42-17-40 (titled "Conduct of hearing; award"). Therefore, the Court of Appeals erred as a matter of law by redefining a statutory term of art, "injury," and forcing an interpretation contrary to the plain language of the statute that defines it. *See* Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see also* Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010) (holding that the Court should not resort to subtle or forced construction to limit or expand a statute's operation when interpreting the plain meaning of a statute).

Had the Legislature intended for S.C. Code Ann. § 42-9-170 to apply only to certain types of "awards," the Legislature would have employed the term "award."

Instead, the Legislature employed the term "injury." Because the meaning of the term "injury" is, in the words of our Supreme Court, "plain and unambiguous, and conveys a clear and definite meaning...the Court has no right to impose another meaning." Vaughn v. Bernhardt, 345 S.C. 196, 198, 547 S.E.2d 869, 870 (2001) (*citing* Hodges v. Rainey, *supra*); *see also* Municipal Ass'n of South Carolina v. AT&T Communications of S. States, Inc., 361 S.C. 576, 580, 606 S.E.2d 468, 470 (2004) (holding that words of a statute "must be given their plain and ordinary meaning without resorting to subtle or forced construction to limit or expand the statute's operation" and citing Hitachi Data Sys. Corp. v. Leatherman, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992)).

Furthermore, it is well-settled that a "word or phrase is presumed to bear the same meaning throughout a text; a material variation in terms suggests a variation in meaning." Travelscape, LLC v. South Carolina Dep't. of Revenue, 391 S.C. 89, 100, 705 S.E.2d 28, 34 (2011) ("As a general rule, 'identical words and phrases within the same statute should normally be given the same meaning.'"). Here, the term "injury" is employed in the first sentence of S.C. Code Ann. § 42-9-170(B) and "disability"[3] in the second sentence (in the context of limiting an employee's access to the general disability statute):

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[3] S.C. Code Ann. § 42-1-120 defines the term "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury." Awards of benefits for varying types of "disability" are provided by S.C. Code Ann. §§ 42-9-10, 42-9-20, and 42-9-30. *See* Wigfall v. Tideland Utilities, 354 S.C. 100, 580 S.E.2d 100 (2003). However, in none of these statutes is the term "disability" synonymous with the term "injury."

> "If an employee has previously incurred permanent partial *disability* through the loss of a hand, arm, shoulder, foot, leg, hip or eye, and by subsequent accident incurs total permanent *disability* through the loss of another member, the employer's liability is for the subsequent injury only, except that the employee may receive further benefits as provided under the provisions of section 42-9-35." (emphasis added).

Use of the term "injury" in the first sentence of S.C. Code Ann. § 42-1-170(B) and "disability" in the second sentence constitutes a material variation by which the Legislature implied a clear variation in meaning. Travelscape, *supra*. Had the Legislature intended for S.C. Code Ann. § 42-1-170(B) to apply only to certain *awards* of *disability*, it would have utilized the term in the first sentence, as it did second.

Additionally, the title of S.C. Code Ann. § 42-1-170 is itself instructive, as it also employs the term "injury" and not "award." The title reads,

> "Permanent injury after sustaining another permanent injury in the same employment; entitlement to compensation; extension of payment." (emphasis added).

If the Legislature had intended the S.C. Code Ann. § 42-9-170(B) to apply to certain classes of *awards*, as opposed to certain classes of *injuries*, the Legislature would have actually employed the term *award* in the first sentence of the statute, as well at the statute's title. Having chosen to use the statutorily defined term "injury," the Court should have interpreted the statute as enacted and defined its requirements according to

its explicit terms, including the term "injury" employed in the title. As noted by the Supreme Court in Beaufort County v. South Carolina State Election Comm'n, 395 S.C. 366, 373 n. 2, 718 S.E.2d 432, 436 n. 2 (2011), a statute's title is an indicator of meaning and, here, it indicates that the Court of Appeals has misconstrued the statute.

