THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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

Opinion No. 5849
(S.C. Ct. App. filed August 18, 2021)

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,..... Petitioner,

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.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioner Second Injury Fund Operations of the South Carolina Insurance Reserve Fund f/k/a South Carolina Second Injury Fund certifies that its Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on September 27, 2021.

QUESTIONS PRESENTED

I. Did the South Carolina Court of Appeals err as a matter of law in ruling that the Guaranty Association meets the statutory definition of "insurer" or "carrier" and thereby is entitled to seek reimbursement from the Second Injury Fund?

II. Did the South Carolina Court of Appeals err in concluding that the Guaranty Association had "effectively" paid assessments to the Second Injury Fund and is therefore eligible to seek reimbursement from the Second Injury Fund?

III. Did the South Carolina Court of Appeals err in ruling that the Quarles claim was not released based on the unambiguous language contained in the Settlement Agreement and Release entered between the Guaranty Association and the Second Injury Fund dated June 17, 2013?

STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission. The Respondent South Carolina Property and Casualty Insurance Guaranty Association ("Guaranty Association") brought this action before the Commission to seek reimbursement from the South Carolina Second Injury Fund of workers' compensation benefits paid to the Employee/Claimant Michael Quarles.

The South Carolina Second Injury Fund was created by statute "to reimburse employers/carriers for Worker's Compensation benefits paid to employees resulting from second or subsequent injuries." *Greenwood Mills, Inc. v. Second Injury Fund*, 315 S.C. 256, 433 S.E.2d 846, 847, n.1 (1993). The purpose of the Second Injury Fund was to "encourage the employment of disabled or handicapped persons without penalizing an employer with greater liability if the employee is injured because of his preexisting condition." *Liberty Mutual Ins. Co. v. Second Injury Fund*, 363 S.C. 612, 611 S.E.2d 297, 303 (Ct. App. 2005). "The Fund accomplishes this goal by absorbing some of the risk that such a worker will become injured in the workplace. Its creation allows the employer, or his insurance carrier, to seek compensation from the Fund when an employee with a prior permanent physical impairment incurs a subsequent disability in the workplace." *Id*.

On June 20, 2007, the South Carolina General Assembly enacted the Workers' Compensation Reform Act which provided for the winding down and closure of the Second Injury Fund. The Reform Act tasked the State Budget and Control Board, now known as the

State Fiscal Accountability Authority,[1] and its Insurance Reserve Fund, with providing "for the efficient and expeditious closure of the fund with the orderly winding down of the affairs of the fund so that the remaining liabilities of the fund are paid utilizing assessments, accelerated assessments, annuities, loss portfolio transfers, or such other mechanisms as are reasonably determined necessary to fund any remaining liabilities of the fund." *See*, S.C. Code Ann. § 42-7-320. As a result, the Petitioner is identified as the Second Injury Fund Operations of the South Carolina Insurance Reserve Fund f/k/a South Carolina Second Injury Fund ("Fund").

The Respondent Guaranty Association submitted the claim for Michael Quarles to the Second Injury Fund seeking reimbursement for the workers' compensation benefits paid by the Guaranty Association for an insolvent insurer, specifically Lumbermens Mutual Insurance Company. The Second Injury Fund denied the claim for several reasons. First, the Guaranty Association is not statutorily authorized to seek reimbursement from the Second Injury Fund. Second, the Guaranty Association does not directly participate in funding the Second Injury Fund. Third, a 2013 settlement and release between the parties bars this claim for reimbursement.

Those issues were initially addressed by Commissioner T. Scott Beck. By Order filed October 2, 2017, Commissioner Beck made various findings of fact and conclusions of law and ordered the Second Injury Fund to make reimbursements to the Guaranty Association in accordance with the terms of a previously approved Agreement to Reimburse Compensation. (R. 56-78).

The Second Injury Fund filed a Form 30 Request for Commission Review of the Single

[1] Pursuant to the South Carolina Restructuring Act of 2014, the State Budget and Control Board was abolished. Effective July 1, 2015, the Insurance Reserve Fund and the Second Injury Fund were ultimately transferred to the State Fiscal Accountability Authority.

