

No. _____

IN THE

Supreme Court of the United States

ROBERT LAPoint,

Petitioner,

—v.—

COMMERCE & INDUSTRY INSURANCE COMPANY

and STEPHENS TPS, INC.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE STATE OF LOUISIANA COURT OF APPEAL, THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

AARON J. BROUSSARD

Counsel of Record

BROUSSARD & WILLIAMSON, LLC

1301 Common Street

Lake Charles, Louisiana 70601

(337) 439-2450

aaron@broussardwilliamson.com

Counsel for Petitioner

QUESTION PRESENTED

After a claim is dismissed as unenforceable under one State's law, does the full faith and credit clause preclude enforcement of the same claim in another State?

PARTIES TO THE PROCEEDING

Petitioner Robert LaPoint, (deceased and represented by his heirs, Katelyn LaPoint, Ashlyn LaPoint, and Chelsea LaPoint), was defendant in the Louisiana Workers' Compensation Court; appellant in the Louisiana Third Circuit Court of Appeal; and respondent in the Louisiana Supreme Court.

Respondents Stephens TPS, Inc. and Commerce & Industry Insurance Company were plaintiffs in the Louisiana Workers' Compensation Court; appellee in the Louisiana Third Circuit Court of Appeal; and applicant in the Louisiana Supreme Court

RULE 29.6 DISCLOSURE

Petitioner is not a corporate entity.

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**PETITION FOR
A WRIT OF CERTIORARI**

Petitioner Robert LaPoint (deceased and represented by his heirs, Katelyn LaPoint, Ashlyn LaPoint, and Chelsea LaPoint) respectfully petitions for a writ of certiorari to review the judgment of the Louisiana Supreme Court.

OPINIONS BELOW

The opinion of the Louisiana Supreme Court (App. 3a-5a) is reported at 328 So. 3d 64. The opinion of the Louisiana Third Circuit Court of Appeals (App. 6a-37a) is reported at 323 So. 3d 428. The opinion of the Louisiana Office of Workers Compensation Office (App. 38a-43a) is not reported. The judgment of the Georgia District Court (App. 54a-56a) is not reported.

JURISDICTION

The opinion of the Louisiana Supreme Court was issued on November 23, 2021 (App. 3a-5a). A timely filed petition for rehearing was denied on January 26, 2022. (App. 1a, 2a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

**STATUTORY AND REGULATORY
PROVISIONS INVOLVED**

U.S. Const. art. IV, § 1
28 U.S.C. § 1738
O.C.G.A. § 34-9-11.1(b)
O.C.G.A. § 15-7-4
Ga. Const. Art. VI, §4.

STATEMENT OF THE CASE

In Georgia, employers are precluded from asserting workers compensation reimbursement claims arising from benefits paid under another State's law. The question in this case is whether the full faith and credit clause precludes enforcement of these claims after they have been asserted and dismissed in Georgia.

In *Angel v. Bullington*, 330 U.S. 183 (1947) this Court ruled that the dismissal of a claim as unenforceable precluded a subsequent suit on the same claim in a different court within the same State. The full faith and credit clause was implicated because the original judgment was issued by a State court and the second in referral court. The reasoning applied in *Angel v. Bullington* points to preclusion in this case based on res judicata, even though no remedy was afforded in the first action.

However, in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) this Court held that a final Virginia court judgment awarding workers compensation benefits did not preclude a second workers compensation claim for the same injury in the District of Columbia. Although this case involves a reimbursement claim, not a workers compensation claim, this Court held in *Thomas* that States are not required by the full faith and credit clause to subordinate their compensation laws to those of another State. The facts of this case bring *Angel* and *Thomas* into conflict.

Stephens TPS (TPS) is a traveling sand-blasting company. While working in Louisiana, TPS hired Robert LaPoint as a laborer. When the Louisiana job

was over, TPS moved to their next job in Georgia and Mr. LaPoint went along.

LaPoint was badly injured on the job in Georgia when a tractor-trailer ran over the lower half of his body. TPS was insured for workers compensation by Commerce & Industry Insurance Company (Commerce). Commerce initially paid workers' compensation benefits under Georgia law. Then LaPoint's benefits were switched to the Louisiana system.

LaPoint filed a tort suit in Georgia against the driver of the tractor-trailer. TPS and Commerce intervened in the Georgia lawsuit to recover all workers' compensation benefits paid to LaPoint up to the time of any recovery. (App. 50a). (TPS and Commerce are referred to collectively as "TPS" below). LaPoint settled his claim against the truck driver at mediation. However, LaPoint and TPS could not agree on whether Georgia or Louisiana law controlled TPS's right to reimbursement of the benefits paid to LaPoint. The parties agreed to set the disputed funds of \$863,695.00 aside and litigate the issue. (App. 134a-144a).

LaPoint filed a Motion for Summary Judgment in the pending Georgia suit, to which TPS was already a party as a result of their intervention seeking reimbursement. LaPoint argued that Georgia law controlled TPS's right to reimbursement for all benefits paid under both the Georgia and Louisiana law. TPS opposed the Motion and argued that Louisiana law controlled TPS's right to reimbursement for benefits paid under the Louisiana Workers Compensation Act. And, inconsistent with their intervention for reimbursement of all benefits paid to LaPoint, TPS argued the Georgia court lacked

jurisdiction to decide their claim for reimbursement of benefits paid under Louisiana law. (App. 72a-85a).

While the Motion for Summary Judgment on TPS's reimbursement claim was pending in Georgia, TPS filed suit in the Louisiana Office of Workers Compensation seeking reimbursement of benefits paid to LaPoint under the Louisiana Workers Compensation Act. (App. 152a-161a). This claim was encompassed by and duplicative of TPS's intervention in Georgia for reimbursement of all benefits paid to LaPoint.

The Georgia court ruled first and made three findings: (1) although the ruling does not contain the word "jurisdiction," the court found it had the power to rule on TPS's Louisiana reimbursement claim; (2) Georgia law controlled TPS's entire reimbursement claim, irrespective of whether the benefits were paid under Georgia or Louisiana law; (3) because Georgia law does not enforce workers compensation reimbursement claims arising under another State's law, the court dismissed TPS's reimbursement claim for benefits paid under Louisiana law. (App. 54a-56a). TPS did not appeal. The Georgia court's judgment was made executory in Louisiana and given full faith and credit by judgment in the Louisiana 14th Judicial District Court dated November 6, 2017. (App. 162a-165a).

Back in Louisiana, the workers compensation administrative law judge ruled the opposite of the Georgia court, applying Louisiana law instead of Georgia law resulting in an award to TPS of \$570,941.00. (App. 38a-43a).

LaPoint appealed to Louisiana Third Circuit Court of Appeal and filed an Exception of Res Judicata based on the full faith and credit clause. (App. 114a-

120a). (Res Judicata may be raised at the appellate level for the first time under Louisiana law. LaPoint filed a related exception of *lis pendens* in the Office of Workers Compensation, but the exception was never heard). By unanimous vote, the court of appeal sustained the Exception of Res Judicata as to TPS's reimbursement claim, finding the Georgia judgment constituted res judicata as to TPS's entire reimbursement claim: "Given the final and preclusive effect of the Georgia court's ruling, we conclude that the workers' compensation judge erroneously rendered judgment awarding reimbursement from Mr. LaPoint's tort recovery...." (App. 32a). *LaPoint v. Com. & Indus. Ins. Co.*, 2020-388 (La. App. 3 Cir. 6/9/21), 323 So. 3d 428, 442, writ granted, judgment vacated, 2021-00995 (La. 11/23/21), 328 So. 3d 64, reh'g denied, 2021-00995 (La. 1/26/22), 331 So. 3d 928.

TPS filed a writ application at the Louisiana Supreme Court. Without oral argument, the court issued a half-page *per curiam* opinion reversing the appellate court. (App. 3a-5a). *LaPoint v. Com. & Indus. Ins. Co.*, 2021-00995 (La. 11/23/21), 328 So. 3d 64, reh'g denied, 2021-00995 (La. 1/26/22), 331 So. 3d 928. Because Georgia law does not recognize or enforce workers compensation claims arising under another State's law, the Louisiana Supreme Court found the Georgia court "lacked jurisdiction" to decide TPS's Louisiana reimbursement claim. Therefore, res judicata did not apply. Three of the seven Justices dissented without written reasons.

Although the court avoided res judicata by saying the Georgia court lacked jurisdiction, they did so because Georgia law did not provide a remedy. Hence, the issue remains whether the dismissal of a claim in one State because the law does not afford a

remedy for the particular claim bars recovery in another State. Jurisdiction was simply the vehicle used to escape the full faith and credit clause, and if allowed to stand, a vehicle that could be used in every case where a court does not approve of another State's law.

LaPoint applied for rehearing, which was denied on January 26, 2022. Thereafter, the case was remanded back to the Louisiana Third Circuit Court of Appeal for consideration of the remaining assignment of error; whether the Louisiana Office of Workers Compensation has jurisdiction over reimbursement claims under Louisiana law.¹ LaPoint requested a stay of proceedings from the Louisiana Supreme Court to allow for this Writ of Certiorari, which was denied. The parties have submitted briefs to the appellate court and await a decision.

There is also a related matter pending in Louisiana district court. At the mediation in Georgia, LaPoint and TPS agreed to keep the disputed funds in the trust account of attorney Nelson Tyrone, LaPoint's attorney in Georgia. To allow Mr. Tyrone to close his file, LaPoint's Louisiana attorney (the undersigned Aaron Broussard) moved the funds to his trust account in Louisiana. When TPS learned the money was in Louisiana, TPS attempted to seize the funds. LaPoint was able to stop the seizure and filed a Motion to move the funds back to Georgia in accordance with the parties' agreement. Given the

¹ The Office of Workers Compensation (OWC) is a court of limited jurisdiction in Louisiana and can only decide claims arising out of the Louisiana Workers Compensation Act. The issue before the appellate court is whether TPS's claim arises out of the Act so that the OWC has jurisdiction or whether the claims belong in Louisiana district court.

potential for conflicting judgments from Georgia and Louisiana, the location of the money may determine who collects it. The district judge granted the motion and TPS filed a Motion for New Trial based on the Louisiana Supreme Court's reversal of the appellate court on the issue of res judicata. On April 19, 2022, the district judge issued written reasons denying TPS's Motion for New Trial. (App. 145a-151a).

REASONS FOR GRANTING THE PETITION

The issue worthy of this Court's attention is whether the full faith and credit clause precludes relitigating a workers compensation reimbursement claim after it has been asserted and dismissed as unenforceable in a sister State. Two former decisions of this Court arguably dictate opposite answers to this question. In *Angel v. Bullington*, 330 U.S. 183 (1947) this Court ruled that the dismissal of a claim as unenforceable by a State court precluded a subsequent suit on the same claim in federal court within the same State. However, in *Thomas v. Washington Gas Light Co.*, 448 U.S. 261 (1980) this Court held that one State cannot conclusively determine the rights of parties under the workers compensation laws of another State.

To put it another way: It is obvious under *Thomas* that an injured employee can pursue workers compensation claims in two States consecutively, subject to a credit for benefits received. But should *Thomas* be extended to also allow the second pursuit of a workers compensation related claim that has been dismissed in a sister State? Or should *Angel* be extended to bar the assertion of a claim

after it has been dismissed in another State as precluded under that State's law?

To put it a third way, in a different context, does *Thomas* allow one State to reapportion a tort recovery between an employee and employer after it has been apportioned in a sister State?

The end of the Georgia court ruling is reproduced below:

Under Georgia's workers' compensation statutory scheme, an employer or insurer's subrogation right is limited to benefits paid under Georgia's Workers' Compensation Act. *Id.* Therefore, this Court finds that STPS and CCIC are "preclude[d] from asserting what might be a valid subrogation claim under [Louisiana] law, *Id.* at 833, and therefore, cannot pursue in Georgia a subrogation claim for the benefits they paid under paid under Louisiana law.

Accordingly, the parties shall come before the Honorable Court on November 10, 2015 at 9:30 a.m. to present evidence and arguments as to STPS and CCIC's recovery of their subrogation lien relating solely to the benefits they paid under the Georgia Workers Compensation Act.

SO ORDERED, this 20th day of October, 2015.

(App. 54a-56a). Even though the court recognized that TPS's claim might be valid under Louisiana law, the court ordered that TPS was "precluded" from asserting the claim in Georgia. Thus, the claim was dismissed because Georgia law did not provide a remedy.

This is not a unique occurrence. Georgia courts have dismissed, and will likely continue to dismiss, all workers compensation reimbursement claims arising under another State's law. See *Liberty Mut. Ins. Co. v. Roark*, 677 S.E.2d 786, 788 (Ga. 2009) and *Performance Food Grp., Inc. v. Williams*, 686 S.E.2d 437, 439–40 (Ga. 2009). The question is whether other States, including Louisiana, are thereafter precluded from enforcing these claims in their courts.

This Court has never squarely addressed this question, especially in the context of workers compensation claims which often trigger the jurisdiction of multiple States. However, before deciding whether *Angel v. Bullington* or *Thomas v. Washington Gas Light Co.* will control the outcome, the Court would first need to address the Georgia court's jurisdiction.

I. The Georgia court's jurisdiction.

A finding that the original court lacked jurisdiction is one of few ways to avoid the application of res judicata. Because Georgia law does not enforce out-of-state workers compensation reimbursement claims on Georgia tort recoveries, the Louisiana Supreme Court held the Georgia court lacked jurisdiction to determine TPS's right under Louisiana law. To be exact, the court said: "Because the Georgia court's jurisdiction extended to workers' compensation claims that arose from payments made under Georgia's workers' compensation law only, the Georgia court lacked jurisdiction to adjudicate Stephens' and CII's reimbursement claims for benefits paid under the LWCA (Louisiana Workers Compensation Act)." (App. 3a-5a).

This section addresses two points: (1) because TPS disputed jurisdiction in Georgia, the Georgia court's

exercise of jurisdiction cannot be questioned now, and (2) the fact that Georgia law does not enforce out-of-state workers compensation reimbursement claims does not mean Georgia courts lack jurisdiction to apportion Georgia tort recoveries, even if it requires ruling on claims arising under another State's law.

A. Because TPS disputed jurisdiction in Georgia, the Georgia court's exercise of jurisdiction cannot be questioned.

Because TPS disputed jurisdiction in Georgia and the Georgia court rejected the argument, that judgment that is entitled to full faith and credit and cannot be attacked now. In *Durfee v. Duke*, 375 U.S. 106 (1963) this Court clarified and outlined the principles for reviewing the original court's jurisdiction for purposes of res judicata under the full faith and credit clause.

In *Durfee*, the parties were disputing ownership of land on the Nebraska-Missouri border. A Nebraska court decided the land was in Nebraska, and therefore, Nebraska had subject matter jurisdiction to determine ownership. After the Nebraska judgment was final, a federal district court in Missouri determined the same land was in Missouri, and therefore, Missouri should have subject matter jurisdiction to determine ownership. However, the federal district court in Missouri recognized the preclusive effect of the Nebraska judgment and dismissed based on res judicata. The United States Court of Appeals for the Eighth Circuit reversed. *Duke v. Durfee*, 308 F.2d 209 (8th Cir. 1962). This Court reversed the appellate court, finding the Nebraska judgment was entitled to full faith and credit, which included the determination of jurisdiction. *Durfee v. Duke*, 375 U.S., at 116.

The *Durfee* Court announced the three following principles for testing the original court's jurisdiction for purposes of res judicata under the full faith and credit clause:

1. A court in one State, when asked to give effect to the judgment of a court in another State, has the power and duty to inquire into the foreign court's jurisdiction to render that judgment.
2. However, the original judgment is entitled to full faith and credit, even as to questions of jurisdiction.
3. Therefore, when jurisdiction has been fully and fairly litigated, and finally decided in the court which rendered the original judgment, further inquiry is precluded.

*Id.*²

After asserting their reimbursement claim in Georgia by intervening in LaPoint's Georgia tort suit, TPS disputed the Georgia court's jurisdiction. (App. 49a-51a). See the quote below from TPS's Opposition to LaPoint's Motion for Summary Judgment in the Georgia district court, in which they argue that Louisiana, not Georgia, is the proper "jurisdiction" to decide their Louisiana benefit reimbursement claim:

Accordingly, the amount of benefits paid, and that continue to be paid, pursuant to

² The Louisiana Supreme has previously recognized and applied these principles. The general rule is that "a judgment is entitled to full faith and credit—even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment." *Schultz v. Doyle*, 2000-0926 (La. 1/17/01), 776 So. 2d 1158, 1164.

Louisiana workers' compensation law are not at issue in this matter. The proper forum and jurisdiction to decide any subrogation interest for Louisiana benefits paid is in Louisiana.

(App. 72a-85a). TPS also claimed the scope of their claim was strictly limited to benefits paid under Georgia law.

As reflected by the following quotes from the Georgia court's ruling, the court considered TPS's jurisdiction and scope argument:

- ...the Court having considered the arguments presented by counsel for all-parties, the entire record and the applicable law, the Court finds as follows:
- Plaintiff argues that their (TPS's) Motion to Intervene was not limited to benefits paid under Georgia law and instead, STPS and CCIC asserted in the instant action a lien for the entire amount of benefits paid to Plaintiff.

(App. 54a-56a). Based on the following quotes below from TPS's intervention, the court correctly rejected TPS's argument that their intervention was limited to reimbursement of benefits paid under Georgia law:

Paragraph 2— Pursuant to the Georgia Workers' Compensation Stephens TPS, Inc. and Commerce & Industry Insurance Co. have paid indemnity benefits and medical benefits to date on Plaintiffs workers' compensation claim. Payments continue on behalf of Plaintiff. (App. 50a).

Paragraph-4— Act and O.C.G.A. § 34-9-11(b), Stephens TPS, Inc., and Commerce & Industry Insurance Co. will be seen as Plaintiffs in this case, and show they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LaPoint, which they would contend they can recover from or against any recovery paid to Plaintiff Robert LaPoint in this action. (App. 50a).

TPS asserted a subrogation lien “up to the actual amount of the compensation paid as of the date of any recovery.” (App. 50a). The Georgia court agreed: “...the Court agrees that STPS and CCIC’s Motion to Intervene was not limited as to benefits paid under Georgia workers compensation law, but also included benefits paid under Louisiana workers compensation statutes.” (App. 54a-56a).

After the Georgia court determined it had the power to rule on TPS’s right to reimbursement for benefits paid in Georgia and Louisiana, the court held Georgia law would control the apportionment of the Georgia tort recovery:

- Under the rule of *lex loci delicti*, this Court must apply Georgia substantive law irrespective of whether the Georgia workers’ compensation law was invoked to pay the benefits.
- Therefore, STPS and CCIC’s subrogation claim is governed by Georgia law.

(App. 54a-56a). This is an exercise of jurisdiction. “Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function

remaining to the court is that of announcing the fact and dismissing the cause.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83 (1998). Yes, the Georgia court dismissed the claim, but only after finding that it had the power to hear the claim and declare the applicable law.

TPS disputed the Georgia court’s jurisdiction and the Georgia court found it had the power to rule on TPS’s reimbursement claim to the extent TPS sought reimbursement from a Georgia tort recovery. No further inquiry is permitted into the question of jurisdiction. *Durfee*, 375 U.S., at 116.

B. The fact that Georgia law does not enforce out-of-state workers compensation reimbursement claims does not mean the Georgia court lacked jurisdiction.

Even if the Georgia court’s jurisdiction could be questioned, the court was correct in finding it had jurisdiction. With all due respect to the Louisiana Supreme Court, the court asked the wrong question which led to the wrong answer. The question is not whether the Georgia court had jurisdiction to determine TPS’s right under Louisiana law. The question is whether the Georgia court had jurisdiction to apportion a personal injury settlement recovered in Georgia for an injury that occurred in Georgia. Although TPS’s claim is for reimbursement of workers compensation benefits, the settlement funds at issue are not workers compensation funds. They are funds recovered in a tort action. Allowing multiple States to apportion the same funds differently is exactly the type of chaos the full faith and credit clause was designed to avoid.

In *Thomas v. Washington Gas Light Co.*, an injured employee qualified for workers compensation benefits

in both Virginia and the District of Columbia. After receiving a favorable judgment in Virginia, the employee made a workers compensation claim in the District of Columbia, subject to a credit for the benefits obtained in Virginia. This Court rejected the employer's arguments of res judicata based on the full faith and credit clause. In doing so, the Court stated that Virginia's jurisdiction was limited to questions arising under the Virginia Workers Compensation Act and that a workers compensation tribunal may only apply its own State's law. *Thomas*, 448 U.S., at 261–86.

How is this case different from *Thomas*? The *Thomas* decision did not result in an inconsistent division or payment of the same money. The Court held that a Virginia judgment could not dictate or limit the recovery of compensation in another State. There was no double recovery. The injured employee was simply allowed to maximize his recovery under the laws of both States. In this case, the judgments of Louisiana and Georgia cannot be reconciled. They involve the same money. The Georgia judgment only dictates TPS's rights under Louisiana law to the extent they affect the apportionment of a Georgia tort recovery. As discussed below, Georgia has jurisdiction to apportion tort recoveries made in Georgia for injuries occurring in Georgia, even if it means passing on reimbursements claims made under another State's law.

Georgia law must be applied to determine if the Georgia court had jurisdiction. See *Tennessee ex. rel. Sizemore v. Sur. Bank*, 200 F.3d 373, 378 (5th Cir. 2000), *Hazen Research, Inc. v. Omega Minerals, Inc.*, 497 F.2d 151, 154 & n. 1 (5th Cir. 1974), and *Clyde v. Hodge*, 413 F.2d 48 (3d Cir. 1969). See also *Restatement (Second) of Conflicts of Laws* § 105

cmt. b (“When recognition or enforcement of a judgment rendered in one State is resisted in a second State on the ground of the alleged incompetence of the court to render the judgment, the statutes and decisions of the courts in the State in which the judgment was rendered are controlling.”). Accordingly, Georgia law determines whether the Georgia court had jurisdiction.

“A court’s subject-matter jurisdiction defines its power to hear cases.” *Lightfoot v. Cendant Mortg. Corp.*, 137 S. Ct. 553, 560 (2017). The Georgia State Legislature has vested jurisdiction in Georgia district courts for all civil actions without regard to the amount in controversy. Georgia statute O.C.G.A. 15-7-4 provides, in relevant part:

- a. Each state court shall have jurisdiction, within the territorial limits of the county or counties for which it was created and concurrent with the superior courts, over the following matters:

...

2. The trial of civil actions without regard to the amount in controversy, except those actions in which exclusive jurisdiction is vested in the superior courts...

The only jurisdictional limit the Georgia Constitution places on a Georgia State court’s power to adjudicate a civil action is that Georgia superior courts have exclusive jurisdiction “in cases respecting title to land; in divorce cases, and in equity cases.” Ga. Const. Art. VI, §4. Georgia law provided the Georgia State court with jurisdiction over this case—a tort that occurred in Georgia and a claim for subrogation against the recovery from that tort.

Georgia courts have consistently exercised jurisdiction over out-of-state reimbursement claims asserted in Georgia tort actions. *Liberty Mut. Ins. Co. v. Roark*, 677 S.E.2d 786 (Ga. 2009) is an almost identical case. Just like this case, the employee settled their tort suit, but were unable to resolve the subrogation claim due to differences over what State's law governed Liberty Mutual's subrogation rights. The court found "...Georgia courts have addressed the very issue presented in this case and found that Georgia law applies in determining workers' compensation subrogation rights when the employee is injured in Georgia." *Id.*, at 789. See also, *Performance Food Grp., Inc. v. Williams*, 686 S.E.2d 437, 439–40 (Ga. 2009) and *Johnson v. Comcar Indus., Inc.*, 626, 556 S.E.2d 148, 149–50 (Ga. 2001).

In Georgia, a reimbursement claim must be asserted by intervention when the employee has filed suit against the third party and the trial court must determine the validity of the lien. *Canal Ins. Co. v. Liberty Mut. Ins. Co.*, 570 S.E.2d 60, 63 (2002). The Georgia court had subject matter jurisdiction to apportion the money recovered by LaPoint for injuries he sustained in Georgia.

Moreover, allowing one State to question another State's jurisdiction based on the remedy provided in that State would nullify the full faith and credit clause. If the forum State court disagrees with the outcome in the original State court, the forum State may simply assert the original court lacked jurisdiction to rule on the claim under the forum State's law. The result would be endless inconsistent judgments.

TPS asserted their entire reimbursement claim in Georgia. The Georgia court correctly exercised

jurisdiction under Georgia law and determined that Georgia law would apply to the subrogation liens enforced on the Georgia tort recovery “irrespective” of whether the benefits were paid under Georgia or Louisiana law. The jurisdiction to render that judgment cannot be questioned now.

II. Reasonable extensions of *Angel v Bullington* and *Thomas v. Washington Gas Light Co.* dictate different results under the facts of this case.

After disposing of jurisdiction, the real issue remains: Whether the dismissal of a workers compensation reimbursement claim as unenforceable in one State precludes relitigating the same claim in another State. More broadly, should the dismissal of any claim in one State preclude relitigating the same claim in another State?

