STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case Number 2022-000154

Steven M. Brant, Employee, Claimant

vs.

Core Services, LLC and South Carolina Department of Transportation, Employer Berkshire Hathaway Direct Insurance Co., Carrier, Markel Ins. Co. and South Carolina State Accident Fund, Carriers, and South Carolina Workers' Compensation Uninsured Employers' Fund, Defendants,

of whom Berkshire Hathaway Direct Insurance Co., is the Appellant

and

South Carolina Department of Transportation, South Carolina State Accident Fund and South Carolina Workers' Compensation Uninsured Employers' Fund are Respondents

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FINAL BRIEF OF RESPONDENT SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

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December 16, 2022

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STATEMENT OF THE CASE

This matter came before the Commission on Forms 50/51. A hearing was held on August 12, 2020 in front of the Single Commissioner. Claimant alleges that he suffered a compensable injury to both of his legs while in the course and scope of his employment on May 6, 2019. Claimant was hired by Core Services, LLC (hereinafter "Core") to work as a tractor operator mowing the shoulders and sides of roadways. (R. p. 300). Core was contracted by the South Carolina Department of Transportation (hereinafter "SCDOT") to mow and trim the shoulders and right of ways in various counties. SCDOT required Core Services to provide a Certificate of Liability Insurance. Core provided a Certificate of Liability Insurance issued on March 5, 2019, produced by Berkshire Hathaway Direct Insurance Company (hereinafter "biBerk") stating that Core had a workers' compensation policy, No. N9W082487. (R. p. 2). This certificate was present to SCDOT. Unbeknown to SCDOT, the biBerk policy had been allegedly cancelled in April of 2019.

In addition to compensability, the Single Commissioner was asked to determine whether biBerk properly cancelled their policy. Core did not appear at the hearing.

The Single Commissioner found that Claimant was hired by Core and that the Claimant suffered a compensable injury to both his legs. The Single Commissioner ordered reimbursement for all past causally related medical treatment since the date of accident, temporary total benefits from May 6, 2019 through February 17, 2020. The Single Commissioner also found that Claimant was at maximum medical improvement and awarded 6% permanent partial disability to Claimant's right leg and 10% permanent partial disability to Claimant's left leg. The Single Commissioner also found that Core had valid workers' compensation insurance coverage in South Carolina by and through biBerk. The Single Commissioner also dismissed the South Carolina Uninsured Employer's Fund (hereinafter "UEF"), SCDOT and the South Carolina State Accident Fund (hereinafter "SAF"). (R. pp. 284-312).

BiBerk subsequently appealed to the Full Commission on the following grounds: whether the UEF and SAF lacked standing to contest the cancellation of biBerk's policy alleging that neither entity was a party or a third-party beneficiary to the insurance contract between Core and biBerk; whether biBerk effectively cancelled Core's policy under Kentucky law prior to the date of the accident; whether Core's policy was effectively cancelled under South Carolina law prior to the Claimant's date of accident.

The Appellate Panel in a *de novo* review of the evidence presented made the following relevant Findings of Fact:

> #26 Core obtained insurance with biBerk (R. p. 340)
>
> #27 In its application for workers' compensation insurance, Core stated that it (a) had clerical office employees and lawn maintenance workers, and (b) did no tree removal of excavation. (biBerk APA p. 858, 859, 872, 874; UEF APA p. 145 & 155) (R. p. 340).

#28 The policy of workers' compensation insurance with biBerk was effective March 6, 2019, through March 6, 2020 (biBerk p. 859, pp. 871-872); UEF APA p. 144 & 153). (R. p. 340).

#29 The mailing address of Core as stated in the application for insurance and in the policy is 828 E. High St., PMB 272, Lexington, KY 40502 (biBerk p. 872; UEF 144, 152-3). (R. p. 341).

#30 Kentucky is listed as the 3A endorsed state in the policy (biBerk p. 859). (R. p. 341).

#31 Under 3C(other states insurance), the policy was effective in all other states except for North Dakota, Ohio, Washington and Wyoming. Thus, the policy was also effective in South Carolina (biBerk APA p. 859), (R. p. 341).