Regardless, whether or not S.C. Code Ann. § 42-9-170 applies is irrelevant, as Lemon's entitlement to benefits, and the 500 week limitation thereon, stems from the plain language of S.C. Code Ann. § 42-9-10, as explained in Medlin v. Greenville County. As such, the Respondents respectfully request that the Supreme Court reverse the Court of Appeals and affirm the Workers' Compensation Commission's calculation of Lemon's award.

III. The ruling of the Court of Appeals contradicts the holding of *Medlin v. Greenville County.*

The Workers' Compensation Commission correctly awarded Lemon the balance of 500 weeks (179 weeks) under S.C. Code Ann. § 42-9-10 because Lemon is *not* "entitled to compensation for both injuries" under Title 42 and the 500 week maximum mandated by § 42-9-10 is not a "per accident" limitation, according to the Supreme Court's holding in Medlin v. Greenville Co., 303 S.C. 484, 488, 401 S.E.2d 667, 669 (1991). Because the decision of the Court of Appeals directly contradicts this precedent established in Medlin, the Supreme Court should reverse.[4]

[4] In his brief to the Court of Appeals, Lemon raised no argument with respect to the applicability of Medlin. (A. pp.140—158). *See* Rule 208(b)(1)(B), SCACR (stating "[o]rdinarily, no point will be considered on appeal which is not set forth in the statement of the issues on appeal"). Because Lemon failed to preserve this issue for

In Medlin, the employee had a previous injury while working for Greenville County that resulted in a compromise settlement (just as Lemon has received compromise settlements for his four prior claims against Mount Pleasant Waterworks). Medlin then suffered another injury working for Greenville County and filed a claim seeking payment of permanent and total disability compensation (just as Lemon has done). The Commission awarded Medlin an additional 500 weeks, contending that the 500 week limitation in S.C. Code Ann. § 42-9-10 "was a per accident limitation." The Circuit Court affirmed the Commission, "holding that the five hundred week limitation was a per accident limitation." The Court of Appeals expressly reversed this conclusion.

In reversing the "per accident limitation" construct, the Court of Appeals in Medlin reasoned that, having "already received an award of five hundred weeks compensation from his first injury, [the employee] had no basis to recover in the second accident." However, this decision by the Court of Appeals was premised on an interpretation of S.C. Code Ann. § 42-9-170. While the Supreme Court agreed with reasoning of the Court of Appeals, the Medlin Supreme Court concluded that

> "Section 42-9-170 is not applicable to this case as here, employee was not drawing compensation for his 1983 injury at the time his second injury occurred." 303 S.C. 484, 488, 401 S.E.2d 667, 669(1991).

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review by the Court of Appeals, the Court erred in addressing it. *See* State v. Austin, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct.App.1991) (holding that "appellate courts, like well-behaved children, do not speak unless spoken to and do not answer questions they are not asked."). This alone constitutes reversible error.

However, because the Supreme Court agreed that the 500 week limitation in S.C. Code Ann. § 42-9-10 is not a "per accident" limitation and because there is "no statute that would entitle [Medlin] to receive compensation" in excess of 500 weeks "there [was] no basis upon which [Medlin] can recover." Here, the same is true in the case at bar: Lemon was not drawing compensation for his prior claims at the time of his 2012 accident and there is "no statute" that would entitle Lemon to receive compensation in excess of 500 weeks.[5]

In the present case, the Court of Appeals mistakenly suggests that Wyndham v. Thornley, 291 S.C. 496, 354 S.E.2d 399 (Ct. App. 1987),which expressed a similar "per accident" analysis in a case of successive injuries, was "*overruled on other grounds*" by Medlin. This is incorrect. According to Wyndham, "the five hundred week limit does not apply to successive injuries," in the context of "successive injuries while working for different employers." However, Medlin expressly overruled a conclusion that "the five hundred week limitation was a per accident limitation." Therefore, Medlin expressly overruled the seminal holding in Wyndham and went on to make it clear that it matters not whether the successive injuries were sustained in the same or different employment. As explained in plain language by the Medlin Court:

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[5] The Court of Appeals's December 31, 2019 Order does not address whether Lemon was drawing compensation for his prior injuries at the time of the May 8, 2012 accident such that S.C. Code Ann. § 42-9-170 should apply. The Record reflects that Lemon received a lump sum payment of $32,005.50 in compensation on April 27, 2012, which is 11 days prior to the accident *sub judice*.