The facts of this case are not on all fours with *Angel* or *Thomas*, but the rationale of either case can be argued to determine the outcome, albeit opposite outcomes. In *Angel*, this Court ruled that the merits of a claim are disposed of when they are refused enforcement for purposes of res judicata under the full faith and credit clause. *Angel*, 330 U.S., at 190. In *Thomas*, this Court made it clear that the full faith and credit clause does not require a State to subordinate its own compensation policies to those of another State. *Thomas*, 448 U.S., at 278. A reasonable application of *Angel* says the claim is precluded by the dismissal of the same claim in Georgia, while a reasonable application of *Thomas* says Louisiana is free to enforce its own compensation laws in Louisiana, despite the Georgia judgment to the contrary. This case presents the

perfect opportunity for this Court to clarify and evolve the law.

A. A reasonable interpretation of *Angel v. Bullington* requires the application of res judicata in this case.

Bullington sold land to Angel under a deed of trust. When payments were not made, Bullington sued Angel in a North Carolina State court for the deficiency. North Carolina had a statute specifically precluding the claim Bullington made. Consequently, the action was dismissed as precluded under North Carolina law. *Bullington v. Angel*, 16 S.E.2d 411 (1941). Next, Bullington filed the same claim in federal court in North Carolina based on diversity. *Bullington v. Angel*, 56 F. Supp. 372 (W.D.N.C. 1944). The federal judge found the statute precluding the cause of action was a limitation of the North Carolina State's jurisdiction and did not preclude pursuit of the claim in federal court. This Court reversed and dismissed the federal case. *Angel v. Bullington*, 330 U.S. 183. In a later decision, this Court made it clear the case was dismissed for two distinct reasons, one being that the State court suit was res judicata. See *Woods v. Interstate Realty Co.*, 337 U.S. 535, 537 (1949).³

Regarding res judicata, this Court held a refusal to enforce a claim on legal grounds constitutes a dismissal on the merits for purposes of res judicata. "It is a misconception of res judicata to assume that the doctrine does not come into operation if a court

³ The second reason was the policy of *Erie R. Co. v. Tompkins*, 304 U.S. 64 (1938) precluded maintenance in the federal court in diversity cases of suits to which the State had closed its courts

has not passed on the ‘merits’ in the sense of the ultimate substantive issues of a litigation. *Angel*, *supra*, at 190. The ‘merits’ of a claim are disposed of when they are refused enforcement. *Id.* This Court reasoned that “(a)n adjudication of an issue implies that a man had a chance to win his case” and *Angel* had a chance to win the original suit, despite the statute precluding his claim:

The merits of this controversy were adjudicated by the North Carolina Supreme Court since that court, or this Court on appeal, might have decided that the North Carolina statute did not bar Bullington’s first action. The North Carolina statute might have been found unconstitutional. Federal issues were thus involved in the adjudication by the North Carolina Supreme Court.

Id., at 189-191. Therefore, the dismissal of a claim as unenforceable does not prevent the application of res judicata.

This case is factually different from *Angel*. This case involves courts in different States, not two courts in the same State. However, that difference should not change the outcome. Although the question in *Angel* was whether a federal court must give res judicata effect to a judgment rendered by a State court in the same State, the holding was based on the full faith and credit clause, which in most cases is applied between the States. Moreover, “full faith and credit thus generally requires every State to give to a judgment at least the res judicata effect which the judgment would be accorded in the State which rendered it.” *Durfee*, 375 U.S., at 109. The *Angel* Court left no doubt that a claim which was

previously dismissed as precluded would be res judicata in the rendering State: “The judgment of the Supreme Court of North Carolina would clearly bar this suit had it been brought anew in a State court.” *Angel, supra*, at 186–87. Because the claim in this case was barred by res judicata in Georgia, it was likewise barred in every other State by virtue of the full faith and credit clause.

The reasoning expressed in *Angel* applies to this case. TPS did not appeal the Georgia court judgment to any court, much less this Court. And TPS had a chance to win. The full faith and credit clause was implicated because Georgia law failed to give full faith and credit to the law of Louisiana. In *Hughes v. Fetter*, 341 U.S. 609 (1951) Wisconsin had a statute stating that wrongful claims could not be brought in Wisconsin under another State’s law, just like the Georgia statute in this case: “...the employer’s or insurer’s recovery under this Code section shall be limited to the recovery of the amount of disability benefits, death benefits, and medical expenses paid under this chapter.” Ga. Code Ann. § 34-9-11.1(b). In *Hughes*, this Court was “called upon to decide the narrow question whether Wisconsin, over the objection raised, can close the doors of its courts to the cause of action created by the Illinois wrongful death act.” *Id.*, at 611. “It is also settled that Wisconsin cannot escape this constitutional obligation to enforce the rights and duties validly created under the laws of other States by the simple device of removing jurisdiction from courts otherwise competent.” *Id.* “On the one hand is the strong unifying principle embodied in the Full Faith and Credit Clause looking toward maximum enforcement in each State of the obligations or rights created or recognized by the statutes of sister states; on the

other hand is the policy of Wisconsin, as interpreted by its highest court, against permitting Wisconsin courts to entertain this wrongful death action.” *Id.* (internal footnotes deleted). The Court held the Wisconsin statute was forbidden by the national policy of the Full Faith and Credit Clause. *Id.*

TPS was not denied their day in court, they just failed to pursue it. TPS had a chance to win, just like the claimant in *Angel*. Therefore, the merits of TPS’s reimbursement claim for benefits paid in Louisiana were adjudicated for purposes of res judicata.

If *Angel* is to be followed, res judicata should apply in this case. But it is not necessary to establish that point any further at this juncture. For now, the point is that a reasonable extension of the reasoning in *Angel* to the facts of this case requires the application of res judicata.

The second factual difference in this case from *Angel* is the claim in this case is a workers compensation reimbursement claim, not a real estate sale deficiency claim. As discussed below, the modern decisions of this Court hold that States are not required to subordinate their workers compensation law to that of another State, which leads to the discussion of *Thomas v. Washington Gas Light Co.*

B. A reasonable interpretation of *Thomas v. Washington Gas Light Co.* negates the application of res judicata in this case.

In *Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430 (1943) this Court determined that, under the full faith and credit clause, the recovery of workers compensation benefits in one State bars a second recovery for the same injury in another State. Then

two subsequent decisions eroded, and eventually overruled, *Magnolia*. See *Indus. Comm'n of Wis. v. McCartin*, 330 U.S. 622 (1947) and *Thomas*, 448 U.S. 261 (1980). In *Thomas*, this Court overruled *Magnolia* and made a fresh examination of the full faith and credit in workers compensation cases. *Id.*, at 262. In the end, the employee was allowed to make a workers compensation claim in Virginia followed by one in the District of Columbia, subject to a credit. This Court reaffirmed “(t)he principle that the Full Faith and Credit Clause does not require a State to subordinate its own compensation policies to those of another State....” *Id.*, at 279. The *Thomas* Court also felt it significant that the jurisdiction of a workers compensation tribunal is typically limited to determining the parties’ rights in the forum State. *Id.*, at 261. Therefore, the Virginia Commission could not determine the parties’ rights in another State. “Since it was not requested, and had no authority, to pass on petitioner’s rights under District of Columbia law, there can be no constitutional objection to a fresh adjudication of those rights.” *Id.*, at 283.

Thomas can easily be interpreted to prevent the application of res judicata in this case, contrary to result under a reasonable application of *Angel*. TPS brought their claim under the Louisiana Workers Compensation Act. (App. 152a-161a). The application of res judicata would force Louisiana to subordinate its own compensation policies to those of Georgia, contrary to *Thomas*. Also, like the original judgment in *Thomas*, the original judgment in Georgia did not purport to determine TPS’s rights under Louisiana law.

It is not hard to imagine additional scenarios where *Angel* and *Thomas* would dictate different results. Many States have unique defenses in workers

compensation cases that serve as bars or limitations to recovery. Under *Angel*, the dismissal of the claim would preclude the same claim from being made again. But the rationale in *Thomas* would allow the same claim in a new State where the defense did not apply. Even if the defense was applicable in both States, the second State would not be bound by the adjudication of the defense in the original State.

The result in this case under *Thomas* turns on the framing of the issue decided by the Georgia court. If the issue decided was TPS's right to reimbursement for benefits paid under Louisiana law, then *Thomas* would prevent the application of res judicata. But if the issue is framed as the Georgia court's right to apportion a Georgia tort recovery, as it should be, then res judicata applies.

The nature of a claim should be determined by its effect, not by its label or its source. TPS's claim may be labeled a workers compensation reimbursement claim, but in effect, it is an action to apportion a Georgia tort recovery. Unlike the States in *Thomas*, one State in this case is going to have to subordinate its interest to the other by enforcing a judgment contrary to its own laws.

C. The Court should reinforce the holding in *Angel v. Bullington* and clarify the scope of *Thomas v. Washington Gas Light Co.*

This case presents an opportunity to define the scope of *Thomas*. This Court should clarify that *Thomas* does not apply to every claim related to workers compensation, but only when an employee is making consecutive claims in two different States. To hold otherwise would frustrate the purpose of the full faith and credit clause as expressed in *Johnson v. Muelberger*, 340 U.S. 581 (1951):

From judicial experience with and interpretation of the clause, there has emerged the succinct conclusion that the Framers intended it to help weld the independent states into a nation by giving judgments within the jurisdiction of the rendering state the same faith and credit in sister states as they have in the state of the original forum... '(L)ocal policy must at times be required to give way, such 'is part of the price of our federal system.

This constitutional purpose promotes unification, not centralization. It leaves each state with power over its own courts but binds litigants, wherever they may be in the Nation, by prior orders of other courts with jurisdiction. 'One trial of an issue is enough. (internal footnotes omitted).

Id., at 584. An injured worker's recovery of workers compensation benefits in one State is not inconsistent with recovery in another State, and therefore, does not frustrate the unifying purpose of the full faith and credit clause. However, in this case, the two judgments are wholly inconsistent. They order that the same money be paid to two different parties. The application of *Thomas* under the facts of this case would render the full faith and credit clause meaningless. *Thomas* should not allow States to render inconsistent, binding rulings on the same claim, including claims based on workers compensation laws.

As it stands, the location of the funds in this case may determine the outcome, at least financially. Recall, a Louisiana district court judge recently ordered that the money be moved from Louisiana

back to Georgia. (App. 145a-151a). If the judgment of the Louisiana Supreme Court is not reversed and LaPoint fails on the remaining assignments of error, there will be inconsistent final judgments from Louisiana and Georgia regarding the same money. Undoubtedly, TPS would attempt to enforce the Louisiana judgment in Georgia, asking Georgia to subordinate its own laws to Louisiana. This endless back and forth is what the full faith and credit clause was designed to avoid.

“The doctrine of res judicata reflects the refusal of law to tolerate needless litigation. Litigation is needless if, by fair process, a controversy has once gone through the courts to conclusion (internal citations omitted). And it has gone through, if issues that were or could have been dealt with in an earlier litigation are raised anew between the same parties.” *Angel*, 330 U.S. at 192.

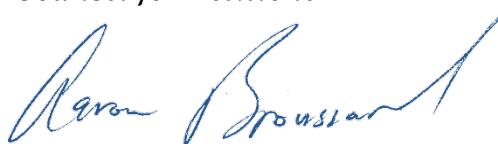
The issue raised by TPS’s claim is what reimbursement they are entitled to out of the Georgia tort recovery. That issue has been conclusively determined by the Georgia State court and should be res judicata as to any further attempt to lay claim to the money. The fact that the claim was precluded under Georgia law does not change the outcome. TPS had their day in court. Any further litigation should be precluded by res judicata under the full faith and credit clause.

CONCLUSION

This Court should grant Certiorari and reinstate the Judgment of Louisiana Third Circuit Court of Appeal sustaining the Exception of Res Judicata.

This case is an opportunity for the Court to address three topics: (1) reiterate the holding of *Durfee v. Duke*, 375 U.S. 106 that the original court's jurisdiction cannot be second guessed if the issue was raised in and litigated in the original court, (2) *Thomas v. Washington Gas Light Co.* did not nullify the full faith and credit clause in every claim that relates to workers compensation, but only condones the receipt of workers compensation benefits in more than one State, and (3) the dismissal of a claim as unenforceable in one State has the same preclusive effect in other States as a full adjudication on the substantive merits for purposes of res judicata under the full faith and credit clause.

RESPECTFULLY SUBMITTED BY
BROUSSARD & WILLIAMSON
Counsel for Petitioner



AARON BROUSSARD
(La #30134)
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 Telephone
(337) 439-3450 Facsimile

Dated: April 26, 2022

APPENDIX

1a

Appendix A

01/26/2022 "See News Release 004 for
any Concurrences and/or Dissents."

THE SUPREME COURT OF
THE STATE OF LOUISIANA

No. 2021-C-00995

ROBERT LAPOINT
VS.

**COMMERCE & INDUSTRY INSURANCE
COMPANY AND STEPHENS TPS, INC.**

IN RE: Robert Lapoint – Applicant Plaintiff;
Applying for Rehearing, Parish of Calcasieu, Office of
Workers' Compensation, District 3 Number(s) 13-
6349, 15-2726, 17-1901, Court of Appeal, Third
Circuit, Number(s) 20-388;

January 26, 2022

Application for rehearing denied.

WJC

JLW

SJC

JBM

2a

Hughes, J., would grant.
Genovese, J., would grant.
Griffin, J., would grant.

Supreme Court of Louisiana
January 26, 2022

/s/ Katie Marjanowic
Chief Deputy Clerk of Court
For the Court

3a

Appendix B

11/23/2021 "See News Release 046 for
any Concurrences and/or Dissents."

**THE SUPREME COURT OF
THE STATE OF LOUISIANA**

No. 2021-C-00995

ROBERT LAPOINT
VS.

**COMMERCE & INDUSTRY INSURANCE
COMPANY AND STEPHENS TPS, INC.**

IN RE: Commerce & Industry Insurance Company –
Applicant Defendant; Stephens TPS, Inc. – Applicant
Defendant; Applying For Writ Of Certiorari, Parish of
Calcasieu, Office of Workers’ Compensation, District
3 Number(s) 13-6349, 15-2726, 17-1901, Court of
Appeal, Third Circuit, Number(s) 20-388;

November 23, 2021

Writ application granted. See per curiam.

JBM

JLW

SJC

WJC

4a

Hughes, J., dissents.
Genovese, J., dissents.
Griffin, J., dissents.

Supreme Court of Louisiana
November 23, 2021

/s/ Katie Marjanowic
Chief Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 2021-C-00995

**ROBERT LAPOINT VS. COMMERCE
& INDUSTRY INSURANCE COMPANY
AND STEPHENS TPS, INC.**

On Writ of Certiorari to the Court of Appeal, Third Circuit, Office of Workers' Compensation, District 3

PER CURIAM

Writ granted. "The doctrine of res judicata is stricti juris; any doubt concerning application of the principle of res judicata must be resolved against its application." *Kelty v. Brumfield*, 93-1142 (La. 2/25/94), 633 So. 2d 1210, 1215. The party urging res judicata must establish all elements of La. R.S. 13:4231 "beyond all question." *Id.* Because the Georgia court's jurisdiction extended to workers' compensation claims that arose from payments made under Georgia's workers' compensation law only, the Georgia court lacked jurisdiction to adjudicate Stephens' and CII's reimbursement claims for benefits paid under the LWCA. Thus, the Georgia court judgment does not have preclusive effect and is not res judicata to the claims at issue here. Accordingly, the court of appeal judgment is vacated, and the matter is remanded for the court of appeal to consider any assignments of error raised on appeal by Robert Lapoint.¹

**COURT OF APPEAL JUDGMENT VACATED
AND REMANDED**

¹ Due to the death of Robert Lapoint on July 28, 2021, this court issued an order on August 10, 2021, substituting his daughters, Katelyn Lapoint, Ashlyn Lapoint and Chelsea Lapoint as party plaintiffs in the above entitled and numbered cause of action pursuant to Louisiana Civil Code Article 2315.1.

Appendix C

**STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT**

20-388

ROBERT LAPOINT

VERSUS

**COMMERCE & INDUSTRY INSURANCE
COMPANY AND STEPHENS TPS, INC.**

APPEAL FROM THE OFFICE OF
WORKERS' COMPENSATION – DISTRICT 03
PARISH OF CALCASIEU,
NOS. 13-6349, 15-2726, 17-1901
DIANNE MARIE MAYO,
WORKERS' COMPENSATION JUDGE

**JOHN E. CONERY
JUDGE**

Court composed of Billy Howard Ezell, Shannon J. Gremillion, John E. Conery, Candyce G. Perret, and Sharon Darville Wilson, Judges.

Gremillion, J., dissents in part and assigns reasons.

**EXCEPTION OF RES JUDICATA SUSTAINED.
JUDGMENT REVERSED AND VACATED.**

**Aaron Broussard
Broussard & Williamson
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450
COUNSEL FOR PLAINTIFF/APPELLANT:
Robert LaPoint**

**Robert A. Dunkelman
Pettiette, Armand, Dunkelman, Woodley, Byrd
& Cromwell, L.L.P.
400 Texas Street, Suite 400
Shreveport, LA 71166-1786
(318) 221-1800
COUNSEL FOR DEFENDANTS/APPELLEES:
Stephens TPS, Inc.
Commerce and Industry Insurance Company**

CONERY, Judge.

Robert LaPoint sustained serious injuries while on a work assignment in Georgia. Mr. LaPoint's employer, Stephens TPS, Inc. (Stephens), and its insurer, Commerce and Industry Insurance Company (C&I), provided initial workers' compensation benefits in Georgia and thereafter under Louisiana law. Stephens and C&I intervened for workers' compensation benefits paid to Mr. LaPoint in a suit that Mr. LaPoint filed in Georgia against alleged third-party tortfeasors, a principal contractor and its employee. Although Mr. LaPoint reached a mediated settlement with the tortfeasor defendants in the Georgia tort suit, the amount due Stephens and C&I as workers' compensation intervenors remained unresolved. A workers' compensation claim was thereafter filed in Louisiana, with the workers' compensation judge eventually ordering reimbursement to Stephens and C&I out of Mr. LaPoint's third-party tort settlement for past workers' compensation benefits paid to Mr. LaPoint, as well as a credit for any future workers' compensation obligations under Louisiana law. Mr. LaPoint appeals and, for the first time in this court, files an exception of res judicata. For the following reasons, we reverse and render.

FACTS AND PROCEDURAL HISTORY

As indicated by the parties' stipulations presented to the Louisiana workers' compensation judge, Stephens hired Mr. LaPoint to perform sandblasting and painting work. Although Mr. LaPoint initially worked for Stephens in Louisiana, he was working in Atlanta, Georgia at the time of his underlying March 8, 2012 work-related accident. The record indicates that the accident occurred when Mr. LaPoint's lower

body was crushed by a semi-truck owned by a third-party tortfeasor, Utility Services Company (USCI), and operated on that day by USCI employee, David Michael Jackson. Stephens' operations on the Georgia project were performed under contract with USCI, a company providing water storage tank maintenance services.

At the time of the stipulations, Mr. LaPoint had received medical treatments totaling \$938,518.48 and weekly indemnity benefits totaling \$135,892.12. Of those sums, \$7,283.03 was paid pursuant to Georgia Workers' Compensation Statutes with the remainder paid pursuant to Louisiana Workers' Compensation Statutes.

The parties also provided the WCJ with the procedural history of the two-jurisdiction matter, explaining that, after the March 2012 accident, Mr. LaPoint filed separate claims against the purported third-party tortfeasors, USCI and Mr. Jackson, in Fulton County Superior Court in Georgia.¹ Stephens and C&I intervened in both matters, seeking recovery of all medical and workers' compensation benefits paid.

Mr. LaPoint also filed an initial workers' compensation matter in Louisiana in July 2013, under docket number 13-6349, which he amended on several occasions, alleging miscalculation of his workers' compensation benefit, and failure to provide medical treatment.

With workers' compensation matters proceeding in Louisiana, Mr. LaPoint, Stephens, and C&I entered

¹ Mr. LaPoint filed suit against USCI, bearing docket number 2013 CV 23:9667, in November 2013 and against David Michael Jackson, bearing docket number 14EV00514, in March 2014.

private mediation with the third-party tortfeasors in Georgia and entered into a written settlement agreement in August 2015. According to the pre-hearing stipulations, however, Mr. LaPoint, Stephens, and C&I “could not agree whether any recovery or credit is due Stephens [] and [C&I] arising out of the workers’ compensation payments made.” With the parties acknowledging the dispute and signaling an intent to pursue judicial determination of sums due, the disputed funds were held in the trust account of Mr. LaPoint’s counsel.²

² In pertinent part, the “General Release and Settlement Agreement” provided:

RELEASOR, agrees and avers, as a condition precedent to the settlement of this matter, to be responsible for satisfying, adjudicating, or compromising all legally enforceable liens, subrogation claims and claims for reimbursement including but not limited to Worker’s Compensation, Medicare, Medicaid, CHAMPUS, ERISA, hospital health and any other legally enforceable liens of any kind. The undersigned further states that pursuant to O.C.G.A. § 44-14-473, all hospital, medical, and physician bills incurred for treatment rendered to RELEASOR have been fully paid or will be paid by RELEASOR from the Settlement Funds (See Plaintiff’s O.C.G.A. § 44-14-473 Lien Affidavit attached hereto as Exhibit “A”).

Commerce and Industry Insurance Company, RELEASOR’S workers’ compensation carrier, agrees and avers to provide lien waivers to RELEASEES.

Commerce and Industry Insurance Company and Stephens TPS, Inc. (hereinafter, “Intervening Plaintiff”) consent to this Settlement and Release Agreement on the condition that RELEASOR is to escrow in RELEASOR’S counsel’s trust account the sum of \$863,695.00. Said funds are to remain held in the trust account until such time as a judicial

Stephens and C&I filed their own claim in the Louisiana OWC, a case assigned docket number 15-2726, seeking a judicial determination of their “credit and reimbursement rights for the monies paid under the Louisiana Workers’ Compensation Act and subsequently filed a disputed claim on March 29, 2017 seeking an order of forfeiture of benefits as Robert LaPoint has not reimbursed Stephens [] and [C&I] the monies being held in the attorney’s trust account.”

The parties stipulated with regard to the funds that:

There is presently held in plaintiff's counsel's trust account the sum of \$863,695.00 which sum represents payments made by Stephens TPS, Inc. and Commerce and Industry Insurance Company to or on behalf of Robert Lapoint pursuant to the provisions of the Louisiana Workers'

adjudication has been made as to the Intervening Plaintiffs' reimbursement rights, lien amount, future credit, Plaintiff's attorneys' fees, Plaintiff's right to future compensation including medical expenses and any other workers' compensation obligation which may be due. RELEASOR and Intervening Plaintiffs agree that sums held in escrow do not represent the total sums in dispute as continuing benefits may be due. All such future payments are included in the determination to be made by the courts.

The parties acknowledge that RELEASOR intends to pursue the judicial adjudication in Georgia and Intervening Plaintiffs intend to pursue the judicial adjudication in Louisiana. RELEASOR does not consent to the adjudication in Louisiana. Intervening Plaintiffs do not consent to the adjudication in Georgia

Compensation Act prior to the date of the settlement of the Georgia third party claims.

A subsequently executed “Settlement Agreement and Release” entered into between Mr. LaPoint and Stephens and C&I, provides in pertinent part:

[T]he undersigned, Stephens TPS, Inc. and Commerce and Industry Insurance Company (“Releasors”) for the sole consideration of ONE THOUSAND FIVE HUNDRED and NO/100 dollars (\$1,500.00) the receipt of which is hereby acknowledged, does hereby release, acquit and discharge Robert LaPoint (“Releasee”) and his agents, servants, successors, heirs, executors, and administrators from ONLY the claim(s) arising from benefits allegedly paid pursuant to Georgia workers’ compensation statutes that total approximately \$7,282.03, as a result of the event which occurred on or about March 8, 2012 involving Robert LaPoint.

This Settlement Agreement and Release (“Release”) does NOT address, affect, release, or discharge the claim(s) arising from benefits paid pursuant to Louisiana workers’ compensation law that approximately total over \$856,413.96., as a result of the event which occurred on or about March 8, 2012 involving Robert LaPoint. LaPoint specifically reserves the right to dispute any and all other alleged lien rights or legal rights asserted by Releasors, including but not limited to, choice of law and jurisdictional issues. Likewise, Releasors reserve any and all rights to pursue any and all other alleged

lien rights or legal rights in any and all courts in accordance with the law. This release does not have any affect beyond a compromise of the \$7,282.03 paid by Releasors allegedly pursuant to Georgia workers' compensation statutes.

It is understood and agreed that this settlement is the compromise of a thoughtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of the Releasors.

It is expressly understood this Release does not affect any other rights, causes of action or demands that are not addressed specifically in this Release that the Releasors and the Releasee may have for other events or contracts.

