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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable Aisha Taylor, Commissioner

Appellate Case No. 2024-000533
S.C. W.C.C. File No. 1112328

Samuel Rose, Claimant,

v.

JJS Trucking and Chris Thompson Services (Statutory Employer),

and

Bridgefield Casualty Insurance Co. (Carrier for Statutory Employer) and South Carolina Uninsured Employers' Fund, Carriers, Defendants,

of which Chris Thompson Services and Bridgefield Casualty Insurance are the Appellants

and South Carolina Uninsured Employers' Fund is the Respondent,

---

Record on Appeal

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DECISION AND ORDER

OF THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1112328

SAMUEL ROSE, EMPLOYEE/CLAIMANT

vs.

JJS TRUCKING, LLC, AND CHRIS THOMPSON SERVICES, LLC, EMPLOYERS,

and

BRIDGEFIELD CASUALTY INSURANCE COMPANY AND TRAVELERS INSURANCE COMPANY, CARRIERS,

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing:	Held in Summerville, South Carolina on May 15, 2012
Appearances:	Employee/Claimant represented by Joseph B. Fisher, George Sink Law Firm, N. Charleston, South Carolina
	Employer, Chris Thompson Services and Bridgefield Casualty Company represented by Kirsten L. Barr, Trask & Howell, LLC, Mt. Pleasant, South Carolina
	Employer, JJS Trucking, LLC appeared pro se.
	Carrier, Travelers Insurance Company represented by F. Reid Warder, Jr., Esquire, Wood & Warder, LLC, Charleston, SC
	South Carolina Uninsured Employers' Fund, Defendant was represented by Amy V. Cofield, Cofield Law Firm, Lexington, South Carolina
Purpose of Hearing:	To determine issues as set forth on Form 50 and Form 51
Decision and Order:	By Commissioner Gene McCaskill
Date:	**August 23, 2012**

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Form 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is $650.00 and compensation rate is $433.34 respectively.
4. Venue, set in Dorchester County, is proper.
5. The Employee/Claimant was injured while working for Chris Thompson Services, LLC and workers' compensation was filed, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS:

ON BEHALF OF THE EMPLOYER:

EXHIBIT NO.	NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORTS	NO. OF PAGES
1	SLED Report	04/30/12-04/26/12	1-9
2	Petition to Transfer Liability	04/30/12-01/24/12	10-14
3	SCWCC Form 18	04/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/10	39

ON BEHALF OF THE CLAIMANT

EXHIBIT NO.	NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORTS	NO. OF PAGES
1	Stuart M. Leon, MD MUSC Medical Center	08/10/11	1-2
2	Andrew B. Conrad, MD MUSC Medical Center	08/10/11	3-5
3	Christopher J. Erikson, MD		

	MUSC Medical Center	08/10/11	6-7
4	Peter H. White, MD MUSC Medical Center	08/11/11	8-9
5	Alan N. Abel, MD	08/16/11-01/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	08/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	09/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	09/06/11-10/11/11	27-40
9	Troy Marlow, MD TriCounty Radiology Associates	11/09/11	41-42
10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report SC Highway Patrol	08/10/11	47-50
EX B	Pay Records of the Claimant	07/12/11-08/09/11	51-55

ON BEHALF OF TRAVELERS INDEMNITY COMPANY

EXHIBIT NO.	NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORTS	NO. OF PAGES
1	Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr.	03/30/12	14
2	Premium Finance Agreement for JJS Trucking, LLC	10/13/10	1
3	Travelers Invoice to JJS Trucking, LLC	11/08/10	2
4	Notice of Cancellation	01/04/11	2
5	SC Department of Employment And Workforce	02/21/12	15

ON BEHALF OF SC UNINSURED EMPLOYERS' FUND

EXHIBIT NO.	NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE	DATE OF REPORTS	NO. OF PAGES

NONE

STATEMENT OF THE CASE

This claim is before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant on November 18, 2011, and Form 51 filed by Defendant, Chris Thompson Services on December 15, 2011, and Form 51 filed by Defendant, SC Uninsured Employers' Fund on January 4, 2012. The Claimant alleged that on August 10, 2011 he sustained an alleged injury to his right knee, back, neck and head. Defendants denied the claim.

It was the Claimant's position that he was injured on August 10, 2011 while employed by JJS Trucking. Claimant asserted that JJS Trucking was a subcontractor to Chris Thompson Services. JJS Trucking is uninsured and Chris Thompson is insured by Bridgefield Casualty Insurance Company. The Claimant seeks a finding of compensability that includes medical treatment, payment of temporary total benefits less any amounts paid by the carrier of Chris Thompson Services.

It was the position of Chris Thompson Services that the Claimant sustained an admitted injury by accident as alleged on August 10, 2011. However, the severity of permanency of injuries and need for future treatment was specifically denied. Chris Thompson Services also made a Motion to Transfer Liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415 because Mr. Cedric Smalls, a principal of JJS Trucking, had represented to Chris Thompson Services that it had workers' compensation coverage. Chris Thompson Services had obtained an ACORD Form 25 Certificate of Insurance indicating coverage. Chris Thompson Services also stated to the Commissioner that it had, through its insurance carrier, Bridgefield, paid temporary total disability payments since the date of the accident in the amount of $75.00 per week and requested that the South Carolina Uninsured Employers' Fund reimburse Bridgefield for those benefits paid. Chris Thompson Services argued that JJS Trucking never provided notice that his coverage had changed or lapsed. Chris Thompson Services argued that a

certificate of insurance presented distinguished this case from the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009).)

Because the case at had a description of the policy terms. The distinction was also offered that the Hopper case dealt with an out of state employer or multi-state employers and regulations and that this case did not.

It was further argued that the signature of David Hayes as the authorized agent for the insurance company satisfactory the face of the certificate of insurance rose no red flags regarding the authority of the signature. It was also argued that a copy of the certificate of insurance was filed with the South Carolina Workers' Compensation Commission on November 4, 2011, which was believed to be a timely filing.

The SC Uninsured Employers' Fund argued that liability could not be transferred to the UEF. It was argued that the certificate of insurance presented was sufficient pursuant to the law set forth in the Barton v. Higgs case (Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009)) as well as the Hopper v. Terry Hunt Construction case. The SC Uninsured Employers' Fund argued that the description of operations box was blank and that the cases of Barton and Hopper stood for the proposition that incomplete certificates were not sufficient to transfer liability. It was also argued that the certificate of insurance only stated it was a "binder" and never conveyed any information that there was ever a policy written.

The Uninsured Employers' Fund argued that the timing of the presentation of the certificate was contrary to §42-1-415. That statute provides that documentation must be turned over to the Commission "at the time a claim is filed". This certificate was not turned over for several months. The UEF argued that §42-1-415(A) stated that the upstream contractor must first pay all benefits due before requesting liability to be transferred and at the time of the

hearing. However, only a few benefits had been paid, certainly not all. Therefore, the UEF argued that the case was premature as far as the motion to transfer liability.

EVIDENCE OF THE CASE

The Claimant testified that he was working on August 10, 2011 for JJS Trucking in Summerville, SC at the Keystone Lumber Mill. He stated that JJS Trucking was owned by Cedric Smalls and that he had been working there for about 4 ½ to 5 months prior to his accident. Claimant testified that during his time at JJS Trucking, his job was to haul loads from Summerville, SC to North Charleston, SC, specifically from Keystone Lumber Mill to Westvaco. He explained that he was injured when he was rear-ended by a truck that was following him causing his truck to jackknife and hit the median wall. Following the accident, Claimant testified that he suffered a fractured knee, low back and neck injury as well as dizziness and problems with his left hand. He testified that following the accident, he went to MUSC where he was to receive further treatment from a neurologist and orthopedist but never got those because of having no insurance. Instead he went to a general practitioner by the name of Dr. Abel and from there, he was referred to Tri County Spinal Care for pain management and then to Dr. Wildstein, an orthopaedic surgeon.

Claimant testified that he has been unable to work since August 10, 2011, because of the nerve damage he sustained in his neck and back. He further testified that he still has headaches, numbness in his left arm and fingers and his back. He is currently on several medications such as Flexeril, Neurontin, Elavil and Viracept as well as Ibuprofen. He testified that it is his understanding that he needs to see a neurologist and needs to have surgery.

On cross-examination, the Claimant stated that he had to reschedule his last hearing because he had been incarcerated, accused of stealing a 32" television, some barstools and a laptop. Claimant stated, "the police said a witness observed me running across the parking lot

running from an apartment across the street to my mom's car and putting it in the car". Claimant testified that he was using a cane recommended by Dr. Avery because he had fallen down the stairs once. He said he had fallen down the stairs in January when at his mother's house but after that fall, his pain became worse.

On cross-examination by Mr. Smalls, the Claimant testified that he was hired by JJS Trucking as a contractor. He testified that he worked his own schedule but that Cedric Smalls told him to work 12 hours from the time he started. On further cross-examination by Mrs. Cofield, the Claimant clarified that he was a sub-contractor for Chris Thompson Services, but was an employee of JJS. He also stated that when he was arrested last month, he was not using his cane, but he was on Oxycodone and other medications.

On cross-examination by Mrs. Barr, it was stated that it was his responsibility to keep his truck clean and would be responsible for any fines due to his own negligence. He also stated that he is responsible for any state and federal taxes and any workers' compensation insurance.

Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Chris Thompson Services. He indicated he had been using JJS Trucking since approximately 2008. He explained that when he first hired JJS Trucking he was given a certificate of insurance showing that they had workers' compensation coverage. He said that he requested updated documentation once a year.
Mr. Thompson was shown a certificate of insurance that he identified to be dated October 18, 2011, and issued by Swamp Fox Agency. He stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Insurance Agency. He stated that his view of the certificate of insurance gave him no reason to question whether or not JJS Trucking had insurance. He conveyed that it was not

until about September or beginning of October before he was positively told that he did not have insurance. After that information was received, he severed his relationship with JJS Trucking.

On cross-examination by Mrs. Cofield, Mr. Thompson acknowledged that there was no description in the Description of Operations box on the certificate of insurance. Mr. Thompson also acknowledged that it did not have a policy number, but in fact, stated that it was a "binder". Mr. Thompson testified that he did not believe that Mr. Smalls purposely defrauded him or purposely gave a false certificate of insurance.

FINDINGS OF FACT

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.

2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.

3. Claimant has an average weekly wage of $650.00 and a compensation rate of $433.34.

4. Claimant is not at maximum medical improvement.

5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.

6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.

7. On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.

8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.

9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1-415.

10. Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

CONCLUSIONS OF LAW

1. On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

4. Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.

5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.

6. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.

7. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1-415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.

8. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.

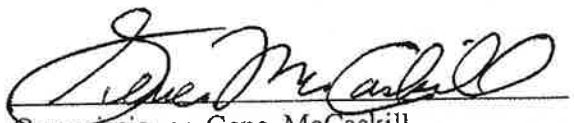
9. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 23, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE
SOUTH CAROLINA WORKERS' COPMENSATION COMMISSIONS'
APPELLATE PANEL

SAMUEL A. ROSE, Claimant/Respondent, v. JJS TRUCKING, LLC Uninsured Employer/Respondent, and CHRIS THOMPSON SERVICES, LLC, Upstream Contractor, and BRIDGEFIELD CASUALTY INS. CO., Carrier, Appellants, and S.C. UNINSURED EMPLOYERS' FUND, Respondent.	W.C.C. FILE NO. 1112328 **DECISION & ORDER**

Statement of the Case

This matter is before the Commission's Appellate Panel pursuant to the Form 30 filed by Chris Thompson Services and Bridgefield Casualty, seeking review and reversal of the August 23, 2012 Decision and Order of Hearing Commissioner McCaskill. The Appellants respectfully contend that Commissioner McCaskill erred as a matter of law in failing to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415, erred as a matter of law in ordering the Appellants to reimburse "all out of pocket medical expenses," and erred as a matter of law in awarding the Claimant future medical treatment pursuant to S.C. Code Ann. § 42-1-415.

The Hearing Commissioner's Decision and Order contained the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *Samuel Rose was an employee of JJS Trucking on August 10, 2011.*
2. *On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.*
3. *Claimant has an average weekly wage of $650.00 and a compensation rate of $433.34.*
4. *Claimant is not at maximum medical improvement.*
5. *As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.*
6. *As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.*
7. *On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.*
8. *On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.*
9. *On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1415.*
10. *Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.*

CONCLUSIONS OF LAW

1. *On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).*

2. *At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).*

3. *The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).*

4. *Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.*

5. *Claimant is entitled to medical treatment causally related to his injury pursuant to §42- 15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.*

6. *Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris*

Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.

5. *Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.*

6. *Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.*

7. *Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.*

Furthermore, the Form 30 filed by the Appellants alleges the followings errors and exceptions:

1. *The Hearing Commissioner erred in finding that Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act, as this "finding" is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and the applicable law.*

2. *The Hearing Commissioner erred in finding that the Claimant sustained an injury to his head, knee, leg, back, and neck, as this finding is arbitrary, capricious, impermisibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

3. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to temporary total disaiblity benefits from August 10, 2011 and continuing until, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

4. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to an evaluation to determine the extent of his injuries, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

5. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to ongoing medical treatment, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*

6. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence and the applicable law.*

7. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant has not received all benefits due under the Act, as this "conclusion" is arbitary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*

8. *The Hearing Commissioner erred as a matter of law in concluding that the issue of transfer of responsiblilty to the UEF is not ripe for adjudication at this time, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*

Evidence Summary

The Claimant testified that he was employed as a driver for JJS Trucking on August 10, 2011 when he was injured in a motor vehicle accident. Since the accident, the Claimant has received medical treatment from MUSC, Dr. Abel, and Dr. Wildstein for alleged injuries to his back, knee, and left hand. Although the Claimant testified that he has been unable to work since the accident, the originally hearing in this case had to be rescheduled due to the Claimant's incarceration. According to the Claimant, he was accused of stealing a 32" television, some barstools, and a computer. The Claimant testified that, "the police said a witness observed me running across the parking lot running from an apartment across the street to my mom's car and putting it in the car." In addition, the Claimant testified that he fell down the stairs in January 2012 at his mother's house, which increased his pain and resulted in him using a cane.

Chris Thompson testified that JJS Trucking was operating as a subcontractor Chris Thompson Services, LLC, at the time in question. Mr. Thompson testified that he obtained a

Certificate of Insurance from JJS Trucking at the time his relationship with the company began in 2008 and that he has requested and obtained updated Certificates of Insurance from JJS Trucking on a yearly basis since that time. Mr. Thompson identified the October 18, 2010 Certificate of Insurance contained in the Record (Appellants' APA #6, p.39). This Certificate shows that JJS Trucking had workers' compensation coverage through Travelers Insurance for the period from October 8, 2010 through October 8, 2011. This Certificate shows Chris Thompson Services as the Certificate Holder and is signed b David W. Hayes, whom Mr. Thompson identified as the owner of the Producer, the Swamp Fox Agency. Mr. Thompson testified that after receiving this Certificate of Insurance, he had no reason to believe that JJS Trucking did not have workers' compensation insurance until after the Claimant's accident.

The record reveals that Travelers Insurance did, in fact, insure JJS Trucking for a period after the Certificate of Insurance was issued, but the policy lapsed without notice to Chris Thompson Services by any person or entity. Cedric Smalls, the owner of JJS Trucking, confirmed that he did not ever inform Chris Thompson Services that his workers' compensation insurance had lapsed and further testified that Chris Thompson would not allow him to work as a subcontractor if his workers' compensation insurance ever lapsed.

At the time of the hearing, the Claimant was receiving weekly temporary total disability compensation from the Chris Thompson's carrier, as reflected on the Form 18.

Conclusion

After reviewing the record and considering the briefs and oral arguments, we AFFIRM with AMEND in part, as follows:

FINDINGS OF FACT

1. Samuel Rose was an employee of JJS Trucking on August 10, 2011.

2. On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg

back and neck arising out of and in the course of his employment with JJS Trucking.

3. Claimant has an average weekly wage of $650.00 and a compensation rate of $433.34.

4. Claimant is not at maximum medical improvement.

5. As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.

6. As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.

7. On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.

8. On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.

9. On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1415.

9. Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

CONCLUSIONS OF LAW

1. On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

4. Claimant is entitled to temporary total disability benefits beginning on August 10, 2011pursuant to § 42-9-10 until such time as he is able to return to work.

5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant's past causally-related medical treatment should be paid directly to the providers pursuant to the Fee Schedule. Carrier shall select an authorized treating physician for any future medical treatment.

5. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.

6. Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1415 only permits the higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act. The evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier. Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.

7. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.

8. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

IT IS SO ORDERED!

The Honorable Avery B. Wilkerson

WE CONCUR:

The Honorable T. Scott Beck

The Honorable Melody James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 15 day of May, 2013

By Valerie D Deller

Administrative Assistant to the Commissioner

Amy V. Cofield
Kirsten L. Barr
Joseph B. Fisher
Chris Thompson Services (Reg & cert)
JJS Trucking LLC (Reg & cert)

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.: 1112328

Samuel Rose,
Employee/Claimant,

-vs-

JJS Trucking, LLC, and Chris Thompson Services, LLC,
Employers, and
Bridgefield Casualty Insurance Company and Travelers Insurance Company,
Carriers, and
South Carolina Uninsured Employers Fund,
Defendants.

HEARING: Held on September 23, 2013, in St. Matthews, South Carolina, per notices timely and properly served upon all parties of interest.

APPEARANCES: Benjamin W. Akery, Esq., The Steinberg Law Firm, L.L.P., appearing on behalf of the Claimant

Kirsten L. Barr, Trask & Howell, L.L.C., appearing on behalf of Chris Thompson Services, LLC, and Bridgefield Casualty Insurance Company

Amy V. Cofield, Esq., The Cofield Law Firm, appearing on behalf of the South Carolina Uninsured Employers' Fund

John Eric Kaufmann, Esq., appearing on behalf of J.J.S. Trucking, LLC

PURPOSE OF HEARING: To determine issues pursuant to Form 21

DECISION & ORDER: By Aisha Taylor, Commissioner

FILED: September 2, 2014

EVIDENCE SUBMITTED

In addition to the Commission's file, which is part of the record of the case, the following items were timely and properly submitted into evidence by the Defendants pursuant to the Administrative Procedures Act:

DEFENDANT'S APA SUBMISSIONS

APA #	DESCRIPTION	DATES	PAGES
1	Gregory M. Jones, M.D. Charleston Spine & Physical Medicine	3/20/13 – 4/16/13	1-4

EXHIBITS #	DESCRIPTION	DATES	PAGES
2	JJS Trucking Certificate of Insurance	10/2/10 – 10/2/11	5
3	Deposition of Sedrick Smalls	11/14/11	6-17
4	Deposition of Samuel Rose	11/14/11	18-28
5	Petition to Transfer Liability	1/24/12 - 4/30/12	29-33
6	SCWCC Form 18	4/10/12	34
7	SLED	4/30/12	35-42

The following items were timely and properly submitted into evidence by the Claimant pursuant to the Administrative Procedures Act:

CLAIMANT'S APA SUBMISSIONS

APA #	DESCRIPTION	DATES	PAGES
8	Stuart M. Leon, M.D.	8/10/11	43 – 44
9	Andrew B. Conrad, M.D.	8/10/11	45 - 47
10	Christopher J. Erikson, M.D.	8/10/11	48 – 49
11	Peter H. White, M.D.	8/11/11	50 – 51
12	Alan N. Abel, M.D.	8/16/11 – 6/6/13	52 – 72
13	Michael S. Rissing, M.D.	8/23/11	73 – 74
14	Cameron Wills, D.C.	9/2/11	75 - 76
15	Richard Kellett, M.D.	9/6/11 – 10/11/11	77 – 90
16	Troy Marlow, M.D.	11/9/11	91 - 92
17	Michael Wildstein, M.D.	11/23/11 – 12/14/11	93 – 96
18	Donald E. Olofsson, D.O.	11/30/11	97 – 98
19	Steven C. Poletti, M.D.	7/15/13	99 - 100

EXHIBITS #	DESCRIPTION	DATES	PAGES
20	Traffic Collision Report S.C. Highway Patrol	8/10/11	101 – 104
21	Statement of Account Dr. Alan N. Abel, M.D.	8/16/11 – 6/6/13	105 – 107
22	Statement of Account Tricounty Spinal Care Centers	9/2/11 – 10/11/11	108 – 111
23	Statement of Account Southeastern Medical Solutions	11/9/11 – 12/14/11	112

24	Decision & Order Commissioner Gene McCaskill	8/23/12	113 – 123
25	Decision & Order Appellate Panel	5/15/13	124 - 134

STIPULATIONS

1. All parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act.
2. Notice of the hearing was properly and timely served upon all parties of interest.
3. Venue, set in Dorchester County, is proper as agreed by the parties.
4. The Claimant's average weekly wage is $650.00 resulting in a compensation rate of $433.34.

STATEMENT OF THE CASE

This matter was before the undersigned Commissioner on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Defendants' Form 21 requesting permission to terminate compensation, following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. The Claimant argues that he has not reached maximum medical improvement and is entitled to ongoing compensation or , in the alternative; the Claimant argues he is permanently and totally disabled.

Following the hearing, on November 8, 2013, the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company, by and through their attorney, learned for the first time that the Claimant had an ongoing third-party claim arising out to of the August 10, 2011

accident pending in the Charleston County Court of Common Pleas. On November 12, 2013, the Defendants filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in the Charleston County Court of Common Pleas on February 20, 2013. The Defendants argued that this newly discovered evidence was relevant to the determination of the issues pending before the undersigned Commissioner, because the record reveals that the Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days after filing his third-party claim and, to date, has never filed a Form S-2. As a result, the Defendants argue that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560. The Claimant did not file a return[1] to the Defendant's Motion to Introduce Newly Discovered Evidence. The Defendants' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. At the time of the hearing, the Claimant, Samuel Rose, was 43 years old. He is a high school graduate and worked for J.J.S. Trucking for approximately six months. (Hrg. Transcript p. 17, ll. 18-25). The Claimant was rear ended on

[1] The Claimant did file a "Motion in Opposition to Introduce After Discovered Evidence." The Claimant's motion was denied by Administrative Order dated January 3, 2014.

August 10, 2011 while traveling on I-26, allegedly injuring his head, neck, back, and legs. (Hrg. Transcript p. 19, l. 17- p. 20, l. 23).

The Claimant testified that he is currently experiencing stiffness and throbbing pain in his neck that radiates to his shoulders, arms, and head. (Hrg. Transcript p. 28, ll. 1-10). He is also experiencing numbness in his arm and fingers and he claims that he can only lift about 25 pounds with his right arm. (Hrg. Transcript p. 28, ll. 14-25). He stated his left arm is worse than his right. (Hrg. Transcript p. 29, l. 1- p. 30, l. 4).

Regarding the Claimant's lower back, he testified that he currently experiences throbbing, radiating pain in his lower back near his spine. (Hrg. Transcript p. 30, ll. 10-18). He testified that his back is fine when he is moving, but hurts when he stops. (Hrg. Transcript p. 31, ll. 2-10).

The Claimant also testified that his right leg occasionally gives out and swells. (Hrg. Transcript p. 31, ll. 15-18). His knee sometimes hurts, but not always. (Hrg. Transcript p. 31, ll. 17-24). He was previously diagnosed with Osgood-Schlatter's Disease, but he claims he was not experiencing any pain in his right knee at the time of the accident. (Hrg. Transcript p. 32, ll. 4-10).

The Claimant also testified that the back of his head swells up, and he constantly has headaches, dizziness, and blurred vision. (Hrg. Transcript p. 32, ll. 11-17). The Claimant further testified that he did not believe he could go back to work in his current condition because he believes he cannot take the vibrations of driving the truck or doing the pre-trip inspection. (Hrg. Transcript p. 33, ll. 3-10).

On cross-examination, the Claimant testified that he fell down a flight of stairs at his mother's house in November of 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 35, ll. 2-7). The Claimant admitted he went to Tri-County Spinal Care, but he initially stated it was only for pain management. (Hrg. Transcript p. 35, ll. 14-23). After further questioning, the Claimant denied receiving treatment, but later he admitted that he had received injections and MRI's and x-rays had been taken. (Hrg. Transcript p. 35, ll. 6-19).

The Claimant also admitted that he currently carries his cane in the wrong hand, his right hand, even though the doctors advised him that he needs to carry the cane in his *left* hand if he is actually having *right* knee pain. (Hrg. Transcript p. 38, l. 16 – p. 39, l. 7). He also testified that he did not remember Dr. Wildstein telling him that his complaints were out of proportion with what the physical exam showed. (Hrg. Transcript p. 39, ll. 21-25).

The Claimant admitted that he has not applied for any jobs or even looked for work anywhere. (Hrg. Transcript p. 42, ll. 9-14). He also testified that he has not been incarcerated again since the last hearing. (Hrg. Transcript p. 42, l. 23 – p. 43, l. 5). He admits that he was incarcerated after the August 10, 2011 accident.

Upon further cross-examination, the Claimant testified that he believes he needs the cane for dizziness, which he relates to his headaches. (Hrg. Transcript p. 44, l. 14 – p. 45, l. 14). The Claimant was also forced to admit that, despite his testimony that "nothing's been done" for him, Dr. Abel's records indicate the Claimant saw him 42 times. (Hrg. Transcript p. 45, l. 24 – p. 46,

l. 4). He was also forced to admit that he has been treated and evaluated Dr. Kellett, Dr. Wildstein, Dr. Wills, Dr. Poletti, and Dr. Jones and he has received both injections and pain medicine. (Hrg. Transcript p. 46, ll. 8-20).

On re-direct examination, the Claimant testified that Dr. Wildstein said he might potentially benefit from a one level anterior cervical discectomy and fusion. (Hrg. Transcript p. 50, ll. 2-24). The Claimant also testified he was feeling depressed even though depression was never raised in his Form 50 or his response to the Form 21 submitted by the Defendants. (Hrg Transcript p. 51, l. 10 – p. 52, l. 10).

On November 8, 2013, the Claimant's attorney contacted the Defendants' counsel to discuss an upcoming mediation in the Claimant's previously undisclosed third-party claim. On November 12, 2013, Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Motion to Introduce Newly Discovered Evidence. The newly discovered evidence was the Claimant's third-party claim filed in the Charleston County Court of Common Pleas on February 20, 2013. The Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days and still has not filed a Form S-2.

On November 21, 2013, the Claimant filed a Motion in Opposition to Introduce After Discovered Evidence. The Claimant also filed on December 20, 2013 a Motion to Introduce After Discovered Evidence. On December 23, 2013, the Defendants filed a Return to the Claimant's Motion to Introduce Newly Discovered Evidence.

On January 3, 2014, Commissioner Taylor issued three orders that granted the Defendants' Motion to Introduce Newly Discovered Evidence and denied the Claimant's Motion in Opposition to Introduce After Discovered Evidence and the Claimant's Motion to Introduce After Discovered Evidence.

Based upon the newly discovered evidence admitted into the record, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. § 42-1-560(b) by not filing a Form S-2 with the Workers' Compensation Commission, the employer, and the carrier within thirty days. As a result, the Claimant is not entitled to additional benefits under the Act, and the Defendants may terminate payment of temporary total disability benefits.

FINDINGS OF FACT

1. The parties to this proceeding were sent directives for a proposed order on January 13, 2014.
2. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (*See* Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence).
3. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the

commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statue provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

2. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, *supra*.

3. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, *supra.* Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.

4. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

5. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.

6. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.

7. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.

8. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant is not entitled to pursue, and the Defendants shall have no liability for, any additional benefits under the Workers' Compensation Act following the commencement of the third-party action on February 20, 2013.

IT IS, FURTHER ORDERED that the Defendants shall have a lien on the proceeds of any recovery from any third-party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

IT IS SO ORDERED!

Commissioner Aisha Taylor

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
September 2, 2014

By: Renee Smith, Administrative Assistant to Commissioner Taylor

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Samuel A. Rose, Claimant, Respondent,

v.

JJS Trucking, LLC, Chris Thompson Services, LLC, Bridgefield Casualty Ins. Co., and South Carolina Uninsured Employers' Fund, Defendants,

Of whom Chris Thompson Services, LLC and Bridgefield Casualty Ins. Co. are Appellants,

and

JJS Trucking, LLC and South Carolina Uninsured Employers' Fund are Respondents.

Appellate Case No. 2013-001322

Appeal From The Workers' Compensation Commission

Opinion No. 5291
Submitted November 1, 2014 – Filed January 28, 2015

APPEAL DISMISSED

Kirsten Leslie Barr, Trask & Howell, LLC, of Mt. Pleasant, for Appellants.

Joseph Brooks Fisher, George Sink, PA Injury Lawyers, of North Charleston, and Benjamin William Akery, The Steinberg Law Firm, LLP, of Goose Creek,

for Respondent Samuel A. Rose; John Eric Kaufmann, of Columbia, for Respondent JJS Trucking, LLC; and Amy V. Cofield, Cofield Law Firm, of Lexington, for Respondent South Carolina Uninsured Employers' Fund.

FEW, C.J.: Chris Thompson Services, LLC and its carrier appeal the workers' compensation commission's refusal to order a transfer of responsibility pursuant to subsection 42-1-415(A) of the South Carolina Code (2015). Because the commission has not yet ruled on the merits of Samuel Rose's entire claim for benefits, however, the order is not a final decision, and thus not immediately appealable. We dismiss.

Rose filed this workers' compensation action alleging he sustained accidental injuries to his right knee, back, neck, and head while working for JJS Trucking, LLC. At the time of Rose's injury, JJS Trucking was a subcontractor for Chris Thompson Services and was uninsured. The commission ordered Chris Thompson Services to pay for Rose's medical treatment and temporary total disability benefits.

Chris Thompson Services petitioned the commission "to transfer responsibility for continuing compensation and benefits" to the South Carolina Uninsured Employers' Fund pursuant to subsection 42-1-415(A). The commission refused to order the transfer, finding the issue of transfer was "not ripe for adjudication at this time." The commission also determined Rose had not reached maximum medical improvement, and thus did not rule on his claim for permanent disability.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a "final decision" of the commission. An order of the commission is not a final decision unless it resolves the entire action. *See Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); *Bone*, 404 S.C. at 73, 744 S.E.2d at 556 (same); *see also* 404 S.C. at 75, 744 S.E.2d at 557 ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (quoting *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health*

& Envt'l Control, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))). The commission's order leaves the merits of Rose's claim for permanent disability unresolved. Therefore, the order is not a final decision and not immediately appealable.

Appellants argue, however, the commission's refusal to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund under subsection 42-1-415(A) is immediately appealable under the following provision of section 1-23-380: "A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy." Appellants contend they "are required under the [commission's] order to make ongoing payments to [Rose], in addition to adjusting the claim and providing medical benefits, all despite the fact that . . . Appellants properly petitioned the commission to transfer continuing liability to the [Uninsured Employers' Fund]." Appellants further contend that reimbursement from the Fund after final judgment is not an adequate remedy and this court's "failure to address the appeal at this time would deprive . . . Appellants of any meaningful remedy and would vitiate the statutory scheme envisioned by the General Assembly with the enactment of [section] 42-1-415."

We do not agree that dismissing this appeal deprives Appellants of an adequate remedy. Appellants make no specific argument as to how the commission's refusal to address transfer at this time affects Appellants in any way other than to delay the payment of money. *See Bone*, 404 S.C. at 74, 744 S.E.2d at 556 (stating an employer and its insurance carrier "have an adequate remedy in that they may raise the issue of compensability" after a final award by the commission). The Uninsured Employers' Fund appears to acknowledge that it would be required to reimburse Appellants if the commission later orders a transfer. Therefore, if the commission eventually determines the transfer was adequately documented and thus should have been ordered, Appellants will recover their payments through reimbursement. If the commission does not later order a transfer, Appellants have an adequate remedy in an appeal after the commission's final decision in the case.

Because we dismiss the appeal on the ground that the order is not immediately appealable, we decline to address Appellants' argument that the denial of transfer to the Uninsured Employers' Fund before final judgment is contrary to the legislative intent of section 42-1-415.

APPEAL DISMISSED.[1]

THOMAS and LOCKEMY, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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January 28, 2015

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Re: Samuel Rose v. JJS Trucking
Appellate Case No. 2013-001322

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Amy Bracy

BEFORE THESOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION'S APPELLATE PANEL

SAMUEL ROSE, Claimant/Appellant, v. JJS TRUCKING, Uninsured Employer, and CHRIS THOMPSON SERVICES, Upstream Employer, and BRIDGEFIELD CASUALTY INS. CO., Carrier for Chris Thompson Services, and THE STATE ACCIDENT FUND, Respondents.	)	W.C.C. File No. 1112328 **DECISION & ORDER**

STATEMENT OF THE CASE

This matter came before the Commission's Appellate Panel for a review hearing on April 21, 2015. The case was previously tried before Commissioner Taylor on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Form 21 filed by Chris Thompson Services and Bridgefield Casualty Insurance (hereinafter "the Respondents"), requesting permission to terminate compensation following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. Following the hearing, on November 8, 2013, the Respondents learned for the first time that the Claimant had an ongoing third-party claim arising out to of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas.

On November 12, 2013, the Respondents filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in

the Charleston County Court of Common Pleas on February 20, 2013. The Respondents argued that this newly discovered evidence was relevant to the determination of the issues pending before Commissioner Taylor because the Claimant did not file a Form S-2 with the Workers' Compensation Commission, the Employer, or the Carrier within thirty days after filing his third-party claim. As a result, the Respondents argued that the Claimant is not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements of S.C. Code Ann. § 42-1-560. The Claimant did not file a return[1] to the Respondent's Motion to Introduce Newly Discovered Evidence. The Respondents' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case.

On September 2, 2014, Commissioner Taylor issued a Decision and Order, by which she made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. *The parties to this proceeding were sent directives for a proposed order on January 13, 2014.*
2. *The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013. (See Exhibits "A" and "B" to the Defendants' Motion to Introduce Newly Discovered Evidence).*
3. *The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the*

[1] The Claimant did file a "Motion in Opposition to Introduce After Discovered Evidence." The Claimant's motion was denied by Administrative Order dated January 3, 2014.

commission that this third-party action had been commenced. To date, no Form S2 has been filed or served by the Claimant.

CONCLUSIONS OF LAW

1. *S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statue provides that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.*

2. *Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, supra.*

3. *According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, supra. Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.*

4. *Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on*

which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

5. *Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.*
6. *Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the workers' Compensation Act.*
7. *Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.*
8. *Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.*

Thereafter, the Claimant filed a Form 30 requesting review of Commissioner Taylor's September 2, 2014 Order on the following grounds:

> *FIRST: The Hearing Commissioner erred in granting Defendant's [sic] Chris Thompson Services, LLC and Bridgefield Casualty Insurance Companies November 12, 2013 Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim filed in Charleston County Court of Common Pleas on February 20, 2013), the error being that the defense of exclusive remedy was not pled by any of the Defendant's [sic], nor was the issue raised at the September 23, 2013 hearing before the single Commissioner, further the Answer and Counterclaim could have been secured by the Defendant's before the September 23, 2013 hearing had they exercised reasonable diligence.*

SECOND: The Hearing Commissioner erred in denying the Claimant's November 21, 2013 Motion in Opposition to Introduce After Discovered Evidence summarily without any legal reasoning, findings of fact or conclusions of law to support this denial.

THIRD: The Hearing Commissioner erred in denying Claimant's December 20, 2013 Motion to Introduce newly Discovered Evidence (voluntary dismissal of the Claimant's third-party suit), holding the voluntary dismissal did not fit the meaning of "Newly Discovered Evidence" under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned [sic] on August 5, 2013, the error being there is no requirement under South Carolina Statutory Law, South Carolina Workers' Compensation Regulations or South Carolina Common Law Jurisprudence that evidence must exist at the time of a hearing in order for it to be considered as newly discovered evidence.

FOURTH: The Hearing Commissioner erred in granting Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (voluntarily [sic] dismissal Claimant's third-party suit) the error being that South Carolina case law holds that when a Claimant voluntarily dismissed his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

FIFTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third-party suit), the error being this is a gross miscarriage of justice as the single Commissioner entertained new defenses that were not pled or argued at the September 23, 2013 hearing by the Defendant's [sic], however the single Commissioner did not allow the Claimant to introduce newly discovered evidence or to

be heard to argue their position in response to Defendant's newly discovered evidence which would render the Defendant's [sic] exclusive remedy argument moot.

SIXTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim and denying the Claimant's Motion to Introduce Newly Discovered Evidence (voluntary dismissal of Claimant's third party-suit) without holding a hearing on the issue to allow both sides to argue their respective positions or to reconvene the September 23, 2013 hearing pursuant to South Carolina Workers' Compensation Regulation 67-707(C)(2)(d).

SEVENTH: The Hearing Commissioner erred in granting the Defendant's [sic] Motion to Introduce Newly Discovered Evidence (Claimant's Answer and Counterclaim) and denying Claimant's Motion to Introduce Newly Discovered Evidence (Voluntary Dismissal of Claimant's third-party suit) without holding a hearing on the issue or reconvening the September 23, 2013 hearing, the error being it is well-settled law of South Carolina that if the Commission undertakes to receive such additional evidence, due process requires that counsel should be alerted before hand so that they may be prepared to participate in the proceedings. Green v. Rabestos-Manhattan, Inc., 250 S.C. 58, 156, [sic] S.E.2d 318 (1967). In the case at bar, there were no proceedings whatsoever, simply a Commissioner allowing newly discovered evidence to come in from one party and not allowing newly discovered evidence in rebuttal from the opposing party without holding a hearing on the issue or reconvening the original hearing.

EIGHTH: The Hearing Commissioner erred in finding of fact #3 and Conclusion of Law #1 in holding that the Claimant failed to file a Form S2 when the Claimant did indeed file a voluntary dismissal of the Claimant's underlying 3rd party lawsuit as newly discovered evidence on December 19, 2013, which the Commissioner denied, then subsequently filed the appropriate S2 on February 10, 2014 after re-filing the underlying 3Rd party lawsuit.
NINTH: The Hearing Commissioner erred in Conclusion of Laws #1, #2, #3, #4, #5, #6, #7, and #8 in holding that the Claimant did not provide notice of the 3rd party action by way of filing a Form S2 and therefore was not entitled to additional medical treatment,

disability benefits or permanent disability when the Claimant voluntarily dismissed his underlying 3rd party claim on December 5, 2013 before settling it and submitted the dismissal to the Commission as newly discovered evidence and then after re-filing the 3rd party lawsuit timely filed a Form S2 on December 19, 2013, the error being that when a Claimant voluntarily dismisses his/her third-party suit the voluntary dismissal leaves the situation as though no suit had ever been filed and the Claimant's failure to comply with S.C. Code Ann. § 42-1-560 in not filing a Form S-2 is fully remedied and moot. Callahan v. Beaufort County School District, 375 S.C. 92, 651, [sic] S.E.2d 311 (2007).

CONCLUSION

The Appellate Panel AFFIRMS the September 2, 2014 Decision and Order of Hearing Commissioner Taylor in its entirety and enters the following:

FINDINGS OF FACT

1. The Claimant commenced a civil action against a third-party as a result of the same August 10, 2011 accident for which he seeks workers' compensation benefits by filing a counterclaim against Robbie Clark in the Charleston County Court of Common Pleas on February 20, 2013.
2. The Claimant did not file or serve a Form S2 on the Employer, Carrier, or the Commission within thirty days after commencing the third-party action on February 20, 2013 and did not otherwise notify the Employer, Carrier or the commission that this third-party action had been commenced.

CONCLUSIONS OF LAW

1. S.C. Code Sec. 42-1-560 sets forth the requirements for simultaneously pursuing a third-party civil action and a workers' compensation claim. The statue provides

that "[n]otice of the commencement of the [third-party] action shall be given within thirty days thereafter to the [Commission], the employer and carrier upon a form prescribed by the [Commission]." Because the Claimant did not provide any notice of the commencement of the third-party action to the Commission, the Employer, or the Carrier within thirty days and because the Claimant has not filed a Form S2, which is the form prescribed by the Commission for notice of such third-party actions, the Claimant has failed to satisfy the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

9. Because the Workers' Compensation Act is in derogation of common law rights, the terms and requirements of S.C. Code Ann. Sec 42-1-560 must be strictly construed. Callahan v. Beaufort Co. Sch. Dist., 375 S.C. 92, 651 S.E.2d 311 (2007). Even though Defendants are entitled to maintain their lien on the proceeds of any recovery from the third-party whether by judgment, settlement, or otherwise and despite the fact that the Defendants have "not lost [their] right of subrogation against the responsible third-party, the statutory provision mandates notice to the employer, carrier, and the Commission within thirty days of filing the third-party suit." Callahan, *supra.*

10. According to the South Carolina Supreme Court, "42-1-560(b) must be strictly followed in order for a claimant to preserve [the] right to proceed against both an employer and a third-party." Callahan, *supra.* Because the Claimant has not followed the mandatory requirements of S.C. Code Ann. Sec. 42-1-560, but has ignored them entirely, the Claimant has failed to preserve his right to proceed

against the employer for additional benefits under the Workers' Compensation Act after the date he commenced the third-party action, February 20, 2013.

11. Pursuant to S.C. Code Ann. Sec. 42-9-210, any and all compensation payments made by the Defendants to the Claimant after February 20, 2013, the date on which he commenced his third-party action without notice to the Defendants or the Commission, were not due and payable as a result of the Claimant's failure to comply with the mandatory requirements of S.C. Code Ann. Sec. 42-1-560.

12. Pursuant to S.C. Code Ann. Sec. 42-9-260, the Defendants are entitled to terminate temporary disability compensation effective the date of the hearing, September 23, 2013.

13. Pursuant to S.C. Code Ann. Sec. 42-15-60, the Defendants shall have no liability for any additional medical care or treatment under the Workers' Compensation Act.

14. Pursuant to S.C. Code Ann. Sec. 42-9-10, Sec. 42-9-20, and Sec. 42-9-30, the Claimant is not entitled to, and the Defendants shall have no liability for, any benefits for permanent disability or loss of use under the Workers' Compensation Act.

15. Pursuant to S.C. Code Sec. 42-1-560(b), the Defendants shall have a lien on the proceeds of any recovery from any third party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

ORDER

IT IS THEREFORE, HEREBY ORDERED that the Claimant is not entitled to, and the Defendants/Respondents shall have no liability for, any additional benefits under the Workers' Compensation Act.

IT IS, FURTHER ORDERED that the Defendants/Respondents shall have a lien on the proceeds of any recovery by the Claimant from any third-party whether by judgment, settlement or otherwise, to the extent of the total amount of compensation, including medical and other expenses paid by the Defendants.

IT IS SO ORDERED!

The Honorable R. Michael Campbell, II, Commissioner

Date: February 8th, 2016

WE CONCUR:

The Honorable T. Scott Beck, Commissioner

The Honorable Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on February 8, 2016

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Samuel Rose, Claimant, Appellant,

v.

JJS Trucking, Uninsured Employer, and Chris Thompson Services, Upstream Employer, and Bridgefield Casualty Ins. Co., Carrier for Chris Thompson Services, and The State Accident Fund, Respondents.

Appellate Case No. 2016-000497

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2018-UP-155
Submitted March 1, 2018 – Filed April 18, 2018

REVERSED AND REMANDED

Stephen Benjamin Samuels, of Samuels Law Firm, LLC, of Columbia, for Appellant.

Kirsten Leslie Barr, of Trask & Howell, LLC, of Mount Pleasant, for Respondents JJS Trucking, Chris Thompson Services, and Bridgefield Casualty Ins. Co.

Amy V. Cofield, of Cofield Law Firm, of Lexington, for Respondent State Accident Fund.

PER CURIAM: Samuel Rose appeals an order of the Appellate Panel of the Workers' Compensation Commission (the Appellate Panel) ruling (1) he was not entitled to additional benefits under the Workers' Compensation Act (the Act) and (2) Chris Thompson Services and Bridgefield Casualty Insurance Company (collectively, Respondents) were entitled to a lien on the proceeds of any third-party recovery Rose obtained. On appeal, Rose argues (1) the single commissioner erred by granting Respondents' motion to introduce newly-discovered evidence while denying his similar motion and (2) the single commissioner and Appellate Panel erred by barring him from further benefits due to a violation of section 42-1-560(b) of the South Carolina Code (2015).

After the single commissioner held a hearing to determine whether Respondents could stop temporary compensation payments and whether Rose was entitled to further compensation, but prior to entry of a resulting order, Respondents filed a motion to introduce newly-discovered evidence. In the motion, Respondents asserted Rose initiated a third-party civil action arising out of the accident that also gave rise to his workers' compensation claim, but he failed to give timely notice of the action. *See* § 42-1-560(b) ("Notice of the commencement of the action shall be given within thirty days thereafter to the Workers' Compensation Commission, the employer[,] and carrier upon a form prescribed by the Workers' Compensation Commission."). Rose filed a similar motion in response, informing the single commissioner that the third-party action had been voluntarily dismissed and seeking to introduce the stipulation of dismissal into evidence. The single commissioner granted Respondents' motion but denied Rose's.

In its order denying Rose's motion, the single commissioner found, "The evidence sought to be introduced (the Voluntary Dismissal) does not fit the meaning of 'newly[-]discovered evidence' under Regulation 67-707 of the South Carolina Code as it did not exist at the time of the hearing before the undersigned on August 5, 2013." However, regulation 67-707 does not include such a requirement, and the single commissioner's finding is contrary to this court's precedent. *See* S.C. Code Ann. Regs. 67-707(C) (2012) ("The moving party must establish the new evidence is of the same nature and character required for granting a new trial and show: (1) [t]he evidence sought to be introduced is not evidence of a cumulative or impeaching character but would likely have produced a different result had the evidence been procurable at the first hearing; and (2) [t]he evidence was not known to the moving party at the time of the first hearing, by reasonable diligence the new evidence could not have been secured, and the discovery of the new evidence is being brought to the attention of the Commission immediately upon its

discovery."); *Wise v. Wise*, 394 S.C. 591, 602, 716 S.E.2d 117, 123 (Ct. App. 2011) (explaining "[n]othing requires that the facts be in existence at the time of the first hearing by the single commissioner" to be admitted under regulation 67-707). Accordingly, the denial of Rose's motion was controlled by an error of law, and we reverse it. *See* S.C. Code Ann. § 1-23-380(5) (Supp. 2017) (providing this court may reverse a decision by the Commission "if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . affected by [an] error of law").

Having determined Rose's stipulation of dismissal should have been allowed into evidence and considered by the single commissioner, we further find the single commissioner and Appellate Panel erred by concluding Rose's purported violation of section 42-1-560(b) barred his workers' compensation claim from proceeding. *See Callahan v. Beaufort Cty. Sch. Dist.*, 375 S.C. 92, 97, 651 S.E.2d 311, 314 (2007) ("A voluntary dismissal leaves the situation as though no suit had ever been filed."); *id.* ("Following this rule, [a voluntarily-dismissed] third-party suit . . . [becomes] a nullity, and [section] 42-1-560 is not applicable. As a result, there is no violation of [section] 42-1-560 when the third-party suit is treated as never being filed.").

We reverse the Appellate Panel's order and remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED.[1]

LOCKEMY, C.J., and WILLIAMS and KONDUROS, JJ., concur.

[1] We decide this case without oral argument pursuant to Rule 215, SCACR.

DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COMMISSION PANEL: THE HONORABLE T. SCOTT BECK; THE HONORABLE MICHAEL CAMPBELL; THE HONORABLE SUSAN BARDEN

SCWCC FILE NO.: 1112328

Samuel Rose,

Employee,
Appellant

v.

JJS Trucking, Uninsured Employer, and
Chris Thompson Services, Upstream Employer,

Employers, and

Bridgefield Casualty Insurance Company and
South Carolina Uninsured Employers' Fund,

Carrier, Defendants.

UPON REMITTITUR FROM THE SOUTH CAROLINA COURT OF APPEALS

Filed: June 17, 2019

STATEMENT OF THE CASE

This matter was before the Single Commissioner on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Defendants' Form 21 requesting permission to terminate compensation, following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. The Claimant argued that he had not reached maximum medical improvement and was entitled to ongoing compensation or, in the alternative; the Claimant argued he was permanently and totally disabled.

Following the hearing, on November 8, 2013, the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company, by and through their attorney, learned for the first time that the Claimant had an ongoing third-party claim arising out of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas. On November 12, 2013, the Defendants filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in the Charleston County Court of Common Pleas on February 20, 2013. The Defendants argued that this newly discovered evidence was relevant to the determination of the issues pending before the undersigned Commissioner, because the record reveals that the Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days after filing his third-party claim and, to date, has never filed a Form S-2. As a result, the Defendants argue that the Claimant was not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements

of S.C. Code Ann. § 42-1-560. The Claimant filed a Motion in Opposition on November 21, 2013 and Motion to Introduce Newly Discovered Evidence on December 20, 2013, which sought to introduce evidence of a voluntary dismal of Claimant's third-party claim. The Defendants' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case. Claimant's Motion in Opposition and Motion to introduce the voluntary dismissal were denied.

On September 2, 2014, the Hearing Commissioner issued a Decision and Order that held Defendant had no liability for any additional benefits under the SC Workers' Compensation Act following the commencement of the third-party action on February 20, 2013. The Appellate Panel affirmed the Hearing Commissioner by way of Decision and Order dated February 8, 2016. Claimant appealed the Decision and Order of the Appellate Panel to the South Carolina Court of Appeals, and on April 18, 2018, the Court of Appeals found that Claimant's stipulation of dismissal should have been allowed into evidence and as such, the Hearing Commissioner's finding that Claimant's claim was barred was in error. The SC Court of Appeals reversed the Order of the Commission and remanded the matter back to the Commission for proceedings consistent with the opinion.

Upon Remittitur to the Commission, the matter was assigned back to the Single Commissioner on July 16, 2018 for further proceedings consistent with the opinion of the Court of Appeals. The parties appeared via telephone conference with the Single Commissioner on April 25, 2019 wherein Claimant's counsel requested the Single Commissioner be recused on the basis that the Single Commissioner had previously heard the matter and ruled against the Claimant. The Motion for Recusal was granted on April 29, 2019 via email correspondence to the parties. Jurisdiction of

this matter now rests with the Appellate Panel of the Full Commission pursuant to the original Remittitur from the SC Court of Appeals.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. At the time of the hearing, the Claimant, Samuel Rose, was 43 years old. He is a high school graduate and worked for J.J.S. Trucking for approximately six months. (Hrg. Transcript p. 17, ll. 18-25). The Claimant was rear ended on August 10, 2011 while traveling on I-26, allegedly injuring his head, neck, back, and legs. (Hrg. Transcript p. 19, l. 17- p. 20, l. 23).

The Claimant testified that he is currently experiencing stiffness and throbbing pain in his neck that radiates to his shoulders, arms, and head. (Hrg. Transcript p. 28, ll. 1-10). He is also experiencing numbness in his arm and fingers and he claims that he can only lift about 25 pounds with his right arm. (Hrg. Transcript p. 28, ll. 14-25). He stated his left arm is worse than his right. (Hrg. Transcript p. 29, l. 1- p. 30, l. 4).

Regarding the Claimant's lower back, he testified that he currently experiences throbbing, radiating pain in his lower back near his spine. (Hrg. Transcript p. 30, ll. 10-18). He testified that his back is fine when he is moving, but hurts when he stops. (Hrg. Transcript p. 31, ll. 2-10).

The Claimant also testified that his right leg occasionally gives out and swells. (Hrg. Transcript p. 31, ll. 15-18). His knee sometimes hurts, but not always. (Hrg. Transcript p. 31, ll. 17-24). He was previously diagnosed with Osgood-Schlatter's Disease, but he claims he was not experiencing any pain in his right knee at the time of the accident. (Hrg. Transcript p. 32, ll. 4-10).

The Claimant also testified that the back of his head swells up, and he constantly has headaches, dizziness, and blurred vision. (Hrg. Transcript p. 32, ll. 11-17). The Claimant further testified that he did not believe he could go back to work in his current condition because he believes he cannot take the vibrations of driving the truck or doing the pre-trip inspection. (Hrg. Transcript p. 33, ll. 3-10).

On cross-examination, the Claimant testified that he fell down a flight of stairs at his mother's house in November of 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 35, ll. 2-7). The Claimant admitted he went to Tri-County Spinal Care, but he initially stated it was only for pain management. (Hrg. Transcript p. 35, ll. 14-23). After further questioning, the Claimant denied receiving treatment, but later he admitted that he had received injections and MRI's and x-rays had been taken. (Hrg. Transcript p. 35, ll. 6-19).

The Claimant also admitted that he currently carries his cane in the wrong hand, his right hand, even though the doctors advised him that he needs to carry the cane in his *left* hand if he is actually having *right* knee pain. (Hrg. Transcript p. 38, l. 16 – p. 39, l. 7). He also testified that he did not remember Dr. Wildstein telling him that his complaints were out of proportion with what the physical exam showed. (Hrg. Transcript p. 39, ll. 21-25).

The Claimant admitted that he has not applied for any jobs or even looked for work anywhere. (Hrg. Transcript p. 42, ll. 9-14). He also testified that he has not been incarcerated again since the last hearing. (Hrg. Transcript p. 42, l. 23 – p. 43, l. 5). He admits that he was incarcerated after the August 10, 2011 accident.

Upon further cross-examination, the Claimant testified that he believes he needs the cane for dizziness, which he relates to his headaches. (Hrg. Transcript p. 44, l. 14 – p. 45, l. 14). The Claimant was also forced to admit that, despite his testimony that "nothing's been done" for him, Dr. Abel's records indicate the Claimant saw him 42 times. (Hrg. Transcript p. 45, l. 24 – p. 46, l. 4). He was also forced to admit that he has been treated and evaluated Dr. Kellett, Dr. Wildstein, Dr. Wills, Dr. Poletti, and Dr. Jones and he has received both injections and pain medicine. (Hrg. Transcript p. 46, ll. 8-20).

On re-direct examination, the Claimant testified that Dr. Wildstein said he might potentially benefit from a one level anterior cervical discectomy and fusion. (Hrg. Transcript p. 50, ll. 2-24). The Claimant also testified he was feeling depressed even though depression was never raised in his Form 50 or his response to the Form 21 submitted by the Defendants. (Hrg Transcript p. 51, l. 10 – p. 52, l. 10).

Defendants submitted the following APA submissions as evidence: Medical records from Gregory M. Jones, M.D. (APA pp. 1-4); JJS Trucking Certificate of Insurance (APA p. 5); Deposition of Sedrick Smalls (APA pp. 6-17); Deposition of Samuel Rose (APA pp.18-28); Petition to Transfer Liability (APA pp. 29-33); SCWCC Form 18 (APA pp. 34); SLED (APA pp. 35-42); and Third-Party Complaint – Charleston Common Pleas (Exhibit A to 11/12/13 Motion to Introduce Newly Discovered Evidence).

The Claimant submitted the following APA submissions as evidence: Medical records from Stuart M. Leon, M.D. (APA pp. 43-44); Dr. Andrew Conrad, M.D. (APA pp. 45-47); Christopher Erikson, M.D. (APA pp. 48-49); Peter White, M.D. (APA pp. 50-51); Alan Abel,

M.D. (APA pp. 52-72); Michael Rissing, M.D. (APA pp. 73-74); Cameron Willis, D.C. (APA pp.75-76); Richard Kellett, M.D. (APA pp. 77-90); Troy Marlow, M.D. (APA pp.91-92); Michael Wildstein, M.D. (APA pp. 93-96); Donald Olofsson, D.O. (APA pp.97-98); Steven Poletti, M.D. (APA pp. 99-100); Traffic Collision Report SCHP (APA pp. 101-104); Statement of Account - Dr. Abel (APA pp. 105-107); Statement of Account – Tricounty Spinal Care (APA pp. 108-111); Statement of Account – Southeastern Medical Solutions (APA p. 112); and Stipulation of Dismissal (Exhibit 2 to 12/20/13 Motion to Introduce Newly Discovered Evidence).

DISCUSSION

Upon remittitur from the Court of Appeals, the undersigned Appellate Panel reviewed this matter as a whole including all of the testimony, medical records and other evidence presented at the Single Commissioner's September 23, 2013 hearing on the merits of Defendants' Form 21 Request for Hearing as well as all exhibits to post-hearing motions filed with the Hearing Commissioner. Based on the preponderance of the evidence WE, THE APPELLATE PANEL, HEREBY MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

FINDINGS OF FACT OF THE APPELLATE PANEL

1. By Order of the South Carolina Court of Appeals, Claimant filed a voluntary dismissal on December 5, 2013, after the date of the Single Commission Hearing, and as such, the voluntary dismissal leaves the situation as though no suit had ever been filed. As a result, there is no violation of S.C. Code Ann. § 42-1-560.
2. As to the merits of the claim, the parties originally appeared for a hearing before Commissioner McCaskill on May 15, 2012, which resulted in a Decision and Order of the Single Commissioner on August 23, 2012. The August 23, 2012 Decision and Order was appealed to the Full Commission and on May 15, 2013, the Appellate Panel

entered a Decision and Order, which was ultimately unappealled and is now the law of the case.[1]

3. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Samuel Rose was an employee of JJS Trucking on August 10, 2011.

4. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Claimant sustained compensable injuries to his head, [right] knee, [right] leg, back, and neck arising out of and in the course of his employment with JJS Trucking.

5. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Claimant has an average weekly wage of $650.00 and a compensation rate of $433.34.

6. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, on or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.

7. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, On August 10, 2011, JJS Trucking, LLC was operating without proper insurance as required by the Workers' Compensation Act.

8. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, on August 10, 2011, JJS Trucking, LLC was operating as a subcontractor for Chris Thompson Services, LLC, and is an "upstream employer" pursuant to §42-1-415.

[1] The issue of whether the Commission erred as a matter of law in failing to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415 was preserved for appeal by Defendants Christ Thompson, LLC and Bridgefield Casualty's subsequent Motion and resulting appeals to the Full Commission and the S.C. Court of Appeals. By Order of the Court of Appeals dated January 28, 2015, Defendants' appeal was dismissed as not immediately appealable and preserved for further adjudication or appeal after a final decision of the Commission.

9. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

10. As a result of the May 15, 2013 Appellate Panel Decision and Order, Claimant was found to not be at maximum medical improvement and Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company were ordered to provide Claimant with "an evaluation to determine the extent of his injuries" and further ordered that Claimant was "entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier." The Full Commission also found that Claimant was entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reached maximum medical improvement.

11. After a review of the evidence as a whole, we find Defendants Thompson Services, LLC and Bridgefield Casualty Insurance Company provided Claimant with the medical evaluation pursuant to the original Single Commissioner Order dated August 23, 2012 and affirmed with amendments by the May 15, 2013 Decision and Order of the Appellate Panel. This evaluation with Dr. Greg Jones of Charleston Spine & Physical Medicine dated March 20, 2013 and updated on April 16, 2013, address Claimant's neck, back and right knee complaints. Dr. Jones reviewed Claimant's history of treatment modalities including epidural blocks to the lumbar spine, physical therapy, epidural injections and right-sided cervical facet injections to the cervical spine, and medications. Dr. Jones opined Claimant would likely not benefit significantly from single level fusion C5-6 as there was no evidence of definitive cervical radiculopathy.

(Defendants' APA p. 4). Dr. Jones placed Claimant at maximum medical improvement as of March 20, 2013.

12. During the same time as his evaluation with Dr. Jones, Claimant continued treating on his own with his family physician, Dr. Alan N. Abel. While Dr. Abel had initially referred Claimant to a neurosurgeon for evaluation of surgery on his neck back in October of 2012, after reviewing Dr. Jones' records, Dr. Abel opined that he was "essentially in agreement with this interpretation." Dr. Able also placed Claimant at maximum medical improvement and noted he was "not optimistic that [Claimant] will improve to any significant degree in the future." Dr. Abel noted that "perhaps" Claimant could benefit from physical therapy and also referenced a EMG to see if there is nerve decompression in his neck requiring cervical intervention. (Claimant's APA p. 70).

13. On July 15, 2013, Claimant obtained his own Independent Medical Evaluation with Dr. Steven C. Poletti who reviewed Claimant's MRI scans of the cervical spine that showed two-level disc herniations at C5-6 and C6-7 as well as bilateral C6 nerve root compression. Dr. Poletti diagnosed Claimant with cervical disc herniation with spondylosis, cervical radiculopathy, low back pain of indeterminate etiology, and history of right knee contusion/impaction fracture. Dr. Poletti opined Claimant required an evaluation by a knee specialist and that surgery was indicated for Claimant's two-level cervical disc disease with pain radiating into his arm. Dr. Poletti also opined Claimant needed an MRI scan of his lumbar spine.