Commissioner's Decision and Order. In its appeal, the Second Injury Fund asserted several issues for review including each of the issues raised in the present appeal. (R. 83-84). The Appellate Panel ultimately affirmed the Decision and Order of the Single Commissioner. (R. 28-55).

The appeal was next heard by the Circuit Court because the date of accident pre-dates the amendment to Section 42-17-60, which provides for direct appeals from the Commission to the Court of Appeals. A hearing was held before Circuit Court Judge Robin B. Stilwell on October 30, 2018. Judge Stilwell issued an Order filed December 7, 2018, which affirmed the Decision and Order of the Workers' Compensation Commission filed March 18, 2018. (R. 1-27).

A timely appeal was subsequently filed to the Court of Appeals. On August 18, 2021, the Court of Appeals issued a published opinion affirming the decision of the Circuit Court. The Fund filed a petition for rehearing which was summarily denied by order filed September 27, 2021.

ARGUMENTS

I. The South Carolina Court of Appeals erred as a matter of law in ruling that the Guaranty Association meets the statutory definition of "insurer" or "carrier" and thereby is entitled to seek reimbursement from the Second Injury Fund.

As to the first issue raised on appeal, the Court of Appeals affirmed the Workers' Compensation Commission and the Circuit Court in ruling that "the Guaranty Association meets the statutory definition of insurer or carrier and is entitled to seek reimbursement from the [Second Injury] Fund." Slip Op. at 6. While the Court of Appeals lists the various arguments made by the Fund, the Court did not provide any analysis of nor refute any of those arguments. Instead, the Court of Appeals decided this issue of statutory construction by citing to a single line from a Supreme Court decision that *neither party* cited in their briefs to the Court of Appeals and that neither of the lower tribunals cited in their decisions. The Court of Appeals focuses *solely* on this Court's decision in *Hudson v. Lancaster Convalescent Center*, 407 S.C. 112, 754 S.E.2d 486 (2014), where this Court writes: "Guaranty is a last resort insurer created by the legislature to protect consumers in the event that their insurer becomes insolvent." 754 S.E.2d at 492.[2] That one sentence, however, does not establish that this Court actually construes the Guaranty Association as an "insurer" in the literal and legal sense of the term. In fact, the Court of Appeals' reading of *Hudson* as establishing that the Guaranty Association is an "insurer" should be reconsidered in light of a later decision of this Court, also decided in 2014, where this Court actually identifies the Guaranty Association for what it is under the law: an "unincorporated, non-profit legal entity" which is "neither the wrongdoer *nor the insurer of a wrongdoer*, but is

[2] The *Hudson* case, in fact, is not cited or referenced any place in the entire Record on Appeal, demonstrating that the Guaranty Association never relied on that decision at any stage of this litigation. As discussed below, the Guaranty Association denies that it is an insurer, which is a point that was overlooked by the Court of Appeals.

instead a statutory entity that exists to provide some protection for the insureds of insolvent insurance companies." *South Carolina Property and Casualty Insurance Guaranty Association v. Brock*, 410 S.C. 361, 764 S.E.2d 920, 922-923 (2014). (Emphasis added). The Court of Appeals entirely overlooked the *Brock* decision which is not discussed or even cited in the Court of Appeals' decision. It is *Brock* that described from a legal standpoint the nature of the Guaranty Association, and this Court in *Brock* was clear in its explanation that the Guaranty Association is *not the insurer of the wrongdoer*. This Court is urged to issue a writ of certiorari to clarify this purported inconsistency in prior decisions and to specifically clarify the type of legal entity the Guaranty Association is and to conclude, as this Court did in *Brock*, that it is *not* an insurer in the literal or legal sense of the term.

Additionally, even the *Hudson* decision does not hold the Guaranty Association to be an insurer in the literal or legal sense. After using the word "insurer," this Court in *Hudson* proceeds to address the applicable law:

> Section 38-31-60(b) provides that Guaranty "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...." When Guaranty steps into the shoes of an insolvent insurer, its liability is derivative of the insolvent insurance company's direct liability to the consumer. The legislature has limited this liability to a "covered claim" which is defined by § 38-31-20(8) as "... an unpaid claim ... which arises out of ... an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer ... covered claim does not include: ... (h) any claim for interest."

Hudson, 754 S.E.2d at 492.

