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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM

THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

APPELLATE CASE NO. 2022-000154

SCWCC FILE NO. 1907252

Steven M. Brant, Employee, Claimant,

v.

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

of which Berkshire Hathaway Direct Insurance Company is the Appellant,

and

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

FINAL BRIEF OF RESPONDENTS SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION AND SOUTH CAROLINA STATE ACCIDENT FUND

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STATEMENT OF THE CASE

This is an appeal from the South Carolina Workers' Compensation Commission (Commission). By Order dated January 11, 2022, the Appellate Panel of the Commission unanimously affirmed the Single Commissioner's Order of June 9, 2021. Claimant alleged he suffered a work-related fall on May 6, 2019, with resulting injuries. Claimant named his employers as Core Services, LLC ("Core" as direct employer) and South Carolina Department of Transportation ("DOT" as potential statutory employer). Claimant sought a determination of compensability and a determination as to the responsible party for any worker's compensation benefits. The findings regarding compensability and Claimant's entitlement to benefits were not appealed. The subject of this appeal is whether the workers' compensation insurance policy issued by Berkshire Hathaway Direct Insurance Co. (Berkshire Hathaway) to Core remained in effect on the date of accident.

Relative to the coverage issues, Berkshire Hathaway asserted that Core is a Kentucky company who contracted with Berkshire Hathaway in Kentucky. ROA 233; Tr. p. 10, ll. 17 – 19.

Berkshire Hathaway asserted that Kentucky is the "3A endorsed state" on its policy. ROA 233; Tr. p. 10, l. 20. Berkshire Hathaway asserted that, even though this accident occurred in South Carolina and Core was doing business in South Carolina at the time of Claimant's accident, the policy and its cancellation must be interpreted according to Kentucky law. ROA 235; Tr. p. 12, ll. 8 – 12. Despite this, Berkshire Hathaway conceded that South Carolina has jurisdiction because the policy admittedly provides coverage in South Carolina. ROA 235; Tr. p. 12, ll. 12 – 15.

At the hearing before the Single Commissioner, Berkshire Hathaway alleged that Core's policy was cancelled prior to the date of loss. ROA 235; Tr. p. 12, ll. 15 – 17. Despite asserting that Kentucky law controls, Berkshire Hathaway also took the diametrically opposed position that S.C. Code of Reg. 67-405 "is the governing law" in this situation. ROA 235; Tr. p. 12, ll. 17 – 18. Berkshire Hathaway argued that it sent a notice of termination, and that the notice of termination was received by NCCI more than thirty (30) days prior to the date of accident, and that the policy was appropriately cancelled under South Carolina law. ROA 235; Tr. p. 12, l. 15 – p. 14, l. 7. Berkshire Hathaway argued that "[a]ll we have to do, insofar as South Carolina is concerned, is satisfy the requirements of the regulation [S.C. Code Reg. 67-405], which have been satisfied." ROA 238; Tr. p. 15, ll. 2 – 5.

Berkshire Hathaway asserted that the policy it issued to Core was a contract, and that no other party (here, the South Carolina Workers' Compensation Uninsured Employers' Fund (UEF), the South Carolina Department of Transportation (DOT), and the State Accident Fund (SAF)) has standing to challenge whether the policy was legally cancelled. ROA 237; Tr. p. 14, l. 13 – p. 15, l. 5. Berkshire Hathaway asserted that there is "no legal basis" upon which the UEF, DOT, or the SAF could challenge that the cancellation was improper. ROA 238; Tr. p. 15, ll. 13 – 22. Berkshire Hathaway asserted that Core is the only "aggrieved party" if the cancellation were improper. ROA

238; Tr. p. 15, l. 24 – p. 16, l. 2. Berkshire Hathaway asserted that Core's signing of a compliance agreement with the Commission was tantamount to a stipulation that the coverage was properly and legally cancelled. ROA 239; Tr. p. 16, l. 5 – 18.