The undersigned, Releasee hereby declares and represents that no promise, inducement or agreement not herein expressed has been made, and that this Release contains the entire agreement between the parties hereto, and that the terms of this Release are contractual and not a mere recital.

Mr. LaPoint, in turn, filed a motion for summary judgment in the Georgia litigation seeking a determination that Stephens and C&I were not entitled to recover any of the workers' compensation benefits they had paid. The Georgia court ruled in favor of Mr. LaPoint, explaining:

Plaintiff is a Louisiana resident who was injured in the course of his employment in Georgia. [Stephens and C&I] paid workers' compensation benefits to Plaintiff initially

under Georgia's workers' compensation statutes and shortly thereafter, under Louisiana's workers' compensation statutes. [Stephens and C&I] intervened in the instant action to enforce their subrogation lien for workers¹⁷ compensation benefits paid to the Plaintiff. In this Motion, Plaintiff seeks a determination that [Stephens and C&I] are not entitled to recover their subrogation lien as to workers¹⁷ compensation benefits paid to Plaintiff under both Georgia and Louisiana's workers¹⁷ compensation statutes. Plaintiff argues that their Motion to Intervene was not limited to benefits paid under Georgia law and instead, [Stephens and C&I] asserted in the instant action a lien for the entire amount of benefits paid to Plaintiff.

Upon review of the record, the Court agrees that [Stephens and C&I's] Motion to Intervene was not limited as to benefits paid under Georgia workers¹⁷ compensation law, but also included benefits paid under Louisiana workers¹⁷ compensation statutes. In their supporting brief, [Stephens and C&I] sought to intervene as to the total amount then paid to Plaintiff, a vast majority of which was paid under Louisiana statutes. **Under the rule of lex loci delicto, this Court must apply Georgia substantive law irrespective of whether the Georgia workers' compensation law was invoked to pay the benefits.** Performance Food Grp., Inc. v. Williams, 300 Ga. App. 831, 686 S.E.2d 437 (2009). Therefore, [Stephens and C&I's] subrogation claim is governed by

Georgia law. Under Georgia's workers' compensation statutory scheme, an employer or insurer's subrogation right is limited to benefits paid under Georgia's Workers' Compensation Act. Id. Therefore, this Court finds that [Stephens and C&I] are "precluded from asserting what might be a valid subrogation under [Louisiana] law["], Id. at 833, and, therefore, cannot pursue in Georgia a subrogation claim for the benefits they paid under [] Louisiana law.

(Emphasis added.)

Mr. LaPoint thereafter sought to enforce the Georgia order by an action in the Fourteenth Judicial District Court of Louisiana, docket number 2016-2947. The trial court did so, ordering that the Georgia order was entitled to full faith and credit. No appeal was taken from that Order.

Stephens and C&I then filed a further claim with the OWC, proceeding under docket number 17-1901, seeking forfeiture of Mr. LaPoint's benefits due to a purported failure to reimburse them from the Georgia settlement proceeds. The WCJ consolidated this latter proceeding with Mr. LaPoint's claim in 13-6349 and with Stephens and C&I's earlier filed claims in 15-2726.

Mr. LaPoint thereafter filed exceptions of lack of subject matter jurisdiction and no cause of action. After the WCJ denied both exceptions, Mr. LaPoint filed an application for writ of supervisory review. A panel of this court denied the application. *See LaPoint v. Stephens TPS, Inc.*, 18-471 (La.App. 3 Cir. 7/20/18)(an unpublished writ ruling). The supreme

court thereafter denied Mr. LaPoint's writ application before that court. *Stephens TPS v. LaPoint*, 18-1394 (La. 10/8/18), 253 So.3d 799.

The Louisiana WCJ heard the consolidated matters in March 2019. In addition to the stipulated facts, the WCJ considered the parties' submissions, which included medical records, the records of underlying Louisiana proceedings, and excepts from the Georgia proceedings, including the settlement agreement reached in the Georgia litigation. Mr. LaPoint also testified at the hearing, describing the accident along with his medical treatment and his return to Louisiana. Much of that testimony pertained to the issue of whether he was in a condition to make a knowing selection of Louisiana compensation benefits over those of Georgia.

After taking the matter under advisement, the WCJ rendered reasons for judgment, which were transcribed for the record on March 21, 2019, and in which the WCJ determined that Mr. LaPoint had capacity to request that his workers' compensation benefits be continued under the Louisiana workers' compensation statutes rather than in Georgia.³ The

³ Finding Mr. LaPoint to be of "sound mind when he elected to change his receipt of Georgia workers' compensation benefits to Louisiana workers' compensation benefits," the WCJ explained that:

The claimant, Robert LaPoint, argues that the claimant was not competent to change from receiving Georgia workers' compensation benefits to Louisiana compensation benefits on or about August 30, 2012. After careful review of the Grady Memorial records around that time, the claimant was alert, was able to communicate with the staff that he did not want the nicotine patch to cease smoking. In fact, he continued to smoke even though he knew that it would affect his

WCJ turned to Stephens and C&I's claim for reimbursement from the sum held in Mr. LaPoint's counsel's escrow fund (\$856,411.97) and assessed the net reimbursement to be \$570,941.32.⁴

A final judgment was delayed, with the WCJ ultimately including an order approving Stephens and C&I's claim for a credit toward their future workers' compensation obligation, a sum not included in the attorney's escrow account.⁵ In addition to the

healing process. He was on pain medication and other medication that made him sleepy, but there's nothing in the records that show it hindered his thought processes. Moreover, the issues of where the benefits were paid from did not become an issue until counsel was retained and sent a letter in January 2016 requesting that benefits be changed to Georgia [sic] benefits. The Court finds that the claimant was competent to make the change from Georgia to Louisiana benefits to receive workers' compensation benefits.

⁴ The figure includes a deduction for costs of recovery and attorney fees pursuant to *Moody v. Arabie*, 498 So.2d 1081 (La.1986).

⁵ The record includes April 1, 2019 correspondence from Dennis R. Stevens, counsel for Stephens and C&I, that followed the March 21, 2019 reasons for ruling and explained that:

We are in receipt of and thank you for the reasons for judgment in the captioned matter. I note that the court intended to award both credit and reimbursement to defendants. The parties must not have clarified that the amount being held in the plaintiff's attorney's escrow account was for only past indemnity and medical expenses paid prior to the date of settlement of the Georgia third-party claim The amount of the credit would be separate and independent from the amount of reimbursement and would apply to those sums received in the third-party claim, less the amount being held in the attorney's escrow account and less the Moody fee.

order of reimbursement in the amount of \$570,941.00, the November 26, 2019 judgment provided that Stephens and C&I “are entitled to a credit toward their future workers’ compensation obligation under Louisiana law and, considering the agreement of the parties as to the amount thereof, the future credit is hereby set at \$2,095,735.36.”

Mr. LaPoint appeals, questioning whether the OWC had subject matter jurisdiction to determine issues of reimbursement or credit. He also files an exception of res judicata for the first time on appeal.

LAW AND DISCUSSION

Exception of Res Judicata

In his brief filed in support of his exception of res judicata, Mr. LaPoint maintains that the WCJ was barred from permitting what constituted re-litigation of the previously adjudicated final judgment in Georgia. Mr. LaPoint specifically points to the Georgia district court’s October 20, 2015 ruling, set forth in full above, and argues that the Georgia court determined that Georgia law governed the entire subrogation claim asserted by Stephens and C&I in those proceedings against the third-party tortfeasors. He notes that Stephens and C&I did not appeal the Georgia ruling. Given the finality of the Georgia judgment, Mr. LaPoint continues in arguing that Stephens and C&I are barred from further litigating

The calculation of the credit, which is separate and independent from the calculation of the reimbursement, would be as follows: \$4,000,000.00 – \$863,695.00 – \$3,136,305.00. \$3,136,305.00 minus 1/3 (\$1,045,435.00) equals \$2,090,870.00. The amount of the credit applied to future workers’ compensation benefits is in the amount of \$2,090,870.00.

that they have a right of subrogation against LaPoint's Georgia tort recovery for benefits paid to him under the Louisiana compensation statutes and/or for a credit for future benefits.

In opposition, Stephens and C&I assert that the use of the exception of res judicata is merely a re-characterization of Mr. LaPoint's challenge to the OWC's subject matter jurisdiction to consider the claim for credits for future benefits to be paid under Louisiana compensation law. Relying on this nexus with the underlying subject matter jurisdiction claim, Stephens and C&I contend that this court should readily overrule the exception of res judicata as the OWC's ruling on the subject matter jurisdiction issue was rejected by this court on writ review and subsequent review denied by the supreme court, as explained above. *See Stephens*, 18-471.

This latter claim in opposition, which invokes the law of the case doctrine, lacks merit. The law of the case doctrine provides merely that "an appellate court will generally refuse to reconsider its own rulings of law on a subsequent appeal of the same case." *Hernandez v. La. Workers' Comp. Corp.*, 15-118, p. 5 (La.App. 3 Cir. 6/3/15), 166 So.3d 456, 459. Notably, however, in this case the exception of res judicata has been lodged *for the first time* on appeal. The record contains no exception of res judicata filed below and, accordingly, no corresponding ruling from the OWC or this court. Further, application of the law of the case doctrine is discretionary. *Id.* Even "[a] prior denial of supervisory writs does not preclude reconsideration of an issue on appeal, nor does it prevent the appellate court from reaching a different conclusion." *Id.* at 458 (citing *State v. Castleberry*, 98-1388 (La. 4/13/99), 758 So.2d 749, *cert. denied*, 528 U.S. 893, 120 S.Ct. 220 (1999)). We accordingly reject

Stephens' and C&I's claim that the exception of res judicata should be summarily denied and instead turn to consideration of the merits of the peremptory exception.

Exceptions of res judicata are governed by La.R.S. 13:4231, which reads:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The supreme court has thus explained that, under La.R.S. 13:4231,

a second action is precluded when all of the following are satisfied: (1) the judgment is valid; (2) the judgment is final; (3) the parties are the same; (4) the cause or causes of action asserted in the second suit existed at the time of the final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.

Chauvin v. Exxon Mobil Corp., 14-0808, pp. 5-6 (La. 12/9/14), 158 So.3d 761, 765 (citing *Chevron U.S.A., Inc. v. State*, 07-2469 (La. 9/8/08), 993 So.2d 187; *Burguieres v. Pollingue*, 02-1385 (La. 2/25/03), 843 So.2d 1049).

Although all of the identified elements are required, the supreme court has identified the “chief inquiry” under La.R.S. 13:4231 as “whether the second action asserts a cause of action which arises out of the transaction or occurrence that was the subject matter of the first action.” *Chevron*, 993 So.2d at 194 (quoting *Burguieres*, 843 So.2d at 1053). This inquiry “serves the purpose of judicial economy and fairness by requiring the plaintiff to seek all relief and to assert all rights which arise out of the same transaction or occurrence.” *Oliver v. Orleans Par. Sch. Bd.*, 14-329, pp. 20-21 (La. 10/31/14), 156 So.3d 596, 612 (quoting La.R.S. 14:4231, cmt. (a)), *cert. denied*, 575 U.S. 1009, 135 S.Ct. 2315 (2015).

As a peremptory exception under La.Code Civ.P. art. 927, the exception of res judicata may be considered for the first time on appeal “if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.” See La.Code Civ.P. art. 2163. See also *Smith*

v. State, Dep't of Transp. & Dev., 04-1317 (La. 3/11/05), 899 So.2d 516. Both qualifiers are present in this case. Finding proof of the exception in the record, we sustain the exception for the reasons below.

Validity of Judgment

This first requirement for the application of res judicata, the validity of the judgment, is demonstrated by the procedural background as reflected in the record. Louisiana Revised Statutes 13:4231, cmt. (d) provides that, “[t]o have any preclusive effect a judgment must be valid, that is, it must have been rendered by a court with jurisdiction over subject matter and over parties, and proper notice must have been given.” *See also Burguières*, 843 So.2d 1049.

The Georgia court determined that it had personal and subject matter jurisdiction over the claim, finding Georgia law applicable given the situs of the accident in that state, and determined that an employer’s right of subrogation in Georgia was limited to benefits paid under the Georgia workers’ compensation act. *See Ga.Code Ann.*, § 34-9-11.1.⁶

⁶ Titled “Rights of employee or employer or its insurer to proceed against persons other than employer who are liable for employee’s injury or death[.]” Ga.Code Ann., § 34-9-11.1 provides, in pertinent part:

(a) When the injury or death for which compensation is payable under this chapter is caused under circumstances creating a legal liability against some person other than the employer, the injured employee or those to whom such employee’s right of action survives at law may pursue the remedy by proper action in a court of competent jurisdiction against such other persons, except as precluded by Code Section 34-9-11 or otherwise.

In determining the limits of its own jurisdiction, the Georgia court relied on *Performance Food Grp., Inc. v. Williams*, 300 Ga.App. 831, 686 S.E.2d 437 (2009), a case in which a plaintiff truck driver was injured in a work-related accident while in Georgia. The employer provided the plaintiff with workers' compensation benefits under the law of his home state, Tennessee. The employer, in turn, filed a Georgia suit against the Georgia tortfeasors and intervened in the employee's corresponding tort suit as well. The employer sought to recover benefits it provided under the Tennessee compensation law. The Georgia district court, however, denied the Tennessee workers' compensation intervention and entered summary judgment in favor of the third-party tortfeasors. The court of appeals affirmed that judgment, citing its own jurisprudence in explaining:

(b) In the event an employee has a right of action against such other person as contemplated in subsection (a) of this Code section and *the employer's liability under this chapter has been fully or partially paid, then the employer or such employer's insurer shall have a subrogation lien, not to exceed the actual amount of compensation paid pursuant to this chapter, against such recovery*. The employer or insurer may intervene in any action to protect and enforce such lien. However, the employer's or insurer's recovery under this Code section shall be *limited to the recovery of the amount of disability benefits, death benefits, and medical expenses paid under this chapter* and shall only be recoverable if the injured employee has been fully and completely compensated, taking into consideration both the benefits received under this chapter and the amount of the recovery in the third-party claim, for all economic and noneconomic losses incurred as a result of the injury.

(Emphasis added.)

“[I]f the plaintiff is eligible for workers’ compensation under the law of the state where the tort was committed, the law of that state is applicable even though the plaintiff may have received and accepted workers’ compensation in another state.” For this purpose, subrogation rights arising from the payment of workers’ compensation benefits is a substantive law issue. Because Gunn was injured in Georgia and was eligible to receive workers’ compensation benefits in Georgia, Georgia law governs Performance Food’s subrogation claim.

Since Georgia law applies, the subrogation rights of employers and insurers on account of their payment of workers’ compensation benefits derives from OCGA § 34-9-11.1. “[A]ny subrogation claim which an insurer under the Georgia Workers’ Compensation Act may have against a third-party tortfeasor who has caused the death or disability of an employee arises solely by operation of statute.” However, “OCGA § 34-9-11.1(b) plainly provides the employer or insurer a right of subrogation limited to benefits paid under the Georgia Workers’ Compensation Act,” and as a consequence Performance Food cannot pursue a subrogation claim for benefits paid under foreign law.

Performance Food argues that this result is unfair, contending that it had been required to pay benefits under Tennessee law and had no opportunity to contradict its employee’s election and pay Gunn benefits in Georgia. As a result, Performance Food

argues, “the Georgia courts should not effectively overrule the laws of the State of Tennessee and deny [Performance Food] its right of subrogation provided by Tennessee law.” While the trial court’s decision precludes Performance Food from asserting what might be a valid subrogation claim under Tennessee law, the trial court acted consistently with binding precedent. That the worker injured in Georgia sought and received benefits in Illinois rather than Georgia made no difference in the application of Georgia law, in light of the rule of *lex loci delicti*, in *Sargent Indus.[, Inc. v. Delta Air Lines, Inc.*, 251 Ga. 91, 303 S.E.2d 108 (1983)]. Our Supreme Court has recently affirmed that the “application of *lex loci delicti*, even though sometimes leading to results which may appear harsh” remains the law in Georgia. Further, there is no inherent right to subrogation in Georgia, and the legislature’s failure to provide for subrogation does not deprive the employer or insurer of due process. “[T]he employer has no constitutionally protected interest in any sums the employee receives from the third-party tortfeasor.”

Id. at 832-34 (footnote omitted) (citations omitted). See also *Liberty Mut. Ins. Co. v. Roark*, 297 Ga.App. 612, 677 S.E.2d 786 (2009).

Georgia law accordingly provided no subrogation right to Stephens and C&I for benefits paid under the Louisiana’s Workers’ Compensation Act. The final judgment of the Georgia court has been found to be entitled to full faith and credit in a final judgment of

the Fourteenth Judicial District Court. *See LaPoint v. Stephens TPS, Inc.*, 2016-2957.

Finality of Judgment

For res judicata purposes, a final judgment is one “that disposes of the merits in whole or in part. The use of the phrase ‘final judgment’ also means that the preclusive effect of a judgment attaches once a final judgment has been signed by the trial court and would bar any action filed thereafter unless the judgment is reversed on appeal.” La.R.S. 13:4231, cmt. (d). *See also Oliver*, 156 So.3d 596.

Like validity, the finality of the October 20, 2015 Georgia judgment is firmly established. The Georgia court considered its jurisdictional reach as it applied to Stephens’ and C&I’s claim(s) under both Georgia and Louisiana law. It found no availability of recovery under the Louisiana workers’ compensation law in that forum, concluding instead that “an employer or insurer’s right is limited to benefits paid under [the] Georgia Workers’ Compensation Act.” No appeal was taken from the ruling.

Moreover, although Stephens and C&I contend that the Georgia ruling did not extend to any subrogation claim that could be brought under Louisiana law, we again find that position meritless. The Georgia court exercised its jurisdiction over the entirety of the claim before it, one in which Stephens and C&I participated by their intervention in the tort matters. They asserted their subrogation claim for both Georgia and Louisiana benefits. Within the context of that question, and chosen forum, the Georgia court determined that their “subrogation claim is governed by Georgia law” and that “[u]nder Georgia’s workers’ compensation statutory scheme, an employer or insurer’s subrogation right is limited

to benefits paid under Georgia's Workers' Compensation Act." It went on to say that, even assuming a potentially valid subrogation under Louisiana law, the Georgia law offered no remedy thereto.

Stephens and C&I erroneously contend that the Georgia ruling is not valid for the remaining issue of subrogation under the Louisiana workers' compensation act. Stephens and C&I seek both a reimbursement and a "credit" for their future workers' compensation obligation that stemmed from a Georgia accident, was adjudicated by all parties in a Georgia forum, and which, after the October 20, 2015 Georgia judgment, resulted in a settlement reached in accordance with Georgia law, namely Ga.Code Ann., § 34-9-11.1.⁷ Allowing Stephens and C&I to reach into that now- finite *tort recovery, available and obtained only under Georgia law*, would permit Stephens and C&I to avail themselves of proceeds not otherwise available to Mr. LaPoint given USCI's status as the principal contractor on the project. *See* La.R.S. 23:1032; La.R.S. 23:1061. *See, e.g., Allen v. State ex rel. Ernest N. Morial-New Orleans Exh. Hall Auth.*, 02-1072 (La. 4/9/03), 842 So.2d 373. *See also Berard v. The Lemoine Co., LLC*, 15-152 (La.App. 3 Cir. 7/8/15), 169 So.3d 839, *writ denied*, 15-1516 (La. 10/23/15), 179 So.3d 606. Allowing such access would undermine the integrity and purpose of the Georgia statutory scheme described by the Georgia court in its October 20, 2015 final judgment.

Further, that Georgia policy uniquely provided Mr. LaPoint with the ability to recover from a

⁷ Whereas the Georgia judgment was rendered in October 2015, the settlement was not reached until 2016.

principal/statutory employer and/or its employee and insurer. In contrast, recovery in Louisiana rests exclusively in workers' compensation against all employers by operation of La.R.S. 23:1032 and La.R.S. 23:1061. While the parties debate whether La.R.S. 23:1102 and La.R.S. 23:1103 permit Stephens' and C&I's recovery for reimbursement and/or credits, doing so largely in their debate regarding subject matter jurisdiction, their focus misses the mark *in this case*. Subject matter jurisdiction certainly existed for such recovery that *may* have fallen outside of the Georgia litigation. However, as Mr. LaPoint's tort recovery was from a statutory employer and/or its employee, Stephens and C&I *could not* have recovered either reimbursement or credit from that recovery under the cited statutory authority. Instead, La.R.S. 23:1101, La.R.S. 23:1102, and La.R.S. 23:1103 specifically preclude that recovery when the "third-party" is a *principal/statutory employer*, the unique scenario presented here.

La.R.S. 23:1101 instead defines "third person," providing that:

A. When an injury or compensable sickness or disease for which compensation is payable under this Chapter has occurred under circumstances creating in some person (in this Section referred to as "third person") *other than those persons against whom the said employee's rights and remedies are limited in R.S. 23:1032*, a legal liability to pay damages in respect thereto, the aforesaid employee or his dependents may claim compensation under this Chapter and the payment or award of compensation hereunder shall not affect the claim or right of action of the said

employee or his dependents, relations, or personal representatives against such third person, nor be regarded as establishing a measure of damages for the claim; and such employee or his dependents, relations, or personal representatives may obtain damages from or proceed at law against such third person to recover damages for the injury, or compensable sickness or disease.

(Emphasis added.)

As a principal/statutory employer, Mr. LaPointe's right of recovery against USCI and its employee—in this state—would have been exclusively in workers' compensation and, in turn, those defendants would not have been a "third party" for purposes of La.R.S. 23:1102 and La.R.S. 23:1103. In short, there would have been no tort recovery at all under Louisiana law.

Identity of Parties

This third requirement for the exception of *res judicata*, that the parties to the initial judgment and the second action be the same, is uncontested as Mr. LaPoint, Stephens, and C&I were the parties involved in both the Georgia and Louisiana litigation.

Existence of the Cause of Action

Undoubtedly the cause of action, Stephens and C&I's attempt to recover benefits paid under the Louisiana workers' compensation act, *existed* at the time of the October 20, 2015 judgment rendered by the Georgia court. As seen in the excerpt of its ruling quoted *infra*, the issue was placed squarely before that court and, in fact, the Georgia court rejected any claim for recovery of Louisiana benefits, instead finding Georgia workers' compensation law applicable

to a workers' compensation subrogation claim filed in a hearing in Georgia in a Georgia tort suit.

We note here that much has been made in this court regarding whether Stephens and C&I sought, by their intervention in the Georgia third-party tort matters, both reimbursement for past compensation expenditures and for credits for future expenditures under the Louisiana workers' compensation scheme. In part, this fine division in the claim of reimbursement or credit is inconsequential, as the Georgia court determined that **Georgia law does not allow subrogation, at all, of any payments made under a foreign workers' compensation law.**

Further, the language of the interventions and the ongoing, monthly nature of the future "credits" undermines the position that Stephens and C&I intervened in the Georgia tort suit only for "reimbursement" of benefits previously paid and did not seek a specific "credit" for future expenditures under the Louisiana workers' compensation law.

The timeline of events is also illustrative of the strained nature of the reimbursement/credit division issue. Mr. LaPoint sustained injury in the work-related accident in Georgia on March 8, 2012. Workers' compensation benefits commenced in Georgia, but were transferred to Louisiana benefits shortly thereafter.⁸ Mr. LaPoint filed his two Georgia suits against the third-party tortfeasors in November

⁸ In addition to the fact that only \$7,283.03 was paid in Georgia benefits indicates the short-lived nature of the benefits being pursued in that state. The "Claims Manager" notes, completed less than two months after the accident in April-May 2012, indicated that benefits were being transferred to Louisiana pursuant to Mr. LaPoint's choice.

2013 and in March 2014. Stephens and C&I intervened in the tort claims in 2014. In each “Complaint for Intervention,” Stephens and C&I indicated that: “Stephens TPS, Inc. and Commerce & Industry Insurance Company have paid indemnity benefits and medical benefits to date on Plaintiff’s workers’ compensation claim. *Payments continue on behalf of Plaintiff.*” (Emphasis added.) They further asserted that:

Pursuant to the Georgia Workers’ Compensation Act and O.C.G.A. § 34-9-11(b), Stephens TPS, Inc. and Commerce & Industry Insurance Co. will be seen as Plaintiffs in this case, and show they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LaPoint, which they would contend they can recover from or against any recovery paid to Plaintiff Robert LaPoint in this action.

WHEREFORE, Stephens TPS, Inc. and Commerce & Industry Insurance Co. show that if Plaintiff recovers any damages, those damages should be apportioned so that Stephens TPS, Inc. and Commerce & Industry Insurance Co., *can recover their claim for all medical and indemnity benefits as entitled by law.*”

(Emphasis added.) Thus, some two years after Georgia benefits ceased, Stephens and C&I intervened, seeking not only reimbursement of past expenditures, whether under Georgia or Louisiana law, but calling the Georgia court’s attention to the fact that benefits were ongoing. They were obviously ongoing under the Louisiana compensation scheme,

as they had been for almost two years prior. To now assert in this forum, that Stephens' and C&I's 2014 interventions in Georgia, which cited its continuation of payments, did not include a prayer toward future, ongoing payments is contrary to the continuing and cumulative nature of the workers' compensation benefits. Any potential cause of action obviously existed at the time of the Georgia proceeding and was, in fact, presented and adjudicated in the Georgia forum.