The Fund discussed this very statutory language in its briefs to the Court of Appeals. Section 38-31-60(b) provides that the Guaranty Association "is considered the insurer *to the extent of its obligations on covered claims* and, *to this extent*, has all rights, duties, and

obligations of the insolvent insurer as if the insurer had not become insolvent." S.C. Code Ann. § 38-31-60(b). (Emphasis added). This language does not state that the Guaranty Association is considered an "insurer" for purposes of seeking reimbursement from the Second Injury Fund. That interpretation would disregard the explicit limiting language "to the extent of its obligations on covered claims." That limiting language provides that the Guaranty Association is considered an "insurer" only with respect to its "obligations on covered claims," which consists of its *liabilities* to consumers and not its ability to file claims or seek reimbursement from third parties such as the Second Injury Fund. *See*, *Buchanan v. South Carolina Property and Casualty Insurance Guaranty Association*, 424 S.C. 542, 819 S.E.2d 124, 126 (2018) (recognizing that the Guaranty Association's liability is derivative of an insolvent insurer's direct liability to a consumer on a "covered claim"). Thus, the Guaranty Association enjoys "all rights, duties, and obligations of the insolvent insurer" but only with respect to its liability for covered claims.

As the Fund has pointed out, this construction of the limiting language in 38-31-60(b) is clear from the plain and ordinary language used. Nonetheless, other provisions of the South Carolina Property and Casualty Insurance Guaranty Association Act, S.C. Code Ann. § 38-31-10, *et seq*., further support that interpretation. Specifically, the Guaranty Association Act includes a section that expressly defines (and thus limits) the Guaranty Association's rights to recover the amount of any "covered claim" from third parties. Section 38-31-90(2) authorizes the Guaranty Association to recover the amount of any "covered claim" against certain insureds with a high net worth or against "an affiliate of the insolvent insurer." The Second Injury Fund is not listed and does not fit the description of those entities stated in Section 38-31-90(2). Importantly, the Guaranty Association Act does not include any other provision authorizing the Guaranty Association to recover the amount of any "covered claim" from any other entity,

including the Second Injury Fund. As a "creature of statute," the Guaranty Association's right to seek recovery is limited to what the Guaranty Association Act expressly authorizes. *See, Duke Power Co. v. Laurens Electric Cooperative, Inc.*, 344 S.C. 101, 543 S.E.2d 560, 562 (Ct. App. 2000) ("creatures of statute … only have such authority as the legislature has given them"). That does not include a claim for reimbursement from the Second Injury Fund. Obviously, if the General Assembly intended to authorize a claim for reimbursement from the Second Injury Fund, it would have expressly provided for such. It did not do so.

In short, the Court of Appeals' reliance on the single line from the *Hudson* decision is misplaced. A much more comprehensive analysis is required for a proper interpretation of a complex statutory scheme. The Guaranty Association, as confirmed by this Court in *Brock*, is not actually an insurance company.

The Fund has presented various arguments to demonstrate that the Guaranty Association does not meet the statutory definition of "insurer" or "carrier" and thereby is not entitled to seek reimbursement from the Second Injury Fund. The Court of Appeals, however, did not address the statutory construction arguments that the Fund raised in its briefs. The Court of Appeals merely restated the Fund's different arguments in its opinion (Slip Op. at 5-6), but the Court never actually analyzes those arguments, relying instead on that single line from the *Hudson* decision which is misconstrued.

Specifically, the Fund pointed out that the Guaranty Association denied that it is an insurance company throughout this litigation. *See*, Guaranty Association's Full Commission Brief, p. 17 ("SCPCIGA does not purport to be an insurance company"); Guaranty Association's Circuit Court Brief, p. 18 (same). (R. 114, 149). Thus, even the Guaranty Association does not claim to be an "insurer" in the literal or legal sense of the term.