14. Upon review of the preponderance of the evidence as a whole, we find Claimant is not at maximum medical improvement for his August 10, 2011 work injury. We give

greater weight to the medical opinions of Dr. Poletti than we do the medical opinions of Dr. Jones. Specifically, Dr. Poletti agreed with Claimant's prior treating physician, Dr. Wildstein, who had previously recommended a cervical fusion. In addition, it is important to note Dr. Jones is a physical medicine and rehabilitation doctor, as opposed to Dr. Wildstein and Dr. Poletti, both of whom are orthopaedic surgeons specializing in the spine. We give great weight to Dr. Poletti's assessment of Dr. Dr. Jones's medical opinion wherein Dr. Poletti stated, "a non-surgical recommendation from a non-surgeon doesn't really mean all that much to me." (Claimant's APA pp. 99-100).

15. With regards to Claimant's cervical spine, we find the opinions of the two orthopaedic spine surgeons, Drs. Wildstein and Poletti, outweigh the medical opinion of Dr. Jones. As such, we find Claimant is entitled to additional medical treatment to include the recommended cervical fusion as recommended as it has been shown by a preponderance of the evidence that it would tend to lessen his period of disability.

16. We find Defendants had the surgical recommendations of Dr. Wildstein and Dr. Poeltti at time of the September 23, 2013 hearing before the Hearing Commissioner and elected to deny the surgery, which was their right, and rely on the medical opinion of Dr. Jones. As such, we find the Claimant has shown good cause to direct his own medical care and hereby appoint Dr. Steven C. Poletti, or other referral from Dr. Poletti, as the authorized provider for Claimant's cervical and lumbar spine treatment.

17. We find Claimant is entitled to an evaluation with an orthopaedic surgeon who specializes in the knee/lower extremity to obtain updated MRI scans and an assessment of Claimant's continued complaints of pain in his right knee. This finding is based upon the preponderance of the evidence including the recommendation of Dr. Poletti,

4. Claimant is not at maximum medical improvement for his injuries to his neck (cervical spine), back (lumbar spine), and right leg (knee).

5. Pursuant to S.C. Code Ann. § 42-15-60 and S.C. Code Ann. Section 42-15-80, Claimant is entitled to treatment for his neck, back, and right knee. Defendants are liable for Claimant's future treatment with Dr. Poletti or any referral made by Dr. Poletti for Claimant's neck and back injuries. Defendants are to direct Claimant's medical treatment for his right knee.

6. Claimant is entitled to temporary total disability benefits from August 11, 2011 through the present and continuing until he is placed at maximum medical improvement. Claimant is entitled to a lump-sum payment of any back-owed TTD accrued during litigation.

ORDER AND AWARD

Based upon the above Findings of Fact and Conclusions of Law set forth herein,

IT IS HEREBY ORDERED Claimant is not at maximum medical improvement for his injuries to his neck, back, and right knee.

IT IS HEREBY ORDERED Claimant is entitled to additional medical treatment to the neck and back, to include a cervical fusion and follow-up treatment with Dr. Steven C. Poletti or other referral made by Dr. Poletti.

IT IS HEREBY ORDERED Claimant is entitled to an evaluation of his right knee, including an updated MRI, with an orthopaedic surgeon who specializes in the knee/lower extremity at the direction of Defendants.

IT IS HEREBY ORDERED Claimant is entitled to temporary total disability benefits from September 11, 2011 through the present and continuing until he is placed at maximum medical improvement. Claimant is entitled to a lump-sum payment for all back-owed TTD benefits as of the date of this Decision and Order

AND IT IS SO ORDERED.

Commissioner T. Scott Beck

Commissioner Michael Campbell

Commissioner Susan Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 17, 2019

DECISION AND ORDER
OF THE
APPELLATE PANEL
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

COMMISSION PANEL: THE HONORABLE T. SCOTT BECK; THE HONORABLE MICHAEL CAMPBELL; THE HONORABLE SUSAN BARDEN

SCWCC FILE NO.: 1112328

Samuel Rose,

Employee,
Appellant

v.

JJS Trucking, Uninsured Employer, and
Chris Thompson Services, Upstream Employer,

Employers, and

Bridgefield Casualty Insurance Company and
South Carolina Uninsured Employers' Fund,

Carrier, Defendants.

UPON REMITTITUR FROM THE SOUTH CAROLINA COURT OF APPEALS

Filed: June 24, 2019

STATEMENT OF THE CASE

This matter was before the Single Commissioner on September 23, 2013 in St. Matthews, South Carolina, pursuant to the Defendants' Form 21 requesting permission to terminate compensation, following a previous Commission Order finding that the Claimant sustained an injury by accident on August 10, 2011 and was entitled to a medical evaluation to determine the extent of his injuries, as well as ongoing temporary total disability compensation. The Claimant argued that he had not reached maximum medical improvement and was entitled to ongoing compensation or, in the alternative; the Claimant argued he was permanently and totally disabled.

Following the hearing, on November 8, 2013, the Defendants, Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company, by and through their attorney, learned for the first time that the Claimant had an ongoing third-party claim arising out of the August 10, 2011 accident pending in the Charleston County Court of Common Pleas. On November 12, 2013, the Defendants filed a Motion to Introduce Newly Discovered Evidence, specifically the Claimant's pleadings in connection with the third-party claim he filed in the Charleston County Court of Common Pleas on February 20, 2013. The Defendants argued that this newly discovered evidence was relevant to the determination of the issues pending before the undersigned Commissioner, because the record reveals that the Claimant failed to file a Form S-2 with the Workers' Compensation Commission, the employer, or the carrier within thirty days after filing his third-party claim and, to date, has never filed a Form S-2. As a result, the Defendants argue that the Claimant was not entitled to additional benefits under the Workers' Compensation Act as a matter of law for failure to comply with the requirements

of S.C. Code Ann. § 42-1-560. The Claimant filed a Motion in Opposition on November 21, 2013 and Motion to Introduce Newly Discovered Evidence on December 20, 2013, which sought to introduce evidence of a voluntary dismal of Claimant's third-party claim. The Defendants' Motion was granted by Administrative Order dated January 3, 2014 and the Claimant's third-party pleadings were admitted into evidence and made part of the record in this case. Claimant's Motion in Opposition and Motion to introduce the voluntary dismissal were denied.

On September 2, 2014, the Hearing Commissioner issued a Decision and Order that held Defendant had no liability for any additional benefits under the SC Workers' Compensation Act following the commencement of the third-party action on February 20, 2013. The Appellate Panel affirmed the Hearing Commissioner by way of Decision and Order dated February 8, 2016. Claimant appealed the Decision and Order of the Appellate Panel to the South Carolina Court of Appeals, and on April 18, 2018, the Court of Appeals found that Claimant's stipulation of dismissal should have been allowed into evidence and as such, the Hearing Commissioner's finding that Claimant's claim was barred was in error. The SC Court of Appeals reversed the Order of the Commission and remanded the matter back to the Commission for proceedings consistent with the opinion.

Upon Remittitur to the Commission, the matter was assigned back to the Single Commissioner on July 16, 2018 for further proceedings consistent with the opinion of the Court of Appeals. The parties appeared via telephone conference with the Single Commissioner on April 25, 2019 wherein Claimant's counsel requested the Single Commissioner be recused on the basis that the Single Commissioner had previously heard the matter and ruled against the Claimant. The Motion for Recusal was granted on April 29, 2019 via email correspondence to the parties. Jurisdiction of

this matter now rests with the Appellate Panel of the Full Commission pursuant to the original Remittitur from the SC Court of Appeals.

EVIDENCE SUMMARY

The Claimant testified on his own behalf. At the time of the hearing, the Claimant, Samuel Rose, was 43 years old. He is a high school graduate and worked for J.J.S. Trucking for approximately six months. (Hrg. Transcript p. 17, ll. 18-25). The Claimant was rear ended on August 10, 2011 while traveling on I-26, allegedly injuring his head, neck, back, and legs. (Hrg. Transcript p. 19, l. 17- p. 20, l. 23).

The Claimant testified that he is currently experiencing stiffness and throbbing pain in his neck that radiates to his shoulders, arms, and head. (Hrg. Transcript p. 28, ll. 1-10). He is also experiencing numbness in his arm and fingers and he claims that he can only lift about 25 pounds with his right arm. (Hrg. Transcript p. 28, ll. 14-25). He stated his left arm is worse than his right. (Hrg. Transcript p. 29, l. 1- p. 30, l. 4).

Regarding the Claimant's lower back, he testified that he currently experiences throbbing, radiating pain in his lower back near his spine. (Hrg. Transcript p. 30, ll. 10-18). He testified that his back is fine when he is moving, but hurts when he stops. (Hrg. Transcript p. 31, ll. 2-10).

The Claimant also testified that his right leg occasionally gives out and swells. (Hrg. Transcript p. 31, ll. 15-18). His knee sometimes hurts, but not always. (Hrg. Transcript p. 31, ll. 17-24). He was previously diagnosed with Osgood-Schlatter's Disease, but he claims he was not experiencing any pain in his right knee at the time of the accident. (Hrg. Transcript p. 32, ll. 4-10).

The Claimant also testified that the back of his head swells up, and he constantly has headaches, dizziness, and blurred vision. (Hrg. Transcript p. 32, ll. 11-17). The Claimant further testified that he did not believe he could go back to work in his current condition because he believes he cannot take the vibrations of driving the truck or doing the pre-trip inspection. (Hrg. Transcript p. 33, ll. 3-10).

On cross-examination, the Claimant testified that he fell down a flight of stairs at his mother's house in November of 2011 and again in January of 2012 and re-injured his back and neck on both occasions. (Hrg. Transcript p. 35, ll. 2-7). The Claimant admitted he went to Tri-County Spinal Care, but he initially stated it was only for pain management. (Hrg. Transcript p. 35, ll. 14-23). After further questioning, the Claimant denied receiving treatment, but later he admitted that he had received injections and MRI's and x-rays had been taken. (Hrg. Transcript p. 35, ll. 6-19).

The Claimant also admitted that he currently carries his cane in the wrong hand, his right hand, even though the doctors advised him that he needs to carry the cane in his *left* hand if he is actually having *right* knee pain. (Hrg. Transcript p. 38, l. 16 – p. 39, l. 7). He also testified that he did not remember Dr. Wildstein telling him that his complaints were out of proportion with what the physical exam showed. (Hrg. Transcript p. 39, ll. 21-25).

The Claimant admitted that he has not applied for any jobs or even looked for work anywhere. (Hrg. Transcript p. 42, ll. 9-14). He also testified that he has not been incarcerated again since the last hearing. (Hrg. Transcript p. 42, l. 23 – p. 43, l. 5). He admits that he was incarcerated after the August 10, 2011 accident.

Upon further cross-examination, the Claimant testified that he believes he needs the cane for dizziness, which he relates to his headaches. (Hrg. Transcript p. 44, l. 14 – p. 45, l. 14). The Claimant was also forced to admit that, despite his testimony that "nothing's been done" for him, Dr. Abel's records indicate the Claimant saw him 42 times. (Hrg. Transcript p. 45, l. 24 – p. 46, l. 4). He was also forced to admit that he has been treated and evaluated Dr. Kellett, Dr. Wildstein, Dr. Wills, Dr. Poletti, and Dr. Jones and he has received both injections and pain medicine. (Hrg. Transcript p. 46, ll. 8-20).

On re-direct examination, the Claimant testified that Dr. Wildstein said he might potentially benefit from a one level anterior cervical discectomy and fusion. (Hrg. Transcript p. 50, ll. 2-24). The Claimant also testified he was feeling depressed even though depression was never raised in his Form 50 or his response to the Form 21 submitted by the Defendants. (Hrg Transcript p. 51, l. 10 – p. 52, l. 10).

Defendants submitted the following APA submissions as evidence: Medical records from Gregory M. Jones, M.D. (APA pp. 1-4); JJS Trucking Certificate of Insurance (APA p. 5); Deposition of Sedrick Smalls (APA pp. 6-17); Deposition of Samuel Rose (APA pp.18-28); Petition to Transfer Liability (APA pp. 29-33); SCWCC Form 18 (APA pp. 34); SLED (APA pp. 35-42); and Third-Party Complaint – Charleston Common Pleas (Exhibit A to 11/12/13 Motion to Introduce Newly Discovered Evidence).

The Claimant submitted the following APA submissions as evidence: Medical records from Stuart M. Leon, M.D. (APA pp. 43-44); Dr. Andrew Conrad, M.D. (APA pp. 45-47); Christopher Erikson, M.D. (APA pp. 48-49); Peter White, M.D. (APA pp. 50-51); Alan Abel,

M.D. (APA pp. 52-72); Michael Rissing, M.D. (APA pp. 73-74); Cameron Willis, D.C. (APA pp.75-76); Richard Kellett, M.D. (APA pp. 77-90); Troy Marlow, M.D. (APA pp.91-92); Michael Wildstein, M.D. (APA pp. 93-96); Donald Olofsson, D.O. (APA pp.97-98); Steven Poletti, M.D. (APA pp. 99-100); Traffic Collision Report SCHP (APA pp. 101-104); Statement of Account - Dr. Abel (APA pp. 105-107); Statement of Account – Tricounty Spinal Care (APA pp. 108-111); Statement of Account – Southeastern Medical Solutions (APA p. 112); and Stipulation of Dismissal (Exhibit 2 to 12/20/13 Motion to Introduce Newly Discovered Evidence).

DISCUSSION

Upon remittitur from the Court of Appeals, the undersigned Appellate Panel reviewed this matter as a whole including all of the testimony, medical records and other evidence presented at the Single Commissioner's September 23, 2013 hearing on the merits of Defendants' Form 21 Request for Hearing as well as all exhibits to post-hearing motions filed with the Hearing Commissioner. Based on the preponderance of the evidence WE, THE APPELLATE PANEL, HEREBY MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

FINDINGS OF FACT OF THE APPELLATE PANEL

1. By Order of the South Carolina Court of Appeals, Claimant filed a voluntary dismissal on December 5, 2013, after the date of the Single Commission Hearing, and as such, the voluntary dismissal leaves the situation as though no suit had ever been filed. As a result, there is no violation of S.C. Code Ann. § 42-1-560.
2. As to the merits of the claim, the parties originally appeared for a hearing before Commissioner McCaskill on May 15, 2012, which resulted in a Decision and Order of the Single Commissioner on August 23, 2012. The August 23, 2012 Decision and Order was appealed to the Full Commission and on May 15, 2013, the Appellate Panel

entered a Decision and Order, which was ultimately unappealled and is now the law of the case.[1]

3. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Samuel Rose was an employee of JJS Trucking on August 10, 2011.

4. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Claimant sustained compensable injuries to his head, [right] knee, [right] leg, back, and neck arising out of and in the course of his employment with JJS Trucking.

5. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Claimant has an average weekly wage of $650.00 and a compensation rate of $433.34.

6. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, on or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.

7. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, On August 10, 2011, JJS Trucking, LLC was operating without proper insurance as required by the Workers' Compensation Act.

8. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, on August 10, 2011, JJS Trucking, LLC was operating as a subcontractor for Chris Thompson Services, LLC, and is an "upstream employer" pursuant to §42-1-415.

[1] The issue of whether the Commission erred as a matter of law in failing to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415 was preserved for appeal by Defendants Christ Thompson, LLC and Bridgefield Casualty's subsequent Motion and resulting appeals to the Full Commission and the S.C. Court of Appeals. By Order of the Court of Appeals dated January 28, 2015, Defendants' appeal was dismissed as not immediately appealable and preserved for further adjudication or appeal after a final decision of the Commission.

9. Pursuant to the May 15, 2013 Decision and Order of the Appellate Panel, Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.

10. As a result of the May 15, 2013 Appellate Panel Decision and Order, Claimant was found to not be at maximum medical improvement and Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company were ordered to provide Claimant with "an evaluation to determine the extent of his injuries" and further ordered that Claimant was "entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier." The Full Commission also found that Claimant was entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reached maximum medical improvement.

11. After a review of the evidence as a whole, we find Defendants Thompson Services, LLC and Bridgefield Casualty Insurance Company provided Claimant with the medical evaluation pursuant to the original Single Commissioner Order dated August 23, 2012 and affirmed with amendments by the May 15, 2013 Decision and Order of the Appellate Panel. This evaluation with Dr. Greg Jones of Charleston Spine & Physical Medicine dated March 20, 2013 and updated on April 16, 2013, address Claimant's neck, back and right knee complaints. Dr. Jones reviewed Claimant's history of treatment modalities including epidural blocks to the lumbar spine, physical therapy, epidural injections and right-sided cervical facet injections to the cervical spine, and medications. Dr. Jones opined Claimant would likely not benefit significantly from single level fusion C5-6 as there was no evidence of definitive cervical radiculopathy.

(Defendants' APA p. 4). Dr. Jones placed Claimant at maximum medical improvement as of March 20, 2013.

12. During the same time as his evaluation with Dr. Jones, Claimant continued treating on his own with his family physician, Dr. Alan N. Abel. While Dr. Abel had initially referred Claimant to a neurosurgeon for evaluation of surgery on his neck back in October of 2012, after reviewing Dr. Jones' records, Dr. Abel opined that he was "essentially in agreement with this interpretation." Dr. Able also placed Claimant at maximum medical improvement and noted he was "not optimistic that [Claimant] will improve to any significant degree in the future." Dr. Abel noted that "perhaps" Claimant could benefit from physical therapy and also referenced a EMG to see if there is nerve decompression in his neck requiring cervical intervention. (Claimant's APA p. 70).

13. On July 15, 2013, Claimant obtained his own Independent Medical Evaluation with Dr. Steven C. Poletti who reviewed Claimant's MRI scans of the cervical spine that showed two-level disc herniations at C5-6 and C6-7 as well as bilateral C6 nerve root compression. Dr. Poletti diagnosed Claimant with cervical disc herniation with spondylosis, cervical radiculopathy, low back pain of indeterminate etiology, and history of right knee contusion/impaction fracture. Dr. Poletti opined Claimant required an evaluation by a knee specialist and that surgery was indicated for Claimant's two-level cervical disc disease with pain radiating into his arm. Dr. Poletti also opined Claimant needed an MRI scan of his lumbar spine.

14. Upon review of the preponderance of the evidence as a whole, we find Claimant is not at maximum medical improvement for his August 10, 2011 work injury. We give

greater weight to the medical opinions of Dr. Poletti than we do the medical opinions of Dr. Jones. Specifically, Dr. Poletti agreed with Claimant's prior treating physician, Dr. Wildstein, who had previously recommended a cervical fusion. In addition, it is important to note Dr. Jones is a physical medicine and rehabilitation doctor, as opposed to Dr. Wildstein and Dr. Poletti, both of whom are orthopaedic surgeons specializing in the spine. We give great weight to Dr. Poletti's assessment of Dr. Dr. Jones's medical opinion wherein Dr. Poletti stated, "a non-surgical recommendation from a non-surgeon doesn't really mean all that much to me." (Claimant's APA pp. 99-100).

15. With regards to Claimant's cervical spine, we find the opinions of the two orthopaedic spine surgeons, Drs. Wildstein and Poletti, outweigh the medical opinion of Dr. Jones. As such, we find Claimant is entitled to additional medical treatment to include the recommended cervical fusion as recommended as it has been shown by a preponderance of the evidence that it would tend to lessen his period of disability.

16. We find Defendants had the surgical recommendations of Dr. Wildstein and Dr. Poeltti at time of the September 23, 2013 hearing before the Hearing Commissioner and elected to deny the surgery, which was their right, and rely on the medical opinion of Dr. Jones. As such, we find the Claimant has shown good cause to direct his own medical care and hereby appoint Dr. Steven C. Poletti, or other referral from Dr. Poletti, as the authorized provider for Claimant's cervical and lumbar spine treatment.

17. We find Claimant is entitled to an evaluation with an orthopaedic surgeon who specializes in the knee/lower extremity to obtain updated MRI scans and an assessment of Claimant's continued complaints of pain in his right knee. This finding is based upon the preponderance of the evidence including the recommendation of Dr. Poletti,

of which we give great weight, as well as the testimony of the Claimant. Defendants retain the right to direct Claimant's medical treatment as it relates to his right knee injury.

18. Claimant is entitled to temporary total disability benefits from August 11, 2011 to the present and continuing until he is placed at maximum medical improvement. Claimant is entitled to a lump-sum award of any back payment of temporary total disability benefits due.

19. All other issues are held in abeyance and preserved for future adjudication or appeal.

CONCLUSIONS OF LAW

1. The parties to this proceeding are subject to and bound by the provisions of the South Carolina Workers' Compensation Act.

2. A voluntary dismissal leaves the situation as though no suit had ever been filed. Following this rule, Claimant's voluntary dismissal of his of his third party claim made the claim a nullity and S.C. Code Ann. Sec. 42-1-560 is not applicable. As a result, there is no violation of S.C. Code Ann. Sec. 42-1-560 when Claimant's third-party claim is treated as never being filed. *See Callahan v. Beaufort Cty. Sch. Dist.*, 375 S.C. 92, 97, 651 S.E.2d 311, 314 (2007).

3. ". . . [O]ur courts have clearly held the natural consequences flowing from a compensable injury, absent an independent intervening cause, are compensable." Mullinax v. Winn-Dixie Stores, 318 S.C. 431, 458 S.E. 2d 76, 79 (Ct. App. 1995); Burnette v. City of Greenville, 401 S.C. 417, 737 S.E. 2d, 200, 206 (Ct. App. 2012).

4. Claimant is not at maximum medical improvement for his injuries to his neck (cervical spine), back (lumbar spine), and right leg (knee).

5. Pursuant to S.C. Code Ann. § 42-15-60 and S.C. Code Ann. Section 42-15-80, Claimant is entitled to treatment for his neck, back, and right knee. Defendants are liable for Claimant's future treatment with Dr. Poletti or any referral made by Dr. Poletti for Claimant's neck and back injuries. Defendants are to direct Claimant's medical treatment for his right knee.

6. Claimant is entitled to temporary total disability benefits from August 11, 2011 through the present and continuing until he is placed at maximum medical improvement. Claimant is entitled to a lump-sum payment of any back-owed TTD accrued during litigation.

ORDER AND AWARD

Based upon the above Findings of Fact and Conclusions of Law set forth herein,

IT IS HEREBY ORDERED Claimant is not at maximum medical improvement for his injuries to his neck, back, and right knee.

IT IS HEREBY ORDERED Claimant is entitled to additional medical treatment to the neck and back, to include a cervical fusion and follow-up treatment with Dr. Steven C. Poletti or other referral made by Dr. Poletti.

IT IS HEREBY ORDERED Claimant is entitled to an evaluation of his right knee, including an updated MRI, with an orthopaedic surgeon who specializes in the knee/lower extremity at the direction of Defendants.

IT IS HEREBY ORDERED Claimant is entitled to temporary total disability benefits from September 11, 2011 through the present and continuing until he is placed at maximum medical improvement. Claimant is entitled to a lump-sum payment for all back-owed TTD benefits as of the date of this Decision and Order

AND IT IS SO ORDERED.

Commissioner T. Scott Beck

Commisioner Michael Campbell

Commissioner Susan Barden

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Valerie D. Deller on June 24, 2019

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JUDICIAL CONFERENCE DECISION AND ORDER

Samuel Rose v Chris Thompson
SCWCC: 1112328
Commissioner: Taylor
Panel : Beck, Campbell, Barden

This matter was heard before the South Carolina Workers' Compensation Full Commission in Judicial Conference on a **Motion to Reconsider**. The Commissioners considered the matter and ordered the matter handled in the following manner:

IT IS, THEREFORE, ORDERED the pending appeal of the Administrative Order of the Commission is hereby;
_____ Dismissed as Interlocutory. _____Set for Oral Argument.

IT IS, THEREFORE, ORDERED the pending motion be, and hereby is;
_____ Granted. ____✓____Denied. _____Dismissed _____Preserved for hearing

BEFORE THE;
_____ Hearing Comm. _____Jurisdictional Comm. _____Full Commission.

IT IS, THEREFORE, ORDERED this matter be, and hereby is; remanded to take such action and enter an Order consistent with the Court's directive.

_____ Remand to Panel as indicated below.
_____Barden _____James _____Taylor
_____Beck _____Campbell _____Wilkerson
_____McCaskill

_____ Remand for Order consistent with the Order of the Court.
_____ Remand to the Hearing Commissioner.
_____ Remand to the Jurisdictional Commissioner.
_____ Other: _____.

_____ Remand: _____ Panel Oral Argument. _____En Banc Oral Argument.

AND IT IS SO ORDERED.

T. Scott Beck, Chair
For the Commission

Columbia, South Carolina
7/15/2019

CONCURRING:	NOT PARTICIPATING:	DISSENTING:
Commissioner Susan S. Barden	_____	_____
Commissioner Melody James	_____	_____
Commissioner Aisha Taylor	__x__	_____
Commissioner Avery Wilkerson	_____	_____
Commissioner Michael Campbell	_____	_____
Commissioner Gene McCaskill	_____	_____

CERTIFICATE OF SERVICE
THIS IS TO CERTIFY THE UNDERSIGNED HAS THIS DATE SERVED THIS ORDER IN THE ABOVE ENTITLED ACTION UPON ALL PARTIES ELECTRONICALLY OR BY DEPOSITING A COPYHEREOF, POSTAGE PAID, IN THE UNITED STATES MAIL

This 15 day of July, 2019.

By: Valerie D Dellen
SCWCC Judicial Department

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO.: 1112328

Samuel Rose, Claimant, v. JJS Trucking and Chris Thompson Services, LLC., Employers, and SC Uninsured Employers' Fund and Bridgefield Casualty Ins. Company, Carriers, Defendants,	**ORDER DENYING MOTION TO QUASH SUBPOENA AND ORDERING ATTENDANCE OF ADJUSTER AND CORPORATE OFFICER AT HEARING**

Defendants, pursuant to Regulation 67-215 of the South Carolina Workers' Compensation Act, filed this Motion to Quash. The Motion was set for argument and heard by the undersigned single Commissioner on May 20, 2022, after proper service on all required parties.

1. On August 19, 2021, Claimant filed and properly served a Petition for Order and Rule to Show Cause seeking the following: (1) that Defendants be ordered to comply with the Commission's order dated May 15, 2013 ordering that Claimant was "entitled to ongoing medical treatment" with Dr. Steven C. Poletti and pay back TTD benefits for a duration of 288.2857 weeks from January 9, 2014 until July 29, 2019 in the amount of $125.482.87; (2) ordered to pay a 10% penalty for late payment; (3) ordered to pay attorney's fees and costs for bringing this motion; (4) ordered to pay an appropriate penalty to Claimant for compensatory contempt; and (5) such other sanctions as the Commission deems appropriate.

2. Claimant sought to introduce evidence to support their claim of compensatory

contempt and wilful refusal to comply with an order of the Commission

3. Claimant properly served the adjuster assigned to the file, Tracy Hayes, with a Form 27 subpoena requiring Ms. Hayes to appear and testify at the May 20, 2022 hearing. Included with the subpoena was a check for mileage and the $25.00 witness fee as well as a printout from Google Maps providing the route and distance to the hearing location.

4. On May 12, 2022, Defendant Carrier filed a Motion to Quash this subpoena. Arguments were heard on the record before the undersigned Commissioner on May 20, 2022.

5. At the hearing, Claimant argued that the Commission has authority to subpoena a party to a hearing even if the party resides out of state. Defendant took the position that the adjuster is not a corporate officer and cannot be compelled to attend a proceeding outside her state of residence (Georgia). Defendants argued:

> . . . I believe the legal side says that if you wish to compel the testimony of someone who works and resides in another state, who is neither a party or an officer of a party or an owner of a party, which [the adjuster] does not meet any of those requirements, then his rights under the Rules of Civil Procedure and under our statutes and the statutes of Georgia, given the right to depose her where she works or resides in the state of Georgia; it does not give him the legal authority to command her presence here and *I think that's the difference from what your experience was, she is not an officer or managing agent or an owner of a party nor is she a party.* [Tr. Page 42, line 20-page 43, line 11 (emphasis added)].

6. Defendants subsequently withdrew their motion to quash the subpoena.

7. The Commission has authority to issue a subpoena to a party's representative to attend a hearing. Bridgefield Casualty is a named party to this case. I find a corporate officer (CEO or COO) is Bridgefield Casualty's representative.

8. The Commission may issue an Order and Rule to Show Cause requiring an appearance before a Commissioner under regulation 67-1404.

9. The Commission possesses specific statutory power to subpoena witnesses under

§ 42-3-140.

10. Claimant has met his burden of showing that the testimony of these witnesses is necessary and appropriate as to the issues raised in the Petition for Rule and Order to Show Cause.

ORDER

IT IS THEREFORE ORDERED that adjuster Tracy Hayes shall appear at this rescheduled Rule to Show Cause hearing (~~date yet to be determined~~); September 20th 2022 @ 10:00 AM

IT IS FURTHER ORDERED that Defendants shall produce a corporate officer (CEO or COO) who shall appear at this rescheduled Rule to Show Cause hearing (~~date yet to be determined~~); and September 20th 2022 @ 10:00 AM

IT IS SO ORDERED.

Avery B. Wilkerson, Jr.
Commissioner
S.C. Workers' Compensation Commission

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Melani Roark on July 21, 2022

Order served via USPS:

JJS TRUCKING, LLC 137-A GORDON STREET CHARLESTON, SC 29403
Stephen B. Samuels Samuels Reynolds Law Firm 1320 Richland Street Columbia, SC 29201
Lisa C. Glover SC Uninsured Employers' Fund P:O Box 1815 Lexington, SC 29071
Kirsten L. Barr Trask & Howell, LLC PO Box 2167 Mt. Pleasant, SC 29465
Timothy B. Killen Holder Padgett Littlejohn & Prickett, LLC 945 Houston Northcutt Boulevard Mount Pleasant, SC 29464

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Samuel Rose, Employee, Respondent,

v.

JJS Trucking, Uninsured Employer,

and

Chris Thompson Services, Upstream Employer, Bridgefield Casualty Insurance Company, and South Carolina Uninsured Employers' Fund, Carrier, all of whom are Appellants.

Appellate Case No. 2019-001357

Appeal From The Workers' Compensation Commission

Unpublished Opinion No. 2022-UP-325
Heard June 9, 2022 – Filed August 10, 2022

AFFIRMED

Timothy Blair Killen, of Holder, Padgett, Littlejohn & Prickett, LLC, of Mt. Pleasant, Amy V. Cofield, of Amy V. Cofield Attorney at Law, of Lexington, and Lisa C. Glover, of South Carolina State Accident Fund, of Lexington, for Appellant South Carolina Uninsured Employers' Fund.

Kirsten Leslie Barr, of Trask & Howell, LLC, of Mt. Pleasant, for Appellants Chris Thompson Services, LLC and Bridgefield Casualty Ins. Co.

Stephen Benjamin Samuels, of Samuels Reynolds Law Firm LLC, of Columbia, for Respondent.

PER CURIAM: Three entities appeal Samuel Rose's award from the appellate panel of the Workers' Compensation Commission. Those entities are Chris Thompson Services, Bridgefield Casualty Insurance Company, and the South Carolina Uninsured Employers' Fund.

Appellants' arguments can be grouped into two main issues. The first is whether this claim's procedural history barred the commission from addressing Rose's entitlement to benefits. The second is whether substantial evidence supports the commission's awards of future medical benefits and temporary total disability (TTD) benefits. We affirm. The claim is not barred and the record supports the award.

ALLEGED PROCEDURAL BAR

Appellants argue the commission did not have the authority to address Rose's entitlement to benefits because a series of "conclusions of law" in a single commissioner's 2014 order are the law of the case. The 2014 order found Rose failed to comply with section 42-1-560 of the South Carolina Code (2015)—commonly known as the "third-party statute"—and that Rose forfeited his workers' compensation claim by not providing the commission and the parties with proper notice of a related tort suit. Rose appealed that order. A panel of this court reversed.

We respectfully disagree with Appellants' argument. The only sensible reading of the 2014 order is that it dismissed the claim based on the argument that Rose violated the third-party statute. Appellants point us to conclusions of law summarily stating Rose is not entitled to benefits as of the date he filed a counterclaim in the tort suit under sections 42-9-10, -20, -30, -210, -260, and 42-15-60 of the South Carolina Code (2015). Those are, respectively, the statutes on total disability, partial disability, scheduled recovery, payments made by an

employer when they were not due, temporary total disability, and medical treatment.

Nothing in the 2014 order suggests the commission adjudicated that Rose had no viable claim because he did not prove a claim under these particular statutes. The order's entire thrust was that Rose had no claim under these statutes because (in the commission's view) the third-party statute precluded Rose from having any claim at all. There is no doubt about this. The order announced Rose "failed to satisfy the [statute's] mandatory requirements" and "[a]s a result, [Rose] is not entitled to additional benefits under the Act." A previous panel of this court correctly determined that this view was wrong and that it was an abuse of discretion for the commission to blind itself to Rose's attempt to cure the lack of notice and follow the third-party statute. The commission followed the proper course on remand, which was to adjudicate the merits of this case.

Appellants make a related argument that because these conclusions were the law of the case, they lacked notice that the commission would adjudicate the claim's merits on remand.

These conclusions were not the law of the case, as we have explained. They followed from, and were controlled by, the commission's finding on the third-party statute. Appellants argue that Rose did not appeal these conclusions when he appealed the 2014 order. This is not correct. The conclusions were specifically listed in the ninth exception of Rose's request for panel review, recited on pages six and seven of the commission's February 8, 2016 order.

We must work through one more sub-part of the argument that this case's procedure ran amok on remand. This claim was tried in 2013 on Appellants' request to stop paying temporary total disability benefits. The commission did not decide the merits of that request until years later. That delay was because—as noted above—Appellants successfully urged the commission to find that the third-party statute barred Rose's claim.

We respectfully reject Appellants' argument that the commission followed a defective procedure once this court reversed and remanded for this claim's adjudication. There was already a trial record on the stop-pay request. With the skirmish over the third-party statute behind everyone, the case needed an order on the merits.

After this court remanded, the commission issued an administrative order assigning the case to a single commissioner. The record contains inquiries to the single commissioner about whether she would take additional evidence or whether she would rely on the trial record from 2013. Even so, there was no affirmative request by any of the parties to present additional evidence and reopen the record.

The single commissioner ultimately recused herself and notified the parties that an appellate panel would consider the case. Here again, there was no affirmative request by any of the parties to present additional evidence. There was also no objection to this procedure until after the appellate panel issued its order on the merits. We think the lack of any pre-order objection renders any complaints about the pre-order procedure either waived or not preserved for our review. *See Patterson v. Reid*, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995) (explaining an issue a party raises for the first time in a petition for rehearing but could have raised before is not preserved).

MERITS OF THE COMMISSION'S ORDER

Appellants argue there are several errors with the commission's decision on the merits. We respectfully disagree and will deal with the arguments in turn.

The finding that Rose is entitled to additional medical benefits is supported by substantial evidence. *See* S.C. Code Ann. § 42-15-60(A) (2015) (stating a claimant may receive medical treatment beyond ten weeks when the treatment "will tend to lessen the period of disability as evidenced by expert medical evidence stated to a reasonable degree of medical certainty").

An orthopedic surgeon gave the following opinions supporting the finding Rose is entitled to back surgery, a knee evaluation, and an evaluation of his lower back: (1) Rose had two-level disc disease and pain radiating into his arm consistent with cervical radiculopathy, which clearly indicated surgical intervention; (2) Rose clearly had significant knee pain and required an evaluation by an orthopedic surgeon specializing in the knee; and (3) Rose had low back pain of indeterminate etiology and needed an MRI scan of his lumbar spine.

Although Appellants' preferred physician held different opinions, the commission found the orthopedic surgeon was more credible, which we cannot discount. *See Corbin v. Kohler Co.*, 351 S.C. 613, 624, 571 S.E.2d 92, 98 (Ct. App. 2002) (explaining the commission determines the weight and credibility to afford expert medical testimony); *Gadson v. Mikasa Corp.*, 368 S.C. 214, 221-22, 628 S.E.2d

262, 266 (Ct. App. 2006) (explaining the commission's findings of fact are conclusive when there is conflicting medical evidence); *Clark v. Aiken Cnty. Gov't*, 366 S.C. 102, 107, 620 S.E.2d 99, 101 (Ct. App. 2005) (explaining this court cannot override the commission's judgment with respect to the weight and credibility of evidence on questions of fact). We are convinced this satisfies the low bar for substantial evidence. *See Lockridge v. Santens of Am., Inc.*, 344 S.C. 511, 515, 544 S.E.2d 842, 844 (Ct. App. 2001) (explaining an award is supported by substantial evidence if reasonable minds could reach the same conclusion as the commission); *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984) ("Substantial evidence is something less than the weight of the evidence and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.").

We respectfully reject Appellants' arguments that the order is vague, unsupported by evidence stated to a reasonable degree of medical certainty, and impermissibly orders an "evaluation" as opposed to medical "treatment."

The order is not vague. It accounts for the varying opinions of the different physicians, explains that the commission gave greater weight to the orthopedic surgeon's opinion, and is supported by the orthopedic surgeon's report, which plainly states, "I . . . hold my opinions true, most probable, to a reasonable degree of medical certainty." A statute explains that the commission can order an evaluation as well as treatment. *See* § 42-15-60(A) ("The refusal of an employee to accept any . . . treatment *or evaluation* when provided by the employer or ordered by the commission bars the employee from further compensation . . . ." (emphasis added)).

We likewise reject the argument that the commission erred in designating the orthopedic surgeon to direct Rose's future neck and back care. Appellants' assert the commission improperly deprived them of their right to choose Rose's physician, but Appellants' preferred physician had opined Rose was not at the point of maximum medical improvement and did not need any future medical treatment—positions with which the commission disagreed. The commission is empowered to supervise and direct the treatment process. *See* § 42-15-60(A) (stating an employee ordinarily must accept the employer-chosen physician, but the commission can order otherwise if good cause is shown and require a change in medical service); *Martin v. Rapid Plumbing*, 369 S.C. 278, 292, 631 S.E.2d 547, 555 (Ct. App. 2006) (holding the commission's designation of a physician was proper because the employer failed to provide treatment that the employee felt he

needed); *Clark*, 366 S.C. at 114, 620 S.E.2d at 105 (holding the commission was within its authority to designate a physician because the employer-chosen physician's treatment was unsuccessful). It would at least be odd—and maybe even silly—for the commission to order that Rose was entitled to back surgery but designate as Rose's doctor a physician who believed Rose did not need surgery.

Because we do not take issue with the surgeon's designation as the authorizing treating physician for Rose's back, we have no issue with the commission ordering Appellants to pay for causally related treatment. We respectfully reject Appellants' argument that the award here is similar to the award in *Rice v. Froehling & Robertson, Inc.*, 267 S.C. 155, 163, 226 S.E.2d 705, 708 (1976) (holding an employer and insurance carrier were entitled to a more definite order to protect an argument that certain future medical care was unnecessary or did not tend to lessen the period of disability). This award designated the surgeon as Rose's authorized treating physician for Rose's neck and back, empowered the surgeon to treat those injuries, and empowered the surgeon to refer Rose to other providers if necessary. Workers' compensation cases frequently involve disputes over whether a particular treatment is appropriate even though it has been recommended. If such a dispute arises in this case, the parties are free to litigate that issue in front of the commission.

Appellants argue the commission should have addressed whether Rose's two falls sometime after his work-related automobile wreck were the proximate cause of his problems. We disagree. This was not an issue on Appellants' Form 21 or Form 58, and Appellants offered no evidence other than conjecture supporting the view that these falls were intervening events that caused Rose's ailments. *See S.C. Dep't. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) (explaining an issue raised for the first time on appeal is not preserved for appellate review); *Lockridge*, 344 S.C. at 515, 544 S.E.2d at 844 (explaining appellate courts look for substantial evidence when reviewing workers' compensation cases).

The finding that Rose is entitled to TTD is likewise supported by substantial evidence. *See* S.C. Code Ann. § 42-9-260 (2015) (stating an employee who is out of work due to an injury he sustained at work may receive TTD until he reaches maximum medical improvement). While it is regrettable the trial record is from 2013, there was plenty of evidence that Rose was not authorized to return to work until he received additional treatment. As noted above, the commission chose to primarily credit the orthopedic surgeon, who believed Rose should be on off-duty status pending treatment. *See Lee v. Bondex, Inc.*, 406 S.C. 97, 102, 749 S.E.2d

155, 157 (Ct. App. 2013) (explaining a claimant must be unable to do the job he performed before his injury to receive TTD). Accepting the commission's credibility determinations as we are required to do, we find the orthopedic surgeon's opinion constituted substantial evidence in support of the TTD award. *See Lockridge*, 344 S.C. at 515, 544 S.E.2d at 844 (explaining how expansively substantial evidence is defined); *Palmetto All., Inc.*, 282 S.C. at 432, 319 S.E.2d at 696 (further explaining the substantial evidence standard's broad scope); *Corbin*, 351 S.C. at 624, 571 S.E.2d at 98 (explaining the importance of letting the commission decide how much weight and credibility to afford expert medical testimony); *Gadson*, 368 S.C. at 221, 628 S.E.2d at 266 (explaining how much weight and credibility the commission affords expert medical testimony is conclusive); *Clark*, 366 S.C. at 108, 620 S.E.2d at 102 (explaining an appellate court cannot substitute its opinion on the weight and credibility of expert medical testimony for the commission's).

The last point we must address is related to TTD and may be convoluted to explain. This case was tried in 2013 and decided in 2019. The order found Rose was not at maximum medical improvement and, among other things, found that Appellants could not terminate TTD. The 2019 order required Appellants to resume TTD payments and held that they owed Rose a lump sum for any back-owed TTD.

Appellants argue the commission foreclosed them from presenting evidence that Rose's temporary total disability may have ended sometime between 2013 and 2019. They say that when the case was remanded to the commission from this court in 2018, the commission should have confined itself to adjudicating Rose's "status" as of 2013.

The commission did not decide anything more than what it was supposed to decide. As noted above, Appellants did not ask the commission when this case was remanded for the opportunity to update the record from the 2013 trial or to amend their stop pay request and present evidence that Rose's condition had improved and that he was capable of working. Granted, the situation was unusual, but the time to sort out and litigate (if necessary) the proper procedure was before the commission ruled on the merits, not after. The case was tried on Appellants' request to stop TTD payments. The commission ruled against Appellants on that request. The result of that ruling necessarily meant Appellants could not stop paying TTD and that they owe it until the commission authorizes them to stop paying. *See* § 42-9-260(F) (governing termination of TTD after one hundred and fifty days).

CONCLUSION

For these reasons, the appellate panel's order is

AFFIRMED.

THOMAS, MCDONALD, and HEWITT, JJ., concur.

HEARING DATE: **February 14, 2023**
WCC FILE NO.: **1112328**

CLAIMANT: **Samuel Rose**
EMPLOYER: **Chris Thompson Services, LLC**
JJS Trucking, LLC

CARRIER: **SC Workers Compensation Uninsured Employers Fund**
Bridgefield Casualty Insurance Company

ATTORNEY(P): **Stephen B. Samuels**
ATTORNEY(D): **SCWCUEF: Matthew J. Story/Timothy B. Killen/Lisa Glover**
Bridgefield Casualty Insurance Company: Kirsten L. Barr

COURT REPORTER:

Gloria Davis
d/b/a Palmetto Court Reporting
321 Mac Circle
Lexington, SC 29073
palmettocrtrptng@aol.com
(803) 358-0515

emailed on March 15, 2023

DIRECTIVES

Attorney Story, please draft the order consistent with the below findings and return to this office within 30 days:

- **Position of each on the record**

1. Please note in the Order the date these instructions were sent to the parties.
2. Voss v. Ramco, Inc.; Hopper v. Terry Hunt Const.; Barton v. Higgs; Hardee v. McDowell apply.
3. Tillotson v. Keith Smith Builders unpublished not considered.
4. Didn't supply Certificate of Insurance at time claim was filed. All benefits haven't been paid.
5. Certificate of Insurance 10 month Before accident aren't done in the course of the insurance business. Certificate of Insurance – blank as to job, doesn't note where coverage applies or what job entity, each job would require a certificate of insurance. Court of Appeals case.
6. APA 72 – updated Certificate of Insurance – incomplete
7. For all of the above reasons, carrier fails on all of the above in allowing transfer of liability to UEF.

INSTRUCTIONS: Please let our office know if you have difficulty obtaining a transcript or cannot complete the order within this timeframe. Draft the Order consistent with the above substance of the preceding Findings of Fact; however, you may add additional Findings of Fact consistent with the above ruling. The Order should also include biographical information, information regarding the Claimant's work history and previous medical history, if relevant to the case.

If you need a transcript, order it *immediately* from the court reporter listed above.

Please forward a copy of the proposed order to opposing counsel or *pro se* claimant (1) week before forwarding to my office. Please note in your cover letter whether opposing counsel agrees that the order accurately reflects my ruling, does not agree that the order accurately reflects my ruling, or failed to respond regarding the order.

When submitting the proposed Order to the Commission, please EMAIL to mroark@wcc.sc.gov.
Please only send hard copies of the proposed order when the claimant is *pro se*.

Matters To Include In The Order:

1. **APA Submissions**
2. **Stipulations**
3. **Statement of the Case (contentions of the parties, stated concisely)**
4. **Evidence of the Case (synopsis of the evidence, including testimony and medical reports)**
5. **Findings of Fact – numbered (Do NOT delete any of the above findings, however, the prevailing party may add to support the decision, except regarding credibility, unless I have instructed you to)**
6. **Conclusions of Law (cite applicable statutory sections and case law)**
7. **Award**

Do not address credibility in the Order, unless it has been addressed in the preceding Order Notes.

Commissioner Avery Wilkerson, Jr.
S.C. Workers' Compensation Commission
1333 Main Street, Suite 500
Columbia, SC 29201

State of South Carolina
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE AVERY B. WILKERSON, JR.
SCWCC File No.: 1112328
Samuel Rose,
Claimant,
v.
JJS Trucking and
Chris Thompson Services (statutory employer),
Employers,
and
Bridgefield Casualty Insurance (carrier for the statutory employer) and
SC Uninsured Employers Fund,
Carriers,
Defendants.

Hearing held in Saint George, South Carolina,
on February 14, 2023

Per notice timely and properly served upon all Parties of Interest.

Appearances:	Kirsten L. Barr, Esq., Trask & Howell, LLC Mt. Pleasant, South Carolina, for Employer/Carrier Thompson/Bridgefield. Matthew J. Story of Clawson & Staubes, LLC, Charleston, South Carolina, for South Carolina Uninsured Employers' Fund.
Purpose of Hearing:	To determine issues set forth on Employer/Carrier's Petition to Transfer Liability to the Motion to the South Carolina Uninsured Employers' Fund pursuant to S.C. Code Ann. § 42-1-415
Court Reporter:	Gloria Davis d/b/a Palmetto Court Reporting, 321 Mac Circle, Lexington, South Carolina, (803) 358-0515

Filed:

STATEMENT OF THE CASE

This case arises out of a work injury that occurred on August 10, 2011, when Claimant was involved in a truck accident. Claimant filed his claim on or about September 8, 2011. The current action commenced with the Employer/Carrier Thompson/Bridgefield's (hereinafter, "Thompson") Petition to Transfer Liability to the South Carolina Uninsured Employers' Fund (hereinafter "UEF"), pursuant to S.C. Code Ann. § 42-1-415, filed on or about October 4, 2022. The UEF filed their Return to Petition on or about October 20, 2022, and denied Employer/Carrier's Motion to Transfer.

The position of Thompson is that they paid 500 weeks compensation to Claimant, and that there is ongoing liability for benefits to the Claimant, at this point in time, but that all benefits have been paid to date. Thompson argues that its subcontractor, JJS Trucking, (hereinafter, "JJS") provided a certificate of insurance for worker's compensation coverage at the time it was engaged by Thompson, and that on October 18, 2010, JJS's insurance company, Travelers, issued a certificate of worker's compensation coverage to Thompson for the period covering October 8, 2010, through October 8, 2011, which is signed and dated by David Hayes of Swamp Fox Agency, an authorized representative of Travelers. At a hearing held on May 15, 2012, counsel for Travelers admitted that Travelers gave authority to Swamp Fox Agency to write insurance on behalf of JJS at the time the policy was created and initially bound. Later, due to nonpayment, the policy was canceled, and Thompson was not provided notice of the lapse of coverage prior to Claimant's work injury.

Thompson stipulates that it turned over the certificate of insurance from JJS to the Commission by October 18, 2011. Thompson contends that it reasonably relied on the certificate of insurance from JJS at the time of claimant's accident, and that it provided the Worker's Compensation

Commission and the UEF with the certificate of insurance in October of 2011, and has since provided all benefits due to claimant. Thompson relies on an unpublished decision, *Almazon v. SCUEF,* 2017-UP-124 (March 15, 2017), for the proposition that the documentation of insurance required by SCWCC Reg. 67–415 has limited requirements such that a reasonable person needs to believe that there was coverage available under the certificate.

It is the position of the UEF that all defenses are preserved from the 2012 hearing, and the UEF reasserts all previously raised defenses at the prior hearing in 2012 at this time. As Thompson attempts to shift the responsibility from a private insurance carrier to the UEF, the UEF argues that S.C. Code Ann. § 42-1-415 should be strictly construed. Furthermore, the UEF argues that it is not appropriate for the Commission to make a determination on this issue as the South Carolina Court of Appeals, on January 28, 2015, issued a decision finding the issue of transfer of liability to be interlocutory. The UEF also argues that Thompson is still responsible for ongoing benefits, therefore it is premature to seek a transfer of liability under S.C. Code Ann. § 42-1-415 and *Tillotson v. Keith Smith Builders*, 357 S.C. 554 (2004); that Thompson did not provide the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b), but turned it over 3 months later; that the certificate of insurance provided is blank as to the description and location of operations; that the certificate provided only shows a binder, and does not show policy number; that Thompson's reliance on unpublished decisions is improper: and that South Carolina case law holds that blanks on a certificate of insurance result in an ineffective certificate of insurance, pursuant to *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009). The UEF further argues that as Thompson and JJS formed a new business relationship with each delivery, including the amount of work and rate of pay, and there was no written

agreement between them and so, no term for a certificate of insurance to cover, as the certificate provided contained no description of operations. Thompson further undertook the duty to learn more about the certificate of insurance form to confirm coverage, and that duty would continue.

A hearing was held on February 14, 2023, in St. George, Dorchester County, South Carolina. Present for the hearing were Kirsten L. Barr, Esq. of Trask & Howell, LLC for the Employer/Carrier and Matthew J. Story of Clawson & Staubes, LLC, for the South Carolina Uninsured Employers' Fund. Claimant's counsel, Stephen B. Samuels, of Samuels Reynolds Law Firm, received notice of the hearing, but did not appear with permission of the Single Commissioner. JJS Trucking is currently unrepresented, and was served notice of the Petition, but did not appear.

I. STIPULATIONS

1. This claim was heard before the undersigned Commissioner pursuant to notices timely and properly served on all parties.

2. The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.

3. The Commission's file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.

4. The undersigned Commissioner made all counsel present aware that his daughter-in-law is employed by the law firm defending the UEF and offered to recuse himself. All counsel acknowledged this information and stated that they did not wish the undersigned to be recused.

5. That a prior hearing on this issue was previously held on May 15, 2012, with the participation of all interested parties, and the transcript has been offered into evidence and is being considered by the undersigned.

6. That Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011 (APA 71).

APA SUBMISSIONS

The following medical records, documents, and depositions were submitted by the parties under the Administrative Procedure Act and the Regulations of the Commission, without objection:

On behalf of Thompson per PHB of 1/30/2023

EXH	DESCRIPTION	DATES	APA #
1	Dr. Robert B. Lowery	10/20/22	1-5
2	Dr. Steven C. Poletti	12/19/22	6
3	Secretary of State Record for the Swamp Fox Agency	3/30/94-10/29/15	7
4	Certificate of Liability Insurance	10/18/10	8
5	Medical Paid by Carrier	10/4/11-1/10/23	9-11
6	Sedrick Smalls Depositions Transcript	11/14/11	12-64
7	SCWCC Coverage & Compliance	3/30/12	65-83
8	SCWCC Transcript of Proceedings	5/15/12	84-101
9	SCWCC Form 19	9/9/22	102
10	DOI Records for David W. Hayes Swamp Fox Agency	1/30/23	103-105
11	Charleston County Property Record for 137A Gordon Street	1/30/23	106-107

Documents also reviewed from Hearing of 5/15/2012 on behalf of Thompson

EXH	DESCRIPTION	DATES	APA #
1	SLED Report	4/30/12-4/26/12	1-9
2	Petition to Transfer Liability	4/30/12-01/24/12	10-14
3	SCWCC Form 18	4/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/11	39

Documents also reviewed from Hearing of 5/15/2012 on behalf of Claimant

EXH	DESCRIPTION	DATES	APA #
1	Stuart M. Leon, MD MUSC Medical Center	8/10/11	1-2
2	Andrew B. Conray, MD MUSC Medical Center	8/10/11	3-5
3	Christopher J. Erikson, MD MUSC Medical Center	8/10/11	6-7
4	Peter H. White, MD MUSC Medical Center	8/11/11	8-9
5	Alan N. Abel, MD	8/16/11-1/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	8/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	9/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	9/6/11-10/11/11	27-40
9	Troy Marlon, MD TriCounty Radiology Associates	11/09/11	41-42

10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report SC Highway Patrol	8/10/11	47-50
EX B	Pay Records of the Claimant	7/12/11-8/09/11	51-55

EVIDENCE OF THE CASE

In review of the prior transcript, and focusing on the petition to transfer liability, Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Thompson. Thompson had been working with JJS since approximate 2008, and that when Thompson first hired JJS, he was given a certificate of insurance showing that JJS had Worker's Compensation coverage and that Thompson requested updated documentation once a year.

At the 2012 hearing, Christopher Thompson was shown the certificate of insurance that he identified to be dated October 18, 2010 (APA 8 to 2023 submissions) and stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Agency. Thompson testified that his view of the certificate of insurance gave him no reason to question whether or not JJS had insurance. Christopher Thompson testified that it was not until September or the beginning of November of 2011 before he was positively told that JJS did not have insurance, and upon receiving that information, he severed his relationship with JJS.

On cross-examination, Christopher Thompson acknowledged that there is no description in the description of operations box on the certificate of insurance (APA 8). Christopher Thompson also acknowledged that the certificate did not have a policy number, but stated it was a

"binder." Christopher Thompson testified that he continued to use JJS for some weeks after the accident of Claimant, and identified another certificate of insurance, dated September 29, 2011, marked as Exhibit 2 for the 2012 hearing, and acknowledged that policy showed an actual policy number.

In review of the deposition testimony of Sedrick Smalls, owner of JJS trucking, Smalls testified that he never had a written contract with Thompson (APA 20 to 2023 submissions).

The undersigned has reviewed the APA submissions of Thompson and the UEF from the hearing in 2012, along with the APA submissions from the hearing in 2023.

FINDINGS OF FACT

Based upon the stipulations, APA submissions, the Commission's file and arguments of counsel, the undersigned Commissioner makes the following findings of fact as required by S.C. Code Anno., § 42-17-40, 1976:

1. Order directives were sent to both parties on March 15, 2023.
2. This claim was heard before the undersigned Commissioner pursuant to notices timely and properly served on all parties.
3. The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.
4. The Commission's file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.
5. That the parties agreed to rely on the Commission's file, prior APA Submissions including but not limited to the hearing transcript from 2012 in lieu of receiving testimony at this hearing.

6. In reviewing the facts and evidence presented, the undersigned relies on *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) for the applicable case law.
7. In reviewing the facts and evidence presented, the undersigned does not rely on *Almazon v. SCUEF*, 2017-UP-124 (March 15, 2017), as it is unpublished and has no precedential value.
8. Thompson did not supply the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b) but turned it over 3 months later (APA 71).
9. That the certificate of insurance provided is blank as to the description and location of operations and is therefore incomplete.
10. That the certificate of insurance provided does not note where coverage applies or to what job entity, and as no written contract existed, each transaction would be a new job requiring a certificate of insurance,
11. That the certificate provided only shows a binder and does not show policy number.
12. That all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature.
13. Even the updated Certificate of Insurance (APA 72 to 2023 hearing; Exhibit 2 to 2012 hearing) is incomplete.
14. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

CONCLUSIONS OF LAW

Based upon the findings of fact set forth above, the undersigned Commissioner makes the following conclusions of law as required by S.C. Code Anno., § 42-17-40:

1. Thompson seeks to transfer liability to the UEF pursuant S.C. Code Ann. § 42-1-415 and has failed to show entitlement to transfer liability based on the above findings of fact.

2. That *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) apply and require strict construction of C. Code Ann. § 42-1-415.

3. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

ORDER

Based on the foregoing findings of fact and conclusions of law, Thompson has not entitlement to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415.

This Petition is therefore **DENIED.**

AND IT IS SO ORDERED.

No hearing costs are assessed.

The Honorable Avery B. Wilkerson

Columbia, South Carolina

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Melani Roark on May 15, 2023

State of South Carolina

Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable R. Campbell, II, Chair; The Honorable Gene McCaskill; The Honorable Cynthia C. Dooley

SCWCC File No.: 1112328

Samuel Rose,
Claimant,
v.

JJS Trucking and
Chris Thompson Services (statutory employer),
Employers,

and

SC Uninsured Employers Fund and
Bridgefield Casualty Insurance (carrier for the statutory employer),
Carriers,
Defendants.

FULL REVERSAL

Hearing held in Columbia, South Carolina,
on February 13, 2003
Per notice timely and properly served upon all Parties in Interest.

Appearances:	Stephen B. Samuels, Samuels Law Firm, appeared on behalf of Claimant/Respondent.
	Kirsten L. Barr, Trask & Howell, LLC, appeared on behalf of Chris Thompson Services and Bridgefield Casualty Insurance, Defendants/Appellants.
	Penn W. Ely, Clawson & Staubes, appeared on behalf of the Defendant S.C. Uninsured Employers Fund
Court Reporter:	Amber Scarborough (843) 252-3445
Filed:	June 22, 2023

I. STATEMENT OF THE CASE

On October 22, 2021, the Appellants, Bridgefield Casualty Insurance and Chris Thompson Services, filed a Form 21 hearing request seeking to terminate ongoing temporary disability compensation payments to the Claimant, Samuel Rose. Seven months later, the Form 21 was scheduled for a hearing before Hearing Commissioner Avery B. Wilkerson. On May 10, 2022, the Claimant subpoenaed Ms. Tracy Hayes, an adjuster employed by Bridgefield Casualty Insurance ("the Carrier") who is a resident and citizen of Georgia and commanded her to travel in excess of 600 miles to testify at the Form 21 hearing in Mount Pleasant on May 20, 2022. On May 12, 2022, the Appellants filed a Motion to Quash the subpoena for Ms. Hayes.

Commissioner Wilkerson considered the Motion to Quash at a pre-hearing conference on May 20, 2022. At that time, Commissioner Wilkerson stated that if Ms. Hayes did not attend the hearing and testify pursuant to the Claimant's subpoena, he would command both the adjuster and the Carrier's CEO to appear and testify in her stead:

> "So, either we're going to get the adjuster here with pay or we're going to get both of them here; I don't care. I'd just soon both of them come, to be honest, to see if their files match up. Remember I was in that business. They don't always match up." (T. p.48, ll.10-15).

At no time did the Claimant request the testimony of the Carrier's CEO, a Florida resident, nor did the Claimant list her as a witness for the May 20, 2022, hearing. The Claimant's attorney conceded that

> "[t]there would obviously be no point in sending a subpoena to the CEO of the insurance company." (T.p.45, l.17 – p.45, l.2)

In response to Commissioner Wilkerson's statements, the Appellants argued that the Commission does not have authority or jurisdiction to command citizens of other states to attend and testify at hearings in South Carolina. In response, Commissioner Wilkerson remarked,

> "If you subpoena the COO or whatever, they can fly in, they've got corporate planes, have them here the same day whatever day that is, they can both come. What's good for the goose is good for the gander." (T. p.49, ll.8-17).

The Appellants further argued that, because the basis for their legal positions and defenses were already plainly stated in their numerous legal pleadings and briefs, and because the Carrier's CEO had no personal knowledge of this claim, her in-person testimony would serve no legitimate purpose. In response, Commissioner Wilkerson stated,

> "I don't know what the purpose is... he is wanting them to come ... I can't tell you what the purpose of it is because I don't know enough about the case ... I don't know why they're coming; I can't answer that." (T.p. 53, ll. 1-11).

The May 20, 2022, Form 21 hearing was adjourned after a three-hour pre-hearing conference.