> "These principles would hold true in any case regardless of whether the successive injury occurred while working for the same or different employers." 303 S.C. 484, 488, 401 S.E.2d 667, 669(1991).

Therefore, the Court of Appeals erred in relying on Wyndham for any purpose.

The Court of Appeals also curiously quoted Medlin v. Greenville County with approval, suggesting that it "does not dictate a different result." Then, in a footnote, the Court of Appeals concluded that Medlin "is inapplicable due to the plain language of S.C. Code Ann. § 42-9-170(B)." This makes no sense of course, since Medlin's holding was an interpretation of S.C. Code Ann. § 42-9-10 and applies irrespective of § 42-9-170, because that statute was also inapplicable in Medlin. More importantly, the Court of Appeals fails to reconcile the fact that the Supreme Court in Medlin expressly overruled the Commission and the Circuit Court's conclusion that the 500 week maximum mandated by S.C. Code Ann. § 42-9-10 is a "per accident" maximum and held that no statute authorized an award of benefits in excess of 500 weeks, even where there are successive accidents.

When the holding of Medlin is properly applied to the undisputed facts of the case, it is clear that Court of Appeals erred in reversing the Worker' Compensation Commission's award of the balance of 500 weeks (179 weeks) under S.C. Code Ann. § 42-9-10. In accordance with this precedent, Lemon is only "entitled to compensation for the degree of disability which would have resulted from the later [May 8, 2012] accident," because his previous disability (totaling 321 weeks) was "non-existent in so far as the Act is concerned." Medlin, 303 S.C. 484, 488, 401 S.E.2d 667, 669 (1991). The Supreme Court has already decisively concluded that the 500 week maximum

mandated by S.C. Code Ann. § 42-9-10 applies to successive injuries – irrespective of S.C. Code Ann. § 42-9-170 -- and that there is no other statutory authority for an award of compensation in excess of 500 weeks, save claims of paraplegia, quadriplegia, or brain damage. Those entities being inapplicable here, the Supreme Court should reverse the decision of the Court of Appeals and affirm the Commission's award of 179 weeks of compensation.[6]

IV. The Court of Appeals erred as a matter of law in construing S.C. Code Ann. § 42-1-170 so as to create an exception to the 500 week maximum mandated by S.C. Code Ann. § 42-9-10.

The Order of the Court of Appeals misconstrues the plain terms of S.C. Code Ann. § 42-9-170 by holding that it provides an exception to the 500 week maximum prescribed by S.C. Code Ann. § 42-9-10. The Court purportedly relies solely on Wyndham v. Thornley, 291 S.C. 496, 354 S.E.2d 399 (Ct. App. 1987) for this proposition. However, as explained more fully above, Wyndham – its holding and analysis -- was expressly reversed by the Supreme Court in Medlin v. Greenville County based on the plain language of S.C. Code Ann. § 42-9-10.

That plain language reads,

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[6] The Court of Appeals, in footnote 8 of the December 31, 2019 Order, indicated that it was troubled by the Commission's analysis (or lack thereof) regarding Lemon's prior payments of disability compensation in his four prior workers' compensation claims. Should this be a concern to the Supreme Court, the matter could be remanded to the Commission to clarify the basis for its award of 179 weeks of compensation under S.C. Code Ann. § 42-9-10. Any perceived lack of clarity is not a proper basis for reversal.

> "When the incapacity for work resulting for an injury is total, the employer shall pay ... to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages ... In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C)." (emphasis added).

