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CIVIL LIABILITY

Defense Verdict Set Aside for Failure to Submit Issue of Last Clear Chance

Jeremy Scheffer, who worked at The Spirited Cyclist bicycle shop in Huntersville, used a black moped with a broken headlight as his primary means of transportation. Rather than have it repaired, he affixed a rechargeable bicycle light to the left handlebar, which caused the light to point to the left, rather than straight ahead.

When Scheffer drove away from the bicycle shop just after 6:30 pm on November 27, 2010, he headed north on Highway 115, wearing a gray helmet and non-reflective clothing, including a black leather jacket and chaps. At the same time, Nathaniel Dalton was operating his Honda Accord in the opposite direction. As he approached the highway's intersection with Steam Engine Drive, which is controlled by a traffic light, he slowed down, turned on his left turn signal, entered the left turn lane, and waited for an oncoming northbound vehicle to pass. Because the traffic light was green and he saw nothing behind it, Dalton did not come to a complete stop before he turned left, headed toward Steam Engine Drive. Having begun his turn before he was all the way into the intersection, his vehicle crossed the double yellow line into the northbound lane twenty-eight feet short of the painted stop line, where it was struck by Scheffer's moped.

Dalton later testified that he did not see Scheffer, a moped, or anything else travelling behind the

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northbound vehicle that passed by before he made his turn. An accident reconstructionist and the investigating officer calculated Dalton's speed prior to impact at slightly less than 6 or 7 miles per hour. The moped left thirty-four feet of skid marks prior to impact and the Accord left two feet of skid marks after Dalton slammed on his brakes following the collision.

Witness Kathryn Turner was traveling south on Highway 115. Slightly over a mile from the accident scene, she saw a "very, very faint little light" on the road ahead. It was not a headlight or fixed light, and she first saw it when it was only about two car lengths away. It was very dark that evening and she had "no idea" what the light was. After passing it, she looked in her rearview mirror and saw nothing.

Another witness, James Cockrell, stopped his vehicle at the intersection of Highway 115 and Faith Road, three tenths of mile south of the highway's intersection with Steam Engine Road. He saw a northbound car approaching, waited for it to pass, and saw no lights or vehicles behind it. He began to turn right onto the highway, headed north, when "a streak went by me, and I thought it was a motorcycle." Certain that he did not see any lights on the streaking vehicle, he estimated its speed at forty to forty-five miles per hour, "maybe faster."

The specifications for Scheffer's moped state that its top speed is twenty-seven miles per hour. An accident reconstruction specialist hired by the Scheffer estate after Jeremy was fatally injured in the accident opined that immediately prior to the collision, he was operating the moped at a speed of not less than nineteen miles per hour and no more than thirty-two miles per hour.

Scheffer would often charge the battery of the bicycle light, which was not intended for use on a motorized vehicle, at the bicycle shop. The light was inoperable following the accident and no physical evidence showed whether its battery remained charged or was either operating or on at the time of the collision.

Scheffer's estate filed a wrongful death action against Dalton, whose answer included a plea of contributory negligence. The estate's reply denied contributory negligence and pled last clear chance. At trial, the court denied the estate's motion for directed verdict on the issue of contributory negligence and declined to instruct the jury on last clear chance, reasoning that Dalton could not have had the last clear chance to avoid the collision because "all the evidence shows that [he] never saw [Scheffer]." After the jury found both parties negligent and denied the estate's alternative motions for judgment notwithstanding the verdict or a new trial, the estate gave notice of appeal.

On October 20, in *Scheffer v. Dalton*, the Court of Appeals found no merit in the estate's argument that the trial court erred when it allowed the defense to introduce into evidence an accident report in which the section pertaining to Scheffer's drug and alcohol use was redacted, but the corresponding section for Dalton, which showed no drug or alcohol use, was not.

In response to the estate's argument that allowing the accident report to be introduced into evidence raised a presumption that Scheffer was guilty of alcohol or drug use, the Court observed that Dalton's use or non-use of alcohol was a relevant issue, and while relevant evidence may be excluded under Rule 403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury," the standard of review for Rule 403 determinations is "abuse of discretion," with the burden being on the appellant to not only show error, but also that he was prejudiced and "a different result would have likely ensued had the error not occurred." Because the report in question was admitted into evidence without objection and the investigating officer's trial testimony was similar to the report's contents, the Court found that the estate failed to meet its burden of showing that the trial court's admission of the partially redacted accident report was prejudicial.