Same transaction or occurrence

The final element of res judicata is obvious. All compensation benefits arose out of the subject matter of the first Georgia tort litigation, as Stephens and C&I attempted to recover compensation benefits resulting from Mr. LaPoint's Georgia tort claim. The details of whether workers' compensation recovery was under Georgia or Louisiana law, or whether it was pursued as a reimbursement or as a credit against future payments, is of no moment. The inquiry is instead whether the cause of action for workers' compensation arose out of *the transaction or occurrence* that was the subject matter of the initial litigation. In this case, the occurrence of both was the accident causing injury and damages under Georgia law, which also necessitated the compensation payments.

Following examination of each of the elements required under La.R.S. 13:4231, we conclude that the exception of res judicata has merit. Given the final and preclusive effect of the Georgia court's ruling, we conclude that the workers' compensation judge erroneously rendered judgment awarding reimbursement from Mr. LaPoint's tort recovery and in

ordering that Stephens and C&I are entitled to a credit for future compensation payments.

As this matter is resolved entirely by reference to the exception of res judicata, Mr. LaPoint's additional assignment of error is rendered moot.

DECREE

For the foregoing reasons, the Exception of Res Judicata filed by Appellant, Robert LaPoint is sustained and the underlying judgment rendered November 16, 2019 is reversed and vacated. Costs of this proceeding are assessed to Appellees, Stephens TPS, Inc. and Commerce and Industry Insurance Company.

**EXCEPTION OF RES JUDICATA SUSTAINED.
JUDGMENT REVERSED AND VACATED.**

STATE OF LOUISIANA
COURT OF APPEAL, THIRD CIRCUIT

20-388

ROBERT LAPOINT
VERSUS
COMMERCE & INDUSTRY INSURANCE
COMPANY AND STEPHENS TPS, INC.

GREMILLION, Judge, dissents in part.

I agree with the majority that the Georgia judgment constitutes res judicata as to the rights of Commerce & Industry Insurance Company and Stephens TPS, Inc.(C&I), for reimbursement for benefits paid prior to the rendition of that judgment. However, I dissent from the majority's ruling that the same judgment constitutes res judicata as to C&I's claim of a credit against future compensation.

Exceptions of res judicata are governed by La.R.S. 13:4231, which reads (emphasis added):

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the

transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, *with respect to any issue actually litigated and determined if its determination was essential to that judgment.*

C&I and Mr. LaPoint both admit that the issue of C&I's credit was not before the Georgia court; Georgia law does not recognize an employer's right to a credit. Under Georgia law, an employer enjoys a subrogation lien pursuant to Ga.Code Ann. §34-9-11.1. That lien may not "exceed the actual amount of compensation paid pursuant to this chapter[.]" *Id.* at subsection (b). The Georgia statute does not address a credit against future compensation the employer may have to pay. There is no counterpart in Georgia to the dollar-for-dollar credit an employer or insurer is entitled to under Louisiana law. In fact, Georgia law does not authorize a subrogation lien against recovery from third parties for future benefits. *GSU Ins. Co. v. Sabel Indus., Inc.*, 255 Ga.App. 236, 564 S.E.2d 836 (2002). This comports with the notion of "subrogation," in which one party, the subrogee, steps into the shoes of another, the subrogor; the subrogee's rights are no greater nor less than the subrogor's. *See*

Jordan v. TG&Y Stores Co., 256 Ga. 16, 342 S.E.2d 665 (1986).

The Georgia court was limited to the benefits *already paid* to or on behalf of Mr. LaPoint, and at that only what was paid pursuant to Georgia law. This is affirmed in the Georgia court's ruling, which stated, "In this Motion, Plaintiff seeks a determination that [Stephens] and [C&I] are not entitled to recover their subrogation lien as to workers[] compensation benefits paid under both Georgia's and Louisiana's workers[] compensation statutes." And further (emphasis added), "In their supporting brief, [Stephens] and [C&I] sought to intervene as to the total amount *then paid* to the Plaintiff, a vast majority of which was paid under the Louisiana statutes."

The issue of C&I's credit was never litigated. The issue of the credit was not essential to the Georgia judgment, which only addressed C&I's entitlement to subrogation against Mr. LaPoint's tortfeasors. Further, the applicable statutes make clear that when a district court's judgment is silent on the issue of the employer's credit, that judgment is not res judicata.

The broad jurisdictional statement of OWC is set forth in La.R.S. 23:1310.3, which reads in pertinent part:

A. A claim for benefits, the controversion of entitlement to benefits, or other relief under the Workers' Compensation Act shall be initiated by the filing of the appropriate form with the office of workers' compensation administration. Mailing, facsimile transmission, or electronic transmission of the form and payment of the filing fee within five days of any such mailing or transmission

constitutes the initiation of a claim under R.S. 23:1209.

Pursuant to La.R.S. 23:1103, the employer is entitled to first-dollar reimbursement for all compensation it has paid. It is also entitled to a dollar-for-dollar credit against any future compensation. The credit constitutes “relief under the Workers’ Compensation Act.”

According to La.R.S. 23:1101(B), the amount of a credit due an employer may be set forth in the judgment of the trial court in a third-party suit. If it is not, the credit will be determined in accordance with La.R.S. 23:1102(A). Section 1102(A)(2) provides:

Any dispute between the employer and the employee regarding the calculation of the employer’s credit may be filed with the office of workers’ compensation and tried before a workers’ compensation judge. However, any determination of the employer’s credit shall not affect any rights granted to the employer or the employee pursuant to R.S. 23:1103(C).

The plain wording of La.R.S. 23:1101(B) provides that *if the parties agree*, the district court judgment may set forth the amount of credit due the employer; otherwise it will be determined pursuant to La.R.S. 23:1102(A), which provides for the OWC’s jurisdiction to hear such a dispute. This indicates that the district court’s silence on the issue of a credit does not constitute *res judicata* on that issue.

For the foregoing reasons, I dissent from the ruling of the majority finding that the Georgia judgment precludes litigation of the employer’s credit.

Appendix D
[LETTERHEAD]

LOUISIANA WORKFORCE COMMISSION
Office of Workers' Compensation Administration
District 3

November 26, 2019

Robert A. Dunkelman
Attorney at Law
P.O. Box 1786
Shreveport, LA 71166

Certified Mail #70191120000215475683
Return Receipt Requested

Aaron Broussard
Attorney at Law
1301 Common Street
Lake Charles, LA 70601

Certified Mail #70191120000023794570
Return Receipt Requested

Re: Robert Lapoint vs. Commerce & Industry
Insurance Company and Stephens TPS Inc.
Docket # 13-06349
District 3

NOTICE OF SIGNING OF FINAL JUDGMENT

IN ACCORDANCE WITH LA C.C.P. ART. 1913,
NOTICE IS HEREBY GIVEN THAT on November 26,
2019, Honorable Dianne Mayo, Workers' Compensation
Judge, signed a final judgment in the above referenced
matter, a copy of which is attached hereto.

- Pursuant to La. C.C.P. art. 1971, et seq. a **motion for new trial** may be filed within seven (7) days, commencing from the day after mailing of this notice as certified by the Clerk of Court, exclusive of legal holidays.
- Pursuant to La. R.S. 23:1310.5(B), and La. C.C.P. art. 2123, and in the absence of a timely filed motion for new trial, an appeal which suspends the effect or execution of this judgment (**suspensive appeal**) must be filed within thirty (30) days, commencing from the day after mailing of this notice as certified by the Clerk of Court. If a motion for new trial is filed timely, the delay for filing a suspensive appeal commences on the day after notice of judgment on the motion for new trial is mailed, as certified by the Clerk of Court.
- Pursuant to La. R.S. 23:1310.5(B) and La. C.C.P. art. 2087, and in the absence of a timely motion for new trial, an appeal which does not suspend the effect or execution of this judgment (**devolutive appeal**) must be filed within sixty (60) days, commencing from the day after mailing of this notice as certified by the Clerk of Court. If a motion for new trial is filed timely, the delay for filing a devolutive appeal commences on the day after notice of judgment on the motion for new trial is mailed, as certified by the Clerk of Court.

I **hereby certify** that a true copy of the foregoing *Notice of Signing of Final Judgment* was mailed to the above- named persons via certified mail on the 26th day of November, 2019.

/s/ Stephanie Wood
CLERK OF COURT

40a

[STAMP]

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OWC-DISTRICT 3

2019 NOV 26 A 8:23

ROBERT T. LAPOINT * DOCKET NO. 13-06349
DISTRICT: 03
VERSUS * OFFICE OF WORKER'S
COMPENSATION
STEPHENS TPS, INC. * STATE OF LOUISIANA

CONSOLIDATED WITH

STEPHENS TPS, INC. * DOCKET NO. 15-02726
DISTRICT: 03
VERSUS * OFFICE OF WORKER'S
COMPENSATION
ROBERT LAPOINT * STATE OF LOUISIANA

CONSOLIDATED WITH

STEPHENS TPS, INC. * DOCKET NO. 17-01901
DISTRICT: 03
VERSUS * OFFICE OF WORKER'S
COMPENSATION
ROBERT LAPOINT * STATE OF LOUISIANA

JUDGMENT

THIS MATTER having come regularly before the Court for trial on the merits on March 11, 2019 and for reasons orally assigned and adopted as written reasons on March 21, 2019:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that STEPHENS TPS, INC. and COMMERCE AND INDUSTRY INSURANCE COMPANY are entitled to reimbursement from the amount currently held in the escrow account of Robert Lapoint's attorney, Aaron Broussard, in the amount of \$570,941.00, representing workers' compensation lien reimbursement, plus legal interest from the date of Judgment until paid.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that STEPHENS TPS, INC. and COMMERCE AND INDUSTRY INSURANCE COMPANY are entitled to a credit toward their future workers' compensation obligation under Louisiana law and, considering the agreement of the parties as to the amount thereof, the future credit is hereby set at \$2,095,735.36

THUS DONE AND SIGNED this 26th day of November, 2019 in Lake Charles, Calcasieu Parish, Louisiana.

/s/ [ILLEGIBLE]
WORKER'S COMPENSATION JUDGE

JUDGMENT PREPARED BY:

PETTIETTE, ARMAND, DUNK.ELMAN,
WOODLEY BYRD & CROMWELL, L.L.P.

BY: /s/ Robert A. Dunkelman
Robert A. Dunkelman, No. 18189

400 Texas Street, Suite 400 (71101)
P.O. Box 1786
Shreveport, Louisiana 71166-1786
Phone: (318) 221-1800
Fax: (318) 226-0390
E-Mail: rdunkelman@padwbc.com

ATTORNEYS FOR STEPHENS TPS, INC. AND
COMMERCE AND INDUSTRY fNSURANCE
COMPANY

[STAMP]

TRUE COPY

BY /s/ [ILLEGIBLE]

OFFICE OF WORKER'S COMPENSATION
AUTHORIZED CERTIFICATION CLERK

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APPROVED AS TO FORM AND CONTENT

BROUSSARD & HART

BY: /s/ Aaron Broussard
Aaron Broussard, La. Bar No. 30134

1301 Common Street
Lake Charles, Louisiana 70601
Phone: 337-439-2450
Fax: 337-439-3450

ATTORNEYS FOR ROBERT LAPOINT

Appendix E

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
FILE No. 2013CV239667

ROBERT LAPOINT,

Plaintiff,

And

STEPENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE COMPANY,

Intervening Plaintiffs,

vs.

UTILITY SERVICE COMPANY,

Defendant.

COMPLAINT FOR INTERVENTION

COME now, STEPHENS TPS, INC. and COMMERCE & INDUSTRY INSURANCE COMPANY, by and through counsel, and hereby file the following Complaint for Intervention

1.

The named Defendants are properly subject to the jurisdiction of this Court and may be served with process as specifically set forth and identified in Plaintiff's Complaint.

45a

2.

Stephens TPS, Inc. and Commerce & Industry Insurance Company have paid indemnity benefits and medical benefits to date on Plaintiffs workers' compensation claim. Payments continue on behalf of Plaintiff.

3.

Defendants are responsible for the injuries to Plaintiff.

[STAMP]

EXHIBIT

7

4.

Pursuant to the Georgia Workers' Compensation Act and O.C.G.A. § 34-9-11(b), Stephens TPS, Inc; and Commerce & Industry Insurance Co. will be seen as Plaintiffs in this case, and show they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LaPoint, which they would contend they can recover from or against any recovery paid to Plaintiff Robert LaPoint in this action.

WHEREFORE, Stephen TPS, Inc. and Commerce & Industry Insurance Co. show that if Plaintiff recovers any damages, those damages should be apportioned so that Stephens TPS, Inc. and Commerce & Industry Insurance Co. can recover their claim for all medical and indemnity benefits as entitled by law.

This 4th day of March, 2014.

LAW OFFICE OF JENNIE E. ROGERS

/s/ Jennie E. Rogers

JENNIE E. ROGERS

Attorney for Stephens TPS, Inc. and
Commerce Industry Insurance Company
Georgia Bar No. 612725

P.O. Box 5725
Alpharetta, GA 30023-5725
Phone: (678) 240-1842
Fax: (855) 870-6362
jennie.rogers@aig.com

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
FILE No. 2013CV239667

ROBERT LAPOINT,

Plaintiff,

And

STEPENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE COMPANY,

Intervening Plaintiffs,

vs.

UTILITY SERVICE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this day served counsel for the opposing parties in the foregoing matter with a copy of the attached ***Complaint for Intervention*** by depositing a copy of same in the United States Mail in a properly addressed envelope with adequate postage thereon to ensure delivery.

This 4th day of March, 2014.

By: /s/ Jennie E. Rogers, Esq.
JENNIE E. ROGERS, ESQ.
Georgia Bar No. 612725
Attorney for Stephens TPS, Inc. and
Commerce Industry Insurance Company

PERSONS SERVED:

Aaron Broussard, Esq.
Broussard & Hart, L.L.C.
1301 Common Street
Lake Charles, LA 70601

David C. Marshall, Esq.
Hawkins Parnell Thackston & Young, LLP
303 Peachtree Street NE
4000 SunTrust Plaza
Atlanta, GA 30308

Nelson O. Tyrone: III, Esq.
Tyrone Law Firm, P.C.
400 Colony Square, Suite 1900
1201 Peachtree Street NE
Atlanta, GA 30361

Appendix F

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO.
14EV00514

ROBERT LAPOINT

Plaintiff,

And

STEPHENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE, CO.,

Intervening Plaintiffs,

v.

DAVID MICHAEL JACKSON,

Defendant.

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Transaction ID: 55861554

Date: Aug 08 2014 02:59PM

Cicely Barber, Clerk

Civil Division

COMPLAINT FOR INTERVENER

COMES NOW, STEPHENS TPS, INC. AND
COMMERCE & INDUSTRY INSURANCE CO., by

and through counsel, and hereby file the following *Complaint for Intervention*.

1.

The named Defendant is properly subject to the jurisdiction of this Court and may be served with process as specifically set forth and identified in Plaintiff's Complaint.

2.

Stephens TPS, Inc. and Commerce & Industry Insurance Co. have paid indemnity benefits and medical benefits to date on Plaintiffs workers' compensation claim. Payments continue on behalf of Plaintiff.

[STAMP]

EXHIBIT

8

3.

Defendant is responsible for the injuries to Plaintiff.

4.

Pursuant to the Georgia Workers' Compensation Act and O.C.G.A. § 34-9-11(b), Stephens TPS, Inc., and Commerce & Industry Insurance Co. will be seen as Plaintiffs in this case, and show they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LaPoint, which they would contend they can recover from or against any recovery paid to Plaintiff Robert LaPoint in this action.

WHEREFORE, Stephen TPS, Inc. and Commerce & Industry Insurance Co. show that if Plaintiff recovers any damages, those damages should be apportioned so that Stephens TPS, Inc. and Commerce & Industry Insurance Co. can recover their claim for all medical and indemnity benefits as entitled by law.

This the 8th day of August, 2014.

Respectfully submitted,

LAW OFFICE OF JENNIE E. ROGERS

By: /s/ Jennie E. Rogers, Esq.
JENNIE E. ROGERS, ESQ.
Georgia Bar No. 612725
Attorney for Stephens TPS, Inc. and
Commerce & Industry Insurance Co.

LAW OFFICE OF JENNIE E. ROGERS
P.O. Box 5725
Alpharetta, GA 30023-5725
Phone: (678) 240-1842
Fax: (855) 984-4677

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO.
14EV00514

ROBERT LAPOINT

Plaintiff,

And

STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE, CO.,

Intervening Plaintiffs,

v.

DAVID MICHAEL JACKSON,

Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this day served the **CERTIFICATE OF SERVICE** named above with a copy of the forgoing **PROPOSED COMPLAINT** upon known attorneys of record by fileand serve to the following:

Nelson O. Tyrone: III
Tyrone Law Firm, P.C.
1201 Peachtree Street NE
400 Colony Square, Suite 1900
Atlanta, GA 30361

This 8th day of August, 2014.

53a

By: /s/ Jennie E. Rogers, Esq.
JENNIE E. ROGERS, ESQ.
Georgia Bar No. 612725

Appendix G

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

**CIVIL ACTION
FILE NO. 14EV00514**

**ROBERT LAPOINT,
PLAINTIFF,
VS.
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE, CO.,
INTERVENING PLAINTIFFS.**

[STAMP]

State Court of Fulton County
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10/20/2015 12:23:57 PM
Cicely Barber, Clerk
Civil Division

ORDER

The above styled action having come before the Honorable Court for hearing on Plaintiff's MOTION FOR SUMMARY JUDGMENT AND IN THE ALTERNATIVE, MOTION FOR ADJUDICATION OF CO-PLAINTIFF STEPHENS TPS, INC. AND

COMMERCE INDUSTRY INSURANCE COMPANY'S ("STPS and CCIC") LIEN INTEREST and the Court having considered the arguments presented by counsel for all-parties, the entire record and the applicable law, the Court finds as follows:

Plaintiff is a Louisiana resident who was injured in the course of his employment in Georgia. STPS and CCIC paid workers compensation benefits to Plaintiff initially under Georgia's workers-compensation statutes and shortly thereafter, under Louisiana's workers compensation statutes. STPS and CCIC intervened in the instant action to enforce their subrogation lien for workers compensation benefits paid to the Plaintiff. In this Motion, Plaintiff seeks a determination that STPS and CCIC are not entitled to recover their subrogation lien as to workers compensation benefits paid to Plaintiff under both Georgia and Louisiana's workers compensation statutes. Plaintiff argues that their Motion to Intervene was not limited to benefits paid under Georgia law and instead, STPS and CCIC asserted in the instant action a lien for the entire amount of benefits paid to Plaintiff.

[STAMP]

EXHIBIT

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Upon review of the record, the Court agrees that STPS and CCIC's Motion to Intervene was not limited as to benefits paid under Georgia workers compensation law, but also included benefits paid under Louisiana workers compensation statutes. In their supporting brief, STPS and CCIC sought to intervene as to the total amount then paid to the Plaintiff, a vast majority of which was paid under the

Louisiana statutes. Under the rule of *lex loci delicti*, this Court must apply Georgia substantive law irrespective of whether the Georgia workers' compensation law was invoked to pay the benefits. Performance Food Grp., Inc. v. Williams, 300 Ga. App. 831, 686 S.E.2d 437 (2009). Therefore, STPS and CCIC's subrogation claim is governed by Georgia law. Under Georgia's workers' compensation statutory scheme, an employer or insurer's subrogation right is limited to benefits paid under Georgia's Workers' Compensation Act. Id. Therefore, this Court finds that STPS and CCIC are "preclude[d] from asserting what might be a valid subrogation claim under [Louisiana] law, Id. at 833, and therefore, cannot pursue in Georgia a subrogation claim for the benefits they paid under paid under Louisiana law.

Accordingly, the parties shall come before the Honorable Court on November 10, 2015 at 9:30 a.m. to present evidence and arguments as to STPS and CCIC's recovery of their subrogation lien relating solely to the benefits they paid under the Georgia Workers Compensation Act.

SO ORDERED, this 20th day of October, 2015.

/s/ Fred C. Eady
HONORABLE FRED C. EADY, JUDGE
STATE COURT OF FULTON COUNTY

Appendix H

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
FILE NO. 2014EV000514

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE & INDUSTRY INSURANCE, COMPANY, Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY and, in the alternative MOTION FOR ADJUDICATION OF CO-PLAINTIFF STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY'S LIEN INTEREST

COMES NOW, Plaintiff Robert Lapoint by and through the undersigned counsel, and hereby files its Motion for Summary Judgment against Stephens TPS, Inc., and Commerce & Industry

Insurance Company and in the alternative Motion for Adjudication of Co-Plaintiff Stephens TPS, Inc., and Commerce & Industry Insurance Company's lien interest in this matter. In support hereof, Plaintiff shows this Court that there remain genuine issues of material fact to be tried and that Plaintiff is entitled to summary judgment pursuant to O.C.G.A. §9-11-56 and other applicable law.

[STAMP]
EXHIBIT
C

Plaintiff's Motion for Summary Judgment and in the alternative Motion for Adjudication is based upon and supported by Plaintiff's Brief in Support of Motion for Summary Judgment against Stephens TPS, Inc., and Commerce & Industry Insurance Company and in the alternative Motion for Adjudication of Co-Plaintiff Stephens TPS, Inc., and Commerce & Industry Insurance Company's lien interest, and all Exhibits attached hereto which are filed contemporaneously herewith. Plaintiff further relies on all pleadings previously filed with the Court.

For the reasons set forth in the Brief in Support of Plaintiff's Motion for Summary Judgment, and as demanded by the pleadings and evidence referenced, Plaintiff respectfully prays that this Court issue an Order granting said Motion and entering summary judgment in favor of Plaintiff on all of the Intervening Plaintiff's claims.

59a

This 2nd day of April 2015.

Respectfully submitted

/S/ Nelson O. Tyrone, III

Nelson O. Tyrone, III

Georgia Bar # 721189

Attorney for the Plaintiff

Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
Tel. 404-377-0017

**THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

CIVIL ACTION
FILE NO. 2014EV000514

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE, COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day serviced a true and correct copy of the within and foregoing **PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY** and, in the alternative **MOTION FOR ADJUDICATION OF CO-PLAINTIFF STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY'S LIEN INTEREST** by depositing the same in the United States mail with sufficient postage affixed thereon and addressed as follows:

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

Jennie Rogers
Law Offices of Jennie Rogers
P.O.Box 5725
Alpharetta, GA 30023

Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601

This 2nd day of April, 2015

Respectfully submitted
/S/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar No. 721189

TYRONE LAW FIRM
1201 Peachtree St., N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
(404) 377-0017 telephone
(404) 249-6764 facsimile

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
FILE NO. 2014EV000514

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE, COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

PLAINTIFF'S BRIEF IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
AGAINST STEPHENS TPS, INC., AND
COMMERCE & INDUSTRY INSURANCE
COMPANY and, in the alternative
MOTION FOR ADJUDICATION OF
CO-PLAINTIFF STEPHENS TPS, INC., AND
COMMERCE & INDUSTRY INSURANCE
COMPANY'S LIEN INTEREST

Robert Lapoint suffered terrible and debilitating injuries in the action before this court. In Plaintiff's Complaint he alleges that because Defendant failed to observe proper safety protocols

when moving his tractor-trailer at an industrial worksite. Without such negligence on Defendant's part, Plaintiff has alleged that a vehicle weighting roughly 60,000 pounds would not have driven over and crushed Lapoint from his ankle to his waist as he was attempting to do his job.

On August 8, 2014 Plaintiff's employer Stephens TPS and the employers' Workers' Compensation insurer Commerce & Industry Insurance Company intervened in this action as co-Plaintiffs as Plaintiff's employer and Workers' Compensation insurance carrier under OCGA § 34-9-11(b). Plaintiff settled this action on April 1, 2014 with all parties for less than full and complete compensation. Co-Plaintiffs Stephens TPS, Inc., And Commerce & Industry Insurance Company were signatories to the settlement agreement. The settlement of Mr. Lapoint's claims did not fully and completely compensate him. As such, the co-Plaintiff Stephens TPS, Inc., and Commerce & Industry Insurance Company no longer have any legal right to recovery of their lien interest in this case. Therefore Summary Judgment against co-Plaintiff Stephens TPS., Inc., And Commerce & Industry Insurance Company is appropriate.