On May 26, 2022, the Appellants withdrew the Motion to Quash. Commissioner Wilkerson subsequently issued an "Order denying Motion to Quash Subpoena and Ordering Attendance of Adjuster and Corporate Officer at Hearing" on July 21, 2022, by which he commanded both the Carrier's Georgia-based adjuster, Ms. Hayes, and the Carrier's Florida-based "CEO," to attend a hearing in Columbia, South Carolina, on September 20, 2022. According to Commissioner Wilkerson's July 21, 2022, Order, S.C. Code Ann. § 42-3-140 authorizes him to compel, on his own motion, the attendance of citizens of other states at workers' compensation hearings in South Carolina. The Appellants, Chris Thompson Services and Bridgefield Casualty, filed and served a Form 30 Notice of Appeal of this July 21, 2022, Order on August 30, 2022.

Meanwhile, the Court of Appeals issued an unpublished decision in this claim on August 10, 2022, after which the prior lump sum award of temporary disability compensation became due and the Appellants

tendered payment to the Claimant in the amount of $91,858.65, plus interest that accrued while that award was pending appeal ($33,541.11). After filing a Form 18 showing the final payment of the maximum of 500-weeks of compensation, the Appellants withdrew the Form 21 on September 6, 2022.

On September 13, 2022, Commissioner Wilkerson's office informed the parties that he intended to cancel the hearing scheduled for September 20, 2022, as the issues before him -- including enforcement of the Commission's prior award -- now appeared to be moot. The Claimant's attorney objected and demanded that the hearing go forward as scheduled, despite the Appellants' pending Form 30. No Motion to Postpone the September 20, 2022, hearing was filed. The Claimant did not subpoena any witnesses for the September 20, 2022, hearing; however, Ms. Hayes appeared and testified voluntarily. At the five-hour hearing on September 20, 2022, the Claimant did not make any motion to adjourn pursuant to S.C. Code Reg. 67-613, nor did Commissioner Wilkerson actually adjourn the hearing for any purpose. Instead, the Claimant argued that Commissioner Wilkerson should infer that the testimony of the Carrier's CEO "would be unfavorable to the position of the [Appellants] since they have refused to produce him [sic]."

On October 20, 2022, the Appellants filed a timely Brief to the Appellate Panel, by which they argued that that Commissioner Wilkerson was without authority or jurisdiction to issue the "Order denying Motion to Quash Subpoena and Ordering Attendance of Adjuster and Corporate Officer at Hearing" on July 21, 2022. Commissioner Wilkerson's Order, which contains no findings of fact or rulings of law, is otherwise impermissibly vague, unsupported by evidence in the record, and contrary to the applicable law. In addition, the Appellants contend that the Claimant is not entitled to present any additional evidence or testimony, despite the July 21, 2022, Order, as the September 20, 2022, hearing has been conducted (at the Claimant's insistence) and the Claimant did not make a Motion to Postpone or Adjourn that hearing for any purpose.

Over the Appellants' objection, the Claimant filed a Brief to the Appellate Panel on February 6, 2023. By his Brief, the Claimant argues that the Appellate Panel should reconsider its denial of the Claimant's Motion to Dismiss the appeal as interlocutory and its denial of the Claimant's Motion to

Reconsider the denial of the Claimant's Motion to Dismiss the appeal.[1] In the alternative, the Claimant contends that the Appellate Panel should affirm Commissioner Wilkerson's July 21, 2022, Order "and require Bridgefield Casualty to produce their CEO at the reconvened Show Cause hearing." The Claimant further asks that the Appellate Panel order that the Carrier's CEO should be ordered to testify as to the substance of attorney/client privileged communications.

The Appellants filed a Reply Brief to the Appellate Panel on February 8, 2023. By their Reply Brief, the Appellants contend that the Claimant's Brief, which was filed and served 120 days after the Appellants' Brief is untimely under S.C. Code Reg. 67-705 and should be stricken from the record. In addition, the Appellants argued that the issue of witnesses is now moot, as no additional testimony could affect the benefits to which the Claimant is entitled under the Workers' Compensation Act and the Claimant did not seek to adjourn the hearing on his Petition for Order and Rule to Show Cause after being heard on said Petition for more than eight (8) hours. The Appellants further contend that there has been no showing that any additional witness testimony is "necessary" to the proceedings and that there otherwise exists no authority for the exercise of extra-territorial subpoena power in this claim.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

Hearing Commissioner Wilkerson's July 21, 2022, Order does not contain separately sated findings of fact or conclusions of law, but reads as follows:

1. On August 19, 2021, Claimant filed and properly served a Petition for Order and Rule to Show Cause seeking the following: (1) that Defendants be ordered to comply with the Commission's order dated May 15, 2013 ordering that Claimant was "entitled to ongoing medical treatment" with Dr. Steven C. Poletti and

[1] The Claimant filed a Motion to Dismiss the appeal on August 8, 2022. The Appellants filed a Return on August 17, 2022, and the Claimant filed a Reply on August 25, 2022. By Order of Commissioner Beck dated August 29, 2022, the Motion to Dismiss was denied. The Claimant then filed a Petition for Rehearing of the Motion to Dismiss on August 31, 2022. The Appellants filed a Return to the Petition on September 9, 2022, and the Claimant filed a Reply on September 13, 2022. The Petition for Rehearing was denied by Order of Commissioner Beck dated September 19, 2022.

pay back TTD benefits for a duration of 288.2857 weeks from January 9, 2014 until July 29, 2019 in the amount of $125.482.87; (2) ordered to pay a 10% penalty for late payment; (3) ordered to pay attorney's fees and costs for bringing this motion; (4) ordered to pay an appropriate penalty to Claimant for compensatory contempt; and (5) such other sanctions as the Commission deems appropriate.

2. Claimant sought to introduce evidence to support their claim of compensatory contempt and willful refusal to comply with an order of the Commission.

3. Claimant properly served the adjuster assigned to the file, Tracy Hayes, with a Form 27 subpoena requiring Ms. Hayes to appear and testify at the May 20, 2022, hearing. Included with the subpoena was a check for mileage and the $25.00 witness fee as well as a printout from Google Maps providing the route and distance to the hearing location.

4. On May 12, 2022, Defendant Carrier filed a Motion to Quash this subpoena. Arguments were heard on the record before the undersigned Commissioner on May 20, 2022.

5. At the hearing, Claimant argued that the Commission has authority to subpoena a party to a hearing even if the party resides out of state. Defendant took the position that the adjuster is not a corporate officer and cannot be compelled to attend a proceeding outside her state of residence (Georgia). Defendants argued:

> *. . . I believe the legal side says that if you wish to compel the testimony of someone who works and resides in another state, who is neither a party or an officer of a party or an owner of a party, which [the adjuster] does not meet any of those requirements, then his rights under the Rules of Civil Procedure and under our statutes and the statutes of Georgia, given the right to depose her where she works or resides in the state of Georgia; it does not give him the legal authority to command her presence here and I think that's the difference from what your experience was, she is not an officer or managing agent or an owner of a party nor is she a party. [Tr. Page 42, line 20-page 43, line 11 (emphasis added)].*

6. Defendants subsequently withdrew their motion to quash the subpoena.

7. The Commission has authority to issue a subpoena to a party's representative to attend a hearing. Bridgefield Casualty is a named party to this case. I find a corporate officer (CEO or COO) is Bridgefield Casualty's representative.

8. The Commission may issue an Order and Rule to Show Cause requiring an appearance before a Commissioner under regulation 67-1404.

9. The Commission possesses specific statutory power to subpoena witnesses under § 42-3-140.

10. Claimant has met his burden of showing that the testimony of these witnesses is necessary and appropriate as to the issues raised in the Petition for Rule and Order to Show Cause.

ORDER

IT IS THEREFORE ORDERED that adjuster Tracy Hayes shall appear at this rescheduled Rule to Show Cause hearing (September 20th 2022 @ 10:00am);

IT IS FURTHER ORDERED that Defendants shall produce a corporate officer (CEO OR COO) who shall appear at this rescheduled Rule to Show Cause hearing (September 20th, 2022 @ 10:00AM); and

IT IS SO ORDERED.

III. ISSUES ON APPEAL

On August 3, 2022, Defendants (Chris Thompson Services, LLC, and Bridgefield Casualty Insurance Company timely filed a Form 30 Request for Commission Review alleging the following errors of fact and law:

1. Did the Hearing Commissioner err as a matter of law by issuing an Order denying a Motion to Quash on July 21, 2022, when said Motion to Quash was previously withdrawn on May 26, 2022, rendering the matter moot and ending the authority of the Hearing Commissioner to adjudicate the matter or issue an order, such that the July 21, 2022, Order is necessarily arbitrary, capricious, and rendered in excess of authority?

2. Did the Hearing Commissioner err as a matter of law in making his own motion to compel a corporate officer of Bridgefield Casualty to attend a hearing in Columbia, South Carolina, when the Claimant never requested the testimony of any corporate officer, never noticed the deposition of any corporate officer, never served any subpoena for the testimony of a corporate officer, and never identified any legitimate purpose for the testimony of a corporate officer? The Hearing Commissioner's unilateral action to compel a witness under these circumstances is arbitrary, capricious, and made in excess of the Hearing Commissioner's legal authority. In addition, the Defendants were never given adequate notice or meaningful opportunity to be heard

on the Hearing Commission's unilateral motion, which was otherwise made upon unlawful procedure without any factual or legal basis.

3. Did the Hearing Commissioner err as a matter of law in finding, based on the Claimant's attorney's argument, that "the Commission has authority to subpoena a party to a hearing even if the party resides out of state," the error being that there is no legal authority for an administrative officer in the State of South Carolina to compel the resident or citizen of another state to travel to South Carolina?

4. Did the Hearing Commissioner err in finding and concluding that "a corporate officer (CEO or COO) is Bridgefield Casualty's representative" and that the "Commission has authority to issue a subpoena to a party's representative to attend a hearing," the errors being:

a. neither the Commission, nor the Claimant, have issued a subpoena for the Bridgefield' s Corporate Representative;

b. Bridgefield was not given the opportunity to designate a corporate representative;

c. Bridgefield was not given the opportunity to seek modification of or protection from any subpoena;

d. the Commission's subpoena power is confined to the jurisdictional limits of the State of South Carolina and the Workers' Compensation Commission does not possess subpoena power over individuals outside of the State of South Carolina;

e. the corporate officers of Bridgefield Casualty are residents and citizens of the State of Florida; and

f. the Commission does not have authority to subpoena individual residents and citizens of the State of Florida to a hearing in South Carolina?

5. Did the Hearing Commissioner err as a matter of law in vaguely concluding that S.C. Code Reg. 67-1404 is applicable, as the Commission has not issued "an Order and Rule to Show Cause" in this case?

6. Did the Hearing Commissioner err as a matter of law in vaguely concluding that S.C. Code Reg. 67-1404 authorizes a South Carolina Workers' Compensation Commissioner to compel, on his own motion, the attendance of an individual resident or citizen of Florida to attend a Workers' Compensation Hearing in South Carolina?

7. Did the Hearing Commissioner err in as a matter of law in vaguely concluding that the Commission "possesses specific statutory power to subpoena witnesses under § 42-3-140," as the Commission has not at any time issued any subpoena to any witness in this case?

8. Did the Hearing Commissioner err in as a matter of law in vaguely concluding that the Commission's "statutory power to subpoena witnesses under § 42-3-140" authorizes the Commission to issue a subpoena to an individual resident or citizen of another state?

9. Did the Hearing Commissioner err in finding and concluding that the "Claimant has met his burden of showing that the testimony of these witnesses is necessary and appropriate," as the Claimant did not even request the testimony of a corporate officer and no reason for the testimony of both the adjuster and a corporate officer is elucidated in the Hearing Commissioner's Order? In fact, at the hearing on May 20, 20202, neither the Claimant, nor the Hearing Commissioner, identified any necessary or appropriate purpose for the testimony of both a corporate officer and the adjuster:

a. Mr. Samuels: "[t]there would obviously be no point in sending a subpoena to the CEO of the insurance company." (T.p.45, 1.17-p.45, 1.2)

b. Commissioner Wilkerson: "I don't know what the purpose is... he is wanting them to come ... I can't tell you what the purpose of it is because I don't know enough about the case ... I don't know why they're coming; I can't answer that." (T.p. 53, ll. 1-11).

c. Commissioner Wilkerson: "So, either we're going to get the Adjuster here with pay or we're going to get both of them here; I don't care. I'd just soon both of them come, to be honest, to see if their files match up. Remember I was in that business. They don't always match up." (T. p.48, 11.10-15).

d. Mr. Samuels: "I don't know what the explanation would be why they refused to pay TTD; I guess that's what we need the Adjuster and the CEO for." (T. p.155; 11.7-10) *[Note: the Defendants have filed multiple pleadings, including a Form 58, outlining their defenses and positions and the evidentiary and legal basis therefore].*

e. Commissioner Wilkerson: "If you subpoena the COO or whatever, they can fly in, they've got corporate planes, have them here the same day whatever day that is, they can both come. What's good for the goose is good for the gander. If we're going to get information, we're getting all the information. If both sides have to protect their clients, that's exactly what we're here for. If you feel that needs to be part of it, so ordered, do me the order, Mr. Samuels." (T. p.49, ll.8- 17).

10. Did the Hearing Commissioner err as a matter of law by ordering "adjuster Tracy Hayes" to appear and testify at a hearing in Columbia, South Carolina, the error being that the Hearing Commissioner does not have the power, authority, or jurisdiction to compel an individual resident and citizen of the State of Georgia to attend an administrative hearing in the State of South Carolina?

IV. DECISION OF THE APPELLATE PANEL

Findings of Fact

1. On May 10, 2022, the Claimant sent a Form 27 subpoena commanding Ms. Tracy Hayes, a resident and citizen of Georgia, to testify at the Form 21 hearing in Mount Pleasant, South Carolina on May 20, 2022, and tendered reimbursement for 618 miles of travel from her place of work in Gainesville, Georgia.
2. The Claimant did not subpoena or request the testimony of any corporate representative of Bridgefield Casualty Insurance for the May 20, 2022, hearing.
3. On May 12, 2022, the Appellants filed a Motion to Quash the extra-territorial subpoena for Ms. Hayes on the basis that she was an individual resident and citizen of Georgia.
4. After a pre-trial conference on May 20, 2022, the Appellants withdrew the Motion to Quash on May 26, 2022.
5. On July 21, 2022, Hearing Commissioner Wilkerson issued an "Order denying Motion to Quash Subpoena and Ordering Attendance of Adjuster and Corporate Officer at Hearing," unilaterally concluding a "CEO or COO" shall be the Carrier's corporate representative, though Hearing Commissioner Wilkerson previously stated that he did not know the purpose for a corporate representative's testimony (T.p. 53, ll. 1-11) and the Carrier was never given the opportunity to designate a corporate representative to testify on their behalf for any purpose because no such request was made by the Claimant or the Commission.
6. It is undisputed that the Carrier does not have a "COO" and that their "CEO," who is not an individual party to this claim, is a resident and citizen of the State of Florida.

7. No evidence has been presented that the Carrier's CEO has any personal or specialized knowledge of this workers' compensation claim.
8. On July 21, 2022, the Commission issued a Notice of Hearing for September 20, 2022, on the Form 21 and the Claimant's Petition for Order and Rule to Show Cause.
9. On August 3, 2022, the Appellants timely and properly filed a Form 30 requesting review of Hearing Commissioner Wilkerson's July 21, 2022, Order and raising the question of whether Hearing Commissioner Wilkerson has unilateral, extra-territorial authority to order citizens of foreign states to attend a workers' compensation hearing in South Carolina without good cause. The Appellate Panel considers this to be an important issue necessitating immediate review of Hearing Commissioner Wilkerson's July 21, 2022, Order.
10. The Form 21 was withdrawn on September 6, 2022.
11. By Form 19 dated September 9, 2022, the Appellants notified the Commission of the final payment to the Claimant of the maximum of 500 weeks of compensation.
12. A hearing was held before Commissioner Wilkerson on September 20, 2022, regarding the Claimant's Petition for Order and Rule to Show Cause.
13. The Claimant did not subpoena any witnesses to the September 20, 2022, hearing on his Petition for Order and Rule to Show Cause.
14. The Claimant did not file any Motion to Postpone the September 20, 2022, hearing.
15. The Claimant did not file any Motion to Adjourn the September 20, 2022, hearing.
16. Because the Hearing Commissioner has already held a multi-hour hearing on the Claimant's Petition for Order and Rule to Show Cause on September 20, 2022; because the Claimant made no motion to postpone or adjourn the September 20, 2022, hearing to secure additional testimony; and because there are no compensation or medical benefits to be enforced at this time; the testimony of the Carrier's CEO is not necessary to the adjudication of the Petition for Order and Rule to Show Cause.

17. The CEO's testimony, to the extent that it is not privileged, would also be cumulative to, and duplicative of, the binding legal positions and reasoning already contained in the record and explained in the Appellants' pleadings because there has been no showing that the Carrier's CEO has any personal or specialized knowledge of this claim such that her testimony could be considered necessary for the adjudication of the Claimant's Petition for Order and Rule to Show Cause, or as the Claimant alleges, for the Claimant to discover "the explanation ... why [the Appellants] refused to pay TTD" or why they are allegedly "in contempt of a Commission order."

18. To the extent that the Claimant alleges that the July 21, 2022, decision is not immediately appealable, the Appellate Panel disagrees. The July 21, 2022, decision leaves nothing else to be decided on the issue of out-of-state witness testimony. Without immediate review, the Appellants and the Carrier's CEO would be forced to choose between the irreparable harm and prejudice inherent in the time and expense of defending against potential contempt citations or the time and expense of multi-state, multi-day travel, in violation of their rights to due process. Future reversal by the Appellate Panel of either a contempt citation or an order commanding interstate witness testimony would not provide any meaningful remedy, nor make either the Appellants or the Carrier's CEO whole, but instead would be an unjust and prejudicial waste of time and resources. Furthermore, immediate review of the July 21, 2022, decision does not prejudice the Claimant. Not only does the Claimant not have the right to compel testimony from citizens in other states, but the Claimant did not request the testimony of any corporate officer, the Claimant did not prove that such testimony was necessary, the Claimant did not make any motion to postpone or adjourn the September 20, 2022, hearing for this testimony, and the Claimant has already been provided with the maximum 500-weeks of compensation.

Conclusions of Law

1. The present appeal is properly before the Appellate Panel pursuant to S.C. Code Reg. 67-701, which permits immediate review of a Hearing Commissioner's decision upon the timely filing of a Form

30. Immediate review of Hearing Commissioner Wilkerson's July 21, 2022, decision does not violate S.C. Code Ann. § 42-17-50, because that statute does not require finality or otherwise prohibit the immediate and only meaningful review of the important issue of a Hearing Commissioner's decision to exercise extra-territorial subpoena power.

2. As argued previously by the Appellants in response to the Claimant's Motion and Petition, the present appeal is properly before the Appellate Panel pursuant to S.C. Code Ann. § 42-17-50. Consistent with this statutory authority, the Workers' Compensation Commission promulgated S.C. Code Reg. 67-701, which states "[e]ither party or both may request Commission review of the Hearing Commissioner's decision ... within fourteen days of the day the Commissioner's order is received." (emphasis added). Neither Regulation 67-701, nor S.C. Code Ann. § 42-17-50, employ the term "final," nor do they in any way exclude intermediate decisions or orders from immediate review. Therefore, only by resorting to an improperly forced construction could the Appellate Panel's authority to be limited to review of more "final" orders. *See* Grazia v. S.C. State Plastering, LLC, 390 S.C. 562, 569, 703 S.E.2d 197, 200 (2010) (holding that the Court should not resort to subtle or forced construction to limit or expand a statute's operation).

3. As recently acknowledged by the Court of Appeals in an unpublished opinion, the Appellate Panel "commonly reviews intermediate orders that decide important issues in a contested workers' compensation case. It does so even though other parts of the case remain in active litigation or are not ripe for decision." Davis v. S.C. Dept. of Corrections, 2022-UP-81. To the extent that this recent "important issue" standard governs Appellate Panel review, we find and conclude that the question of whether a Hearing Commissioner has unilateral, extra-territorial authority to order citizens and residents of foreign states to attend a workers' compensation hearing in South Carolina without good cause is indeed an "important issue" necessitating immediate review. Notably, not a single case cited by the Claimant in support of his request for dismissal involves the application of Regulation 67-701, or S.C. Code Ann. § 42-17-50, or the authority of the Workers' Compensation Commission to review a Hearing Commissioner's order. Statutes and case law involving judicial

review by appellate courts of civil actions simply have no applicability to the workers' compensation claim *sub judice* or to the authority of the Appellate Panel to review the Hearing Commissioner's July 21, 2022, Order.

4. Furthermore, there can be no meaningful review of the Hearing Commissioner's July 21, 2022, Order if such review is not conducted immediately. That is because if review of the July 21, 2022, Order is postponed until some more "final" decision is rendered, there will be no remedy for the Hearing Commissioner's factual and legal errors; the Appellants and the Carrier's CEO, personally, will be irreparably harmed by the time and expense of multi-state, multi-day travel; and their rights to due process will be improperly, and unnecessarily, violated. The principal case relied upon by the Claimant, Levi v. N. Anderson County EMS, 409 S.C. 374, 762 S.E.2d 44 (Ct. App. 2014), stands for the proposition that "[t]he denial of a motion to dismiss has been consistently held not to be final decision" because it does not establish the law of the case. The only "motion to dismiss" filed in this case was filed by the Claimant. Levi does not address *sua sponte* orders commanding the in-person testimony of out-of-state witnesses without just cause, which do establish the law of the case and are "final." Therefore, Levi is inapplicable to the appeal *sub judice*.

5. In addition, immediate review of the August 3, 2022, Order commanding the testimony of out-of-state witnesses, including the Carrier's CEO who has no personal knowledge of this claim, would not prejudice the Claimant. In fact, the Claimant has already been heard on his Petition for Order and Rule to Show Cause over the course of more than eight (8) hours on May 20, 2002, and September 20, 2022, and made no motion further adjourn those proceedings. The Claimant has already been provided with the maximum 500 weeks of compensation and continues to receive authorized medical treatment with the doctor of his choosing. Perhaps more importantly, the Claimant never requested the testimony of any corporate officer, never noticed the deposition of any corporate officer, never served any subpoena for the testimony of a corporate officer, never identified any legitimate purpose for the testimony of a corporate officer, and otherwise admitted

that "[t]there would obviously be no point in sending a subpoena to the CEO of the insurance company." (T.p.45, l.17 – p.45, l.2) (emphasis added).

6. Pursuant to S.C. Code Ann. § 42-3-140, the Workers' Compensation Commission has no power to issue subpoenas outside of the State of South Carolina. While the Workers' Compensation Commission possesses subpoena power under § 42-3-140, the plain language of this statute reveals no legislative intent to authorize administrative subpoena power beyond the territorial jurisdiction of South Carolina. *See generally* C.J.S. Conflict of Laws § 35 (2022) ("[a] state's laws generally have no extraterritorial effect"); 98 C.J.S. Witnesses § 38 (2022) ("[u]nless otherwise provided by law, a subpoena duces tecum has no force outside of the state") (*citing* John Deere Co. v. Cone, 239 S.C. 597, 124 S.E.2d 50 (1962);. Furthermore, considering our Supreme Court's decisions in Doctors Hospital of Augusta v. Comptrust AGC Workers' Compensation Trust Fund, 371 S.C. 5, 636 S.E.2d 862 (2006) (holding that the Workers' Compensation Commission has no exterritorial jurisdiction in the context of out-of-state medical bill review because "the principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another"), and *Ex parte* First Pennsylvania Banking & Trust Co., 247 S.C. 506, 148 S.E.2d 373 (1966) (holding that even where there is "no territorial limitation expressed in the statute ... the jurisdiction of a state is restricted to its own territorial limits"), we conclude that S.C. Code Ann. § 42-3-140 does not authorize the Workers' Compensation Commission to command individual residents and citizens of other states, including the Carrier's CEO, to testify in South Carolina.

7. Pursuant to S.C. Code Ann. § 42-3-150, the Workers' Compensation Commission does not have authority to enforce a subpoena to, or otherwise compel the testimony of, an out-of-state witness, including the Carrier's CEO. While the Workers' Compensation Commission possesses the power to compel the attendance of witnesses under § 42-3-150, the plain language of this statute reveals no legislative intent to authorize enforcement of administrative subpoenas beyond the territorial jurisdiction of South Carolina. *See* Doctors Hospital of Augusta v. Comptrust AGC Workers'

Compensation Trust Fund, 371 S.C. 5, 636 S.E.2d 862 (2006) and *Ex parte* First Pennsylvania Banking & Trust Co., 247 S.C. 506, 148 S.E.2d 373 (1966); *see also* Opinion of the S.C. Attorney General *In re Stephen M. Pstrak, Esq.* 2001 WL 1397516 (stating the opinion of the Attorney General's Office regarding "the enforceability of a South Carolina state court subpoena served outside the borders of the state ... on an out of state witness" is that it would be "ineffectual as a subpoena because the courts of this state are without jurisdiction over persons or property outside of its territory.").

8. In his Brief dated February 6, 2023, the Claimant alleges that the Commission has personal jurisdiction over the Carrier's CEO, a resident of Florida who has no knowledge of this claim, ostensibly because "the Commission is not issuing a subpoena to an out of state entity or witness. The Commission is ordering a party to have its agent appear and testify as to why the Carrier should not be held in contempt for willfully refusing to comply with an order." However, this allegation is not consistent with the law, is not consistent with Commissioner Wilkerson's July 21, 2022, Order, and is not consistent with Commissioner Wilkerson's own statements on the record, which bely the Claimant's new allegation:

   - "I don't know what the purpose is... he [the Claimant] is wanting them to come ... I can't tell you what the purpose of it is because I don't know enough about the case ... I don't know why they're coming; I can't answer that." (5/20/22 Hrg. T.p. 53, ll. 1-11).

9. Commissioner Wilkerson's July 21, 2022, Order is not a Rule to Show Cause pursuant to S.C. Code Reg. 67-1404 and the Commission has never made any finding that the Appellants ever violated any order, much less commanded anyone to "to testify as to why the Carrier should not be held in contempt." Instead, the July 21, 2022, Order specifically states:

   "[t]he Commission has authority to issue a subpoena to a party's representative to attend a hearing. Bridgefield Casualty is a named party to this case. I find a corporate officer (CEO or COO) is Bridgefield Casualty's representative." (emphasis added).

10. Neither Commissioner Wilkerson, nor the Claimant, cites any authority for the extra-territorial

subpoena power the July 21, 2022, Order purports to exercise – because no such power or authority exists. Similarly, neither Commissioner Wilkerson, nor the Claimant, elucidates any rational basis for the finding that the Carrier's CEO is must be the Carrier's representative for the purposes of a hearing on the Claimant's Petition – because no rational basis exists. Accordingly, the July 21, 2022, Order is reversed and vacated by the Appellate Panel.

11. Under S.C. Code Ann. § 42-3-150, the Commission may "issue subpoenas to compel the attendance of witnesses over whom the Commission has jurisdiction, but only when the testimony of said witness is "deemed necessary." Here, there has been no showing that the testimony of the Carrier's CEO is necessary for the adjudication of any issue before the Workers' Compensation Commission. There is no evidence that the Carrier's CEO has any personal or unique knowledge of this claim, there exists no workers' compensation benefit that could be gained from her testimony, and Hearing Commissioner Wilkerson even admitted that he did not understand the reason for the CEO's testimony (5/20/22 Hrg. T.p. 53, ll. 1-11). Therefore, the testimony of the Carrier's CEO cannot be deemed necessary, and the Workers' Compensation Commission does not have authority to compel her attendance at a hearing on the Claimant's Petition for Order and Rule to Show Cause under S.C. Code Ann. § 42-3-150.

12. In addition, the Workers' Compensation Commission does not have personal jurisdiction over the Carrier's CEO, a resident and citizen of Florida who is not a party to this claim, to testify at a hearing in South Carolina, especially considering the fact that there has been no showing that she has any personal knowledge of, or direct involvement with, this claim. *See* Companion Property & Casualty Ins. Co. v. U.S. Bank, 2016 W.L. 6781057 (Dist. S.C., Columbia Div., Nov. 16, 2016) (explaining that the amenability of a non-resident corporate agent to jurisdiction is not the same as that of his corporate employer, especially where the non-resident agent has never been in the state and has no causal connection within the state to the alleged injury).

13. Moreover, to the extent that the Commission has jurisdiction and authority to compel Bridgefield to produce a corporate representative to testify at a hearing in South Carolina, the designation of

the appropriate representative should be reserved to Bridgefield absent a showing of some particular need or specialized knowledge.[3] The Claimant did not seek the testimony of a corporate designee by deposition or otherwise. If he had, it is clear that Bridgefield, not the Claimant or the Commission, would be entitled to determine who was in the best position to testify on their behalf. For example, under Rule 30(b)(6) of the Federal Rules of Civil Procedure , the party noticing the deposition of a corporation "must describe with particularity the matters for examination" and then the corporation "must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on its behalf and it may set out the matters on which person designated will testify.'" *In re:* Aqueous Film-Foaming Foams Product Liability Litigation, 2022 WL 678996 (Dist. S.C., Charleston Div., February 14, 2022). Here, neither the Claimant, nor Hearing Commissioner Wilkerson, described with any particularity the matters for examination, and otherwise failed to allow the Appellants the opportunity to determine who was in the best position to testify on behalf Bridgefield regarding such matters. Instead, the July 21, 2022, Order concludes, without explanation that "a corporate officer (CEO or COO) is Bridgefield's representative." There is no legal authority for a court or commission to strip a corporate defendant of the right to designate their own representative for the purpose of testifying on behalf of the corporation. Accordingly, Commissioner Wilkerson's unilateral designation of the CEO as Bridgefield's representative was arbitrary, capricious, and made without legal authority. According to the July 21, 2022, Order,

> "[t]he Commission has authority to issue a subpoena to a party's representative to attend a hearing. Bridgefield Casualty is a named party to this case. I find a corporate officer (CEO or COO) is Bridgefield Casualty's representative."

[3] The Commission has not issued an Order and Rule to Show Cause under S.C. Code Reg. 67-1404.

Not only did Commissioner Wilkerson did not cite any authority for this finding, but he also failed explain why Bridgefield was not entitled to designate its own representative, and why the CEO must be this representative. In fact, Commissioner Wilkerson previously admitted that

> "I don't know what the purpose is ... I can't tell you what the purpose of it is because I don't know enough about the case ... I don't know why they're coming; I can't answer that." (T.p. 53, ll. 1-11).

This was plain, reversible error.

14. The Claimant, having failed to move for an adjournment of the September 20, 2022, hearing, is not entitled to present testimony from the Carrier's CEO in connection with his Petition for Order and Rule to Show Cause because S.C. Code Reg. 67-612(J) requires that "[a]ll available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R. 67-613." *See* Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (holding that use of the word "shall" indicates a mandatory requirement). The Claimant has already been heard by the Hearing Commissioner for more than five (5) hours on his Petition for Order and Rule to Show Cause on September 20, 2022. After the July 21, 2022, Order was appealed, the Claimant's attorney acknowledged that the Carrier's CEO would not be present at a hearing on September 20, 2022. However, the Claimant did not file a Motion to Postpone the hearing on September 20, 2022. Instead, the Claimant actually insisted that the hearing go forward on that date without the testimony of the CEO. Despite the fact that the CEO did not attend the September 20, 2022, hearing, the Claimant did not file any Motion to Adjourn the proceedings in accordance with S.C. Code Reg. 67-612(J) or S.C. Code Reg. 67-613(C), nor did he attempt to preserve any right to present any additional evidence on his Petition for Order and Rule to Show Cause after that date. Pursuant to Regulation 67-613(C), a party may move for adjournment at a hearing to obtain witness testimony under certain circumstances; however, the party seeking the adjournment must actually make such a motion. Not only did the Claimant not move to adjourn the September 20, 2022, hearing, but when counsel for the Appellants inquired about the issue, Commissioner

Wilkerson stated, "I'm not going to adjourn this hearing because this hearing has nothing to do with that one witness." (T. p.32, ll.5-7).

15. Therefore, even if the Carrier's CEO could be legally compelled to testify in South Carolina, the Claimant is not entitled to present additional evidence or witness testimony on his Petition for Order and Rule to Show Cause because the hearing has already been conducted on the Claimant's Petition and the Claimant made no Motion to Postpone or Motion to Adjourn that hearing to secure the testimony of the Carrier's CEO. See S.C. Code Reg. 67-612(J) (requiring that "[a]ll available evidence and testimony shall be presented at the scheduled hearing or a party must move for an adjournment according to R. 67-613"); S.C. Code Reg. 67-613(A) (requiring that a "party shall arrange and present all evidence at the hearing."); and Collins v. Doe, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002) (holding that use of the word "shall" indicates a mandatory requirement).

16. The Claimant, having failed to move for a postponement of the September 20, 2022, hearing, is not entitled to present testimony from the Carrier's CEO in connection with his Petition for Order and Rule to Show Cause because S.C. Code Reg. 67-613(A) requires that a "party shall arrange and present all evidence at the hearing."

17. Even if Claimant was entitled to present additional testimony, the testimony would serve no legitimate purpose. The July 21, 2022, Order states that the

> "Claimant has met his burden of showing that the testimony of these witnesses is necessary and appropriate as to the issues raised..."

However, the Order contains no findings of fact or conclusions of law or explanation for this supposition, nor does it elucidate how the Carrier's CEO's attendance at a hearing in South Carolina is either "necessary" or "appropriate." Of course, the Claimant did not even name the Carrier's CEO as a witness, much less justify the necessity of testimony that he did not request. The Appellants had no notice that the issue would even be raised (*sua sponte* by Commissioner Wilkerson) on May 20, 2022, but even then, Commissioner Wilkerson admitted,

"I don't know what the purpose is... he is wanting them to come ... I can't tell you what the purpose of it is because I don't know enough about the case ... I don't know why they're coming; I can't answer that." (T.p. 53, ll. 1-11).

18. When counsel for the Appellant pressed the Claimant's attorney on the issue of necessity, he merely surmised,

> "I don't know what the explanation would be why they refused to pay TTD; I guess that's what we need the Adjuster and the CEO for." (T. p.155; ll.7—10).

The Appellants' legal position on the Claimant's entitlement to a lump sum award of back temporary total disability compensation while an appeal was pending before the Court of Appeals was fully "explained" in numerous legal pleadings, including a Return to the Claimant's Petition for Rule to Show Cause, a Memorandum of Law, and a Form 58 pre-hearing brief, all of which contain specific references to applicable legal authority (including Case v. Hermitage Cotton Mills, 236 S.C. 515, 115 S.E.2d 57 (1960), which holds that the only payment required during the pendency of that appeal is "the weekly compensation accruing after the date of the Commission's award"). Therefore, any testimony the Carrier's CEO or others might provide would be cumulative to, and duplicative of, the binding legal positions and reasoning already contained in the record, such that her testimony could not be considered "necessary or appropriate" as a matter of law or fact. *See* Dongguk University v. Yale University, 270 F.R.D. 70, 71 (Dist. Conn. 2010) (explaining that testimony of a corporate designee "ought to be productive and not simply an excuse to seek information that is already known" and where information "could easily be obtained from another source, the court may refuse to allow that topic") (internal citations omitted).

19. Moreover, the reasoning behind the Appellants' legal contentions, other than what is stated in the pleadings, is largely subject to attorney-client privilege and; therefore, not a proper subject of cross-examination at either a hearing or a deposition. *See* *In re* Independent Service Organizations Antitrust Litigation, 168 F.R.D. 651 (Dist. Kan. 1996) (concluding that producing a corporate witness to testify about the defendant's denials and affirmative defenses was so "inefficient,

unreasonable, [and] implicates [such] serious privilege concerns" that the witness was entitled to a protective order) (internal quotations omitted).

20. The Claimant further alleges that the testimony of the Carrier's CEO "is relevant for the Rule to Show Cause in confirming and acknowledging that they are in contempt of a Commission order..." (5/20/22 Hrg. T. p 45, l.24 – p.46, l.1) and that he also wants to cross-examine the CEO regarding an alleged "refusal" to comply with the Commission's June 24, 2019, Order regarding the Claimant's entitlement to medical treatment with Dr. Poletti. However, neither stated purpose has any bearing on the Claimant's entitlement to workers' compensation benefits. Not only does the CEO apparently have no personal knowledge of these allegations, but the Appellants deny that they are in contempt of a Commission order, as the Claimant has already received 500 weeks of compensation and he continues to receive causally related medical treatment at the expense of the Appellants following the conclusion of a prior appeal.

21. Specifically, regarding medical treatment, the June 24, 2019, Order concluded that the "Claimant is entitled to additional medical treatment to the neck and back," the Commission designated Dr. Poletti as the Claimant's authorized treating physician, and the Commission specifically awarded the Claimant the right "to direct his own medical care" with Dr. Poletti. The Appellants contend that at no time did they interfere with the Claimant's right to "direct his own medical care," nor did they deny any request for authorization from Dr. Poletti or otherwise refuse to pay any medical bills because no such requests or bills were ever presented to the Appellants prior to September 2022. The Appellants contend that all bills and requests for authorization that the Appellants have received from Dr. Poletti have been paid and approved and the Claimant continues to receive medical treatment at the Appellants' expense. These positions are well-known to the Claimant and have already been made part of the record. To suggest that the testimony of the Carrier's CEO would somehow support the Claimant's contempt allegations is patently absurd.

22. Again, neither the Claimant, nor Commissioner Wilkerson, even attempted to establish that the Carrier's CEO has any personal knowledge of this claim – much less unique knowledge – such that

her in-person testimony at a hearing in South Carolina should be required over some less burdensome means by which the Claimant could ascertain "the explanation ... why [the Appellants] refused to pay TTD" or why they are allegedly "in contempt of a Commission order." Less burdensome means obviously include review of the legal pleadings, cross-examination of Ms. Hayes (who voluntarily testified at the hearing on September 20, 2022, at the Claimant's request), or other testimony by deposition or remote methods. *See* In re Lipitor Marketing, 2014 WL 12621613, (Dist. S.C., Charleston Div., Nov. 13, 2014) (explaining the "Apex Doctrine," which recognizes that subpoenas directed at an official at the "apex" of corporate management creates "a tremendous potential for abuse or harassment" and "undue leverage by harassing the opposition or inflating its discovery costs;" therefore, courts require subpoenas to corporate officers be premised on a showing that the officer "has unique or special knowledge of the facts at issue and ... other less burdensome avenues for obtaining the information sought have been exhausted."); *see also* Steele v. XPO Express, Inc., 2017 WL 10544634 (Dist. S.C., May 8, 2017) (stating that the "Apex rule is aimed to prevent the high level official deposition that is sought simply because he is the CEO or agency head – the top official, not because of any special knowledge of, or involvement in, the matter in dispute." (internal quotations omitted). The Appellants contend that to find the testimony of the Carrier's CEO "necessary and appropriate," in the absence of any evidence that she even has personal knowledge of this claim, is untenable, and gives the impression that the July 21, 2022, Order serves no purpose other than the burdensome harassment that the Apex Doctrine seeks to prevent. We agree.

23. Here, not only did the Claimant not need the testimony of the Carrier's CEO to determine the basis for the Appellants' legal arguments (rendering such testimony inappropriately cumulative and duplicative), but the Claimant did not require such testimony in order to enforce payment of the lump sum award. In fact, following the final decision of the Court of Appeals, the Claimant was paid the full 500-weeks of compensation, including the prior lump sum at issue plus interest, on September 2, 2022 – weeks prior to the September 20, 2022, hearing – because the appeal had

concluded, making the prior award payable. Therefore, even assuming *arguendo* that the Claimant might have once claimed a legitimate need for the testimony of the Carrier's CEO or other witness as to "why [the Appellants] refused to pay TTD," that issue was rendered moot when the final payment of compensation was made.

24. Given that there has been no proof of any violation of the June 24, 2019, Order and there is no evidence that the Carrier's CEO has any personal knowledge of the any aspect of this claim, her testimony would not serve any legitimate purpose. Under S.C. Code Ann. § 42-3-150, the Commission may "issue subpoenas to compel that attendance of witnesses ... deemed necessary in connection with any proceeding." (emphasis added). There has been no showing of such necessity (the Claimant did not even name the CEO as a witness in the first instance), there exists no workers' compensation benefit to be gained from her testimony, and Commissioner Wilkerson even admitted that he did not understand the reason for the CEO's testimony (5/20/22 Hrg. T.p. 53, ll. 1-11).

25. In the absence of any prior proof of any violation and in the absence of any showing that the Carrier's CEO is a "necessary" witness as required by S.C. Code Ann. § 42-3-150, the Claimant's purpose in seeking to compel a Florida-based CEO with no personal knowledge to testify regarding moot issues at a hearing in South Carolina begs the question of whether that purpose is improperly retributive. Indeed, no testimony from the Carrier's CEO would in any way affect the Claimant's entitlement to workers' compensation benefits.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Order of Hearing Commissioner Wilkerson dated July 21, 2022, is **REVERSED** and **VACATED**, for the reasons set forth herein above.

IT IS THEREFORE HEREBY ORDERED that the claim is remanded to Commissioner Wilkerson for a determination on the merits based on the record

AND SO IT IS ORDERED.

[Signatures following page]

Columbia, SC

R. Michael Campbell, II, Commissioner, Chair

Gene McCaskill, Commissioner

Cynthia C. Dooley, Commissioner

Order Served via email:

Stephen B. Samuels Samuels Reynolds Law Firm stephen@samuelsreynolds.com Kirsten L. Barr Trask & Howell kbarr@trask-howell.com	Matthew J. Story Clawson & Staubes LLC mstory@clawsonandstaubes.com Lisa Glover SCUEF lglover@saf.sc.gov

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 22, 2023

State of South Carolina
Workers' Compensation Commission

DECISION AND ORDER

THE HONORABLE Avery B. Wilkerson, Jr.

SCWCC File No.:1112328

Samuel Rose,
Claimant,
v.

JJS Trucking and Chris Thompson Services (statutory employer),
Employers,
and

SC Uninsured Employer's Fund and
Bridgefield Casualty Insurance (carrier for the statutory employer),
Carriers,
Defendants.

District 7

Hearing held in Richland County, South Carolina,
on September 20, 2022
Per notice timely and properly served upon all Parties of Interest.

Appearances:	Stephen Samuels, Esq., of Samuels Reynolds Law Firm, appeared on behalf of Claimant.
	Kirsten Barr, of Trask & Howell, appeared on behalf of Defendant Bridgefield Casualty Insurance Company.
Purpose of Hearing:	Claimant's Petition for Rule to Show Cause
Court Reporter:	Gloria Davis, Palmetto Court Reporting, 321 Mac Circle, Lexington, SC 29073, 803-358-0515, www.PalmettoCourtReporting.com

Filed: ***August 22, 2023***

I. STATEMENT OF THE CASE

This matter arises from Claimant's involvement in a work-related truck accident on August 10, 2011. The issue currently before the Commission involves whether Defendants are subject to fines and penalties for their failure to pay alleged back-owed compensation and provide medical benefits. Because this claim has a lengthy procedural history, an abbreviated history of this claim is set forth below and is instructive as to the issues for adjudication.

As a result of the accident in August 2011, Claimant alleged injury to his right knee, back, neck, and head. At the outset of the claim, Defendants admitted the accident occurred, but denied the severity of the injuries and the need for future treatment. The matter proceeded to a hearing before the Single Commissioner on May 15, 2012. By Decision and Order, dated August 23, 2012, the Single Commissioner found the claim compensable placing Claimant on a running award of temporary total disability benefits beginning on August 10, 2011, and continuing and awarding causally related medical treatment and reimbursement for out-of-pocket medical expenses incurred as of the date of the hearing. The August 2012 Order also found that the transfer of liability to the Uninsured Employer's Fund was not ripe for adjudication as not all benefits had been paid. The Appellate Panel affirmed the Single Commissioner's award on May 13, 2013.

Defendants filed an appeal at the Court of Appeals alleging that the Single Commissioner erred in declining to transfer liability to the Uninsured Employer's Fund. While this issue was pending before the Court, Defendants filed a Form 21 Hearing Request with the Commission alleging that Claimant reached maximum medical improvement and seeking to terminate benefits. A second hearing was held before another Single Commissioner on September 23, 2013. After the Hearing, Defendants moved to introduce newly discovered evidence in the form of a third-party claim that Claimant filed in the Charleston County Court of Common Pleas on February 20, 2013. The Single Commissioner granted the motion admitting the additional evidence into the record. However, Claimant's similar motion to introduce, as newly discovered evidence, the voluntary dismissal of the third-party claim was denied and therefore, excluded from the trial record. Based upon the evidentiary record as modified by the evidentiary rulings, the Single Commissioner, by Decision and Order dated September 2, 2014, terminated Claimant's temporary disability compensation and medical benefits effective September 23, 2013 reasoning that Claimant had elected his remedy by failing to file a Form S-2 notifying the Commission and Defendants of the commencement of the third party action. In accordance with the Order, Defendants terminated TTD payments on January

9, 2014.[1] The Appellate Panel affirmed the Single Commissioner's denial of benefits, but the Court of Appeals reversed and remanded the claim back to the Commission. The Court reasoned that the Single Commissioner erred by excluding Claimant's stipulation of dismissal from the evidentiary record. Therefore, the Commission incorrectly barred Claimant from recovering workers compensation benefits for failure to comply with the Act's third-party statute.

On remand, the Appellate Panel, by Decision and Order dated June 24, 2019, reinstated benefits finding that Claimant had not yet reached MMI. The Commission awarded additional medical treatment for the neck and back including a cervical fusion and follow-up treatment with Dr. Poletti, additional medical treatment for the right knee to include an evaluation and an MRI with an orthopedic surgeon of Defendants' choosing, and temporary total disability benefits from September 11, 2011 through the present and continuing until MMI. Defendants were ordered to pay any back-due TTD in a lump sum.

Thereafter, on July 25, 2019, Defendants appealed the Commission's 2019 Order to the Court of Appeals. Pursuant to the terms of the Order, defendants restarted TTD weekly payments on July 26, 2019. While the claim was pending before the Court of Appeals, Defendants filed a Form 21 Hearing Request on October 22, 2021 seeking to terminate compensation and requesting a credit for overpayment of benefits based upon Claimant's alleged return to work.[2] Thereafter, Claimant filed the instant Rule to Show Cause Proceeding seeking an award of fines, penalties, sanctions, and attorney's fees and costs for Defendants' failure to comply with the Appellate Panel's May 2013 Order. Defendants disagree that an award of fines, penalties, sanctions, and attorney's fees is appropriate because they have at all times complied with the Orders of the Commission: no compensation is currently due and owing, Claimant is not in need of additional causally related medical treatment for his work injuries, and his unjustified refusal of medical treatment bars him from further benefits under the Act.

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[1] Claimant alleges in the Petition for Rule to Show Cause that Defendants terminated TTD payments on January 19, 2014. According to the Form 18 Periodic Reports contained in the Commission file, Defendants terminated TTD payments on January 9, 2014.

[2] In addition to the Form 21 and the Rule to Show Cause proceeding, a number of motions were filed with the Commission. Most significantly, Defendants filed a Motion to Quash Claimant's subpoena compelling the attendance of Bridgefield Casualty Insurance Adjuster, Tracy Hayes, at the May 20, 2022 Hearing. The matter was initially heard before the undersigned on May 20, 2022 and the myriad pending motions adjudicated. However, the Rule to Show Cause proceeding was postponed pending the appearance of Ms. Hayes and a Bridgefield Casualty Corporate Officer at a reconvened hearing. Though, Defendants later withdrew their motion to quash, the Commission issued an order, sua sponte, denying the motion and ordering the adjuster and corporate officer to appear at the rescheduled September 20, 2022 hearing. This July 21, 2022 Order became the subject of an additional Appellate Panel appeal.

While Defendants' Form 21 and Claimant's Rule to Show Cause Petition was pending before the Commission, on August 10, 2022 the Court of Appeals affirmed the Commission's 2019 Order awarding benefits in full. Accordingly, on September 2, 2022, the Defendants notified the Commission that the back-owed TTD and interest had been paid and advised that they wished to withdraw their pending Form 21 hearing request. On June 22, 2023, the Appellate Panel reversed and vacated the Single Commissioner's order requiring the Adjuster and COO to attend the Rule to Show Cause Hearing and remanded the claim to the undersigned for a determination on the merits.[3]

The matter was heard on September 20, 2022. Stephen Samuels, Esquire appeared on behalf of Claimant, Mr. Rose, and Kirsten Barr, Esquire, appeared on behalf of Defendant Bridgefield Casualty Insurance.

II. STIPULATIONS

The parties stipulated at the hearing to the following issues:

1. The purpose of the hearing is to determine the issues raised in Claimant's Petition for Rule to Show Cause.
2. Notice of the hearing was timely and properly served on all parties of interest.
3. The parties stipulated that venue, set in Richland County, is proper.
4. The Claimant seeks an award of fines, penalties, sanctions, and attorney fees and costs under the South Carolina Workers' Compensation Act. The South Carolina Workers' Compensation Commission has jurisdiction over this case.

II. APA SUBMISSIONS

At the start of the proceeding, Claimant objected to the admission of nearly all Defendants' APA submissions as either irrelevant, inadmissible hearsay, or improperly authenticated. Claimant did not object to the admission of Defendant's APA #11 (Notice of Medical Appointment with Dr. Wildstein) arguing that this record was relevant evidence of Defendants' non-compliance with the

[3] Defendants' appeal of the July 21, 2022 Order divested the undersigned of jurisdiction as the matters pending before the Single Commissioner were directly affected by the outcome of the appeal. *See* Gattis v. Murrells Inlet VFW No. 10420, 353 S.C. 100, 112 (Ct. App. 2003)(citing Rule 205, SCACR for the proposition that "[n]othing. . .shall prohibit the lower court. . . from proceeding with matter *not affected* by the appeal." (emphasis in original)).

Commission's Order. Claimant also did not object to Defendants' APA #21 (Dr. Poletti's Deposition) reasoning that this record was relevant to show Defendants' willful disregard and failure to provide treatment.

In response, Defendants alleged that the APA submissions were relevant evidence of the thought process followed in attempting to comply with the Commission's 2019 Order. Defendants collected updated medicals and wage information to determine what treatment Claimant required and if he was working because benefits had previously been denied for approximately 5 ½ years. Based upon the results of their investigation, Defendants filed a Form 21 Hearing request in October 2021 disputing Claimant's entitlement to continued indemnity benefits and medical care. In Defendants' view, the records evidence a good faith belief that Claimant was not in need of any additional treatment. For the reasons set forth in this Decision and Order, the following records and reports were admitted into evidence over Claimant's objection pursuant to the Administrative Procedures Act and Regulation 67-612:

Claimant's Submissions:

APA	MEDICAL PROVIDER	DATES	PAGES
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22	EK Health – Vocational Evaluation and Employability Analysis	3/16/22	832-847
23	Motion to Compel Heyward's Trucking Records	3/25/22	848-870
24	2nd Motion to Compel CityWide Logistics and Leopard Records	3/25/22	871-888
25	Deposition of Stephanie Mauney, P.A.	4/7/22	889-910
26	SC Court of Appeals Notice of Oral Arguments	5/2/22	911-913
27	Brigham & Associates, Inc. Impairment Rating Critique Report	5/4/22	914-1041

IV. EVIDENCE OF THE CASE

Records

Dorchester County Sheriff's Jail Record

Defendants submitted evidence of Claimant's incarceration from April 14, 2012 through May 9, 2012. (Defendants' APA 1, p. 1-2).

South Carolina Department of Motor Vehicles Officer's Reports

Records from the South Carolina Department of Motor Vehicles indicate that Claimant was involved in minor motor vehicle accidents on March 29, 2015, December 21, 2016, July 16, 2017, January 1, 2020, and May 2, 2020 (Defendants' APA 3, p. 8-9, 11-12, 14-15, 17-18, 20-21). These dates of accident are verified by Claimant's 10-year driving history. *See generally* (Defendants' APA 16).

Heyward's Trucking Payments

Heyward Trucking records indicate that the business made three loans to Claimant. *See generally* (Defendants' APA 6). For the period of January 4, 2021 through October 18, 2021, Claimant was loaned $18,140.00. (Defendants' APA 6, p. 102-103). For the period of January 2, 2020 through December 28, 2020 Claimant was loaned $13,715.36. (Defendants' APA 6, p. 100-101). For the period of January 2, 2019 through December 2, 2019 Claimant was loaned $16,002.04. (Defendants' APA 6, p. 98-99). No promissory note was introduced into evidence dictating the repayment terms of any of the three loans.

Notice of Medical Appointment with Dr. Wildstein

On September 3, 2020, Defendants notified Claimant's counsel that an appointment had been scheduled for an evaluation with Dr. Michael S. Wildstein on September 23, 2020. (Defendants' APA 11, p. 230).

Records of Subpoenas and Motions to Compel

According to the documents submitted into the record, it appears Defendants engaged in active investigation of Claimant's medical history and work activities. From June 17, 2021 through August 20, 2021 Defendants sent a total of 8 subpoenas and filed 3 motions to compel seeking disclosure of personnel records from CityWide Logistics, Leopard, Inc. and Archie H. Heyward of Heyward Trucking Company, records from Mr. Earle Hamilton, and medical and Social Security documentation from Claimant's Counsel. (Defendants' APA 12, pp. 232, 235, 238, 241, 244, 247, 250, 253; Defendants' APA 13; Defendants' APA 24; Defendants' APA 23). Defendants also sent a FOIA request to the Federal Motor Carrier Safety Administration seeking disclosure of

driver inspection records or logs from CityWide Logistics specifically completed by Claimant. (Defendants' APA 14, p. 278).

Navy Federal Credit Union Records

Claimant's banking records from Navy Federal Credit Union indicate some larger deposits, but the source of those deposits is unclear. The deposits are not consistently received and are not for a consistent amount. The records also show debits posted from business entities located in various states. *See (Defendants'* APA #17).

Partial Records of Earle Hamilton/CityWide Trucking

These records show payments made from Earle Hamilton to various contractors including Archie Heyward and Anthony Heyward & Heyward's Trucking. Claimant is not listed as receiving a payment on any of the invoices or ledgers provided. *See generally* (Defendants' APA 7).

Woodall & Broome Surveillance Reports

The surveillance report from Woodall & Broome indicates that Claimant was surveilled while engaged in various activities including driving a personal vehicle, visiting a gas station, visiting a private residence, and engaging in activities that appeared to be employment related on three separate occasions: from August 23, 2019 through September 12, 2019; October 8, 2020 through October 23, 2020; and May 25, 2023 through June 14, 2021. (Defendants' APA 8, p. 118, 143-147; Defendants' APA 8, p. 149-162; Defendants' APA 8, p. 166-179-180).

Commission Records

SCWCC Form 18

Defendants paid temporary total disability benefits from August 11, 2011 through September 2, 2014. (Claimant's Exhibit G, p. 46). Defendants restarted payment of TTD on July 26, 2019 according to the terms of the Commissions June 24, 2019 Order. (Claimant's Exhibit G, p. 46).

Single Commissioner Decision & Order (August 23, 2012)

On August 23, 2012, the Single Commissioner found that Claimant was an employee of JJS Trucking and, because JJS Trucking was uninsured, found the upstream contractor, Chris Thompson Services liable for benefits. (Claimant's Exhibit B, p. 23-24). Claimant was awarded temporary total disability benefits beginning August 10, 2011 and continuing and causally related medical treatment for his injuries. (Claimant's Exhibit B, p. 24).

Appellate Panel Order (June 24, 2019)

On June 24, 2019, the Full Commission found that: Claimant was not at maximum medical improvement for the injuries to his back, neck, and right knee; that Claimant was entitled to :additional medical treatment to the neck and back, to include a cervical fusion and follow-up treatment with Dr. Steven C. Poletti or other referral made by Dr. Poletti;" that Claimant was entitled to an evaluation of his right knee, including an updated MRI, with an orthopedic surgeon specializing in the knee or lower extremities; and that Claimant was entitled to temporary total disability benefits from September 11, 2011 through the present and continuing until maximum medical improvement. (Claimant's Exhibit F, p. 44-45).

SLED Criminal Record

The record submitted indicates that Claimant was charged with and/or convicted of multiple offenses dating from 2001 back to approximately 2015. *See generally* (APA #15).

Medical Records

Charleston Spine & Physical Medicine

Claimant presented to Dr. Gregory Jones from March 20, 2013 for an independent medical evaluation. According to Dr. Jones, Claimant developed chronic myofascial pain primarily in the cervicothoracic right should girdle region. Dr. Jones notes a positive history of preexisting degenerative pathology in both the cervical and lumbar spine that pre-dated the August 2011 accident. (Defendants' APA 2, p. 5). In Dr. Jones' opinion, Claimant had reached maximum medical improvement on March 20, 2013 and could return to work at full capacity. (Defendants' APA 2, p. 6). He was not a surgical candidate and no additional medical treatment that would tend to lessen his period of disability. (Defendants' APA 2, p. 6).

Roper Hospital Diagnostics and ER Northwoods

Claimant presented to the emergency Room at Northwoods on July 16, 2017 following a motor vehicle accident complaining of minor neck tenderness and mild lumbar spinal tenderness. (Defendants' APA 5, p. 61). According to the medical notes, the vehicle's airbag did not deploy. (Defendants' APA 5, p. 61). Claimant was diagnosed with soft tissue injuries to the cervical and lumbar spine and discharged the same day. (Defendants' APA 5, p. 63-64). X-rays of Claimant's lumbar spine revealed minor changes. (Defendants' APA 5, p. 96). A CT of Claimant's cervical spine revealed mild degenerative changes but was otherwise unremarkable without acute findings. (Defendants' APA 5, p. 96-97).

Health First

Claimant presented to Health First on August 15, 2017 for a DOT physical and urinalysis. The record indicates that Claimant's physical exam on that date was within normal limits. (Defendants' APA 9, p. 181-182). Claimant attended a second DOT physical on September 17, 2018 and was seen by Dr. Karey Breen. The record indicates that Claimant's physical exam on that date was within normal limits. (Defendants' APA 9, p. 192). Thereafter, Claimant presented for two more normal DOT physical exams in 2019 and 2020. (Defendants' APA 9, p. 193-194, 199-201). He also specifically denied any back or neck problems or bone, muscle, joint, or nerve problems on a Medical Examination Report Form, dated September 26, 2020. (Defendants' APA 9, p. 202-207). However, on the Medical Examination Report Form signed by Claimant and dated November 24, 2021, he includes bone, muscle, joint, or nerve problems and neck or back problems in a subjective account of his prior health history and indicates that the aforementioned symptoms are related to an August 2011 motor vehicle accident. (Defendants' APA 9, p. 212-216).

EK Health- Vocational Evaluation and Employability Analysis

Defendants sought a vocational evaluation by Jan Westmoreland. According to her March 16, 2022 report, Claimant remains employable in the sedentary to light physical demand category. (Defendants' APA 22, p. 846).

Southeastern Spine Institute

Claimant presented to Dr. Poletti on July 15, 2013 for the purposes of an independent medical evaluation. According to Dr. Poletti, Claimant exhibited limited range of motion in his neck and back and pain with flexion and extension of his spine. (Claimant's APA 1, p. 1). He also exhibited pain in and around the right side of his right knee. (Claimant's APA 1, p.1). MRI diagnostics revealed a two-level disc herniation at C5-6 and C6-7. (Claimant's APA 1, p.1). Based upon his physical examination, Dr. Poletti opined, at the time, that Claimant required, cervical surgery, further MRI of his lumbar spine, and a referral to an orthopedic surgeon for his knee. (Claimant's APA 1, p. 2).

Claimant returned to Dr. Poletti for a second independent medical evaluation on April 30, 2019. Dr. Poletti noted that Claimant had not received any of the recommended treatment in the intervening years. (Claimant's APA 1, p. 3). Based upon his updated examination, Dr. Poletti recommended updated MRIs and opined that Claimant continued to remain a candidate for a cervical discectomy and fusion but that the threat of permanent nerve damage from his lack of treatment could make surgery a less viable option. (Claimant's APA 1, p. 4).

In the treatment notes from a third independent medical evaluation on September 7, 2022, Dr. Poletti continued to advocate for surgical intervention for Claimant's cervical spine but stated that an updated MRI of the cervical spine and an MRI of lumbar spine should be performed prior to confirming any current recommendation for surgery. (Claimant's APA 2, p. 4b; *see also* Claimant's Exhibit N., p. 129; Claimant's Exhibit O, p. 130).