#32 Core provided a certificate of workers' compensation insurance to DOT, showing (a) workers' compensation coverage, (b) Core as the insured, (c) Core's address as Lexington, KY and (d) the insurer as biBerk (Claimant's APA p. 768; UEF APA p. 95). (R. p.341).

#33 on April 2, 2019 biBerk attempted to cancel Core's workers' compensation policy (stating the cancellation's effective date of as April 21, 2019) because of Core's material misrepresentation in obtaining coverage; Core had identified its business as landscape maintenance (performing no tree removal or excavation work). The work is a "more hazardous class code than a traditional landscaper" (Deposition of Yoh; UEF APA p. 153,174; Claimant's APA pp. 769-770); biBerk APA p. 866; 860, 863;868-9). (R. p. 341).

#34 Core's PMB (private mailbox number) was listed on the notice of cancellation, but it was not shown on the proof of mailing (biBerk APA p. 860,

biBerk p. 862; 866, 868-869; Deposition of Yoh, pp. 13-15; Ex C to Deposition of Yoh; UEF's APA Ex. C.). (R. p. 341).

#35 Pursuant to Reg. 67-405(c) (1), a carrier who desires to cancel a policy of insurance must file a notice of termination pursuant to Reg. 67-416. The termination/ cancellation is not effective until thirty (30) days after receipt by NCCI, the Commission's authorized agent. NCCI received notice of the cancellation on April 2, 2019, and by virtue of that fact alone and absent the circumstances described below, the policy would have been effectively cancelled as of May 2, 2019 -four (4) days prior to the date of accident in issue (biBerk APA p. 863). (R. p. 341).

#36 Another issue, however, renders the cancellation ineffective. Both S.C. Code Ann. 38-75-730 and Core's policy require that the insured receive notice of cancellation to the "addresses shown in the policy". In this case, biBerk's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. We do not find this deficiency to be a mere "scrivener's error" or "inconsequential", as stated in biBerk's legal memorandum. The legislature specifically allows Carriers to prove a cancellation by and through proof of mailing: a proof of mailing of showing that cancellation was sent somewhere other than required by law is most certainly not "inconsequential." Further, we do not find biBerk's privity argument -that the SAF and UEF are not parties to the contract and therefore have not standing to challenge the effectiveness of the cancellation. While Core may be the direct employer, its unwillingness or inability to pay benefits could and would directly affect the UEF, SAF and DOT. We agree with the positions of the Defendants DOT, SAF and UEF on this issue. The

DOT, SAF and UEF would be directly affected and could be harmed by this Commission finding that the biBerk policy was properly cancelled. Simply because the UEF has the statutory right to file a lien in South Carolina on the Core's assets (Core being a Kentucky company) does not negate the harm that the UEF may see. The DOT and SAF, as potential statutory employer and Carrier, are entitled to indemnification from the direct employer under S.C. Code Ann.§ 42-1-440, and may even "call in that subcontractor ... as a defendant or codefendant." Thus, the Act expressly gives the DOT and SAF to argue that Core and biBerk are liable. It would strain credibility to think that (1) the DOT and SAF could argue that another party is liable but, yet (2) cannot argue that the liable party's insurance policy, which was not cancelled in accordance with the governing law to which all parties are subject, was effective at the time of the accident. *See* UEF's APA Ex. C, pp. 153, 167, and 174-175; S.C. Code Ann. §§ 38-75-730, 42-1-440. (R pp. 341-2).

#37. biBerk cites both Kentucky statutory law and cases in its Memorandum. However, South Carolina law governs insurance polices effective in South Carolina, and this matter arises in South Carolina. We find that the workers' compensation policy was not properly cancelled in accordance with South Carolina law, and that any Kentucky law to the contrary is irrelevant. biBerk is subject to South Carolina law. *See, inter alia*, §§ 38-1-20, 38-5-10, and 38-75-730. (R. p. 342).

This appeal was then timely filed.

STANDARD OF REVIEW

In reviewing which of two carriers provided insurance in a worker's compensation action, our Supreme Court applied the following standard of review: review of a decision of the workers' compensation commission is governed by the Administrative Procedures Act. Although this Court may not substitute its judgment for that of the full commission as to the weight of the evidence on questions of fact, it may reverse where the decision is affected by an error of law. Review is limited to deciding whether the commission's decision is unsupported by substantial evidence or is controlled by some error of law. *Rodriguez v. Romero*, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005).