Similarly, the Court found no merit in the estate's contention that the trial court erred when it submitted the issue of contributory negligence to the jury because "[i]n determining the sufficiency of the evidence to justify the submission of an issue of contributory negligence to the jury, [the appellate court] must consider the evidence *in the light most favorable to the defendant and disregard that which is favorable to the plaintiff*." As a consequence, "[i]f there is more than a scintilla of evidence that plaintiff is contributorily negligent, the issue is a matter for the jury, not for the trial court." Applying those observations to the evidence offered by the parties in this case, the Court found that Dalton's testimony and that of witnesses Turner and Cockrell *required* the trial court to submit contributory negligence as an issue for the jury to decide.

At the same time, however, the Court found error in the trial court's handling of the issue of last clear chance because, as with contributory negligence, it *must* be submitted if the evidence, when viewed in the light most favorable to the non-moving party, "will support a reasonable inference of each essential element of the doctrine." While the burden was on the estate to establish that it was applicable, the Court found that if the evidence of record were viewed in the light most favorable to the estate, it satisfied the doctrine's four essential elements, *i.e.*, (1) plaintiff negligently placed himself in a position of peril from which he could not escape in the exercise of reasonable care; (2) defendant knew, or should have discovered, plaintiff's perilous position; (3) he had the time and means to avoid injury to the endangered plaintiff; and (4) he failed to use the available time and means to avoid injuring him.

That being the case, while it was not error for the trial court to allow the partially redacted accident report into evidence, nor did it err when it submitted the issue of contributory negligence to the jury, it should have allowed the jury to determine whether Dalton had the last clear chance to avoid the accident in which Jeremy Scheffer was fatally injured.

Interlocutory Appeal Dismissed

Because Travis and Ashley Worlock did not pay the bill they received from Dewey Wright Well and Pump Company ("Wright") for the well it drilled on their property, Wright sued them and David Taylor, who the drilling contract described as their "agent." After a series of motions and other pleadings, and the entry and setting aside of two default judgments, the trial court concluded that it did not have personal jurisdiction over Taylor and dismissed him, denied the Worlocks' motion for summary judgment, and set the case for trial. The Worlocks appealed.

On October 20, in *Dewey Wright Well and Pump Company, Inc. v. Worlock*, the Court of Appeals found that the trial court's order denying the Worlock's motion for summary judgment was *not* a final judgment. Therefore, their appeal was interlocutory, and generally there is no right of immediate appeal from an interlocutory order. However, the Court continued, a trial court order *would* be immediately appealable if it "deprives the appellant of a substantial right which would be lost without immediate review," such as when the possibility of inconsistent verdicts exists.

In the present case, while the trial court order dismissing Taylor was a final determination of Wright's claim against him, it was based on a lack of personal jurisdiction, not the merits of the underlying claim. As a consequence, there was no possibility of inconsistent verdicts. And, since the Worlocks did not demonstrate how the trial court's interlocutory order affected a substantial right, the Court lacked jurisdiction to review their appeal, so it was dismissed.

Complaint Fails to Allege Bad Faith Sufficient to Overcome Statutory Immunity

Ophthalmologist Dr. William Shannon had been on the medical staff at Gaston Memorial Hospital for thirty years when it temporarily suspended his hospital privileges and requested that he undergo a comprehensive neuropsychiatric

assessment to determine whether he had any physical, psychiatric, emotional, substance abuse, or personal health issues that might have contributed to two “patient incidents.”

After he was evaluated by a psychologist and psychiatrist, the hospital referred Dr. Shannon to the North Carolina Physicians Health Program (“NCPHP”) and he had a two hour meeting with Bob Testen, a consultant and licensed clinical social worker for NCPHP, and Joseph Jordan, an NCPHP counselor and employee. While their “initial assessment” letter, which they sent to the hospital and North Carolina Medical Board, stated that he was “cooperative and forthcoming” and had no alcohol, substance abuse, or legal issues, nor a history of psychiatric illness, it contained a recommendation that Dr. Shannon obtain further professional evaluation.