Deposition Testimony

Jennifer Mikoll, PA- Health First

Jennifer Mikoll, a board-certified physicians' assistant and certified by the Federal Motor Carrier Safety Administration (FMCSA) to perform DOT physicals, testified in her deposition that she evaluated Claimant on September 26, 2020 when he presented to Health First for his DOT physical. (Defendants' APA #18, p. 537-538). Claimant did not note any physical problems on the medical questionnaire. (Defendants' APA #18, p. 538-539). He signed the form certifying that the information provided was accurate and complete. (Defendants' APA #18, p. 539). She performed a limited examination of his back and knees and did not do any range of motion testing on his

cervical spine. (Defendants' APA #18, p. 541; Defendants' APA #18, p. 542, 546). Her limited examination did not reveal any deficits. (Defendants' APA #18, p. 541).

Archie Heyward, Heyward's Trucking Company, LLC

Archie Heyward, sole proprietor of Heyward's Trucking Company, LLC testified that he provides trucking and warehouse services to CityWide Logistics and Leopard Company. (Defendants' APA #19, p. ...). He denied that Claimant worked for him. (Defendants' APA #19, p. 576, ln. 3-11). Claimant was present on the premises nearly every day, but he was only at CityWide Logistics to "hangout." (Defendants' APA #19, p. 576, ln. 9-11; p. 577, ln. 3-7). The amounts paid to Claimant were a loan although there is no written loan agreement, no IOUs, and no promissory note. (Defendants' APA #19, p. 585-586, 596, ln. 9-11). Mr. Heyward expected the debt to be repaid when Claimant received his settlement. (Defendants' APA #19, p. 583-584). He paid him to perform odd jobs around his house such as raking the yard or running errands. (Defendants' APA #19, p. 588, ln. 4-25). The fund he paid to Claimant were not a gift. (Defendants' APA #19, p. 593, ln. 20-25).

Earle Hamilton

Mr. Hamilton testified that CityWide Logistics and Leopard, Inc. would sometimes hire Archie Heyward and Heyward Trucking to drive trucks for them. Claimant was not hired to work for Mr. Heyward or Heyward Trucking as a subcontractor. (Defendants' APA 20, p. 645, ln. 9-15, Defendants' APA 20, p. 650, ln. 10-18). Claimant would show up at Mr. Hamilton's warehouse and "sit there with [Mr. Hamilton] all day." (Defendants' APA 20, p. 651, ln. 13-18). Sometimes he would give Claimant keys to open the warehouse. (Defendants' APA 20, p. 652, ln. 1-8).

Claimant's Deposition Testimony

Defendants deposed Claimant a second time on October 13, 2021. He testified that his sole sources of income at the time were Social Security and workers' compensation. (Claimant's Exhibit K, p. 57). He also testified that he received money from family in the form of loans. (Claimant's Exhibit K, p. 57). He has not worked for any income since 2013. (Claimant's Exhibit K, p. 57). He has maintained his CDL certification and has submitted to yearly DOT physicals. (Claimant's Exhibit K, p. 57). He admitted to being "mostly truthful" in providing medical

histories for his DOT physicals. (Claimant's Exhibit K, p. 57). He admitted to omitting information relating to his past injuries on his medical history "just to get it over with." (Claimant's Exhibit K, p. 66).

His testimony corroborates the balance of the evidence in the record and affirms that Claimant goes to CityWide Logistics daily and has moved box trucks occasionally while he was there but was not working. (Claimant's Exhibit K, p. 58). He has never worked for Archie Heyward or Heyward Trucking. (Claimant's Exhibit K, p. 61). Claimant also provided his account of the various minor motor vehicle accidents that he was involved in since his work accident and confirmed that he had only seen Dr. Poletti one time for a visit relating to his work injuries since 2013. (Claimant's Exhibit K, p. 61-62).

Dr. Poletti's Deposition Testimony

In Dr. Poletti's opinion, which was based upon a 2011 MRI, Clamant is a candidate for cervical surgery. (Claimant's Exh. M, p. 82). As of the date of the deposition, Claimant had not received any other imaging other than the cervical MRI in 2011. (Claimant's Exh. M, p. 95). He testified that he was not aware of Claimant's subsequent involvement in several motor vehicle accidents in the intervening years but reiterated that the findings on the 2011 MRI were, to a reasonable degree of medical certainty, related to the work accident. (Claimant's Exh. M, p. 82, 87-88). He recommended a cervical MRI, lumbar MRI, and would consider cervical surgery depending on the MRI report. (Claimant's Exh. M. p. 95-96, 98, 105). He testified that Defendants did not contact him to set up treatment after June 17, 2019. (Claimant's Exh. M, p. 103).

Stephanie Mauney, P.A.

She evaluated Claimant for a DOT physical in November 2021. (Defendants' APA 25, p. 890-891). As part of her exam, she reviews the medical history provided by the patient. (Defendants' APA 25, p. 891-892). According to Ms. Mauney, Claimant did not give her any reason to believe that he had any physical problem that would prevent him from operating a truck. (Defendants' APA 25, p. 892). Her physical exam did not reveal any abnormal findings. (Defendants' APA 25, p. 894). She admitted that Claimant did answer "yes" to the questions regarding neck and back problems, and she inquired as to his fitness to drive a truck. (Defendants' APA 25, p. 896). She determined that he was medically capable of driving a truck based upon his

responses. (Defendants' APA 25, p. 896). She recorded the results of Claimant's evaluation contemporaneous with his exam. (Defendants' APA 25, p. 897).

Brigham Associates, Inc.

Defendants obtained an impairment rating critique from Brigham Associates. A report dated May 4, 2022, references myriad medical records reviewed in providing an impairment rating evaluation. The report indicates that between the dates of 2018 – 2022 "No medical records from his treating providers were available for review..." (Defendants' APA 27, p. 921). The balance of the report chronicles the medical records relied upon for the review and provides a critical evaluation of Claimant's subjective reports of injury, causation, and the impairment rating methodology used by Dr. Poletti. *See generally* (Defendants' APA 27).

V. FINDINGS OF FACT

1. Claimant was involved in a work-related trucking accident on August 10, 2011 and sustained alleged injuries to his right knee, back, neck, and head.
2. Defendants initially admitted the accident but denied the extent of the injuries and the need for future treatment.
3. On August 23, 2012, the single commissioner issued an order finding Claimant's injuries compensable, awarding temporary total indemnity benefits beginning on August 11, 2011 and continuing, and awarding causally related medical treatment and reimbursement for out-of-pocket medical expenses. (Commission File; Claimant's Exh. B, p. 23-24). The August 2012 Order also denied the transfer of liability to the Uninsured Employer's Fund (UEF).
4. The appellate Panel affirmed the Single Commissioner's August 2012 Order. (Commission File).
5. Defendants filed an appeal of that Order to the Court of Appeals alleging that the Single Commissioner erred in failing to transfer liability to the UEF.
6. Thereafter, Defendants filed a Form 21 Hearing Request seeking to terminate benefits alleging that Claimant reached maximum medical improvement. (Commission File).
7. A second Hearing was held before the Single Commissioner on September 23, 2013. After the hearing, evidence of a third-party claim filed in the circuit court was admitted into the

record. By decision and order, dated September 2, 2014, the Single Commissioner terminated Claimant's indemnity award and medical benefits reasoning that Claimant elected his remedy by failing to file an S-2 with the Commission notifying the Defendants and the Commission of the third-party action. (Commission File).

8. The September 2, 2014 Decision & Order was appealed to the Court of Appeals. The Court reversed the Single Commissioner's determination and remanded the claim back to the Commission for a determination on the merits. (Commission File).
9. On remand, the Appellate Panel reinstated benefits and found that Claimant had not yet reached MMI. By Order, dated June 24, 2019, the Panel stated: "Claimant is entitled to additional medical treatment to the neck and back, to include a cervical fusion and follow-up treatment with Dr. Steven Poletti or other referral made by Dr. Poletti. (Claimant's Exh. F, p. 44).
10. The Commission also ordered defendants to provide an evaluation of Claimant's right knee, including an updated MRI, with an orthopedic surgeon who specializes in the knee/lower extremity...." (Claimant's Exh. F, p. 45). The Commission reinstated indemnity benefits beginning September 11, 2011 through the present and continuing until MMI and required that all back-owed benefits be paid in a lump sum. (Claimant's Exh. F, p. 45).
11. Conclusion of Law #5 stated that: "Claimant is entitled to treatment for his neck, back, and right knee. Defendants are liable for Claimant's future treatment with Dr. Poletti or any referral made by Dr. Poletti for Claimant's neck and back injuries. Defendants are to direct Claimant's medical treatment for his right knee." (SCWCC Appellate Panel Order, June 24, 2019, p.13).
12. According to Finding of Fact #16: "Claimant has shown good cause to direct his own medical care and [we] hereby appoint Dr. Steven C. Poletti, or other referral from Dr. Poletti, as the authorized provider for Claimant's cervical and lumbar spine treatment." (SCWCC Appellate Panel Order, June 24, 2019, p.11).
13. Defendants filed a second appeal with the Court of Appeals on July 25, 2019 and restarted weekly TTD payments on July 26, 2019. (Claimant's Exh. G, p. 46).
14. While the claim was pending on appeal at the Court of Appeals, Defendants engaged in an active investigation to include taking multiple depositions, sending myriad subpoenas, and obtaining an impairment rating critique, additional medical records, Claimant's criminal

records, a vocational evaluation, and surveillance reports. *See generally* (Defendants' APAs 1-27).

15. Defendants filed a second Form 21 Hearing Request on October 22, 2021 seeking to terminate compensation and requesting a credit for overpayment of benefits based upon Claimant's alleged return to work. (Commission File).
16. Thereafter, Claimant filed the instant Rule to Show Cause Petition seeking an award of fines, penalties, sanctions, and attorney's fees and costs for Defendants' failure to comply with the Appellate Panel's May 2013 Order. (Commission File).
17. Defendants scheduled a medical appointment for Claimant with Dr. Wildstein on September 23, 2020 (Defendants' APA 11, p. 230).
18. In response to Defendants' letter advising of the Wildstein appointment, Claimant responded via e-mail to Defendants' Counsel, on September 4, 2020, asking that treatment be provided with Dr. Poletti per the Commission's Order. This is the only e-mail submitted for the record making such a request. (Claimant's Exh. H, p. 47).
19. On July 21, 2022, the undersigned issued an evidentiary ruling requiring the appearance of both the claims adjuster for Bridgefield Casualty Insurance, Ms. Tracy Hayes, and a Bridgefield Corporate Officer at the September 20, 2022 hearing. Defendants timely appealed that Order to the Appellate Panel and the Panel reversed and vacated the decision. (Commission File).
20. On August 10, 2022, the Court of Appeals affirmed the Commission's 2019 order awarding benefits in full. (Commission File).
21. On September 2, 2022, Defendants notified the Commission that the back-owed TTD and interest was paid, and Defendants wished to withdraw the pending October 2021 Form 21 Hearing Request. (Commission File).
22. Defendants scheduled an appointment with Dr. Poletti on Claimant's behalf for September 7, 2022. (Claimant's Exh. N, p. 129).
23. On September 7, 2022, Defendants authorized the MRI diagnostics recommended by Dr. Poletti. (Hr. TR. p. 8, ln. 1-14). Defendants informed the undersigned that the requisite MRI was scheduled at the time of the Hearing. (Hr. Tr. p. 8, ln. 10-17).
24. According to Claimant's Counsel, an appointment for evaluation of Claimant's knee had also been scheduled at the time of the hearing. (Hr. Tr. p. 84, ln. 14-17).

25. According to an impairment rating critique by Brigham Associates, between the dates of 2018 – 2022 "No medical records from his treating providers were available for review..." (Defendants' APA 27, p. 921).

26. During his deposition, Dr. Poletti testified that, in his opinion, Claimant required a cervical MRI and a lumbar MRI. Claimant may require cervical surgery depending on the results of the diagnostics. (Claimant's Exh. M, p. 105).

VI. CONCLUSIONS OF LAW

1. Defendants' APA submissions are relevant for the purpose of determining whether good cause existed for Defendants alleged willful non-compliance with a Commission Order. The records are admitted into evidence and will be weighed accordingly with the balance of the evidence in the record. The South Carolina Rules of Evidence do not apply in Workers' Compensation proceedings; however, the Administrative Procedures Act requires that "irrelevant, immaterial, or unduly repetitious evidence shall be excluded." *See* Hamilton v. Bob Bennett Ford, 339 S.C. 68 (2000); S.C. Code Ann. § 1-23-33(1)(1979, as amended). The Commission's Rule to Show Cause proceeding is essentially an action for contempt. *See* S.C. Code Ann. § 42-3-150 (1980, as amended) ("Any failure to obey an order of the Commission may be punished as contempt thereof.) "In an action for contempt, the burden of proof is on the moving party." Brasington v. Shannon, 288 S.C. 183, 184 (1986). In a contempt proceeding, the moving party bears the burden to show the existence of a court order and the respondent's noncompliance. Id. "The burden then shifts to the respondent to establish his defense and inability to comply with the order." Id. In this case, Claimant seeks fines and penalties for Defendants failure to obey a Commission Order without good cause under S.C. Code Ann. § 42-3-175 (2007, as amended) or S.C. Code Ann. § 42-3-150 (1980, as amended). Excluding Defendants' APA submissions deprives it of due process of law and prevents it from meeting its burden to establish facts in its defense. Defendants' submissions tend to make the existence of "good cause" for failure to comply with a Commission Order more or less probable. Therefore, the submissions are relevant to the issues for determination, admitted into the evidentiary record for consideration, and will be weighed accordingly with the balance of the evidence.

2. Ms. Tracy Hayes hearing testimony is also admitted into the record and will be weighed appropriately with the balance of the evidence. On July 21, 2022, the undersigned issued an evidentiary ruling requiring the appearance of both the claims adjuster for Bridgefield Casualty Insurance, Ms. Tracy Hayes, and a Bridgefield Corporate Officer at the September 20, 2022 hearing. Defendants timely appealed that Order to the Appellate Panel and the Panel reversed and vacated the decision. The thrust of the Appellate Panel's decision is that the Commission lacks the authority to issue out of state subpoenas or compel the attendance of out of state witnesses, and that the CEO testimony is irrelevant to this matter. The Appellate Order does not specifically address Ms. Hayes' testimony. *See* Rose v. JJS Trucking, et. al., SCWCC 1112328 (Appellate Panel, June 22, 2023). Furthermore, Counsel stated on the record that "she's not here under subpoena, . . .she's here in her personal capacity." (Hr. Tr. p. 173, ln. 4-7). Because Ms. Hayes appeared at the Hearing on her own volition, her testimony is admissible to the extent it is relevant.
3. As previously stated, in a contempt proceeding, the moving party bears the burden to show the existence of a court order and the respondent's noncompliance. Brasington v. Shannon, 288 S.C. at 184. The basis of this inquiry rests upon establishing which court order Defendants have allegedly disobeyed. The relevant order for purposes of determining Defendants' responsibilities regarding compliance is the Appellate Panel Order dated June 24, 2019.
4. The Commission awarded Claimant benefits on May 13, 2013. While that award was on appeal to the courts, Defendants filed a Form 21 hearing request seeking to terminate payment of benefits. Additional evidence was admitted after the hearing and benefits were ultimately denied based upon a finding of Claimant's procedural default under the Act's third-party statute. This determination was affirmed by the Panel but reversed by the Court of Appeals. "Generally, reversal of a judgment on appeal has the effect of vacating the judgment and leaving the case standing as if no judgment had been rendered." Moore v. North American Van Lines, 319 S.C. 446, 448 (1995)(internal citations omitted). "When the award of the Commission was reversed by the [Court of Appeals][4] it became of no

[4] The original rule of law quoted by the Moore Court included a reference to the Circuit Court as the proper appellate tribunal at the time of that decision. However, Section 42-17-60 was amended in 2007 to require that appeals from the Commission be filed with the Court of Appeals. S.C. Code Ann. § 42-17-60 (2007, as amended); *see also* Act No.

effect and was no longer in existence." Id. (internal citations omitted). In this case, the Court of Appeals' reversal of the Commission's 2014 Order rendered it a nullity. However, this does not mean that the Commission's May 2013 order awarding benefits was automatically reinstated. The claim was left as if no order had been issued pending a second order on remand to the Commission. The Commission issued a second Order on remand on June 24, 2019. Therefore, the terms of the 2019 order are determinative of Defendants' conduct.

5. Defendants complied with the terms of the Commissions' June 24, 2019 Appellate Panel Order when it started paying weekly TTD payments during the pendency of its Appeal to the Courts. "In the case of an appeal from the decision of the Commission on questions of law, the appeal does not operate as a supersedeas and, after that time, the employer is required to make *weekly payments* of compensation *and to provide medical treatment ordered by the commission* involved in the appeal or certification until the questions at issue have been fully determined in accordance with the provisions of this title. Interest accrues on an unpaid portion of the award at the legal rate of interest as established in Section 34-31-20(B) during the pendency of an appeal." S.C. Code Ann. § 42-17-60 (2007, as amended)(emphasis added). According to the Form 18 submitted by Claimant, defendants reinstated Claimant's weekly payments on July 26, 2019 and continued such payments during the pendency of the appeal. On August 10, 2022, the Court of Appeals affirmed the Commission's Order in full. According to statute, they were under no obligation to pay the lump sum prior to the resolution of the appeal. Defendants notified the Commission on September 2, 2022 that full payment of the back-due TTD lump sum was paid, within the period to petition the Supreme Court for certiorari. *See* Rule 242(c), SCACR. Therefore, Defendants complied with the terms of the 2019 Commission Order relating to indemnity payments.
6. Defendants complied with the Commission's 2019 Order because the order did not require Defendants to authorize the required medical treatment. "If a claimant brings an action before the commission to enforce an order authorizing medical treatment or payment of benefits and the commissioner determines that an insurer. . . without good cause, failed to

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111, Pt I, § 30, eff July 1, 2007, applicable to injuries that occur on or after that date. The change in appellate process does not affect the validity of the underlying rule of law.

authorize medical treatment and/or pay benefits when ordered to do so by the commission, the insurer, . . . must pay the claimant's attorney's fees and costs of enforcing the order. The commission may impose sanctions for willful disobedience of an order, including, but not limited to, a fine of up to five hundred dollars for each day of the violation." S.C. Code Ann. § 42-3-175(A)(1)(2007, as amended). Section 42-3-150 also permits the Commission to find a party in contempt for failure to obey a Commission order. S.C. Code Ann. § 42-3-150 (1980, as amended).

7. Conclusion of Law #5 states that: "Claimant is entitled to treatment for his neck, back, and right knee. Defendants are liable for Claimant's future treatment with Dr. Poletti or any referral made by Dr. Poletti for Claimant's neck and back injuries. Defendants are to direct Claimant's medical treatment for his right knee." (SCWCC Appellate Panel Order, June 24, 2019, p.13). According to Finding of Fact #16: "Claimant has shown good cause to direct his own medical care and [we] hereby appoint Dr. Steven C. Poletti, or other referral from Dr. Poletti, as the authorized provider for Claimant's cervical and lumbar spine treatment." (SCWCC Appellate Panel Order, June 24, 2019, p.11). Read as a whole, these provisions, and the mandates set forth in the Order section, indicate that Claimant was to present to Dr. Poletti on his own and Defendants would be responsible for paying the medical bills. No bills for treatment were introduced into evidence. Claimant submitted one e-mail to Defendants' Counsel, dated September 4, 2020, asking that treatment be provided with Dr. Poletti. The Brigham Associates report indicates that between the dates of 2018 – 2022 "No medical records from [Claimant's] treating providers were available for review...." Defendants scheduled an appointment with Dr. Poletti, though the Order authorized Claimant to direct his own medical care for the back, and Claimant presented for the appointment on September 7, 2022. At that appointment, Dr. Poletti recommended follow-up MRI studies of both the lumbar and cervical spine to confirm his surgical recommendation. Defendants informed the undersigned that the requisite MRI was scheduled at the time of the Hearing. An appointment for evaluation of Claimant's knee had also been scheduled at the time of the hearing. Defendants also scheduled an appointment with Dr. Wildstein for September 23, 2020, though they were under no obligation to do so. Defendants have fulfilled their obligations according to the terms of

the Commission Order. For similar reasons, the undersigned declines to punish Defendants for contempt under Section 42-3-150.

8. Defendants were still required to authorize Claimant's medical treatment for his knee and failed to do so pursuant to the terms of the Order. However, Defendants have shown good cause for failing to do so and no fines or penalties are currently due. The record is replete with evidence indicating that Defendants had legal grounds to challenge Claimant's ongoing benefits award and Defendants exercised their right to do so. In October 2021, Defendants filed a Form 21 Hearing Request seeking to terminate benefits denying that Claimant suffered any causally related disability. As evidence in support of their request, Defendants submitted the 27 APAs summarized in this Order including, but not limited to, testimony, criminal records, surveillance reports, bank statements, vocational evaluations, an impairment rating critique, DMV records, and medical records. If Defendants believed in good faith that Claimant was receiving or would receive benefits to which he was no longer entitled, they were entitled to adjudicate the issue before the Commission prior to paying the medical benefits. Therefore, Defendants are not subject to fines, penalties, and attorney fees and costs under Section 42-3-175 or Section 42-3-150. Claimant's Rule to Show Cause Petition is denied.

ORDER

IT IS HEREBY ORDERED Defendants' APA submissions and Ms. Tracy Hayes Testimony are admitted into the record.

IT IS HEREBY ORDERED Claimant's Rule to Show Cause Petition and request for fines, penalties, and attorney fees and costs is denied.

AND SO IT IS ORDERED.

8-18-2023 (date)

Columbia, SC

Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Melani Roark on August 22, 2023

Order served via USPS:

JJS TRUCKING, LLC 137-A GORDON STREET CHARLESTON, SC 29403
Stephen B. Samuels Samuels Reynolds Law Firm 1320 Richland Street Columbia, SC 29201
Matthew J Story Clawson & Staubes, LLC 126 Seven Farms Drive Suite 200 Charleston, SC 29492-7595
Kirsten L. Barr Trask & Howell, LLC PO Box 2167 Mt. Pleasant, SC 29465
Lisa C. Glover SC Uninsured Employers' Fund PO Box 1815 Lexington, SC 29071

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Samuel Rose v JJS Trucking LLC
SCWCC: 1112328
Commission Panel: Dooley, Campbell, Taylor; Chair
Order Assigned to Commissioner: Dooley
Court Reporter – Amber Scarborough- 803-252-3445

Kristen L Barr	Defendants/Appellants
Matthew J. Story	SCUEF/Respondents
Stephen B. Samuels	Claimant/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Affirm** the decision and order of the Single Commissioner. Insert a new finding of fact #26. We find the medical treatment recommended by Dr. Poletti will tend to lessen claimant's period of disability as outlined i8n Dr. Poletti's medical report on p. 188. Renumber remaining finding of facts.

Mr. Story please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial
Transmitted via email this 13 September 2023

Corrected

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Samuel Rose v JJS Trucking LLC
SCWCC: 1112328
Commission Panel: Dooley, Campbell, Taylor; Chair
Order Assigned to Commissioner: Dooley
Court Reporter – Amber Scarborough- 803-252-3445

Kristen L. Barr	Defendants/Appellants
Matthew J. Story	SCUEF/Respondents
Stephen B. Samuels	Claimant/Respondent

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Affirm** the decision and order of the Single Commissioner.

Ms. Story please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at ehollmon@wcc.sc.gov or call at 803.737.5737

Judicial
Transmitted via email this 14 September 2023

State of South Carolina
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: Commissioner Cynthia C. Dooley; Commissioner Aisha Taylor, Chair; and Commissioner R. Michael Campbell, II

SCWCC File No.: 1112328

Samuel Rose,
Claimant,
v.
JJS Trucking and
Chris Thompson Services (Statutory Employer),
Employer,

and
Bridgefield Casualty Insurance (Carrier for Statutory Employer) and
SC Uninsured Employers' Fund,
Carriers,
Defendants.

AFFIRMED

Hearing held in Richland, South Carolina, (telephonic)
on August 28, 2023
Per notice timely and properly served upon all Parties of Interest.

Appearances:	Samuel Stephens, Esq. of Samuels Reynolds Law Firm, appeared on behalf of Claimant/Respondent. Kirsten Barr, Esq., of Trask & Howell, appeared on behalf of Defendant/Appellant, Bridgefield Casualty Insurance Company. Matthew J. Story, Esq., of Clawson & Staubes, LLC, appeared on behalf of S.C. Uninsured Employers' Fund/Respondents.
Court Reporter:	Amber Scarborough/Creel Court Reporting, Inc., 1230 Richland Street, Columbia, SC, (803) 252-3445, contact@creelreporting.com
Filed:	March 8, 2024

I. STATEMENT OF THE CASE

This matter came before the Full Commission on the Chris Thompson Services' (hereinafter "Thompson") Form 30. Briefs were prepared and submitted, and oral argument was heard on August 28, 2023, and the Full Commission Panel reviewed the record. This review arises out of an order issued May 15, 2023, by the Single Commissioner.

II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Single Commissioner made the following Findings of Fact:

Based upon the stipulations, APA submissions, the Commission's file and arguments of counsel, the undersigned Commissioner makes the following findings of fact as required by S.C. Code Anno., § 42-17-40, 1976:

1. Order directives were sent to both parties on March 15, 2023.
2. This claim was heard before the undersigned Commissioner pursuant to notices timely and properly served on all parties.
3. The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.
4. The Commission's file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.
5. That the parties agreed to rely on the Commission's file, prior APA Submissions including but not limited to the hearing transcript from 2012 in lieu of receiving testimony at this hearing.
6. In reviewing the facts and evidence presented, the undersigned relies on *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C.

445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) for the applicable case law.

7. In reviewing the facts and evidence presented, the undersigned does not rely on *Almazon v. SCUEF*, 2017-UP-124 (March 15, 2017), as it is unpublished and has no precedential value.
8. Thompson did not supply the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b) but turned it over 3 months later (APA 71).
9. That the certificate of insurance provided is blank as to the description and location of operations and is therefore incomplete.
10. That the certificate of insurance provided does not note where coverage applies or to what job entity, and as no written contract existed, each transaction would be a new job requiring a certificate of insurance,
11. That the certificate provided only shows a binder and does not show policy number.
12. That all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature.
13. Even the updated Certificate of Insurance (APA 72 to 2023 hearing; Exhibit 2 to 2012 hearing) is incomplete.
14. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

The Single Commissioner made the following Conclusions of Law:

Based upon the findings of fact set forth above, the undersigned Commissioner makes the following conclusions of law as required by S.C. Code Anno., § 42-17-40:

1. Thompson seeks to transfer liability to the UEF pursuant S.C. Code Ann. § 42-1- 415 and has failed to show entitlement to transfer liability based on the above findings of fact.

2. That *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell,* 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*,383 S.C. 310, (2009) and *Barton v. Higgs,* 381 S.C. 367 (S.C. 2009) apply and require strict construction of [sic] C. Code Ann. § 42-1-415.

3. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

III. ISSUES ON APPEAL

Thompson timely filed a Form 30 with the following grounds for appeal:

1. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 6, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.

2. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 7, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.

3. The Hearing Commissioner erred in finding and concluding that "Thompson did not supply the certificate of insurance to the Workers' Compensation Commission ... as required by S.C. Code Ann. § 42-1-415(b)" [sic], as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is supported by neither the greater weight of the evidence or the applicable law.

4. The Hearing Commissioner erred in failing to find and conclude that the Petitioners timely provided a Certificate of Insurance to the Commission in accordance with S.C. Code Ann. § 42-1-415(B) and that said Certificate was part of the Commission's file prior to any hearing in this claim.

5. The Hearing Commissioner erred in finding and concluding that the Certificate of Insurance is "incomplete," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

6. The Hearing Commissioner erred in failing to find and conclude that the Certificate of Insurance is complete and meets all of the requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415.

7. The Hearing Commissioner erred in finding and concluding that "as no written contract existed, each transaction would be a new job requiring a certificate of insurance," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

8. The Hearing Commissioner erred in failing to find and conclude that the Petitioners obtained a proper Certificate of Insurance at the time JJS was engaged to perform work as required by S.C. Code Ann. § 42-1-415 based upon the overwhelming and undisputed evidence in the record.

9. The Hearing Commissioner erred in finding and concluding that "all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

10. The Hearing Commissioner erred in failing to find and conclude that the Petitioners have already pay all benefits due and payable to the Claimant, including the statutory maximum of 500-weeks of compensation and the Petitioners are entitled "to transfer responsibility for continuing compensation and benefits to the Uninsured Employers Fund" in accordance with the plain language of S.C. Code Ann. § 42-1-415(A).

11. The Hearing Commissioner erred in finding and concluding that the "updated" Certificate of Insurance is "incomplete," as this finding of fact is neither relevant, nor supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

12. The Hearing Commissioner erred in concluding that the Petitioners "failed to show entitlement to transfer liability," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.

13. The Hearing Commissioner erred in concluding that case law requires "strict construction of C. Code Ann. § 42-1-415" [sic], as this conclusion is as this conclusion is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.

14. The Hearing Commissioner erred in concluding that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise fails to apply any legal principle to the facts of this case, including the undisputed fact that the Petitioners collected documentation of insurance from JJS trucking at the time JJS Trucking was engaged to perform work; the

undisputed fact that said documentation of insurance met all requirements of S.C. Code. Ann. § 42-1-415 and the current version of S.C. Code Reg. 67-415; the undisputed fact that JJS Trucking was a South Carolina Employer, with a South Carolina address, and documented South Carolina insurance; the undisputed fact that the documentation of insurance was signed by an authorized representative; and the undisputed fact that further investigation of the documentation of insurance was undertaken by Chris Thompson Services and revealed that JJS Trucking had a valid policy of insurance as documented and as stipulated by Travelers.

15. The Hearing Commissioner erred in concluding that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case regarding what is acceptable to the Commission as documentation of insurance, the error being that these cases pre-date the applicable regulation, S.C. Code Reg. 67-415, the requirements of which have been met by the Petitioners by overwhelming and undisputed evidence.

16. The Hearing Commissioner erred as a matter of law in concluding that Voss v. Ramco, Inc, 325 S.C. 560, 482 S.E.2d 582 (Ct. App 1997) applies to this case or requires strict construction of S.C. Code Ann. § 42-1-415, at this case does not even mention S.C. Code Ann. § 42-1-415 and is otherwise wholly inapplicable because the fact that the Claimant was an "Employee" of JJS Trucking pursuant to S.C. Code Ann. § 42-1-130 and the fact that the South Carolina Workers' Compensation Commission has jurisdiction over this claim have been the established law of the case since Commissioner McCaskill issued his Order dated August 23, 2012.

17. The Hearing Commissioner erred as a matter of law in ordering that Petitioners "has not entitlement to transfer liability" [sic], as this order is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.

18. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Travelers stipulates that it provided workers' compensation coverage to JJS Trucking as documented on the Certificate of Insurance and stipulated by counsel for Travelers, and therefore, Petitioners reasonably relied upon the Certificate of Insurance.

19. The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Certificate of Insurance is dated and signed by David Hayes of the Swamp Fox Agency as an authorized representative of Travelers as required by S.C. Code Reg. 67-415 and as stipulated by Travelers.

20. The Hearing Commissioner erred as a matter of law by arbitrarily and capriciously adding to the stated requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 in contravention of the Petitioners' constitutional and statutory rights of due process and equal protection under the law.

21. The Hearing Commissioner erred as a matter of law in failing to find and conclude that neither JJS Trucking, nor any other person or entity gave Chris Thompson Services any notice of the policy cancellation and that; therefore, Chris Thompson Services reasonably relied upon the Certificate of Insurance dated October 18, 2010, and reasonably believed

that JJS Trucking had workers' compensation insurance coverage at the time of Samuel Rose's accident because the accident occurred within the certified policy period.

22. The Hearing Commissioner erred as a matter of in failing to make specific, detailed findings of fact on any material issues and in failing to apply the applicable law, including S.C. Code Reg. 67-415, to such facts, as required by the South Carolina Workers' Compensation Act and the Administrative Procedures Act.

23. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Chris Thompson Services and its own carrier, Bridgefield Casualty, promptly and timely provided the Workers' Compensation Commission and the Uninsured Employers' Fund with the Certificate of Insurance dated October 18, 2010, and notified by the Commission and the UEF of their intent to seek a transfer liability to the UEF in accordance with S.C. Code Ann. § 42-1-415.

24. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Chris Thompson Services and Bridgefield Casualty have paid all benefits due to the Claimant in accordance with the prior orders of the Commission, including 500 weeks of compensation and all causally related medical care and treatment recommend by the physician appointed by the Commission, Dr. Poletti.

25. The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Petitioners took additional steps to ensure that a policy was issued to JJS Trucking (and covered the work JJS Trucking was engaged to perform) after coverage was bound and certified on October 18, 2010, based on the admission by Travelers that it actually issued a policy of insurance to JJS Trucking as stated in the October 18, 2010, Certificate of Insurance, and based on testimony of Chris Thompson that after receiving said Certificate from the Swamp Fox Agency, he telephoned the Swamp Fox Agency to verify coverage for JJS Trucking and "spoke with Greg Hudson ... he said everything is good to go, you're covered ... Cedric [of JJS Trucking] was good to go."

26. The Hearing Commissioner erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(A), "upon the submission of documentation to the commission that a ... subcontractor has represented himself to a higher tier subcontractor ... as having workers' compensation insurance at the time the ... subcontractor was engaged to perform work, the higher tier subcontractor ... must be relieved of any and all liability under this title ... The higher tier subcontractor ... may petition the commission to transfer responsibility for **continuing** compensation and benefits to the Uninsured Employer's Fund," and in failing to conclude that the Petitioners properly submitted such documentation, specifically an ACORD Form 25, Certificate of Insurance dated October 18, 2010, and; therefore, must be relieved of responsibility for any continuing medical benefits in this claim.

27. The Hearing Commissioner erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor ... must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission" and Regulation 67-415(A) further provides that "[f]or purposes of Section 42-1-415 ... the following is acceptable as documentation of

insurance ...the ACORD Form 25-S, Certificate of Insurance ... provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." The Hearing Commissioner further erred in failing to conclude that the ACORD Form 25 Certificate of Insurance dated October 18, 2010, meets all of the requirements of § 42-1-415 and Reg. 67-415(A)(2) because it indicates a valid South Carolina address for the insured ("137-A Gordon Street, Charleston SC 29403"), the form is dated ("10/18/10"), and it is signed and issued by David W. Hayes of the Swamp Fox Agency, which Travelers admits was their authorized agent.

IV. DECISION OF THE APPELLATE PANEL

After reviewing the briefs submitted by the parties, oral arguments by Thompson and the SC Uninsured Employers Fund, and based upon the record in its entirety, this Appellate Panel makes the following findings:

FINDINGS OF FACT

1. That the South Carolina Worker's Compensation Commission has jurisdiction over this matter.

2. That jurisdiction and venue are proper.

3. The above cited case was heard by the Single Commissioner on 02/14/23.

4. [The Single Commissioner's] Order directives were sent to both parties on 3/15/23.

5. A Decision and Order was issued on 05/15/23.

6. Thompson filed a Form 30 (Notice of Appeal) on 05/26/23.

7. The Appellate Panel heard oral arguments on 08/28/23.

8. This claim was heard before the undersigned Commissioners pursuant to notices timely and properly served on all parties.

9. The South Carolina Workers' Compensation Commission has jurisdiction of the parties and the subject matter of this claim and venue is proper in Dorchester County, State of South Carolina.

10. The Commission's file, except for any self-serving declarations and unstipulated medical reports, is made a part of the record.

11. That the parties agreed to rely on the Commission's file, prior APA Submissions including but not limited to the hearing transcript from 2012 in lieu of receiving testimony at this hearing.

12. In reviewing the facts and evidence presented, the undersigned relies on *Voss v. Ramco, Inc.*, 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), *Hardee v. McDowell*, 381 S.C. 445, 673

S.E.2d 813 (S.C. 2009), *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009) and *Barton v. Higgs*, 381 S.C. 367 (S.C. 2009) for the applicable case law.

13. In reviewing the facts and evidence presented, the undersigned does not rely on *Almazon v. SCUEF*, 2017-UP-124 (March 15, 2017), as it is unpublished and has no precedential value.

14. Thompson did not supply the certificate of insurance to the Worker's Compensation Commission "at the time a claim is filed by the injured employee" as required by S.C. Code Ann. § 42-1-415(b) but turned it over later (APA 71).

15. That the certificate of insurance provided is blank as to the description of location/operations and is therefore incomplete and may not be used to transfer liability pursuant to S.C. Code Ann. § 42-1-415 and *Hopper v. Terry Hunt Const.*, 383 S.C. 310, (2009).

16. That the certificate of insurance provided does not note where coverage applies or to what job entity, and as no written contract existed, each transaction would be a new job requiring a certificate of insurance.

17. That the certificate provided only shows a binder and does not show policy number.

18. That all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature.

19. Even the updated Certificate of Insurance (APA 72 to 2023 hearing; Exhibit 2 to 2012 hearing) is incomplete.

20. All other orders in this case that are not inconsistent with this decision are incorporated herein by reference.

21. The Single Commissioner's Order of May 15, 2023, is affirmed in its entirety.

CONCLUSIONS OF LAW

The following sections of the South Carolina Code of Law give the appropriate definition of divisions of the South Carolina Workers' Compensation Act as applicable to this case:

1. South Carolina Code Section 42-9-30 governs schedule of period of disability and compensation.

2. South Carolina Code Section 42-17-50 governs review and rehearing by the Commission.

ORDER

For all the above and foregoing reasons, the Full Commission **AFFIRMS** the Decision and Order of The Single Commissioner.

AND SO IT IS ORDERED.

_____(date)
Columbia, SC

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

By: _____
Commissioner Cynthia C. Dooley

By: _____
Commissioner Aisha Taylor, Chair

By: _____
Commissioner R. Michael Campbell, II

Order Served via email:

Stephens B. Samuels Samuels Reynolds Law Firm stephen@samuelsreynolds.com	Matthew J. Story Clawson & Staubes, LLC mstory@clawsonand staubes.com Kristen L. Barr Trask & Howell, LLC kbarr@trask-howell.com

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on March 8, 2024

9/23/2011 4:08:28 PM Batch: 17515461

South Carolina Workers' Compensation Commission
1612 Marion Street • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov

WCC File #: **Unassigned**
Carrier File #: **943450**
Carrier Code #: **1067**
Employer FEIN #: 111328

Claimant's Name: Samuel Rose SSN: [redacted]
Address: [redacted]
City: Charleston State: SC Zip: 29403
Home Phone: [redacted] Work Phone: ( )

Employer's Name: JJS Trucking, LLC (uninsured employer)
Chris Thompson Services, LLC (upstream employer)
Address: 137-A Gordon Street
City: Charleston State: SC Zip: 29403
Insurance Carrier: SCUEF
Bridgefield Casualty Insurance Company (Chris Thompsor

Preparer's Name: Joseph Fisher, Esquire Law Firm: George Sink, P.A. Preparer's Phone #: (843) 569-1700

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.
A claim for workers' compensation benefits is made based on the following grounds: **Date of Injury or Illness: on or about 8/10/2011**
☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an injury to right knee, back, neck, and head on or about 08/10/2011 in Charleston County, State of South Carolina.
1b. Body part(s) affected are: right knee, back, neck, and head.
Briefly describe how the accident occurred: Claimant was involved in a traffic collision during course and scope of employment.

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.

3. The relationship of employer and employee existed at the time of injury.

4. At the time of the injury the claimant was performing services arising out of and in the course of employment.

5. Notice of the accidental injury was given to the Employer on or about 08/10/2011 in the following manner:
Verbally to owner of company.

☒ 6. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: all above-referenced injuries
☐ (b) additional medical examination and treatment for:

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
from date of injury to MMI.

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☒ (1) General Disability: ☐ Total ☐ Partial ☒ (2) Specific Disability: ☐ Total ☐ Partial
☐ (3) Wage Loss

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of $To Be Determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
N/A

11a. Further grounds or unusual aspects of claim:
Any and all allowable; claimant reserves the right to amend.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
MUSC, 171 Ashley Avenue, Charleston, SC 29403; Dr. Alan Abel, 7741-C Dorchester Road, N. Charleston, SC 29418;Tri-County Spinal Care Center, 8626 Dorchester Road, Suite 101, N. Charleston, SC 29420.

11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: N/A

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. **I am requesting a hearing. A $25 fee is required.**

14. Estimated time needed for hearing: 60 minutes

SCWCC
SEP 14 '11
INSURANCE & MEDICAL SERVICES

I verify the contents of this form are accurate and true to the best of my knowledge.

Joseph B. Fisher, Esq. Attorney for Claimant jfisher@sinklaw.com 09/08/2011
Preparer's Signature Title Email Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50
Revised 9/07

Employee's Notice of Claim and/or Request for Hearing

50

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER UNASSIGNED

Samuel Rose, Claimant, v. JJS Trucking, LLC, and Chris Thompson Services, LLC, Employers, and SCUEF, and Bridgefield Casualty Insurance Company, Carriers.	CERTIFICATE OF SERVICE

I hereby certify that on this day, September 8, 2011, I mailed a copy of the attached Form 50 (request for hearing) by depositing copies of same with the United States Postal Service, first-class, postage pre-paid, to the below-listed counsel/parties/entities addressed as follows:

Ms. Virginia Crocker, Judicial Director
S.C. Workers' Compensation Commission
Post Office Box 1715
1333 Main Street, Suite 500
Columbia, South Carolina 29202-1715

Samuel Rose
17 Ashton Street
Charleston, SC 29403

JJS Trucking, LLC
137-A Gordon Street
Charleston, SC 29403

S.C. Uninsured Employers' Fund
100 Executive Center Drive, Ste 101
Columbia, SC 29210

Chris Thompson Services, LLC
Post Office Box 3377
Summerville, South Carolina 29484

Bridgefield Casualty Insurance Company
Post Office Box 600
Gainesville, Georgia 30503

Isaac Garcia - Legal Assistant
George Sink, P.A.

North Charleston, SC

September 8, 2011

SCWCC
SEP 4 '11
INSURANCE & MEDICAL SERVICES

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

September 20, 2011

Bridgefield Casualty Insurance Company
P.O. Box 600
Gainesville, GA 30503-0600
Carrier Code No. 01067

Re: WCC File No. 1112328
SAMUEL ROSE
SSN: [redacted]
Date of Injury: 08/10/2011

CHRIS THOMPSON SERVICES, LLC
Carrier Policy No.

The above claim has been filed according to Regulation 67-206. However, we have not received a First Report of Injury (Form 12A) for this claim. According to our records, you are the party responsible for filing the First Report of Injury (Form 12A) for the above claim. Please submit a Form 12A to the Commission within ten days of the date this letter.

A copy of the correspondence establishing this claim is enclosed for your information. Please reference the WCC file number on all correspondence and forms filed with the Commission regarding this claim.

Sincerely,

Grant W. Duffield
Director of IMS
803-737-5718

:GWD
Enclosure: Claim Filing

10/5/2011 2:57:29 PM Batch: 17598525

The South Carolina Second Injury Fund

WILLIAM E. GUNN
INTERIM DIRECTOR

100 EXECUTIVE CENTER DRIVE, SUITE 101
SANTEE BUILDING
COLUMBIA, S.C. 29210
www.scsif.sc.gov

(803) 798-2722
FAX: (803) 798-5290

October 3, 2011

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
RECEIPT NO.: 000369704119

Virginia Crocker, Judicial Director
South Carolina Workers' Compensation Commission
PO Box 1715
Columbia, South Carolina 29202-1715

RE: SAMUEL ROSE VS. JJS TRUCKING, LLC
SCWCC NO. 1112328; UEF NO. 007236

Dear Ms. Crocker:

Enclosed is the Fund's Answer to Request for Hearing in the above referenced case. By copy of this letter, I am serving same on the parties listed below.

With kind regards, I am

Yours very truly,

TIMOTHY B KILLEN
STAFF ATTORNEY

TB:tbk
Enclosure
cc: Joseph B. Fisher, Esq.
JJS Trucking, LLC
Chris Thompson Services, LLC
Bridgefield Casualty Ins. Co.

10/5/2011 2:57:30 PM Batch: 17598525

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739
www.wcc.sc.gov

WCC File #: 1112328
Carrier File #: 007236
Carrier Code #:
Employer FEIN #:

Claimant's Name: Samuel Rose SSN: [redacted]
Address: [redacted]
City: Charleston State: SC Zip: 29403
Home Phone: [redacted] Work Phone:
Date of Injury: 08/10/2011

Employer's Name: Jjs Trucking, Llc
Address: C/o Cedric Smalls, R.a. 137-a Gordon St.
City: Charleston State: SC Zip: 29403
Insurance Carrier:

Preparers Name: Timothy B Killen Law Firm: SCWCUEF Preparers Phone #: (803) 798-2722

Date of Injury or Illness: 08/10/2011

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
   General: there has been no proof.
2. It is denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is denied notice of injury was given the employer. The reasons for denial are:
6. It is denied the employee **Needs / Is Entitled to Additional** medical care as a result of injury or illness. The reasons for denial are:
7. It is denied the employee is entitled to temporary total disability for the period(s) of :
8. It is denied the employee is permanently disabled. The reasons for denial are:
9. It is denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of $ (unknown) applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
    See Attachment.
12. Estimated time needed for hearing: 1 hour.

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: SEE CERTIFICATE OF SERVICE

Address:

on the 3rd day of October, 2011 by ☒ first class mail ☐ personal service ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature	Staff Attorney	tkillen@sif.sc.gov	10/03/2011
	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC Form # 51
Revised 9/07

51

Employer's Answer to Request for Hearing

ATTACHMENT - WCC FORM 51

SCUEF NO: 007236
SCWCC NO: 1112328

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing _____ Filing a Claim _____, dated 9-8-11.

Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing _____ Filing a Claim _____, dated _____.

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.

STATE OF SOUTH CAROLINA *
* CERTIFICATE OF SERVICE
COUNTY OF RICHLAND *

The undersigned employee of the South Carolina Second Injury Fund, 100 Executive Center Drive, Suite 101, Columbia, South Carolina, 29210, does hereby certify that he or she has served the following named individual(s) and/or companies with a copy of the pleading indicated below by mailing a copy of same to them in the United States mail, with sufficient postage affixed thereto and return address clearly marked, on the date indicated below:

PARTIES SERVED:

JOSEPH B. FISHER, ESQ.
GEORGE SINK LAW FIRM
PO BOX 63506
N. CHARLESTON, SC 29419-3506

JJS TRUCKING, LLC
C/O CEDRIC SMALLS, R.A.
137-A GORDON ST.
CHARLESTON, SC 29403

CHRIS THOMPSON SERVICES, LLC
PO BOX 3377
SUMMERVILLE, SC 29484

BRIDGEFIELD CASUALTY INS. CO.
PO BOX 600
GAINESVILLE, GA 30503

PLEADING: FORM 51 - UNINSURED EMPLOYERS' FUND'S ANSWER TO REQUEST FOR HEARING

~~TIMOTHY D KILLEN~~
JOYCE DEATRICK

October 3, 2011
Columbia, South Carolina

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739

WCC File # 1112328
Carrier File # 943450
Carrier Code #
Employer FEIN

Samuel A. Rose	~~247-88-3390~~	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company	
Claimant's Name	SSN	Employer's Name	
~~19 Ashton St.~~	Charleston, SC 29403	106 New Hope Dr.	Summerville, SC 29483
Address	City State Zip	Address	City State Zip
~~(843) 577-3988~~		Bridgefield Casualty Insurance Co.	
Home Phone	Work Phone	Insurance Carrier:	
Date of Injury: August 10, 2011			

Preparer's Name: Kirsten L. Barr | Law Firm: Trask & Howell, LLC | Preparer's Phone #: (843) 881-4228

Date of Injury or Illness: August 10, 2011

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer / carrier in answer to the claim, respectfully shows:

1. It is denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are:
2. It is denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Claimant was never an employee of Chris Thompson Services.
3. It is denied the relationship of employer and employee existed at the time in question. The reasons for denial are: Claimant was not an Employee of Chris Thompson Services at any time.
4. It is denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: Claimant never performed any services for Chris Thompson Services and it is further denied that he sustained any injury by accident as alleged.
5. It is denied notice of injury was given the employer. The reasons for denial are: Claimant did not give notice of any accident to Chris Thompson Services and it is denied that he gave notice to his actual employer; pending investigation.
6. It is denied the employee needs medical care as a result of injury. The reason for denial are: See #1 through #5, above.
7. It is denied the employee is entitled to temporary total disability for the period(s) of: See #1 through #5, above.
8. It is denied that the employee is permanently disabled. The reasons for denial are: See #1 through #5, above.
9. It is denied that the employee has a serious disfigurement.
10. It is contended that an average weekly wage of $ TBD applies, according to attached Form 20 as provided by law. Claimant earned no wage from Chris Thompson Services at any time.
11. Further contentions, grounds of defense, or unusual aspects are: Reserve the right to amend. Chris Thompson Services and Bridgefield Casualty Insurance Co. assert S.C. Code Ann. § 42-1-415 as a defense.
12. Estimated time needed for hearing: One hour

I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Ms. Virginia Crocker, SCWCC, P. O. Box 1715, Columbia, SC 29202-1715; Joseph B. Fisher, Esq., PO Box 63506, North Charleston, SC 29419; S.C. Uninsured Employers Fund, 100 Executive Center Drive, Suite 101, Columbia, SC 29210; and JJS Trucking, LLC, 137-A Gordon Street, Charleston, SC 29403

on the 7th day of October ,2011 by ☒ first class mail; ☐ personal service; ☒ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

D. Az Whitfield for KLB	Attorney for Defendants.	kbarr@trask-howell.com	October 7, 2011
Preparer's Signature	Title	Email	Date

Refer to R.67-204 through R.67-210 and R.67-601through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

WCC FORM # 51 REV. DATE 9/07 **51** **Employer's Answer to Request for Hearing**

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739

PRE-HEARING BRIEF
WCC FILE NO: 1112328

Samuel A. Rose	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Claimant's Name	Employer's Name
~~12 Ashton St.~~	106 New Hope Dr.
Address	Address
Charleston, SC 29403	Summerville, SC 29483
City State Zip	City State Zip
~~(843) 577-2985~~	Bridgefield Casualty Insurance Co.
Home Phone Work Phone	Carrier

Kirsten L. Barr — Preparer's Name
(843) 881-4228 — Phone #

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate:$0 Chris Thompson Services 2. AWW: $:$0 Chris Thompson **Date of Injury: August 10, 2011**

3. Type of injury and body part(s): alleged head, neck and right knee injury due to a motor vehicle accident

4. Facts in controversy: Claimant is an employee of JJS Trucking, which is a subcontractor of Chris Thompson Services. At the time JJS Trucking was engaged to perform work for Chris Thompson Services, Chris Thompson Services obtained a Certificate of Workers Compensation Insurance. Most recently, in October 2010, Chris Thompson Services obtained an Accord Form 25 Certificate of Liability Insurance showing that JJS Trucking was insured for workers' compensation by Tower Insurance Co. for the period from October 8, 2010 until October 8, 2011. Chris Thompson Services is the named certificate holder and Tower Insurance Company's authorized agent, David W. Hayes swore that should the policy be "cancelled before the expiration date thereof, the issuing insurer Will endeavor to mail 10 days written notice to the certificate holder, " Chris Thompson Services. Apparently, coverage for JJS Trucking lapsed prior to the August 10, 2011 accident; however, neither JJS Trucking, nor Tower Insurance Company, nor its agents notified Chris Thompson Services of the lapse in coverage, as expressly required by S.C. Code Ann. § 42-1-415.

5. Legal issues involved: Whether and to what extent the Claimant sustained any injury arising out of and in the course of his employment with JJS Trucking on August 10, 2011 pursuant to S.C. Code Ann. § 42-1-160. Whether and to what extent the Claimant is entitled to temporary total disability compensation benefits as a result of the August 10, 2011 accident pursuant to S.C. Code Ann. §§ 42-9-10, 42-9-20, or 42-9-260. Whether the Claimant is entitled to any additional medical care or treatment pursuant to S.C. Code § 42-15-60 given that there is no expert medical evidence stated to a reasonable degree of medical certainty that additional medical treatment would tend to lessen the alleged period of disability associated with the August 10, 2011 accident and the law specifically requires such evidence. Whether JJS Trucking represented itself to Chris Thompson Services as having workers' compensation insurance at the time JJS Trucking was engaged to perform work, as required by S.C. Code Ann. § 42-1-415(A). Whether Chris Thompson Services is entitled to transfer liability to for continuing compensation and benefits (if any) to the Uninsured Employers' Fund in accordance with S.C. Code Ann. § 42-1-415(A). Whether the Accord Form 25 Certificate of Liability Insurance dated October 18, 2010 and attached hereto, is "a standard form acceptable to the commission" as contemplated by S.C. Code Ann. § 42-1-415(B). Whether the Accord Form 25 Certificate of Liability Insurance dated October 18, 2010 was collected

at the time JJS Trucking was engaged to perform work, as required by S.C. Code Ann. § 42-1-415(B); Whether JJS Trucking knowingly and willingly failed to notify (by certified mail) Chris Thompson Services that its workers' compensation insurance had lapsed, such that JJS Trucking is subject to penalties for fraud in accordance with S.C. Code Ann. § 42-1-415(C).

6. Unusual aspects: Defendants Chris Thompson Services and Bridgefield Casualty Insurance have been attempting to depose the Claimant since October 4, 2011 and the earliest date the Claimant has been made available for a deposition is November 14, 2011, which is 2 days prior to the scheduled hearing. Therefore, Defendants Chris Thompson Services and Bridgefield Casualty Insurance request that the record remain open for additional records that may be requested as a result of said deposition.

7. Witnesses (designate if expert*): Chris Thompson and/or other representative of Chris Thompson Services, LLC

8. Exhibits: Accord Form 25 Certificate of Liability Insurance dated October 18, 2010

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) To be submitted upon receipt

10. Name, address, and specialty, if any, of the treating physician: MUSC, 169 Ashley Ave., Charleston, SC 29425

11. Impairment rating(s); body part(s); physician and date of opinion: none

12. I am amending my Form 50/51 in the following manner: N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: Kristen L. Barr Email: kbarr@trask-howell.com

Date of hearing: November 17, 2011 Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Samuel A. Rose, Claimant, -vs- JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer, -and- Bridgefield Casualty Insurance Co., Carrier Defendants	BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION W.C.C. FILE NO. 1112328 NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS TO BE INTRODUCED AS DIRECT EVIDENCE

TO: South Carolina Workers' Compensation Commission, Joseph B. Fisher, Esq., attorney of record for Samuel A. Rose, Timothy Killen, Esq., attorney of record for S.C. Unemployed Insurance Fund, and JJS Trucking, LLC,

YOU ARE HEREBY NOTIFIED THAT Kirsten L. Barr, pursuant to the provisions of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.* and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330, herewith submits the following evidence on behalf of the Defendants, to wit:

EXHIBITS #	DESCRIPTION	DATES	PAGES
9	Accord Form 25 Certificate of Liability Insurance	10/18/10	53

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Chris Thompson
And/or other representative of Chris Thompson Services, LLC

Kirsten L. Barr
Attorney for the Defendants

Date: November 4, 2011

118/133\notice

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-

Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

March 30, 2012

F. Reid Warder, Jr.
Wood & Warder LLC
P O Box 20550
Charleston, SC 29413

Carrier Code No. 00000

Carrier File No. NRHR20110920

Re: **Claim file:**
WCC File No. 1112328
SAMUEL ROSE v. CHRIS THOMPSON SERVICES, LLC et al
Date of Injury: 08/10/2011

Compliance file:
WCC File No. X110953
SCWCC v. JJS Trucking LLC

Dear Mr. Warder:

This is in response to your call to me yesterday in which you indicated my deposition that was scheduled for today in Columbia has been cancelled. You said in lieu of my deposition you would accept a letter from me that states the Compliance Division's position regarding whether or not Travelers Indemnity insured JJS Trucking, LLC on the date of the accident, which was 8/10/2011. The position of the Compliance Division is it did not. The documentation of this is presented below.

The Compliance Division's investigation determined that JSS Trucking, LLC is a limited liability company, as evidenced by SC Secretary of State registered agent information shown as **Exhibit A.**

Cedric Smalls, owner of JJS Trucking, LLC, responded to the Compliance Division's request for information by completing the Employer Questionnaire shown as **Exhibit B.** The questionnaire has attachments that include certificates of insurance indicating Travelers provided coverage to JJS Trucking, LLC from 10/8/2010 to 10/8/2011, and Zurich provided coverage to JJS Trucking, LLC from 8/24/2010 to 8/24/2011. However, both Travelers and Zurich denied they provided coverage to JJS Trucking, LLC on the date of the accident, as evidenced by the denial letters shown respectively as **Exhibit C** and **Exhibit D.**

The insurance records of the Commission indicate that Travelers Indemnity Company provided coverage to JJS Trucking, LLC from 10/8/2010 to 2/5/2011 and from 9/23/2011 to 11/10/2011, as evidenced by the proof of coverage documents shown respectively as **Exhibit E** and **Exhibit F**.

Accordingly, the position of the Compliance Division is that Travelers Indemnity did not provide coverage to JJS Trucking, LLC on the date of the accident, and my recommendation is Travelers Indemnity should be released as a carrier of record for the claim.

Further, the position of the Compliance Division is that JJS Trucking, LLC was subject to the SC Workers' Compensation Act and uninsured from 2/5/2011 until 9/23/2011, and from 11/10/2011 through the date of this letter. JJS Trucking, LLC came under the Act by obtaining insurance, lapsed or did not renew its policy, but continued under the Act. In order to come out from under the Act, an eligible employer -- one that does not now regularly have four employees -- must file a Form 38 to withdraw from the Act. That was not done. (See R67-403 and R67404.) The issue as to whether the employer was also subject to the Act by regularly having four or more employees has not been addressed in this compliance action, but that could be the case as well.

If you have questions or comments about the above, please call me directly,

Sincerely,

Garry Smith
Compliance Division, Director
803-737-5707

Enclosures: **Exhibit A - F**

c:
JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Kirsten L. Barr, Esquire
Trask & Howell, LLC
PO Box 2167
Mt. Pleasant, SC 29465

Joseph B. Fisher, Esquire
George Sink, PA
P O Box 63506
North Charleston, SC 29419-3506

Timothy B. Killen, Esquire
100 Executive Center Drive Suite 101
Santee Bldg
Columbia, SC 29210

South Carolina
Secretary of State
Mark Hammond

JJS TRUCKING, LLC

Note:This online database was last updated on 10/3/2011 6:01:29 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CEDRIC SMALLS
ADDRESS:	137-A GORDON STREET
CITY:	CHARLESTON
STATE:	SC
ZIP:	29403
SECOND ADDRESS:	

FILE DATE:	07/22/2005
EFFECTIVE DATE:	07/22/2005
DISSOLVED DATE:	/ /

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	07/22/2005	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at their own risk.

EXHIBIT A

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-1258
www.wcc.sc.gov

Workers' Compensation Commission

September 20, 2011

JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

Dear JJS TRUCKING, LLC:

A workers' compensation claim has been filed on behalf of the above-named claimant. The defendant in the caption is stated to have been the employer. Additional information is required to determine if insurance coverage for JJS TRUCKING, LLC exists. Please furnish the following information within five (5) days from the date of this letter.

Name of insurance agent: Swamp Fox Agency
Agent's phone number: 843-761-3999
Insurance carrier: Travelers
Policy number: 0216-CB-EQS3181-K
Name as it appears on policy: JJS Trucking, LLC
Effective dates of policy: OCTOBER 8, 2010 to JANUARY 4, 2011
Employer's FEIN: [redacted]
Name of person completing form: Cedric Smalls
Telephone number: [redacted]

If you have any questions you may contact me at 803-737-5711 or MFelton@wcc.sc.gov.

Sincerely,

Michael Felton

Michael Felton
Compliance Investigator

Enclosure: Questionnaire

EXHIBIT 6

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICES

Questionnaire for Uninsured Employer

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

1. Official business name: JJS Trucking, LLC
2. Official business address: 137-A Gordon Street Chas. S.C. 29403
3. Owner(s) of business: Cedric Smalls
4. Number of employees in SC at time of alleged accident: 4
5. Number of subcontractors in SC at time of alleged accident: 0
6. Business FEIN: [redacted]
7. Was the above-named claimant the employee of the employer at the time of the alleged accident? ✓ Yes. _____ No.

If applicable: How much was the claimant paid?
Hourly gross N/A or weekly gross N/A
Number of hours the claimant worked per week: driver is paid by loads

8. Was the business providing service or subcontracting for an "upstream" employer or general contractor when the alleged injury occurred? If so, please provide the business name and address:
Chris Thompson Services, LLC
[redacted]
Summerville, S.C. 29483

9. Are there any extenuating circumstances or facts about this claim and accident that need to be made known? If so, please describe:
JJS employee was found Not at fault at time of Accident. Enclosed is a copy of Accident report.

