

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM CHESTERFIELD COUNTY

Paul M. Burch, Circuit Court Judge
Trial Court Case No.: 2012-CP-13-00362

Appellate Case No.: 2012-213511

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SC COURT OF APPEALS

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

v.

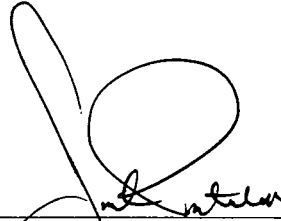
John F. Stroud & Sons, Inc. and
American Home Assurance Co.,.....Respondents

**MOTION TO ALLOW FILING OF MOTION
IN CIRCUIT COURT**

The Respondents, John F. Stroud & Sons, Inc. and American Home Assurance Co., by and through their undersigned counsel, hereby move the Court pursuant to Rule 240, SCACR to grant limited jurisdiction to the Chesterfield County Court of Common Pleas to allow Respondents to file a motion with that court to enter judgment and subsequent supplemental entries of judgments providing for interest pursuant to Rule 58, SCRPC and S.C. Code Ann. § 34-31-20 (1976). The Order of

the Honorable Paul M. Burch, Fourth Judicial Circuit Judge, granting reimbursement in Respondents' favor is attached to this Motion as Exhibit A and incorporated herein by reference.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jared M. Pretulak", written over a horizontal line.

Jared M. Pretulak (S.C. Bar No. 74884)
Gallivan, White & Boyd, P.A.
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Attorney for Respondents

May 3, 2013

Greenville, SC

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EXHIBIT A

STATE OF SOUTH CAROLINA)
 COUNTY OF CHESTERFIELD)
 South Carolina Second Injury Fund,
 Appellant,
 v.
 American Home Assurance Co.,
 Respondent,
 (In Re: John Stroud v. John F. Stroud & Sons,
 Inc.)

) IN THE COURT OF COMMON PLEAS
) OF THE FOURTH JUDICIAL CIRCUIT

Case Number: 2012-CP-13-00362

CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

*True Cost
 Judge D. Williams*

**ORDER AFFIRMING DECISION OF
 THE APPELLATE PANEL OF THE
 SOUTH CAROLINA WORKERS'
 COMPENSATION COMMISSION**

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 CLERK
 CHESTERFIELD COUNTY, S.C.

ORDER

This matter is before the Court on South Carolina Second Injury Fund’s (“the Fund”) appeal from the decision of the Appellate Panel of the South Carolina Workers’ Compensation Commission (“Appellate Panel”) finding that employer, John F. Stroud & Sons, Inc., and carrier, American Home Assurance Co., are entitled to full Second Injury Fund reimbursement for benefits paid or to be paid to the injured employee, John Stroud on the underlying workers’ compensation claim.

The parties presented oral arguments on September 17, 2012, at the Chesterfield County Courthouse. After hearing the arguments of counsel, reviewing the memoranda and other documents submitted to the Court, and the applicable authority, the Court hereby affirms the decision of the Appellate Panel as set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

Mr. Stroud sustained compensable work-related injuries on April 10, 2005, when the plane that he was piloting crashed during the course and scope of his employment. He suffered severe injuries to his left and right eyes, left and right legs, left hip, right arm, pelvis, vertebrae,

ribs, femur, face, ankle, lungs, pancreas, mesentery, and brain. Mr. Stroud filed a workers' compensation claim that was concluded by an award on September 5, 2008.

Employer and Respondent sought Second Injury Fund Reimbursement in accord with S.C. Code § 42-9-400, contending that they incurred substantially greater liability for medical costs, disability, and compensation based on prior permanent physical conditions of diabetes and brain damage combining with the April 10, 2005 plane crash injuries to result in permanent impairment equal to or in excess of seventy-eight weeks or more pursuant to § 42-9-400(d)(2), (28), and 34(b).

Commissioner G. Bryan Lyndon held a hearing on September 21, 2011, in Florence, South Carolina. The Commissioner's Decision and Order, filed October 20, 2011, found the claim reimbursable. On October 31, 2011, the Fund filed an Application for Full Commission Review of the Hearing Commissioner's Decision and Order. A hearing took place on March 19, 2012, and on May 22, 2012, the Appellate Panel affirmed the Decision and Order of the Appellate Panel.

The Fund now appeals the Appellate Panel's Decision and Order to this Court.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act ("APA") establishes the standard for judicial review of decisions by the Appellate Panel. *Frederick v. Wellman, Inc.*, 385 S.C. 8, 15-16, 682 S.E.2d 516, 519 (Ct. App. 2009); see *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 134-135, 276 S.E.2d 304, 306 (1981). Under the scope of review established by the APA, this Court may not substitute its judgment for that of the Appellate Panel as to the weight of the evidence on questions of fact, but may reverse or modify the Appellate Panel's decision if the appellant's

substantial rights have been prejudiced because the decision is affected by an error of law or is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Carolinas Recycling Group v. South Carolina Second Injury Fund*, No. 2010-166906, 2012 WL 2125280 at *2 (S.C. Ct. App. June 13, 2012); *see* S.C. Code § 1-23-380. Substantial evidence is defined as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion as the Appellate Panel. *Carolinas Recycling Group*, at *2 (citing *Lark*, 276 S.C. at 135, 276 S.E.2d at 306).