II. STATEMENT OF MATERIAL FACTS THAT ARE NOT IN DISPUTE:

A. The Underlying Cause of Action

In March of 2012, Robert Lapoint was working as a laborer for Stephens TPS, an industrial painting and sandblasting company that was subcontracted by USCI to perform sandblasting and painting work at the Atlanta water treatment plant. (Complaint; Stephens Dep. 42). In order to complete its work, Stephens TPS occasionally required thousands of pounds of sand to be delivered to the site via tractor-

trailer. (Stephens Dep., 13-14, 95; Jackson Dep., 72-74; Moore Dep., 17-18). To “offload” the sand, the tractor-trailer driver must back the vehicle into a specific area near the hose, and a laborer for Stephens TPS connects the hose by crawling under the tractor-trailer and affixing it to a connection located there. (Stephens Dep. 32-33, 105-106; Lapoint Dep., 57-62; Harp Dep., 26-27). One of Lapoint’s general duties at the worksite is to help connect the hose when the sand arrives in the tractor-trailer. (Lapoint Dep., 57, 66, 87; Moore Dep. 20-21, 40-41).

On March 8, 2012, Defendant, who was employed by USCI, drove a tractor-trailer carrying a load of sand to the Atlanta site. (Jackson Dep. 245-248). This was Defendant’s first time delivering sand to the Atlanta site. (Jackson Dep. 247). After an initial attempt at backing the tractor-trailer into the worksite, Defendant got out of the tractor-trailer and walked back to the rear of his vehicle. (Jackson Dep. 114). There, a Stephens TPS employee named Phillip Harp informed Defendant that the tractor-trailer was not close enough to the hose to connect it. (Jackson Dep. 119-120, 125-129; Harp Dep. 78-79). They agreed that Defendant would have to move his tractor-trailer to realign it to get closer to the hose. Id.

Around that time, Robert Lapoint, who was walking towards the tractor-trailer in his safety gear, made eye contact with Defendant and greeted him verbally. (Lapoint Dep., 115-123, 125; Jackson Dep. 87-88, 147-149). Lapoint did this “to let the driver know I would be around his truck”. (Lapoint Dep. 114-115, 119). Defendant acknowledged Lapoint and nodded says “hey, how’s it going”. (Lapoint Dep., 194-195; Jackson Dep. 87-88, 147-149). After greeting Defendant, Lapoint crawled under the trailer to

connect the hose. (Lapoint 124-131). Connecting the hose to the trailer to offload sand was one of Lapoint's general job duties. (Lapoint Dep., 57, 66, 87; Moore Dep. 20-21,35, 44-45).

Shortly after he saw Lapoint, Defendant then walked to the cab of the tractor-trailer and got in to back the tractor-trailer closer to the hose. (Jackson Dep. 245-249). In order to back the tractor-trailer closer to the hose, Defendant would have to first pull up, then back up at an angle. (Jackson Dep., 139). When he got in the cab of his tractor-trailer Defendant could no longer see Lapoint (Jackson Dep. 253-254) and did not know where Lapoint was working that day (Jackson Dep. 183, 190-191). Defendant then released the air brake and began pulling the tractor-trailer forward. (Jackson Dep. 239).

Hearing a sound, Lapoint heard something and realized the tractor-trailer was moving and attempted to crawl out from under the truck. (Lapoint Dep. 132-133, 163). Lapoint had nearly made it when the rear wheel of the tractor-trailer caught his ankle, twisting him over and running over him from his ankle to his hips. (Lapoint Dep. 132-133, 163). Crushed into the ground by thousands of pounds of sand, Lapoint suffered brutal injuries to his leg, pelvis, and internal organs.

B. The Co-Plaintiff's Intervention in This Case:

On August 8, 2014 Plaintiff's employer Stephens TPS and the employers' Workers' Compensation insurer Commerce & Industry Insurance Company intervened in this action as co-Plaintiffs as Plaintiff's employer and Workers' Compensation insurance

carrier under OCGA § 34-9-11(b). (See Complaint for Intervener, August 8, 2014, Exhibit A).

C. Settlement of All Claims in This Case:

The parties met for mediation on April 1, 2015. At mediation Mr. Lapoint settled his claims against all parties for the sum total of four million dollars (\$4,000,000). (Settlement Agreement attached as Exhibit B). This amount represented less than the full value of Mr. Lapoint's injury claim. In fact, the amount represented less than **half** of the Demand for Settlement presented by counsel for Mr. Lapoint (See, Plaintiff's Demand dated March 10, 2015, Attached as Exhibit C). Further, the settlement amount represented less than Mr. Lapoint's medical "special" damages (past and future medical needs and past and future lost wages). (See, Exhibit C).

III. ARGUMENT AND CITATION TO AUTHORITY:

A. The Summary Judgment Standard

Under O.C.G.A. § 9-11-56, summary judgment may be granted when the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact." Summary judgment is appropriate when the undisputed facts, viewed in a light most favorable to the non-moving party, support judgment as a matter of law. *Drew v. Sitar Financial, Inc.*, 291 Ga. App. 323 (2008). "A summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damage." O.C.G.A. § 9-11-56(c).

B. This Court has Jurisdiction Over All of the Co-Plaintiff's claims.

On August 8, 2014 co-Plaintiffs Stephens TPS., Inc., sought leave from this Court to intervene in the present action for the full amount of the Workers' Compensation benefits paid to Mr. Lapoint based on a "subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LA Point." (Complaint of Intervener, Exhibit A). In their Complaint of Intervener the co-Plaintiff's alleged that their intervention was pursuant to Georgia Law, specifically the Georgia Workers' Compensation Act:

Pursuant to the Georgia Workers' Compensation Act and O.C.G.A. § 34-9-11(b), Stephens TPS, Inc. and Commerce & Industry Insurance Co. will be seen as Plaintiffs in this case, and show they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert Lapoint, which they would contend they can recover from or against any recovery paid to Plaintiff Robert Lapoint in this action.

Having sought to intervene, and having successfully intervened in this action, the co-Plaintiffs have consented to the jurisdiction of this Court.

C. Georgia Law Does Not Allow A Recovery By The Comp Carrier Where The Plaintiff Has Not Been Fully And Completely Compensated.

Georgia Law, O.C.G.A. § 34-9-11(b) only allows for the insurer to recover on its lien "if the injured

employee has been fully and completely compensated.” Second, *Roark* holds that Commerce Industry & Insurance Company has no subrogation rights because O.C.G.A. § 34-9-11(b) “plainly provides the employer or insurer a right of subrogation limited to benefits paid under the Georgia Workers’ Compensation Act.”

The resolution of Mr. Lapoint’s personal injury claims by settlement with all parties on April 1, 2014 for less than his special damages and with no recovery for pain and suffering damages de-facto does not leave him “fully and completely compensated”. As such, the co-Plaintiffs’ have no legal rights to recover any amount under Georgia law from Plaintiff.

Therefore Plaintiff seeks summary judgment for all claims by co-Plaintiff Stephens TPS, Inc., And Commerce & Industry Insurance Company.

III. Conclusion.

On August 8, 2014 co-Plaintiffs Stephens TPS., Inc., sought leave from this Court to intervene in the present action for the full amount of the Workers’ Compensation benefits paid to Mr. Lapoint based on a “subrogation lien up to the actual amount of the compensation paid as of the date of any recovery paid to the Plaintiff Robert LA Point.” Plaintiff settled this action on April 1, 2014 with all parties for less than full and complete compensation. Co-Plaintiffs Stephens TPS, Inc., Commerce & Industry Insurance Company were signatories to the settlement agreement. The settlement of Mr. Lapoint’s did not fully and completely compensate him. As such, the co-Plaintiff Stephens TPS, Inc., and Commerce & Industry Insurance Company no longer have any legal right to recovery of their lien interest in this case. Therefore Summary Judgment against co-

Plaintiff Stephens TPS, Inc., And Commerce & Industry Insurance Company is proper.

WHEREFORE, for all reasons stated above, Plaintiff seeks an Order GRANTING this motion.

This 2nd day of April 2015.

Respectfully submitted

/S/ Nelson O. Tyrone, III

Nelson O. Tyrone, III

Georgia Bar # 721189

Attorney for the Plaintiff

Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
Tel. 404-377-0017

**THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

CIVIL ACTION
FILE NO. 2014EV000514

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE, COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day serviced a true and correct copy of the within and foregoing **PLAINTIFF'S BRIEF IN SUPPORT MOTION FOR SUMMARY JUDGMENT AGAINST STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY** and, in the alternative **MOTION FOR ADJUDICATION OF CO-PLAINTIFF STEPHENS TPS, INC., AND COMMERCE & INDUSTRY INSURANCE COMPANY'S LIEN INTEREST** by depositing the same in the United States mail with sufficient postage affixed thereon and addressed as follows:

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

Jennie Rogers
Law Offices of Jennie Rogers
P.O.Box 5725
Alpharetta, GA 30023

Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601

This 2nd day of April, 2015

Respectfully submitted
/S/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar No. 721189

TYRONE LAW FIRM
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
(404) 377-0017 telephone
(404) 249-6764 facsimile

Appendix I

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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**State Court of Fulton County
EFILED**

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Date: May 04 2015 03:46 PM
Cicely Barber, Clerk
Civil Division

CIVIL ACTION FILE NO.
14EV00514Y

ROBERT LAPOINT,
Plaintiff,
And

STEPHENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE CO.,

Intervening Plaintiffs,

v.

DAVID MICHAEL JACKSON,
Defendant.

INTERVENING PLAINTIFFS' RESPONSE
TO PLAINTIFF ROBERT LAPOINT'S
MOTION FOR SUMMARY JUDGMENT
AND IN THE ALTERNATIVE, MOTION
FOR ADJUDICATION OF CO-PLAINTIFF
STEPHENS TPS, INC. AND COMMERCE
INDUSTRY INSURANCE COMPANY'S
LIEN INTEREST

NOW COME Intervening Plaintiffs, Stephens TPS, Inc. and Commerce and Industry Insurance Company, by and through their attorney, and respond to Plaintiff Robert LaPoint's Motion for Summary Judgment and in the alternative, Motion for Adjudication of Co-Plaintiff Stephens TPS, Inc. and Commerce Industry Insurance Company's Lien Interest as follows:

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EXHIBIT
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INTRODUCTION

Robert LaPoint's ("Plaintiff") motion fails for three reasons. First, he has not complied with Uniform State Court Rule 6.5.¹, which requires the moving party to file "a separate, short and concise statement of each theory of recovery and of each of the material

¹ It appears Plaintiff included a statement of facts in his brief in support, but Plaintiff failed to file the required separate statement of material facts.

facts as to which the moving party contends there is no genuine issue to be tried.” Second, Intervening Plaintiffs, Stephens TPS, Inc. and Commerce and Industry Insurance Company (“Intervenors”), are entitled to an evidentiary hearing on their subrogation lien because this is a mixed question of law and fact and requires the presentation of evidence. Third, Plaintiff may only seek resolution of the Georgia workers’ compensation lien in Georgia pursuant to O.C.G.A. § 34-9-11.1, which is limited to the benefits and expenses “paid under *this* chapter.” The Plaintiff has availed himself of Louisiana’s jurisdiction by filing for, and receiving, workers’ compensation benefits in that state, before filing suit in Georgia. Therefore, Louisiana is the appropriate jurisdiction to litigate the Louisiana workers’ compensation subrogation lien.

Accordingly, Intervenors respectfully request Plaintiff’s motion for summary judgment, and in the alternative motion for adjudication of lien interests, be dismissed.

I. STATEMENT OF FACTS

Intervenors have not prepared a response to the non-existent separate statement of material undisputed facts required by Uniform State Court Rule 6.5. Intervenors have provided a separate statement of facts, which include the procedural history of Plaintiff’s Louisiana workers’ compensation claims omitted from Plaintiff’s brief.

In his motion, Plaintiff omitted critical facts. Plaintiff did not fully explain how he received both Georgia workers’ compensation benefits and Louisiana workers’ compensation benefits. A full review of all the facts clearly shows Plaintiff’s motion

for summary judgment and in the alternative motion for adjudication of Intervening Plaintiff's lien interest should be denied in full.

Plaintiff Robert LaPoint briefly received benefits paid under Georgia's workers' compensation statutory scheme and then began, and is still, receiving benefits paid pursuant to Louisiana's workers' compensation statutory scheme. Plaintiff received approximately \$7,282.03 in benefits paid pursuant to Georgia workers' compensation statutes. He currently has received approximately \$856,413.96 (broken down as \$797,054.49 Medical Benefits and \$59,359.47 Indemnity Payments) in benefits pursuant Louisiana workers' compensation law and continues to receive Louisiana benefits. Thus, Intervenors have a subrogation lien under Georgia law for benefits paid pursuant to Georgia workers' compensation law, and also have a subrogation lien in Louisiana pursuant to Louisiana law for benefits paid under Louisiana workers' compensation law. However, Intervenors are only seeking to enforce and recover their subrogation lien under Georgia law in the current matter.

Intervenors intervened in the current action pursuant to O.C.G.A. § 34-9-11.1, and this court granted Intervening Plaintiffs' "Motion to Intervene pursuant to O.C.G.A. § 34-9-11.1." See Court Order Granting Motion to Intervene, EFILED on October 14, 2014. The plain language of O.C.G.A. § 34-9-11.1 states that Intervenors have a right of subrogation limited to benefits paid "pursuant to this chapter." O.C.G.A. § 34-9-11.1. Accordingly, Intervenors are only pursuing their subrogation lien on the benefits paid under Georgia's statutory scheme in the current matter before this Court.

Intervenors are also pursuing their Louisiana subrogation lien on the benefits paid pursuant to Louisiana's workers' compensation statutory scheme in Louisiana through Louisiana's Office of Workers' Compensation. Plaintiff is subject to the jurisdiction of Louisiana because he voluntarily selected Louisiana as the forum for adjudicating matters concerning the Louisiana workers' compensation benefits paid. Plaintiff initiated and filed a disputed claim for workers' compensation in Louisiana. Of note, Plaintiff filed the disputed claim in Louisiana on August 15, 2013, which was roughly seven months BEFORE filing the current matter before this Court on March 10, 2014.

II. ARGUMENT AND CITATION OF AUTHORITY

A. Plaintiff Failed to Comply with Uniform State Court Rule 6.5 and His Motion Should Be Dismissed.

Uniform State Court Rule 6.5 requires a party moving for summary judgment to file a separate Motion, Theory of Recovery, Statement of Facts and Brief In Support. Plaintiff has failed to file his separate Theory of Recovery and Statement of Facts. Plaintiff's motion is deficient and in contravention to the procedural requirements. Intervenors request that Plaintiff's motion be dismissed as non compliant with Uniform Rule 6.5.

B. Workers' Compensation Subrogation Liens are Mixed Questions of Law and Fact Requiring Presentation of Evidence and Therefore Summary Judgment is Inappropriate.

In Georgia, the court must make the determination as to whether an employee has been made whole by an allegedly negligent third party before it can determine whether the employer and the insurer should recover all or part of their workers' compensation subrogation lien. To do so, the court may consider evidence of the circumstances surrounding the incident, the extent of the employee's injuries, the amount of the settlement, the amount of the lien and any other evidence relating to the issue of whether the employee has been "made whole." After the injured employee has obtained a verdict in his favor or settled the case, it is the trial court's duty to consider evidence and determine whether the employee has been fully and completely compensated. Gen. Blee. Membership Corp. v. Garnto, 266 Ga.App. 452, 597 S.E.2d 527 (1994). The Court of Appeals has held that the question of whether the employee has been fully and completely compensated "is a mixed question of law and fact . . . [and] therefore requires the presentation of evidence." City of Warner Robins v. Baker, 255 Ga.App. 601, 602, 565 S.E.2d. 919 (2002).

Plaintiff has resolved his third party claims through a mediated settlement. Intervenors have paid benefits to the Plaintiff pursuant to Georgia's Workers' Compensation Act and seek recovery of those benefits. The recovery of those benefits is a mixed question of law and fact, which requires an evidentiary hearing.

Intervenors respectfully request this Court deny Plaintiffs motion and grant Intervenors' request for an evidentiary hearing or bench trial to present evidence on the issue of whether Plaintiff has been fully and completely compensated concerning the Georgia subrogation lien. Intervenors have filed a request for an Evidentiary Hearing concurrently with this Response.

C. Intervenor's Seek Recovery Only For Benefits Paid Pursuant to Georgia Workers' Compensation Statute.

This court granted Intervenor's motion to intervene pursuant to O.C.G.A. § 34-9-11.1(b) on October 14, 2014. The only benefits paid under Georgia workers' compensation statutory scheme were paid pursuant to O.C.G.A. § 34-9-11.1(b) and total \$7,282.03.

Georgia law is clear that O.C.G.A. § 34-9-11.1 creates an enforceable subrogation lien interest only for workers' compensation benefits paid in Georgia – NOT for benefits paid in another state under a foreign statutory scheme. O.C.G.A. § 34-9-11.1(b) provides, in pertinent part:

(b) In the event an employee has a right of action against such other person as contemplated in subsection (a) of this Code section and the employer's liability *under this chapter* has been fully or partially paid, then the employer or such employer's insurer shall have a subrogation lien, not to exceed the actual amount of compensation *paid pursuant to this chapter*, against such recovery. The employer or insurer may intervene in any action to protect and enforce such lien. However, the employer's or insurer's recovery under this Code section

shall be limited to the recovery of the amount of disability benefits, death benefits, and medical expenses paid under this chapter and shall only be recoverable if the injured employee has been fully and completely compensated, taking into consideration both the benefits received under this chapter and the amount of the recovery in the third-party claim, for all economic and noneconomic losses incurred as a result of the injury.

O.C.G.A. § 34-9-11.1(b) (emphasis added).

As shown above, the subrogation lien shall not exceed the amount of compensation “paid pursuant to this chapter.” Additionally, recovery of a subrogation lien granted pursuant to O.C.G.A. § 34-9-11.1 is limited to the benefits and expenses “paid under this chapter.” OCGA § 34-9-11.1.

The Georgia Court of Appeals addressed the recoverability of foreign subrogation liens in 2009 in the case of Performance Food Group, Inc. v. Williams, 300 Ga.App. 831, 686 S.E.2d 437 (2009). The Performance Food holding stated that the Georgia Workers’ Compensation Act did not permit such a recovery. Id. at 833. In Performance Food, the employer Performance Food Group was seeking reimbursement for workers’ compensation benefits paid entirely under the Tennessee workers’ compensation statute from the proceeds of a third party claim filed in Georgia. Unlike the current matter, there were no benefits paid under the Georgia statute in Performance Food. The court held that “OCGA § 34-9-11.1(b) plainly provides the employer or insurer a right of subrogation limited to benefits paid under the Georgia Workers’ Compensation Act,’ and as a consequence Performance Food cannot

pursue a subrogation claim for benefits paid under foreign law.” Id. (quoting Johnson v. Comcar Industries, Inc., 252 Ga.App. 625, 626, 556 S.E.2d 148, 150 (2001)).

As recognized by Plaintiffs, Intervenors are in perfect agreement that they intervened in this matter “pursuant to Georgia law, specifically the Georgia Workers’ Compensation Act.” See Plaintiffs Motion for Summary Judgment and in the alternative, Motion to Adjudicate

Defendant’s Lien Interest, ¶ “B.”, pg. 5. Intervenors agree that they paid benefits pursuant to the Georgia Workers’ Compensation Act totaling \$7,282.03. All parties agree that the Act permits Intervenors to seek recovery of their subrogation lien consisting of payments made pursuant to O.C.G.A. § 34-9-11.1(b) – i.e. \$7,282.03. All parties agree that the Act does not permit the recovery of benefits paid under the foreign law of Louisiana. Intervenors do not seek recovery of Louisiana benefits in this action.

D. Plaintiff Voluntarily Invoked Louisiana’s Jurisdiction by Selecting Louisiana As the Forum to Adjudicate His Louisiana Workers’ Compensation Matters and Should Not Be Permitted to Forum Shop.

It is undisputed that Plaintiff, by and through his current counsel of record Aaron Broussard, voluntarily invoked Louisiana’s jurisdiction well before filing suit in Georgia. On August 15, 2013, Plaintiff filed a “Disputed Claim of compensation,” seeking an increase in his Louisiana workers’ compensation benefits. See Certified copies of Plaintiff’s Disputed Claim; and Affidavit of Dennis R. Stevens, Esq., attached to Intervenors’ Notice of Filing Original Documents as Exhibits 1 and 4,

respectively, and filed concurrently herewith. This claim was filed almost seven months BEFORE Plaintiff and his attorney Aaron Broussard filed the current lawsuit on March 10, 2014 in this Georgia court.

It is undisputed that Plaintiff continued to seek the jurisdiction of the Louisiana courts regarding his Louisiana workers' compensation benefits after he filed the Georgia suit. On November 24, 2014, Plaintiff filed a First Amended Disputed Claim for Compensation and again on February 6, 2015, he filed a Second Amended Disputed Claim for Compensation. See Certified copies of Plaintiff's First and Second Amended Disputed Claim; and Affidavit of Dennis R. Stevens, Esq., attached to Intervenors' Notice of Filing as Exhibits 2, 3, and 4.

It is undisputed that to this day, Plaintiff is still invoking the jurisdiction of the Louisiana court with regard to his Louisiana workers' compensation benefits. Plaintiff's Second Amended Disputed Claim is still pending and Plaintiff is currently asking the Louisiana court to determine the amount of the Louisiana workers' compensation benefits he received and will continue to receive in the future. Concurrently, in Louisiana, Intervenors are seeking to enforce their subrogation interest granted under Louisiana law for the Louisiana benefits paid. Affidavit of Dennis R. Stevens, Esq., attached to Intervenors' Notice of Filing as Exhibit 4.

It is undisputed that Plaintiff has not withdrawn or retracted the Louisiana litigation he voluntarily initiated in any manner or at any time over the past two years. He never, at any time, attempted to move his worker's compensation claim back to Georgia. He never, at any time, disputed his right to pursue a

workers' compensation in Louisiana. By filing three Claims, Plaintiff admitted: (1) any issues regarding Louisiana workers' compensation benefits is correctly in Louisiana; and (2) continues to rely on the Louisiana statutory scheme for his workers' compensation benefits.

Despite voluntarily choosing Louisiana as the first legal forum and continuing to avail himself of that legal forum to increase his benefits, Plaintiff now wishes to avoid Louisiana law on the sole issue of subrogation. Plaintiff now wants to have this Georgia court "adjudicate" Louisiana's subrogation rights under the Georgia workers' compensation statutory law. Plaintiff has no legal basis for this request.

Plaintiff's argument fails for two reasons. First, workers' compensation is statutory, with all rights and obligations set out in the statute. If the statute does not provide for a right or obligation, it cannot be inferred. See Mandato & Associates, Inc. v. Sepulveda Masonry, 303 Ga.App. 438, 440, 693 S.E.2d 620, 622 (2010) (statutes in derogation of common law must be strictly construed). In his brief, Plaintiff does not cite any part of either the Louisiana statute or the Georgia statute in support of his assertion that Georgia can "adjudicate" Louisiana's workers' compensation law. He does not cite to any statute because neither statute says that Georgia has the right or authority to change Louisiana's workers' compensation scheme. As discussed earlier, the Plaintiff is fully aware that the Georgia Workers' Compensation Act does not provide for the recovery of benefits paid under a foreign law. Further, there is nothing in the Georgia statute to bar recovery of workers' compensation benefits paid under a foreign law in a foreign state. O.C.G.A. § 34-9-11.1(b).

Because the statute does not provide such authority, Plaintiff cannot infer it and his claim fails.

The second reason that Plaintiff's argument fails is that the Georgia Court of Appeals addressed the recovery of foreign benefits in its 2009 decision in Performance Food Group, Inc. v. Williams, *supra*. Although that case did not involve benefits split between two states, the court did consider whether foreign benefits could be recovered in the foreign state. While the Tennessee benefits could not be recovered in a Georgia court, the court concluded that the intervening plaintiffs were not precluded from pursuing a subrogation lien in Tennessee pursuant to the Tennessee statutory scheme. The court stated in footnote 3 that it was a "persuasive argument" that the intervening plaintiff Performance Food Group was "not precluded from pursuing a subrogation lien in [a foreign state]" for foreign benefits paid. Performance Food Group, Inc. v. Williams, 300 Ga.App. 831, 833 n.3 (2009). Likewise in this case, Louisiana, the forum chosen by Plaintiff, is the proper forum for Intervenors to pursue their subrogation interest for Louisiana benefits. They have no right to pursue their lien in Georgia. See O.C.G.A. § 34-9-11.1(b).

In conclusion, Plaintiff has and continues to avail himself of the Louisiana courts, the legal forum he first chose to determine his workers' compensation benefits. He has no statutory basis in Louisiana or Georgia to support the argument that Louisiana's subrogation rights can be "adjudicated" by a Georgia court. To now say that the Georgia court has some say in how only one portion, but not all, of Louisiana's workers' compensation benefits are handled is illogical, absurd and contrary to any law or statute in either state. Plaintiff and his counsel are forum

shopping because they prefer the Georgia statutes' "made whole" requirement. As the old saying goes, Plaintiff "cannot have his cake and eat it too."

Accordingly, the amount of benefits paid, and that continue to be paid, pursuant to Louisiana workers' compensation law are not at issue in this matter. The proper forum and jurisdiction to decide any subrogation interest for Louisiana benefits paid is in Louisiana.