10. Name of person completing form: Cedric Smalls
11. Telephone #: [redacted]

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICE

Mail FR-10 to: Office of Financial Responsibility
SC Department of Public Safety
PO Box 1498, Columbia, SC 29216

SOUTH CAROLINA DEPARTMENT
FR-10 (REV. 07)
NOTICE

Date	Time	County	Insurance A. Secondary 1. S Primary 5. County 3. SC Primary 6. PP	Collision Double, RL # Name	Multiple Units Hit & Run S. Spec
08-10-2021	0340	10		§ 26 / X 26	

To Vehicle Owner/ Operator: **Failure to comply could result in appropriate action under 56- of laws of S.C. as amended, if vehicle subject to registration in S. the Department must suspend your driving and/or registration privileges. Other have been met under the above sections of law.**

E-079899

Driver/Pedestrian's Full Name: ROSE SAMUEL A

Unit	Sex	Race	Street/R.F.D.
01	M	B	12 ASHTON ST

Birth Date: 08-23-1970 | City, State, & Zip: CHARLESTON SC 29403

State	Driver's License #	Class	Insurance Company
SC	[redacted]	A	TOWER INS CO

Year	Body	Vehicle Make	VIN #
1995	TR	INTL	[redacted]

State	Year	License Plate #	Owner's D.L. #
SC	2011	[redacted]	

Home Telephone: ( ) | Owner's Full Name: 338 TRUCKING LLC

Bus. Telephone: ( ) | Street/R.F.D.: 137 GORDON ST APT A

Contributed To Collision: Yes **No** | City, State, & Zip: CHARLESTON SC 29403

E-079900

Driver/Pedestrian's Full Name: CLARK ROBBIE

Unit	Sex	Race	Street/R.F.D.
02	M	B	213 [redacted]

Birth Date: [redacted] | City, State, & Zip: SUMMERVILLE SC 29485

State	Driver's License #	Class	Insurance Company
SC	008523561	A	TOWER INS CO

Year	Body	Vehicle Make	VIN #
1999	TR	INTL	[redacted]

State	Year	License Plate #	Owner's D.L. #
SC	2012	[redacted]	

Home Telephone: ( ) | Owner's Full Name: CHRIS THOMPSON SERVICES LLC

Bus. Telephone: ( ) | Street/R.F.D.: 108 NEW HOPE DR

Contributed To Collision: **Yes** No | City, State, & Zip: SUMMERVILLE SC 29483

Driver/Pedestrian's Full Name

Unit	Sex	Race	Street/R.F.D.

Birth Date | City, State, & Zip

State	Driver's License #	Class	Insurance Company

Year	Body	Vehicle Make	VIN #

State	Year	License Plate #	Owner's D.L. #

Home Telephone: ( ) | Owner's Full Name

Bus. Telephone: ( ) | Street/R.F.D.

Contributed To Collision: Yes No | City, State, & Zip

All Units Insurance Information
(to be completed by investigating Officer)

Accident Insurance Information for Unit # 01
Company Name: TOWER INS CO | Area Code/Phone Number: ( )
Agency Name | Policy Number

Accident Insurance Information for Unit # 02
Company Name: TOWER INS CO | Area Code/Phone Number: ( )
Agency Name | Policy Number

Accident Insurance Information for Unit #
Company Name | Area Code/Phone Number: ( )
Agency Name | Policy Number

Insurance Information

Notice of Requirement Accepted → Signature | Y N Refused to Affix Signature | Y N Vehicle Subject to Registration in SC?

To Be Completed By Insurance Agency, Broker, Or Other Company Representative

Reference Unit # _____. I hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of this collision.

Insurance Company | Policy #:

Beginning Date: | Ending Date: | Policy Holder:

I hereby affirm that I am employed by the above insurance company and that I am authorized to provide insurance information for the vehicle listed herein.

Signature | Title

NAIC#: (assigned by S.C. Dept of Ins.) | Bus. Telephone: ( )

Notice: Failure to have this form completed by your insurance broker, agent, or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.

If any of the below are applicable, disregard the above portion.

- ☐ Check here if a Form SR-22, Fleet Policy or 25 or more vehicles is on file with the Department covering the vehicle.
- ☐ Check here if a certificate of self-insurance has been issued by the Department covering the vehicle and indicate the certificate number SI - _____
- ☐ Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.

Signature | Date

Form FR-10 Not Issued: Section 56-10-270, 56-10-520

No FR-10 Issued to Operator/Owner of Unit #

Summons Issued to:

For operating or allowing the operation of an uninsured vehicle

Summons Number:

Signature

Investigating Officer's Name	Rank	Badge #	Code	Date	Reviewer's Name	Rank	Initials Review Date
NELSON - O A	L/CPL	7775	HP85				11CH

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICES

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PT JJSTRUC

DATE (MM/DD/YYYY) 10/18/10

PRODUCER
Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Tower Ins. Co. of New York	
INSURER B: Travelers Indem. & Affiliates	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ ☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
						GENERAL AGGREGATE	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				PRODUCTS - COMP/OP AGG	$
		☐ POLICY ☐ PRO-JECT ☐ LOC					
A		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
		☐ ANY AUTO	BAPDF0280410	10/02/10	10/02/11	BODILY INJURY (Per person)	$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		☒ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		☒ UM/UIM 75,000					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
							$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N	BINDER	10/08/10	10/08/11	WC STATU-TORY LIMITS ☒ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)				E.L. EACH ACCIDENT	$ 500,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 500,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 688-5084
P.O. BOX 3977
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2009/01)

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SCWCC

OCT 18 '11

INSURANCE & MEDICAL SERVICES

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID JP
JJSTRUC

DATE (MM/DD/YYYY) 09/29/11

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Ins. Co.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO				BODILY INJURY (Per person)	$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS ☒ OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N ☐ (Mandatory in NH)	6ZZUB9907M95409	08/24/10	08/24/11	E.L. EACH ACCIDENT	$ 100,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 100,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

THIS IS A REVISED CERTIFICATE FOR 08/24/10-08/24/11 TO PROVIDE POLICY NUMBER.

CERTIFICATE HOLDER

CHRISTE

CHRIS THOMPSON SERVICES, LLC
FAX: 843-688-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

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OCT 18 '11

INSURANCE & MEDICAL SERVICES

TRAVELERS

The Travelers Indemnity Company
P.O. Box 473502
Charlotte, NC 28247-3502

09/08/2011

Samuel A. Rose
~~17 Hudson Cb~~
Charleston, SC 29403

Employer: Jjs Trucking, LLC
Employee: Samuel A. Rose
Date of Loss: 08/10/2011
File Number: 026-CB-EQS3181-K
State Case Num:

Dear Samuel Rose

We have completed our investigation of your Workers' Compensation claim and have decided that we cannot accept it as being compensable. There is a possibility that other insurance coverage is available to pay part or all of your related expenses if you should decide to pursue this.

It appears this injury occurred outside of the Travelers policy period of 10/08/10 to 01/04/11.

We regret that our decision could not be more favorable for you, but we are obligated to accept only the claims that are compensable under South Carolina state laws.

If you disagree with our decision, you may ask the South Carolina Workers' Compensation Commission for a hearing.

Sincerely,

Florence Hudson, CI Rep
(704)544-3584 Fax: (877)389-4687
(800)759-6194 Ext.
FGHUDSON@travelers.com
Workers' Compensation Unit

cc: George Sink P A
Workers' Comp Commission
Jjs Trucking, LLC

EXHIBIT
C

SCWCC
OCT 18 '11
INSURANCE & MEDICAL SERVICES

C2294SWSSC

ZURICH

September 07, 2011

Attn: Joseph Fisher
George Sink, P.A.
PO BOX 63506
N. Charleston, SC 29419-3506

RE: Claim #: 2800076183
Employer: JJS Trucking LLC
Date of Loss: 08/10/2011
Claimant: Samuel Rose
SCWCC: Pending

Zurich North America

Claims

P.O. Box 968080
Schaumburg, IL 60196

Telephone (800) 808-6412
Fax (704) 551-3402
http://www.zurichna.com

Dear Mr. Fisher:

We recently received the enclosed Letter of Representation on the above mentioned case. However, we cannot locate any policy for of the above named employer. I have spoken with Cherri Hood of the Swamp Fox Agency who was the agency for the employer in the past. They indicated that they could not locate a WC Policy with Zurich either. They advised that JJS Trucking did have a WC Policy with Travelers Insurance until January 2011. Here is the policy information:

Travelers
Policy Number 7PKUB4408P09210
10/8/2010-10/8/2011
Cancelled 01/07/2011

At this time I request that your office amend any Form 50 that has been filed which indicates that Zurich is the correct carrier. Please also consider this letter our Notice of Denial on the above mentioned claim.

Very truly yours,
Zurich American Insurance

Brad Fauler
Claims Specialist
704-551-3481

Cc: South Carolina Workers Compensation Commission

CC: JJS Trucking Company
137-A Gordon Street
Charleston,SC 29403

EXHIBIT D

SCWCC
OCT 18 '11
INSURANCE & MEDICAL SERVICES

NCCI **POC Online Inquiry**

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr:	7PKUB4405P09210	Cov Prvdr ID:11347	Pol Eff Dt: 10/08/2010	Pol Exp Dt:	10/08/2011
Primary Insured Name:	JJS TRUCKING LLC			Primary Insured FEIN:	710986218
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	

Primary Insured Information

Primary Insured Name:	JJS TRUCKING LLC
Street:	137 GORDON ST APT A
City:	CHARLESTON
State:	SC
Zip Code:	294033598

Coverage Provider Information

Cov Prvdr ID-Cov Prvdr Name:	11347 - TRAVELERS INDEMNITY CO
Street:	POB 3556
City:	ORLANDO
State:	FL
Zip Code:	328023556
Group ID:	10804
Branch:	136

Orig Pol Rcvd Dt: 11/04/2010 | Orig POC Rcvd Dt: | Last Rcvd Dt: 05/06/2011 | Last Activity Dt: 05/06/2011

Prior Pol Nbr:

State Cov Prvdr:

State Eff Dt:	10/08/2010	State Exp Dt:	
Gov Class:	7228		
Legal Nature of Insured:	16 - LIMITED LIABILITY COMPANY (LLC)		
Wrap Up Pol:	2 - NON-WRAP-UP POLICY		
Employee Leasing Code:	1 - NON-EMPLOYEE LEASING POLICY		
Pol Type Plan:	02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 05 AND 06		
Pol Type Cvrg:	01 - STANDARD WORKERS' COMPENSATION POLICY		

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Coverage Cancelled
2/5/2011

EXHIBIT B

NCCI **POC Online Inquiry**

Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr: 7PKUB4408P09210 Pol Eff Dt: 10/08/2010 Pol Exp Dt: 10/08/2011
Primary Insured Name: JJS TRUCKING LLC Cov Prvdr ID: 11347

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/06/2011	01/04/2011	01/06/2011	01 - CANCELLATION	02 - CANCELLED PRO-RATA	20 - CANCELLED AT REQUEST OF THE FINANCE COMPANY
01/05/2011	01/12/2011	01/05/2011	02 - REINSTATEMENT	00	00
12/05/2010	01/12/2011	12/05/2010	01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM

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Coverage Cancelled 30 days after receipt by NCCI of the Cancellation Document, making the Effective Date of Cancellation 2/5/2011

NCCI **POC Online Inquiry**

Main Page | Log Out

Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr:	7PKUB4866P01211	Cov Prvdr ID:11347	Pol Eff Dt: 09/23/2011	Pol Exp Dt:	09/23/2012
Primary Insured Name:	JJS TRUCKING LLC			Primary Insured FEIN:	710986219
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	

Primary Insured Information

Primary Insured Name:	JJS TRUCKING LLC
Street:	137 GORDON ST APT A
City:	CHARLESTON
State:	SC
Zip Code:	294033698

Coverage Provider Information

Cov Prvdr ID-Cov Prvdr Name:	11347 - TRAVELERS INDEMNITY CO
Street:	POB 3556
City:	ORLANDO
State:	FL
Zip Code:	328023556
Group ID:	10804
Branch:	136

Orig Pol Rcvd Dt: 10/10/2011 | Orig POC Rcvd Dt: | Last Rcvd Dt: 10/11/2011 | Last Activity Dt: 10/12/2011

Prior Pol Nbr:

State Cov Prvdr:	
State Eff Dt:	09/23/2011
State Exp Dt:	
Gov Class:	7228
Legal Nature of Insured:	10 - LIMITED LIABILITY COMPANY (LLC)
Wrap Up Pol:	2 - NON-WRAP-UP POLICY
Employee Leasing Code:	1 - NON-EMPLOYEE LEASING POLICY
Pol Type Plan:	02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 05 AND 06
Pol Type Cvrg:	01 - STANDARD WORKERS' COMPENSATION POLICY

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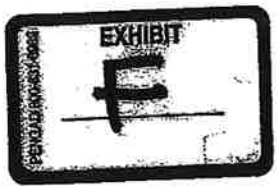
The Employer Came back into Compliance on 9/23/2011 but the Policy Cancelled on 11/10/2011



NCCI **POC Online Inquiry**

Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr: 7PKUB4856P01211 Pol Eff Dt: 09/23/2011 Pol Exp Dt: 09/23/2012

Primary Insured Name: JJS TRUCKING LLC Cov Prvdr ID: 11347

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
10/11/2011	10/04/2011	10/12/2011	01 - CANCELLATION	03 - CANCELLED SHORT-RATE	03 - CANCELLED BY EMPLOYER

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Coverage Cancelled 30 days after receipt by NCCI of Cancellation NOTICE, making the Effective date of Cancellation 11/10/2011

5466296 10/18/10 ✓ 1532868

STANDARD PREMIUM FINANCE MANAGEMENT CORP. PO BOX 522941 MIAMI, FLORIDA 33152-2941

CONTRACT NO. PENDING

PREMIUM FINANCE AGREEMENT

THIS AGREEMENT is made on the date indicated between the insured and STANDARD PREMIUM FINANCE MANAGEMENT CORPORATION, a Florida Corporation hereinafter called "SPFMC", for the financing of the balance of the premiums on the following insurance policies:

POLICY NUMBER	Full Name and Address of Insurance Company and Name & Address of General Agent to which policy premium is paid	FOR SPFMC USE ONLY	INCEPTION DATE	POLICY EXPIRES	TYPE OF COVERAGE	PREMIUM
	N.C.C.U.		10/6/2010	10/6/2011	WORKERSCOMP	$4,690.00
						$0.00
						$0.00
						$0.00
						$0.00

O Direct O Agent G Monthly Billing

(A) CASH PRICE (Total Premiums)	(B) YOUR CASH DOWN PAYMENT	(C) AMOUNT FINANCED The Amount of credit provided to you or on your behalf. Unpaid balance of cash price.	(D) FINANCE CHARGE The dollar amount the credit will cost you.	(E) DOCUMENTARY STAMPS State required documentary stamps	(F) Total of Payments (BALANCE DUE) The amount you will have paid after you have made all payments as scheduled.	(G) ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	(H) DEFERRED PAYMENT PRICE (B plus F)
4560.00	1140.00	3420.00	259.38	0.00	3679.38	17.85	$4,819.38

3420.00

State Documentary Stamp Tax where Applicable by Law in the amount stated above will be paid directly to the Department of Revenue.

YOUR PAYMENT SCHEDULE WILL BE:

Amount of Each Payment	Number of Payments	Payments are Due Monthly Beginning
406.82	9	11/3/2010

Each of the monthly payments is due on the same day of each succeeding month until paid in full.

SECURITY: You are giving a security interest in any and all unearned return premiums, dividends and loss payments which may become payable under the policies.
LATE CHARGE: If a payment is 5 days late, you will be charged 5% of the late installment, but no less than $1.00 for Georgia, Florida, Alabama and Mississippi; not less than $1.00 for South Carolina, in Texas and Tennessee, if a payment is 10 days late, you will be charged 5% of the installment, but no less than $2.00 for Tennessee or otherwise prescribed by the state (whichever that is not to exceed $10.00 on personal lines in Florida).
PREPAYMENT: If you payoff early, you may be entitled to a refund or part of the finance charge, although you may have to pay a prepayment penalty. See the reverse side/page 2 of this document for additional information about prepayment, default, and prepayment penalties.

FEDERAL TRUTH IN LENDING DISCLOSURES

FOR VALUE RECEIVED: the undersigned Insured promises and agrees to pay to the order of "SPFMC" the sum of (being the total of payments above) pursuant to all of the terms and conditions contained in the Schedule above and in the Terms and Conditions of this agreement, all of which are incorporated herein. 3679.38

NOTICE: SEE REVERSE SIDE/PAGE 2 FOR IMPORTANT INFORMATION

NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE.

DO NOT SIGN THIS AGREEMENT UNTIL ALL REMAINING CONDITIONS ON REVERSE SIDE/PAGE 2 HAVE BEEN READ BY YOU.

THE UNDERSIGNED EXECUTED THIS LOAN AGREEMENT AND RECEIVED A COPY THEREOF THIS 8 DAY OF OCTOBER 2010

(PRINT OR TYPE)

JJS TRUCKING, LLC
INSURED NAME (as stated in policy)

DO

137-A GORDON ST
Address

CHARLESTON, SC 29403 8435773988 8434429171
City, State, Zip Code Home phone Work phone

Policy will be cancelled for Non-Payment
SIGNATURE OF INSURED (If Corporation, Title of Officer Signing)

X Cedric Smalls

X

710985219
S.S.# or Business I.D. # Driver's License

AGENT'S NOTE: The undersigned agent hereby certifies that all policies listed above hereof have been issued and delivered and that the down payment as shown in the contract has been paid by or on behalf of the insured and that all policies listed therein were issued by this agency. The undersigned warrants that the above contract evidences a bona fide and legal transaction, that the assured is of legal age and has capacity to contract, that the signature is genuine and that he has delivered a copy of this contract to the insured. The agent further states that none of the policies listed hereon contain an audit or reporting form. Agent acknowledges that it is not affiliated in any capacity or manner with SPFMC and agrees in the event of cancellation to remit the gross unearned commissions or unearned premiums to SPFMC upon request.

SWAMP FOX AGENCY, INC 40085

P. O. BOX 522

PINEPOLIS, SC 29469
PRINT NAME AND ADDRESS OF AGENT OR BROKER OF THE INSURANCE POLICY BEING

X Melanie Cody 10-13-10
SIGNATURE OF BROKER OR AGENT

"THIS CHATTEL PAPER OR INSTRUMENT HAS BEEN COLLATERALLY ASSIGNED TO BRANCH BANKING AND TRUST COMPANY, AS SECURED PARTY, AND ANY FURTHER ASSIGNMENT WILL VIOLATE THE RIGHTS OF SUCH SECURED PARTY."

TRAVELERS
2420 LAKEMONT AVENUE
P.O.BOX 3556
ORLANDO, FL 32802-3556

Account Bill

Account No. 5568D3149
Date of This Bill 11/08/10

TOTAL BALANCE
$1,655.00
MINIMUM DUE
$1,655.00

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

PAYMENT MUST BE RECEIVED BY:
NOVEMBER 23, 2010

ACCOUNT BILLING SUMMARY

POLICY	TYPE	POLICY PERIOD	MIN. DUE	BALANCE
4408P092 UB	Workers Comp	10/08/10 To 10/08/11	$1,655.00	$1,655.00
TOTAL BALANCE			$1,655.00	$1,655.00

TRANSACTIONS SINCE LAST STATEMENT

Payment Received - Thank You	-4,560.00
Total Transactions (See Transaction Detail Section)	+6,215.00
TOTAL BALANCE	$1,655.00

TRANSACTION DETAIL

POLICY NUMBER 4408P092 UB Workers Comp	
10/08/10 New Policy	6,215.00
TOTAL TRANSACTIONS	$6,215.00

CONTINUED ON NEXT PAGE

TO ENSURE PAYMENT IS PROPERLY APPLIED, detach the return payment stub and mail to the return address below.
ASSIGNED RISK WORKERS COMPENSATION INSURANCE

648842H 2010312 7235 701 075LMK

Payment Coupon

Make checks payable to: Travelers

SWAMP FOX AGENCY INC
JJS TRUCKING, LLC

5568D3149

Travelers
One Tower Square
Remittance Box 96359
Hartford, CT 06183-9042

Include Account Number on the check.

☐ Change of Address? Place an "X" here. Print changes on reverse side.

PAYMENT MUST BE RECEIVED BY
NOVEMBER 23, 2010

TOTAL BALANCE
$1,655.00
MINIMUM DUE
$1,655.00
AMOUNT ENCLOSED

13343430381630393220101108201011230001655000000000000009635900000000060

Policyholder JJS TRUCKING, LLC
Account No. 5568D3149

Date of This Bill: 11/08/10

SPECIAL MESSAGES

Your payment must be received by the "Due Date". Failure to pay the amount due may affect your insurability under the state Workers Compensation Insurance Plan.

You must pay at least the minimum due or up to the total balance due. If at any time you pay us more than the minimum due, and it covers your future installments you will not receive a bill.

If you dispute any of the amount due on this bill, you must do the following by the due date in order to avoid cancellation procedures from being initiated.

1) Provide to us written documentation outlining and explaining the specific areas of dispute as well as your estimate of the undisputed amount due and your method of calculation. You must pay the undisputed amount by the "due date".

2) Make a written request to the plan administrator for a hearing on the dispute. You may contact us in writing for the name of the plan administrator in your state.

All written correspondence should be mailed to the address found in the Customer Service Contacts section of this invoice.

To order Loss Control Services, please call the 1-800 number found in the Customer Service Contacts section of this invoice.

The account number shown above consists of your billing policy number and policy form. For the complete policy number refer to your policy paper.

This bill is rendered by THE TRAVELERS INDEMNITY COMPANY affiliated company indicated on the policy shown on this notice.

PRODUCER

TRAVELERS
2420 LAKEMONT AVE STE 100
ORLANDO FL 32814

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ACKNOWLEDGEMENT

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

NOTICE OF CANCELLATION – NONPAYMENT OF PREMIUM FINANCED POLICY

POLICY NUMBER: (7PKUB-4408P09-2-10)

EFFECTIVE DATE OF CANCELLATION: 01-04-11

THIS NOTICE IS TO:

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

INSURER:
THE TRAVELERS INDEMNITY COMPANY

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

This policy has been financed by a premium finance company. The Premium Finance Company has exercised its right to cancel this policy as provided in its agreement with the insured, due to the insured's delinquent payment status.

Inquires regarding the outstanding balance should be made directly to the Premium Finance Company.

PLEASE NOTE: The Insurance Company is under no obligation to reinstate this policy in the event the Premium Finance Company should resind their cancellation request.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY. FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR PRODUCER.

RECEIVED
JAN 18 2011
Swamp Fox Agency Inc.

DATE OF ISSUE: 01-05-11
POL. EFF. DATE: 10-08-10 POL. EXP. DATE: 10-08-11 ST ASSIGN: SC
OFFICE: DIRECT ASSIGNMENT
PRODUCER: SWAMP FOX AGENCY INC

WUNN8K96

004863

TRAVELERS
2420 LAKEMONT AVE STE 100
ORLANDO FL 32814

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

CANCELLATION

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

CANCEL NOTICE - NONPAYMENT OF PREMIUM FINANCED POLICY

THIS NOTICE IS TO:

EFFECTIVE DATE OF CANCELLATION: 01-04-11

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

AMOUNT DUE: $

POLICY NUMBER: (7PKUB-4408P09-2-10)

We wish to inform you that your policy designated herein is cancelled in accordance with its terms as of the effective date of cancellation indicated herein, and at the hour on which the policy became effective. Any premium adjustment required by the policy will be made.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY. FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR PRODUCER.

INSURER: THE TRAVELERS INDEMNITY COMPANY

DATE OF ISSUE: 01-05-11 SJ
POL. EFF.DATE: 10-08-10 POL. EXP. DATE: 10-08-11 ST ASSIGN: SC
OFFICE: DIRECT ASSIGNMENT 701
PRODUCER: SWAMP FOX AGENCY INC 75LMK

WUNT2D00

004884

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Samuel A. Rose, Employee/Claimant, -vs- JJS Trucking, LLC and Chris Thompson Services, LLC, Employers, and Bridgefield Casualty Insurance Co. and The S.C. Uninsured Employers' Fund, Carriers, Defendants.	W.C.C. FILE NO. 1112328 PETITION TO TRANSFER LIABILITY TO S.C. UNINSURED EMPLOYERS' FUND PURSUANT TO S.C. CODE ANN. § 42-1-415

TO: The South Carolina Workers' Compensation Commission; Joseph B. Fisher, Esq., attorney for the Claimant; JJS Trucking, LLC; Timothy B. Killen, Esq., attorney for The South Carolina Uninsured Employers' Fund; and F. Reid Warder, Esq., attorney for Travelers Insurance Company:

PLEASE TAKE NOTICE that Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 to transfer liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. In his December 6, 2011 Form 50, the Claimant named JJS Trucking, LLC and Chris Thompson Services, LLC (upstream contractor) as employers at the time of

his August 10, 2011 work-related accident. The Claimant alleges injuries to the right knee, back, neck, and head as a result of an August 10, 2011 motor vehicle accident.

2. JJS Trucking, LLC was the Claimant's direct employer at the time of the August 10, 2011 accident. (See attached depositions of Samuel Rose and Sedrick Smalls).

3. JJS Trucking, LLC was a subcontractor for Chris Thompson Services, LLC at the time of the Claimant's alleged injuries.

4. JJS Trucking, LLC provided Chris Thompson Services, LLC with a Certificate of Liability Insurance, with effective date of October 8, 2010 and expiration date of October 8, 2011 for its workers' compensation policy, at the time it commenced work for Chris Thompson Services, LLC. (Exhibit A).

5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking, LLC to Chris Thompson Services, LLC.

6. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to or the knowledge of Chris Thompson Services, LLC, prior to the August 10, 2011 accident.

7. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this

title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employer's Fund."

8. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."

9. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.

10. JJS Trucking, LLC represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).

11. Furthermore, S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

12. JJS Trucking, LLC never provided Chris Thompson Services, LLC with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed, as required by S.C. Code Ann. § 42-1-415(C).

13. Based on all of the above, Chris Thompson Services, LLC is informed and believes it must be relieved of any and all liability under this title.

WHEREFORE, Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order relieving Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company from any liability under the Act for WCC Claim Number 1112328 in accordance with S.C. Code Ann. § 42-1-415 and transfer liability, if any, to the S.C. Uninsured Employers' Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for Chris Thompson Services, LLC
and Bridgefield Casualty Insurance Company

January 24, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2012 I have caused a true and correct copy of the Petition to Transfer Liability to be mailed postage prepaid to the Claimant's attorney and parties to be added addressed as follows:

Joseph B. Fisher, Esq.
PO Box 63506
North Charleston, SC 29419

Sedrick Smalls
JJS Trucking, LLC
137-A Gordon St.
Charleston, SC 29403

Timothy Killen, Esq.
S.C. Uninsured Employers Fund
100 Execuitve Center Dr,. Ste 101
Columbia, SC 29210

F. Reid Warder, Esq.
P.O. Box 20550
Charleston, SC 29413

Kirsten L. Barr

118/133\petition to transfer liability

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PT JJSTRUC

DATE (MM/DD/YYYY) 10/18/10

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Tower Ins. Co. of New York	
INSURER B: Travelers Indem. & Affiliates	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
A		AUTOMOBILE LIABILITY	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
		☐ ANY AUTO				BODILY INJURY (Per person)	$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		X SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		X UM/UIM 75,000					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	BINDER	10/08/10	10/08/11	WC STATU-TORY LIMITS X OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐				E.L. EACH ACCIDENT	$ 500,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 500,000
						E.L. DISEASE - POLICY LIMIT	$ 500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 688-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2009/01)

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EXHIBIT A

Condensed Transcript

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
Employer,
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SAMUEL ROSE

November 14, 2011
9:45 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public

ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044
Telephone:

2700 Centennial Tower
101 Marietta Street
Atlanta GA 30303
www.esquiresolutions.com

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
-vs-
JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Samuel Rose, taken before Laci Bearden, Court Reporter and Notary Public, at the George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 9:45 a.m.

APPEARANCES

For the Employer: George Sink, P.A.
BY: Joseph B. Fisher
7011 Rivers Avenue
Suite 105
N. Charleston, SC 29406
jfisher@sinklaw.com

For the Carrier: Trask & Howell, L.L.C.
BY: Kirsten L. Barr
763 Johnnie Dodds Blvd.
P.O. Box 2167
Mt. Plesant, SC 29465
kbar@trash-howell.com

S.C. Uninsured Employers Fund
BY: Timothy Killen, Esq
100 Executive Center Drive, Suite 101
Columbia, SC 29210
Tkillen@sif.sc.gov

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EXAMINATION BY MS. BARR 4
EXAMINATION BY MR. KILLEN 28

EXHIBITS

(No exhibits produced.)

SAMUEL ROSE
was sworn (affirmed) and testified as follows:
EXAMINATION BY MS. BARR:
Q Mr. Rose, my name is Kirsten Barr and I represent a company called Bridgefield Casualty Insurance Company, and Chris Thompson Services regarding your worker's compensation claim. And I'm sure Mr. Fisher's explained to you what we're doing here today, but again, it's called a discovery deposition, and it really is just what it sounds. It's my chance to discover a little bit more about you as a person and about the accident and your injuries and how you've been doing since then. My questions are intended to be straight forward, so if I ask something that is unclear or doesn't make sense, please ask me to rephrase or repeat my question. I'm happy to do that. Because otherwise, if you answer my questions, number one, I'm going to assume you're answering truthfully, and number two that you understood the question before you answered it; fair enough?
A Okay.
Q The other thing is the court reporter is going to take down everything we say here today. This is the microphone, so we just need to speak up and speak clearly. I'll understand you if you nod your head here today, but she can't take that down on paper very well, so we just need to remember to say yes or no and just again, answer it to the

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best of your ability.
If you would state your full name for the record?
A Samuel Archiedell Rose.
Q Could you spell your middle name for me?
A A-R-C-H-I-E-D-E-L-L.
Q And Mr. Rose, what is your date of birth?
A August 23, 1970.
Q And your social security number?
A 3390.
Q And are you married, single, divorced?
A Single.
Q Have you ever been married?
A No.
Q Do you have any children?
A No.
Q And what is your current you address?
A 17 Ashton Street, Charleston, South Carolina.
Q And who do you live with at 17 Ashton Street?
A My cousin.
Q And how long have you lived there?
A I grew up there.
Q And it's just the two of you living there?
A Yes.
Q Anybody depending on you for support?
A No.

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Q Tell me, it's my understanding you were working for a company called JJS Trucking at the time of this accident; is that right?
A Yes.
Q And who did you work for at JJS Trucking?
A Sedrick Smalls.
Q And when did you start working for Sedrick Smalls at JJS Trucking?
A Back in February or March.
Q Of 2011?
A Yes.
Q And what were you hired to do for JJS Trucking?
A To haul woodchips from Summerville to North Charleston.
Q And that was to North Charleston to the Capstone plant?
A Yes.
Q Did you have a set work schedule that you did?
A From 12:00 o'clock until 12 noon: Either 12 noon or 2:00 o'clock, and I worked a 10 to 12 hour shift.
Q And during your ten to 12 hour shift, I guess it would be a ten hour shift if you started at 2:00 o'clock in the afternoon?
A Yes – well, no. From the time I started, I worked either 10 to 12 hours, and I worked until the plant closed.
Q And to your knowledge, what time did the plant close?
A It's suppose to close at 3:30, but sometimes it closes

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early.
Q And would you work until the North Charleston plant closed or the saw mill up in Summerville closed?
A Summerville. North Charleston is open 24/7.
Q So you would begin and start your day at Summerville?
A Yes.
Q Did you keep the truck you used at your home or JJS Trucking, how did your day start?
A It was parked in Summerville at the saw mill.
Q So would you drive your personal vehicle to the saw mill then?
A Yes.
Q Did you have to punch a time card or anything like that, or how did you keep track – how would JJS keep track of your time?
A Our daily logs.
Q What would you keep track of in your daily log?
A The time that I start work, the inspection of the truck, and number of runs I made.
Q And would you also get receipts from either the saw mill or from the mill in Charleston as far as what you loaded or unloaded?
A Each load that we pick up we received a receipt. When we got to Capstone we received another receipt.
Q And what would you do with these receipts?

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A We turned them in at the end of the week.
Q And who did you turn the receipts in to?
A They went to Chris Thompson. He has a mailbox placed at the saw mill in Summerville, and we fill out our work sheet, and we put everything in the envelope for him.
Q And then how would you get paid?
A By check. Sedrick Smalls is the one that paid me.
Q And what was the basis of your pay? How did he calculate how much you would earn per week?
A $25 dollars per load.
Q So someone would add up all those receipts and there would be $25 even for each load that you would get paid?
A Yes.
Q And how many loads would you average per shift?
A Anywhere from six, seven loads per shift.
Q And how many days per week did you do this?
A Five.
Q Was it Monday through Friday?
A Yes. We worked on weekends as needed?
Q How frequently would you work weekends.
A Not often?
Q And how did it work? Would Mr. Smalls pay you in check, or would he give that to you personally? Was it mailed to you?
A It was given personally.

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Q By Mr. Smalls?
A Yes.
Q And what day of the week would he give you your check?
A Friday.
Q So every Friday you would get a check?
A Yes.
Q And how much was your average check that you were paid on Fridays by Mr. Smalls?
A It ranged from 650 to 750 depending on how many loads I ran for the week.
Q And so you would get the whole 650 to 750?
A Yes.
Q He didn't take out any taxes?
A He took out a hundred dollars for damages to the truck for an escrow account.
Q He took that out each week or just the beginning?
A Each week.
Q What is your job status with Mr. Smalls? Are you still employed by him?
A Yes, to my understanding.
Q Do you still have funds in that escrow account?
A I have no idea.
Q When was the last time you got a paycheck from Mr. Smalls?
A The week prior to the accident.

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Q Have you spoken to Mr. Smalls since the accident?
A Once or twice.
Q Did he come see you in the hospital?
A Yes.
Q Has he done anything to help you with your lost wages or your medical bills?
A Nothing.
Q Have y'all discussed that?
A When I asked him about it, he told me about the insurance. When I contacted the insurance, nothing.
Q And what did he tell you about insurance?
A That he had insurance.
Q Did he tell you, like, auto insurance or worker's comp, or did he tell you what kind?
A He said he had workers' comp insurance for us.
Q And he gave you the name of a company to call?
A Yeah. I gave that to the lawyer. I don't remember the name. He also said that he spoke with Chris Thompson, and Chris Thompson told him that he would cover the medical bills.
Q Did you ever speak with anybody at Mr. Smalls insurance company, or did you just pass that on to your attorney?
A They contacted me at first, after the accident. They sent me a card and then after that, nothing. I passed all that information on to my attorney.

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Q As I understand it, you had legal representation pretty quickly after the accident; is that fair to say?
A Yes, I called him.
Q I mean, that was within like a day or two after the accident you had somebody working on your behalf?
A In two days.
Q Where did you work prior to JJS Trucking?
A Leopard, Incorporated.
Q Leopard?
A Yes.
Q What does Leopard, Incorporated do?
A It's a tire company. We distribute tractor trailer tires.
Q How long did you work for Leopard?
A About seven years.
Q And where's Leopard located?
A It's headquartered out of New Jersey. It's local office is here in North Charleston.
Q You said that they distribute tractor trailer tires. Were you doing long distance hauling, trucking?
A Both. My job required mostly local driving.
Q So local within South Carolina?
A No. South Carolina, North Carolina, Florida, Georgia.
Q And why did you leave Leopard, Incorporated?
A The work slowed down, and I needed money.

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Q When did you last work for them?
A February, the latter part of February.
Q Of this year?
A Yes.
Q How much were you earning on average at Leopard?
A About 500 a week.
Q And is that the same you would earn from them say in 2010 or 2009?
A Yeah.
Q One of the things we have to do in worker's comp is try to get an idea of how much money you were making in the past year. So was there any other income from any sources other that Leopard, Incorporated or from Sedrick Smalls in this past year, 2011?
A Allstate Logistics.
Q What did you do for Allstate Logistics?
A Local runs. That's just to supplement my income.
Q When was the last time you worked for Allstate Logistics?
A Back in January. The company went out of business.
Q So around the time of this accident, say July or August of 2011, any other supplemental sources of income?
A No.
Q The checks that you would get from Sedrick Smalls, would it be on a JJS checking account?

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A Yes.
Q Would it always be the same looking check, or did you ever get a check personally from Sedrick?
A Always from JJS Trucking.
Q And if we needed to try to track down how much those checks were, would you have a habit of cashing them somewhere or depositing them into a checking or saving account?
A I always cashed it at First Citizens Bank.
Q Did you have an account there or was that where Mr. Smalls did?
A That's where Mr. Smalls had his account.
Q Was there a particular branch that you used?
A Summerville, Main Road.
Q Tell me, on the day of this accident, I believe it was August 10, 2011, what were you doing before the accident occurred or what were you in the process of doing when the accident occurred?
A That was my last run for the night, and I was on my way to Capstone to drop the load.
Q Did you ever turn in the receipts from that day to Sedrick Smalls?
A No. The receipts were left inside the truck. My log book and everything was left in the truck.
Q And tell me, as a result of the accident, what

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happened. Did you stay inside the cab of truck, were you thrown from the cab of the truck, what happened to you specifically?
A After the accident, I was pulled out of the truck. Some people stopped, and they pulled me out of the truck and tossed me over the wall, the median of the highway.
Q Are there air bags in the truck or any other restraint devises?
A Seatbelt.
Q Do you recall hitting in particular on the inside of the cab, or did the seatbelt restrain you?
A My knee shattered the steering column. My head bounced off the rear glass and steering wheel.
Q You said the rear glass?
A Yes, it was a day cab.
Q Anything else that you can really recall hitting?
A Just my right knee when it shattered the steering column and just hitting -- I blacked out when I hit the glass, but I do remember getting pulled from the cab, and then they threw me over the wall before the truck blew up.
Q When you blacked out were you totally out cold, or did things just kind of go hazy for you a little bit?
A I was told I was out cold.
Q It's my understanding you were taken to MUSC; is that right?

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A Yes.
Q How long did you stay at MUSC?
A A day and a half.
Q And when they released you from MUSC were you referred to any particular doctors or what was your plan of care after your release from MUSC?
A They scheduled me an appointment with the neurologist. They gave me a physical therapist and told me I needed to see an orthopaedist as well.
Q Do you have a family physician?
A No, not at the time, no.
Q In the past, have you had a personal family doctor?
A No, I just use military doctors.
Q Did you serve in the military?
A No, my parents.
Q So when you were younger, you would just see VA doctors?
A Yeah.
Q But you haven't seen anybody at the VA since this accident?
A No.
Q And if you need to take a break, just let me know.
A I took pills before.
Q What sort of pills might have you taken today?
A Flexeril, Fioricet, Ellevill, Ibuprofen.

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Q Do those medications have any effects on you, side effects? Do they make you drowsy or --
A Drowsy, dizzy but they are suppose to help me cope with pain.
Q Now, after MUSC, did you -- you said that they scheduled a appointment with a neurologist; is that right?
A Yes.
Q Did you see the neurologist?
A No, they kept canceling my appointment.
Q Have you seen a neurologist at all since the accident?
A I'm scheduled to see one next week.
Q Who are you scheduled to see next week?
A Dr. Weinsteen(sic).
Q Doctor who?
A Weinsteen.
Q Weinsteen? Is this somebody that you're --
MR. FISHER: Wildsteen.
MS. BARR: Wildsteen.
Q And you're to see Dr. Wildsteen about your neck?
A My neck, my back, and my knee.
Q Now, I know MUSC had talked to you about seeing an orthopedist about your knee. Did you see any of the orthopedists at MUSC for your knee?
A No. They canceled the appointments as well.
Q There was talk about you seeing Dr. Hartsock(ph). Did

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you ever see him? He's an orthopedist at MUSC?
A He's the one that canceled the appointment. There was a problem with the insurance.
Q You've seen Dr. Wildsteen already; is that right?
A I've spoken with him, but I haven't went to his office yet.
Q Have you seen any doctor since you were released from MUSC?
A Yes.
Q And who has treated you?
A Dr. Able, Dr. Keller, Dr. Willis.
Q Dr. Able, what kind of doctor is Dr. Abel; do you know?
A General practitioner.
Q And how did you find Dr. Able?
A Through my lawyer's office.
Q And what has Dr. Able been doing for you?
A He's the initial one that treated me for my neck, my back, and my knee. He's been –
Q Giving you the medications?
A Some of it. I'm just monitoring my treatment. Dr. Kellet(ph) is the pain specialist. He's the one – he's been trying to help me cope with my pain. He's given me Oxycodone, Lortab, just things to help with the pain. I've token two epidurals, cortisone shots.
Q And were your epidurals for your neck or for your lower

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back?
A My lower back. The cortisone shots were for my neck. And he referred me to Dr. Wildsteen.
Q Have you seen anybody in Dr. Wildsteen's office.
A No. I took an MRI already, and I'm waiting for my appointment.
Q Where did you have the MRI done?
A Trident County Radiology.
Q And was that for your neck or for you or lower back?
A My neck. I've had an MRI of my knee done at MUSC.
Q All right. Do you have any appointments with any doctors that deal specifically with the knee problem or the main problem, your neck and your back at this point?
A My neck and my back at this point.
Q And you mentioned Dr. Willis; is that right?
A Yes.
Q What has Dr. Willis done for you?
A Mostly it's just therapy, physical therapy and just to help me deal with the pain.
Q Any doctors other than Dr. Able, Dr. Kellet, Dr. Willis?
A No.
Q And then of course you saw a number of doctors while you were a patient at MUSC.
A Yes.

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Q After – I know you spent the night there but after your release did you ever go back to see any doctors at MUSC?
A No. I went to my appointments but they kept getting canceled. And the also assigned me a physical therapist. And I forgot who that was.
Q Did you get any therapy done there?
A Three times.
Q And I know you said you scheduled Dr. Wildsteen. Any other doctors appointment?
A No. Doctor Ables, yes.
Q What sort of schedule to you have with Dr. Able? Do you see him like once a week or once a month?
A Every two weeks.
Q And the pain medicines you have now you said you get some from Dr. Able and then some from Dr. Kellet?
A Yeah.
Q Tell me a little bit about the pain you're feeling now, where you're feeling it, and help me understand how you describe it.
A Dizziness.
Q And how frequently are you dizzy?
A Daily.
Q Is it something that comes and goes?
A If I move too fast then my head starts spinning. If I

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get up, when I first stand up I have to orient myself. There's a throbbing in the back of my head that hurts. My neck, if I hold it up too long it starts hurting. My lower back is still in pain. And my knee, if I go for walks in the neighborhood to exercise, walking less than a block I just need help or need some rest just to get back on.
Q And that's your right knee?
A Yeah.
Q Does it lock up or it just hurts?
A It locks up and it hurts.
Q Do you feel the pain anywhere else?
A My whole back. My entire back.
Q Is there anything that helps with the pain or improves it even a little bit as far as your back pain goes. A position or activity that helps?
A Showers, warm Showers, Bengay.
Q But you have been doing some exercises with the physical therapist?
A Yes.
Q Do they have you doing anything at home as far as exercising or stretching to help with your back?
A Stretching helps my back and my neck.
Q Are you good? Some people are better than others about actually doing the stretches and exercises. Do you do them?
A I do some of them, but it hurts.

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Q You mentioned that the medication that you've taken before you came here today, do you take any other medications say like at bedtime?
A Yeah.
Q What other medications do you take?
A Flexeril.
Q Your handing me a list and it look likes --
A Those are all the medication that I take.
Q So it's Flexeril, Amitriptyline, Fioricet, Ellevil, Ibuprofen, Lortab, the Ibuprofen, and you also have Neurontin and Oxycodone?
A Right?
Q And the Oxycodone, is that something that you take when the pain gets really bad?
A Yes.
Q And the Neurontin you take everyday?
A Yes.
Q Have you ever had surgery before?
A No.
Q Have you ever been hospitalized for any reason prior to this accident?
A No.
Q Have you ever had a workmen's compensation claim or a personal injury claim?
A Never.

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Q Have you ever been in an automobile accident prior to this?
A Yes.
Q And when was that?
A I think it was '07.
Q In 2007?
A Yes.
Q And where did that accident occurred?
A Here in Charleston.
Q Were you injured in that accident?
A No.
Q Was there any sort of settlement with the insurance company over that accident?
A Yes.
Q Do you recall about how much you received in that settlement?
A No.
Q Was it a couple hundred dollars, a couple thousand dollars?
A It was a few hundred. And the owner of the car is the one that got his car repaired. I borrowed the car.
Q Did they take you hospital or anything after the accident?
A No.
Q Do you have any chronic medical conditions like high

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blood pressure, diabetes anything like that.
A High blood pressure. Asthma.
Q Do you take prescription medications for either of those conditions?
A For high blood pressure Lotensin.
Q And who prescribes Lotensin for you?
A Dr. Able.
Q And before Dr. Able, who –
A I was not on any medication for high blood pressure.
Q Were you aware you had high blood pressure before the accident?
A Yes, but it wasn't dangerously high.
Q Do you monitor your blood pressure now?
A Now, I do, yes.
Q Do you have it under control now?
A Yes.
Q And just so I'm clear, you may have already told me this, but Dr. Able – you never saw Dr. Able until after this accident in August?
A Right. The blood pressure medicine, they first assumed the headaches I was having was because of the blood pressure. Then the blood pressure came under control and then I still had the headaches.
Q Does the pain medication that you're taking, does that help with the headaches?

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A No, not really.
Q How would you describe the type of headaches you have. Where do you feel it and what does it feel like?
A The back of my head. It's like a buildup of pressure, throbbing.
Q Does that change through the course of the day, the intensity?
A Sometimes it gets worse and sometimes it's milder, but it's there.
Q I noticed your wearing a soft collar around your neck. Where did you get that?
A Dr. Able.
Q When do you wear that?
A Whenever I have to keep my head up.
Q So like you don't wear that around the house or that sort of thing?
A No. Right now just keeping my head up it hurts, and my collar is just to help me keep it up.
Q So you kind of rest your chin on it a little bit?
A Yeah.
Q And the cane, I notice that your off carrying the cane?
A Dizziness and balance.
Q Have you talked to Dr. Able about maybe your medications effecting you making you a little dizzy?
A He said that the whiplash effect, I'm going to be dizzy

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for another year. I'll still have side effects from it.
Q But you have not gone to a neurologist to have that checked out.
A Not yet.
Q And you don't think any appointments are scheduled right now with the specialist?
A No. They've taken X-rays, and Dr. Kellet is the last to take X-rays of my neck, and he referred me to the neurologist.
Q And that's in his same practice together, Dr. Wildsteen and Dr. Kellet; is that right?
A Dr. Willis and Dr. Kellet is in the same practice. Dr. Able is in a different practice.
Q Have you had any sources of income since the accident?
A Just family and money that I've borrowed.
Q You don't have like a AFLAC policy or any kind of insurance policy?
A No.
Q And your medical bills, have you started getting bills from MUSC or any of the other providers?
A Yes.
Q Have you paid any of your medical bills?
A No.
Q When was the last time you spoke to Sedrick Smalls?
A It's been over a month ago.

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Q And you said that he told you that you were covered by workmen's? He had a worker's comp policy that covered you?
A That was in the hospital after the accident he told me that and that was back in August.
Q Did you subsequently find out that he didn't have a policy in effect?
A Yes.
Q Did you talk to him about that?
A I spoke with my lawyer.
Q But you never confronted Mr. Smalls, and said hey, your policy was no good?
A Yeah. I asked him about it, and he still showed me that it was good.
Q Do you have a gut feeling, do you believe him, do you think he had a workmen's compensation policy?
A At the time of the accident, I did believe him.
Q What about now, do you know what to think?
A Right now I was told they didn't that the policy lapsed.
Q Do you think, you know, if Mr. Smalls said he had it, do you think he knew it had lapsed, or do you think he was telling you the truth --
A At the time, I assumed he was telling me the truth.
Q If we needed you to help us figure out how much you had earned while working for JJS Trucking, do you have any sort

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of record like a check stub or anything like that that you could --
A I didn't save any.
Q You didn't save any.
A We probably can go to the bank and ask for copies of the check.
Q But you said they were always on a JJS Trucking checking account?
A Yes.
Q And then there would have also been somebody would have kept a log --
A Sedrick Smalls.
Q Did your log survive the accident; do you know?
A I have no idea.
Q With the log that you would have had with you on the night of the accident, been your only log you ever had working for JJS Trucking, or would there have been other log?
A Copies of the logs are kept by Chris Thompson when we turned in the logs at the end of the week.
Q Did you ever see him personally and like hand him the log, or was there just left in the place?
A We left it in a place.
Q Was that left at Capstone?
A No, it was left in Summerville.

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Q At the saw mill in Summerville?
A Yes.
Q Would it have been at that front office where you drop in?
A No, back at the scales.
Q Would you talk to anybody when you dropped that off?
A No. We put it in a envelope in the mailbox. The mailbox was for CTS Trucking, and we just put it in an envelop for CTS Trucking.
Q There was just some kind of lobby with the mailbox in it?
A It's outside.
Q Outside. And it's over there by the scales?
A Yes. And if there was any problems CTS would contact me or Sedrick Smalls would contact me.
Q As far as problems with the logs?
A Yes.
Q Mr. Rose, I think that's all the questions I have for you. Mr. Killen may have some questions for you and your lawyer might have some, too.
EXAMINATION BY MR. KILLEN:
Q I'm Tim Killen. I represent the state agency involved in this case. This is Workmen's Compensation Uninsured Employer Fund. When you went to work for JJS Trucking, did your route ever vary?

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A We took the interstate or we went the back way through Hanahan and Goose Creek.
Q But you were always going to the same place from the same place; is that correct?
A Yes.
Q How did you know you were hauling these loads for Chris Thompson?
A Chris Thompson was the contractor and everything coming out of Summerville saw mill is either hauled for Don Sweet or Chris Thompson. Everybody else were just subcontractors under those two.
Q How did you know you were you working under Chris Thompson?
A I was told.
Q Who told you that?
A Sedrick Smalls.
Q Did you ever work for anybody else other than Chris Thompson?
A At the saw mill, no.
Q You said that Chris Thompson would contact you?
A No, his secretary.
Q His secretary would contact you?
A If there's a problem with the logs or paperwork that I turn in, they left either notes in the box for us, or when we picked up our checks, we received the note from them, or

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they would call us on the phone, or our boss would tell us, relay the message to us.
Q Did somebody from Chris Thompson call you more often, or did your boss Sedrick Smalls?
A Mostly Sedrick Smalls. Once I was contacted by someone from Chris Thompson's office?
Q Just once?
A Twice.
Q Are you sure?
A Yes.
Q I don't want you to guess. I just want you to tell us what you know. And when you were contacted by someone from Chris Thompson what did they want?
A First time, was my hours of service. I went over 12 hours, and they told me not to do that, and the second time it was for truck inspections.
Q What in regards to truck inspections?
A I needed to take the truck over to his shop to have them inspect it.
Q You needed to take your JJS Trucking truck over to Chris Thompson's shop; is that correct?
A Yes.
Q So that someone from Chris Thompson's outfit could inspect your truck?
A The trailer. The trailers that we hauled belonged to

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Chris Thompson. The trucks belong to JJS Trucking, and they were responsible for the maintenance on the trailer. JJS Trucking was responsible for maintenance on the truck.
Q Every time you hauled a load the trailer was Chris Thompson's?
A Yes.
Q When you were hurt the trailer on your out truck was Chris Thompson's?
A Yes.
Q Did JJS Trucking own any of the trailers?
A No, just the truck.
Q Could you have done the job without the trailer?
A No. The trailer is used to haul the chips.
Q And so in order to get the job done you needed Chris Thompson's trailer?
A Right.
Q Did you ever have any direct interaction with Chris Thompson himself?
A His mechanics.
Q What would they do?
A They were the ones that inspected the trucks, took care of the maintenance on the trucks, fix the tires, just the regular maintenance on the trailer.
Q You said the trucks, you mean the trucks or the trailer or both?

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A The trailer. The day before the accident they inspected the trucks, the truck itself.
Q And that JJS Trucking's truck?
A Yes. Chris Thompson mechanic inspected the truck itself. The tractor, the day before the accident and prior to that they were only inspecting the trailer and just done any maintenance or anything that we found wrong with the trailer, they would fix it.
Q Do you know why they would inspect your truck the day before the accident?
A One of trucks that belonged to JJS Trucking had a tire problem. The treads on the tires was worn. The mechanics inspected it when it was parked at Summerville saw mill. He left a note saying it needed to get repaired, and then he wanted to see all the trucks and inspect the tires.
Q He being who?
A The head mechanic. A guy named Tim.
Q Tim working for?
A Chris Thompson. And to my knowledge he wanted every truck that JJS drove inspected by him.
Q Did you talk to Sedrick Smalls about that?
A Yes.
Q What did Sedrick Smalls tell you?
A The truck that I was driving I had to take it to the mechanic to get some tires replaced, and after I had the

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tires replaced, I took it to have Tim, Chris Thompson's mechanic to have it inspected.
Q What did Sedrick Smalls tell you about the inspections?
A That we passed the inspection.
Q Did he tell you anything else?
A No. He just you told me to go get the trailer from Chris Thompson, so I could continue my work for the day.
Q Did you ever hand in your logs to Sedrick Smalls or JJS Trucking?
A Yes.
Q How frequently would you do that?
A When I first started, I gave him my logs personally. But after approximately two weeks I started putting it in the box.
Q And giving it directly to Chris Thompson's company?
A Yes.
Q Beside the truck and the trailer, was there anything else you needed to do your job?
A Fuel.
Q And you needed the logs; right.
A Yep.
Q How was fuel paid for?
A Tonya Smalls, Sedrick's wife, we met her at the gas station on Monroe Gray Avenue. She would fill up the truck. She did it twice a week.

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Q Did you ever --
A Plus she would pay for it after we filled it up.
Q Did you fill up your truck any other way than that?
A No.
Q And when you got those new tires on the truck how was that paid for?
A He paid for it himself. Sedrick Smalls paid for it.
Q Did anybody working for JJS Trucking ever get fired while you worked there?
A Nobody got fired.
Q Did anybody ever get reprimanded while you were there?
A Not to my knowledge.
Q Did you ever get reprimanded in any way?
A Once for my hours of service.
Q You got reprimanded by Chris Thompson's secretary.
A Both. Chris Thompson secretary and Sedrick Smalls.
Q And you got paid $25 a load?
A Yes.
Q And all the load you were hauling were --
A Woodchips.
Q In Chris Thompson's trailers.
A Yes.
Q Do you know whether or not Chris Thompson had a right to fire you?
A He would recommend that we be fired.

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Q What do you think would you happen if he made that recommendation?
A We would be fired.
Q Is it your understanding that Chris Thompson said he would pay for your medical bills?
A That's what I was told.
Q You were told that by Sedrick Smalls?
A Yes.
Q And none of your medical bills have been paid?
A Nothing.
Q And you have not received any form of weekly compensation while you have been out?
A No.
Q Did Chris Thompson subcontract this work out to any other companies other than JJS Trucking?
A I wouldn't know that.
Q Were you aware of any drivers from other companies hauling loads using Chris Thompson's trailers?
A I wouldn't know that.
Q Capstone ever have any drivers?
A None that came in contact with it. Everybody that drove there just came from all over the state.
Q You never saw any Capstone employers driving your truck doing the same things that you were you doing?
A I wouldn't know if they were Capstone employees.

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Q So you don't know; is that the right?
A Right.
Q How often do you take the Oxycodone?
A I take the oxycodone when the pain is unbearable.
Q When's the last time you took it.
A Last night.
Q Before that, when's the last time you took it?
A When I took my MRI.
Q How long ago was that?
A Last week, Monday.
Q Do you ever take it more than a couple times a week?
A No.
Q And you said you were tossed over the median when you got out of the truck?
A The people that pulled me out of the truck. They tried to pull me away from it. I remember one guy saying get him on the other side against the wall, and then I felt them throw me over the wall, and when I came, to the police and firemen was dragging me further away from the truck while it was burning.
Q What was burning?
A The truck blew up. The tractor that hit me blew up, and my truck was burning. It caught on fire.
Q You didn't get any burns yourself?
A Smoke Inhalation, no.

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Q Who pulled you out of the truck?
A I have no idea.
Q Do you know who hit you?
A I was told it was the driver by the name of Robbie.
Q Do you know Robbie?
A No.
Q Have you ever met him prior to that night?
A Just speaking saying hi and bye.
Q Where would you see him?
A When I'm leaving or coming to work. When I'm leaving the saw mill or coming to work to the truck.
Q Saw mill. That's where you would start your work every day?
A Yes.
Q What business is there?
A Summerville saw mill. That's where we picked up the woodchips to take to Capstone.
Q Where did you keep your --
A All the trucks were parked across the street from the saw mill property. All of Chris Thompson's trucks and JJS trucks, they were parked there.
Q Where there any other trucks from any other companies parked in the same lot?
A There used to be, but back in June or you July Don Sweet, he had his drivers bring his trucks to him, and his

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sub contactors parked their trucks somewhere else. The only people that parked there was Chris Thompson and JJS trucks.
Q Do you know anything about who paid who to park there?
A No.
Q Do you know anything about the agreement between JJS Trucking and Chris Thompson?
A No.
Q Do you know how much -- and I know I just asked you this question. Do you know what percentage Chris Thompson took from each of your loads.
A No.
Q Did you have an understanding what would have happened had your truck not passed that inspection by Chris Thompson's personnel that day?
A I would have either had to drive a different truck or not work.
Q Do you know whether or not Sedrick Smalls had any discussions with Chris Thompson when you were hired?
A I don't know.
Q That's all I have.
MS. BARR: Thank you, sir. That's all we have for you if Mr. Fisher doesn't have any questions.
(The deposition was concluded at 10:40 a.m. November, 14th, 2011.)

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STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF DORCHESTER)

I, Laci B. Bearden, Court Reporter and Notary Public, certify that I did have Samuel Rose to appear before me at 9:45 a.m. on Monday, November 14th, 2011, at the law offices of George Sink, P.A., 7011 Rivers Avenue, n. Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of November, 2011.

_____

Laci B. Bearden
Notary Public for South Carolina
My Commission Expires: September 29, 2021

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
Employer.
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SEDRICK SMALLS

November 14, 2011
11:00 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public

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BEFORE THE SOUTH CAROLINA
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JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
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-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Sedrick Smalls, taken before Laci Bearden, Court Reporter and Notary Public, at the George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 11:00 a.m.

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EXHIBITS

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SEDRICK SMALLS
was sworn (affirmed) and testified as follows:
EXAMINATION BY MR. FISHER:

Q My name is Joe Fisher. I represent Samuel Rose with the worker's compensation claim that we filed arising out of an accident that occurred on August 10, 2011. I want to ask you some questions about your relationship with my client, a work relationship and your work relationship, business relationship with a gentleman named Chris Thompson and his company Chris Thompson Services, LLC; okay?

A Yes, sir.

Q Will you please state your name for the record?

A Sedrick Smalls.

Q Mr. Smalls, where do you live at?

A 137A Gordon Street, Charleston, South Carolina, 29403.

Q And are you familiar with the company called JJS Trucking?

A Yes.

Q And how are you familiar with that company?

A I am the owner, president. I think that's it, the president.

Q Are there any other owners, any other shareholders, anything like that in JJS Trucking?

A No.

Q Your a sole proprietor?

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A Yes.
Q Sole owner?
A Yes. President, yes.
Q And do you know a gentlemen named Samuel Rose?
A Yes.
Q How do you know Mr. Rose?
A I employed him at JJS Trucking.
Q Do you remember when he went to work for you?
A I believe it was the fourth month.
Q I think he testified earlier he went to work for you in April of 2011. Would that be about right?
A Correct, correct.
Q Was he working for you in August of 2011?
A Yes.
Q And JJS Trucking, you guys subcontract work for Chris Thompson Services; is that correct?
A Correct.
Q And how long have you had a relationship to work with Chris Thompson Services?
A For over three plus years.
Q And what is that relationship?
A I'm a subcontractor. He – I pull loads for him. He provides a trailer, and I provide my insurance coverage to him, and he pays me by the ton to carry each load.
Q And where do these loads go to, and where do the loads

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come from?
A They come from a lumber mill in Summerville, and then they go to a paper mill in Charleston, and the lumber mill is off of Highway 78 and they go to Virginia Avenue.
Q And that's your exclusive contract with him?
A Yes.
Q You don't haul anything else anywhere other than this route from Summerville to the paper mill; is that right?
A Correct.
Q And let me see, my client had started working for you in April of 2011. Did you pay my client?
A Yes, I paid him. Yes.
Q And how did you pay him?
A I paid him as a subcontractor by the per load. For every load that he received, he got paid for each load.
Q And how much did he get paid per load?
A Twenty-five dollars per load.
Q And how many loads would you say he could make on average in a day?
A Focus – he would on average per day it was normally around five loads. Sometimes a little bit more, sometimes a little bit less, but on average for Mr. Samuel every week, he typically got 25 to 30 loads every week. I do have some documentation for that.
Q You do. Could I see what you have?