Moreover, as the Fund explained in its briefs to the Court of Appeals, Section 42-9-400(a) of the Workers' Compensation Act provides for reimbursement by the Second Injury Fund to an "employer or his insurance carrier" which paid the "awards of compensation and medical benefits provided by this title." S.C. Code Ann. § 42-9-400(a). Similarly, Section 42-7-320, which authorizes the winding down of the Second Injury Fund, provides that "[t]he fund shall continue reimbursing *employers and insurance carriers* for claims accepted by the fund on or before December 31, 2011." S.C. Code Ann. § 42-7-320(B)(3). (Emphasis added). Section 42-7-310(d)(2), however, defines "carrier" as "all insurance carriers, self-insurers and the State Accident Fund." S.C. Code Ann. § 42-7-310(d)(2). The term "insurance carrier" is not defined to include the Guaranty Association.

The rule of statutory construction known as "expressio unius est exclusion alterius" is particularly appropriate to this analysis. That rule provides that "to express or include one thing implies the exclusion of another, or of the alternative." *Hodges v. Rainey*, 341 S.C. 79, 533 S.E.2d 578, 582 (2000). As noted, the term "carrier" is defined in Section 42-7-310(d)(2) as "all insurance carriers, self-insurers, and the State Accident Fund." S.C. Code Ann. § 42-7-310(d)(2). The term "carrier" is likewise defined in Section 42-1-60 as "any person or fund authorized under Section 42-5-20 to insure under this title and includes self-insurers." S.C. Code Ann. § 42-1-60. A guaranty association is not specifically included in either definition, and thus, consistent with "expressio unius est exclusion alterius," the failure to identify a guaranty association compels the conclusion that the General Assembly intended that a guaranty association *not be treated* as a "carrier" for purposes of the Second Injury Fund reimbursement. Quite simply, had the General Assembly intended to include a guaranty association as a "carrier" that could seek reimbursement from the Second Injury Fund, it certainly would have so stated in

explicit terms.

In fact, as the Fund has shown but the Court of Appeals overlooked, reference to another section of the Workers' Compensation Act strongly supports that very construction. Section 42-1-560 governs the subrogation rights of a "carrier" against third parties. Section 42-1-560(a) specifically provides:

> The respective rights and interests of the injured employee, or, in the case of his death, his dependents and any person entitled to sue therefor, and of the employer or person, *association*, corporation or carrier *liable for the payment of compensation and other benefits under this title, hereinafter called the "carrier,"* in respect to the cause of action and the damages recovered shall be as provided by this section.

S.C. Code Ann. § 42-1-560(a). (Emphasis added). Specifically, with regard to Section 42-1-560, the General Assembly re-defined the term "carrier" to explicitly include an "association … liable for the payment of compensation and other benefits under this title," which would thus include a guaranty association. This shows that the General Assembly understood that the general definition of "carrier" in Section 42-1-60 does not include a guaranty association; otherwise, it would not have been necessary to provide a unique and expanded definition of "carrier" for purposes of Section 42-1-560 alone. This also shows that the General Assembly did not intend for a guaranty association to be included in the definition of "carrier" as used in Sections 42-7-310, 42-7-320, and 42-9-400 with respect to reimbursement from the Second Injury Fund because quite simply the General Assembly did not utilize the same expanded definition of "carrier" as it used in Section 42-1-560.

Importantly, this Court has held that "[t]he Workers' Compensation Act should be read *in pari materia* when possible." *United Technologies v. South Carolina Second Injury Fund*, 318 S.C. 213, 456 S.E.2d 901, 904 (1995). *See also, Hudson v. Townsend Saw Chain Co.*, 296 S.C.

17, 370 S.E.2d 104 (Ct. App. 1988). Thus, to read Sections 42-1-60 and 42-1-560 *in pari materia*, it must be concluded that the General Assembly has deliberately chosen to define "carrier" more broadly to include an "association" in Section 42-1-560. But, the General Assembly did not use that broad definition of "carrier" in the sections related to reimbursement from the Second Injury Fund. That further supports the position that a guaranty association is not included in the definition of "carrier" as used in Sections 42-7-310, 42-7-320, and 42-9-400. *See also, Merchants Mut. Ins. Co. v. South Carolina Second Injury Fund*, 277 S.C. 604, 291 S.E.2d 667 (1982) (holding that the Second Injury Fund statute is a statute of creation that must be strictly construed).