DOT and SAF first asserted that the compliance agreement[1] signed by a representative of Core is not dispositive of whether coverage was properly and legally terminated. DOT and SAF asserted that, as determined in *Bowman v. State Roofing*, 365 S.C. 112 (2005), the "agreement merely indicates that the employer is unable to demonstrate compliance at the time the agreement is signed . . . ." ROA 240; Tr. p. 17, ll. 21 – 24. DOT and SAF further argued that the compliance agreement cannot bind any other parties, including themselves or the UEF. ROA 242; Tr. p. 19, ll. 8 – 10.

DOT and SAF asserted that Berkshire Hathaway's purported cancellation of the Core policy was ineffective, as it was not sent to the address of the insured as shown on the policy. ROA 242; Tr. p. 19, l. 8 – p. 22, l. 6. DOT and SAF asserted that the notice of cancellation was ineffective under both the policy itself and under S.C. Code § 38-75-730. DOT and SAF asserted that the policy and S.C. Code § 38-75-730 require the notice of cancellation be sent to address shown in the policy, and this was not done in this case. ROA 242; Tr. p. 19, l. 11 – 20, l. 24. There is no argument that notice of cancellation was sent to the address as shown on the policy. This is not a question of fact.

DOT and SAF asserted that they do have standing to challenge the legality of the purported cancellation of a workers' compensation policy where they may face liability for benefits. ROA 243; Tr. p. 20, l. 24 – p. 22, l. 6.

[1] ROA 1; UEF's APA Submissions, p. 94.

The UEF concurred with the coverage positions of DOT and SAF, asserting that Core's policy wasn't properly cancelled under South Carolina law. ROA 245; Tr. p. 22, ll. 11 – 16. UEF further asserted that Kentucky law is irrelevant, as Core and Berkshire Hathaway were doing business in South Carolina. ROA 245; Tr. p. 22, ll. 16 – 18.

Despite writing and selling policies effective in other states, Berkshire Hathaway asserted that "there is no way that an insurance company can comply with every single state's laws regarding cancellation". ROA 250; Tr. p. 27, ll. 18 – 24. Of course, insurance is a business that is regulated by each state.

The Single Commissioner issued her Decision and Order on June 9, 2021. Importantly, the Single Commissioner found that: (1) Core was Claimant's direct employer; (2) Core was subject to the terms and conditions of the S.C. Workers' Compensation Act (the Act); (3) Core obtained workers' compensation insurance with Berkshire Hathaway; (4) Berkshire Hathaway's policy was effective from March 6, 2019, through March 6, 2020 (encompassing Claimant's date of accident); (5) the policy was effective in South Carolina *via* a paragraph 3C endorsement; (6) Berkshire Hathaway's attempted cancellation of the policy was ineffective due to its failure to comply with the terms of the policy and S.C. Code Ann. § 38-75-730; (7) that "the DOT, SAF, and UEF would be directly affected and could be harmed by this Commission finding that the Berkshire Hathaway policy was properly cancelled"; (8) that Kentucky law contrary to South Carolina's is irrelevant; and (9) that Core and Berkshire Hathaway are responsible/liable for the payment of benefits. ROA 284 – 312.

Berkshire Hathaway's appeal to the Full Commission timely followed. The Full Affirmation from the Appellate Panel was entered on January 11, 2022. This appeal followed.

STANDARD OF REVIEW

The South Carolina Administrative Procedures Act sets forth the standard for judicial review of decisions of the Workers' Compensation Commission. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981); *Hargrove v. Titan Textile Co.*, 360 S.C. 276, 599 S.E.2d 604 (Ct. App. 2004). Pursuant to this scope of review, the Court may not substitute its judgment for that of the appellate panel as to the weight of the evidence on questions of fact. *Gadson v. Mikasa Corp.*, 364 S.C. 214, 221, 628 S.E.2d 262 (2006); *Grant v. Grant Textiles*, 361 S.C. 188, 603 S.E.2d 858 (Ct. App. 2004). Substantial evidence is described as, "not a mere scintilla of evidence, nor the evidence viewed blindly from one side of the case, but is evidence which, considering the record as a whole, would allow reasonable minds to reach the conclusion the administrative agency reached." *Pratt v. Morris Roofing, Inc.*, 357 S.C. 619, 622, 594 S.E.2d 727 (2004). On issues of law, "this court has the power and duty to review the entire record and decide the jurisdictional facts in accord with its view of the preponderance of the evidence." *Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 216, 661 S.E.2d 395, 399 (Ct. App. 2008).