After the hospital informed Dr. Shannon that his staff privileges would not be reinstated, he surrendered his license to the Medical Board and sued Testen, Jordan, and the NCPHP on grounds that Testen and Jordan were negligent in performing their evaluation and NCPHP was vicariously liable as their employer. The defendants responded with a Rule 12(b)(6) motion to dismiss, arguing that they were immune from suit under N.C.G.S. § 90-21.22(f). The trial court agreed and Dr. Shannon appealed.

On October 6, in *Shannon v. Testen*, the Court of Appeals found that N.C.G.S. § 90-21.22 provides immunity for participants where “peer review activities [are] conducted in good faith.” And, it continued, to allege bad faith, a complaint “must do more than allege mere negligence.” It requires a showing of “intentional dishonesty or a wrongful motive” and “implies a false motive or a false purpose, and hence ... is a species of fraudulent conduct.” While acknowledging the distinction between bad faith and fraud, the Court found that “for all practical purposes bad faith usually hunts in the fraud pack.”

In the present case, Dr. Shannon’s complaint did not allege bad faith. In fact, it did not even

contain a conclusory allegation that the defendants acted in bad faith. Indeed, its allegations “read like a run-of-the-mill negligence claim.” While Dr. Shannon argued that willfulness should be inferred from carelessness, the Court found that doing so “would set aside the distinction between negligence and bad faith.” And, since bad faith was a “necessary step in overcoming the legal immunity afforded by N.C. Gen. Stat. § 90-21.22(f),” the complaint failed to state a claim upon which relief could be granted.

Parol Evidence Rule Not Applicable to Testimony Regarding Oral Agreement

Monica Little had already been employed by Employment Staffing Group (“ESG”) for twelve years when she signed an Employment Agreement containing a covenant not to compete that prohibited her from working for competing businesses within 50 miles of ESG’s base locations for a year after her employment ended. It also contained a two-year prohibition against soliciting ESG’s customers. Although the agreement did not mention consideration, ESG’s HR director told Little she would receive \$100 for signing it, and the company subsequently made a direct deposit of \$100 into her bank account.

Shortly after the Employment Agreement was executed, ESG sued Little and moved for a preliminary injunction, claiming that she breached the agreement by going to work for a competitor and soliciting ESG’s customers. After concluding that there was a “reasonable likelihood” ESG would prevail, the trial court entered an order enjoining Little from “attempting to compete with ESG in the staffing service industry” or soliciting ESG’s customers, and Little appealed.

On October 6, in *Employment Staffing Group, Inc. v. Little*, the first issue the Court of Appeals addressed was the interlocutory nature of Little’s appeal. After acknowledging the general rule that an order granting a preliminary injunction

cannot be appealed prior to entry of a final judgment unless the appellant has been deprived of a substantial right, it found that in *Copypro, Inc. v. Musgrove*, __ N.C. __ (2014), the Supreme Court applied a different rule to situations in which “time is of the essence” and “the appellate process is not the procedural mechanism best suited for resolving the dispute.” And, because it concluded that the present case “presents a time-sensitive issue as to both Plaintiff’s and Defendant’s rights under the Employment Agreement and has a substantial effect on their livelihoods,” the Court chose to address the merits of Little’s appeal.

It then quoted the guidance the Supreme Court provided in *A.E.P. Industries, Inc. v. McClure*, 308 N.C. 393 (1983) for when it is appropriate to issue a preliminary injunction: “[a]s a general rule, a preliminary injunction is an extraordinary measure taken by a court to preserve the status quo of the parties during litigation. It will be issued only (1) if a plaintiff is able to show *likelihood* of success on the merits of [her] case and (2) ... [she] is likely to sustain irreparable loss unless the injunction is issued, or if, in the opinion of the Court, issuance is necessary for the protection of a plaintiff’s rights during the course of litigation.”

Little’s argument on appeal was that ESG’s claim was not likely to succeed because, when an employment already exists, a subsequent covenant not to compete must be accompanied by “new consideration,” and the \$100 paid to her by ESG was “illusory,” since it was not mentioned in the Employment Agreement. She also stressed the significance of the agreement’s “merger clause,” which stated that “[t]his agreement embodies the entire agreement of the parties relating to the subject matter.” However, while the Court agreed that merger clauses are “designed to effectuate the policies of the Parol Evidence Rule” by barring the admission of evidence inconsistent with the terms of a writing, parol evidence of the consideration paid in the present case was *not* inconsistent with the terms

of the Employment Agreement. Rather, it was like the evidence in *Phelps-Dickson Builders, LLC v. Amerimann Partners*, 172 N.C. App. 427 (2005), in which the Court held that while the parol evidence rule “applies where the writing totally integrates all the terms of a contract,” “[t]he rule is otherwise where it is shown that the writing is not a full integration of the terms of the contract.... [T]erms not included in the writing may then be shown by parol.”