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A Yes.
Q Take your time.
A Here we go. If you want to make a copy of that.
Q That would be great.
A That's the same thing I provided to the insurance company.
(Where upon an off the record discussion took place.)
Q Sir, you provided us with what looks like a payroll log, is that what that is? What is that? And I'll show you a copy of it.
A Exactly. This is what we call a load sheet and for each ticket number you see represents a load. For each load that's turned in, that's how he gets paid his $25. It just verifies what he done that particular week.
Q And for example on 7/12/2011, if you'll take a look at that.
A Correct.
Q Which is one, two, three, four, five, six, seven numbers; is that correct? One, two, three, four, five, six, seven numbers.
A Correct.
Q Does that mean he made seven loads that day?
A Correct.
Q And then on the 13th it shows one, two, three, four,

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five numbers, so he made five loads that day; correct?
A Correct.
Q And I would assume it varies on traffic and other things; is that correct?
A Correct.
Q As to how many loads you could get a day. And what you've given us is from July 12, 2011, through August 9, 2011; is that correct?
A Correct. But I do have all of his since he was employed. I just thought it might be handy here today because that's for the insurance company. They just wanted "X" amount for representation so, but that's what you're looking at right there.
Q I would like to mark this is as Plaintiff's Exhibit One, please.
(Plaintiff's Exhibit No. 1 was marked for identification.)
Q Now, what was your arrangement with Chris Thompson Services, your business arrangement?
A My arrangement was to – and we only had a verbal agreement, but my arrangement was to haul loads, and I was to receive compensation for each load that I carried, and I would turn in my sheets at the end of the week, and then the following week he would relinquish me a check for what I did the previous week.

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Q Were you paid by the ton?
A Correct.
Q And then he was also paid by the ton. "He" being Chris Thompson, did he get paid so much per ton as well?
A I believe so, yes.
Q Who paid Chris Thompson?
A I would believe he got paid from Capstone because that's the -- maybe -- matter of fact, he might have got paid from the lumber mill. Actually, I really don't know, but I know that's where we delivered it to, Capstone.
Q And Chris Thompson would cut a check JJS Trucking --
A Correct.
Q -- every week and then you would cut a check to your employees --
A Yes.
Q -- or is it the fellows who drove a truck for you --
A Correct.
Q -- and that's how that worked?
A Correct.
Q And how many trucks did you have working for you at the time of this accident?
A Three.
Q Three. And how many trucks do you own?
A Four.
Q Four trucks. Who all drove a truck for you?

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A At that time of the incident, it was me, Samuel Rose, Shaun Thompson -- Shaun Thomas, and Reggie Washington. Reggie was really part time. He didn't run every day.
Q Did you have a truck driver named Terri?
A Yes, I did, but he was not employed with me at that time. He was a subcontractor for me at that time.
Q Did you have a truck driver named Max?
A Yes. I did at that time, but he was not working for me at that time.
Q The deal with Chris Thompson was in order for you to work for him you had to provide him with copies of your certificates of insurance --
A Correct.
Q -- to cover your drivers and yourself for worker's compensations purposes; is that right?
A Correct.
Q And what would happen if you didn't provide those certificates of insurance to Chris Thompson?
A I would be terminated.
Q And who paid for the gas for the trucks that you drove?
A I did.
Q What about the tires?
A I did. All maintenance to the vehicles, I was responsible for?
Q But the trailers were owned by Chris Thompson?

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A Exactly. But excluding the trailer. Everything on the trailer would be Chris Thompson's.
Q How long have you had JJS Trucking?
A If I'm not mistaken -- I know I got a date for when it was established, but I would say somewhere around seven years.
Q Have you ever had any trouble with insurance like what's going on now?
A No, sir.
Q Now, you've provided and I believe your insurance agency provided some insurance certificates to us, and the state has concluded that your insurance had lapsed from February 5, 2011. Until September 23, 2011. Did you ever receive a letter from the state?
MR. KILLEN: Let me just object to the form of that question.
Q Well, if you could just answer that. Have you ever received a letter from the South Carolina Workmen's Compensation Commission by a gentlemen named Gary Smith?
A Please repeat that question.
Q Have you ever received a copy of this letter right here, I want to show you?
A No, sir.
Q It says it was mailed to 137A Gordon Street?
A Let's see, this is on October -- okay, October the

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28th. Okay. Okay.
Q Is this your address here, 137A Gordon Street?
A Yes. Well, what I want to say is I haven't actually seen it myself, but they have sent quite a bit of letters to me.
Q And has any insurance company or anyone told you that your insurance had lapsed starting February 5, 2011, through September 23, 2011?
A I had not received anything from my actual insurance carrier.
Q But have you talked with anyone at the State of South Carolina Workmen's Compensation Commission about that?
A No, sir.
Q And no one's discussed any sort of fine with you for not having it --
A I did receive a letter saying that if I do not show that I had insurance over "X" amount of years that I would receive a fine.
Q Now, are you aware that the insurance company -- your worker's compensation carriers has said that you didn't have insurance at the time of this accident?
A I am aware that they said that.
Q Have you talked to them about that since then?
A Have I talked with them?
Q Your insurance company?

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A I have, and they still stand by the fact that I do not have worker's compensation.
Q And which company said that, is it Travelers, Zurich, do you remember?
A Towers.
Q After Mr. Rose was in the accident, when did you find out this accident happened?
A I found out immediately. I mean, within an hour.
Q Did you go to the hospital and see him?
A Yes, I did.
Q Did you ever talk to Chris Thompson about this accident?
A Yes, I did.
Q What did Chris Thompson and you discuss?
A I informed him that at this scene his driver hit my driver in the rear, that at the scene DOT and South Carolina State Troopers had faulted his driver at fault and that my driver was in no way -- they called it not contributing. So I informed him of all of this.
Q After this accident, did you and Chris Thompson ever discuss worker's compensation coverage?
A We did later on once I found out that I was not being covered.
Q What did Mr. Thompson tell you?
A That when he informed me that --

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MS. BARR: Object to the hearsay.
Q Go ahead and answer the question.
A He informed me that I can no longer work for him based on the fact that my insurance had lapsed at that time. That's what he said.
Q Did he ever say anything about his insurance taking care of this claim with regard to Mr. Rose?
A What he stated is that --
MS. BARR: Same objection to hearsay.
Q Go ahead.
A What he stated was that Sedrick -- that I was responsible for keeping my worker's comp coverage current. He stated that he was not informed that my insurance had lapsed. Actually, I was looking for it here, but I don't have it. But I was going to ask you -- remember I faxed you two copies of -- he in turn said to me, Sedrick -- so the bottom line I was terminated. Later on, a week or so later he informed me that he did an investigation or he had come across the fact that my insurance had not lapsed, and he provided me with documents. I in turn called my insurance agent that happened to look into this because ever since I worked for Mr. Thompson, if my insurance was ever in jeopardy of lapsing, my insurance carrier always would inform him because he's listed down there, but all I can say is, he said, Sedrick, you know you can't be employed here,

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but I don't know what's going on because if you look at those documents, it would state that you would have it, but again, if I don't I don't, but I was not aware that I did not.
Q Is this the documents you were just asking me about?
A Yes, sir.
Q And one of them is dated 10/18/2010. Can you take a look at that? Number one it has Tower Insurance Company. Below it it has Travelers Insurance; is that correct?
A Correct.
Q And it shows the date covered 10/8/10 to 10/8/11?
A I know on this policy, if I'm not mistaken, I had just renewed it after the incident because after I found out, I went to go get reinstated, you know, and so that's what we're looking at right here.
Q And this was generated after the accident; is what you're saying?
A That's right, that's right.
Q And where it says binder down there, what does that mean?
A That means that I'm covered.
Q That's your understanding that it means you're covered. Then I have this other one from Swap Fox Agency? Is this your agency?
A No. No. No. We're looking at the wrong thing. I'm

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sorry. This is not what I'm looking at because this here says 10/2/2010 --
Q Yes, sir.
A -- through 10/2/2011.
Q Yes, sir.
A So therefore when I look at this I would have been covered through -- because I received a couple of them now, so let me retrack what I stated.
Q This is another one that you -- no, this one's dated 9/29/11.
A Okay. There we go. This is the one probably I was referring to.
Q And this one, the 10/8/10, that says -- does that say Travelers Insurance?
A Yeah, that says Travelers Insurance; correct.
Q And this 9/29/11, now whose insurance company picks up coverage at that point.
A Zurich America Insurance Company.
Q And that's good from August 24, 2010, it says, to August 24, 2011; is that correct.
A Correct.
Q But you didn't purchase it until 9/29/11; is that correct?
A Actually -- the best thing I can say to you is -- purchase -- I was under the impression that I didn't -- if

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this is 9/29/11 -- I wasn't the person -- that was not a purchase actual date because if that's a purchase date, why would it be 9/29/11 where it actually says here, you know, coverage 8/24/10 through 8/24/11. I --

Q That's a good question.

A I was under the impression that that's when probably someone actually sent it out verifying the date it was sent out but not the actual date of coverage. These -- from my interpretation -- these are the actual dates of coverage.

Q Why would there have been one from August 24, 2010 for Zurich and one from October 8, 2010 from Travelers? I don't have any idea.

A The only idea that I could have is maybe the insurance had lapsed and somebody else picked it up. I don't know. What I do is I make my payments to Swap Fox and -- but I don't know.

Q Have you ever went and showed these and discussed these with anyone at Swap Fox?

A We talked -- I sent it back to Swap Fox. I have not gotten a response back from Swap Fox, and that would be attention Gregg Hudson, I believe, operations manager via Swap Fox.

Q When you hired Samuel Rose, his job was to haul woodchips from Summerville to the Capstone Plant; is that correct?

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A Correct.

Q And you furnished the truck; is that correct?

A Correct.

Q You paid for the gas; is that correct?

A Correct.

Q You paid for the maintenance on the truck; is that correct?

A Correct.

Q And really all he did was he was suppose to get in the truck and drive it safely to and from Summerville, dumped in Capstone, come back. His job was just to drive the truck?

A His job was just to drive the truck; yes.

Q And you told him where to go?

A No, I did not.

Q You didn't tell him where to go?

A No, sir. At Summerville, we have a loader box and each driver has a shift, but you can start your shift earlier or later. I did not make that determination.

Q Not when, but where? I mean, he had your truck. His job was to drive your truck from Summerville saw mill, to Capstone. He couldn't just take that truck if he wanted to haul chips to Savannah or something like that?

A No, sir.

Q Well, thank you, sir. I don't have any other questions. Appreciate it.

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EXAMINATION BY MS. BARR:

Q Mr. Smalls, my name is Kirsten Barr. We met briefly before we went on. I represent Chris Thompson and the insurance carrier. Do you recall making payments to Swap Fox or to anybody else for worker's comp insurance in 2011?

A No, ma'am.

Q Would you have written one check. I mean, do you recall making any payments toward the purchase of a worker's comp insurance policy in the year prior to the accident?

A Yes, ma'am.

Q Now, do you have business records showing -- would you write the check to Swap Fox then?

A Sometimes I made them to Swap Fox and sometimes I -- like, if I was close to being terminated, they would say, hey, just make it out to us and make sure it stays current.

Q At any time in the months prior to this accident that happened in August of 2011, did you stop making your regular payment?

A Focus. I'm not going to say that I didn't -- I might not have had some times when I might have been late. But what would happen is that my insurance agent would say, Smalls, well this is where you are and this is what you need to do. But, yes, ma'am -- and -- focus -- if my insurance had lapsed, I would have to go in and sign something saying that I didn't for that particular period that might have

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just lapsed that I was not covered, so again, the best way I can put it is that I'm not going to say that I didn't have any issues, but at the time of this incident, I was under the impression that I was covered.

Q Would you be able to put your hand on like the canceled checks or check stubs that you would have written to pay for your worker's compensation insurance in the months prior to Mr. Rose's accident?

A I'm pretty sure I could go back and find documentations of payments.

Q Do you recall ever getting a notice from Swap Fox or from the worker's comp insurance company saying that your policy had lapsed --

A No.

Q -- or that they were going to cancel it?

A No, ma'am.

Q You still get your insurance with Swap Fox?

A As of now, I'm out of business pretty much. I'm exhausted.

Q Were you running trucks for anybody other than --

A No. No, ma'am.

Q -- what you did for Chris Thompson?

A Exactly. That was everything for me.

Q And you have four trucks?

A Yes.

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Q Do you still have the four trucks?
A I still have -- yes, I still have them.
Q And where do you keep your trucks?
A I keep one of them at the shop that broke, but I have three in a yard, what they call Red Top.
Q Is that something that you own or --
A It's a friend's property.
Q And where in Red Top is that?
A That's off of Charleston -- I think that's Old Charleston Road.
Q And who owns the property where they're located?
A Rodney Doctor.
Q Doctor?
A Yes, ma'am.
Q And do you pay him rent to keep those trucks there, or is he just a friend, or what's the arrangement?
A Oh, no, he's a friend.
Q And you say that you have not worked or done any kind of work with JJS Trucking since you talked to Mr. Thompson about the lapse in your worker's comp insurance?
A Yes, ma'am.
Q Just a quick question. We've marked this as Claimants One, but I think you said this was a load sheet; is that what you called it?
A Yeah. By definition, we call them load sheets, but

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that's how we determine compensation.
Q And would this be something that an employee like Mr. Rose would turn in to you each week?
A Yes. But technically he turned it in to the office. He didn't really turn them in to me, but I look at it as being turned in to me. Every week he would fill it out just like I did and put it in a box, and then when the checks came from Chris Thompson then it would come back to me.
Q So when you say he leaves it in a box, this was a box at Capstone?
A Correct.
Q But Chris Thompson didn't write a check to Samuel Rose. He wrote you a check?
A Exactly. He wrote me a check. Yes, ma'am.
Q I think Mr. Killen probably has some questions for you. That's all I have for you right now.
EXAMINATION BY MR. KILLEN:
Q Mr. Smalls, I'm Tim Killen. I represent South Carolina Worker's Compensation Uninsured Employers Fund, and this load sheet, this is filled out by Samuel Rose; is that correct?
A Correct.
Q And did Mr. Rose do the calculations on this document?
A No. No. Chris Thompson did the calculations on the sheet.

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Q So Mr. Rose would leave this in a box for Chris Thompson; is that correct?
A Correct.
Q And Chris Thompson or someone in his company would do these calculations?
A Correct.
Q And then Mr. Thompson's company would pay you --
A Correct.
Q -- and send these sheets back?
A Correct.
Q And then you would have them for your records; is that right?
A Correct.
Q So would you just then write a check to Samuel Rose for the amount shown on the bottom of this load sheet?
A No. I would write a check to him for each load -- his compensation was $25.
Q That's right.
A I would count each load that was turned in to verify, and I would cut him a check for those amount of loads.
Q Did Mr. Rose ever tell you how many trips he took in a certain week?
A Sometimes we would discuss -- you know, he would say, well, yes Smalls, I got 25 loads, or I got 30 loads and then, so we would discuss it and then what would happen is

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when this came back this was like double checking what the verbal communication was.
Q The verbal communication was just informative; right?
A Correct.
Q This document, this load sheet, I mean, that's the holy grail.
A Yes.
Q That's the document where everything is based off of; right?
A Correct.
Q Let me ask you a few background questions. What's your date of birth?
A 5/22/70.
Q And your social security number?
A 4002.
Q And your driver's license number?
A 008680380.
Q And that's South Carolina?
A Correct, sir.
Q I know your home address, is that your business address as well?
A Correct, sir.
Q Have you ever operated any other locations other than the Gordon Street location?
A No, sir.

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Q Where do you house your trucks?
A Red Top or if I was –
Q I'm sorry. Let me ask that a better way. When you were in business, where did you house your trucks?
A In Summerville at the mill.
Q And who owns that mill?
A Well, owns the mill would be Capstone.
Q And so you would park your trucks there, did you pay anyone for the space?
A No, sir.
Q Who did you negotiate that with?
A Well, you use the word, "negotiate." I was just authorized by Mr. Chris Thompson to be able to park there.
Q And you went into business with Chris Thompson about three and a half years ago; right?
A Yes, sir.
Q You never had a written contract with him?
A No, sir.
Q But you had a written contract with all your drivers?
A Yes, sir, most of them.
Q You're the only member of your LLC?
A Yes, sir.
Q How are you taxed?
A When you say, how am I taxed?
Q Are you taxed like a sole proprietor? Do you know?

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it's okay if you don't know.
A I mean, I got some tax documents, but I know there's different ways you can be taxed.
Q Do you pay corporate taxes for your income through your LLC? If you don't know, it's okay?
A Well, I know on my taxes my corporation is listed so.
Q Okay. Your LLC?
A Yes, sir.
Q You pay personal income tax?
A Can I make a call? Because my accountant might answer the phone.
Q It's all right. Who's your accountant?
A Liberty Tax. Warren – Warren Frazier.
Q Where is he located?
A Goose Creek.
Q Do you own the property at Gordon Street?
A Yes, I do.
Q Personally?
A Yes.
Q Does your LLC own any property?
A No, sir.
Q Who owns those trucks?
A My corporation.
Q Their titled in the name of JJS Trucking, LLC; is that correct?

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A Correct.
Q Where do you bank?
A First Citizens.
Q Do you have personal accounts there?
A I don't have a personal account.
Q All your bank accounts there – if their – is there more than one?
A No. It's just one, JJS Trucking.
Q And it's just a checking account?
A Yes.
Q Do you have a mortgage on your house at Gordon Street?
A I do.
Q Is that in your name alone?
A It is.
Q How do you pay the mortgage?
A By check.
Q Out of your JJS Trucking, LLC account?
A Most of time I would assume so, yes.
Q You would assume so or yes or no?
A I would say yes.
Q So you use that JJS Trucking account for your personal needs?
A I guess you can say it like that.
Q Do you separate your money from your corporation with your personal money?

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A Oh, no, I see what you're saying. No, I do pull it out.
Q How do you pull it out?
A I write a check to myself.
Q And then you cash it?
A Correct.
Q At First Citizens?
A Correct.
Q How do you pay your electric bill?
A I would pay it off of my account.
Q From your corporate account?
A Correct.
Q What about when you go get groceries?
A I pay cash.
Q Do you ever write a check for groceries?
A No, sir.
Q Do you own any automobiles personally?
A Yes, sir.
Q How do you get gas?
A I pay for it with the cash.
Q You pay cash for your gas at all times?
A Correct.
Q You never use your corporate account to pay for your personal vehicle's gas.
A No, sir.

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Q What kind of cars do you own personally?
A I got a Kia Sorento and a F250 true cab truck and a F150 that's an older truck.
Q Any other automobiles or trucks?
A No, sir.
Q Does your wife own those vehicles as well?
A No.
Q Did you ever take money out of any of your drivers checks to pay for worker's comp insurance?
A No.
Q Did Chris Thompson ever take money out of what he paid you to pay for worker's compensation insurance?
A No.
Q Did the terms of your agreement with Chris Thompson ever change at any time during the course of your relationship?
A No.
Q So he took the same percentage out when you started as he did from your last load?
A Same percentage out -- same percentage out. I would say -- you say take the same percentage out. I would word it as I was paid by the ton, but that would change based off of fuel cost or what he was being compensated with because it did go up and down. But I don't see it as -- you say take something out.

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Q So when it changed, how did you find out that it changed?
A I saw it on the -- I mean, I got the load sheet -- the statement.
Q When you got paid, that's when you learned?
A Correct.
Q There was no negotiating those factors?
A No, sir.
Q What Chris Thompson paid you, you got; is that correct?
A Correct.
Q And you didn't have any say so in that?
A No, sir.
Q And you said earlier your job was to provide insurance coverage, and his job was to provide the trailer?
A Well, I mean, no. My job was to provide a truck and a driver.
Q Okay.
A But under the terms, I was supposed to make sure I keep my insurance, you know, current.
Q And that's your liability insurance and your worker's comp insurance?
A Correct.
Q I believe Mr. Fisher showed you a certificate of insurance earlier. I don't think we made it an exhibit. There's one dated 10/18/2010.

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(Where upon an off the record discussion took place.)
Q Do you have a copy of that certificate dated 10/18/2010 or do you need --
A I got it.
Q Now, in October of 2010, did you get a new policy through the Swap Fox Agency for worker's comp insurance?
A I'm sorry. Which one am I looking at?
Q Your looking at the one dated 10/18/2010.
A Okay.
Q That's the one that we're dealing with here. That's the most important one, in my opinion.
Did you get a new policy of insurance that year in October of 2010 for worker's comp; do you remember that?
A A new?
Q Yes.
A 10th, the 18th, 10/18/10, did I get a new?
Q Let me go through this certificate with you. This purports to show that the document was created on October 18, 2010 by someone at Swap Fox Agency, and it has insure B Travelers Insurance or Indemnity and Affiliates. I can't read, it and that's where your worker's comp policy would be in effect. That insure B up there at the top is referencing this right here where it says binder and then these dates of effective coverage down here, 10/8/10 through

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10/8/11. Did you go get a new insurance policy around that time?
A If that's the 10/18/10 -- I would -- are you saying this is the time when I was renewing it?
Q I'm asking you. Did you renew a policy, or did you get a new one or what?
A I renew it every year, so if I'm renewing it every year and it starts on the 10th, the 8th, the 10, 10th the 2nd and then this date up here is -- I would have believed that this is the beginning of a new policy.
Q It shows binder down there. Did you ever have an actual policy issued to you from Travelers?
A I'm pretty sure I would have had to. I mean --
Q When did you make your payments to Swap Fox?
A Oh, wow, I mean, normally there would have been a deposit made, and I would be making monthly payments.
Q So around the time, you either renewed or get a new policy you make a deposit; is that correct?
A Correct.
Q And then from the rest of the year you make --
A Correct.
Q -- equal monthly installments; is that correct?
A Pretty much.
Q And there were times in the past where you would fall behind?

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A Correct.
Q But someone from Swap Fox would contact you and let you know and then you would catch up; correct?
A Correct.
Q Now, the worker's comp commission is showing a – that this policy was canceled sometime in February of 2011. Now, between October of 2010 and February of 2011, were you missing payments to Swap Fox or Travelers?
A Okay. Say that one more time, please.
Q Between October of 2010 and February of 2011, that's about what, four months?
A Okay. Between October – go ahead now.
Q Did you miss any of your payments?
A For my worker's comp, I'm going to say I really don't recall missing any payments, but if worker's comp says – well, not worker's comp but if they say my insurance lapsed in January, I would have to say obviously I didn't make a payment.
Q Are you telling me you know that you didn't make a payment or just because this paperwork, which is not binding, says it.
A Exactly.
Q Are you relying on these documents?
A Yeah, pretty much.
Q Solely for your recollection?

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A Pretty much.
Q Are you telling me that it's possible you missed a payment or two?
A I'm saying it is possible.
Q Is it probable?
A Probable? If that the same meaning as saying possible, I'm going to say it's possible.
Q Did you ever get a call from anyone at Swap Fox during that time?
A No, sir.
Q Did you ever get a letter from anyone at Swap Fox during that time telling you your policy was getting ready to lapse?
A No, sir.
Q Did you ever get a letter from Travelers during that period of time telling you your policy was getting ready to lapse and what you could do to cure that?
A I don't recall it, no, sir.
Q Did you ever get any of your premiums refunded to you?
A No, sir.
Q Neither Travelers nor Swap Fox ever wrote you a check for any worker's compensation insurance you paid for, but they weren't providing coverage for you?
A No, sir.
Q How frequently would you send certificates over to

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Chris Thompson?
A I myself don't send certificates over to Chris Thompson. My agent would send it over to Chris Thompson.
Q Did you ever ask your agent to do that?
A In the past I think one time I did. It wasn't in the last year. I think one time before my – he questioned me on my insurance renewal date, and I called my agent and say could you send over Chris Thompson a current, you know, certificate of insurance, but that was – that had probably happened two years plus ago.
Q How long was your agreement with Chris Thompson supposed to last?
A He never – we never discussed a time frame for how long it was supposed to last.
Q How long did it actually last?
A I'm going to say about three and a half years.
Q So for three and a half years, you two companies never had a written agreement?
A No, sir.
Q Three and a half years you two companies, both of your LLCs, never put anything on paper to show that you two had a contract with each other?
A No, sir.
Q And nothing changed since three and a half years before the contract terminated, as far as the terms of contract are

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concerned; is that correct?
A Yes, sir, that's what I am saying.
Q After Chris Thompson terminated the contract with your company, did your company receive full payment for the work it had already performed?
A If you are saying if anything was owed to me from him, did I receive it, then I would say, yes.
Q Was it effective immediately, or did you get a 30 day grace period?
A Immediately.
Q And you would make your insurance payments to Swap Fox Agency?
A Yes, sir, sometimes, yes.
Q Sometimes?
A Yes, sometimes.
Q Where would you make them if you weren't making them directly to Swap Fox?
A If I'm not mistaken it would have been to like a finances company maybe. I don't know if it was actually to Towers or Zurich, but sometimes it would be like a finance company that would be established, and I would pay them.
Q When is the last time you remember making payments to a finance company?
A I would have to go and look at my records. Right this second I –

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Q Just to the best of your recollection?
A I would – I would believe in this – in the early portion of this year because like I said, I know I was making payments.
Q So you were making payments in 2011?
A 2011.
Q It's 2011.
A Yes.
Q It is your testimony that you never received notice of a cancellation?
A No, sir.
Q By notice of cancellation, I mean a letter from the insurance company or the agent saying that they were getting ready to cancel your policy unless you followed up with the payment?
A It's a possibility they might have sent me something. Also when I was aware of a possible lapse then, I would bring it current. In this particular case here, I was not aware that my insurance had lapsed, and any other time if my insurance was about to lapse, Chris Thompson would have been all over me because he did not want my insurance to lapse, so I can't say I didn't make a mistake. What I can say is that ever since I dealing with Swap Fox and ever since I've been running for Chris, I never had this problem, and when he brought it to my attention, I didn't have nothing to say.

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Q "He" being who?
A Chris Thompson.
Q And he didn't know about this problem until after the accident; is that correct?
A Correct.
Q That's all the questions I have.
EXAMINATION BY MR. FISHER:
Q Let me ask you one, Mr. Smalls: The finance company, whenever you say sometimes you made insurance payments through a finance company and not directly to Swap Fox, what finance company would that be, and how did that work?
A The best way I can put it is Swap Fox was my insurance agent. Normally, when I would go and establish a insurance binder, I would have to put "X" amount of dollars down, and then it would say, okay, well, to the balance on this – if the policy was $5,000, I might put down $2,000. They might finance 3,000. I would give Swap Fox a check and then what would happen would be I would either make payments to a – normally, I don't think it was the actual insurance, I think it was to like a finance company. And then if I got in trouble, you know, they would say, Hey, you know your insurance is about to cancel. I would talk to my insurance agent and say, Hey, what's the deal, well, you got "X" amount of time. Sometimes I would just cut them a direct check, you know, and they would deal with it however they

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deal with my policy. They might have had a more faster, efficient way of dealing with the situation.
Q Well, there's this note here – cancellations, reinstatements, non renewals and it shows on 1/6/11 that your policy was canceled, and it says by the request of the finance company?
MR. KILLEN: Can you tell him where that is, Joe?
MR. FISHER: Yeah.
Q It says TOC inquiry on line with South Carolina. This is something to show whether or not you had insurance. But anyway, the finance company, if you don't make a payment to the finance company, does your coverage lapse?
A I would say I'm sure it would lapse. I guess, that's an answer.
Q Do you know what finance agency it was that you were dealing with at this time?
A I would have to really go back and talk to my agent. I can find that out.
Q It would be worth it for you to do that. Thank you, sir. I don't have any other questions.
EXAMINATION BY MR. KILLEN:
Q Quick follow up. Did you ever sign a contract with the finance agency?
A You know something, I have to go back and look at my documents because like I said, normally when I start the

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policy I would sign "X" amount of papers, and I'd have to go back and try to start looking at all those things to verify that.
MR. FISHER: Okay. Thank you. That's all.
(The deposition was concluded at 12:10 p.m. November, 14th, 2011.)

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STATE OF SOUTH CAROLINA)
: C-E-R-T-I-F-I-C-A-T-E
COUNTY OF DORCHESTER)

I, Laci B. Bearden, Court Reporter and Notary Public, certify that I did have Sedrick Smallsto appear before me at 11:00 a.m. on Monday, November 14th, 2011, at the law offices of George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of November, 2011.

_____

Laci B. Bearden
Notary Public for South Carolina
My Commission Expires: September 29, 2021

TRASK
HOWELL
WORKERS' COMPENSATION DEFENSE

Reply to
Kirsten L. Barr
(843) 881-1027
kbarr@trask-howell.com

September 6, 2022

Via Email Only
Ms. Sonji Spann
S. C. Workers' Compensation Commission
P. O. Box 1715
Columbia, SC 29202-1715

Re: Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328
Carrier File No.: 0196-943450
Date of Accident: August 10, 2011

Dear Ms. Spann:

On September 2, 2022, the Defendants issued the final payment of temporary total disability compensation to the Claimant, as well as a lump sum payment of back temporary total disability compensation plus interest to the Claimant and his attorney.

Therefore, enclosed herewith for filing, please find our Form 19 reflecting payment of 500 weeks of compensation pursuant to S.C. Code Ann. § 42-9-270 and S.C. Code Reg. 67-414(C)(3). I would appreciate a clocked copy of the Form 19 being returned to my office *via* email.

By a copy of this letter, I am providing the Claimant's attorney and other parties of record with a copy of the Form 19.

Yours very truly,

Kirsten L. Barr

KLB/mbm/les
Enc.
cc: Tracy Hayes, Summit Holdings (w/enc.) (email only-claim faxes)
Chris Thompson, Chris Thompson Services, LLC (w/enc.)
Stephen B. Samuels, Esq. (w/enc.) (email/mail)
Timothy Blair Killen, Esq. (w/enc.) (email/mail)
Lisa Glover, Esq. (w/enc.) (email/mail)
Cedric Smalls, JJS Trucking, LLC (w/enc.) (Charleston, SC & Ridgeville, SC)

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328
Carrier File # 0196-943450
Carrier Code #
Employer FEIN

Samuel A. Rose	[redacted]	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company	
Claimant's Name	SSN	Employer's Name	
[redacted]	Charleston, SC 29403	106 New Hope Dr.	Summerville, SC 29483
Address	City State Zip	Address	City State Zip
[redacted]		Bridgefield Casualty Insurance Co.	
Home Phone	Work Phone	Insurance Carrier	

Kirsten L. Barr — Preparer's Name
(843) 881-4228 — Phone #

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	500	8/11/11	9/8/22	$ 216,670.57
2. Number of weeks T.P.				$ 0
3. Number of weeks P.P.				$ 0
4. Disfigurement				$ 0
5. Agreement and Final Release				$ 0
Total Compensation Paid (includes interest payment of $33,541.11)				$ 250,211.68
6. Total Medical Benefits* Paid				$ 29,975.72
7. Funeral Benefits				$ 0

☐ Case Denied

Date of Injury: August 10, 2011 (month day year)

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____ Claimant

By: Kirsten L. Barr Employer's Representative

Date: September 9, 2022

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party $_____

B. Attorney's Fee Paid by Employer $_____

C. Attorney's Fee Paid by Claimant (Non contingent fees, only) $_____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied

WCC FORM # 19 REV. DATE 3/96 **19** **STATUS REPORT AND COMPENSATION RECEIPT**

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Samuel A. Rose, Employee/Claimant, -vs- JJS Trucking, LLC and Chris Thompson Services, LLC, Employers, and Bridgefield Casualty Insurance Co. and the S.C. Uninsured Employers' Fund, Carriers, Defendants.	)	W.C.C. FILE NO. 1112328 **PETITION TO TRANSFER LIABILITY TO S.C. UNINSURED EMPLOYERS' FUND PURSUANT TO S.C. CODE ANN. § 42-1-415**

TO: The South Carolina Workers' Compensation Commission; Stephen B. Samuels Esq., attorney for the Claimant; JJS Trucking, LLC; and Timothy B., Esq., attorney for The South Carolina Uninsured Employers' Fund:

PLEASE TAKE NOTICE that Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 for an order transferring liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. In his December 6, 2011, Form 50, the Claimant named JJS Trucking, LLC, and Chris Thompson Services, LLC, (upstream contractor) as Employers at the time of his August 10, 2011, accident.

2. JJS Trucking was the Claimant's direct employer at the time of the August 10, 2011, accident.

3. JJS Trucking was a subcontractor of Chris Thompson Services at the time of the Claimant's alleged injuries.

4. JJS Trucking provided Chris Thompson Services with a Certificate of Liability Insurance, with effective date of October 8, 2010, and expiration date of October 8, 2011, for its workers' compensation policy at the time it commenced work for Chris Thompson Services, LLC. (*See attached* Exhibit A).

5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking to Chris Thompson Services.

6. Travelers Insurance Company has formally stipulated, through legal counsel, that Travelers actually bound and provided coverage for JJS Trucking, as indicated on the Certificate of Insurance, and that the agency that issued the Certificate of Insurance was its authorized agent with actual authority to issue that Certificate.

7. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to, or the knowledge of, Chris Thompson Services prior to the August 10, 2011, accident.

8. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title…In the event that employer is uninsured…the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner,

or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employer's Fund."

9. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."

10. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.

11. JJS Trucking represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (*See attached* Exhibit A).

12. S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

13. JJS Trucking admittedly never provided Chris Thompson Services, LLC with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed, as required by S.C. Code Ann. § 42-1-415(C).

14. Christ Thompson Services and its carrier, Bridgefield Casualty Insurance, have paid all compensation due in this claim, as evinced by the Form 19 filed with the Commission evincing payment of 500 weeks of compensation. (*See attached* Exhibit B).

15. For the reasons set forth herein above, Chris Thompson Services and Bridgefield Casualty must be relieved of any and all liability under this Title 42, to include reimbursement for past payment of compensation benefits, as well as past and future medical benefits.

WHEREFORE, Defendants Chris Thompson Services and Bridgefield Casualty Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order ordering reimbursement and further relieving Chris Thompson Services, LLC, and Bridgefield Casualty Insurance Company from any liability under the Act for WCC Claim Number 1112328 in accordance with S.C. Code Ann. § 42-1-415 and transferring liability for future medical benefits, if any, to the South Carolina Uninsured Employers' Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L Barr
Kirsten L. Barr
Attorney for Chris Thompson Services, LLC,
and Bridgefield Casualty Insurance Company

September 29, 2022

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September 2022 I have caused a true and correct copy of the Petition to Transfer Liability to the SC Uninsured Employers' Fund to be mailed postage prepaid to the parties addressed as follows:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201

Timothy Blair Killen, Esq.
945 Houston Northcutt Blvd.
Mt. Pleasant, SC 29464

Lisa Glover, Esq.
P.O. Box 1815
Lexington, SC 29071

Cedric Smalls
JJS Trucking, LLC
137-A Gordon Street
Charleston, SC 29403

Cedric Smalls
JJS Trucking, LLC
765 McDaniel Town Road
Ridgeville, SC 29472

Kirsten L. Barr

118/133\petition to transfer liability #3

EXHIBIT A

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PT JJSTRUC

DATE (MM/DD/YYYY) 10/18/10

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Tower Ins. Co. of New York	
INSURER B: Travelers Indem. & Affiliates	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
A		AUTOMOBILE LIABILITY	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
		☐ ANY AUTO					
		☐ ALL OWNED AUTOS				BODILY INJURY (Per person)	$
		☒ SCHEDULED AUTOS					
		☐ HIRED AUTOS				BODILY INJURY (Per accident)	$
		☐ NON-OWNED AUTOS					
		☒ UM/UIM 75,000				PROPERTY DAMAGE (Per accident)	$
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS ☒ OTH-ER	
B		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	BINDER	10/08/10	10/08/11	E.L. EACH ACCIDENT	$500,000
						E.L. DISEASE - EA EMPLOYEE	$500,000
						E.L. DISEASE - POLICY LIMIT	$500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 688-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2008/01)

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EXHIBIT A

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328
Carrier File # 0196-943450
Carrier Code #
Employer FEIN

Samuel A. Rose — [redacted] SSN
Claimant's Name
[redacted] — Charleston, SC 29403
Address — City State Zip
[redacted]
Home Phone — Work Phone

JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Employer's Name
106 New Hope Dr. — Summerville, SC 29483
Address — City State Zip
Bridgefield Casualty Insurance Co.
Insurance Carrier

Kirsten L. Barr — (843) 881-4228
Preparer's Name — Phone #

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	500	8/11/11	9/8/22	$ 216,670.57
2. Number of weeks T.P.				$ 0
3. Number of weeks P.P.				$ 0
4. Disfigurement				$ 0
5. Agreement and Final Release				$ 0
Total Compensation Paid (includes interest payment of $33,541.11)				$ 250,211.68
6. Total Medical Benefits* Paid				$ 29,975.72
7. Funeral Benefits				$ 0

☐ Case Denied

Date of Injury: August 10, 2011
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____ Claimant

By: Kirsten L. Barr Employer's Representative

Date: September 9, 2022

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party $ _____

B. Attorney's Fee Paid by Employer $ _____

C. Attorney's Fee Paid by Claimant (Non contingent fees, only) $ _____

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied

WCC FORM # 19 REV. DATE 3/96 **19** **STATUS REPORT AND COMPENSATION RECEIPT**

EXHIBIT B

Trask & Howell, L.L.C. 64732

DATE	DESCRIPTION	INVOICE #	AMOUNT	CHECK DEDUCTION	NET AMOUNT
09/28/2022	27 S. C. Workers' Compensation Commission 118.0133 Fee for filing Petition to Transfer Liability	S ROSE	50.00		50.00

CHECK DATE	CONTROL NUMBER	TOTALS ▶					
09/28/2022	64732	Gross:	50.00	Ded:	0.00	Net:	50.00

TRASK & HOWELL, L.L.C.
ATTORNEYS AT LAW
763 Johnnie Dodds Blvd.
P.O. Box 2167
Mt. Pleasant, SC 29465-2167

WACHOVIA BANK, NA
DIVISION OF WELLS FARGO BANK, NA
67-776/532

64732

DATE 09/28/2022

AMOUNT *****$50.00

PAY *** FIFTY & 00/100 DOLLARS

TO THE ORDER OF: S. C. Workers' Compensation Commission
P.O. Box 1715
Columbia SC 29202-1715

AUTHORIZED SIGNATURE

Security features included. Details on back.

Trask & Howell, L.L.C.
64732

Vendor: 27 S. C. Workers' Compensation Commission

Date	Description	Invoice #	Amount	Disc	Net Amt
09/28/2022	118.0133 Fee for filing Petition to Transfer Liability	S ROSE	50.00		50.00

Check Date	Check #	Gross Amt	Disc Amt	Net Amt
09/28/2022	64732	50.00	0.00	50.00

Nelco [L1572P3BGN] 9675326

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5739

PRE-HEARING BRIEF
WCC FILE NO: 1112328

Samuel A. Rose	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Claimant's Name	Employer's Name
[redacted]	106 New Hope Dr.
Address	Address
Charleston, SC 29403	Summerville, SC 29483
City State Zip	City State Zip
[redacted]	Bridgefield Casualty Insurance Co.
Home Phone Work Phone	Carrier

Kirsten L. Barr — (843) 881-4228
Preparer's Name — Phone #

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate:$0 Chris Thompson Services 2. AWW: $:$0 Chris Thompson **Date of Injury: August 10, 2011**

3. Type of injury and body part(s): alleged head, neck and right knee injury due to a motor vehicle accident

4. Facts in controversy: Claimant is an employee of JJS Trucking, which is a subcontractor of Chris Thompson Services. At the time JJS Trucking was engaged to perform work for Chris Thompson Services, Chris Thompson Services obtained a Certificate of Workers Compensation Insurance. Most recently, in October 2010, Chris Thompson Services obtained an Accord Form 25 Certificate of Liability Insurance showing that JJS Trucking was insured for workers' compensation by Travelers Insurance Co. for the period from October 8, 2010 until October 8, 2011. Chris Thompson Services is the named certificate holder and Travelers Insurance Company's authorized agent, David W. Hayes swore that should the policy be "cancelled before the expiration date thereof, the issuing insurer will endeavor to mail 10 days written notice to the certificate holder," Chris Thompson Services. Apparently, coverage for JJS Trucking lapsed prior to the August 10, 2011 accident; however, neither JJS Trucking, nor Travelers Insurance Company, nor its agents notified Chris Thompson Services of the lapse in coverage, as expressly required by S.C. Code Ann. § 42-1-415.

5. Legal issues involved: Whether JJS Trucking represented itself to Chris Thompson Services as having workers' compensation insurance at the time JJS Trucking was engaged to perform work, as required by S.C. Code Ann. § 42-1-415(A). Whether Chris Thompson Services is entitled to transfer liability to for continuing compensation and benefits (if any) to the Uninsured Employers' Fund in accordance with S.C. Code Ann. § 42-1-415(A). Whether the Accord Form 25 Certificate of Liability Insurance dated October 18, 2010 and attached hereto, is "a standard form acceptable to the commission" as contemplated by S.C. Code Ann. § 42-1-415(B). Whether the Accord Form 25 Certificate of Liability Insurance dated October 18, 2010 was collected at the time JJS Trucking was engaged to perform work, as required by S.C. Code Ann. § 42-1-415(B); Whether JJS Trucking knowingly and willingly failed to notify (by certified mail) Chris Thompson Services that its workers' compensation insurance had lapsed, such that JJS Trucking is subject to penalties for fraud in accordance with S.C. Code Ann. § 42-1-415(C). Whether and to what extent the Claimant sustained any injury arising out of and in the course of his

employment with JJS Trucking on August 10, 2011 pursuant to S.C. Code Ann. § 42-1-160. Whether and to what extent the Claimant is entitled to temporary total disability compensation benefits as a result of the August 10, 2011 accident pursuant Ann. S.C. Code §§ 42-9-10, 42-9-20, or 42-9-260. Whether the Claimant is entitled to any additional medical care or treatment pursuant to S.C. Code § 42-15-60 given that there is no expert medical evidence stated to a reasonable degree of medical certainty that additional medical treatment would tend to lessen the alleged period of disability associated with the August 10, 2011 accident and the law specially requires such evidence.

6. Unusual aspects:

7. Witnesses (designate if expert*): Chris Thompson and/or other representative of Chris Thompson Services, LLC

8. Exhibits: Please see attached Notice of Submissions; Depositions of Claimant and Sedrick Smalls.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) Please see attached Notice of Submissions.

10. Name, address, and specialty, if any, of the treating physician: Unknown

11. Impairment rating(s); body part(s); physician and date of opinion: none

12. I am amending my Form 50/51 in the following manner: N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

Signature: Kristen L. Barr Email: kbarr@trask-howell.com

Date of hearing: May 15, 2012 Time needed for hearing: 1 hour

On behalf of ☐ Claimant ☒ Employer

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	
	)	BEFORE THE
COUNTY OF CHARLESTON	)	SOUTH CAROLINA
	)	WORKERS' COMPENSATION COMMISSION
	)	
Samuel A. Rose,	)	W.C.C. FILE NO. 1112328
	)	
Claimant,	)	
	)	
-vs-	)	
	)	
JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,	)	NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS TO BE INTRODUCED AS DIRECT EVIDENCE
	)	
Employer,	)	
	)	
-and-	)	
	)	
Bridgefield Casualty Insurance Co.,	)	
	)	
Carrier	)	
	)	
Defendants	)	
	)	

TO: South Carolina Workers' Compensation Commission, Joseph B. Fisher, Esq., attorney of record for Samuel A. Rose, Timothy Killen, Esq., attorney of record for S.C. Unemployed Insurance Fund, and JJS Trucking, LLC,

YOU ARE HEREBY NOTIFIED THAT Kirsten L. Barr, pursuant to the provisions of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.* and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330, herewith submits the following evidence on behalf of the Defendants, to wit:

EXHIBITS #	DESCRIPTION	DATES	PAGES
1	SLED Report	4/30/12-4/26/12	1-9

2	Petition to Transfer Liability	4/30/12-1/24/12	10-14
3	SCWCC Form 18	4/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/8/11-10/8/10	39

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Chris Thompson
And/or other representative of Chris Thompson Services, LLC

Kristen L. Barr

Kirsten L. Barr
Attorney for the Defendants

Date: May 4, 2012
118/133\notice3

South Carolina Workers' Compensation Commission
1333 Marion Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739

PRE-HEARING BRIEF
WCC FILE NO: 1112328

Samuel A. Rose	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Claimant's Name	Employer's Name
~~7 Ashton St.~~	106 New Hope Dr.
Address	Address
Charleston, SC 29403	Summerville, SC 29483
City State Zip	City State Zip
~~(843) 971-0000~~	Bridgefield Casualty Insurance Co.
Home Phone Work Phone	Carrier

Kirsten L. Barr — (843) 881-4228
Preparer's Name — Phone #

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $433.34 2. AWW: $650.00 Date of Injury: August 10, 2011

3. Type of injury and body part(s):

neck, back, right knee per prior Order of the Commission

4. Facts in controversy:

At the time of the accident on August 10, 2011, the Claimant was the direct employee of JJS Trucking, LLC, which is owned by Cedric Smalls. JJS Trucking was a subcontractor of Chris Thompson Services, LLC, and was required to provide a Certificate of Insurance for Workers' Compensation at the time it was engaged to perform work. Thereafter, JJS Trucking was required to provide updated Certificates of Insurance for workers' compensation annually from its insurance agency, Swamp Fox, to Chris Thompson Services.

On October 18, 2010, JJS Trucking's insurance agency, Swamp Fox, issued an ACORD Form 25, Certificate of Liability Insurance to Chris Thompson Services (as "certificate holder"), documenting that JJS Trucking had workers' compensation insurance coverage through Travelers Insurance for the period

covering October 8, 2010, through October 8, 2011. This Certificate of Insurance is dated and signed by David Hayes of the Swamp Fox Agency as an authorized representative of Travelers. In fact, Travelers stipulated that "*certainly Travelers gave the authority to the Swamp Fox Agency to write insurance on their behalf. And at the time that the policy was created and bound initially, and a deposit was made, it was fully in effect and it was a valid policy ... later on afterwards, due to nonpayment, it was cancelled* ..." (5/15/12 Hrg. T. pp.11-12). Neither JJS Trucking, nor any other person or entity gave Chris Thompson Services any notice of the policy cancellation. Therefore, Chris Thompson Services reasonably relied upon the Certificate of Insurance dated October 18, 2010, and reasonably believed that JJS Trucking had workers' compensation insurance coverage at the time of Samuel Rose's accident because the accident occurred within the certified policy period.

Chris Thompson Services and its own carrier, Bridgefield Casualty, immediately provided the Workers' Compensation Commission and the Uninsured Employers' Fund with the Certificate of Insurance dated October 18, 2010, and notified by the Commission and the UEF of their intent to seek a transfer liability to the UEF in accordance with S.C. Code Ann. § 42-1-415. Since that time, Chris Thompson Services and Bridgefield Casualty have paid all benefits due to the Claimant in accordance with the prior orders of the Commission, including 500 weeks of compensation and all causally-related medical care and treatment recommend by the physician appointed by the Commission, Dr. Poletti.

5. Legal issues involved:

Pursuant to S.C. Code Ann. § 42-1-415(A), "upon the submission of documentation to the commission that a ... subcontractor has represented himself to a higher tier subcontractor ... as having workers' compensation insurance at the time the ... subcontractor was engaged to perform work, the higher tier subcontractor ... **must be relieved** of any and all liability under this title ... The higher tier subcontractor

... may petition the commission to transfer responsibility for **continuing** compensation and benefits to the Uninsured Employer's Fund." (emphasis added). Chris Thompson Services and Bridgefield Casualty respectfully contend that it has properly submitted such documentation, specifically an ACORD Form 25, Certificate of Insurance dated October 18, 2010, and; therefore, must be relieved of responsibility for any continuing medical benefits in this claim.

Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor ... must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission" and Regulation 67-415(A) further provides that "[f]or purposes of Section 42-1-415 ... the following is acceptable as documentation of insurance ...the ACORD Form 25-S, Certificate of Insurance ... provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." Here, the ACORD Form 25 Certificate of Insurance dated October 18, 2010, meets all of the requirements of § 42-1-415 and Reg. 67-415(A)(2) because it indicates a valid South Carolina address for the insured ("137-A Gordon Street, Charleston SC 29403"), the form is dated ("10/18/10"), and it is signed and issued by David W. Hayes of the Swamp Fox Agency, which Travelers admits was their authorized agent.

Despite the provisions of S.C. Code Ann. § 42-1-415I, which requires that JJS Trucking notify, by certified mail, Chris Thompson Services of any lapse in coverage within five days of such a lapse, JJS Trucking admittedly never provided Chris Thompson Services with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed and; therefore, Chris Thompson Services reasonably relied upon the October 18, 2010, Certificate of Insurance to believe that JJS Trucking had workers' compensation insurance at the time of Samuel Rose's accident.

For these reasons, Chris Thompson Services and Bridgefield Casualty respectfully contend that they must be relieved of any and all liability under this Title 42, to include reimbursement for past payment of compensation benefits, as well as past and future medical benefits.

6. Unusual aspects: *N/A*

7. Witnesses (designate if expert*):

F. Reid Warder, Esq., Chris Thompson, David W. Hayes, Greg Hudson, Cedric Smalls

8. Exhibits:

See attached Notice of Submissions; SCWCC File; S.C. Secretary of State Records for JJS Trucking and Swamp Fox Agency, S.C. Department of Insurance Records for David W. Hayes of the Swamp Fox Agency

9. Medical evidence: *See* attached Notice of Submissions

10. Name, address, and specialty, if any, of the treating physician:

(Per Commission Order) Dr. Steven C. Poletti, Southeastern Spine Institute (orthopaedic surgeon)

11. Impairment rating(s); body part(s); physician and date of opinion:

N/A (Claimant has been paid 500 weeks of compensation per Commission order dated 6/24/19)

12. I am amending my Form 50/51 in the following manner:

N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201
stephen@samuelslawfirm.net

Lisa Glover, Esq.
P.O. Box 1815
Lexington, SC 29071
lglover@saf.sc.gov

Matthew J. Story, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
mstory@clawsonandstaubes.com
matt@cslaw.com

Cedric Smalls
JJS Trucking, LLC
137-A Gordon Street
Charleston, SC 29403
(mail)

Timothy Blair Killen, Esq.
945 Houston Northcutt Blvd.
Mt. Pleasant, SC 29464
tkillen@hplplaw.com

Cedric Smalls
JJS Trucking, LLC
765 McDaniel Town Road
Ridgeville, SC 29472
(mail)

on the 30th **day of** January **2023**
by ☒ **first class postage** ☐ **certified mail** ☐ **personal service** ☒ **email only.**

Signature : Kristen L Barr Email: kbarr@trask-howell.com

Date of hearing: February 14, 2023 Time needed for hearing: One hour

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

STATE OF SOUTH CAROLINA	)	
	)	BEFORE THE
COUNTY OF CHARLESTON	)	SOUTH CAROLINA
	)	WORKERS' COMPENSATION COMMISSION
	)	
Samuel A. Rose,	)	W.C.C. FILE NO. 1112328
	)	
Claimant,	)	
	)	
-vs-	)	
	)	
JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/ Bridgefield Casualty Insurance Company,	)	NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS TO BE INTRODUCED AS DIRECT EVIDENCE
Employer,	)	
-and-	)	
Bridgefield Casualty Insurance Co.,	)	
Carrier,	)	
Defendants.	)	

TO: South Carolina Workers' Compensation Commission and Stephen B. Samuels, Esq., attorney of record for Samuel A. Rose, Matthew J. Story, Esq.,Timothy Blair Killen, Esq., and Lisa Glover, Esq., attorneys of record for the SCUEF, and Cedric Smalls, JJS Trucking (both addresses),

YOU ARE HEREBY NOTIFIED THAT Kirsten L. Barr, pursuant to the provisions of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.* and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330, herewith submits the following evidence on behalf of the Defendants, to wit:

APA #	DESCRIPTION	DATES	PAGES
1	Dr. Robert B. Lowery	10/20/22	1-5
2	Dr. Steven C. Poletti	12/19/22	6
3	Secretary of State Record for the Swamp Fox Agency	3/30/94—10/29/15	7
4	Certificate of Liability Insurance	10/18/10	8
5	Medical Paid by Carrier	10/4/11—1/10/23	9-11
6	Sedrick Smalls Deposition Transcript	11/14/11	12-64
7	SCWCC Coverage & Compliance	3/30/12	65-83
8	SCWCC Transcript of Proceedings	5/15/12	84-101
9	SCWCC Form 19	9/9/22	102
10	DOI Records for David W. Hayes Swamp Fox Agency	1/30/23	103-105
11	Charleston County Property Record for 137A Gordon Street	1/30/23	106-107

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

F. Reid Warder, Esq.
Chris Thompson
David W. Hayes
Greg Hudson
Cedric Smalls

Kirsten L. Barr

Kirsten L. Barr, Attorney for the Defendants,
Chris Thompson Services, Bridgefield Casualty
Insurance Co., and Summit Holdings

Date: January 30, 2023
118\133\notice

PROOF OF SERVICE

I hereby certify that on this 30th day of January 2023, I served the foregoing Claimant, Samuel A. Rose, with copies of the attached Pre-Hearing Brief, Notice of Witnesses and Written Medical Reports and attached records which are being submitted to be made a part of the record in the case under the Administrative Procedures Act, by having emailed to the parties of record and mailed to JJS Trucking (both addresses) as follows:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201
stephen@samuelslawfirm.net

Matthew J. Story, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
mstory@clawsonandstaubes.com
matt@cslaw.com

Timothy Blair Killen, Esq.
945 Houston Northcutt Blvd.
Mt. Pleasant, SC 29464
tkillen@hplplaw.com

Lisa Glover, Esq.
P.O. Box 1815
Lexington, SC 29071
lglover@saf.sc.gov

Cedric Smalls
JJS Trucking, LLC
137-A Gordon Street
Charleston, SC 29403
(mail)

Cedric Smalls
JJS Trucking, LLC
765 McDaniel Town Road
Ridgeville, SC 29472
(mail)

Kirsten L. Barr
TRASK & HOWELL, L.L.C.
Attorneys for Defendants
Mt. Pleasant, South Carolina

118\133\POS-PHB

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5739 www.wcc.sc.gov

PRE-HEARING BRIEF
WCC File No: 1112328

Claimant's Name: Samuel Rose
Address: [redacted]
City: Charleston State: SC Zip: 29403
Home Phone: Work Phone:
Preparer's Name: Matthew J. Story, Esquire

Employer's Name: Uninsured Employer's Fund
Address: c/o State Accident Fund
PO Box 210039
City: Columbia State: SC Zip: 29221
Carrier: Uninsured Employers Fund
Preparer's Phone #: (843) 577-2026

A claim for workers' compensation benefits is made based on the following grounds:
☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $433.34 2. AWW: $650.00 **Date of Injury:** 08/10/2011
3. Type of injury and body part(s): Neck, Back, Right Knee (per prior Order)
4. Facts in controversy: See Addendum
5. Legal issues involved: See Addendum
6. Unusual aspects: Statutory Employer/Carrier has failed to pay "all benefits due" pursuant to S.C. Code §42-1-415
7. Witnesses (designate if expert):* See Addendum
8. Exhibits: See Addendum
9. Medical evidence (indicate report pursuant to R.67-612; deposition or appearance):
S.C. Uninsured Employers' Fund relies on Submissions of Statutory Employer
10. Name, address, and specialty, if any, of the treating physician: Dr. Steven Poletti (Per Commission Order); Employer/Carrier per Commission Order
11. Impairment rating(s); body part(s); physician and date of opinion: N/A – 500 weeks previously paid by Statutory Employer
12. I am amending my Form 50/51 in the following manner:

☐ **Mediation**
- ☐a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐b. Mediation is required pursuant to Reg. 67-1802.
- ☐c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to **mediation@wcc.sc.gov**.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Stephen B. Samuels, Esq., Samuels Reynolds Law Firm, 1320 Richland St, Columbia SC 29201-2522 on the ____day of ___20____by; ☐ first class postage ☐ certified mail ☐ personal service.

Signature:
Email: Mstory@cslaw.com
Date of hearing: 2/14/2023 at 10:40 am
Time needed for hearing: 1 hour

I verify the contents of this form are accurate and true to the best of my knowledge.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67- 1801. File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports. * Commissioners reserve the right to admit expert witnesses at hearings.

WCC Form # 58
Revised 7/15

58

PRE-HEARING BRIEF

ADDENDUM TO FORM 58

SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

4. Whether Statutory Employer/Carrier's petition to transfer liability to the Fund should be denied, where:

(a) Under Tillotson v. Keith Smith Builders,

"... the statute [§ 42-1-415] itself makes clear its purpose is to ensure that statutory employees are protected, although their immediate employer may have misrepresented to a contractor that it had workers' compensation insurance.

"... Importantly, in keeping with the statutory employee doctrine, §42-1-415(a) requires the upstream contractor initially pay all benefits due to the subcontractor's injured employee. The contractor may then petition to transfer responsibility of future payments to the Uninsured Employers' Fund. In addition, the contractor may be reimbursed by the Fund.

"The section may be viewed as enforcing the statutory employee doctrine, even when a subcontractor commits fraud by stating it has workers' compensation coverage. The purpose of the section is further clarified when read in context of surrounding statutes. Each section, from §42-1-410 to 450, deals with certain aspects of the statutory employee doctrine. Section 42-1-415 is principally concerned with protecting a subcontractor's injured employees." 357 S.C. 554 (2004), 593 S.E.2d 621, 624 (Ct. App. 2004) (emphasis added).

The Statutory Employer/Carrier herein, rather than "pay[ing] all benefits due to the Claimant "in the first instance is still providing court ordered medical benefits due to the Claimant.

(b) The Claimant filed his claim on or about September 8, 2011. The Statutory Employer/Carrier filed its Form 51 on or about October 7, 2011. In that Form 51, the Statutory Employer/Carrier "assert[ed] S.C. Code Ann. §42-1-415 as a defense." However, Statutory Employer/Carrier failed to submit the Certificate of Insurance upon which it intended to use a ground for this defense at that time, as required by §42-1-415(b) ("The documentation must be ... turned over to the commission at the time a claim is filed by the injured employee.").

The Statutory Employer/Carrier failed to submit the documentation to the Commission until the following year, on or about January 24, 2012, when it filed its Petition to Transfer Liability despite having paid no benefits at that time.

(c) Assuming *arguendo* that the matter is ripe to be heard by this Commission or the Commission disagrees with the Fund's position above, whether the Statutory Employer/Carrier can transfer liability to the Fund where:

(i) The Certificate of Insurance fails to show that the alleged insured had insurance at the time the certificate was collected, in that it purports to show only a binder of insurance.

(ii) The Certificate of Insurance is dated some ten (10) months prior to the Claimant's date of injury, where no binder could remain effective for that period of time and Statutory Employer took no steps to ensure that a policy was subsequently issued to the Direct Employer.

(iii) The Certificate of Insurance was collected some ten (10) months prior to the Claimant's date of injury, but the "contract" between the Statutory Employer and Direct Employer involved an at will relationship between the parties where amount of work and rate of payment to the Direct Employer fluctuated without Direct Employer's consent, giving rise to a new agreement each time the Direct Employer and/or his employee(s) picked up a shipment for Statutory Employer.

(iv) The Statutory Employer/Carrier has made no showing that David W. Hayes is an authorized representative of Travelers Indemnity.

(v) The Certificate of Insurance is blank in the "Description of Operations" box, contrary to the requirements as set forth by the Court of Appeals.

(vi) Statutory Employer/Carrier's APA 72 shows an updated Certificate of Insurance providing a policy number for the policy issued, demonstrating that the Initial Certificate of Insurance as incomplete on its face.

5. See Number Four (4), above; Statutory Employment Doctrine (Voss v. Ramco, Inc., 325 S.C. 560, 566, 482 S.E.2d 582, 585 (Ct.App.1997; S.C. Code Ann. §42-1-415 (Hopper v. Terry Hunt Const., 383 S.C. 310, 680 S.E. 2d 1 (2009), Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (S.C. 2009), Hardee v. McDowell, 372 S.C. 413, 642 S.E.2d 632 (CtApp.2007)); S.C. Code Reg. 67-415.