ARGUMENTS

1. THE UEF HAS STANDING TO CONTEST THE CANCELLATION OF THE BIBERK POLICY.

In is well established by the appellate courts that the UEF (along with the SCDOT and SAF) have standing to contest coverage. The UEF is frequently in the position to argue that coverage was not properly cancelled as the UEF is only added to cases when there is an issue of coverage. For example, in *Bessinger v. R-N-M Builders & Assocs., LLC*, 421 S.C. 349, 806 S.E.2d 731 (Ct. App. 2017), the UEF appealed whether coverage was properly cancelled. The Court of Appeals did not question whether the UEF had standing to raise this issue and decided *Bessinger* on the merits. As noted in the order of the Appellate Panel, Core's unwillingness or inability to pay benefits would directly affect either the UEF or SAF. (Finding of Fact #36, R. pp. 341-2)). The Appellate Panel also found that the "Act expressly gives the DOT and SAF to argue that Core and biBerk are liable. It would strain credibility to think that (1) the DOT and SAF could argue that another party is liable but, yet (2) cannot argue that the liable party's insurance policy, which was

not cancelled in accordance with the governing law to which all parties are subject, was effective at the time of the accident. (FOF 36). Although the UEF may have remedies under S. C. Code § 42-7-200 to attempt to recover funds, if the UEF is required to pay, it makes no sense for the UEF to be forced to stand by and not be able to contest a cancellation of policy

Therefore, it is clear that the UEF has standing to contest whether the Appellant's policy was properly cancelled.

Appellant cites several cases in their brief that find that a third party cannot enforce the terms of a contract. *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.,* 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003); *Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994). However, these cases are not relevant to the matter at hand. The UEF is not arguing that specific terms of a contract should be enforced but only that the biBerk policy remained in effect on May 6, 2019 as it was never properly cancelled. The UEF along with the SAF and SCDOT have a substantial interest in whether the policy was properly canceled as if the biBerk policy was properly cancelled then liability would be imposed on either the UEF or SAF.

Appellant seems to concede that if Core had made an appearance, then the UEF would be in a better position to contest the cancellation of the policy. There is no legal basis as to whether the appearance or non-appearance of an employer would affect whether the UEF can contest the cancellation.

Appellant argues that the capitulation agreement is a binding admission that Core was notified of the cancellation and any challenges to coverage are moot. The capitulation agreement does not circumvent the notice requirements that are required by statute and regulations. In *Bowman v. State Roofing Co.,* 365 S.C. 112, 616 S.E.2d 699

(2005), the South Carolina Supreme Court addressed whether a capitulation agreement was binding on a coverage issue. In *Bowman,* that capitulation agreement stated, "[i]t is understood and agreed by signing this Agreement [Employer] does not make any admissions or waive any claims or causes of action [Employer] may have against any third party, insurance company, agent or broker." The *Bowman* court found that the capitulation agreement did not resolve the issues of coverage and nor was it a waiver of a claim that the carrier's cancellation was ineffective. Likewise, the capitulation agreement signed by Core has almost the exact same verbiage in it as it is states: "Executing the agreement does not nullify any defenses the Respondent may have for any claim and does not waive any claims or causes of action the Respondent may have against any third party, insurance company, agent or broker." (R. p. 1). Thus, just as in *Bowman*, the capitulation agreement in this case is not dispositive on the coverage issue and a hearing on the merits was required to determine if a policy has been cancelled.

2. SOUTH CAROLINA LAW IS CONTROLLING AND IT IS IRRELEVANT AS TO WHETHER THE POLICY WAS PROPERLY CANCELLED UNDER KENTUCKY LAW.