Here, the Employment Agreement was silent as to consideration, an element the Court found to be “necessary to form a binding non-compete agreement,” but one that was not precluded by any provision in the parties’ agreement. Therefore, since ESG’s non-compete covenant was not “fully integrated,” and as the merger clause and parol evidence rule did not prohibit the trial court from considering ESG’s evidence of the “missing essential term of consideration,” the Court overruled Little’s argument that the consideration ESG paid to her was “illusory.”

Nor was the Court persuaded by her alternative argument that the consideration she received from ESG was *inadequate*, as “[o]ur Courts have generally not evaluated the adequacy of the consideration for a non-competition agreement entered into after the employment relationship already exists, considering the parties to be the judges of the adequacy of the consideration.” Therefore, the Court affirmed the trial court’s order granting ESG’s motion for preliminary injunction.

[Foreign Judgment Taxing Attorney’s Fee Against Losing Party Recognized](#)

Julie Anne Zelent moved from England to Scotland in 2006. She met Alan Savage that same year and they began cohabiting that September. After temporarily separating the following August, they resumed their relationship in 2008, but permanently separated that October. She later moved to Carteret County, North Carolina.

Zelent sued Savage in Scotland in 2011, alleging that she had sustained an “economic disadvantage” as a result of their relationship, for which she was entitled to financial contribution under Scotland’s Family Law Act of 2006. However, at the conclusion of a seven-day trial, the presiding judge found that she was not entitled to a recovery from Savage, and she chose not to appeal.

A hearing was subsequently held to determine whether Savage should be reimbursed for the legal costs he incurred defending Zelent’s “economic disadvantage” claim. She received notice of the hearing and responded to his reimbursement claim by email, but chose not to attend the hearing. The judge ruled that Savage *was* entitled to be reimbursed, in an amount to be determined by the Auditor of Court. A hearing was held for that purpose and, again, Zelent chose not to attend. The Auditor awarded £148,516.75 and his award was subsequently approved by the judge. Zelent neither appealed nor paid the judgment.

Savage brought suit on the Scottish judgment in Carteret County Superior Court and Zelent moved to dismiss under Rule 12(b)(6), but her motion denied. Savage then filed a “Motion to Recognize a Foreign-Country Money Judgment,” which was granted, and Zelent appealed, contending that the trial court erred in (1) recognizing the Scottish judgment and (2) failing to find that it was “fundamentally unfair” and “repugnant to North Carolina public policy.”

On October 20, in *Savage v. Zelent*, the Court of Appeals affirmed. While it agreed with Zelent that the Foreign-Country Money Judgments Recognition Act excludes judgments for “alimony, support, or maintenance in matrimonial or family matters” from those foreign judgments entitled to recognition in North Carolina, the Scottish judgment in this case did not fall in that category. Because the Court was obligated to accord the term “judgment” its “plain and definite meaning,” it

found that the Scottish judgment in this case was a judgment for attorneys’ fees and costs, not one for alimony, support, or maintenance. Therefore, it was not error for the trial court to conclude that it the Scottish judgment was “not a judgment for support in family matters.”

Nor was the Court persuaded by Zelent’s alternative argument that the Scottish judgment was “fundamentally unfair.” Having “invoked the jurisdiction of the Scottish court and availed herself of the procedures and processes applicable to her case” and having failed to avail herself of the process and procedures available to her for appealing its resolution, the Court concluded that she “should be precluded from arguing the integrity and fairness of the very system she chose to litigate her claims.”

Likewise, it found no merit in Zelent’s contention that the proceeding under which Savage obtained the judgment at issue was “repugnant to the public policy of North Carolina” and in violation of N.C.G.S. § 1C-1853 because the key factor under all North Carolina attorney fee statutes is “reasonableness,” whereas Scotland applies a different standard. As that there is a “stringent” test for finding a public policy violation under the statute, the Court held that “a difference in law, even a marked one, is not sufficient to raise a public policy issue.” Therefore, the trial court did not err when it rejected Zelent’s contention that the Scottish court’s judgment was repugnant to the public policy of North Carolina.