6. Claimant; Chris Thompson (by deposition and previous hearing transcript); Sedrick Smalls (by deposition and previous hearing transcript); and any and all witnesses named or called by any party. Statutory Employer/Carrier has submitted the depositions of Mr. Thompson and Mr. Smalls, and Fund will rely on those submissions. However, this is to advise that fund reserves the right to submit these materials should Statutory Employer/Carrier withdraw its submissions prior to the hearing date.

South Carolina Workers' Compensation Commission
1333 Marion Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739

PRE-HEARING BRIEF
WCC FILE NO: 1112328

Samuel A. Rose	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Claimant's Name	Employer's Name
~~17 Ashton Ct.~~	106 New Hope Dr.
Address	Address
Charleston, SC 29403	Summerville, SC 29483
City State Zip	City State Zip
(~~8[illegible]~~	Bridgefield Casualty Insurance Co.
Home Phone Work Phone	Carrier

Kirsten L. Barr (843) 881-4228
Preparer's Name Phone #

A claim for workers' compensation benefits is made based on the following grounds:

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: $433.34 2. AWW: $650.00 Date of Injury: August 10, 2011

3. Type of injury and body part(s):

neck, back, right knee per prior Order of the Commission

4. Facts in controversy:

At the time of the accident on August 10, 2011, the Claimant was the direct employee of JJS Trucking, LLC, which is owned by Cedric Smalls. JJS Trucking was a subcontractor of Chris Thompson Services, LLC, and was required to provide a Certificate of Insurance for Workers' Compensation at the time it was engaged to perform work. Thereafter, JJS Trucking was required to provide updated Certificates of Insurance for workers' compensation annually from its insurance agency, Swamp Fox, to Chris Thompson Services.

On October 18, 2010, JJS Trucking's insurance agency, Swamp Fox, issued an ACORD Form 25, Certificate of Liability Insurance to Chris Thompson Services (as "certificate holder"), documenting that JJS Trucking had workers' compensation insurance coverage through Travelers Insurance for the period

covering October 8, 2010, through October 8, 2011. This Certificate of Insurance is dated and signed by David Hayes of the Swamp Fox Agency as an authorized representative of Travelers. In fact, Travelers stipulated that "*certainly Travelers gave the authority to the Swamp Fox Agency to write insurance on their behalf. And at the time that the policy was created and bound initially, and a deposit was made, it was fully in effect and it was a valid policy ... later on afterwards, due to nonpayment, it was cancelled* ..." (5/15/12 Hrg. T. pp.11-12). Neither JJS Trucking, nor any other person or entity gave Chris Thompson Services any notice of the policy cancellation. Therefore, Chris Thompson Services reasonably relied upon the Certificate of Insurance dated October 18, 2010, and reasonably believed that JJS Trucking had workers' compensation insurance coverage at the time of Samuel Rose's accident because the accident occurred within the certified policy period.

Chris Thompson Services and its own carrier, Bridgefield Casualty, immediately provided the Workers' Compensation Commission and the Uninsured Employers' Fund with the Certificate of Insurance dated October 18, 2010, and notified by the Commission and the UEF of their intent to seek a transfer liability to the UEF in accordance with S.C. Code Ann. § 42-1-415. Since that time, Chris Thompson Services and Bridgefield Casualty have paid all benefits due to the Claimant in accordance with the prior orders of the Commission, including 500 weeks of compensation and all causally-related medical care and treatment recommend by the physician appointed by the Commission, Dr. Poletti.

*** ***AMENDMENT*** *** The UEF alleges in their Pre-Hearing Brief filed February 6, 2023, that the case of Tillotson v. Keith Smith Builders does not permit a *transfer* of liability until all benefits due are paid. However, Tillotson specifically recognizes the statutory right to "petition to *transfer* responsibility of **future payments** to the Uninsured Employer's Fund." (emphasis added). Not only have Bridgefield and

Chris Thompson Services paid all benefits currently due, but the Tillotson case makes clear that the responsibility for "future payments" can be transferred to the UEF at this time.

In addition, the UEF's Pre-Hearing Brief alleges that Bridgefield and Chris Thompson Services "failed to submit" the October 18, 2010, Certificate of Insurance until "about January 2012." However, the October 18, 2010, Certificate of Insurance was not only referenced in the November 4, 2011, Pre-Hearing Brief, but served upon the UEF on that date. That same October 18, 2010, Certificate of Insurance was already in the Commission's file no later than October 18, 2011, as evinced by the October 28, 2011, letter of Gary Smith regarding his coverage and compliance investigation and attached thereto.

The UEF's Pre-Hearing Brief further alleges that Chris Thompson Services "took no steps to ensure that a policy was subsequently issued" to JJS Trucking after coverage was bound and certified on October 18, 2010. Not only does Travelers admit that it actually issued a policy of insurance to JJS Trucking as stated in the October 18, 2010, Certificate of Insurance, but Chris Thompson testified that after receiving said Certificate from the Swamp Fox Agency, he telephoned the Swamp Fox Agency to verify coverage for JJS Trucking and "spoke with Greg Hudson … he said everything is good to go, you're covered … Cedric [of JJS Trucking] was good to go." (5/15/12 Hrg. T. pp.51-52).

With respect to the allegation by the UEF in their Pre-Hearing Brief suggesting that Mr. David W. Hayes, the owner and registered agent of the Swamp Fox Agency, was not an authorized representative of Travelers, the stipulation by Traveler's attorney, F. Reid Warder, Jr., makes clear that the Swamp Fox Agency was indeed "authorized" to write insurance on behalf of Travelers, which necessarily includes Mr. Hayes, as further evinced by APA p.7 and APA p.103.

5. Legal issues involved:

Pursuant to S.C. Code Ann. § 42-1-415(A), "upon the submission of documentation to the commission that a … subcontractor has represented himself to a higher tier subcontractor … as having workers' compensation insurance at the time the … subcontractor was engaged to perform work, the higher tier subcontractor … **must be relieved** of any and all liability under this title … The higher tier subcontractor … may petition the commission to transfer responsibility for **continuing** compensation and benefits to the Uninsured Employer's Fund." (emphasis added). Chris Thompson Services and Bridgefield Casualty respectfully contend that it has properly submitted such documentation, specifically an ACORD Form 25, Certificate of Insurance dated October 18, 2010, and; therefore, must be relieved of responsibility for any continuing medical benefits in this claim.

Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor … must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission" and Regulation 67-415(A) further provides that "[f]or purposes of Section 42-1-415 … the following is acceptable as documentation of insurance …the ACORD Form 25-S, Certificate of Insurance … provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." Here, the ACORD Form 25 Certificate of Insurance dated October 18, 2010, meets all of the requirements of § 42-1-415 and Reg. 67-415(A)(2) because it indicates a valid South Carolina address for the insured ("137-A Gordon Street, Charleston SC 29403"), the form is dated ("10/18/10"), and it is signed and issued by David W. Hayes of the Swamp Fox Agency, which Travelers admits was their authorized agent.

Despite the provisions of S.C. Code Ann. § 42-1-415, which requires that JJS Trucking notify, by certified mail, Chris Thompson Services of any lapse in coverage within five days of such a lapse, JJS Trucking admittedly never provided Chris Thompson Services with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed and; therefore, Chris Thompson Services reasonably relied upon the October 18, 2010, Certificate of Insurance to believe that JJS Trucking had workers' compensation insurance at the time of Samuel Rose's accident.

For these reasons, Chris Thompson Services and Bridgefield Casualty respectfully contend that they must be relieved of any and all liability under this Title 42, to include reimbursement for past payment of compensation benefits, as well as past and future medical benefits.

6. Unusual aspects: *N/A*

7. Witnesses (designate if expert*):

F. Reid Warder, Esq., Chris Thompson, David W. Hayes, Greg Hudson, Cedric Smalls

8. Exhibits:

See attached Notice of Submissions; SCWCC File; S.C. Secretary of State Records for JJS Trucking and Swamp Fox Agency, S.C. Department of Insurance Records for David W. Hayes of the Swamp Fox Agency

*** ***AMENDMENT*** *** Defendants' November 4, 2011, Form 58, Notice of APAs, Certificate of Insurance, and Proof of Service; October 28, 2011, Letter of Gary Smith, with attachments

9. Medical evidence: *See* attached Notice of Submissions

10. Name, address, and specialty, if any, of the treating physician:

(Per Commission Order) Dr. Steven C. Poletti, Southeastern Spine Institute (orthopaedic surgeon)

11. Impairment rating(s); body part(s); physician and date of opinion:

N/A (Claimant has been paid 500 weeks of compensation per Commission order dated 6/24/19)

12. I am amending my Form 50/51 in the following manner:

N/A

I verify the contents of this form are accurate and true to the best of my knowledge.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to:

Stephen B. Samuels, Esq.
1320 Richland Street
Columbia, SC 29201
stephen@samuelslawfirm.net

Lisa Glover, Esq.
P.O. Box 1815
Lexington, SC 29071
lglover@saf.sc.gov

Matthew J. Story, Esq.
126 Seven Farms Drive, Suite 200
Charleston, SC 29492
mstory@clawsonandstaubes.com
matt@cslaw.com

Cedric Smalls
JJS Trucking, LLC
137-A Gordon Street
Charleston, SC 29403
(mail)

Timothy Blair Killen, Esq.
945 Houston Northcutt Blvd.
Mt. Pleasant, SC 29464
tkillen@hplplaw.com

Cedric Smalls
JJS Trucking, LLC
765 McDaniel Town Road
Ridgeville, SC 29472
(mail)

on the 7th day of Feb. 2023
by ☒ first class postage ☐ certified mail ☐ personal service ☒ email only.

Signature : Kristen L Barr Email: kbarr@trask-howell.com

Date of hearing: February 14, 2023 Time needed for hearing: One hour

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.
* Commissioners reserve the right to admit expert witnesses at hearings.

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328
Carrier File # 0196-943450
Carrier Code #
Employer FEIN

Samuel A. Rose	[redacted]	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company	
Claimant's Name	SSN	Employer's Name	
[redacted]	Charleston, SC 29403	106 New Hope Dr.	Summerville, SC 29483
Address	City State Zip	Address	City State Zip
[redacted]		Bridgefield Casualty Insurance Co.	
Home Phone	Work Phone	Insurance Carrier	

Kirsten L. Barr — Preparer's Name
(843) 881-4228 — Phone #

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: August 10, 2011

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

(Check one) Oral argument ☒ is ☐ not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ms. Amy Bracy, S.C. Workers' Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715; Stephen B. Samuels, Esq., 1320 Richland Street, Columbia, SC 29201; Matthew J. Story, Esq., 126 Seven Farms Drive, Suite 200, Charleston, SC 29492; Timothy Blair Killen, Esq., 945 Houston Northcutt Blvd., Mt. Pleasant, SC 29464; and Lisa Glover, Esq., P.O. Box 1815, Lexington, SC 29071

Name / Address

on the 26th day of May, 2023 by ☐ first class mail; ☐ personal service; ☐ certified mail.

Kristen L Barr
Preparer's Signature

Attorney for Defendant
Title

May 26, 2023
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

WCC FORM # 30 REV. DATE 3/97 **30** **REQUEST FOR COMMISSION REVIEW**

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No: 1112328
Carrier File No: 0196-943450
Date of Accident: August 10, 2011

Attachment to Form 30

1. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 6, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.

2. The Hearing Commissioner erred as a matter of law in "Finding of Fact" number 7, as this statement references no fact, appears to be a conclusion of law, and is otherwise impermissibly vague and without evidentiary support.

3. The Hearing Commissioner erred in finding and concluding that "Thompson did not supply the certificate of insurance to the Workers' Compensation Commission ... as required by S.C. Code Ann. § 42-1-415(b)" [sic], as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is supported by neither the greater weight of the evidence or the applicable law.

4. The Hearing Commissioner erred in failing to find and conclude that the Petitioners timely provided a Certificate of Insurance to the Commission in accordance with S.C. Code Ann. § 42-1-415(B) and that said Certificate was part of the Commission's file prior to any hearing in this claim.

5. The Hearing Commissioner erred in finding and concluding that the Certificate of Insurance is "incomplete," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

6. The Hearing Commissioner erred in failing to find and conclude that the Certificate of Insurance is complete and meets all of the requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415.

7. The Hearing Commissioner erred in finding and concluding that "as no written contract existed, each transaction would be a new job requiring a certificate of insurance," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

8. The Hearing Commissioner erred in failing to find and conclude that the Petitioners obtained a proper Certificate of Insurance at the time JJS was engaged to perform work as required by S.C. Code Ann. § 42-1-415 based upon the overwhelming and undisputed evidence in the record.

9. The Hearing Commissioner erred in finding and concluding that "all benefits due and owing to Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature," as this finding of fact is not supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

10. The Hearing Commissioner erred in failing to find and conclude that the Petitioners have already pay all benefits due and payable to the Claimant, including the statutory maximum of 500-weeks of compensation and the Petitioners are entitled "to transfer responsibility for continuing compensation and benefits to the Uninsured Employers Fund" in accordance with the plain language of S.C. Code Ann. § 42-1-415(A).

11. The Hearing Commissioner erred in finding and concluding that the "updated" Certificate of Insurance is "incomplete," as this finding of fact is neither relevant, nor supported by the greater weight of the evidence, is impermissibly vague, and appears to be an arbitrary and capricious conclusion of law that is neither supported by the greater weight of the evidence or the applicable law.

12. The Hearing Commissioner erred in concluding that the Petitioners "failed to show entitlement to transfer liability," as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.

13. The Hearing Commissioner erred in concluding that case law requires "strict construction of C. Code Ann. § 42-1-415" [sic], as this conclusion is as this conclusion is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.

14. The Hearing Commissioner erred in concluding that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case as this conclusion is arbitrary, capricious, impermissibly vague, and otherwise fails to apply any legal principle to the facts of this case, including the undisputed fact that the Petitioners collected documentation of insurance from JJS trucking at the time JJS Trucking was engaged to perform work; the undisputed fact that said documentation of insurance met all requirements of S.C. Code. Ann. § 42-1-415 and the current version of S.C. Code Reg. 67-415; the undisputed fact that JJS Trucking was a South Carolina Employer, with a South Carolina address, and documented South Carolina insurance; the undisputed fact

that the documentation of insurance was signed by an authorized representative; and the undisputed fact that further investigation of the documentation of insurance was undertaken by Chris Thompson Services and revealed that JJS Trucking had a valid policy of insurance as documented and as stipulated by Travelers.

15. The Hearing Commissioner erred in concluding that Hardee v. McDowell, Hopper v. Terry Hunt Const., or Barton v. Higgs, "apply" in this case regarding what is acceptable to the Commission as documentation of insurance, the error being that these cases pre-date the applicable regulation, S.C. Code Reg. 67-415, the requirements of which have been met by the Petitioners by overwhelming and undisputed evidence.

16. The Hearing Commissioner erred as a matter of law in concluding that Voss v. Ramco, Inc, 325 S.C. 560, 482 S.E.2d 582 (Ct. App 1997) applies to this case or requires strict construction of S.C. Code Ann. § 42-1-415, at this case does not even mention S.C. Code Ann. § 42-1-415 and is otherwise wholly inapplicable because the fact that the Claimant was an "Employee" of JJS Trucking pursuant to S.C. Code Ann. § 42-1-130 and the fact that the South Carolina Workers' Compensation Commission has jurisdiction over this claim have been the established law of the case since Commissioner McCaskill issued his Order dated August 23, 2012.

17. The Hearing Commissioner erred as a matter of law in ordering that Petitioners "has not entitlement to transfer liability" [sic], as this order is arbitrary, capricious, impermissibly vague, and fails to apply any legal principle to the facts of this case.

18. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Travelers stipulates that it provided workers' compensation coverage to JJS Trucking as documented on the Certificate of Insurance and stipulated by counsel for Travelers, and; therefore, Petitioners reasonably relied upon the Certificate of Insurance.

19. The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Certificate of Insurance is dated and signed by David Hayes of the Swamp Fox Agency as an authorized representative of Travelers as required by S.C. Code Reg. 67-415 and as stipulated by Travelers.

20. The Hearing Commissioner erred as a matter of law by arbitrarily and capriciously adding to the stated requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 in contravention of the Petitioners' constitutional and statutory rights of due process and equal protection under the law.

21. The Hearing Commissioner erred as a matter of law in failing to find and conclude that neither JJS Trucking, nor any other person or entity gave Chris Thompson Services any notice of the policy cancellation and that; therefore, Chris Thompson Services reasonably relied upon the Certificate of Insurance dated October 18, 2010, and reasonably believed

that JJS Trucking had workers' compensation insurance coverage at the time of Samuel Rose's accident because the accident occurred within the certified policy period.

22. The Hearing Commissioner erred as a matter of in failing to make specific, detailed findings of fact on any material issues and in failing to apply the applicable law, including S.C. Code Reg. 67-415, to such facts, as required by the South Carolina Workers' Compensation Act and the Administrative Procedures Act.

23. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Chris Thompson Services and its own carrier, Bridgefield Casualty, promptly and timely provided the Workers' Compensation Commission and the Uninsured Employers' Fund with the Certificate of Insurance dated October 18, 2010, and notified by the Commission and the UEF of their intent to seek a transfer liability to the UEF in accordance with S.C. Code Ann. § 42-1-415.

24. The Hearing Commissioner erred as a matter of law in failing to find and conclude that Chris Thompson Services and Bridgefield Casualty have paid all benefits due to the Claimant in accordance with the prior orders of the Commission, including 500 weeks of compensation and all causally-related medical care and treatment recommend by the physician appointed by the Commission, Dr. Poletti.

25. The Hearing Commissioner erred as a matter of law in failing to find and conclude that the Petitioners took additional steps to ensure that a policy was issued to JJS Trucking (and covered the work JJS Trucking was engaged to perform) after coverage was bound and certified on October 18, 2010, based on the admission by Travelers that it actually issued a policy of insurance to JJS Trucking as stated in the October 18, 2010, Certificate of Insurance, and based on testimony of Chris Thompson that after receiving said Certificate from the Swamp Fox Agency, he telephoned the Swamp Fox Agency to verify coverage for JJS Trucking and "spoke with Greg Hudson … he said everything is good to go, you're covered … Cedric [of JJS Trucking] was good to go."

26. The Hearing Commissioner erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(A), "upon the submission of documentation to the commission that a … subcontractor has represented himself to a higher tier subcontractor … as having workers' compensation insurance at the time the … subcontractor was engaged to perform work, the higher tier subcontractor … must be relieved of any and all liability under this title … The higher tier subcontractor … may petition the commission to transfer responsibility for **continuing** compensation and benefits to the Uninsured Employer's Fund," and in failing to conclude that the Petitioners properly submitted such documentation, specifically an ACORD Form 25, Certificate of Insurance dated October 18, 2010, and; therefore, must be relieved of responsibility for any continuing medical benefits in this claim.

27. The Hearing Commissioner erred as a matter of law in failing to conclude that, pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor … must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission" and Regulation 67-415(A) further provides that "[f]or purposes of Section 42-1-415 … the following is acceptable as documentation of insurance …the ACORD Form 25-S, Certificate of Insurance … provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." The Hearing Commissioner further erred in failing to conclude that the ACORD Form 25 Certificate of Insurance dated October 18, 2010, meets all of the requirements of § 42-1-415 and Reg. 67-415(A)(2) because it indicates a valid South Carolina address for the insured ("137-A Gordon Street, Charleston SC 29403"), the form is dated ("10/18/10"), and it is signed and issued by David W. Hayes of the Swamp Fox Agency, which Travelers admits was their authorized agent.

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S APPELLATE PANEL

Samuel A. Rose, Employee/Claimant, -vs- JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer, and Bridgefield Casualty Insurance Co., Carrier, Appellants. ***IN RE: PETITION TO TRANSFER LIABLITY TO THE UNINSURED EMPLOYERS FUND,*** S.C. Uninsured Employers Fund, Respondent.	W.C.C. FILE NO. 1112328 **BRIEF OF THE APPELLANTS CHRIS THOMPSON SERVICES & BRIDGEFIELD CASUALTY INSURANCE COMPANY**

Statement of the Case

On September 14, 2011, the Claimant, Samuel Rose, filed a Form 50 alleging that he was injured in an accident on August 20, 2011. The Form 50 named the Claimant's direct employer, JJS Trucking, LLC, and its upstream contractor, Chris Thompson Services, LLC, as Defendants in the claim. On October 7, 2011, the Appellant (Chris Thompson Services and Bridgefield Casualty) filed a Form 51 specifically raising S.C. Code Ann. §42-1-1415 as a defense. Thereafter, the Workers' Compensation Commission was promptly provided with a copy of the Certificate of Insurance dated October 18, 2010. The UEF stipulated that "Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011." Mr. Garry Smith of the

Commission's Coverage and Compliance Division specifically referenced this Certificate of Insurance in a letter to the Claimant's attorney dated October 28, 2011. A formal Petition to Transfer Liability to the South Carolina Uninsured Employers Fund (UEF) was filed on January 24, 2012. (R. pp.94—97). No hearing was held on the claim until May 15, 2012.

Following the initial hearing on May 15, 2012, Commissioner Gene McCaskill issued a Decision and Order dated August 23, 2012, where he concluded, *inter alia*, that the "Claimant is entitled to temporary total disability benefits beginning on August 10, 2011," and that "the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time." The Appellants filed a Form 30, and on May 15, 2013, the Appellate Panel issued an Order summarily affirming Commissioner McCaskill's conclusion that the Petition for Transfer of Liability was "not ripe for adjudication" without any analysis or discussion.

The Appellants appealed the May 15, 2013, Order to the Court of Appeals, arguing that the Commission erred as a matter of law in concluding that the Petition to transfer continuing liability to the UEF pursuant to S.C. Code Ann. § 42-1-415 was "not ripe," based upon the undisputed evidence in the record and the applicable law. By Order dated January 28, 2015, the Court of Appeals dismissed the appeal as interlocutory.

Over the course of the next seven years, the merits of the claim were actively litigated before the Commission and the appellate courts. These appeals were concluded with an unpublished decision by the Court of Appeals on August 10, 2022, after which the prior lump sum award of temporary disability compensation became due and the Appellants tendered payment to the Claimant in the amount of$91,858.65, plus interest that accrued while that award was pending appeal ($33,541.11), and the Appellants

notified the Commission of the final payment of compensation. (*See* Form 19, APA p.102).

On September 29, 2022, the Appellants refiled their Petition to Transfer Liability to the Uninsured Employers Fund. Thereafter on May 15, 2023, Commissioner Avery B. Wilkerson ordered that "Thompson has not entitlement [sic] to transfer liability to the UEF" based on conclusory (and otherwise unsupported) findings of fact and vague conclusions of law regarding the information provided by the Certificate of Insurance, the date it was collected from the subcontractor, and the date it was originally provided to the Commission.[1] The Appellants now seek review of this May 15, 2023, Order and respectfully contend that they have satisfied all of the requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 based upon the greater weight of the evidence in the record and the applicable law. The Appellants request that the Appellate Panel issue an order transferring liability for continuing medical benefits to the Uninsured Employers Fund, as well as requiring reimbursement for all compensation and medical benefits paid to date.

Arguments

An authorized representative of Travelers Insurance issued a Certificate of Insurance to the Appellant, Chris Thompson Services, clearly documenting that

[1] Commissioner Wilkerson also found that "all benefits due and owing to the Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature." Not only is this premised upon a misapprehension of the law, but the Appellate Panel, by Order dated June 22, 2023, actually found "that there are no compensation or medical benefits to be enforced at this time," as the Claimant has already been paid the statutory maximum 500-weeks of compensation benefits and continues to receive causally related medical treatment at the expense of the Appellants.

Travelers insured JJS Trucking (an Employer in Charleston, South Carolina, that was subcontracted by the Appellants) for workers' compensation the period from October 8, 2010, through October 8, 2011, in accordance with S.C. Code Reg. 67-415 and S.C. Code Ann. § 42-1-415. (APA p.8). Mr. Chris Thompson, proprietor of Chris Thompson Services, testified that he hired JJS Trucking to haul woodchips from a sawmill in Summerville to a paper mill in North Charleston. He further testified that Cedric Smalls is the owner JJS Trucking and that, to his knowledge, JJS Trucking did not operate anywhere other than in the State of South Carolina. (Transcript of 5/15/2021 Hrg. pp.48—49). Nothing about the October 18, 2010, Certificate of Insurance, which describes the insured as "JJS Trucking, LLC, 137-A Gordon Street, Charleston, South Carolina," is inconsistent with Mr. Thompson's understanding that JJS Trucing was a trucking company in South Carolina, or otherwise required any additional description to properly document workers compensation coverage for truckers employed by JJS Trucking in South Carolina, like the Claimant Samuel Rose.

Similarly, Cedric Smalls, the sole proprietor of JJS Trucking, testified that his company employed three truck drivers at the time in question. (Transcript of 5/15/2012 Hrg. pp.4—5). Mr. Smalls further testified that he lives at 137-A Gordon Street in Charleston, South Carolina and this is where JJS Trucking is located according to the Certificate of Insurance and records of the Workers' Compensation Commission. Mr. Smalls admits that he was subcontracted by Chris Thompson Services to haul loads from a lumber mill in Summerville to a paper mill in Charleston and that his "deal with Chris Thompson was in order for [him] to work for him [he] had to provide him with copies of [his] certificates of insurance ... to cover [his] driers and [himself] for workers' compensation purposes." Mr. Smalls understood that if he did not provide those

certificates of insurance, he "would be terminated." (Transcript of 5/15/2012 Hrg. p.6, p.9—10). The testimony of Mr. Smalls also corroborates the Certificate of Insurance dated October 18, 2010, and shows that it was wholly reasonable for Chris Thompson to believe that it properly documented workers' compensation coverage for the three truckers employed by JJS Trucking in Charleston, South Carolina.

The attorney for Travelers Insurance, F. Reid Warder, Jr., stipulated at a hearing on May 15, 2012, that

> "... certainly Travelers gave the authority to Swamp Fox Agency to write insurance on their behalf. And at the time that the policy was created and inbound [sic] initially and a deposit was made, it was fully in effect and it was a valid policy." (Transcript of 5/15/2012 Hearing, p.11, l.25—p.12, l.4).

This stipulation, as well the Workers' Compensation Commission's determination that Travelers insured JJS Trucking for workers' compensation liability for the period from October 8, 2010, until February 5, 20211 (APA #7), further indicates that it was reasonable for Chris Thompson Services to rely on the Certificate of Insurance as properly documenting workers' compensation insurance because the coverage documented actually existed and was in full force and effect.

In addition, Mr. Chris Thompson took further independent action to verify the insurance coverage indicated on the Certificate. In fact, it is undisputed that after receiving the October 18, 2010, Certificate of Insurance for JJS Trucking from the Swamp Fox Agency, Mr. Thompson spoke to Greg Hudson, a customer service representative at the Swamp Fox Agency, and

"[he] said everything is good to go, you're covered ... he told me that Cedric was good to go. Those were his exact words, good to go." (Transcript of 5/15/2012 Hrg. p.52, l.9 – p.53, l.1).

Despite this testimony and despite the fact that the October 18, 2010, Certificate of Insurance meets all requirements of S.C. Code Reg. 67-415, Commissioner Wilkerson failed to make any finding of fact or conclusion of law as to whether the Certificate of Insurance was "acceptable documentation of insurance" as required by S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415. Instead, Commissioner Wilkerson vaguely concluded that the Appellants "failed to show entitlement to transfer liability," ostensibly because "the certificate of insurance provided is blank as to the description and location of operations and is therefore incomplete" and because "the certificate of insurance does not note where coverage applies or to what job entity."[2] Respectfully, the location of operations was adequately documented as "JJS Trucking, LLC, as "137-A Gordon Street, Charleston SC 29403," which means that any employee of JJS Trucking is covered for any injury compensable under the South Carolina Workers' Compensation

[2] Commissioner Wilkerson further and inexplicably found that the Appellants did not "supply the certificate of insurance to the Worker's [sic] Compensation Commission 'at the time a claim was filed' ... but turned over 3 months later." He also found that the certificate "does not show a policy number," and that the Petition to Transfer was "premature." Commissioner Wilkerson goes on to suggest that Chris Thompson Services was required to collect a new Certificate of Insurance from JJS Trucking each and every day they performed services, even though it is undisputed that a Certificate was collected when they were originally engaged and on a yearly basis thereafter. There was no attempt by Commissioner Wilkerson to apply any law to these "findings" and the Appellants respectfully contend that they are without legal merit or evidentiary support, impermissibly vague, and should be reversed by the Appellate Panel.

Act. No further description or notation is required by S.C. Code Ann. § 42-1-415 or S.C. Code Reg. 67-415 because the Certificate plainly shows a valid South Carolina address for the insured employer, and; therefore, Commissioner Wilkerson erred as a matter of law in mandating any such requirement, which would otherwise serve no legitimate purpose.

I. The Appellants collected proper documentation of workers compensation insurance on a standard form "acceptable to the Commission," as defined by law and regulation.

The Appellants required that its subcontractor, JJS Trucking, have workers' compensation insurance at the time the subcontractor was engaged to perform work and collected documentation of this insurance "on a standard form acceptable to the commission," as required by S.C. Code Ann. § 42-1-415 and as defined by S.C. Code Reg. 67-415. According to S.C. Code Reg. 67-415(A)(2),

> "[t]he ACORD Form 25-S, Certificate of Insurance, as issued by the insurance carrier for the insured, is acceptable documentation of insurance, provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured."

The ACORD Form Certificate of Insurance, dated October 18, 2010, relied upon by the Appellants meets all statutory and regulatory requirements for documenting workers'

compensation coverage, including a valid South Carolina address, date, and signature. (APA p.8).

The Certificate of Insurance lists the address for the insured, JJS Trucking, LLC, as "137-A Gordon Street, Charleston SC 29403." Clearly, this is a "South Carolina address," but it is also "valid," as evinced by property tax records, which show Cedric Smalls, the owner of JJS Trucking, LLC, also owns the property at 137-A Gordon Street. (APA p.106). Therefore, because the Certificate "indicates a valid South Carolina address for the insured," it meets the requirements for an in-state employer under S.C. Code Reg. 67-415(A)(2) without the necessity of further affirmations or statements.

The Certificate of Insurance is dated "10/18/10" and also shows a workers' compensation policy "effective date" of October 8, 2010, and a policy "expiration date" of October 8, 2011. Therefore, the Certificate is clearly "dated" as required by S.C. Code Reg. 67-415(A)(2) and these dates clearly document coverage for an accident on August 10, 2011, the date the Claimant, Samuel Rose was injured.

Additionally, the Certificate of Insurance is "signed and issued by an authorized representative of the insurance carrier for the insured," as required by S.C. Code Reg. 67-415(A)(2). The Certificate lists the Producer as the "Swamp Fox Agency, Inc.," and it is signed by "David W. Hayes," the Registered Agent of the Swamp Fox Agency (APA p.7) and authorized representative of Travelers. Counsel for Travelers, the Company that provided workers' compensation coverage for JJS Trucking, stipulated,

> "... certainly Travelers gave the authority to Swamp Fox Agency to write insurance on their behalf. And at the time that the policy was created and

inbound [sic] initially and a deposit was made, it was fully in effect and it was a valid policy." (Transcript of 5/15/2012 Hearing, p.11, l.25—p.12, l.4).

Therefore, the Certificate of Insurance relied upon by the Appellants meets all of the requirements of S.C. Code Reg. 67-415, as there are no other requirements for a South Carolina Employer like the Appellants' subcontractor, JJS Trucking. Additional information, such as a statement that "South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy," is only required when the named insured is not a South Carolina Employer. Accordingly, it was plain legal error for Commissioner Wilkerson to mandate additional requirements in the case *sub judice* such as a "description and location of operations," "job entity," or "policy number" because Regulation 67-415 only enumerates three requirements: address, date, and signature. By enumerating these specific requirements, the regulation created a negative implication, as the expression of one thing (or three) necessarily implies the exclusion of others. *See* City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (holding that "when determining the effect of statutory language, the canon of construction *expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that to express or include one thing implies the exclusion of another, or the alternative.").

II. The Certificate of Insurance was properly completed in accordance with Regulation 67-415.

According to Commissioner Wilkerson, the Certificate of Insurance is incomplete because it "is blank as to the description and locations of operations," it "does not note

where coverage applies or to what job entity," and it does not contain a "policy number." Commissioner Wilkerson failed to explain the basis for requiring a specific policy number and failed to elucidate why a three-man trucking company with the word "trucking" in their name and "South Carolina" in their address would need to further explain the nature or location of their operations in their insurance documentation. These failures are compounded the fact that Travelers Insurance's legal representative (F. Reid Warder, Jr.), their authorized agent (the Swamp Fox Agency), and the Workers' Compensation Commission's Coverage and Compliance Division all confirmed that the employees of JJS Trucking, including truck driver Samuel Rose, were actually covered by a valid policy of workers' compensation insurance at the time the Certificate of Insurance was issued. No reasonable person familiar with the circumstances would believe that the Certificate of Insurance in question documented workers' compensation coverage in any state other than South Carolina, where JJS Trucking, JJS's three employees, and Chris Thompson Services were all located and where all of their work was performed.

Furthermore, no such description of operations is required for South Carolina Employers based upon the plain language of S.C. Code Reg. 67-415 and for Commissioner Wilkerson to construe this governing regulation so as to imply such a requirement is not only plain legal error and a plainly arbitrary abuse of discretion, but imposing such a requirement would serve no reasonable purpose. *See* Edge v. State Farm Ins. Co., 345 S.C. 136, 139, 546 S.E.2d 647, 648 (2001) (holding that '[t]he words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's operation."(citing Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992)). Therefore, the Appellants respectfully

contend that Commissioner Wilkerson erred in finding and impliedly concluding that the Certificate of Insurance *sub judice* did not meet the requirements of S.C. Code Reg. 67-415.

The ACORD Form 25 required by S.C. Code Reg. 67-415[3] is a multi-purpose "Certificate of Liability Insurance" that was not specifically or exclusively designed to document only workers' compensation coverage. Instead, the Form 25 is a universal form used to document all types of liability insurance, including commercial general liability insurance, automobile liability insurance, garage liability insurance, excess and "umbrella" liability insurance, and employer's liability insurance and; therefore, the Form 25 contains sections that do not apply to workers' compensation insurance whatsoever and do not need to be completed in order to properly certify or document workers' compensation insurance coverage. For example, the Form 25 has blanks and boxes that can be completed to document whether commercial general liability is "claims-made" or "occurrence" policy; whether a general aggregate limit applies per policy, policy, or location; the amount of policy limits for each occurrence, limits for damage to rented premises, limits for medical expenses, and other information specific to general liability insurance. Another section applies only to automobile liability and has blanks for the coverage amounts for "combined single limit," "bodily injury (per person)," "bodily injury (per accident)," and "property damage," and also asks whether the automobile liability insurance applies to "any auto," "owned autos only," "hired autos only," "scheduled autos," or "non-owned autos only." In order to more fully describe the

[3] S.C. Code Reg. 67-415 states, "[t]he ACORD Form 25-S, Certificate of Insurance, as issued by the insurance carrier for the insured, is acceptable documentation of insurance."

coverage provided by such general liability policies, the Form 25 also has a section for where a "description of operations/locations/vehicles/exclusions added by endorsements/special provisions" can be listed – otherwise, a Certificate Holder might not know which make or model of an insured's vehicles are actually covered by a automobile liability policy or be able to determine the general aggregate limits of a commercial general liability for a particular project or location of the insured. However, workers' compensation insurance has no such limits or exclusions and need no additional descriptions, except perhaps to name an owner or officer of an insured who has voluntarily elected coverage or to document coverage for operations in South Carolina for an out-of-state employer.

This is true because S.C. Code Ann. § 42-5-70 specifically requires that all workers' compensation policies must contain a clause

> "that the insurer shall in all things be bound by and subject to awards, judgements or decrees rendered against such insured employer."[4]

As explained by Professor Larson's treatise on Workers Compensation Law, this express provision compels "a certain minimum coverage in insurance contracts" and is illustrative

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[4]South Carolina, like most states, also utilizes standard language in all policies of workers' compensation insurance, including the following: "We will pay promptly when due the benefits required of you by the workers compensation law."

> "of the semi-public character of compensation insurance, for if a compensation policy is written at all, the insurer will frequently find that the scope of its liability to employees is taken completely out of the hands of the parties to the insurance contract and dictated by the law of the state ... Otherwise, the employee may frequently have two cases to litigate – the first to establish the employer's substantive liability, and the second to show that the insurer's policy covered that liability." Arthur Larson, LARSON'S WORKERS' COMPENSATION LAW § 151.01 (2009).

Essentially, our law requires that a workers' compensation insurance policy issued to a South Carolina employer "is construed to be coextensive with the employer's entire liability" in the state, mandating "coverage of all employees of the assured in all occupations and all businesses." *See* LARSON'S *supra* at § 151.01 and § 151.02.[5] The South Carolina Supreme Court has expressly recognized this principle since at least 1945, when it explained that "if an employer becomes a subscriber he becomes a subscriber for all purposes as to all branches of one business with respect to all those in his service under any contract of hire," so as to avoid inevitable litigation as to "those protected by the act and those not entitled to benefits." Kennerly v. Ocmulgee Lumber Co., 206 S.C. 481, 489, 34 S.E.2d 792, 795 (1945); *see also* Carter's Dependents v. Palmetto State Life Ins. Co., 209 S.C. 67, 76–77, 38 S.E.2d 905, 909 (1946) (holding that "the Legislature did not intend that one should divide his business so that he could

[5] In addition, NCCI's Basic Manual defines the insured employer's "risk" covered by a workers' compensation policy to mean "all operations of an employer within a state." See Basic Manual User's Guide, Reference ID: BU-EXUI-R9BC1.

accept the benefits of our Workmen's Compensation Act as to one feature of his business and reject it as to another of the same business ... when the company came under the provisions of the Workmen's Compensation Act, they did so as to all employees engaged in executing a part of the general trade, business or occupation of the owner within the meaning of the Workmen's Compensation Act.").

Therefore, a more detailed "description of operations" or "locations" on a Form 25 Certificate of Insurance is not necessary to properly document workers' compensation coverage issued to a South Carolina employer. Not only is such further description not required by the plain language of S.C. Code Ann. § 42-1-415 or S.C. Code Reg. 67-415, but such a requirement would obviously serve no reasonable purpose because the scope of coverage afforded by workers' compensation insurance is mandated by statute and not dictated by private contract, as might be the case with general commercial liability or automobile liability insurance.[6] Quite simply, by certifying workers' compensation coverage for JJS Trucking in South Carolina, Travelers necessarily insured all of JJS's Trucking's operations and all of its employees in the State of South Carolina as a matter of law without the necessity of further explanation or description.

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[6] The "description of operations/locations/vehicles/exclusions added by endorsements/special provisions" section, while not necessary to define coverage for all employees of an employer in South Carolina, theoretically could be used to describe coverage in other states or other voluntary coverage. According to the NCCI Basic Manual, this may include descriptions of endorsements "to change or provide additional coverages" that may include U.S. Longshore and Harbor Workers Compensation, Jones Act, or Federal Employers' Liability Act liability. *See* Basic Manual User's Guide, Reference ID: BU-WOCA-EF2ED. However, S.C. Code Reg. 67-415 does not require that this section be completed for a South Carolina employer, only for employers located in other states, to show that they, in fact, have coverage in South Carolina.

To the extent that Commissioner Wilkerson's decision to require a "description and location of operations," or some notation of "where coverage applies or to what job entity," is based on the Supreme Court's decision in Hopper v. Terry Hunt Construction, 336 S.C. 310, 680 S.E.2d 1 (2009), any reliance on Hopper is misplaced, as that case is not only factually distinguishable from the one *sub judice,* but the holding has since been superseded by a new regulation promulgated in 2010. Factually, Hopper concerned a Georgia subcontractor with a Georgia address, a Georgia certificate holder with a Georgia address, a Georgia worker's compensation policy providing coverage for employees in Georgia, and a certificate of insurance that "has 'Georgia' on its face and ... no indication on the certificate ... that there was an all - states endorsement."[7] According to the Supreme Court, on these facts, the Certificate of Insurance did "not constitute proper documentation" of workers' compensation insurance in South Carolina because nothing about the Certificate described or even suggested coverage in South Carolina. 383 S.C. at 315, 680 S.E.2d at 3. In stark contrast, the present case involves a South Carolina subcontractor with a South Carolina address, a South Carolina certificate holder with a South Carolina address, a South Carolina workers' compensation policy providing coverage for employees in South Carolina, and a certificate that repeatedly references "South Carolina" on its face -- without any reference to, or suggestion of, business in any other state.

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[7] A prior certificate provided by the subcontractor in Hopper had specifically identified a South Carolina project in the "Description of Operations/Locations" section. *See* Timothy M. Hopper, Emp., Claimant Terry Hunt Constr. &/or Kajima Constr., Emp. & None/unknown &/or Zurich Am. Ins. Co., Carrier, Defendants, No. WCC 0401965, 2004 WL 3426738, at *10 (S.C. Work. Comp. Comm. Dec. 30, 2004).

Not only is the present case clearly distinguished factually from Hopper, but a new regulation governing the proper documentation of insurance for out-of-state employers was promulgated in response to Hopper in 2010, superseding that holding legally. Under the new version of the governing regulation, S.C. Code Reg. 67-415, South Carolina employers must provide an ACORD Form 25 Certificate of Insurance that "indicates a valid South Carolina address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured." However, there are additional requirements imposed on out-of-state employers:

> "[f]or an out-of-state employer, the ACORD Form 25-S is acceptable, provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy."

Based on the plain language of the regulation, such a statement or further explanation is not required when "the Certificate of Insurance indicates a valid South Carolina address for the insured."

By applying an express requirement for out-of-state employers to a South Carolina employer, like JJS Trucking, Commissioner Wilkerson has unilaterally rendered the second sentence of S.C. Code Reg. 67-415(A)(2) superfluous in contravention of the clear administrative intent expressed by the plain language of the regulation actually promulgated by the Workers' Compensation Commission. *See generally* State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd* 386

S.C. 339, 688 S.E.2d 569 (2010) (holding that a statute must be read so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous" because the legislature "obviously intended [the statute] to have some efficacy, or the legislature would not have enacted it into law.") (internal citations omitted). Therefore, neither Hopper, nor S.C. Code Reg. 67-415, nor S.C. Code Ann. § 42-1-415, require the Certificate of Insurance for JJS Trucking to contain a "description and location of operations," or any notation of "where coverage applies or to what job entity" because JJS Trucking is clearly a South Carolina Employer for whom the scope of workers' compensation coverage is mandated by law. *See* Carter v. Boyd Const. Co., 255 S.C. 274, 178 S.E.2d 536 (1971) (holding that by virtue of S.C. Code Ann. § 42-5-80, a workers' compensation policy "is, in effect, made a contract or agreement between the insurer and the person or persons entitled to compensation benefits.").

III. There is no requirement that a policy number be listed on a Certificate of Insurance.

As explained more fully above in Section II, based upon the plain language of S.C. Code Reg. 67-415, an actual "policy number" is not necessary for proper documentation of insurance because it is not one of the requirements enumerated therein. *See* City of Rock Hill v. Harris, 391 S.C. 149, 154, 705 S.E.2d 53, 55 (2011) (holding that "when determining the effect of statutory language, the canon of *construction expressio unius est exclusio alterius* or *inclusio unius exclusio alterius* holds that to express or include one thing implies the exclusion of another, or the alternative."). Therefore, construing Regulation 67-415 so as to imply such a requirement is not only plain legal error and abuse of discretion, but imposing such a requirement would likewise serve no

reasonable purpose. *See* Edge v. State Farm Ins. Co., 345 S.C. 136, 139, 546 S.E.2d 647, 648 (2001) (holding that '[t]he words of a regulation must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the regulation's operation."(citing Byerly v. Connor, 307 S.C. 441, 415 S.E.2d 796 (1992)). Therefore, the Appellants respectfully contend that Commissioner Wilkerson erred in finding and impliedly concluding that the Certificate of Insurance *sub judice* did not meet the requirements of the current version of S.C. Code Reg. 67-415 because it did not list a "policy number."

To the extent that the use of the term "binder" in place of a numerical policy number required Chris Thompson Services to make further inquiries into the veracity of the Certificate of Insurance and its declarations regarding the workers' compensation coverage afforded JJS Trucking by Travelers Insurance, Chris Thompson Services clearly met this burden. According to Mr. Chris Thompson himself, he spoke to Mr. Greg Hudson, a customer service representative at the Swamp Fox Agency, the authorized agent of Travelers and producer of the workers' compensation policy issued to JJS Trucking. Admittedly, Mr. Hudson

> "said everything is good to go, you're covered ... he told me that Cedric was good to go. Those were his exact words, good to go." (Transcript of 5/15/2012 Hrg. p.52, l.9 – p.53, l.1).

Having confirmed the existence of coverage, Mr. Thompson's knowledge of an actual policy number would serve no purpose, especially considering the fact that the

Certificate of Insurance Acord Form Certificate of Insurance (APA p.8) states on its face in bold lettering that

> "THE **POLICIES** OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED...
>
> ***
>
> SHOULD ANY OF THE ABOVE DESCRIBED **POLICIES** BE CANCELLED BEFORE THE EXPIRATION DATE THEROF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT ..." (emphasis added).

Not only did the plain language of the Certificate of Insurance confirm the existence of a workers' compensation policy issued by Travelers, not only did Mr. Thompson verify this fact with the authorized agent of Travelers, but both Travelers and the Workers' Compensation Commission concede that a policy of workers' compensation insurance was actually issued to JJS Trucking for the policy period beginning on October 8, 2010, as stated on the Certificate of Insurance. The attorney for Travelers Insurance, F. Reid Warder, Jr., stipulated that

> "...at the time that the policy was created and inbound [sic] initially and a deposit was made, it was fully in effect and it was a valid policy." (Transcript of 5/15/2012 Hearing, p.11, l.25—p.12, l.4).

Mr. Garry Smith, Director of the Workers' Compensation Commission's Coverage and Compliance Division informed the parties that the Travelers workers compensation insurance issued to JJS Trucking covered the period from October 8, 2010, and "was cancelled on 2/5/2011" (approximately four months after the Certificate of Insurance was issued to Chris Thompson Services) based upon NCCI records. (*See* letter to Jos. B. Fisher dated October 28, 2011). This same correspondence from the Commission's Coverage and Compliance Division references a letter from Travelers admitting that the policy period was "10/9/10 to 01/04/11." The Coverage and Compliance Division subsequently confirmed that the Travelers policy insured JJS Trucking "from 10/8/2010 to 2/5/2011." (APA p. 66).

Therefore, it was entirely reasonable for Chris Thompson Services to rely, not only on the face of the Certificate of Insurance as properly documenting workers' compensation insurance with Travelers, but also upon his conversations with the agent for Travelers confirming the existence of the documented coverage, because the documented coverage actually existed and was in full force and effect, as confirmed by the producer, the carrier, NCCI, and the South Carolina Workers' Compensation Commission, irrespective of the "policy number." *See contra*, Barton v. Higgs, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009) (explaining that an upstream contractor should have investigated the absence of the signature on a Certificate of Insurance whereupon he would have determined that there was no valid policy.)

In addition, because the policy in question is an assigned risk policy, it is governed by the NCCI Assigned Risk Plan. *See* Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 93, 719 S.E.2d 695, 699 (Ct. App. 2011) (stating that "the Assigned Risk Plan, which includes the Assigned Risk Supplement, has the force of law"), Avant v.

Willowglen Acad., 367 S.C. 315, 319, 626 S.E.2d 797, 799 (2006) (holding that the provisions of the Assigned Risk Plan "prevail over the workers' compensation regulations" pursuant to S.C. Code Ann. § 38-73-540). In accordance with Assigned Risk Supplement 7,

> "The Plan Administrator is authorized to issue binders to eligible employers in accordance with the provisions of the Plan.
> Coverage does not exist without a binder issued by the Plan Administrator listing an assigned carrier.
> **Coverage under any binder issued by the Plan Administrator must be provided by the assigned carrier**, subject to the provisions of the Plan, any applicable policy terms or conditions, and/or any applicable laws, rules, or regulations.
> The Plan Administrator will issue a binder to the employer, its representative, if any, the assigned carrier to which the Plan Administrator assigned the employer...
> The binder must be sent to the appropriate parties as required and must remain in effect until cancelled or until a policy has been issued in accordance with NCCI's Assigned Carrier Performance Standards or state law." (emphasis added)

This governing language a further guarantees the coverage provided by Travelers to JJS Trucking regardless of the use of the term "binder" on the Certificate of Insurance. In addition, cancellation of coverage bound by the Plan Administrator would actually

constitute a breach of the carrier's assigned risk agreement. *See* 9 Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW § 150.05 [3] (2000).

Therefore, use of the term "binder" on the Certificate of Insurance, especially in the context of an assigned risk policy, is entirely reasonable and does not in any way invalidate the coverage properly documented on the Certificate of Insurance. More importantly, a numerical policy number on a Form 25 Certificate of Insurance is not required in order for there to be proper documentation of insurance in accordance with S.C. Code Reg. 67-415 or for there to be a finding that a "subcontractor has represented himself ... as having workers' compensation insurance" as required by S.C. Code Ann. § 42-1-415. Accordingly, the Appellants respectfully request that Commissioner Wilkerson's finding and implied conclusion to the contrary be reversed by the Appellate Panel.

IV. The Certificate of Insurance was timely submitted to the Workers' Compensation Commission.

According to Commissioner Wilkerson's May 15, 2023, Order,

> "Thompson did not supply the certificate of insurance to the Workers' Compensation Commission 'at the time the claim was filed by the injured employee' as required by S.C. Code Ann. § 42-1-415(b) but turned it over 3 months later."

The same Order recites the following stipulation: "Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011." Considering the fact

that October 18, 2011, is only 34 days after the Form 50 was filed on September 14, 2011, and only eight weeks after the Claimant's accident on August 20, 2011, Commissioner Wilkerson's finding of fact regarding the timeliness of the Certificate is wholly without merit or evidentiary support.

Not only had "over 3 months" not passed since a claim was filed by the Claimant, but it would strain credulity to suggest that the phrase "at the time a claim is filed by an injured employee" requires a defendant to actually file a Certificate of Insurance on the same day as the Claimant's Form 50, as this would necessarily require either improper collusion between counsel for opposing parties, or impossible clairvoyance as to the date a claim will be filed. Here, the Appellants not only supplied the Commission with the Certificate of Insurance promptly after the claim was filed, but the Certificate was admittedly in the possession of the Commission (and the UEF) more than six months before the May 15, 2012, hearing when the merits of Samuel Rose's claim were addressed for the first time.

The Appellants respectfully contend that Certificate was "turned over" in accordance with S.C. Code Ann. § 42-1-415(B) because it was submitted during the pendency of the underlying claim by the injured employee, not during some later period when the petition to transfer is finally litigated. According to the South Carolina Supreme Court in South Carolina Board of Dental Examiners v. Breeland:

> "A choice of language in an act will not be construed with literality when to do so will defeat the lawmakers' manifest intention, and a court will reject the ordinary meaning of words used in a statute when, to accept the ordinary meaning, will lead to a result so plainly absurd that it can not

possibly have been intended by the legislature." 208 S.C. 469, 480, 38 S.E.2d 644, 650 (1946) (citations omitted);" *quoted with approval in* Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000).

Therefore, the Appellant's respectfully contend that because Commissioner Wilkerson's literal interpretation of the phrase "at the time a claim is filed" is so plainly absurd that it could not have been intended by the legislature, and because his finding of fact is arbitrary, capricious, and otherwise without any evidentiary support, the Appellate Panel should reverse and vacate the May 15, 2023, Order.

V. The Petition to Transfer Liability is not "premature."

Following a hearing on February 14, 2023, Commissioner Wilkerson's Order of May 15, 2023, found that "all benefits due and owing to the Claimant have not been paid to date, therefore Thompson's Petition to transfer liability is premature." The Commission's Appellate Panel considered a tangential matter in this claim only one day earlier on February 13, 2023, and on the same record concluded "that there are no compensation or medical benefits to be enforced at this time" because the Claimant has already been paid the statutory maximum 500-weeks of compensation benefits and continues to receive causally related medical treatment at the expense of the Appellants. (*See* Form 19, APA p.102; Appellate Panel Order dated June 22, 2023).

Furthermore, it is wholly illogical to interpret S.C. Code Ann. § 42-1-415 as requiring anything other than payment of benefits *presently* due. In fact, the language of S.C. Code Ann. § 42-1-415 clearly contradicts Commissioner Wilkerson's contrary interpretation (*e.g.*, requiring the Appellants to pay all medical benefits that may

become due in the future as a condition precedent to the transfer of "continuing" benefits). The statute plainly states that the higher tier contractor, like Chris Thompson Services, may "petition the commission to transfer liability for *continuing* compensation and benefits to the Uninsured Employers' Fund." (emphasis added). By employing this language, "continuing compensation and benefits," the legislature clearly envisioned that additional benefits may be due in the future; however, if payment compensation and benefits are current as of the time of the Petition to Transfer and hearing on that Petition, the Petition should be considered ripe for adjudication. Any other interpretation of the statute would render the word "continuing" mere meaningly surplusage. *See* State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd* 386 S.C. 339, 688 S.E.2d 569 (2010) (holding "a statute must be read so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous") (internal citations omitted).

Having paid all compensation benefits that could ever be due under the Workers' Compensation Act, and having paid all medical benefits that are currently "due," the Appellants respectfully contend that the Appellate Panel should reverse the May 15, 2023, Order of Commissioner Wilkerson to avoid such a plainly absurd result and should, instead, order a transfer liability for "continuing compensation" to the UEF, as well as reimbursement to the Appellants for all medical and compensation benefits paid to date, in accordance with the plain language of S.C. Code Ann. § 42-1-415. *See generally*, Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 582 (2000) (holding that an interpretation of a statute that leads to an absurd result should be rejected).

VI. The law only requires documentation of insurance be collected at the time a subcontractor is engaged to perform work.

The plain language of S.C. Code Ann. § 42-1-415(B) states that documentation of insurance "must be collected at the time the contractor or subcontractor is engaged to perform work." Despite the fact that the uncontradicted testimony of Chris Thompson, owner of Chris Thompson Services, and Cedric Smalls, owner of the subcontractor, JJS Trucking, confirms that JJS Trucking provided documentation of insurance at the time he was originally engaged to perform work for Chris Thompson Services and JJS Trucking was required to provide updated documentation of insurance on an annual basis thereafter, Commissioner Wilkerson's May 15, 2023, Order vaguely suggests that "as no written contract existed, each transaction would be a new job requiring a certificate of insurance." Commissioner Wilkerson did not cite any legal authority for this proposition and the Appellants respectfully contend that none exists.

In addition, Commissioner Wilkerson otherwise failed to explain why he suggests that JJS Trucking performed more than one job for Chris Thompson Services, when there is no evidentiary support in the record for any such supposition. Instead, the record reveals that the only job JJS Trucking ever performed for Chris Thompson Services was hauling loads from a lumber mill in Summerville to a paper mill in Charleston and the terms of this job never changed. (APA pp.16—17, p.40, ll.14—17).

In Hardee v. McDowell, the Supreme Court held that

> "the phrase 'engaged to perform work' means each time a subcontractor is actually hired to perform work. Thus, if a contractor enters into a contract to hire a subcontractor for one job in January and then enters into another

> contract to hire the subcontractor for a second job in February, the contractor should verify that the subcontractor still has insurance coverage at the time of the February hiring." 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009).

Unlike the subcontractor in Hardee v. McDowell, JJS Trucking was not hired for one job in one location in January and then a second job in another location in February. Instead, the record is clear that JJS Trucking was actually hired to perform one job for Chris Thompson Services in 2008 – hauling loads from lumber mill in Summerville to a paper mill in Charleston -- and did this work consistently without any change in the terms of their agreement for the next three years. (APA p, 96, pp.16—17, p.40, ll.14—17).

Therefore, the Appellants respectfully contend that, in accordance with the requirements of S.C. Code Ann. § 42-1-415(B), documentation of insurance was "collected at the time the contractor or subcontractor is engaged to perform work" and the oral nature of the contract of hire does not change this fact. Accordingly, the Appellants request that Commissioner Wilkerson's conclusory finding to the contrary be reversed by the Appellate Panel.

Conclusion

The Appellants, Chris Thompson Services and Bridgefield Casualty Insurance respectfully request review and reversal of Commissioner Wilkerson's May 15, 2023, Order on the basis that is not supported by the greater weight of the evidence or the applicable law, it is impermissibly vague, and it is otherwise affected by an unwarranted abuse of discretion and made in excess of authority. The Appellants respectfully

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S APPELLATE PANEL

Samuel A. Rose, Employee/Claimant, -vs- JSS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer, and Bridgefield Casualty Insurance Co., Carrier, Appellants. **IN RE: PETITION TO TRANSFER LIABILITY TO THE UNINSURED EMPLOYERS FUND,** S.C. Uninsured Employers Fund, Respondent.	W.C.C. FILE NO. 1112328 **REPLY BRIEF OF THE RESPONDENT S.C. UNINSURED EMPLOYERS FUND**

STATEMENT OF THE CASE

On August 10, 2011, Samuel Rose (hereinafter "Claimant") was injured in a work-related truck accident. Claimant filed a Form 50 on September 14, 2011, whereby JJS Trucking, LLC, (hereinafter "JJS") and Chris Thompson Services, LLC (hereinafter "Thompson") were named as Defendants in the claim. At the time of filing the Form 50, JJS was Claimant's direct employer and Thompson was the upstream general contractor. Subsequently, the Workers' Compensation Commission was provided with a copy of the Certificate of Insurance with an issued date of October 18, 2010. Based upon a stipulation with the UEF, it was agreed that the certificate of insurance was transmitted by Thompson to the Commission by October 18, 2011.

On January 24, 2012, a Petition was filed by Thompson to transfer liability to the South Carolina Uninsured Employers' Fund (hereinafter "UEF"). Thereafter, a hearing was held on May 15, 2012. On August 23, 2012, Commissioner McCaskill ruled that "the issue of transfer of responsibility to the UEF [was] not ripe for adjudication ...." On May 15, 2012, a Form 30 was filed by Thompson seeking review of Commissioner McCaskill's August 23, 2012, Order (hereinafter "August 23 Order"). Thereafter, the Appellate Panel issued an Order which affirmed the August 23 Order.

The Appellants appealed the Full Commission's Order to the South Carolina Court of Appeals, claiming the Commission erred as a matter of law to conclude the Petition to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415 was "not ripe." On January 28, 2015, the Court of Appeals dismissed the appeal as interlocutory.

On August 10, 2022, after approximately seven years of litigation and corresponding appeals before the Commission and the appellate courts, the South Carolina Court of Appeals ordered that Claimant was entitled to benefits, and Thompson tendered past due benefits and interest to Claimant. The Court of Appeals also ordered that Claimant was entitled to additional medical benefits because there was substantial evidence in the record to support the Commission's award of future medical benefits and temporary total disability benefits.

On September 29, 2022, the Appellants refiled their Petition to Transfer Liability to the UEF. Thompson seeks to shift the responsibility for hundreds of thousands of dollars in benefits to the State of South Carolina. In a May 15, 2023, Order (hereinafter "May 15 Order") Commissioner Avery B. Wilkerson ruled that upstream contractor Thompson was not entitled to transfer liability to the UEF.

Commissioner Wilkerson based his ruling, *inter alia*, on the following findings of fact: (1) that Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), Hardee v. McDowell, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), Hopper v. Terry Hunt Const., 383 S.C. 310 (2009), and Barton v. Higgs, 381 S.C. 367 (S.C. 2009) were controlling; (2) that the unpublished opinion of Almazon v. SCUEF, 2017-UP-124 was not persuasive and not controlling; (3) that Thompson did not supply the certificate of insurance to the Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415(b) at the time Claimant filed his workers compensation claim but three months later; (4) that the certificate of insurance was blank as to the description and location of operations and therefore incomplete; and (5) that the certificate of insurance did not show a policy number.

Furthermore, Commissioner Wilkerson made the following findings of law: (1) Thompson failed to show entitlement to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415; and (2) that S.C. Code Ann. § 42-1-415 must be strictly construed in light of the controlling precedent of Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (S.C. Ct. App. 1997), Hardee v. McDowell, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009), Hopper v. Terry Hunt Const., 383 S.C. 310 (2009), and Barton v. Higgs, 381 S.C. 367 (S.C. 2009).