CONCLUSION

Based on the foregoing, Intervening Plaintiffs respectfully request this Court: (1) Deny Plaintiffs Motion for Summary Judgment or in the alternative, Motion for Adjudication of Intervening Plaintiffs' Lien Interest **in full**; (2) Hold that the only matter brought before this Court and to be decided by this Court is the subrogation lien for approximately \$7,282.03 in benefits paid pursuant to Georgia workers' compensation statutes; (3) Hold that the subrogation lien for approximately \$856,413.96 in benefits pursuant Louisiana workers' compensation law and future benefits to be paid under same, be decided in Louisiana pursuant to Louisiana's workers' compensation statutory scheme; and (4) Grant Intervening Plaintiffs' request for an evidentiary hearing/bench trial on the issue of whether Plaintiff has been "made whole" in regards to the subrogation lien of \$7,282.03 in benefits paid pursuant to Georgia workers' compensation statutes.

This the 4th day of May, 2015.

Respectfully submitted,

LAW OFFICE OF JENNIE E. ROGERS

By: /s/ Jennie E. Rogers, Esq.

JENNIE E. ROGERS, ESQ.

Georgia Bar No. 612725

Attorney for Stephens TPS, Inc. and
Commerce & Industry Insurance, Co.

LAW OFFICE OF JENNIE E. ROGERS

P.O. Box 5725

Alpharetta, GA 30023-5725

Phone: (678) 240-1938

Fax: (855) 984-4677

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

CIVIL ACTION FILE NO.
14EV00514Y

ROBERT LAPOINT,
Plaintiff,
And
STEPHEN'S TPS, INC. and COMMERCE
& INDUSTRY INSURANCE CO.,
Intervening Plaintiffs,
v.
DAVID MICHAEL JACKSON,
Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this date served the CERTIFICATE OF SERVICE named above with a copy of the forgoing Intervening Plaintiffs' Response to Plaintiff Robert LaPoint's Motion for Summary Judgment and in the alternative, Motion for Adjudication of Co-Plaintiff Stephens TPS, Inc. and Commerce Industry Insurance Company's Lien Interest upon known attorneys of record by electronic service through File and Serve to the following:

Nelson O. Tyrone, III
Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 1900
Atlanta, GA 30361

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

This the 4th day of May, 2015.

By: /s/ Jennie E. Rogers, Esq.
JENNIE E. ROGERS, ESQ.
Georgia Bar No. 612725

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

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State Court of Fulton County
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CIVIL ACTION FILE NO.
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ROBERT LAPOINT,
Plaintiff,
And
STEPHENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE CO.,
Intervening Plaintiffs,
v.
DAVID MICHAEL JACKSON,
Defendant.

**INTERVENING PLAINTIFFS' STATEMENT
OF MATERIAL FACTS IN RESPONSE TO
PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT, and in the alternative,
MOTION FOR ADJUDICATION OF CO-
PLAINTIFF STEPHENS TPS, INC. AND
COMMERCE INDUSTRY INSURANCE
COMPANY'S LIEN INTEREST**

NOW COME Intervening Plaintiffs, Stephens TPS, Inc. and Commerce and Industry Insurance Company, by and through their attorneys, the Law Offices of Jennie E. Rogers, by Jennie E. Rogers, and file a Statement of Material Facts in Response to Plaintiffs Motion for Summary Judgment as follows:

1.

On August 15, 2013, Plaintiff LaPoint, by and through his counsel of record Aaron Broussard, availed himself of the jurisdiction of Louisiana by voluntarily filing a "Disputed Claim for Compensation" with the Louisiana Office of Workers' Compensation. See Certified copy of Plaintiff's Disputed Claim; and Affidavit of Dennis R. Stevens, Esq., attached to Intervenors' Notice of Filing as Exhibit 1 and 4.

On March 10, 2014, almost seven months later, Plaintiff filed the current matter in the State Court of Fulton County. See Plaintiff's Complaint filed March 19, 2014.

2.

On November 24, 2014, Plaintiff again voluntarily availed himself to the jurisdiction of Louisiana by filing a "First Amended Disputed Claim for Compensation." See Certified copy of Plaintiff's First

Amended Disputed Claim; and Affidavit of Dennis R. Stevens, Esq., attached to Intervenors' Notice of Filing as Exhibit 2 and 4.

3.

On February 6, 2015, Plaintiff most recently sought the jurisdiction of Louisiana for a third time in six months by filing a "Second Amended Disputed Claim". Plaintiff continues to litigate his workers' compensation claim in Louisiana. See Certified copy of Plaintiff's Second Amended Disputed Claim; and Affidavit of Dennis R. Stevens, Esq., attached to Intervenors' Notice of Filing as Exhibit 3 and 4.

This the 4th day of May, 2015.

Respectfully submitted,

LAW OFFICE OF JENNIE E. ROGERS

By: /s/ Jennie E. Rogers, Esq.

JENNIE E. ROGERS, ESQ.

Georgia Bar No. 612725

Attorney for Stephens TPS, Inc. and
Commerce & Industry Insurance, Co.

LAW OFFICE OF JENNIE E. ROGERS

P.O. Box 5725

Alpharetta, GA 30023-5725

Phone: (678) 240-1938

Fax: (855) 984-4677

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION FILE NO.
14EV00514Y

ROBERT LAPOINT,
Plaintiff,
And
STEPHENS TPS, INC. and COMMERCE
& INDUSTRY INSURANCE CO.,
Intervening Plaintiffs,
v.
DAVID MICHAEL JACKSON,
Defendant.

CERTIFICATE OF SERVICE

This is to certify that I have this date served the **CERTIFICATE OF SERVICE** named above with a copy of the forgoing **Intervening Plaintiffs' Statement of Material Facts in Response to Plaintiff Robert LaPoint's Motion for Summary Judgment and in the alternative, Motion for Adjudication of Co-Plaintiff Stephens TPS, Inc. and Commerce Industry Insurance Company's Lien Interest** upon known attorneys of record by electronic service through File and Serve to the following:

Nelson O. Tyrone, III
Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 1900
Atlanta, GA 30361

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

This the 4th day of May, 2015.

By: /s/ Jennie E. Rogers, Esq.
JENNIE E. ROGERS, ESQ.
Georgia Bar No. 612725

Appendix J

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

**CIVIL ACTION
FILE NO. 2014EV000514**

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

**PLAINTIFF'S AMENDED MOTION FOR
SUMMARY JUDGMENT TO INCLUDE
SEPARATE STATEMENT OF THEORIES OF
RECOVERY AND UNDISPUTED MATERIAL
FACTS PURSUANT TO UNIFORM STATE
COURT RULE 6.2**

COME NOW, Plaintiff, and hereby files this their Amended Motion for Summary Judgment and files, contemporaneously with this Motion, Plaintiff's Statement of Theories of Recovery and Undisputed Facts in support of their separately filed Motion for Summary Judgment.

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This 21st day of May, 2015.

Respectfully submitted,

/S/ Nelson O. Tyrone, III

Nelson O. Tyrone, III

Georgia Bar # 721189

Attorney for the Plaintiff

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EXHIBIT
F

Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
Tel. 404-377-0017

**THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

**CIVIL ACTION
FILE NO. 2014EV000514**

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day serviced a true and correct copy of the within and foregoing **PLAINTIFF'S AMENDED MOTION FOR SUMMARY JUDGMENT TO INCLUDE SEPARATE STATEMENT OF THEORIES OF RECOVERY AND UNDISPUTED MATERIAL FACTS PURSUANT TO UNIFORM STATE COURT RULE 6.2** by depositing the same in the United States mail with sufficient postage affixed thereon and addressed as follows:

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

Jennie Rogers
Law Offices of Jennie Rogers
P.O.Box 5725
Alpharetta, GA 30023

Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601

This 21st day of May, 2015

Respectfully submitted,
/S/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar No. 721189

TYRONE LAW FIRM
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
(404) 377-0017 telephone
(404) 249-6764 facsimile

**IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

**CIVIL ACTION
FILE NO. 2014EV000514**

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

**PLAINTIFF'S STATEMENT OF THEORIES
OF RECOVERY AND UNDISPUTED
MATERIAL FACTS**

Pursuant to Uniform State Court Rule 6.2, Plaintiff hereby files this Statement of Theories of Recovery and Undisputed Facts in support of their separately filed Motion for Summary Judgment.

STATEMENT OF THEORIES OF RECOVERY

This Motion is filed on a claim of subrogation (hereinafter "the lien") by Intervening Plaintiffs Stephens TPS, Inc. and Commerce and Industry

Insurance Company (“Intervening Plaintiffs”). Plaintiff has moved for summary judgment as to (1) this Court’s jurisdiction over the Intervening Plaintiffs’ lien, both because intervening Plaintiffs have intervened before this Court and have consented to this Court’s jurisdiction, and because this Motion, properly filed, is before this Court; and 2) The Intervening Plaintiffs Stephens TPS, Inc., and Commerce & Industry Insurance Company no longer have any legal right to recovery of their lien interest in this case as the settlement of Mr. Lapoint’s case, as a matter of indisputed fact, did not satisfy Mr. Lapoint’s undisputed past medical bills and future medical needs and thus, did not fully and completely compensate him.

STATEMENT OF MATERIAL FACTS

I. The Underlying Cause of Action

In March of 2012, Robert Lapoint was working as a laborer for Stephens TPS, an industrial painting and sandblasting company that was subcontracted by USCI to perform sandblasting and painting work at the Atlanta water treatment plant. (Complaint; Stephens Dep. 42). In order to complete its work, Stephens TPS occasionally required thousands of pounds of sand to be delivered to the site via tractor-trailer. (Stephens Dep., 13-14, 95; Jackson Dep., 72-74; Moore Dep., 17-18). To “offload” the sand, the tractor-trailer driver must back the vehicle into a specific area near the hose, and a laborer for Stephens TPS connects the hose by crawling under the tractor-trailer and affixing it to a connection located there. (Stephens Dep. 32-33, 105-106; Lapoint Dep., 57-62; Harp Dep., 26-27). One of Lapoint’s general duties at the worksite is to help connect the

hose when the sand arrives in the tractor-trailer. (Lapoint Dep., 57, 66, 87; Moore Dep. 20-21, 40-41).

On March 8, 2012, Defendant, who was employed by USCI, drove a tractor-trailer carrying a load of sand to the Atlanta site. (Jackson Dep. 245-248). This was Defendant's first time delivering sand to the Atlanta site. (Jackson Dep. 247). After an initial attempt at backing the tractor-trailer into the worksite, Defendant got out of the tractor-trailer and walked back to the rear of his vehicle. (Jackson Dep. 114). There, a Stephens TPS employee named Phillip Harp informed Defendant that the tractor-trailer was not close enough to the hose to connect it. (Jackson Dep. 119-120, 125-129; Harp Dep. 78-79). They agreed that Defendant would have to move his tractor-trailer to realign it to get closer to the hose. Id.

Around that time, Robert Lapoint, who was walking towards the tractor-trailer in his safety gear, made eye contact with Defendant and greeted him verbally. (Lapoint Dep., 115-123, 125; Jackson Dep. 87-88, 147-149). Lapoint did this "to let the driver know I would be around his truck". (Lapoint Dep. 114-115, 119). Defendant acknowledged Lapoint and nodded says "hey, how's it going". (Lapoint Dep., 194-195; Jackson Dep. 87-88, 147-149). After greeting Defendant, Lapoint crawled under the trailer to connect the hose. (Lapoint 124-131). Connecting the hose to the trailer to offload sand was one of Lapoint's general job duties. (Lapoint Dep., 57, 66, 87; Moore Dep. 20-21, 35, 44-45).

Shortly after he saw Lapoint, Defendant then walked to the cab of the tractor-trailer and got in to back the tractor-trailer closer to the hose. (Jackson Dep. 245-249). In order to back the tractor-trailer

closer to the hose, Defendant would have to first pull up, then back up at an angle. (Jackson Dep., 139). When he got in the cab of his tractor-trailer Defendant could no longer see Lapoint (Jackson Dep. 253-254) and did not know where Lapoint was working that day (Jackson Dep. 183, 190-191). Defendant then released the air brake and began pulling the tractor-trailer forward. (Jackson Dep. 239).

Hearing a sound, Lapoint heard something and realized the tractor-trailer was moving and attempted to crawl out from under the truck. (Lapoint Dep. 132-133, 163). Lapoint had nearly made it when the rear wheel of the tractor-trailer caught his ankle, twisting him over and running over him from his ankle to his hips. (Lapoint Dep. 132-133, 163). Crushed into the ground by thousands of pounds of sand, Lapoint suffered brutal injuries to his leg, pelvis, and internal organs.

II. The Intervening Plaintiffs' Intervention in This Case:

On August 8, 2014 Plaintiff's employer Stephens TPS and the employers' Workers' Compensation insurer Commerce & Industry Insurance Company intervened in this action as co-Plaintiffs as Plaintiff's employer and Workers' Compensation insurance carrier under OCGA § 34-9-11(b). (See Complaint for Intervener, August 8, 2014, Exhibit A).

III. Settlement of All Claims in This Case:

The parties met for mediation on April 1, 2015. At mediation Mr. Lapoint settled his claims against all parties for the sum total of four million dollars (\$4,000,000). (Settlement Agreement attached

as Exhibit B). This amount represented less than the full value of Mr. Lapoint's injury claim. In fact, the amount represented less than **half** of the Demand for Settlement presented by counsel for Mr. Lapoint (See, Plaintiff's Demand dated March 10, 2015, Attached as Exhibit C). Further, the settlement amount represented less than Mr. Lapoint's medical "special" damages (past and future medical needs and past and future lost wages). Mr. Lapoint's past medical bills by the time of his settlement totaled \$1,819,725.04. His future medical needs projected by the Life Care Planner LuRae Ahrendt totaled \$2,442,501.00. (Deposition of Plaintiff's Economist J.P. Gingras, p. 8 (Exhibit 2 Economic analysis and calculations)). The range of his past and future medical specials, reduced to present value, ranged from \$1,618.031.00 to \$2,194,837.00. Neither the Defendant nor the Intervening Plaintiffs in this case identified any expert to refute the past medical bills or the future medical needs.

This 21st day of May, 2015.

[SIGNATURES ON NEXT PAGE]

Respectfully submitted

/S/ Nelson O. Tyrone, III

Nelson O. Tyrone, III

Georgia Bar # 721189

Attorney for the Plaintiff

Tyrone Law Firm, P.C.
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
Tel. 404-377-0017

**THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA**

CIVIL ACTION
FILE NO. 2014EV000514

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
& INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day serviced a true and correct copy of the within and foregoing **PLAINTIFF'S STATEMENT AND THEORIES OF RECOVERY AND UNDISPUTED MATIERAL FACTS** by depositing the same in the United States mail with sufficient postage affixed thereon and addressed as follows:

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

Jennie Rogers
Law Offices of Jennie Rogers
P.O.Box 5725
Alpharetta, GA 30023

Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601

This 21st day of May, 2015

Respectfully submitted,
/S/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar# 721189

TYRONE LAW FIRM
1201 Peachtree St., N.E.
400 Colony Square, Suite 2000
Atlanta, Georgia 30361
(404) 377-0017 telephone
(404) 249-6764 facsimile

Appendix K

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
14EV00514Y

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

REPLY BRIEF IN OPPOSITION
TO INTERVENING PLAINTIFFS'
RESPONSE TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

I. Defendant says they only intervened to recover payments made pursuant to Georgia law.

Defendant states they only seek to recover payments made under Georgia law. The truth is Defendant intervened for their entire lien. Defendant

filed two interventions in Georgia.¹² Neither intervention is limited to the payments made under Georgia law, as Defendant represents. In fact, Defendant asserted “they have a subrogation lien up to the actual amount of the compensation paid as of the date of any recovery ... ” and that “Payments continue on behalf of Plaintiff.” Defendant asserted a lien for the entire amount paid to Plaintiff, not just the initial payments made pursuant to Georgia law. Defendant asserted a lien for all payments made up to the time of recovery. Defendant made the entire lien an issue in Georgia and is denying it now because their reimbursement rights are stronger under Louisiana law. Defendant is forum shopping, not Plaintiff.

[STAMP]

EXHIBIT
G

Defendant put all payments at issue in this proceeding by filing an unlimited intervention. Plaintiff’s Motion addresses all payments made and ask that all liens be dismissed. The validity of any and all subrogation rights against the recovery,

¹ Complaint for Intervention filed by Stephens TPS, Inc. and Commerce & Industry Insurance Company in Superior Court of Fulton County, Georgia; #2013CV239667.

² Complaint for Intervener filed by Stephens TPS, Inc. and Commerce & Industry Insurance Company in State Court of Fulton County, Georgia; #14EV00514.

whether the payments were made under Louisiana or Georgia law, are properly before this Court.

II. *Performance Food Group, Inc. v. Williams* is directly on point and requires dismissal of Defendant's lien.

The facts of this case could not be more similar to *Performance Food Grp., Inc. v. Williams*, 300 Ga. App. 831, 832-34, 686 S.E.2d 437, 439-40 (2009). In *Williams*, an employee from Tennessee was injured on the job in Georgia. The injured worker filed suit in Georgia, but received workers' compensation payments in Tennessee. The Tennessee employer filed suit in Georgia seeking recovery of the workers' compensation benefits they paid in Tennessee. The *Williams* court held that Georgia law, not Tennessee law, controlled the right to recovery. Further, the court held the employer could not recover any money paid under a foreign state's law.

The *Williams* opinion is short and copied below. Irrelevant statements and internal citations have been omitted to shorten the opinion even more:

The evidence... shows that Gunn, a Tennessee resident, was injured...in the course of his employment with Performance Food... in Gwinnett County, Georgia. Performance Food... paid medical and indemnity benefits to Gunn under Tennessee's workers' compensation law,... Performance Food brought this action ... to recover for the medical and indemnity benefits it paid to Gunn.

As a rule, where a nonresident employee, hired by a foreign corporation, is injured in Georgia, arising out of and in the scope of the

employment, Georgia will apply its own substantive law, whether or not the Georgia Workers' Compensation law was invoked to pay, because the Georgia conflicts of law rules look to the state of the last act completing the tort to determine the applicable substantive law.

If the plaintiff is eligible for workers' compensation under the law of the state where the tort was committed, the law of that state is applicable even though the plaintiff may have received and accepted workers' compensation in another state. . . . Because Gunn was injured in Georgia and was eligible to receive workers' compensation benefits in Georgia, Georgia law governs Performance Food's subrogation claim. . . .

Since Georgia law applies, the subrogation rights of employers and insurers on account of their payment of workers' compensation benefits derives from OCGA § 34-9-11.1. . . . However, OCGA § 34-9-11.1(b) plainly provides the employer or insurer a right of subrogation limited to benefits paid under the Georgia Workers' Compensation Act, and as a consequence Performance Food cannot pursue a subrogation claim for benefits paid under foreign law. . . .

Performance Food argues that this result is unfair, contending that it had been required to pay benefits under Tennessee law and had no opportunity to contradict its employee's election and pay Gunn benefits in Georgia. As a result, Performance Food argues, "the Georgia courts should not effectively overrule

the laws of the State of Tennessee and deny [Performance Food] its right of subrogation provided by Tennessee law.” While the trial court’s decision precludes Performance Food from asserting what might be a valid subrogation claim under Tennessee law, the trial court acted consistently with binding precedent. That the worker injured in Georgia sought and received benefits in Illinois rather than Georgia made no difference in the application of Georgia law, in light of the rule of *lex loci delicti*, in *Sargent Indus.*, *supra*, 251 Ga. at 93, 303 S.E.2d 108. Our Supreme Court has recently affirmed that the “application of *lex loci delicti*, even though sometimes leading to results which may appear harsh” remains the law in Georgia.³ . . . Further, there is no inherent right to subrogation in Georgia, and the legislature’s failure to provide for subrogation does not deprive the employer or insurer of due process... The employer has no constitutionally protected interest in any sums the employee receives from the third-party tortfeasor. . . .

Performance Food Grp., Inc. v. Williams, 300 Ga. App. 831, 832-34, 686 S.E.2d 437, 439-40 (2009).

This case is no different. You can literally change out the names of the parties and switch “Tennessee” out for “Louisiana.” In this case, an employee from Louisiana was injured on the job in Georgia. The injured worker filed suit in Georgia, but received workers’ compensation payments in Louisiana (and some in Georgia). The employer filed suit in Georgia seeking recovery of the workers’ compensation benefits paid in Louisiana. Just like the *Williams*

court, this Court should hold that Georgia law, not Louisiana law, controls the right to recovery.

Further, this Court should hold that Defendant cannot recover any money paid under Georgia or Louisiana law. Money paid under Louisiana law is not recoverable according to *Williams*.

Money paid under Georgia law is subject to O.C.G.A. 34-9-11.1(b) which only allows the employer to recover "if the injured employee has been fully and completely compensated." Plaintiff has offered evidence which easily demonstrates that Plaintiff has not been fully and completely compensated. Defendant has asserted that a made whole determination requires a trial, but has not actually said they dispute whether Plaintiff has been made whole. Plaintiff's injuries are horrific and Defendant knows he has not been made whole. Regardless, this Court can rule on the legal question as to what law controls Defendant's subrogation rights.

III. Defendant says Plaintiff conceded Louisiana jurisdiction by filing a workers compensation claim in Louisiana and accepting payments in Louisiana.

Defendant says Plaintiff conceded the jurisdiction of Louisiana to decide the workers' compensation lien by filing a workers' compensation claim in Louisiana and accepting payment in Louisiana. (See page 3, 4 and 7 of Defendant's Opposition). There are three problems with this argument.

Frist, Plaintiff did not choose the state. Defendant acts as if Plaintiff chose Louisiana as the state of payment. The truth is Defendant made the choice to switch the payments from Georgia to Louisiana while Plaintiff was still incapacitated in the hospital, in

Georgia. As Defendant acknowledges, only the first \$7,282.03 of \$863,695.99 was paid under Georgia workers' compensation. Defendant was liable under both Louisiana and Georgia law and they made the choice to switch from Georgia to Louisiana. Defendant can produce no evidence that LaPoint made the choice or even knew there was a change made.

Second, as recognized in *Williams*, the place of payment does not dictate the applicable law for reimbursement of a workers compensation lien. The law does not allow savvy workers' compensation insurers to take advantage of injured workers by forum shopping. A workers' compensation insurer's choice of which state's law they make payment under does not determine their reimbursement rights. The law of the forum where the tort suit is pending controls. A workers' compensation insurer cannot mandate the application of a foreign state's law to a Georgia lawsuit pending in a Georgia court.

Finally, Plaintiff never made the lien or Defendant's subrogation rights an issue in Louisiana. Defendant made the lien an issue in Georgia first, not Louisiana. Before anything about the lien was ever filed in Louisiana, Defendant intervened in two Georgia lawsuits and asserted their entire lien. Only **after** the case settled did Defendant (or anyone) file any pleadings regarding the lien in Louisiana. Now, Defendant says this Court has no jurisdiction to decide the amount of a workers' compensation lien in a case where the injury occurred in Georgia and the lawsuit was adjudicated in a Georgia court, under Georgia law. As discussed above, that is not the law.

Parties cannot pick and choose the applicable law in a case by picking what law to make or accept

payment of benefits under. If it was that simple, Plaintiff could refund the payments made under Louisiana law and demand they be made under Georgia law. Then, Defendant would have no argument and Georgia's made whole doctrine would require dismissal of the entire lien.

Respectfully submitted,

/s/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar No. 721189

TYRONE LAW FIRM
1201 Peachtree St., NE
400 Colony Square, Suite 2000
Atlanta, GA 30361
(404) 377-0017 Telephone
(404) 249-6764 Facsimile

Aaron Broussard (Pro Hac Vice)
(La. Bar# 30134)
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 Telephone
(337) 439-3450 Facsimile

IN THE STATE COURT OF FULTON COUNTY
STATE OF GEORGIA

CIVIL ACTION
FILE NO. 14EV00514Y

ROBERT LAPOINT, Plaintiff,
and
STEPHENS TPS, INC. AND COMMERCE
INDUSTRY INSURANCE COMPANY,
Intervening Plaintiffs,
v.
DAVID JACKSON, Defendant.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the within and foregoing **Reply Brief in Opposition to Intervening Plaintiffs' Response to Plaintiff's Motion for Summary Judgment**, by depositing the same in the United States mail with sufficient postage affixed thereon and addressed as follows:

David C. Marshall
Mary Claire Smith
Hawkins, Parnell, Thackston & Young
303 Peachtree Street, N.E.
4000 SunTrust Plaza
Atlanta, GA 30308

Jennie Rogers
Law Offices of Jennie Rogers
P.O.Box 5725
Alpharetta, GA 30023

Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 70601

This 3rd day of June, 2015

Respectfully submitted,
/s/ Nelson O. Tyrone, III
Nelson O. Tyrone, III
Georgia Bar No. 721189

TYRONE LAW FIRM
1201 Peachtree Street, N.E.
400 Colony Square, Suite 2000
Atlanta, GA 30361
(404) 377-0017 telephone
(404) 249-6764 facsimile

Appendix L
COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA
NUMBER 20-00388-WCA

ROBERT LAPOINT, Plaintiff/Appellant
Versus
STEPHENS TPS, INC., Defendant/Appellee
C/W
STEPHENS TPS, INC., Plaintiff/Appellee
Versus
ROBERT LAPOINT, Defendant/Appellant

A CIVIL PROCEEDING

**EXCEPTION OF *RES JUDICATA* ON BEHALF
OF APPELLANT, ROBERT LAPOINT**

RESPECTFULLY SUBMITTED
BY BROUSSARD & WILLIAMSON

/s/ Aaron Broussard
AARON BROUSSARD (#30134)
STEVEN BROUSSARD (#3518)
MICHAEL WILLIAMSON (#31004)
JASON R. BELL (#30860)
RACHEL K. COUVILLION (#33927)
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 Telephone
(337) 439-3450 Facsimile

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PEREMPTORY EXCEPTION
OF *RES JUDICATA*

NOW INTO COURT, through undersigned counsel, comes APPELANT ROBERT LAPOINT (“LaPoint”), who pursuant to La. Code Civ. Proc. art. 2163 and La. Rev. Stat. 14:4231, respectfully asserts the peremptory exception of *res judicata*, which precludes the underlying claims asserted by APPELLEES, STEPHENS TPS INC. and COMMERCE AND INDUSTRY (collectively “TPS”) in the underlying workers’ compensation court. As more fully outlined in the accompanying memorandum in support, LaPoint avers as follows:

1.