Finally, as the Fund pointed out in its arguments to the Court of Appeals, both the Guaranty Association and the Second Injury Fund are funded in similar ways. The Guaranty Association is funded by assessments collected from member insurers, and for purposes of the Guaranty Association's "workers' compensation insurance account," those assessments are collected from workers' compensation carriers. *See*, S.C. Code Ann. § 38-31-60(c). Similarly, the Second Injury Fund is funded by assessments collected from the very same workers' compensation carriers. *See*, S.C. Code Ann. § 42-7-310(d). Thus, in practical terms, allowing the reimbursement by the Guaranty Association from the Second Injury Fund would be circuitous action that is largely a meaningless exercise and a waste of resources that substantially originate from the same source. The General Assembly obviously did not intend to allow for such circuitous litigation that fosters only administrative inefficiencies. The Court of Appeals did not consider or address this additional point of statutory construction.

In sum, the applicable provisions of the Workers' Compensation Act and the Guaranty Association Act do not authorize the Guaranty Association to seek reimbursement from the

Second Injury Fund. The Guaranty Association is not an "insurer" or "carrier" under the Workers' Compensation Act which can pursue a claim for reimbursement. On certiorari review, this Court is respectfully requested to reverse the lower tribunals and rule that the reimbursement claim for benefits paid to Michael Quarles should be barred.

II. The South Carolina Court of Appeals erred in concluding that the Guaranty Association had "effectively" paid assessments to the Second Injury Fund and is therefore eligible to seek reimbursement from the Second Injury Fund.

As its second issue on appeal, the Fund contends that the Guaranty Association does not qualify as an "insurance carrier" to whom reimbursement may be made because the Guaranty Association does not pay any assessments to the Second Injury Fund. By explicit language, reimbursement from the Second Injury Fund is restricted to those employers and carriers which are current in the payment of those assessments. *See*, S.C. Code Ann. § 42-7-310(d)(2). As this language in the statutory scheme provides, because the Guaranty Association does not pay assessments, it cannot be eligible for reimbursement from the Second Injury Fund.[3]

The record is clear that the Guaranty Association pays no assessments to the Second Injury Fund. Nonetheless, the Court of Appeals ruled that "the Guaranty Association *effectively* paid assessments to the Fund via the assessments paid by its member insurers and is, thus, eligible to seek reimbursement from the Fund." Slip Op. at 8. (Emphasis added). The Court of Appeals made the same error as the lower tribunals. While it is true that workers' compensation member insurers of the Guaranty Association are sources of funding for the Second Injury Fund,

[3] It is worth noting that Section 42-7-320 also provides that "[i]nsurance carriers, self-insurers, and the State Accident Fund remain liable for Second Injury Fund assessments, as determined by the State Fiscal Accountability Authority, in order to pay accepted claims." S.C. Code Ann. § 42-7-320(B)(3). Again, in Section 42-7-320, the Guaranty Association is not identified as an entity responsible for paying assessments to cover the reimbursable claims.

those insurers are not paying those assessments *for or on behalf of* the Guaranty Association. They are paying those assessments because they individually qualify as “insurance carriers” which are statutorily responsible to pay assessments to the Second Injury Fund pursuant to Sections 42-7-310 and 42-7-320. There is no “effective” payment of assessments on behalf of the Guaranty Association, and nothing in the statutory scheme supports that conclusion. The "effective payments" rationale constitutes nothing more than a "legal fiction."

As its reasoning, the Court of Appeals explained that "there was no indication that any of the member insurers were delinquent in their payment of assessments to the Fund." Slip Op. at 8. With that statement, the Court of Appeals appears to suggest that the delinquency of a member controls whether the Guaranty Association is entitled to seek reimbursements. In other words, because the Guaranty Association's eligibility to seek reimbursement is tied to its members' conduct, presumably the failure of a member to pay its assessments would make the Guaranty Association ineligible to seek reimbursement. That is the logical end of the Court of Appeals' analysis, which thus shows the fallacy of the Court's ruling. The Guaranty Association should not be tied to the actions *or inactions* of its members – and certainly not without explicit direction from the General Assembly in that regard.

In short, the statutory scheme requires an "insurance carrier" to pay assessments to have a right to seek reimbursement. If the Guaranty Association is to be considered an "insurance carrier" under this statutory scheme, then it is required to meet all the requirements of the scheme, including the payment of assessments – and not by means of the legal fiction of "effective payments." The Guaranty Association pays no assessments to the Second Injury Fund, and as a result, it clearly is not entitled to seek reimbursement from the Fund.