STATEMENT OF FACTS

Respondents hereby incorporate the Statement of the Case as set forth in the Brief of the South Carolina Workers' Compensation Uninsured Employers' Fund as if repeated verbatim herein.

Counsel for the DOT and SAF took the deposition of Margaret Yoh on May 19, 2020. Ms. Yoh testified she is an employee of Berkshire Hathaway Insurance, which is a subsidiary of Berkshire Hathaway Direct Ins. Co. ROA 219; Yoh Depo. p. 4, l. 23 – p. 5, l. 5. Ms. Yoh testified she is an underwriting coordinator. ROA 220; Yoh Depo. p. 6, l. 14. Ms. Yoh testified that part of her job duties is relative to the cancellation of policies. ROA 220; Yoh Depo. p. 6, ll. 20 – 22.

Ms. Yoh testified Berkshire Hathaway had written a policy for Core, and that it was effective as of March 6, 2019. ROA 220; Yoh Depo. p. 6, l. 23 – p. 7, l. 11. Ms. Yoh confirmed that Core's mailing address was 828 East High Street, PMB 272, Lexington, Kentucky 40502. ROA 220; Yoh Depo. p. 7, ll. 19 – 20. Ms. Yoh confirmed that Berkshire Hathaway is obligated to provide written notice to an insured in advance of a cancellation, and that that notice would be mailed "[t]o the address of the named insured." ROA 220; Yoh Depo. p. 8, ll. 2 – 8.

During the deposition, counsel for Berkshire Hathaway stipulated that "the 3C endorsement [of Core's policy] would apply if there is jurisdiction in South Carolina." ROA 221; Yoh Depo. p. 11, ll. 12 – 14. At the hearing before the Single Commissioner, Berkshire Hathaway conceded jurisdiction. ROA 235; Tr. p. 12, ll. 12 – 15.

Ms. Yoh confirmed that paragraph D(2) of Core's policy requires that a notice of cancellation must be mailed to the insured's "mailing address shown in item 1 of the information page." ROA 221; Yoh Depo. p. 12, ll. 1 – 4. Ms. Yoh confirmed that the proof of mailing of the cancellation notice was not sent to the mailing address as shown in item 1 of the information page. ROA 221 – 222; Yoh Depo. p. 12, l. 23 – p. 13, l. 5; p. 14, ll. 16 – 20.

ARGUMENT

I. WHETHER SOUTH CAROLINA LAW AND THE POLICY ITSELF REQUIRE THAT NOTICES OF CANCELLATION BE SENT TO THE INSURED'S ADDRESS AS SHOWN ON THE POLICY?

The Commission found that both S.C. Code Ann. § 38-75-730 and Core's policy require that the insured receive notice of the cancellation to the "addresses shown in the policy." ROA 355 – 356; Full Commission Order, pp. 20 – 21. In this case, Berkshire Hathaway's proof of mailing does not show the entire, complete, or proper address as set forth in the policy. The Commission determined that this was not a mere "scrivener's error" or "inconsequential", as

argued by Berkshire Hathaway. ROA 355; Full Commission Order, p. 20, ¶ 36. The Commission found that the legislature specifically allows Carriers to prove a cancellation by and through a proof of mailing: a proof of mailing showing the cancellation was sent somewhere other than required by law is most certainly not "inconsequential." *Id.*

In its brief, Berkshire Hathaway argues that § 38-75-730(c) applies to the facts herein, and that this subsection requires only that the Notice of Cancellation be "furnished" to the insured, and that this standard may require something less than mailing the Notice to the address as shown on the policy. *See* Brief of Appellant, p. 14. However, Berkshire Hathaway ignores S.C. Code Ann. § 38-75-750 (which admittedly addresses renewal of policies), where the Legislature addresses the meaning of "furnish." In this Code Section, the Legislature uses the word "furnish" six times (it sets out the requirements for insurers to "furnish renewal terms and a statement of the amount of premium" to insureds prior to renewal). Pointedly, in order to "satisfy its obligation to furnish" these items to insureds, the insurer must "*mail[] or deliver[] [these items] to the insured at his address shown in the policy* . . . ." S.C. Code Ann. 38-75-750(d)(1) (emphasis added). This section also allows the insurer to mail it to the agent of record; however, per Berkshire Hathaway, there was no agent of record. Brief of Appellant, p. 2. Therefore, to "furnish" the Notice to the insured, it must have been mailed to the address as shown in the policy. It would be counterintuitive that the Legislature would spell out what is meant by "furnish" in 38-75-750 and mean something entirely difference in 38-75-730, just two code sections earlier.