LSA-C.C.P. art 2163 states: “The appellate court may consider the peremptory exception filed for the first time in that court, if pleaded prior to a submission of the case for a decision, and if proof of the ground of the exception appears of record.”

2.

Res judicata, literally “the thing adjudged,” bars relitigation of claims processed to final judgment in an action between the same parties.¹ *Res judicata* also bars the “relitigation of any subject matter arising from the same transaction or occurrence of a previous suit.”²

¹ Quality Envtl. Processes, Inc. v. IP Petroleum Co., Inc., 2016-0230 (La. App. 1 Cir. 4/12/17), 219 So. 3d 349, 364, writ denied, 2017-00915 (La. 10/9/17), 227 So. 3d 833.

² Gladney v. Anglo-Dutch Energy, L.L.C., 2019-93 (La. App. 3 Cir. 10/2/19), 280 So. 3d 964, 971-72.

3.

Here, the underlying workers' compensation court relitigated the same subrogation claim previously adjudicated to final judgment by a district court in the State of Georgia.³

4.

On October 20, 2015, the Georgia Court ruled that Georgia law governs the entire subrogation claim asserted by TPS in the Georgia proceedings (the same subrogation claim asserted in the underlying proceedings). The Georgia Court ruled TPS does not have a right of subrogation against LaPoint's Georgia tort recovery for benefits paid to LaPoint under the Louisiana statutes.

5.

TPS did not appeal the October 20, 2015 judgment rendered in the Georgia proceedings.

6.

Res judicata bars the relitigation of TPS's subrogation claim in the underlying Louisiana proceedings.

7.

For the reasons more fully stated in the attached memorandum in support, LaPoint prays this Court maintain this exception of *res judicata* and dismiss the underlying claim filed by TPS, with prejudice.

³ *Robert LaPoint, Plaintiff, and Stephens TPS, Inc. and Commerce and Industry Insurance Company, Intervening Plaintiffs, vs. David Jackson, Defendant*", Civil Action 14EV00514Y, State Court of Fulton County, Georgia.

120a

RESPECTFULLY SUBMITTED
BY BROUSSARD & WILLIAMSON
Attorneys for Plaintiff(s)

/s/ Aaron Broussard
AARON BROUSSARD (#30134)
STEVEN BROUSSARD (#3518)
MICHAEL WILLIAMSON (#31004)
JASON R. BELL (#30860)
RACHEL K. COUVILLION (#33927)
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 Telephone
(337) 439-3450 Facsimile

**MEMORANDUM IN SUPPORT
OF EXCEPTION**

A. PROOF OF THIS EXCEPTION APPEARS IN THE RECORD.

For the appellate court to rule on a peremptory exception under La. Code Civ. Proc. art. 2163, proof of the exception must appear in the record. Moreover, this issue was clearly raised in the lower court by LaPoint's exception of *lis pendens* in the underlying proceedings.⁴ The Louisiana Supreme Court has observed, “[t]he ‘test’ established to determine if an exception of *lis pendens* should be sustained is the same as that for *res judicata* . . .”⁵ Finally, “the appellate court shall render any judgment which is just, legal, and proper upon the record on appeal.” La. C.C.P. art. 2164.

Here, the following pleadings are in the record and are pertinent to this exception:

- STPS' interventions in the Georgia tort suits.⁶
- Settlement agreement with Georgia tortfeasors, agreed to by all parties.⁷
- Judgment from Georgia court ruling on LaPoint's Motion for Summary Judgment, and in the alternative, Motion for Adjudication of

⁴ Trial Exhibit, P-4, Pleadings #15-2726, Answer and Exceptions labeled Exhibit 4 - Pages 5 – 13.

⁵ *Aisola v. Louisiana Citizens Prop. Ins. Corp.*, 14-1708, p. 4 (La. 10/14/15), 180 So.3d 266, 269

⁶ Trial Exhibits, P-7, P8; Complaint for Interventions in Georgia Superior Court.

⁷ Trial Exhibits, P-10, D-8, Release and Settlement Agreement.

Co-Plaintiff Stephens TPS, Inc. and Commerce Industry Insurance Company's Lien Interest.⁸

- STPS's claim for reimbursement filed with the OWC.⁹

These pleadings demonstrate that all elements of *res judicata* are satisfied by the Georgia Judgment, which precludes the underlying subrogation claim.

B. THE GEORGIA JUDGMENT IS *RES JUDICATA*, BARRING THE OWC'S RE-LITIGATION OF TPS'S REIMBURSEMENT/SUBROGATION CLAIM.

Res judicata, literally "the thing adjudged," bars re-litigation of claims processed to final judgment in an action between the same parties.¹⁰ *Res judicata* promotes the dual purposes of judicial efficiency and the final resolution of disputes by preventing needless re-litigation.¹¹ The doctrine of *res judicata* is codified in La. R.S. 13:4231:

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

(1) If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject

⁸ Trial Exhibit, D-11, Georgia Judgment on LaPoint's Motion for Summary Judgment.

⁹ Trial Exhibit, D-5, TPS disputed claim for compensation.

¹⁰ Quality Envtl. Processes, Inc. v. IP Petroleum Co., Inc., 2016-0230 (La. App. 1 Cir. 4/12/17), 219 So. 3d 349,364, writ denied, 2017-00915 (La. 10/9/17), 227 So. 3d 833.

¹¹ Terrebonne Fuel & Lube, Inc. v. Placid Refining Co., 1995-0654 (La. 1/16/96), 666 So. 2d 624.

matter of the litigation are extinguished and merged in the judgment.

(2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.

(3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

The Louisiana Supreme Court explained that under La. R.S. 13:4231, a second action is precluded by res judicata when the following are satisfied:

- (1) the judgment is valid;
- (2) the judgment is final;
- (3) the parties are the same;
- (4) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and
- (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation.¹²

“After a final judgment, res judicata bars relitigation of any subject matter arising from the same

¹² Burguiere v. Pollingue, 2002-1385 (La. 2/25/03), 843 So. 2d 1049.

transaction or occurrence of a previous suit.”¹³ Each element is addressed below regarding the Georgia court’s adjudication of TPS’s interventions and the underlying claim.

1. The Judgment is Valid.

“For purposes of res judicata, a valid judgment is one rendered by a court with jurisdiction over both the subject matter and the parties after proper notice was given.”¹⁴ Here, the Georgia Court had jurisdiction over the subject matter – a tort that occurred in Georgia, and a claim for subrogation against any recovery from that tort. TPS made the entire lien an issue in Georgia and never filed one pleading in Georgia disputing jurisdiction. Moreover, Louisiana law states Georgia district court was the proper court to hear the matter. “Any person having paid or having become obligated to pay compensation under the provisions of this Chapter may bring suit **in district court against such third person** to recover any amount which he has paid or becomes obligated to pay as compensation to such employee or his dependents. . . .” La. R.S. § 23:1101(B). Georgia state court was the only district court with both personal and subject matter jurisdiction.

2. The Judgment is Final.

“Likewise, for purposes of La. R.S. 13:4231, a final judgment is one that disposes of the merits in whole or in part.”¹⁵ “Res judicata is an issue and claim

¹³ Gladney v. Anglo-Dutch Energy, L.L.C., 2019-93 (La. App. 3 Cir. 10/2/19), 280 So. 3d 964, 971-72.

¹⁴ Burguieres v. Pollingue, 2002-1385 (La. 2/25/03), 843 So. 2d 1049.

¹⁵ Id.

preclusion device.”¹⁶ The Third Circuit Court previously explained: “Under the principle of issue preclusion set forth in La. R.S. 13:4231(3), ‘[a] judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.’”¹⁷ “Once a court decides an issue of fact or law necessary to its judgment, that decision precludes re-litigation of the same claim or issue in a different cause of action between the same parties.”¹⁸

On October 20, 2015, the Georgia court decided the issue of TPS’s entire subrogation claim. The court determined Georgia law governed the claim. The court determined that TPS’s entire lien was placed at issue through the interventions in Georgia, not just the initial portion of benefits paid under Georgia’s workers’ compensation act. Finally, the court determined that regardless of Louisiana law, Georgia law does not enforce an out-of-state lien against an injured plaintiffs tort recovery in Georgia:

Under the rule of lex loci delecti, this Court must apply Georgia substantive law irrespective of whether the Georgia workers’ compensation law was invoked to pay the benefits. **Therefore, STPS and CCIC’s subrogation claim is governed by Georgia law.** Under Georgia’s workers’ compensation statutory scheme, **an**

¹⁶ Terrebonne Fuel & Lube, Inc. 666 So.2d at 631.

¹⁷ Thomas v. Marsala Beverage Co., 52,898 (La. App. 2 Cir. 11/20/19), 284 So. 3d 1212, 1221.

¹⁸ Liberty Mut. Fire Ins. Co. v. Weaver, 2016-1008 (La. App. 3 Cir. 5/10/17), 219 So. 3d 442,445.

employer or insurer's subrogation right is limited to benefits paid under Georgia's Workers' Compensation Act. Therefore, this Court finds that STPS and CCIC are "preclude[d] from asserting what might be a valid subrogation claim under [Louisiana] law, and therefore, cannot pursue in Georgia a subrogation claim for the benefits they paid under paid [sic] under Louisiana law.

TPS argued its position through briefs and oral argument at the hearing. TPS lost and did not appeal. This judgment disposed of the merits of TPS's subrogation/reimbursement claim. It is a final judgment.

3. The Parties are the Same.

Identity of parties means that the parties must appear in the suit in the same quality or capacity.¹⁹ In both the Georgia and Louisiana proceedings, TPS and its insurer appeared as employer and workers' compensation carrier asserting a claim against Robert's tort recovery. The parties are the same in both actions, appearing in the same quality and capacity, seeking the same thing.

4. The cause of action asserted in the second suit existed at the time of final judgment in the first litigation.

TPS's claim for subrogation asserted in this suit at the OWC existed at the time of the final judgment in Georgia, the first litigation. TPS first put the entire lien at issue in Georgia, and the Georgia court

¹⁹ Thomas, 284 So. 3d at 1219.

entered a final and valid judgment adjudicating the lien. This element is also satisfied.

5. The cause of action asserted in the second suit arose out of the same transaction or occurrence that was the subject matter of the first litigation.

Both the Georgia proceedings and Louisiana proceedings arose out of the same tort that occurred in Georgia, the same benefits paid to Robert, and the same settlement/recovery from the tortfeasors. TPS's Louisiana claim with the OWC arises out of the same transaction or occurrence as the claim asserted in the Georgia interventions. The final element of *res judicata* is satisfied. This exception must be granted.

C. A FOREIGN JUDGMENT HAS THE SAME EFFECT AS A JUDGMENT RENDERED IN THIS STATE.

“The Full Faith and Credit Clause, Article IV, Section 1, of the Constitution of the United States, mandates that a judgment of a state court should have the same credit, validity, and effect in every other court of the United States that it has in the state where it is pronounced.”²⁰ The Louisiana Supreme Court explained:

[A] state court judgment can be made a judgment in a sister state “only if the court purporting to render the original judgment has power to render such a judgment.” That is to say, the court that rendered the judgment must have had jurisdiction over both the subject matter and the person.

²⁰ Schultz v. Doyle, 2000-0926 (La. 1/17/01), 776 So. 2d 1158, 1164 citing Hampton v. McConnel, 16 U.S. (3 Wheat.) 234, 4 L.Ed. 378 (1818).

The general rule is that “a judgment is entitled to full faith and credit—**even as to questions of jurisdiction—when** the second court’s inquiry discloses that those questions have been fully and fairly litigated and finally decided in the court which rendered the original judgment.” Public policy dictates that there be an end to litigation; “that those who have contested an issue shall be bound by the result of the contest, and that matters once tried shall be considered forever settled as between the parties.” **This doctrine should apply in every case where one voluntarily appears, presents his case and is fully heard.** He should, in the absence of fraud, be bound thereafter by the judgment of the court to which he has submitted his cause.²¹

A Louisiana court must give full faith and credit to a judgment of a sister state if the decree is unassailable in the courts of the state which rendered it. If the decree cannot be attacked collaterally in the initial court, it cannot be attacked in a Louisiana court. Didier v. Didier, 255 La. 806, 233 So.2d 248 (1970). See also Dunn v. Mortenson, 839 So.2d 1007 (2d Cir. 2003) (holding a Louisiana court is not required to give full faith and credit to a foreign judgment against an out-of-state defendant unless (1) the judgment debtor consented to jurisdiction in the foreign court, or (2) the foreign court made a specific finding that it had personal jurisdiction over the out-of-state defendant); Schultz v. Doyle, 776 So.2d 1158 (La. 2001) (A Louisiana defendant was sued in Texas and served through that state’s long

²¹ Id (emphasis added).

arm statute. By submitting to the jurisdiction of the Texas court for the limited purpose of challenging jurisdiction, defendant agreed to abide by that court's determination on the issue of jurisdiction. That decision is *res judicata* on that issue in any future proceeding.).

Here, after the Georgia Judgment was rendered in October 2015, the same subrogation claim was litigated a second time by the OWC in March 2019, over LaPoint's objections.²² TPS first placed its claim at issue in Georgia and was unsuccessful. The Georgia court did not decline to exercise jurisdiction over the benefits TPS paid under Louisiana law. Rather, the law in Georgia does not allow application of another's state law in Georgia or allow reimbursement of out-of-state reimbursement claims from Georgia tort recoveries. The doctrine of *res judicata* and the full faith and credit clause require enforcement of the Georgia judgment in Louisiana. TPS's reimbursement rights against LaPoint's tort recovery were properly decided in Georgia, where the injury occurred, the tort suit was filed, and recovery was made.

²² As the Louisiana Supreme Court has observed, “[t]he ‘test’ established to determine if an exception of *lis pendens* should be sustained is the same as that for *res judicata*; thus, an exception of *lis pendens* should be sustained if ‘a final judgment in the first suit would be *res judicata* in the subsequently filed suit.’” *Aisola v. Louisiana Citizens Prop. Ins. Corp.*, 14-1708, p. 4 (La. 10/14/15), 180 So.3d 266, 269 (quoting *United Gen. Title Ins. Co. v. Casey Title, Ltd.*, 01-600, p. 8 (La. App. 5 Cir. 10/30/01), 800 So.2d 1061, 1065, and citing *Domingue v. ABC Corp.*, 96-1224 (La. App. 4 Cir. 6/26/96), 682 So.2d 246, 248.

PRAYER

Appellant ROBERT LAPOINT prays this Exception of *Res Judicata* be GRANTED, dismissing the underlying claims filed by STEPHENS TPS INC. and COMMERCE AND INDUSTRY with the State of Louisiana Office of Workers' Compensation Administration, District 3, with prejudice.

RESPECTFULLY SUBMITTED BY:
BROUSSARD & WILLIAMSON
Attorneys for Plaintiff(s)

/s/ Aaron Broussard
AARON BROUSSARD (#30134)
STEVEN BROUSSARD (#3518)
MICHAEL WILLIAMSON (#31004)
JASON R. BELL (#30860)
RACHEL K. COUVILLION (#33927)
1301 Common Street
Lake Charles, LA 70601
(337) 439-2450 Telephone
(337) 439-3450 Facsimile

COURT OF APPEAL, THIRD CIRCUIT
STATE OF LOUISIANA
NUMBER 20-00388-WCA

ROBERT LAPOINT, Plaintiff/Appellant
Versus
STEPHENS TPS, INC., Defendant/Appellee
C/W
STEPHENS TPS, INC., Plaintiff/Appellee
Versus
ROBERT LAPOINT, Defendant/Appellant

ORDER

Considering the foregoing Exception of Res Judicata:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED the Exception of Res Judicata filed on behalf of Appellant ROBERT LAPOINT is GRANTED, and the underlying subrogation claim filed by STEPHENS TPS INC. and COMMERCE AND INDUSTRY with the State of Louisiana Office of Workers' Compensation Administration, District 3, is dismissed with prejudice.

Signed this _____ day of _____ 2020, in Lake Charles, Louisiana.

JUDGE, THIRD CIRCUIT COURT OF APPEAL
Please send notice to all parties.

AFFIDAVIT OF SERVICE
AND VERIFICATION

STATE OF LOUISIANA
PARISH OF CALCASIEU

Before me, the undersigned notary, personally came and appeared, AARON BROUSSARD counsel for ROBERT LAPOINT who attested to and verified that:

1. He is one of the attorneys for ROBERT LAPOINT.
2. He verifies that the contents of the foregoing Exception of Res Judicata are true and correct to the best of his knowledge and information.
3. He does hereby certify that a copy of this Exception of Res Judicata has been mailed to:

Honorable Charlotte Bushnell
Office of Workers' Compensation Administration
District No. 3
120 West Pujo Street, Suite 200
Lake Charles, LA 70601

Robert Dunkelman
Marshall Perkins
Pettiette, Armand, Dunkelman, Woodley, Byrd,
Cromwell, LLP
400 Texas Street, Suite 400 (71101)
P.O. Box 1786
Shreveport, LA 71166-1786
Office: 318 221-1800

/s/ Aaron Broussard
AARON BROUSSARD

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SWORN TO AND SUBSCRIBED before me, in
Lake Charles, Louisiana on this 5th day of October,
2020.

/s/ Linda G. Raynor
NOTARY REPUBLIC

[SEAL]

LINDA. G. RAYNOR
Notary Public
State of Louisiana
Calcasieu Parish
Notary ID # 92188
My Commission is for Life

Appendix M

**HENNING MEDIATION & ARBITRATION
SERVICE, INC.**

SETTLEMENT MEMORANDUM

HMA Docket #14-19869

The Plaintiff Robert LaPoint has agreed to accept and Defendants David Jackson and Utility Service Company, Inc. (by and through their insurance carriers) have agreed to pay \$4,000,000 for the release of any and all claims of any and all Plaintiffs against any and all Defendants, their agents, insurers, affiliates, employees, employers, officers, directors, and other affiliated parties (Defendants):

TERMS:

- 1 Plaintiff to execute a full and final release of any and all claims past and future that have been brought or could have been brought by Plaintiff against any and all parties and nonparties including the whole world, including death.
- 2 Plaintiff to dismiss the civil action against David Jackson with prejudice and the Appeal currently pending in the civil action against Utility Service Company, Inc. with prejudice.
- 3 Plaintiff to be responsible for satisfying, adjudicating, or compromising all legally enforceable liens, subrogation claims and claims for reimbursement including but not limited to Worker's Compensation; Medicare, Medicaid, CHAMPUS, ERISA, hospital, health and any other legally enforceable liens of any kind. Plaintiff to execute a statutory lien affidavit.

4 Plaintiff to indemnify, defend and hold harmless Defendants from any and all legally enforceable third party claims arising out of injuries and/or damages suffered by Robert LaPoint including but not limited to any and all legally enforceable liens, subrogation claims and claims for reimbursement including but not limited to Worker's Compensation, Medicare, Medicaid, CHAMPUS, ERISA, hospital, health and any other legally enforceable liens of any kind including any third party reimbursement or subrogation claims, all contribution and indemnity claims, and any and all claims for loss of consortium.

5 The parties agree that this is a compromise settlement of a disputed claim and that the Plaintiff contends he has not been made whole.

6 It is further understood and agreed that Defendants admit no liability to Plaintiff and shall not be estopped or otherwise barred from asserting, and expressly reserve the right to assert any claim or cause of action they may have individually or collectively, including any claim for indemnification or contribution.

7 The Plaintiff to execute a confidentiality agreement beginning immediately, with an effective date of April, 1st, 2015, agreeing to keep the terms and amount of this settlement confidential (the parties understand that all parties are authorized to disclose the settlement to all need to know financial and legal representatives). The confidentiality agreement to be valued at \$100.00.

8 ESCROW: Plaintiff to escrow in Plaintiff's counsel's Nelson Tyrone's trust account \$863,695.00. Said funds to be held in trust until such time as Plaintiff has delivered to Defendants written verification of the removal of the Workers

Compensation lien as exhibited in the correspondence attached as exhibit B and Defendants have given written authorization to Plaintiff's counsel to release said funds.

9 Material representations. The Plaintiff hereby affirmatively represents as a material representation to the Defendants and understands that Defendants are relying on his representation in reaching this settlement that the following statements are true: 1. That on the date of the incident in question Plaintiff was separated from his spouse, had been separated from his spouse for eight (8) years prior to the incident in question, denies that there has been a loss of consortium, and denies that his spouse has suffered a loss of consortium. 2. Plaintiff has not received nor applied for any benefits from Medicare or Medicaid. 3. Plaintiff has not received nor applied for any benefits from Social Security Disability.

10. The parties agree to incorporate the terms set forth in Exhibit "A" in the formal Settlement and Release Agreement.

11. Plaintiff to have the right to structure any amount of the settlement. Plaintiff to notify Defendants of the amount to be structured within 10 business days. Any such structures to be co-brokered by a Broker selected by the Plaintiff and a Broker selected by the Defendants. A portion of the settlement, via a qualified assignment, may be used to fund a stream of periodic payments under Section 104(a)(2) of the Internal Revenue Code.

12. Commerce and Industry Insurance Company, the workers' compensation carrier, will provide lien waivers to Defendants and Defendants' insureds.

13. Commerce and Industry Insurance Company and Stephens TPS, Inc. consent to the settlement on the condition that Plaintiff is to escrow in Plaintiffs counsel's trust account the sum of \$863,695.00. Said funds are to remain held in the trust account until such time as a judicial adjudication has been made as to employer/insurer's reimbursement rights, lien amount, future credit, plaintiffs attorney fees, plaintiffs right to future compensation including medical expenses and any other workers' compensation obligation which may be due. Plaintiff and employer/ workers' compensation carrier agree that sums held in escrow do not represent the total sums in dispute as continuing benefits may be due. All such future payments are included in the determination to be made by the courts.

The parties acknowledge Plaintiff intends to pursue the judicial adjudication in Georgia and employer/ insured intend to pursue the judicial adjudication in Louisiana. The plaintiff does not consent to the adjudication in Louisiana. The employer/insurer do not consent to the adjudication in Georgia.

14. Defendants to deliver the release documents to Plaintiffs 10 days after notification of any structures and agreed upon instructions with respect to the terms of the structured settlement. Defendants to deliver \$2,000,000.00 of settlement funds to Plaintiffs in 30 days. Defendants to deliver the remainder of the settlement funds in the amount of \$2,000,000.00 (For a total of \$4,000,000.00 as recited above) to Plaintiffs in 90 days.

This 1st day April, 2015.

SIGNATURES ON FOLLOWING PAGE:

PLAINTIFF(S) DEFENDANT(S)

[Illegible] [Illegible]

Robert LaPoint

INTERVENING PLAINTIFFS

[Illegible]

This memorandum contains all the essential elements of the terms and conditions of the settlement in this case. This is intended as a written memorandum of a binding Settlement Agreement resolving all claims arising from the above legal dispute. The formal settlement documents will be prepared and executed by all parties as soon as possible.

/s/ Rex D. Smith

Rex D. Smith

NEUTRAL'S SIGNATURE

SETTLEMENT MEMORANDUM-EXHIBIT “A”

**Terms to be included in Settlement and
Release Agreement**

RELEASOR having received and acknowledged the aforesaid consideration as satisfaction for and on account of any and all claims, actions, causes of action or other claims of every nature or character, known or unknown, arising out of the Incident against RELEASEES, hereby satisfies, settles, releases and forever discharges RELEASEES, their officers, directors, agents, representatives, underwriters, insurers, general partners, limited partners, successors, assigns, affiliates, subsidiaries and employees and it is the express intent of this release to release all other such persons, firms, or corporations and the whole world.