This sole exception, S.C. Code Ann. § 42-9-10(C), applies only in cases of paraplegia, quadriplegia, or physical brain damage and provides benefits "[n]otwithstanding the five-hundred week limitation prescribed in this section or elsewhere in this title." (emphasis added). The statutory language makes it clear that the 500 week maximum is mandatory and has only a single exception under Title 42: S.C. Code Ann. § 42-9-10(C) and in no other case, including other types of injuries or successive injuries or even death.

Furthermore, interpreting any other statute so as to provide an exception to S.C. Code Ann. § 42-9-10 would render meaningless the words

> "[i]n no case may the period covered by the compensation exceed five hundred weeks except at provided in subsection (C)."

Resort to such forced construction is untenable. *See* 16 Jade Street, LLC v. R. Design Const. Co., LLC., 398 S.C. 338, 343, 728 S.E.2d 448, 450 (2012) (holding that Courts are to construe a statute so "that no word, clause, sentence, provision or part shall be

rendered surplusage, or superfluous."). Indeed, S.C. Code Ann. § 42-9-10's strict 500 week limit was enacted at the same time as S.C. Code Ann. § 42-9-170[7]. If the Legislature had intended for S.C. Code Ann. § 42-9-170 to be an *additional* exception to S.C. Code Ann. § 42-9-10, that statute would have read "[i]n no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C)" *and S.C. Code Ann. § 42-9-170* from the outset. But the statute does not, and has not, ever read this way. Instead, by enumerating only a single exception to the statutory maximum expressed in S.C. Code Ann. § 42-9-10, the Legislature created a negative implication, as the expression of one thing implies the exclusion of others. *See* City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011)(holding that "when determining the effect of statutory language, the canon of construction *expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that to express or include one thing implies the exclusion of another, or the alternative.").

When S.C. Code Ann. § 42-1-170 references that compensation is to be paid "in no case exceeding five hundred weeks," it is simply reiterating the clear mandate of S.C. Code Ann. § 42-9-10, lest the provision "extending the period" of compensation for successive injuries be presumed an exception to that rule. Not only does § 42-1-170 not create another exception to the limitation prescribed by § 42-9-10, not only does § 42-1-170 not state provide compensation in excess of 500 weeks under any scenario, § 42-1-170 actually reinforces the 500 week limit mandated by § 42-9-10. For example, S.C. Code Ann. § 42-9-10(C) clearly specifies that benefits in excess of 500 weeks are payable

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[7] The predecessor statutes were S.C. Code § 72-151 and § 72-168. Originally, there was no exception to the 500 week limit and no mention of paraplegia, quadriplegia, or brain damage.

in cases of paraplegia, quadriplegia, and physical brain damage "[n]otwithstanding the five-hundred week limitation prescribed [by § 42-9-10(A)]." If § 42-9-170 actually provided a similar exception or extension of benefits, it would have employed similar, express language. However, it does not and the suggestion of an implied exception to an express statute is unfounded. Essentially, the Court of Appeals implied rights beyond those which the Legislature has provided. Because the Workers' Compensation Act is a statute in derogation of common law, the Court must "strictly construe its terms." Wigfall v. Tideland Utilities, Inc., 354 S.C. 100, 110, 580 S.E.2d 100, 105 (2003). *See also* Medlin v. Greenville Co., 303 S.C. 484, 401 S.E.2d 667 (1991) (holding that there is no provision of the South Carolina Workers' Compensation Act that authorizes compensation in excess of 500 weeks other than S.C. Code Ann. § 42-9-10(C)).

Instead, S.C. Code Ann. § 42-9-10(C) remains the sole exception to the strict 500 week limit and provisions of both § 42-9-10 and § 42-9-170 "should be interpreted in a way that renders them compatible, not contradictory." Davis v. School District of Greenville County, 374 S.C. 39, 45, 647 S.E.2d 219,222 (2007) (holding that the "goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.'"). Therefore, the Petitioners respectfully request that the Supreme Court reverse Court of Appeals and affirm the Commission in accordance with the plain language of S.C. Code Ann. § 42-9-10.