The South Carolina Code is replete with requirements that notices be mailed to address as shown in the policy: See S.C. Code Ann. §§ 38-75-730; 38-75-740; 38-75-750; 38-75-1160; 38-77-120; and 38-99-90.

The cardinal rule of statutory interpretation is to determine the intent of the legislature. *Georgia-Carolina Bail Bonds. v. County of Aiken*, 354 S.C. 18, 579 S.E.2d 334 (Ct. App. 2003). All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute. *McClanahan v. Richland County Council*, 350 S.C. 433, 567 S.E.2d 240 (2002). The legislature's intent should be ascertained primarily from the plain language of the statute. *State v. Landis*, 362 S.C. 97, 606 S.E.2d 503 (Ct. App. 2004). The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose. *Hitachi Data Sys. v. Leatherman,* 309 S.C. 174, 420 S.E.2d 843 (1992).

If a statute's language is unambiguous and clear, there is no need to employ the rules of statutory construction and this Court has no right to look for or impose another meaning. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. *State v. Dawkins,* 352 S.C. 162, 573 S.E.2d 783 (2002). Courts will reject a statutory interpretation which would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention. *Unisun Ins. Co. v. Schmidt*, 339 S.C. 362, 529 S.E.2d 280 (2000). A court should not consider a particular clause in a statute as being construed in isolation but should read it in conjunction with the purpose of the whole statute and the policy of the law. *See Hinton v. South Carolina Dept. of Prob., Parole and Pardon Servs.*, 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004), *cert. granted* (Jan. 12, 2005).

In this case, Berkshire Hathaway is asking this Court to make a finding that it is not necessary for an insurance company to mail a statutorily required notice of cancellation to an

address other than the correct address. Berkshire Hathaway's own policy requires that the Notice of Cancellation be mailed to the insured's "mailing address shown in item 1 of the Information Page . . . ." ROA 58; UEF's APA, p. 151 (Berkshire Hathaway policy, Part 6(D)). However, Berkshire Hathaway ignores this provision of its own policy. It is not difficult to get this right: the address on the Application showed the private mailbox. ROA 177; Berkshire Hathaway's APA, p. 857. The address on the Information Page showed the private mailbox. ROA 179; Berkshire Hathaway's APA, p. 859. The address on the actual Notice of Cancellation showed the private mailbox. ROA 180; Berkshire Hathaway's APA, p. 860. The address on the Privacy Policy sent to Core showed the private mailbox. ROA 181; Berkshire Hathaway's APA, p. 861.

However, the Proof of Mailing showed that the Notice of Cancellation was not actually mailed to the private mailbox. ROA 182; Berkshire Hathaway's APA, p. 862. Further, the Proof of Notice to the State also shows the improper mailing address. ROA 183 – 184; Berkshire Hathaway's APA, p. 863 – 864.

Lastly, it's important to note that this Court has found that "[a]n insurer's failure to strictly comply with the regulations renders a termination ineffective." *Earl v. HTH Assocs.*, 368 S.C. 76, 81, 627 S.E.2d 760, 763 (Ct. App. 2006) (citing *Larson's Workers' Compensation Law* § 150.03).

Because Berkshire Hathaway failed to properly cancel Core's policy, Berkshire Hathaway and Core are liable to pay any benefits due to Claimant, and the Commission's Order should be affirmed.

II. WHETHER THE COMMISSION CORRECTLY DETERMINED THAT THE UEF AND THE DOT AND SAF CAN RAISE THE ISSUE OF WHETHER AN INSURANCE CARRIER CANCELLED AN INSURANCE POLICY OF AN UNREPRESENTED EMPLOYER IN ACCORDANCE WITH SOUTH CAROLINA LAW WHEN IT DIRECTLY AFFECTS THEIR INTERESTS?