The Appellate Panel's application of South Carolina law as opposed to Kentucky law was correct and should be affirmed. Appellant concedes that South Carolina has subject matter jurisdiction. However, Appellant then states that South Carolina has no interest in the Appellant's cancellation of Core's policy. South Carolina clearly has a significant interest as to the outcome as the accident and treatment took place in South Carolina and the UEF, SAF and SCDOT all have a vested interest in the outcome of this matter. Section 38-61-10 of the South Carolina Code provides that "all contracts of insurance on property, lives, or interests in this state are considered to be made in the state . . . and are subject to the laws of this state." The South Carolina Supreme Court

has previously addressed the issue as to whether S.C. Code § 38-61-10 applies to insurance contracts that were executed outside of South Carolina between parties that are not citizens of South Carolina. In *Sangamo Weston v. Nat'l Sur. Corp.*, 307 S.C. 143, 414 S.E.2d 127 (1992), the Court found that the application of South Carolina law was appropriate and specifically found that South Carolina "has a substantial interest in who bears the ultimate liability for operations conducted in this state which result in injury to South Carolina property and citizens." In *Sangamo*, the Supreme Court answered a certified question regarding which state's law should be applied in interpreting various insurance contracts that were all formed outside the state of South Carolina. The *Sangamo* court found that S.C. Code § 38-61-10 was applicable; thus under South Carolina conflict law, South Carolina substantive law governs the disputed policies. As noted by the Appellant, the Commission has jurisdiction over all coverage and cancellation issues when a claim for benefits under the Act is pending. (Appellant's brief p. 8). Appellants alleges that South Carolina law would not control as Appellant started to try and cancel coverage prior to the date of the accident. However, the only reason it becomes relevant as to whether the policy was properly cancelled is because of the accident that took place in South Carolina on May 6, 2019. Therefore, South Carolina has substantial interest as to who bears liability and under S.C. Code § 38-61-10, South Carolina law should be applied.

South Carolina Code Section § 42-5-60 states that "Every policy for the insurance of the compensation provided in this title or against liability, therefore, shall be deemed to be made subject to the provisions of this title." It is the settled law of this case that the South Carolina Workers' Compensation Commission has jurisdiction over this matter. Counsel for biBerk had no objection to jurisdiction. (R. p. 228). Counsel for biBerk further

stated on the record that South Carolina has jurisdiction via the 3C endorsement. (R. p. 235). There is no reference in the policy as to what state law should be controlling should a dispute about coverage arise, Appellant could have easily drafted language into the policy that Kentucky law should be controlling should any dispute arise. Although portions of the policy mirror Kentucky law this does not mean that Kentucky law is controlling. Thus, South Carolina should be controlling.

3. APPELLANT DID NOT PROPERLY CANCEL THE POLICY UNDER SOUTH CAROLINA LAW.

By failing to mail to Core's full and complete address that was listed on the policy, Appellant failed to properly cancel the policy. Cancellation of an insurance policy must be proved by a preponderance of the evidence. *Edens v. South Carolina Farm Bureau Mutual Insurance Co.*, 279 S.C. 377, 308 S.E. 2d. 670 (1983).

South Carolina Regulation 67-405 details the process that must be followed for a carrier to terminate coverage. Paragraph C of the Regulation states as follows: If the employer fails to renew its insurance, or the insurer cancels the policy, the employer's insurer shall immediately notify the Commission's authorized agent that it no longer insures the employer." Paragraph 1 states: "A workers' compensation insurance carrier shall file a notice of termination in accordance with R. 67-416. Such termination shall not be effective until 30 days after receipt by the Commission's authorized agent." Regulation 67-416 simply states that the electronic interchange standards prescribed by the Commission will be utilized for reports and claims information.

According to documents produced by biBerk, Part 3 of the policy in question entitled Other States Insurance states that this Part applies if one or more states are shown in Item 3c of the Information Page. It further states this policy provides coverage

if work is performed in one of the states included in Item 3c of the Information Page. In addition, paragraph 3 states the benefits will be provided as required by the workers' compensation law of that state. (R. p. 60).

The information page of the policy in question provides that part 3c of "this policy" applies to all other states except Kentucky, North Dakota, Ohio, and Wyoming. By omission, Part 3 of the policy applies to South Carolina. When the Policy Information Page, paragraph 3c, and Part 3 of the policy are read together in the context of the facts of the case at bar, this policy is effective for work-related injuries that occur in South Carolina and further states that benefits will be paid in accordance with the Act in South Carolina. (R. p. 56).