INDEMNIFICATION

RELEASOR hereby specifically agrees to defend, reimburse, indemnify and hold harmless RELEASEES their officers, directors, agents, representatives, underwriters, insurers, general partners, limited partners, successors, assigns, affiliates, subsidiaries and employees, against any other claim for damages, compensation, or otherwise, any other person, firm, corporation or other entity may have or claim to have arising out of the damages or injuries suffered by Robert LaPoint.

It is further understood and agreed that RELEASEES admit no liability to RELEASOR and shall not be estopped or otherwise barred from asserting, and expressly reserve the right to assert any claim or cause of action they may have individually or collectively, including any claim for indemnification or contribution.

MEDICARE/MEDICAID

1. RELEASOR, and RELEASOR'S Counsel of Record, for the consideration set forth in this Release Agreement, further agrees to satisfy, adjudicate, or compromise any and all valid and legally enforceable liens or claims against the proceeds of this Agreement, specifically including, but not limited to, any lien, claim or conditional payment reimbursement demand asserted by or on behalf of Medicare or any entity claiming any right of reimbursement under the Medicare Secondary Payer Act. RELEASOR further agrees to hold harmless, indemnify and defend RELEASEES from any claims arising from the failure of RELEASOR to satisfy adjudicate, or compromise any such valid and legally enforceable liens, claims, and/or Medicare conditional payment reimbursement demands. These obligations include RELEASOR'S payment and/or reimbursement of any and all reasonable attorney's fees and expenses incurred by RELEASEES in connection with the failure of RELEASOR to satisfy adjudicate, or compromise any such valid and legally enforceable liens, claims, and/or Medicare conditional payment reimbursement demands.
2. RELEASOR also agrees to hold harmless, indemnify, and defend RELEASEES with respect to any and all other valid and legally enforceable claims that may be presented by RELEASOR, Medicare, and/or any other party acting on RELEASOR'S or Medicare's behalf, including, but not limited to, administrative or civil fines, penalties, and interest, as well as any damages that arise out of, result from, and/or occur as a consequence of any adverse administrative or legal actions, up to and including the loss of RELEASOR'S future Medicare benefits and/or Medicare eligibility. These obligations include RELEASOR'S payment

and/or reimbursement of any and all reasonable attorney's fees and expenses incurred by RELEASEES in connection with the failure of RELEASEOR to perform these obligations.

3. The funding of this settlement agreement by the RELEASEES is made in reliance on RELEASEOR'S agreement to fulfill the obligations set forth in paragraph 1 and 2 above. The provisions of paragraph 1 and 2 above shall survive the execution of this Release Agreement and shall be enforceable.

OTHER RECOVERIES AND ASSIGNMENT

Releaser assigns to Releasee any and all claims against any third party up the full amount paid as consideration for this release and agrees to cooperate in any recovery efforts undertaken by Releasee.

WARRANTY OF CAPACITY TO EXECUTE AGREEMENT AND ACKNOWLEDGMENT OF COMPREHENSION

Releaser warrants that no other person or entity has any interest in the claims referred to in this Agreement, and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or cause of action referred to in this Settlement agreement, and that the person executing this agreement has the capacity to do so. Releaser acknowledges that it had read this release and understands its contents.

CONFIDENTIALITY

In further consideration of the payment of the sum of \$100.00 Dollars of the consideration paid herein, RELEASEOR and his attorneys covenant and agree that the terms and conditions of this settlement, the existence of the General Release and Settlement

Agreement, the terms, fact and amount of any payments made pursuant to said General Release and Settlement Agreement, the fact or terms and conditions of the General Release and Settlement Agreement, any information contained in the General Release and Settlement Agreement relating to this settlement, or discussed or communicated during the negotiations leading up to execution of the General Release and Settlement Agreement, and the history, background and negotiations for this settlement and the General Release and Settlement Agreement will be kept confidential and private in all respects and the undersigned will not reveal the fact or the amount of this settlement or the terms and conditions of the General Release and Settlement Agreement on the internet, to the newspapers, to any form of media, social media, or to any other person, firm, corporation or entity and the undersigned agree not to disclose the existence of or describe or characterize this settlement or the terms of the General Release and Settlement Agreement in any way whatsoever. If any inquiry as to the existence of or the terms and conditions of this settlement is made by anyone, including the press or media, the undersigned shall decline to respond or will state only that they have no comment. The undersigned also agree not to solicit any such inquiries from any person, firm corporation or entity (the "Confidentiality Provision").

RELEASOR agrees to indemnify and reimburse any cost that RELEASEES incur in order to enforce the Confidentiality Provision of the General Release and Settlement Agreement or any cost related to litigation arising from a breach of the Confidentiality Provision of the General Release and Settlement Agreement.

4/1/2015

ATT00001.htm

Begin forwarded message:

From: "Rogers, Jennie E" <Jennie.Rogers@aig.com>
To: "Aaron Broussard" <aaronbroussard@gmail.com>, Nelson Tyrone <nelson@tyronelaw.com>
Cc: "Rogers, Jennie E" <Jennie.Rogers@aig.com>, "dennis@gibbensandstevens.com" <dennis@gibbensandstevens.com>
Subject: 555-020687 LEGAL-DEF ATTY CORRES Robert LaPoint v. Utility (subro) GAWC00199, corres, atty, 3.31.15 re WC payments
Date: March 31, 2015 at 11:07:50 AM EDT

Dear Aaron and Nelson,

Here are the most recent payment logs for Mr. Lapointe. See you all tomorrow.

Georgia Medical Payments – \$7,282.03
Louisiana Medical Payments – \$797,054.49
Louisiana Indemnity Payments – \$59,359.47

Jennie E. Rogers
Managing Attorney
Law Office of Jennie E. Rogers
Staff Attorneys for AIG
3650 Brookside Parkway, Third Floor
Alpharetta, GA 30022

Direct Line: 678-240-1315

Blackberry: 678-492-3764

Email : jennie.rogers@aig.com

This email message is confidential, intended only for the named recipient(s) and may contain information that is privileged attorney-client communications, attorney work product, or exempt from disclosure under applicable law. If you are not the intended recipient(s), you are notified that the dissemination,

distribution or copying of this message is strictly prohibited. In addition, please immediately delete or destroy all copies or versions you have of this message and notify the sender at (678) 240-1315 or jennie.rogers@aig.com in order that we may take steps to prevent any further inadvertent disclosures. Receipt by anyone other than the named recipient(s) is not a waiver of any attorney-client, work product, or other applicable privilege. Thank you.

Exhibit B

file:///C:/Users/rex/AppData/Local/Microsoft/Windows/INetCache/Content.Outlook/2Z4A64Y0/ATT00001.htm

Appendix N
14th JUDICIAL DISTRICT COURT
PARISH OF CALCASEIU
STATE OF LOUISIANA

No. 2020-0087

**STEPHENS TPS, INC. and COMMERCE
AND INDUSTRY INSURANCE COMPANY**

v.

ROBERT LAPOINT

FILED: _____
DEPUTY CLERK: _____

**WRITTEN REASONS REGARDING
MARCH 21, 2022 HEARING ON MOTION
FOR NEW TRIAL ON PLAINTIFF-IN-
RECONVENTION'S "MOTION FOR
SUMMARY JUDGMENT TO ENFORCE
SETTLEMENT AGREEMENT AND FOR
DECLARATORY RELIEF"**

This matter came before the Court on Monday, March 21, 2022, for hearing and oral argument on the Motion for New Trial on Plaintiff-in-Reconvetion's "Motion for Summary Judgment To Enforce Settlement

Agreement and for Declaratory Relief" that was filed by Stephens TPS, Inc. and Commerce and Industry Insurance Company.

Present for the hearing were Aaron Broussard, counsel for Katelyn LaPoint, Ashlyn LaPoint, and Chelsie LaPoint; and Marshall Perkins, counsel for Stephens TPS, Inc. and Commerce and Industry Insurance Company.

The Court heard Plaintiff-in-Reconvention's "Motion for Summary Judgment To Enforce Settlement Agreement and for Declaratory Relief" on October 19, 2021, which sought a declaration from the Court allowing LaPoint to move certain funds currently held in his Louisiana attorney's trust account to a different attorney's trust account in Georgia. The Court granted the motion for summary judgment, and signed a judgment in accordance therewith on November 16, 2021. Stephens TPS, Inc. and Commerce and Industry Insurance Company now seek a new trial on same.

At the heart of this dispute is a judgment issued by the Louisiana Office of Workers' Compensation ("OWC"), who ruled that Stephens TPS, Inc. and Commerce and Industry Insurance Company are entitled to \$570,941.00 as a partial reimbursement of a workers' compensation lien they claimed over a settlement that LaPoint reached in connection with third- party tort litigation in Georgia. LaPoint took a devolutive appeal from the OWC judgment, and brought a Peremptory Exception of Res Judicata therewith. The Third Circuit Court of Appeal sustained the exception of res judicata, and reversed and vacated the OWC's award. Then, the Louisiana Supreme Court granted a writ application on November 22, 2021, and vacated the ruling of the

Third Circuit and remanded back to the Third Circuit for consideration of LaPoint's assignments of error.

In the instant motion requesting a new trial, Stephens TPS, Inc. and Commerce and Industry Insurance Company argue that the judgment of this Court in granting the motion for summary judgment was clearly contrary to the law and evidence, "especially but not exclusively given the Louisiana Supreme Court's decision."

Legal Standard –

Louisiana Code of Civil Procedure article 1972 provides:

A new trial shall be granted, upon contradictory motion of any party, in the following cases:

- (1) When the verdict or judgment appears clearly contrary to the law and the evidence.
- (2) When the party has discovered, since the trial, evidence important to the cause, which he could not, with due diligence, have obtained before or during the trial.
- (3) When the jury was bribed or has behaved improperly so that impartial justice has not been done.

Louisiana Code of Civil Procedure article 1973 provides that "A new trial may be granted in any case if there is good ground therefor, except as otherwise provided by law."

As an initial matter, the Court finds that the motion was timely filed pursuant to Louisiana Code of Civil Procedure article 1974.

Notwithstanding the recent decision of the Louisiana Supreme Court as to the OWC ruling, this

Court does not find that the granting of LaPoint's motion for summary judgment is "clearly contrary to the law and the evidence." Although at the time of the October 19, 2021 hearing, this Court did not have before it the recent Louisiana Supreme Court decision, this Court finds that the decision of the Louisiana Supreme Court does not change the ultimate result as to this motion. This Court relied upon the Third Circuit's ruling to effectively find that Stephens TPS, Inc. and Commerce and Industry Insurance Company had no interest in the subject funds and thus were without standing to prevent the movement of the funds. Now that the Louisiana Supreme Court has vacated the Third Circuit's ruling, it is clear that Stephens TPS, Inc. and Commerce and Industry Insurance Company have an interest in the location of the funds. However, looking to the agreement between the parties, this Court maintains its ruling granting the motion for summary judgment, and permitting LaPoint to move the subject funds to his former counsel's trust account in Georgia.

The settlement memorandum encompassing the above-referenced agreement was done in connection with LaPoint's tort suit which was filed in Georgia against a third-party. Stephens TPS, Inc. and Commerce and Industry Insurance Company intervened in that Georgia suit seeking subrogation against LaPoint's tort recovery. In connection therewith, the settlement memorandum provided the following:

8 ESCROW: Plaintiff to escrow in Plaintiff's counsel's Nelson Tyrone's trust account \$863,695.00. Said funds to be held in trust until such time as Plaintiff has delivered to Defendants written verification of the

removal of the Workers Compensation lien as exhibited in the correspondence attached as exhibit B and Defendants have given written authorization to Plaintiff's counsel to release said funds.

This Court finds that the language of the settlement memorandum, which was the agreement between the parties, states that the money will be kept in Georgia. Louisiana Civil Code article 2045 provides that "Interpretation of a contract is the determination of the common intent of the parties." It is to be noted that the agreement technically does not name the state of Georgia, but as between the parties, this Court finds that it is clear that by stating that the \$863,695.00 was to be escrowed in Plaintiffs counsel's Nelson Tyrone's trust account, the parties agreed that the funds were to remain in Georgia, where Mr. Tyrone maintained his practice and trust account.

Louisiana Civil Code article 2046 provides that "When the words of a contract are clear and explicit and lead to no absurd consequences, no further interpretation may be made in search of the parties' intent." Here, this Court finds that the agreement was clear that the subject funds were to be maintained in Nelson Tyrone's account, which was known to exist in Georgia. This Court finds that the agreement between the parties is valid, and that the subject funds must be returned to Nelson Tyrone's trust account in Georgia, per the terms of the agreement. Accordingly, this Court's judgment granting the summary judgment is not clearly contrary to the law and evidence.

Additionally, this Court finds that the recent ruling of the Louisiana Supreme Court has no effect on the validity of the agreement between the parties. The

Louisiana Supreme Court ruling did not provide that the agreement was invalid, nor did the Supreme Court rule that the funds have to remain in Louisiana. As such, there has been no change in the status of the case rendering this Court's judgment clearly contrary to the law and evidence.

As an additional argument, Stephens TPS, Inc. and Commerce and Industry Insurance Company contend that this Court lacks jurisdiction to nullify, alter, or modify the Louisiana Office of Workers' Compensation ("OWC") judgment. This Court is not being asked to nullify, alter or amend the OWC judgment. Rather, this Court is reviewing the chronology of the proceedings before it regarding the subject funds. As it stands today, this Court's judgment of February 27, 2020, which granted a preliminary injunction and ordered that the subject funds are not to be expended in any way, is still in effect. Accordingly, the funds are not being disposed of, so there is no modification to the OWC ruling regarding the funds. This Court does not find merit to Petitioners' argument that this Court lacks jurisdiction to nullify, alter, or modify the OWC judgment, especially considering that this Court is not nullifying, altering, or modifying said judgment.

THEREFORE, IT IS HEREBY ORDERED that Petitioners' Motion for New Trial on Plaintiff-in-Reconvention's "Motion for Summary Judgment To Enforce Settlement Agreement and for Declaratory Relief" is **DENIED**.

WRITTEN REASONS SIGNED AND RENDERED,
this 19th day of April, 2022, Lake Charles, Louisiana.

/s/ G. Michael Canaday
HONORABLE G. MICHAEL CANADAY
JUDGE, FOURTEENTH JUDICIAL DISTRICT COURT

Please Serve:

Mr. Aaron Broussard
Broussard & Hart, LLC
1301 Common Street
Lake Charles, LA 7060 I

Mr. Marshall Perkins and Mr. Robert Dunkleman,
counsel for Stephens TPS, Inc. and Commerce and
Industry Insurance Company
Pettiette, Armand, Dunkleman, Woodley, Byrd,
Cromwell, LLP
400 Texas Street, Suite 400 (71101)
Shreveport, LA 71166-1786

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Appendix O

Mail to:

LOCAL DISTRICT OFFICE

OR

OFFICE OF WORKERS' COMPENSATION

POST OFFICE BOX 94040

BATON ROUGE, LA 70804-9040

For information call (225) 342-7565

or Toll Free (800) 201-3457

Docket Number 15-02726

DISPUTED CLAIM FOR COMPENSATION

GENERAL INFORMATION

Claimant files this dispute with the Office of Workers' Compensation. This office must be notified immediately in writing of changes in address. An employee may be represented by an attorney, but it is required.

1. Social Security No. _____ - _____ - _____
2. Date of Injury/Illness 03 - 08 - 12
3. Part(s) of Body Injured _____ Legs _____
4. Date of This Request 04 - 24 - 15
5. Date of Hire _____ - _____ - _____
6. Date of Birth 08 - 27 - 70

7. This claim is submitted by:

Employee Employer Insurer Dependant
 Health Care Provider LWC Other _____

EMPLOYEE

8. Name Robert J. LaPoint

Street or Box 2960 Lake Street, #179

City Lake Charles

State LA Zip 70601

Phone (337) 424-0538

EMPLOYEE'S ATTORNEY

9. Name Aaron Broussard

Street or Box 723 Broad Street

City 1301 Common Street

State LA Zip 70601

Phone (337) 439-2450

EMPLOYER

10. Name Stephens TPS, Inc.

Attn: _____

Street or Box 1025 Eagle Trail SW

City Brookhaven

State MS Zip 39601

Phone () _____

INSURER/ADMINISTRATOR
(circle one)

11. Name Commerce and Industry Insurance Company

Attn: _____

Street or Box P.O. Box 25971

City Shawnee Mission

State KS Zip 66225

Phone (504) 527-5595

EMPLOYER/INSURER'S ATTORNEY
(circle one)

12. Name Dennis R. Stevens

Attn: _____

Street or Box 222 W. St. Peter Street

City New Iberia

State LA Zip 70560

Phone (337) 367-8451

DEFENDANT/HCP/OTHER
(circle one)

13. Name _____

Relationship _____

Street or Box _____

City _____

State _____ Zip _____

Phone () _____

155a

[STAMP]

RECEIVED
OWC-DISTRICT 3

2015 MAY – 1 PM 12:08

SCANNED

14. EMPLOYMENT DATA

Occupation Laborer

Average Weekly Wage \$ _____

Workers' Compensation Rate \$ _____

**15. TO BE COMPLETED BY INJURED EMPLOYEE
OR DEPENDENT:**

(A) ACCIDENT DATA

Date, time and place of accident: 03/08/12; 7:53
a.m.; Atlanta Water Shed Management, 625
Moores Mill Road, Atlanta, GA

Parish or residence at time of injury/illness
Beauregard

Accident reported on 03/08/12 to Phillip Harp
whose position with the employer is supervisor

Describe the accident or injury in detail (person/
equipment involved, type of injury, etc.)
Employee was working under a truck when the
truck was moved by a third party causing the
truck to roll over the employee.

List the names, addresses, telephone numbers of any witnesses.

Phillip Harp (601) 402-6971, 1082 Highway 590 East, Seminary, MS 39479; Earnest Moore (601) 529-0481, 18127 Highway 547, Pattison, MS 39144; David Michael Jackson, Joel Stephens TPS, Kevin and Bill

(B) MEDICAL DATA

State the names, addresses, and telephone numbers of hospitals, clinics and doctors who have provided medical attention.

See attached list

[STAMP]

RECEIVED
OWC-DISTRICT 3

2015 MAY – 1 PM 12:08

SCANNED

(C) THE BONA-FIDE DISPUTE

Check the following that apply and fill in the blanks:

- 1. No wage benefits have been paid
- 2. No medical treatment has been authorized
- 3. Occupational Disease
- 4. Workers' Compensation Rate is incorrect
– Should be \$ _____
- 5. Wage benefits terminated or reduced on
_____ / _____ / _____

- 6. Medical treatment (Procedure/Prescription) _____
recommended by _____
not authorized.
- 7. Choice of physician (specialty) _____
- 8. Disability status _____
- 9. Vocational Rehabilitation – specify _____

- 10. Offset/Credit _____
- 11. Refusal to authorize/submit to evaluation with choice of physician/independent Medical Examination [L. R. S. 23:1121, 1124(B) or 1317.1(F)]
- 12. Other: The employee has filed a Third Party Claim against the alleged responsible parties and has negotiated a settlement of the Third Party Claim. A dispute has arisen between the employer/insurer and the employee regarding the calculation of the employer/insurer's credit and reimbursement as a result of the settlement in the Third Party Claim. The employer/insurer request that the workers' compensation judge make the determination as to the employer's credit and reimbursement from the Third Party Settlement proceeds pursuant to provisions of LSA R.S. 23:1101, et. seq.

NOTE: You may attach a letter or petition with additional information with this disputed claim or when later amending this disputed claim (Form LWC-WC-1008). You must provide a copy of this

158a

**claim and any amendment to all
opposing parties.**

**The information given above is true and correct
to the best of my knowledge and belief.**

/s/ Dennis R. Stevens

SIGNATURE OF CLAIMANT/ATTORNEY
(circle one)

4/27/15
DATE

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**ROBERT LAPOINT – KNOWN MEDICAL
PROVIDERS 11/17/14**

Axelrad, Dr. Thomas
Orthopedic Specialists
1717 Oak Park Boulevard, 3rd Floor
Lake Charles, LA 70601
337-494-4900

Beauregard Memorial Hospital
600 S. Pine Street
DeRidder, LA 70634
337-462-7491

Byrd Regional Hospital
1020 W. Fertitta Blvd.
Leesville, LA 71446
337-239-9041

Davidson, Dr. Vanda
Davidson Orthopedic Clinic
211 N. 3rd Street, Suite A
Alexandria, LA 71301
318-443-4514

Dilks, Dr. Lawrence
Counselling Services of S.W. LA
2711 Ernest Street
Lake Charles, LA 70601
337-431-7194

Dole, Dr. Michael
Diagnostic Pain Management
5408 Provine Place
Alexandria, LA 71303
318-449-8333

160a

Fraser, Dr. Francis A.
1201 W. Fertitta Blvd.
Leesville, LA 71446
337-238-0620

Grady Memorial Hospital
80 Jesse Hill Jr. Drive SW
Atlanta, GA 30303
404-616-4307

Katz, Dr. Stephen
Central Louisiana ANS/PME
3311 Prescott Road, Suite 415
Alexandria, LA 71301
318-443-9300

Lake Charles Memorial Hospital
1701 Oak Park Boulevard
Lake Charles, LA 70601
337-494-2488

Leesville Rehabilitation Hospital
900 S. 6th Street
Leesville, LA 71446
337-392-8118

Rapides Regional Hospital
211 4th Street
Alexandria, LA 71301
318-473-3000

Rees, Dr. Stephen G.
301 W. Fertitta Blvd., Suite 1
Leesville, LA 71446
337-238-0167

Riverside Hospital
211 4th Street
Alexandria, LA 71301
318-767-2900

161a

Tulane University Hospital
1415 Tulane Avenue
New Orleans, LA 70112
504-988-5181

Tulane Urology Clinic
Hellstrom, Dr. Wayne
1415 Tulane Avenue
New Orleans, LA 70112
504-988-5271

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Appendix P

H. Lynn Jones II

Clerk of Court and Ex-Officio Recorder
Fourteenth Judicial District of Louisiana
Parish of Calcasieu
Lake Charles, Louisiana

[SEAL]

Post Office Box 1030
Lake Charles, Louisiana 70602
Main: 337-437-3550
Fax: 337-437-3350

November 20, 2017

TO: DENNIS STEVENS
*GIBBENS & STEVENS
*222 W. ST. PETER ST.
New Iberia, LA 70560-0000

RE: ROBERT LAPOINT
VS. NO: 2016-002947
STEPHENS TPS INC

Dear DENNIS R STEVENS:

In accordance with Article 1913 of the Louisiana Code of Civil Procedure, you are hereby notified that Judgment was read and signed in the above numbered and entitled cause on the 6 day of November 2017.

JUDGMENT ON PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT (HEARD BEFORE THE COURT ON THE 3rd DAY OF OCTOBER, 2017).

163a

Yours very truly,
H. Lynn Jones, II
Clerk of Court

BY: /s/ Kimberly Poullard
Kimberly Poullard
Deputy Clerk of Court

CC: AARON BROUSSARD
*1301 COMMON STREET
LAKE CHARLES, LA 70601-0000

RECORD

I hereby certify that the above and foregoing notice was mailed by me, postage prepaid to counsel of record for all parties and to those parties who were not represented by counsel, directed to their last known address, on this 20th day of November 2017.

/s/ Kimberly Poullard
Deputy Clerk of Court

164a

**14th JUDICIAL DISTRICT COURT
PARISH OF CALCASEIU
STATE OF LOUISIANA**

No. 2016-2947

**ROBERT LAPOINT
VS.
STEPHENS TPS, INC. and COMMERCE
AND INDUSTRY INSURANCE COMPANY**

**FILED: 11-16-17
/s/ Kimberly Poullard
DEPUTY CLERK**

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COST DEPARTMENT

**JUDGMENT ON PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

This cause came to be heard before the Court on the 3rd day of October, 2017 on Plaintiff's Motion for Summary Judgment on the Issue of Foreign Judgment. Present were Aaron Broussard, attorney for Plaintiff, Robert LaPoint; and Dennis Stevens, attorney for Defendants, Stephens TPS, Inc. and Commerce and Industry Insurance Company. After hearing the arguments of counsel, the law and evidence being in favor thereof, for the reasons assigned by written Ruling on October 4, 2017:

IT IS ORDERED, ADJUDGED AND DECREED, the Order dated October 20, 2015 rendered in those proceedings entitled "Robert LaPoint, Plaintiff vs. Stephens TPS, Inc. and Commerce Industry Insurance Company, Intervening Plaintiffs," Civil Action No. 14EV000514, in the State Court of Fulton County, Georgia, is hereby recognized and given full faith and credit.

IT IS FURTHER, ORDERED, ADJUDGED, AND DECREED, this Court's recognition of the above referenced Georgia Order does not dictate how a Louisiana Court might deal with a claim for reimbursement or credit that relates to a Louisiana Compensation claim as those issues are not before the Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the costs of this proceeding are hereby deferred to the merits.

JUDGMENT RENDERED on the 4th day of October, 2017, at Lake Charles, Louisiana.

JUDGMENT READ AND SIGNED on the 6 day of November, 2017, at Lake Charles, Louisiana.

/s/ Clayton Davis
JUDGE CLAYTON DAVIS
14th Judicial District Court