Berkshire Hathaway argues that neither the DOT, SAF, or the UEF has standing to contest

whether an insurance company complied with South Carolina law in attempting to cancel a workers' compensation policy in South Carolina, despite being directly and negatively affected. In doing so, Berkshire Hathaway cites *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.*, 354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003). That case is a breach of contract matter. That case is regarding whether an individual not a party to a contract can enforce the terms of that contract. Here, DOT and SAF are not arguing that the terms of the contract should be enforced (presumably Berkshire Hathaway will make all proper payment of benefits on behalf of Core), DOT and SAF are only arguing that the policy remained in place due to a failure to cancel the policy in accordance with South Carolina law. Berkshire Hathaway cites more breach of contract actions, but each is distinguishable on the foregoing grounds.

Oddly, Berkshire Hathaway does concede that, if Core had made an appearance, rather than acting like an irresponsible, out of state subcontractor seeking to avoid liability, then DOT, SAF, and UEF could make an argument that the policy wasn't properly cancelled. Brief of Appellant, p. 8. Respondents counter that this argument is without merit. It is nonsensical to allow a party to join an argument but not be able to make it on its own. Further, these state agencies are all real parties in interest with stakes in the outcome of this litigation.

According to the Supreme Court:

> To have standing, one must have a personal stake in the subject matter of the lawsuit. In other words, one must be a real party in interest. *Charleston County Sch. Dist. v. Charleston County Election Comm'n*, 336 S.C. 174, 519 S.E.2d 567 (1999). "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action." *Id.* at 181, 519 S.E.2d at 571 (quoting *Anchor Point, Inc. v. Shoals Sewer Co.*, 308 S.C. 422, 428, 418 S.E.2d 546, 549 (1992)).

Sea Pines Ass'n for the Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res., 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). That is, of course, the standard on whether a party has a standing to file

a lawsuit against another party, and not necessarily the standard to determine whether one party has standing to argue that another party did not properly cancel a workers' compensation insurance policy. By citing very cases where the UEF made such arguments, it seems Berkshire Hathaway concedes this point. Brief of Appellant, pp. 7 – 8. In fact, in *Jeffery v. Sunshine Recycling*, 386 S.C. 174, 687 S.E.2d 322 (Ct. App. 2009), though the Employer is listed as an Appellant, the UEF's attorney is also listed as counsel for both the UEF and the Employer. Obviously, this is an error, as the UEF's attorney cannot also represent the Employer, although their interests may seem to be aligned at certain points in litigation (though the Employer was represented at hearings before the Commission). Though the Employer may have appeared before the Commission, it did not appear before this Court.

Further, the Employer made no appearances at any time in *Bessinger v. R-N-M Builders & Associates, LLC*, 421 S.C. 329, 806 S.E.2d 731 (Ct.App. 2017). No employer or representative of an Employer appeared before the Court of Appeals. The Court of Appeals did not toss the case out due to the UEF's lack of standing. In fact, the Court of Appeals heard the arguments and issued a decision on the merits. *See Bessinger v. R-N-M Builders & Associates, LLC,* 421 S.C. 329, 806 S.E.2d 731 (Ct.App. 2017).

Because the DOT and the SAF are real parties in interest in the outcome of this litigation, and because they would be directly and negatively affected by a finding the policy was properly cancelled, and because they are only arguing that statutory provisions were not followed, the DOT and SAF have standing to make the argument that the Berkshire Hathaway policy was not properly cancelled. the Single Commissioner's ruling should be affirmed. Further, the Order of the Commission should be affirmed.

III. WHETHER THE COMMISSION CORRECTLY DETERMINED THAT A SOUTH CAROLINA INSURANCE POLICY IS NOT GOVERENED BY THE LAWS OF KENTUCKY?