As to cancellation, Page 6 of the biBerk policy provides in pertinent part as follows:

> We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the information page will be sufficient to prove notice. ... Any of these provisions that conflict with the law that controls the cancellation of the insurance in this policy is change by this statement to comply with the law. (R. p. 58).

The deposition of Margaret Yoh was taken. Ms. Yoh was the designated 30(b)(6) representative of biBerk. Yoh testified that a proof of mailing showed that the policy was cancelled on April 2, 2019, and that the cancellation was sent to Core Services, 828 E. High Street, Lexington, Kentucky 40502. Item 1 of the Information Page, however, lists a different address for the Employer as it lists Core Services, 828 E. High Street PMB 272 Lexington, Kentucky 40502. Ms. Yoh testified that the proof of mailing does not show the complete address for Core. (R. p. 222). On its face, the proof of mailing appears to

be defective as it was not sent to the Employer's mailing address shown in Item 1 of the Information Page.

This case is similar to *Earl v. HTH Assocs.,* 368 S.C. 76, 627 S.E.2d 760 (Ct. App. 2006). In *Earl*, an insurance company attempted to cancel a policy, but the Court found that, because the cancellation did not comply with technical requirements of the regulation, the cancellation was invalid, and the insurer was responsible for the claim. As noted by the court in *Earl*, workers' compensation statutes and regulations are to be construed liberally in favor of coverage. *See Mauldin v. Dyna-Color/Jack Rabbit*, 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992). Because workers' compensation is a creature of statute, **"we are bound to strictly construe the terms of the statute** . . . ." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003) The decision of an administrative agency interpreting its own regulations is given great deference. *Goodman v. City of Columbia*, 318 S.C. 488, 491, 458 S.E.2d 531, 532 (1995). (Emphasis added).

The *Earl* court found that, by applying a strict interpretation of the regulations construing them in favor of coverage in reviewing the Commission's own interpretation of the regulations, the insurance company failed to notify NCCI of the cancellation of the policy.

Likewise, in the case at bar, a strict interpretation of statute shows that the cancellation was not sent to the complete and proper address as required by South Carolina Workers' Compensation Regulations.

The address on the application for insurance is 828 East High Street, PMB 272, Lexington, Kentucky, 40502, the policy period is form 3/6/19 through 3/6/20. (R. p. 51). The policy also has the same address as the application: 828 East High Street, PMB 272, Lexington, Kentucky, 40502. (R. p. 60). The biBerk policy states that cancellation

requires the mailing of the cancellation notice to the "mailing address shown in Item 1 of the Information Page". (R. p. 74). The date of mailing the notice of cancellation is April 2, 2019. (UEF p. 174). Regulation 67-405(c)(1) requires 30 days notice of cancellation. The proof of mailing shows that the notice of cancellation was sent to 828 E. High Street, Lexington, KY 40502. (R. p. 81). PMB 272 was omitted from the notice of cancellation. It is clear that the Appellant did not send the cancellation to the proper address and subsequently failed to cancel this policy. Thus, the Court must affirm the Appellate Panel's finding of coverage with biBerk.

Appellant argues that there are other inferences in the evidence presented to the Commission. (Appellant's brief p. 12). However, the standard of review is whether there is substantial evidence to support the findings of the Commission not that there is some alternative interpretation of the evidence presented. There is substantial evidence to support the findings of the Commission, thus this court must affirm the Commission's order.

Appellant's interpretation of *Noisette v. Ismail*, 299 S.C. 243, 384 S.E.2d 310 (Ct. App. 1989) is incorrect. *Noisette* is factually different then the case at bar. In *Noisette,* it was not issue as to whether the notice went to the correct address as the insured testified that he believed that the policy had been cancelled for several months as he allowed it lapse. While *Noisette* noted that the parties were unable to provide the actual notice of cancellation, this in and of itself did not mandate a finding that the notice was not mailed. There is no evidence in the record to show that Core was aware of any lapse in coverage.