V. The Court of Appeals misconstrued the benefit provided by S.C. Code Ann. § 42-9-10(A) and the Workers' Compensation

Commission's discretionary authority thereunder to produce an absurd result not intended by the Legislature.

The South Carolina Workers' Compensation Act establishes no minimum award in cases of disability, only statutory maximums. *See* S.C. Code Ann. §§ 42-9-10, 42-9-20, 42-9-30, 42-9-290. According to the plain language of S.C. Code Ann. § 42-9-10,

> "When the incapacity for work resulting for an injury is total, the employer shall pay...to the injured employee during the total disability a weekly compensation equal to sixty-six and two-thirds percent of his average weekly wages...In no case may the period covered by the compensation exceed five hundred weeks except as provided in subsection (C)."

The Commission has the sole discretion to determine the period during which an employee is incapable of earning wages as a result of a particular injury. In this case, the Commission properly determined that period for Lemon was 301 weeks (of which 122 has already been paid by the Petitioners), as Lemon has previously been compensated for disability covering 199 weeks of disability between 2009 and 2011. *See* Medlin v. Greenville County, 303 S.C. 484, 488, 401 S.E.2d 667, 669(1991) (holding that once an employee receives benefits for disability, that degree of disability is "fully 'written-off' and is non-existent in so far as the Act is concerned."). This determination is consistent with the 500 week maximum mandated S.C. Code Ann. § 42-9-10(A) and the undisputed facts of this case.

In addition, the South Carolina Workers' Compensation Act establishes but a single exception to the statutory maximum of 500 weeks by specifically setting forth the

criteria in S.C. Code Ann. § 42-9-10(C): paraplegia, quadriplegia, and permanent brain damage. According to S.C. Code Ann. § 42-9-10(A), "[i]n no case may be the period of covered by the compensation exceed five hundred weeks except as provided in subsection (C)." Despite the fact that § 42-9-10(C) is wholly inapplicable, the Court of Appeals ruled that Lemon is not limited to 500 weeks, but is instead entitled to 699 weeks of compensation as a result of his five workers' compensation claims over a four year period. Essentially, the Court of Appeals concluded that Lemon's was a fate worse than death, as an employee mortally-injured at work would be limited to only 500 weeks of compensation. *See* S.C. Code Ann. § 42-9-290. The Court of Appeals apparently considers Lemon's back injury as more valuable than the amputation of both legs or both arms or blindness in both eyes --or even all three combined – because such persons are also limited to the 500 week maximum required by S.C. Code Ann. § 42-9-10(C). Obviously, this would be an absurd result, which was never intended by the Legislature. *See* Unisun Ins. Co. v. Schmidt, 339 S.C. 362, 368, 529 S.E.2d 280, 283 (2000) (holding that Courts should reject a statutory interpretation that leads to a result so plainly absurd that it could not have been intended by the Legislature).

Therefore, the Petitioners respectfully request that the Supreme Court reverse the Court of Appeals and affirm the Workers' Compensation Commission so as to avoid a plainly absurd result, which was not intended by the Legislature.

Conclusion

Based upon the arguments presented herein above, the Petitioners, Mount Pleasant Waterworks and the South Carolina State Accident Fund, respectfully request that the Supreme Court reverse the Order of the Court of Appeals dated December 31,

2019 and affirm the unanimous Decision and Order of the South Carolina Workers' Compensation Commission in accordance with undisputed evidence in the record and the applicable law.

Respectfully submitted,

Mount Pleasant, S.C.
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Kirsten Leslie Barr

Kirsten Leslie Barr, S.C. Bar # 015525
Trask & Howell, LLC
P.O. Box 2167
Mount Pleasant, S.C. 29465
(843) 881-1027
kbarr@trask-howell.com
ATTORNEYS FOR THE PETITIONERS