Additional Opinion

On October 20, in *Miller v. Miller*, a domestic dispute involving issues of post-separation support, alimony, and equitable distribution, in which the trial court excluded the report of the defendant wife’s expert witness concerning the value of the plaintiff husband’s business under Rule of Evidence 702, the Court of Appeals held that trial courts have “wide latitude of discretion when making a determination about the admissibility of expert testimony” and their

decisions will only be reversed for an abuse of discretion. Because the expert's report in this case relied on incorrect data and contained material errors, the Court found it "unreliable." Therefore, the trial court did not abuse its discretion when it excluded the report from evidence.

WORKERS' COMPENSATION

Parsons Presumption Applied to Anxiety and Depression Claim

Johnnie Wilkes, a landscaper for the City of Greenville, was injured when a third party ran a red light and collided with his truck. The force of the collision caused the truck to hit a tree, breaking its windshield and deploying its airbags. He was taken to Pitt County Memorial Hospital, where he underwent a brain MRI and was treated for neck, back, pelvis, and hip injuries.

While the City admitted Wilkes' entitlement to compensation on a Form 60 for injuries to his "ribs, neck, legs and entire left side," a question later arose as to the extent of his disability and whether there was a causal connection between the accident and his need to be treated for anxiety and depression.

Deputy Commissioner Mary Vilas found Wilkes capable of some work, but she nevertheless concluded that he was entitled to temporary total disability benefits because it would be "futile" for him to seek work due to "his age [62], full-scale IQ of 65, educational level and reading capacity at grade level 2.6, previous work history of manual labor jobs, and his physical conditions resulting from his ... compensable injury."

The defendants appealed and the Full Commission reversed, finding that Wilkes had failed to prove that his anxiety and depression were caused by the work-related accident and that a job search would be futile. Wilkes appealed.

On October 6, in *Wilkes v. City of Greenville*, the Court of Appeals held that the Full Commission should have applied the "*Parsons* presumption" to the question of whether Wilkes' treatment for anxiety and depression was causally connected to his admittedly compensable injury by accident. Quoting from *Parsons v. Pantry, Inc.*, 126 N.C. App. 540 (1997), the Court found that once an injured worker initially establishes a causal relationship between his injury and an accident at work, a presumption arises that "additional medical treatment is directly related to the compensable injury." And, the Court continued, that presumption arises not only when the initial determination of compensability is made in an opinion and award, but "also when the employer makes an admission of compensability by filing a Form 60," as in the present case.

While the City argued that Wilkes was not entitled to the *Parsons* presumption because it had only admitted the compensability of injuries to his "ribs, neck, legs and entire left side," not his complaints of anxiety and depression, the Court found that "our caselaw since *Perez v. American Airlines/AMR Corp.*, 174 N.C. App. 128 (2005)] has made clear that the *Parsons* presumption applies even where the injury or symptoms for which additional medical treatment is being sought is not the precise injury originally deemed compensable."

In support of its holding in that regard, the Court cited *Carr v. Department of Health & Human Services (Caswell Center)*, 218 N.C. App. 151 (2012), in which the injured worker sought treatment for a neck problem after her employer admitted the compensability of a hand injury, and the Court rejected the defendants' argument that "the *Parsons* presumption does not apply when plaintiff's injury is a wholly different injury from the one accepted on the Form 60."

In the present case, the Court found that it was "evident from the Opinion and Award that the Commission did not apply the rebuttable presumption under *Parsons* to Plaintiff's

psychological symptoms and instead kept the burden on Plaintiff to demonstrate causation despite Defendant's prior admission of compensability in the Form 60." Citing *Parsons*, *Perez*, and *Carr* as authority, it found the Commission's Opinion and Award to be "a misapplication of the law," so it remanded the case back to the Commission to "apply the *Parsons* presumption and then make a new determination as to whether Plaintiff's psychological symptoms are causally related to the 21 April 2010 injury."

The Court also found error in the Commission's conclusion that Wilkes was no longer entitled to temporary total disability benefits. Citing *Hilliard v. Apex Cabinet Co.*, 305 N.C. 593 (1982) and *Russell v. Lowes Product Distribution*, 108 N.C. App. 762 (1993) as authority, it defined "disability" as "incapacity because of injury to earn the wages which the employee was receiving at the time of injury in the same or any other employment" and held that once an employee has met his initial burden of production under *Russell*, "the burden shifts to the employer to rebut the evidence of disability by demonstrating 'not only that suitable jobs are available, but that the plaintiff is capable of getting one, taking into account both physical and vocational limitations.'"