III. The South Carolina Court of Appeals erred in ruling that the Quarles claim was not released based on the unambiguous language contained in the Settlement Agreement and Release entered between the Guaranty Association and the Second Injury Fund dated June 17, 2013.

As an additional basis for denying the Guaranty Association's claim for reimbursement from the Second Injury Fund, the Fund relies upon the Settlement Agreement and Release entered between the Guaranty Association and the Second Injury Fund dated June 17, 2013. (R. 258-271). The Fund contends that the current claim for reimbursement of workers' compensation benefits paid to Michael Quarles was included in that settlement, and thus, any liability by the Fund for reimbursement was fully released and extinguished.

Under South Carolina law, "[a] release is a contract, and the scope of a release is gathered by its terms." *Southern Glass & Plastics v. Duke*, 367 S.C. 421, 626 S.E.2d 19, 22 (Ct. App. 2005). "In construing a release, the court must seek to ascertain and give effect to the intention of the parties." *Id*. *See also, Bowers v. South Carolina Department of Transportation*, 360 S.C. 149, 600 S.E.2d 543 (Ct. App. 2004). "It is a question of law for the court whether the language of a contract is ambiguous." *Callawassie Island Members Club v. Dennis*, 425 S.C. 193, 821 S.E.2d 667, 669 (2018). The court "reads the contract or statute to determine if its meaning is clear and unambiguous." *Id*. "A contract is ambiguous when the terms of the contract are reasonably susceptible of more than one interpretation." *Id*.

The Commission, as affirmed by the Circuit Court, found that the Settlement Agreement and Release entered between the Guaranty Association and the Second Injury Fund dated June 17, 2013, was not ambiguous. The Commission ruled:

> Based on the plain, clear and unequivocal language contained therein and any reasonable construction thereof, the Settlement Agreement and Release entered between the Guaranty Association and the Second Injury Fund 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.

(R. 39). The Court of Appeals agreed that "the claim was not released based on the unambiguous language contained in the settlement agreement and release entered between the Guaranty Association and the Fund." Slip Op. at 10. Thus, the Court of Appeals also found that Release to be unambiguous.

However, the Court of Appeals made the very same mistake that the lower tribunals made. The Court of Appeals concluded that "the settlement and release applied only to those claims on which the Fund was paying the Guaranty Association as of February 22, 2013, and the Guaranty Association was not paying Quarles' claim as of that date." Slip Op. at 10. To reach that conclusion, the Court of Appeals deliberately -- and with no explanation -- read key language out of the release language and gave undue preference to a single modifying phrase in a series of co-equal modifying phrases.

The pertinent language from Paragraph 3 of the Settlement Agreement and Release reads as follows:

> ***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 which 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 Association Act) subsequent to the respective liquidations of the underlying carrier or carriers. It is the intent of the Guaranty Association that the SIF and its past, present or future officers, directors, trustees, fiduciaries,

> administrators, employees, agents, representatives, predecessors, successors and assigns, including, but not limited to, the State of South Carolina and its past, present or future officers, directors, trustees, fiduciaries, administrators, employees, agents, representatives, predecessors, successors and assigns ***shall never be liable to any other person or party, whether a private or governmental entity, asserting any claim for any additional sums of money***, including any reimbursements, attorneys' fees and/or other costs and expenses of litigation, with respect to the claims released herein.

(R. 262-263). (Emphasis added). Like the lower tribunals, the Court of Appeals focused only on the phrase, "on which the SIF is currently paying the Guaranty Association as of February 22, 2013," and concluded that any other claims that existed on that date or came into existence after that date were beyond the scope of the release. Ultimately, the Court of Appeals concluded that only claims already known to the Second Injury Fund and on which payments were being made as of February 22, 2013, fell within the scope of the release.