Appellant argues that there is other evidence in the record to support the inference that the notice of cancellation was indeed mailed to Core. (Appellant's brief p. 12). However, this is not the standard of review, the standard is whether there is substantial

evidence to support the decision of the Commission. Appellant also alleges that Core's lack of appearance is further evidence that Core received notice of the cancellation. (Appellant's brief p. 12). This is merely subjective on the Appellant's part. There is no evidence in the record as to why Core failed to appear. There is substantial evidence to support the findings of the Commission.

4. IF BIBERK DOES NOT HAVE COVERAGE, CLAIMANT WAS A STATUTORY EMPLOYEE OF THE SCDOT.

If the biBerk policy was properly cancelled, then the SCDOT must be found to be the statutory employer under S.C. Code §42-1-400. South Carolina Code §42-1-400 states "When any person, in this section and Sections 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is part of his trade, business or occupation and contracts with any other person ....for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this title which he would have been liable to pay if the workman had been immediately employed by him. The work of Core was clearly part of the DOT's trade and business. Jeffery Schwalk testified on behalf the SCDOT. Schwalk agreed that it is the SCDOT's responsibility to maintenance of the right of ways. (R. p. 97). In the case at bar, Claimant was injured while providing routine maintenance to the right of way. Schwalk testified that Core was awarded contracts by SCDOT to provide mowing services for multiple counties in 2019 through 203. (R. p. 98).

Finding of Fact 16 in the Appellate Panel order, found that the Claimant's supervisors at Core had the right to fire the Claimant and had the right to tell the Claimant want to do. (R. p. 352). Additionally, Finding of Fact 17 finds that Core furnished the

equipment, told the workers when to start and Claimant did not supply any tools. (R. p. 352). Under well settled law, the determination of whether a claimant is an employee or an independent contractor focuses on the issue of control, specifically whether the purported employer had the *right* to control the claimant in the performance of his work." *Ray Covington Realtors*, 318 S.C. at 547, 459 S.E.2d at 303; *Chavis v. Watkins*, 256 S.C. 30, 32, 180 S.E.2d 648, 649 (1971). Under the controlling common law rubric of the right of control, "the Court examines four factors which serve as a means of analyzing the work relationship as a whole: (1) direct evidence of the right or exercise of control; (2) furnishing of equipment; (3) method of payment; (4) right to fire." *Ray Covington Realtors*, 318 S.C. at 548, 459 S.E.2d at 303; *Tharpe v. G.E. Moore Co., Inc.*, 254 S.C. 196, 200, 174 S.E.2d 397, 399 (1970)). *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 475-76, 753 S.E.2d 416, 419 (2013)

South Carolina Code §42-1-400 states: When any person, in this section . . . referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section . . . referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

Statutory employment is an exception to the general rule that coverage under the Act requires the existence of an employer-employee relationship. *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008). "The statutory employee doctrine converts conceded non-employees into employees for purposes of

the Workers' Compensation Act. The rationale is to prevent owners and contractors from subcontracting out their work to avoid liability for injuries incurred in the course of employment." *Glass v. Dow Chem. Co.*, 325 S.C. 198, 201 n.1, 482 S.E.2d 49, 50 n.1 (1997). "The effect of these [statutory employment] provisions when brought into operation is to impose the absolute liability of an immediate employer upon the owner and/or general **contractor** although it was not in law the immediate employer of the injured workman." *Parker v. Williams & Madjanik, Inc.*, 275 S.C. 65, 72, 267 S.E.2d 524, 527-28 (1980). *Collins v. Seko Charlotte*, 400 S.C. 50, 56, 732 S.E.2d 630, 633 (Ct. App. 2012)

In the case at bar, it is clear that the SCDOT hired Core to perform services that were part of the SCDOT's trade or business. Thus, the employees of Core would be considered be statutory employees of SCDOT under §42-1-400 and thus the SCDOT and SAF would be the responsible employer/carrier if the biBerk policy coverage was not in effect at the time of the accident.

CONCLUSION

For all of the foregoing reasons, the order of Appellate Panel should be affirmed.

Respectfully submitted,

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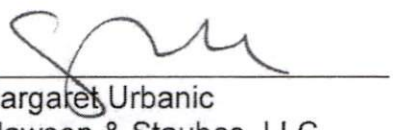
CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief complies with Rule 211(b), SCACR.



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