While the Commission concluded that Wilkes failed to demonstrate that he had engaged in a reasonable job search and that he "presented insufficient evidence that a job search would be futile," the Court reached its own conclusion in that regard, finding that Wilkes "(1) was 60 years old ...; (2) had been employed as a landscaper with Defendant since 2001; (3) had been employed in medium and heavy labor positions throughout his entire adult life; (4) attended school until the tenth grade; (5) was physically incapable of performing his former job as a landscaper/laborer; (6) has 'difficulty reading and comprehending' written material ...; and (7) has 'an IQ of 65, putting him in the impaired range.'" Citing *Peoples v. Cone Mills*, 316 N.C.

426 (1986) and *Johnson v. City of Winston-Salem*, 188 N.C. App. 383 (2008), the Court found that "Plaintiff demonstrated the futility of engaging in a job search" and held that the Full Commission erred when it ruled that he was not temporarily totally disabled.

Asbestosis Claims Not Covered by North Carolina Self-Insurance Security Association

Clegg Lee Joines worked for Fieldcrest Cannon from 1941 until September 1986. One of his fellow workers between 1972 and January 1974 was Dorothy Jane Ketchie. Both developed asbestos-related diseases and filed claims for workers' compensation benefits in 2009. In each case, their last injurious exposure occurred prior to October 1, 1986, when the Legislature formed the North Carolina Self-Insurance Security Association to provide a mechanism for paying "covered claims against member self-insurers" that become insolvent and are unable to pay their workers' compensation claims.

Fieldcrest, which later became a subsidiary of Pillowtex Corporation, was a member of the Security Association until it purchased workers' compensation insurance in December 1997. Pillowtex filed for bankruptcy in 2000 and subsequently defaulted on its payment obligations in a series of claims that arose while it was self-insured. Some, including those of Joines and Ketchie, whose asbestos-related conditions were not diagnosed until after Pillowtex filed its bankruptcy petition, arose before Fieldcrest joined the Security Association. For that reason, the Association took the position that it did not owe benefits to either Joines or Ketchie.

The Full Commission concluded that the language of the relevant statute, N.C.G.S. § 97-130(4), was "plain and unambiguous and statutorily excluded both [Joines' and Ketchie's] claims because 'covered claims' only includes those claims that relate to an injury that occurred while the employer was a member of the Security Association." Joines and Ketchie appealed.

On October 6, in *Ketchie v. Fieldcrest Cannon, Inc.*, the Court of Appeals affirmed. It held that “[t]he plain language of sections 97-130 and 97-131 restricts the scope of compensation to those claims that arise while a self-insured company is both (1) insolvent and (2) a member of the Security Association. Thus, the only claims that the Security Association would be obligated to pay on behalf of Fieldcrest are those that ‘relate to an injury’ that occurred – or in this case, relate to an occupational disease where the last injurious exposure occurred – while Fieldcrest was a member of the Security Association. Because the Security Association was not created until 1 October 1986, a date after each of Plaintiffs’-Appellants’ last injurious exposure to asbestos occurred, these claims do not constitute ‘covered claims’ within the scope of the statutes.”

The Court was not persuaded by plaintiffs’ argument that because the General Assembly used the word “injury” in the statute, while theirs were *occupational disease* claims, the result should be different, finding that “[t]his argument fails because section 97-52 (2013) of the Workers’ Compensation Act provides that the disablement or death from an occupational disease ‘shall be treated as the happening of an injury by accident.’ Thus, the General Assembly’s use of the word ‘injury’ necessarily included any claims for occupational disease.”

It also found no merit in plaintiffs’ argument that the intent of the General Assembly was that “all

claims arising due to an insolvency whether before or after 1986 would be paid by the Security Association.” That argument, the Court found, “completely disregards[s] the plain language of the original version of section 97-131(b)(2),” which provided that “claims relating to a compensable event that occurred prior to the date the self-insurer joined the Association are not included hereunder.” Therefore, the Full Commission did not err when it concluded that plaintiffs’ were not “covered claims” for the purpose of creating Security Association liability.

The full text of the appellate decisions summarized in this newsletter can be found at www.nccourts.org.

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