However, by interpreting that language in that limited manner, the Court of Appeals failed to apply the "broadest meaning" as the parties agreed was proper in Paragraph 7.[4] But more significantly, the Court of Appeals gave absolutely no effect to and effectively struck the additional modifiers of the word "claims" that followed, including "whether known or unknown, noticed or unnoticed, asserted or not asserted, accepted or not accepted, existing or potential." Those modifying terms demonstrate that claims that were not even known or existing as of February 22, 2013, as well as claims on which payments were not being made as of that date, were nonetheless intended to be included within the scope of the release. Otherwise, the language "whether known or unknown, noticed or unnoticed, asserted or not asserted, accepted

[4] Paragraph 7 of the Release provides: "As to the matters released herein, as set forth in paragraph numbered '3' above, the Parties agree that the terms of this Settlement Agreement and Release are to be given the ***broadest meaning*** such that the interpretation and construction do substantial justice to the intent of the Parties." (R. 265). (Emphasis added).

or not accepted, existing or potential" would be utterly meaningless. In other words, if limited to claims already being paid on February 22, 2013, those claims would obviously be "known," "asserted," "accepted" and "existing." What then could be the purpose of the modifiers "unknown," "not asserted," "not accepted," or "potential"?[5] Each of those terms would be superfluous, and yet, that is precisely how the Court of Appeals and the lower tribunals have read the release language. The Court of Appeals erroneously ignored many of the modifiers of the word "claims" which, when properly read together, brought the Quarles claim clearly and unambiguously within the scope of the Release.

As well established rules of construction require, the scope of the Release must be read to include all claims "whether known or unknown, noticed or unnoticed, asserted or not asserted, accepted or not accepted, existing or potential." That is the proper reading of the Release, and one that comports with the direction from this Court that "an interpretation that gives meaning to all parts of the contract is preferable to one which renders provisions in the contract meaningless or superfluous." *Stevens Aviation, Inc. v. DynCorp International LLC*, 407 S.C. 407, 756 S.E.2d 148, 153 (2014). As demonstrated, the operative language consists of a series of co-equal modifying phrases that describe the claims that are released. Not one of those modifying phrases should be made predominant or given greater effect than the others or should be applied to the exclusion of any of the others. In fact, all of those modifying phrases can and should be given equal effect. When the language is so construed, it demonstrates that the parties' intent was to

[5] In its briefs to the Court of Appeals, the Fund actually asked this very question: "What then could be the purpose of the modifiers 'unknown,' 'not asserted,' 'not accepted,' or 'potential'?" The Guaranty Association provides no answer. Likewise, the Court of Appeals provides no answer. In actuality, that question cannot be answered in such a way that allows the Guaranty Association to prevail. Instead, for the Guaranty Association to prevail, those additional modifiers must be ignored and read out of the agreement, which is precisely what has happened at each stage of this litigation.

release, among others, those claims that were "unknown," "not asserted," "not accepted," or "potential" at the time of the settlement. Contrary to the Court of Appeals' ruling, the released claims are not limited to claims already known to the Second Injury Fund and on which payments were being made by February 22, 2013.

In short, the Court of Appeals erred as a matter of law in reading key language entirely out of the Release. As a result, this Court is requested to issue a writ of certiorari in order that the Release may be construed as it was actually written and so that *all parts* of the Release – including each of the co-equal modifying phrases -- are given effect and meaning. Thus, the only proper reading of the Release requires the conclusion that the Quarles claim -- which was known to the parties at the time of execution -- was fully released by the prior settlement.

CONCLUSION

The South Carolina General Assembly has directed the winding down and closure of the Second Injury Fund. Therefore, it is of the utmost public importance that the Second Injury Fund expend its remaining funds only to reimburse those entities entitled by law to reimbursement. To fulfill that mandate, the Petitioner seeks to ensure that claims made by the Guaranty Association to the Second Injury Fund are legally reimbursable so that the remaining funds are legally disbursed and to avoid seeking further assessments that may very well not be legally justified or due. Moreover, the Petitioner is cognizant of the fact that the funds remaining in the Second Injury Fund (and any further assessments as may be necessitated) should not be used to benefit another governmental entity unless specifically authorized by law. This case will

thus have an impact on other claims made or to be made by the Guaranty Association for reimbursement.

For these reasons, the Petitioner Second Injury Fund Operations of the South Carolina Insurance Reserve Fund f/k/a South Carolina Second Injury Fund respectfully requests that this Court grant its petition for a writ of certiorari.

Respectfully submitted,

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