Berkshire Hathaway argues that Kentucky law is controlling on these facts. This is despite the policy being effective in South Carolina, and despite *Berkshire Hathaway itself sent a Certificate of Insurance (dated March 5, 2019) directly to the DOT at its Columbia, South Carolina address*. ROA 2; UEF's APA Submissions, p. 95. Further, at the hearing, Berkshire Hathaway argued that "there is no way that an insurance company can comply with every single state's laws regarding cancellation." ROA 250; Tr. p. 27, ll. 18 – 24. Berkshire Hathaway makes this argument even though it writes policies in South Carolina, and it agrees it is subject to the jurisdiction of this Commission. ROA 235; Tr. p. 12, ll. 12 – 15; Brief of Appellant, p. 8. Respondents assert that South Carolina law governs this South Carolina insurance policy.

First, Berkshire Hathaway concedes that the Commission has jurisdiction over this matter. ROA 235; Tr. p. 12, ll. 12 – 15; Brief of Appellant, p. 8. Accordingly, S.C. Code Ann. § 42-3-180 reads: "All questions arising under this title . . . shall be determined by the commission, except as otherwise provided in this title." Berkshire Hathaway fails to point to any part of the Act stripping the Commission of authority to make coverage determinations. Second, and possibly more important, is S.C. Code Ann. § 38-61-10 ("Contracts which are considered made in State"). Title 38 is "Insurance", and Chapter 61 is "Insurance Contracts Generally." Section 38-61-10 reads: "All contracts on property, lives, or interests in this State *are considered to be made in the State* and all contracts of insurance *which are taken within the State are considered to be made within this State and are subject to the laws of this State.*" (emphasis added). As the Supreme Court wrote:

> Under this statute [§ 38-61-10] it is immaterial where the contract was entered into. Further, there is no requirement that the policyholders or insurers be citizens of

> South Carolina. What is solely relevant is where the property, lives, or interests insured are located. We hold that § 38-61-10 is applicable to the insurance contracts at issue in this litigation. Therefore, under South Carolina conflict law, South Carolina substantive law governs this dispute.

Sangamo Weston v. Nat'l Sur. Corp., 307 S.C. 143, 149, 414 S.E.2d 127, 130-31 (1992). Respondents would further reference Berkshire Hathaway's own brief: "the commission has jurisdiction of all coverage and cancellation issues when a claim for benefits under the Act is actively pending." Brief of Appellant, p. 8 (citing *Labouseur v. Harleysville Mutual Insurance Co.*, 302 S.C. 540, 397 S.E.2d 526 (1990)).

As its only South Carolina source of authority on this issue, Berkshire Hathaway references *Lister v. Nationsbank*, 329 S.C. 133, 494 S.E.2d 449 (Ct.App. 1997). This matter did not involve an insurance policy. This matter concerned a rental care company making unauthorized charges on a customer's credit card, or breach of contract accompanied by a fraudulent act. The current matter obviously involves insurance written for South Carolina interests, and the statutory provisions control. Even if "the policy contains a cancellation endorsement designating Kentucky as the choice of state law governing its cancellation," that endorsement is ineffective due to the foregoing statutory provisions. Brief of Appellant, p. 9. However, it is not clear to Respondents that the endorsement even purports to make Kentucky the governing law. *See* ROA 74; UEF's APA Submissions, p. 167.

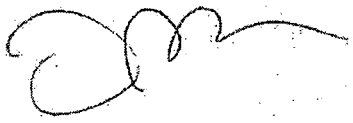
Because Berkshire Hathaway failed to properly cancel Core's policy, Berkshire Hathaway and Core are liable to pay any benefits due to Claimant, and the Single Commissioner's ruling should be affirmed. Further, the Order of the Single Commissioner should be affirmed.

CONCLUSION

Based upon the foregoing arguments and authorities, Respondents respectfully submit that the Commission's Order should be affirmed, and Core and Berkshire Hathaway should be

determined to be liable for the payment of any and all benefits due under the Workers' Compensation Act

RESPECTFULLY SUBMITTED,



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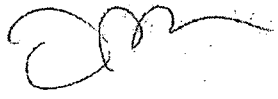
South Carolina Department of Transportation, South Carolina State Accident Fund, and South Carolina Workers' Compensation Uninsured Employers' Fund are the Respondents.

CERTIFICATE OF COUNSEL

I hereby certify that the Respondents DOT's and SAF's Final Brief complies with Rule 211(b) of the SCACR.



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