

## Money Matters: Workers' Comp Case involving Failure to Prove Lost Wages



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### Practice Areas:

- Workers' Compensation
- Professional Liability

### Occupational Disease Claim Barred Where Claimant Failed to Prove Lost Wages

Skinner v. Westinghouse, Op. No. 27037, South Carolina Supreme Court, filed September 6, 2011

In this appeal from a finding of the special referee, the S.C. Supreme Court addressed whether § 42-11-60 of the Workers' Compensation Act bars a claimant with pulmonary disease who did not suffer lost wages from recovering benefits.

The claimant worked for Westinghouse for 15 years, during which he was exposed to asbestos dust and other toxic chemicals. He left Westinghouse to work full time for the National Guard, earning more money. The claimant ultimately developed COPD and asbestosis. He filed a claim for workers' compensation benefits in 2004, alleging accidental injury to his lungs and whole body. At the time of filing his claim, the claimant still worked full time for the National Guard. The Commissioner awarded benefits under § 42-9-30. The Appellate Panel and ultimately a special referee affirmed the award.

The Supreme Court closely examined § 42-11-60, finding recovery under that statute requires a showing of lost wages under § 42-9-10 or § 42-9-20 [the "general disability statutes"]<sup>[1]</sup> and is not compensable under § 42-9-30. Although the claimant established "without question" he suffered from an occupational disease, the Court reversed the original decision, holding the claim was not compensable because claimant failed to prove wage loss as required by § 42-11-60.

**Practice Point:** In cases involving pulmonary disease, keep in mind a claimant cannot recover for injury alone. He or she must establish total or partial wage loss for the claim to be found compensable.

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[1] "It is well-settled that an award under the general disability statutes must be predicated upon a showing of a loss of earning capacity, whereas an award under the scheduled loss statute does not require such a showing." Skinner, p. 4 (citing Fields v. Owens Corning Fiberglas, 301 S.C. 554, 555, 393 S.E. 2d 172, 173 (1990)).

## **About Anne Marie Hempy**

Anne Marie Hempy is an associate practicing in the areas of Workers' Compensation and Defense Litigation. While in law school, Anne Marie worked as a law clerk for Collins & Lacy and served as an Articles Editor for the South Carolina Law Review. Prior to joining Collins & Lacy as an associate, Anne Marie served as a law clerk to the Honorable G. Ross Anderson, Jr., United States District Court, District of South Carolina and worked for a defense firm, where she practiced in the area of Professional Liability Defense.

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