ANALYSIS

Reimbursement from the Fund for this April 10, 2005 injury is controlled by S.C. Code § 42-9-400(a), which states,

If an employee who has a permanent physical impairment... incurs a subsequent disability from injury by accident arising out of and in the course of his employment, resulting in compensation and medical liability or either, for disability that is substantially greater, by reason of the combined effects of the preexisting condition and subsequent injury or by reason of aggravation of the preexisting impairment, than that which would have resulted from the subsequent injury alone, ...such employer or his insurance carrier shall be reimbursed... for compensation and medical benefits.

S.C. Code § 42-9-400(a) (1985 & Supp. 2005).

The self-employed Mr. Stroud established that he had prior knowledge of his own impairments of diabetes and brain damage. Thereby, he is entitled to a presumption that those conditions are permanent physical impairments. S.C. Code § 42-9-400(d) (1985 & Supp. 2005).

The Fund argues that it did not concede Mr. Stroud established he had knowledge of his own diabetes and brain injury; that Mr. Stroud's concussion did not rise to the level of "brain damage;" and that although Mr. Stroud is entitled to a presumption of permanent physical impairment for his diabetes, the evidence rebuts this presumption. In reviewing the record as a

whole, this Court cannot hold that the Decision and Order of the Appellate Panel was clearly erroneous as to these findings. The Fund did not contest employer knowledge with regard to any of Mr. Stroud's preexisting impairments at the initial hearing before the Workers' Compensation Commission, and Mr. Stroud obviously knew of his own diabetes if not also his brain damage. In regard to the brain damage, the Appellate Panel was not clearly erroneous in concluding that Mr. Stroud's prior concussion could be termed "brain damage" as used in the statute, in view of the medical evidence presented to the Appellate Panel and the nature of concussions in themselves. The decision of the Appellate Panel was not clearly erroneous in holding that Mr. Stroud was entitled to a presumption of having prior permanent impairments, and it was also not clearly erroneous in concluding that the Fund did not rebut that presumption.

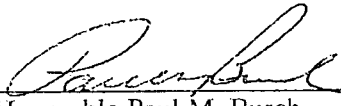
Furthermore, there is substantial evidence on the record that supports the Appellate Panel's Decision and Order that Mr. Stroud's plane crash injuries were substantially greater by reason of the combined effects of his preexisting condition and his plane crash injuries or by the plane crash's aggravation of his preexisting conditions than that which would have resulted from the subsequent injury alone. The medical narratives and medical questionnaires from Dr. Scott and Dr. Waid state that Mr. Stroud's diabetes combined with or was aggravated by the plane crash injuries to result in greater overall liability for the insurance carrier. Dr. Scott concluded that "because of the severity of [Mr. Stroud's] right knee injury, the subsequent deep tissue infection *and* [his] diabetes, there was no other salvage option other than the below-knee amputation of the right leg" (emphasis added). Medical records from Dr. Bosse likewise indicate that Mr. Stroud's preexisting diabetes contributed to him requiring amputation of his right leg after his work accident. A letter from Dr. Waid notes that Mr. Stroud's prior concussion rendered him at greater risk for increased impairment or a longer period of disability should he sustain

another brain injury, and specifically another injury within one year (Mr. Stroud's prior concussion occurred in July 2004 when a backhoe rolled over him, resulting in a loss of consciousness). Dr. Waid concluded, "[I]t is my opinion that... the manner in which [Mr. Stroud] sustained a concussion within a year prior to the accident of April 10th, 2005, served to render him with a greater disability; greater medical costs; as well as more significant disability with loss of time from employment capacities."

CONCLUSION

The Fund's substantial rights have not been prejudice because the decision of the Appellate Panel is not affected by an error of law and is not clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. Viewing the medical evidence as a whole, reasonable minds could reach the same conclusion as the Appellate Panel.

AFFIRMED.


The Honorable Paul M. Burch
Fourth Judicial Circuit

Chesterfield, South Carolina
October 11, 2012

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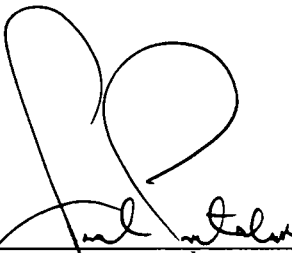
CERTIFICATE OF SERVICE

I do hereby certify that on the 3rd day of May, 2013, I served a copy of the **RESPONDENTS' MOTION TO ALLOW FILING OF MOTION IN LOWER COURT** upon the Clerk of Court for the South Carolina Court of Appeals, the attorney for the Appellant, and others as specified below, by placing a copy of the same in the United States Mail, with due and proper postage affixed thereto, to the following:

Latonya D. Edwards, Esq.
Dilligard Edwards, LLC
3790 Fernandina Road, Ste. 103
Columbia, SC 29210

The Honorable Faye Sellers
Clerk of the Circuit Court
Chesterfield County
200 W. Main Street
Chesterfield, SC 29709

Ms. Virginia L. Crocker
Judicial Director
S. C. Workers' Compensation Commission
P O Box 1715
Columbia, SC 29202



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May 3, 2013