Appellants now seek review of Commissioner Wilkerson's May 15 Order in hopes this Appellate Panel will reverse and rule contrary to otherwise binding and controlling precedent. Accordingly, the Respondent requests that the Appellate Panel issue an order denying the transfer of liability for continuing medical benefits to the UEF, as well as denial of any requirement of reimbursement for all compensation and medical benefits paid to date.

ARGUMENT

I. JJS TRUCKING'S CERTIFICATE OF INSURANCE WAS NOT COMPLETED IN ACCORDANCE WITH S.C. CODE ANN. § 42-1-415 BECAUSE (1) THE CERTIFICATE WAS BLANK AS TO THE DESCRIPTION AND LOCATION OF OPERATIONS AND (2) THE CERTIFICATE DID NOT PROVIDE THE PROJECT TO WHICH COVERAGE WAS TO APPLY.

Although Appellants go to great lengths to demonstrate the Certificate of Insurance presented by JJS and accepted by Thompson was in compliance with S.C. Reg. 67-415, under South Carolina law an incomplete Acord Form does not constitute proper documentation in compliance with S.C. Code Ann. § 42-1-415(A). *See* Society of "Prof;l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) ("Although a regulation has the force of law, it must fall when it alters or adds to a statute"). In Hopper v. Terry Hunt Const., the Supreme Court of South Carolina held that an incomplete Acord Form did not constitute proper documentation under S.C. Code Ann. § 42-1-415 such that an upstream contractor may shift liability to the UEF. Hopper v. Terry Hunt Const., 383 S.C. 310, 680 S.E2d 1, 3 (2009). As background, Kajim, the general contractor, contracted services from Terry Hunt Construction as its subcontractor for pipe installation at a job in Greenwood, South Carolina. Id. at 2. On a previous project, Hunt provided Kajim with an Acord Form 25-S certificate of insurance which indicated Hunt had workers' compensation insurance valid from May 2, 2002, through December 31, 2002. Id. This certificate included material information such as to the project number, subcontract number, and the claim deductible amount in the block labelled "DESCRIPTION OF OPERATIONS/ LOCATIONS." Id.

Prior to beginning work on the Greenwood project, Hunt provided Kajim with another certificate of insurance. Hopper, 680 S.E.2d at 2. While the certificate showed the policy was valid from January 1, 2003, through December 31, 2003, the "DESCRIPTION OF

OPERATIONS/ LOCATIONS" was blank. Id. On February 19, 2004, Timothy Hopper was injured while working for Hunt in Greenwood, South Carolina. Id. At the time Hopper was injured, Hunt did not have workers' compensation insurance because the policy lapsed. Id. This in turn caused Kajima to remain liable to pay Hopper's benefits. Id.

In ruling on whether Hunt's Acord Form complied with S.C. Code Ann. § 42-1-415 such that Kajima could transfer liability to the UEF, the South Carolina Supreme Court held that failure to completely fill out an Acord Form renders the document insufficient, and thus, incompatible with the strict requirements of § 42-1-415. Hopper, 680 S.E.2d at 3. The Court explained that Hunt essentially submitted an incomplete Acord Form when it left blank the Descriptions and Operations box on the Certificate of Insurance. Id at 3. The Acord form also lacked the type of coverage provided by the policy or the deductible amount. Id. The incompleteness of Hunt's Acord Form had a preclusive effect on Kajim's ability to transfer liability to the UEF, because the form did not constitute proper documentation as required by S.C. Code Ann. § 42-1-415. Id. Accordingly, the Court precluded Kajima from transferring liability to the UEF pursuant to S.C. Code Ann. § 42-1-415. Id.

Similar to the facts of Hopper, Thompson relies upon an incomplete Acord Form in an effort to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415. Moreover, it is clear that an incomplete Acord Form is insufficient documentation as required by S.C. Code Ann. § 42-1-415, and failure to strictly adhere to the documentation requirements of § 42-1-415 precludes Appellants from shifting liability to the UEF. Similar to Hopper, and as applied to the facts of the present case, the Acord Form submitted by JJS to Thompson was insufficient documentation because it was (1) blank as to the description and locations of operations and (2) did not provide the project to which coverage was to apply. While Appellants strongly urge this

panel to find that a more detailed description is not necessary to properly document JJS' workers' compensation coverage, this directly conflicts with the binding precedent of Hopper. Therefore, the Acord Form presented to Thompson by JJS is insufficient documentation as required by S.C. Code Ann. § 42-1-415 in accordance with Hopper.

Appellants' argument that Hopper is factually distinguishable from the present case because "nothing about the Certificate [in Hopper] described or even suggested coverage in South Carolina" is misleading. This argument assumes that so long as a certificate of insurance on its face directly relates to a South Carolina subcontractor, the certificate may forgo material information like a description and location of operations, or a description as to what project coverage was to apply. Further, the fact that JJS' legal name is JJS Trucking of South Carolina is merely coincidental and does not control. If either of the aforementioned scenarios were true, then any upstream general contractor, like Thompson, could pass liability to the UEF so long as the subcontractor's certificate of insurance on its face repeatedly references South Carolina or the general contractor's legal name references South Carolina. This reasoning is not what the Hopper Court intended § 42-1-415 to require, and sets a dangerous precedent. Appellants also argue that the amendment to Reg. 76-415 in 2010 supersedes the decision in Hopper. No such results comes from the 2010 amendment, as Hopper stand for the proposition that in order to transfer large financial liabilities to the State, strict adherence to completion of the Acord Form is necessary.

The Single Commissioner correctly ruled that (1) the certificate of insurance provided was blank as to the description and location of operations, and that (2) the certificate of insurance did not provide the project to which coverage was to apply. The certificate of insurance

provided to Thompson by JJS is incomplete and improper documentation, and the Appellants are barred from shifting liability to the UEF.

II. STRICT ADHERENCE TO S.C. REG. 67-415(A)(2) IS NOT DISPOSITIVE IN DETERMINING WHETHER JJS' CERTIFICATE OF INSURANCE WAS PROPER DOCUMENTATION BECAUSE SUCH ADHERENCE ALTERS THE DOCUMENTATION REQUIREMENT OF S.C. CODE ANN. § 42-1-415 IN LIGHT OF *HOPPER v. TERRY HUNT CONST.*

Appellants claim that a certificate of insurance need only meet the requirements of S.C. Code Reg. 67-415(A)(2) is incorrect because it alters the document requirement of S.C. Code Ann. § 42-1-415 as interpreted in Hopper. Specifically, S.C. Reg. 67-415(A)(2) states that an Acord Form "is acceptable documentation of insurance, provided the Certificate of Insurance indicates a valid South Carolina address for the insured, is dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Ann. Regs. 67-415 (1997, as amended). However, as explained in Hopper, a certificate of insurance in insufficient documentation within the meaning of S.C. Code Ann. § 42-1-415 when it fails to include a description and location of operations, and when it fails to provide the project to which coverage was to apply. To limit a certificate of insurance to only what is set out in S.C. Reg. 67-415(A)(2) would alter the documentation requirement of S.C. Code Ann. § 42-1-415 as specified by the South Carolina Supreme Court in Hopper. *See* Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995); Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496, 499 (1943); *See also* Society of Professional Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) ("Although a regulation has the force of law, it must fall when it alters or adds to a statute").

Therefore, S.C. Reg. 67-415(A)(2) cannot limit the required material elements necessary for proper documentation of a subcontractor's certificate of insurance pursuant to S.C. Code Ann. § 42-1-415.

III. JJS TRUCKING'S CERTIFICATE OF INSURANCE WAS NOT COMPLETED IN ACCORDANCE WITH S.C. CODE ANN. § 42-1-415 BECAUSE THE CERTIFICATE DID NOT INCLUDE A POLICY NUMBER.

Appellants argue that a policy number is not necessary for proper documentation of insurance because a policy number is not an enumerated requirement of S.C. Reg. 67-415. Although S.C. Reg. 67-415 does not specifically require documentation of a policy number, Barton v. Higgs clearly requires that a statutory employer, like Thompson, must take the minimal steps to ensure the workers compensation insurance provided by its subcontractor is "properly documented." This includes documentation of a policy number. In the Barton case, the South Carolina Supreme Court ruled it was improper to transfer liability from the upstream contractor to the UEF because the certificate of insurance was unsigned. Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009). The Court explained by the express language of S.C. Code Ann. § 42-1-415, "to transfer liability to the Fund, the high-tier contractor must collect documentation of insurance on a standard form acceptable to the commission" with the certificate of insurance serving "as documentation of insurance." Id. Further, for a certificate of insurance to serve as proper documentation, as that term is used in S.C. Code Ann. § 42-1-415, "the Certificate must be dated, signed, and issued by an authorized representative of the insurance carrier" in accordance with S.C. Reg. 67-415 Id. at 147.

When taking the requirements of both S.C. Code Ann. § 42-1-415 and S.C. Reg. 67-415 in conjunction, "liability may be transferred from the higher tier contractor to the [UEF] only after the higher tier contractor has **properly documented** the subcontractor's claim that it

retained workers' compensation insurance." Id. (emphasis added). An upstream contractor may not transfer liability when it "could have easily investigated the absence of the signature and determine that [the subcontractor] did not have a valid policy." Id.

Like Barton, Thompson as the statutory employer must do more than just simply accept a certificate of insurance from its subcontractor but must "read" the document and ensure the entire document is properly filled out. If Chris Thompson had read JJS' certificate of insurance, he would have clearly discovered the missing policy number. Like the reasoning in Barton, any blank on a certificate of insurance renders the certificate incomplete, this includes a missing policy number.

Additionally, Thompson's reliance on statements made by Greg Hudson, as an agent of Travelers Insurance, is not enough to support the veracity of the certificate of insurance and its declarations regarding the workers' compensation coverage of JJS. Appellants reliance on Almazon v. Henson & Assoc., 2017 WL 4619099 (March 15, 2017) is not dispositive as to this issue. Almazon stands for the proposition that a general contractor may transfer liability to the UEF when the general contractor *reasonably relies* upon a certificate of insurance by its subcontractor. However, because Alamazan is unpublished, the decision has no legal effect, and thus, should not be considered by this Panel. *See* Olson v. Faculty House of Carolina, Inc., 344 S.C. 194, 544 S.E.2d 38, 47-48 (Ct. App. 2001) ("Unpublished orders by a single judge of [the Court of Appeals] are not binding...."); Lanham v. Blue Cross & Blue Shield of S.C., Inc., 338 S.C. 343, 349, 526 S.E.2d 253, 256 (Ct. App. 2000) ("[U]npublished opinions [of the appellate courts] have no precedential value.").

Since the Commissioner correctly ruled that because the certificate of insurance provided by JJS only showed a binder and not a policy number, the Appellants are barred from shifting liability to the UEF.

IV. THE CERTIFICATE OF INSURANCE WAS NOT TIMELY SUBMITTED TO THE WORKERS' COMPENSATION COMMISSION BECAUSE IT WAS NOT SUBMITTED "*AT THE TIME THE CLAIM WAS FILED BY THE INJURED EMPLOYEE*" BUT THIRTY-FOUR DAYS AFTER.

According to Commissioner Wilkerson's May 15, 2023, Order, "Thompson did not supply the certificate of insurance to the Workers' Compensation Commission '**at the time the claim was filed by the injured employee**' as required by S.C. Code Ann. § 42-1-415 but turned it over 3 months later." (emphasis added). Based upon the plain language of S.C. Code Ann. § 42-1-415(B), Appellants are not excused from providing the certificate of insurance to the Workers' Compensation Commission. This is true even if a certificate of insurance is submitted one day after a claim is filed. Appellants failure to comply with this statutory requirement precludes any transfer of liability to the UEF.

S.C. Code Ann. § 42-1-415(B) reads: "To qualify for reimbursement under this section, the higher tier ... contractor ... must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected ... **at the time a claim is filed by the injured employee.**" S.C. Code Ann. § 42-1-415 (1976, as amended) (emphasis added). The statutory language should be interpreted based upon its literal and plain meaning. *See* Charleston County Sch. Dis. v. State Budget and Control Bd., 313 S.C. 1, 437 S.E.2d 6 (1993) (The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature); In re Vincent J., 333 S.C. 233, 509 S.E.2d 261 (1998) (Under the plain meaning rule, it is not the court's place to change the meaning of a clear and

unambiguous statute); Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) (Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning).

Claimant was injured on August 10, 2011. Claimant filed his claim on or about September 14, 2011. It was stipulated that Thompson did not turn over the certificate of insurance from JJS to the Commission until October 18, 2011, one month after filing and 3 months after the accident. Accordingly, the certificate of insurance from JJS was not turned over to the Commission for a total of thirty-four (34) days from the date the claim was filed. However, S.C. Code Ann. § 42-1-415(B) clearly and unambiguously requires a party in Appellants position to have submitted the certificate of insurance on September 8, 2011, because the certificate of insurance "must be collected ... **at the time a claim is filed by the injured employee**," which was September 14, 2011. Therefore, to find that Appellants acted in compliance with S.C. Code Ann. § 42-1-415(B) when it submitted JJS' certificate of insurance to the Commission thirty-four days after Claimant filed his workers compensation claim would impose another meaning not intended by the legislature when it drafted subsection (B). *See* Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995) (Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed, and the court has no right to impose another meaning).

Therefore, since the Commissioner correctly ruled that Appellants failed to submit the certificate of insurance in accordance with S.C. Code Ann. § 42-1-415(B), they are barred from shifting liability to the UEF.

V. THE PETITION TO TRANSFER LIABILITY IS PREMATURE.

Appellants argue that the petition to transfer liability to the UEF is not premature. Appellants claim that because all benefits due and owing to Claimant have been paid to date, and, further, because S.C. Code Ann. § 42-1-415 only requires payment of benefits presently due, the petition to transfer liability is not premature. However, this is incorrect because Claimant is receiving ongoing medical care that will require payment by Appellants, and thus, all health benefits of Claimant have not been paid to date, will be due, and were not current as of the time the Petition to Transfer was filed.

In Tillotson v. Keith Smith Builders, the South Carolina Court of Appeals explained that "[i]importantly, in keeping with the statutory employee doctrine, § 42-1-415(a) requires the upstream contractor initially **pay all benefits due** to the subcontractor's injured employee. The contractor may then petition to transfer responsibility of future payments to the Uninsured Employers' Fund." Tillotson v. Keith Smith Builders, 357 S.C. 544, 593 S.E.2d 621, 624 (S.C. Ct. App. 2004). On October 10, 2022, Claimant visited Dr. Robert B. Lowery of Roper St. Francis whereby a progress note was created. (Attached hereto as Exhibit "A"). In the progress note Dr. Lowery remarked that Claimant "is scheduled for neck surgery in the near future." This surgery is further evidence in an October 6, 2022, letter from Dr. Steven C. Poletti of the Southeastern Spine Institute. In Dr. Poletti's letter he discusses in detail the surgery and how it will be conducted. (Attached hereto as Exhibit "B"). Accordingly, it is readily apparent that Claimant's health benefits have not been paid to date and that future health benefits will be due because Claimant has an upcoming neck surgery for which payment will be necessary. Therefore, the petition to transfer liability to the UEF is premature because all of Claimant's

health benefits have not been paid to date, are still due, and are not current as of the time the Petition to Transfer was filed.

VI. IN ACCORDANCE WITH S.C. CODE ANN. § 42-1-415(B), CHRIS THOMPSON SERVICES WAS REQUIRED TO REVERIFY JJS TRUCKING' HAD PROPER DOCUMENTATION OF INSURANCE WHEN IT *ENGAGED* JJS TRUCKING AS ITS SUBCONTRACTOR FOR WORK COMPLETED ON AUGUST 10, 2011.

In pertinent part, S.C. Code Ann. § 42-1-415(B) states that documentation of insurance "must be collected at the time the contractor or subcontractor is engaged to perform work." Appellants argue that since the only job JJS ever performed for Thompson was hauling loads from a lumber mill in Summerville to a paper mill in Charleston and, further, the terms of the job never changed, Thompson met the statutory requirements under subsection (B) because documentation of insurance was collected by Thompson from JJS. Appellants argue Thompson engaged JJS in 2008, and that some ongoing contract was established that continued past the date of injury. There is no evidence of this ongoing contract, and the terms of the contract were never memorialized into a written contract, so every time Thompson engaged JJS as its subcontractor in hauling loads from a lumber mill in Summerville to a paper mill in Charleston, Thompson was required to reverify JJS had documentation of insurance because each job was a new engagement.

In Hardee v. McDowell the Supreme Court of South Carolina held that based on the express language of S.C. Code Ann. § 42-1-415(B), the phrase "engaged to perform work" meant that each time a subcontractor is hired to work, the general contractor must collect proof of workers' compensation insurance from the subcontractor, and that failure to collect such proof precludes a general contractor from transferring liability to the UEF. Hardee v. McDowell, 381 S.C. 445, 673 S.E.2d 813 (S.C. 2009). Specifically, the Court explained "[t]hus, if a contractor

enters into a contract to hire a subcontractor for one job in January and then enters into another contract to hire the subcontractor for a second job in February, the contractor should verify that the subcontractor still has insurance coverage at the time of the February hiring." Id. 381 S.C. at 453, 673 S.E.2d at 817. Appellants attempt to distinguish the holding in Hardee from the facts of this case by arguing that JJS was not hired for one job in **one location** in January and then a second job in **another location** in February. (emphasis added). However, the location of JJS's operations is not dispositive because the holding in Hardee is not contingent upon the location of where the subcontractor was engaged to perform work, just that the subcontractor was engaged to work on a separate date. Similarly, the fact the terms of the agreement between JJS and Thompson were never modified is not dispositive because the holding in Hardee is not limited to situations where the terms of an agreement remain consistent.

In his November 14, 2011, deposition, Sedric Smalls testified that Thompson "would provide a trailer ... and he pays me by the ton to carry each load." (APA p. 29) (Dep. p. 5, lines 22-24). Since no written agreement existed between JJS and Thompson, Thompson was required to collect a certificate of insurance from JJS every time it engaged JJS to perform work. Thompson testified at the hearing of May 15, 2012, and at no time does he define Thompson's relationship with JJS in any way other than piecemeal hauling of woodchips from a sawmill to a paper mill (Transcript of May 15, 2012, hearing, p. 48, l. 23-24, attached hereto as Exhibit "C").

In Hardee the Court cites *Blacks Law Dictionary* to derive the meaning of "to engage" as engaging someone for employment for wages or other payment. *See Blacks Law Dictionary* 570 (8th ed.2004) (defining "engage" as [t]o employ"); (defining "hire" as "[t]o engage the labor or services of another for wages or other payment"). To "engage" means "to engage someone for

employment", and this includes "to engage the **labor or services of another for wages or other payment**". Thompson paid JJS by the ton to carry each load, which occurred periodically in the three to four years Thompson used JJS as its subcontractor (Exhibit "C", p. 30, l. 4-6; p. 42, l. 7-8 . Each time Thompson hired JJS to carry a load, a new engagement was created such that Thompson was required to obtain documentation of insurance by JJS pursuant to S.C. Code Ann. § 42-1-415(B).

The Commissioner correctly ruled that Appellants are precluded from transferring liability to the UEF because each transaction was a new job which required Thompson to obtain documentation of insurance from JJS, and Thompson failed to obtain such documentation related to the August 10, 2011, subcontractor work of JJS.

CONCLUSION

Based on the foregoing, the Respondent, South Carolina Uninsured Employers' Fund, respectfully requests that Commissioner Wilkerson's May 15, 2023, Order be affirmed in its entirety.

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Charleston, South Carolina
August 18, 2023

BEFORE THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION'S APPELLATE PANEL

Samuel A. Rose, Employee/Claimant, -vs- JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company, Employer, and Bridgefield Casualty Insurance Co., Carrier, Appellants. ***IN RE: PETITION TO TRANSFER LIABLITY TO THE UNINSURED EMPLOYERS FUND***, S.C. Uninsured Employers Fund, Respondent.	W.C.C. FILE NO. 1112328 **REPLY BRIEF OF THE APPELLANTS CHRIS THOMPSON SERVICES & BRIDGEFIELD CASUALTY INSURANCE COMPANY**

The Appellants, Chris Thompson Services and Bridgefield Casualty Insurance Company, reply to the arguments raised in the Brief filed by the South Carolina Uninsured Employers Fund as follows:

I. The UEF's argument that the Appellants were required to file a Certificate of Insurance *simultaneously* with Rose's filing of his initial claim should be rejected by the Appellate Panel.

S.C. Code Ann. § 42-1-415 states that documentation of insurance "must be turned over to the commission *at the time* a claim is filed by the injured employee." (emphasis added). According to the UEF, the Appellants did not turn over documentation "at the

time" Rose's claim was filed, though the UEF's arguments have shifted over time. The UEF's Form 58 originally alleged that the Appellants did not "submit the documentation to the Commission until the following year, on or about January 24, 2012." However, at the Hearing before Commissioner Wilkerson, the UEF stipulated that the Appellants "turned over the certificate of insurance from JJS to the Commission by October 18, 2011."[1]

Despite acknowledging this stipulation in his Order, Commissioner Wilkerson inexplicably found that,

> "Thompson did not supply the certificate of insurance to the Workers' Compensation Commission 'at the time the claim was filed by the injured employee' as required by S.C. Code Ann. § 42-1-415(b) but turned it over 3 months later."

Since October 18, 2011, is only 34 days after the Form 50 was filed on September 14, 2011, the Appellants respectfully contend that Commissioner Wilkerson's finding of fact regarding the timeliness of the Certificate should be reversed. In its Brief to the Appellate Panel, the UEF offers no argument in support of Commissioner Wilkerson's finding in this regard.

Instead, the UEF now argues that the Appellants were required

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[1] The UEF also now claims that October 18, 2011, was "three months after the accident," even though the accident was on August 10, 2011. Applying the Gregorian calendar universally observed since 1582, it is not possible for "three months" to elapse between August and October.

> "to have submitted the certificate of insurance on September 8, 20211, because the certificate of insurance 'must be collected ... at the time a claim is filed by the injured employee,' which was September 14, 2011." (emphasis added).

The Appellants respectfully contend that it is wholly unreasonable to suggest that the Legislature intended for a putative employer to submit documentation in defense of a claim *before* it is actually filed or even served upon them.

Equally illogical is the UEF's argument that liability cannot be transferred

> "even if a certificate of insurance is submitted one day after a claim is filed." (emphasis added).

Respectfully, the plain language of S.C. Code Ann. § 42-1-415(B) – "at the time a claim is filed" – does not require documentation to be turned over simultaneously with the filing of a claim and only by resorting to improperly forced construction of this language could the Commission agree with this argument. *See* Sloan v. Hardee, 371 S.C. 495, 498, 640 S.E.2d 457, 459 (2007) (holding that words must be given their plain and ordinary meaning without resort to forced construction to the statute's operation). Had the Legislature intended to require a simultaneous filing at an exact moment in time, it would have employed more precise language (*i.e.*, "on the *same day* a claim is filed"), as it did elsewhere in the same statute (*e.g.*, "within thirty days of a determination").

While time is a concept with which some appear to have difficulty, the plain and ordinary meaning of the statutory language "at the time" can be most reasonably interpreted as a general period, rather than an exact date. By interpreting the statutory language to mean a general period of time, the Commission can avoid an absurd interpretation that could not have been intended by the Legislature. Clearly, the Legislature did not intend for an employer to file documentation simultaneously with an opposing party's filing of a claim because this would be virtually impossible to accomplish without clairvoyance (or gratuitous advance notice from the Claimant) and would necessarily nullify the statute entirely. *See* Purvis v. State Farm Mut. Auto. Ins. Co., 304 S.C. 283, 288, 403 S.E.2d 662, 666 (Ct.App.1991) (holding that a court must assume the legislature intended to accomplish something through an enacted statute and did not engage in futile action an rejecting an interpretation that rendered a statutory definition meaningless). Kiriakides v. United Artists Commc'ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (holding that the courts will construe statutes so as "to escape the absurdity and carry intention into effect").

Here, the Appellants supplied the Commission with the Certificate of Insurance promptly after the claim was filed and the Certificate was admittedly in the possession of the Commission and the UEF more than six months before the first hearing on the merits of the claim. Therefore, the Appellants respectfully contend that the Certificate was "turned over ... at the time a claim [was] filed by the injured employee" in accordance with S.C. Code Ann. § 42-1-415(B) because it was submitted during the pendency of the underlying claim by the injured employee, not during some later period when the petition to transfer is finally litigated. Because the UEF's interpretation of the phrase "at the time a claim is filed" is so plainly absurd that it could not have been

intended by the Legislature, and because Commissioner Wilkerson's finding of fact on this issue is otherwise arbitrary, capricious, and without any evidentiary support, the Appellants respectfully contend that the Appellate Panel should reverse the May 15, 2023, Order and enter its own findings and conclusions that the Appellants have met all requirements of S.C. Code Ann. § 42-1-415 for reimbursement and a transfer continuing liability to the UEF.

II. The UEF's arguments regarding the payment of medical benefits and the ripeness of the Petition to Transfer are without merit.

S.C. Code Ann. § 42-1-415 unambiguously permits the Appellants to "petition the commission to transfer responsibility for *continuing* compensation and benefits to the Uninsured Employers Fund." (emphasis added). Instead of admitting this plain language renders the Appellant's Petition ripe, the UEF argues that

> "it is readily apparent that Claimant's health benefits have not been paid to date and that future health benefits will be due ***because Claimant has an upcoming neck surgery for which payment will be necessary***. Therefore, the petition to transfer liability to the UEF is premature..." (emphasis added).

However, none of this is true. Not only have all of the Claimant's causally related medical expenses billed to date been paid by the Appellants, but the Claimant's neck surgery was actually performed nearly ten months ago on November 1, 2022, with the knowledge and consent of the UEF. In addition, the Appellants submitted Dr. Poletti's

post-operative report dated December 19, 2022, (describing the surgery performed on the Claimant's neck) into evidence at the hearing before Commissioner Wilkerson and this fact is also well known to the UEF. (APA #2, p.6).

Not only is the UEF's factual argument without merit, but so too is their legal argument on this issue. S.C. Code Ann. § 42-1-415 plainly states that the Appellants may "petition the commission to transfer liability for continuing compensation and benefits to the Uninsured Employers' Fund." By employing this language, "continuing compensation and benefits," the Legislature provided that if additional benefits should accrue after an initial provision of benefits, that liability for such "continuing compensation and benefits" could be transferred to the UEF. Any other interpretation of the statute would render the word "continuing" meaningless and violate the clear intent of the Legislature. *See* State v. Sweat, 379 S.C. 367, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd* 386 S.C. 339, 688 S.E.2d 569 (2010) (holding "a statute must be read so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous") (internal citations omitted). Even the UEF's Brief quotes the following from Tillotson v. Keith Smith Builders:

> "...§ 42-1-415(a) requires the upstream contractor initially pay all benefits due to the subcontractor's injured employee. The contractor may then **petition to transfer responsibility of future payments** to the Uninsured Employer's Fund." 357 S.C. 544, 593 S.E.2d 621, 624 (Ct. pp. 2004) (emphasis added).

Having paid all compensation benefits that could ever be due under the Workers' Compensation Act, and having paid all medical benefits that are currently "due" -- specifically including payment for the Claimant's surgery with Dr. Poletti on November 1, 2022 -- the Appellants respectfully contend that the Appellate Panel should reverse the May 15, 2023, Order of Commissioner Wilkerson to avoid such a plainly absurd result. The Appellants further contend that the Panel should order a transfer liability for "continuing compensation" and "future payments" to the UEF, as well as reimbursement to the Appellants for all medical and compensation benefits paid to date, in accordance with the plain language of S.C. Code Ann. § 42-1-415.

III. The UEF's argument that a Certificate of Insurance must be collected every day JJS Trucking hauls a load for Chris Thompson Services is untenable and should be rejected by the Appellate Panel.

The UEF claims, without evidence or authority, that "[s]ince no written agreement existed between JJS and Thompson, Thompson was required to collect a certificate of insurance from JJS every time it engaged JJS to perform work." The UEF goes on to suggest that "the fact that the terms of the agreement between JJS and Thompson were never modified is not dispositive." Respectfully, these arguments are without merit.

The record shows that JJS Trucking was "engaged to perform work," specifically hauling loads from a sawmill to a paper mill, by Chris Thompson Services in 2008. The "terms of the agreement" between Chris Thompson Services and JJS Trucking did not change over their three-year relationship because Chris Thompson Services

continuously operated under the same contract of hire until their relationship ended when it was discovered that JJS Trucking's insurance had lapsed. (APA pp.16—17, p.40, ll.14—17; 5/15/12 Hrg. T. pp. 48—49, p.58, pp.22—47). The fact that the contract was not a written contract is immaterial, as South Carolina has recognized the legality of parol employment contracts of indefinite duration since at least 1938. *See* McGehee v. S.C. Power Co., 187 S.C. 79, 196 S.E. 538, 541 (1938) (holding that "under all of the authorities ... a contract of employment for an indefinite period" was not subject to the Statute of Frauds and thus capable of enforcement).

Not only does the absurd construction adopted by Commissioner Wilkerson and advocated by the UEF violate the plain meaning of this language of S.C. Code Ann. § 42-1-415, but it also contravenes the holdings of our appellate courts relative to this language. For example, South Carolina Uninsured Employer's Fund v. House, 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004) stands for the proposition that a contractor does not have a continuing duty to check the validity of the subcontractor's insurance status after the subcontractor is "engaged to perform work" because that case involved "only one contract and one point of hire." Hardee v. McDowell, 381 S.C. 445, 453, 673 S.E.2d 813, 817 (2009). While the Supreme Court subsequently distinguished *House* in Hardee v. McDowell, it did so because the *Hardee* case dealt with "a contract to hire a subcontractor for one job in January and then ... another contract to hire the subcontractor for a second job in February," as opposed to the single contract and single point of hire at issue in *House*. According to the Supreme Court's clarification, "the phrase 'engaged to perform work' means each time a subcontractor is actually *hired* to perform work" because such an "interpretation comports with the usual understanding

of 'to engage' someone for employment." 381 S.C. at 453, 673 S.E.2d at 817 (emphasis original).

Applying this analysis to the facts of this case reveals the specious nature of the UEF's argument and Commissioner Wilkerson's legal conclusion. It is generally accepted that most employment contracts in South Carolina are not written contracts and even S.C. Code Ann. § 42-1-30 specifically states that contracts of hire can be "expressed or implied, oral or written." However, no reasonable person would it suggest that an oral contract of hire necessarily has a duration of only a single day. For example, the Claimant Rose was himself engaged under an oral contract of hire, yet no reasonable person would suggest that Rose was not "engaged to perform work" until the morning of his accident despite being hired five months earlier and performing the exact same services on a regular basis and under the same terms throughout the duration of that relationship. Yet this is precisely how the UEF and Commissioner Wilkerson suggest JJS Trucking's engagement to perform work for Chris Thompson Services should be construed[2] and this suggestion is no less ridiculous than the aforementioned example.

Like the subcontractor in *House*, supra, JJS Trucking performed services for Chris Thompson Services under "only one contract and one point of hire." Therefore, Chris Thompson Services did not have a continuing duty to check the validity of JJS Trucking's insurance status on a daily basis. The Appellants respectfully request that

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[2] The UEF's Brief (p.15) states "[e]ach time Thompson hired JJS to carry a load, a new engagement was created such that Thompson was required to obtain documentation of insurance...". Respectfully, there is no evidence to support this allegation. Instead, the evidence reveals that JJS was hired only once in 2008 and then continued to perform under the same contract of hire until it was terminated following Rose's accident.

the Appellate Panel reject the UEF's arguments, reverse and vacate the decision of Commissioner Wilkerson, and enter its own finding that documentation of insurance was properly collected at the time JJS Trucking was "engaged to perform work" and on a regular basis thereafter based on the uncontradicted testimony in the record. (*See* 5/15/12 Hrg. T. p. 50).

IV. The UEF's arguments regarding the "material elements" of S.C. Code Ann. § 42-1-415 are baseless.

The UEF argues that "S.C. Code Reg. 67-415(A)(2) cannot limit the required material elements necessary for proper documentation of a subcontractor's certificate of insurance pursuant to S.C. Code Ann. § 42-1-415." This certainly begs the question: what "material elements" does S.C. Code Ann. § 42-1-415 actually enumerate "for proper documentation" of insurance? The answer is that the language of S.C. Code Ann. § 42-1-415(B) only requires that documentation of insurance be "on a standard form acceptable to the commission" and otherwise does not contain any other "material elements." Therefore, S.C. Code Reg. 67-415 does not "limit" any "required material elements" of the statute, it defines them *in toto*, stating that "[f]or the purposes of Section 41-1-415" what the Commission has deemed "acceptable as documentation of insurance."

Furthermore, to the extent that Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009) might suggest that a description of operations or locations are required on a Certificate of Insurance for a South Carolina Employer, not only would such an interpretation necessitate the court's usurpation of the Commission's

discretionary authority,[3] but any such holding has since been superseded by the promulgation of the current version of 67-415 in 2010. The Workers' Compensation Commission, by virtue of their authority under S.C. Code Ann. § 42-1-415, promulgated S.C. Code Reg. 67-415, so as to require that a Certificate of Insurance need not contain a "description of operations" unless the employer is located out-of-state, and no such description is required in the case of a South Carolina employer.

Perhaps more importantly, the question before the Court in *Hopper* was whether "substantial evidence" supported the Commission's own finding of fact that the petitioner had not properly documentation insurance in South Carolina "on a standard form acceptable to the commission." In finding that substantial evidence supported the Commission's finding, the Court did not decide any question of law and did not otherwise purport to alter, amend, or supplement the requirements of S.C. Code Ann. § 42-1-415 or S.C. Code Reg. 67-415, as to do so would have exceeded the Court's authority.

In the case *sub judice*, there is no substantial evidence to support such a finding and Commissioner Wilkerson's May 15, 2023, Order does not even address S.C. Code Reg. 67-415. While the May 15, 2023, Order does vaguely reference *Hopper*[4], the operative facts of this case are clearly distinguishable. Instead of a Georgia subcontractor with a Georgia address, a Georgia certificate holder with a Georgia

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[3] *See* City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (holding that court cannot rewrite statutes and inject matters into it which are not in the legislature's language").

[4] Commissioner Wilkerson's Order makes no attempt to apply any law to the facts of the case.

address, a Georgia worker's compensation policy providing coverage for employees in Georgia, and a certificate of insurance that "has 'Georgia' on its face and ... no indication on the certificate ... that there was an all - states endorsement" as was the case in *Hopper*; the present case involves a South Carolina subcontractor with a South Carolina address, a South Carolina certificate holder with a South Carolina address, a South Carolina workers' compensation policy providing coverage for employees in South Carolina, and a certificate that repeatedly references "South Carolina" on its face -- without any reference to, or suggestion of, workers' compensation coverage in any other state. Respectfully, nothing about this argument is "misleading," as the UEF charges in its Brief, and nothing about the *Hopper* case prohibits the Commission from finding that the Certificate of Insurance presented in this case is "on a standard form acceptable to the Commission," because it meets all of the elements actually required by S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415.

Conclusion

Based upon the foregoing arguments and those contained their original Brief, the Appellants, Chris Thompson Services and Bridgefield Casualty Insurance, respectfully request review and reversal of Commissioner Wilkerson's May 15, 2023, Order on the basis that is not supported by the greater weight of the evidence or the applicable law, it is impermissibly vague, and it is otherwise affected by an unwarranted abuse of discretion and made in excess of authority. The Appellants respectfully contend that they have satisfied all requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 and therefore, request that the Appellate Panel issue an order transferring liability

for continuing medical benefits to the Uninsured Employers Fund, as well as requiring reimbursement for all compensation and medical benefits paid to date.

Respectfully submitted,

Kristen L Barr

August 23, 2023
Mount Pleasant, South Carolina

Attorney for Appellants
Trask & Howell, LLC

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BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1112328

Samuel Rose,

Claimant,

vs.

Chris Thompson Services, LLC, and JJS Trucking, LLC,

Employer,

and

Bridgefield Casualty Insurance Company, UEF, Travelers Indemnity, Carrier,

Defendants.

TRANSCRIPT OF PROCEEDINGS

May 15, 2012

This hearing was held before Commissioner Gene McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, 500 North Main Street, County Council Conference Room, Summerville, South Carolina, on Tuesday, May 15, 2012.

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THE COURT: Today's date is May 15, 2012. This is the case of Samuel Rose vs. Chris Thompson Services, LLC and JJS Trucking, LLC. The Workers' Compensation Commission File Number is 1112328. The claimant is represented by Joseph B. Fisher. The defendants are -- Amy V. Cofield is here on behalf of the UEF, Reid Warder is on behalf of Travelers Indemnity Company, and Kirsten Barr is representing Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company.

The date of the accident is August 10, 2011. We have an average weekly wage of $650 and a comp rate of $433. This is an admitted case. Are there any objections to jurisdiction, venue, or any APA submissions?

MR. FISHER: The only objection that I would raise, sir, my client has got some criminal history that was attached to Ms. Barr's brief and there's some misdemeanor charges on there and I would ask that the misdemeanor charges be struck from the record. I don't believe that they meet the standards to which they should be taken into consideration. I don't think they affect his credibility in any way, and I don't believe the misdemeanor charges were punishable by over a year in jail or a fine of $1500.

THE COURT: Ms. Barr, do you want to speak to

that?

MS. BARR: Yes, Your Honor. We did include the SLED report, it's APA No. 1, in part due to the fact that the delay in this matter was due in part to Mr. Rose's recent incarceration, but there's also contained in that arrest record crimes of moral turpitude which we believe would affect claimant's credibility. I don't have a problem redacting some of the minor offenses, but I believe it's within the discretion of you, Your Honor, to weigh and accord it the way you feel it is appropriate.

THE COURT: Okay. And that is -- that's what I'm going to do. I'm going to weigh it and give it whatever weight it's due.

MR. FISHER: Yes.

THE COURT: Any other objections?

MS. BARR: Yes, Your Honor. There is one late APA submission from the claimant. It is a medical report from Dr. Wildstein dated 12/14/11. I'm not sure how he's included it in his APA submission or what page number he's given it, but this was only served on the parties -- I received it on Friday. So we don't believe it meets the statutory -- the regulatory requirement of 67-6-12 because we weren't afforded the 15 day's notice of that report.

THE COURT: Mr. Fisher?

MR. FISHER: We didn't receive that report until late. We submitted it when we received it. I don't think it prejudiced any one in any way because Dr. Wildstein has other records that are part of this case. But all we're asking for, again, is a finding of compensability and, you know, treatment. But I don't think it prejudice any one in any way because they're aware that Dr. Wildstein has treated Mr. Rose in the past and I don't think it affects them in any way adversely.

MS. BARR: Your Honor, prior to Friday, the most recent record from Dr. Wildstein that had been submitted by the claimant is APA Page 44 and said, "I don't think he's currently a reasonable surgical candidate as most of his complaints are rather non-specific and out of proportion with his physical exam findings." The late APA submission says something quite different and recommends potentially surgical treatment. It does drastically change the nature of his opinions and would have been something we would have responded to if afforded the opportunity under the regulation.

THE COURT: Okay. Anything else from Ms. Cofield?

MS. COFIELD: Not on the APAs. No, sir.

THE COURT: Mr. Warder, anything else?

MR. WARDER: No, sir.

THE COURT: Where is that medical report?

MR. FISHER: Just one second, sir.

MS. BARR: Is it Page 56?

MR. FISHER: It's 56 and 57.

THE COURT: Mr. Fisher, do you disagree with Ms. Barr's assessment that it suggests something different than the earlier medical report?

MR. FISHER: Oh, yes, sir, I do. I do agree with her assessment, that it -- that it does. My client has been denied medical treatment by both of these parties ever since we started. We did the best we could with regard to getting him the treatment that we could get him. He hasn't had any money since we started this proceeding back in August. And I admit that that -- that it's late and it does change. But if the claim is found to be compensable, that's all we're asking for. We're not asking for a determination with regard to you ordering the surgery today. We're not asking for a determination with regard to anything other than, you know, a compensable claim right now. So if you want to remove that, I don't think -- I don't think that would prejudice us in any way.

THE COURT: Okay. Well, it's not timely, so it's out. All right. Anything else?

(No response.)

THE COURT: All right. The Commission file becomes part of the record with the exception of self-serving declarations and unstipulated medical reports.

Mr. Fisher, would you please state your client's position for the record?

MR. FISHER: Yes, sir. Samuel Rose was injured on August 10, 2011. He was an employee of JJS Trucking. JJS Trucking was a subcontractor to Chris Thompson Services. On August 10, 2011, he picked up a load of woodchips. He was taking the woodchips from a sawmill in Summerville to a paper mill in North Charleston. On his way there, another Chris Thompson truck that was behind him hit him, knocked him into a wall. Both vehicles burned up. They were totaled.

My client was injured. He was taken to MUSC. He was hospitalized for a period of time following the accident. He filed a workers' compensation claim alleging injuries to his head, knee, leg, back, the neck. We filed that with JJS Service -- JJS Trucking. Excuse me. We found out JJS Trucking didn't have any insurance, so we went upstream to Chris Thompson asking for them to pay his benefits. Benefits were denied.

My client started -- he's received $75 a week

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benefits since going back to the day he was hurt. His comp rate is $433.34 or $433. His medical bills from MUSC haven't been paid. None of his medical bills have been paid.

We're just set -- we're here today asking for you to find this to be a compensable claim award. His entitlement to medical treatment, payment of any medical bills that he's incurred as a result of this accident. We're asking for him to be compensated $433 a week back to the day that he got hurt because he hasn't worked since this accident occurred. And, of course, they would be entitled to a $75 a week credit for what they've paid. We're just looking for, again, you to find this compensable and award him the benefits that he deserves in accordance with the Act. Thank you, sir.

THE COURT: Thank you. Ms. Barr.

MS. BARR: Thank you, Your Honor, and thank you for your patience in allowing to get our positions on the record. It is true the claimant was a direct employee of JJS Trucking which is Chris Thompson Services, my client's subcontractor. We don't dispute that there was an accident as alleged on August 10 of 2011, although we do dispute the severity or permanency of those injuries and the need for future treatment.

But most importantly our position here today

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is that we believe we would be entitled to transfer liability to the South Carolina Uninsured Employers Fund under Statute 42-1-415 because JJS Trucking and its principal, Mr. Cedric Smalls, represented -- represented himself to Chris Thompson as having workers' comp insurance at the time he was initially engaged to perform work for and Chris Thompson Services and, thereafter, updated the Certificate of Insurance and that representation of coverage on an annual basis. On October 18, 2010, Chris Thompson Services obtained an ACORD Form 25 Certificate of Insurance showing that JJS Trucking was covered by a contract with workers' compensation issued by Travelers Insurance for the period from October 8, 2010 to October 8, 2011. And that's Page 39 of our APA submissions.

At no time prior to Mr. Rose's accident did JJS Trucking, Cedric Smalls, the Swamp Fox Insurance Agency which was the producer of this policy, Travelers or any other person or entity notify Chris Thompson Services that his coverage had changed or lapsed. And as required by Section 42-1-415, Chris Thompson Services and his insurance carrier, Bridgefield, have paid temporary total disability benefits since the date of accident and request as a part of their petition to transfer liability that the UEF reimburse these benefits to us. We believe

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that UEF has unreasonably denied the request and has submitted a return to the petition.

Now, the petition was originally filed back in January and the issues raised back as early as our Form 50 and again on a pre-hearing brief in November of 2010. But on a more recent return to our petition, the UEF claims that the statute places some obligation on Chris Thompson to -- to -- to update a representation of coverage because it does not contain a policy number, but simply lists that there is a binding insurance contract. We believe that the details of the coverage, including the coverage period, the coverage limits, the name of the insurer were all accurate representations of the coverage that was in fact written by Travelers. I believe Travelers -- and I'll ask Mr. Warder to speak to this, but that Travelers would stipulate that it insured JJS as of October 18, 2010, the date the Certificate of Insurance, due to a contract that initially covered the period from October 8, 2010 to October 8, 2011. Therefore the representations contained in that Certificate of Insurance at the time it was issued were correct despite the fact the policy later lapsed.

Would Travelers be in a position to stipulate to that fact?

MR. WARDER: The -- certainly Travelers gave

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the authority to Swamp Fox Agency to write insurance on their behalf. And at the time that the policy was created and inbound initially and a deposit was made, it was fully in effect and it was a valid policy. And therefore later on afterwards, due to non-payment, it was cancelled later on. But, yes, otherwise we would have no cancellation of anything or a policy in existence. They certainly had the authority of Travelers to write policies on their behalf because they're an insurance agent.

MS. BARR: For these reasons we believe that the certificate that we rely upon is a valid representation of insurance as required by 42-1-415.

The second argument the UEF raises is that the Certificate of Insurance is not proper documentation of insurance because it doesn't contain a description of operations. They cite the Hopper case and Regulation 67-4-15. Now, Hopper, which I believe you now have a copy of, has an important distinction that makes it not applicable to this case. And you will see that the court noted that this certificate, the certificate at play in Hopper, contained no information regarding the policy -- the coverage that the policy provided. And, in fact, the Certificate of Insurance we rely upon does contain a detailed description of the policy terms including the

policy period and policy limits and, therefore, we believe it is distinguishable.

Furthermore, Hopper dealt with an out-of-state employer or multi-state employer and the regulations add additional burdens for Certificate of Insurance for an out-of-state employer under 67-415, and the description of operations is required for an out-of-state employer. That's not an issue here. Mr. Cedric Smalls, JJS Trucking, is right here in North Charleston, South Carolina and -- and -- and has no multi-state operations. So we believe that that alleged deficiency does not defeat our ability to transfer.

The third issue they raise is that the Certificate of Insurance is invalid because they contest the authority of David Hayes. But as you've heard from Travelers's attorney, they don't dispute the authority of Swamp Fox Agency, the principal of which is David Hayes, to issue a Certificate of Insurance on their behalf.

Furthermore, there's no requirement under the statute or the regulations that we investigate the authority of the signator. We simply can rely on a reasonable representation of insurance and that's what we did. On the face of that Certificate of Insurance, it raises no red flag about the authority of the signator. We even took an extra step because my client didn't

obtain the certificate directly from JJS Trucking. They had it faxed to them directly from the producer of that policy, the Swamp Fox Agency, and you'll see at the top of the certificate the fax number there and that will be borne out by the testimony of my client.

The UEF also argues that we are not entitled to transfer of liability because they question the timing of the presentation of our Certificate of Insurance. 42-415 says that the certificate is to be turned over at the time a claim is filed. The claim was filed and we filed a Form 50 raising 42-1-415 as a defense. We served the certificate on November 4th of 2011, six and a half months ago. It was served again when we initially filed our petition to transfer liability in January and again when we had to renew our motion due to some recent scheduling difficulties.

The claim has yet to be adjudicated. The claim filed by Cedric Smalls is still pending. We haven't even determined that claim yet. So we believe that the certificate that's turned over six and a half months before the claim is even adjudicated for the first time is timely under the statute. The UEF seems to suggest that we need to show up at the Commission at the time that Form 50 was delivered in order to meet our burden, and I don't believe that's a justified

interpretation.

The UEF, their sixth claim is that we should have obtained a new Certificate of Insurance each time JJS pulled a load on behalf of Chris Thompson Services. This is certainly belied by the statutory interpretation of this case -- of this statute. JJS only performed one service for JJS, was engaged a single time to do a single service, and that's to go back and forth between two mills. The terms of this engagement never changed, and for that reason we did not need to continually update the certificate each time he pulled a load.

We believe that we have met all the requirements and we appreciate your consideration.

THE COURT: All right. Ms. Cofield.

MS. COFIELD: Yes, Your Honor. It's been a long established policy that a statutory employer bears the absolute liability to injured workers. Section 42-1-415 was a narrow exception whereas the employer could pass liability to the UEF. It must, therefore, be construed strictly. Recent case law that -- that we have discussed and that we've presented -- I have presented in my return has described further what some of these necessities to meet the statutory requirements are. One of those cases is Barton vs. Hicks, 674 Southeastern 2nd 145. In this case the only thing wrong with the

certificate was that it lacked a signature. One box was empty. Supreme Court ruled that that was not an acceptable form because there was no signature on it. The Court has taken the position that an employer cannot pass liability to the UEF by simply accepting a piece of paper without reviewing it and checking to make sure it's accurate thereby ignoring the information that appears on the certificate.

That in this case has been ignored in several ways. One, the description of operations box is blank. The Hopper case stands for the proposition that you can't have blanks on your certificate. Barton had a blank signature. This one has a description of operations that's blank. That case in nowhere stands for the proposition that that only applies to out-of-state employers. In that case there was an out-of-state employer, but that was not what the court relied on to rule that the certificate was invalid. They ruled upon the fact that it had not been filled out and the fact that the employer had failed to read it and see that it had not been filled out and to take proper steps to verify the information on the certificate.

Another problem with the certificate is it doesn't say anywhere that they have procured a policy. The only thing the certificate says is there's a binder.

A binder is only a temporary piece of coverage until a policy is issued. A binder cannot be expected to last for ten months into the period stated on here. As far as we know, the -- he never received another certificate that ever indicated that there was a policy of insurance.

We did raise the question about David Hayes's signature on this certificate. There has been no evidence presented until today, and all we have today really is that Swamp Fox Agency was authorized to issue the certificate. Normally what is required is that some evidence be given that David Hayes was a -- she called him a principal of Swamp Fox. I don't know that. I don't know who David Hayes is. There's nothing in the record and nothing in evidence to show David Hayes was an authorized agent to sign the certificate.

There is a problem with the timing of the presentation of the certificate because 42-1-415 provides, "Documentation must be turned over to the Commission at the time a claim is filed by the injured employee." I would say that turning a certificate over months later to the Commission is not at the same time.

Also raised is the question of whether or not they have met the requirements of 42-1-415(A) which says the upstream contractor must pay all the benefits due before requesting that liability be transferred. There

has not been an order. That is true. An order would establish all benefits due, then they should pay all benefits due, and then at that time they may petition to transfer liability. That issue makes this case premature as far as the transfer of liability.

Commissioner, I would rely further on the return that I have sent to you that outlines specifically further the arguments and case law that support my position.

THE COURT: All right. Mr. Warder.

MR. WARDER: Thank you, Commissioner. I'm here today on behalf of Travelers Indemnity Company, and we take the position that since the policy that was issued to JJS Trucking was effectively cancelled on February 5th of 2011, that we certainly have no liability whatsoever for the date of injury in this matter which is August 10th of 2011, over six months hater. I don't think anyone here is contending that we had an effective policy at that time. As I pointed out in our pre-hearing on Page 73 of my APA submissions, Swamp Fox Agency had received a notice of cancellation January 18th of 2011. Therefore, we would ask that we be released from this matter. Thank you.

THE COURT: Mr. Fisher, anything else?

MR. FISHER: No, sir.

THE COURT: All right. Ms. Barr, anything else?

MS. BARR: No, thank you, Your Honor.

THE COURT: Ms. Cofield?

MS. COFIELD: No, sir.

THE COURT: All right. Mr. Fisher, do you want to call your witness?

MR. FISHER: Yes, sir.

THE COURT: Mr. Rose, I'm going to swear you in here in just a second, and then I'm going to ask you to state and spell your full name for the record. I have two requests for you. One, please speak loudly enough so that the court reporter who is making a record of this hearing, all of the attorneys and I can hear you. And the second thing is if you are asked a yes or no question, please respond with yes or no. Don't say uh-huh or unh-unh. That can get confused in the record. And please don't shake or nod your head because especially in this dynamic it would be very difficult for her to take down. Okay.

THE WITNESS: Yes, sir.

(SAMUEL ARCHIE DELL ROSE, being duly sworn to tell the whole truth and nothing but the truth, testified as follows:)

THE COURT: Would you state and spell your

full name for the record, please?

THE WITNESS: Samuel Archie Dell Rose. S-A-M-U-E-L, A-R-C-H-I-E, D-E-L-L, R-O-S-E.

THE COURT: All right. Mr. Fisher.

DIRECT EXAMINATION

BY MR. FISHER:

Q. Mr. Rose, please try and speak as loud as you can. Where were you working on -- were you working on August 10, 2011?

A. Yes.

Q. And where were you working at?

A. For JJS Trucking out of Summerville at Keystone Lumber Mill.

THE COURT: Why don't you turn just a little bit so they can see you, at least a profile.

BY MR. FISHER:

Q. Where were you working at?

A. For JJS Trucking out of Summerville.

Q. Okay. And who owns JJS Trucking?

A. Cedric. Cedric Smalls.

Q. And how long had you worked there before August 10, 2011?

A. Between four and a half to five months.

Q. And what did you do at JJS Trucking?

A. Haul loads from Summerville to North

Charleston.
Q. And was that -- and when you say from Summerville, where at -- where did you start your trip at?
A. Keystone Lumber Mill to Westvaco in North Charleston.
Q. Did you drive anywhere else?
A. No.
Q. That was the only route that you drove the whole time you worked there?
A. Yes.
MS. BARR: Your Honor, I apologize for interrupting. We haven't yet put Mr. Smalls on the record.
THE COURT: This is true.
MS. BARR: I'm sorry, Mr. Rose.
MR. FISHER: We can go ahead and then we can go back if you would like.
THE COURT: Let's do that. Mr. Smalls, do you have a statement for the record?
MR. SMALLS: Yes, Your Honor. I wanted to state that as far as being properly --
(CEDRIC SMALLS, being duly sworn to tell the whole truth and nothing but the truth, testified as follows:)

THE COURT: Please state and spell your full name for the record.
THE WITNESS: Cedric Smalls. C-E-D-R-I-C. Smalls, S-M-A-L-L-S.
THE COURT: Go ahead, Mr. Smalls.
STATEMENT ON THE RECORD
MR. SMALLS: In regards of the matter on being properly notified of the lapse of insurance, I am stating that I was not properly notified. I also give in support of that that Mr. Chris Thompson is listed as additionally insured. From my understanding he was never notified of the lapse of insurance. There is a situation in my past to where one time my insurance was about to lapse and Swamp Fox had as Chris Thompson being -- knowing as additionally insured, contacted Mr. Chris. Mr. Chris contacted me immediately and the situation was rectified.
In this particular case, nothing of that sort ever happened. Mr. -- Mr. Thompson would have never allowed me to actually work that long of a period without being notified. We both have the same -- the same agent, which is Swamp Fox. I clearly believe that there was a mistake made in the notification of lapse. And I just wanted to go on record as stating that as far as JJS is concerned, at -- at this point in time, I believe that we were not properly notified.

THE COURT: Any of y'all have questions for Mr. Smalls?
MS. COFIELD: Not at this time. When we put him up to testify, we will.
THE COURT: All right.
MS. BARR: And, Your Honor, I believe Mr. Smalls, he previously gave a statement in his deposition that he was prepared to -- to appear on his own behalf without assistance of counsel.
THE COURT: Yes. You do know you are entitled to a lawyer?
MR. SMALLS: Yes, sir. I have been working on that matter. Yes, sir.
THE COURT: But you are appearing today without counsel?
MR. SMALLS: Yes, sir.
THE COURT: All right.
MR. SMALLS: Thank you, Your Honor.
THE COURT: Anything else before we go back to Mr. Rose?
(No response.)
THE COURT: All right. Mr. Fisher.
BY MR. FISHER:
Q. Okay. Mr. Rose, now, how long did you drive for JJS Trucking before August 10, 2011?

A. About four and a half to five months.
Q. Okay. And your route was what?
A. From Summerville to North Charleston. From Keystone Lumber Mill in Summerville to Westvaco in North Charleston.
Q. And was that the only route that you ever drove for Cedric Smalls --
A. Yes.
Q. -- JJS Trucking?
A. Yes.
Q. Okay. And let me see. And what did you haul?
A. Woodchips.
Q. Okay. And what happened on August 10, 2011?
A. As I was -- well, I was on my last run for the night from Summerville to Westvaco. I got on the interstate at Exit 199. I came up I-26. And as I approached Ashley Phosphate, I was rear-ended. The truck hit me -- well, I downshifted to go through the construction. There was construction going on at the time. I slowed up and I was rear-ended by a truck that was following me. I jackknifed. I hit the median wall. The trucks exploded and I passed out.
Q. Okay. And at the -- what happened after the accident? Did you go to the doctor?
A. I went to MUSC.

Q. And what were the problems you were experiencing physically whenever you went to MUSC?
A. My right knee was fractured, lower back pains, my neck was injured, and dizziness and problems with my left hand.
Q. Now, were you knocked unconscious as a result of this accident?
A. Yes.
Q. And after the accident did you report your accident and injuries to the supervisor?
A. Yes.
Q. And who is your supervisor?
A. Cedric Smalls.
Q. Okay. And after they sent you home from MUSC, did they -- did the doctors at MUSC make any appointments for you to continue treatment?
A. Yes.
Q. And where were those appointments made at?
A. On my discharge from MUSC, I was scheduled to go see an orthopedic surgeon and there was another doctor. I'm not sure. But I'm assuming that it was a neurologist, but both appointments -- both appointments was cancelled.
Q. Why were they cancelled?
A. No insurance.

Q. Okay. And did you tell them it was a work-related accident?
A. Yes, I did.
Q. And there was no workers' comp insurance that paid for that?
A. They said they needed the policy and without the policy number or -- they couldn't do anything without a policy number or approval.
Q. Okay. And nothing ever got approved?
A. Nothing was ever approved.
Q. After that, did you ever get any treatment after you left MUSC?
A. Yes.
Q. Where did you treat?
A. I went to a general practitioner, Dr. Abel. And from there I went to Tri-County Spinal Care for pain management. And from there I went to Dr. Wildstein, an orthopedic surgeon.
Q. Okay. And what did they treat you for, Dr. Abel, Dr. Wildstein, and the folks at Tri-County Spine?
A. My neck, my lower back, and my knee.
Q. And have you missed any time from work?
A. Yes.
Q. Have you worked since August 10, 2011?

A. No.
Q. And why is that?
A. The nerve damage that I have in my -- from my neck, back problems that I continue to have, dizziness, and numbness in my arm.
Q. Are you able to drive now? You drove a truck for a living. Are you able to drive now?
A. As long as I'm not on medication, I can drive, but not a truck.
Q. Okay. Do you have any idea how far you can drive now without having any physical problems?
A. Not far.
Q. Okay. Is there any way you could run the circuit that you used to run for Cedric Smalls in the condition you're in now?
A. No. The vibrations from the truck will -- I was told that it's going to do a little bit more damage to my neck.
Q. Okay. And what's the worst current problem that you have right now?
A. Neck pain, numbness in my arm, and lower back pain.
Q. Okay. How about your knee?
A. My knee is the only thing that I was told that's healed -- that's healing fine.

Q. Okay. And whenever your neck hurts, your back hurts, is there anything that alleviates the pain?
A. Well, I'm on medication for pain, but that's not really working. What I try to do is just about anything that will get my mind off the pain whether it's walking or just anything.
Q. Okay. And can you describe the pain that you feel in your neck to the Commissioner?
A. The base of my skull is still swollen. It's a throbbing headache. My left arm is numb. I have numbness and I feel my fingers. My lower back. If I stand too fast, I get dizzy. If I move too fast, it just starts hurting. If I stay in one position and one place, it's fine.
Q. Do you take any medication currently for your neck and your back pain?
A. Yes.
Q. And what do you take?
A. I'm on Viracept, Flexeril, Neurontin, and Elavil, as well as ibuprofen.
Q. And who is writing you these prescriptions for these medications?
A. My latest prescriptions came from Dr. Abel.
Q. Is it your understanding you're going to continue to take these medications into the near future?

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A. Yes.
Q. What is your understanding about any future medical needs you might have?
MS. BARR: Objection. Calls for hearsay.
MR. FISHER: I'm just asking his understanding, not what anyone --
THE COURT: What is your understanding?
THE WITNESS: My understanding is that I need -- I need surgery on my neck. The doctor called it --
MS. BARR: Objection. Hearsay.
MR. FISHER: You can't say what the doctor called. I just want what is your understanding.
THE COURT: What is your understanding.
THE WITNESS: My understanding is that I have a herniated disc in my back and neck. That's my understanding.
BY MR. FISHER:
Q. Okay. Do you have any understanding with regard to any future medical treatment?
A. Yes. My understanding is I need to see a neurologist, and I need the surgery on my neck to relieve the pain. And afterwards, then I'll get my back checked out.
Q. How were you paid whenever you were hauling

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for Cedric Smalls?
A. Weekly.
Q. And were you paid by the hour?
A. I was paid by the load.
Q. And how much is a load?
A. $25 per load.
Q. Okay. And who gave you the checks?
A. Cedric Smalls.
Q. Okay. Did Chris Thompson ever give you a check?
A. No.
Q. And do you have any understanding with regard to how Cedric Smalls was paid?
A. Yes. Chris Thompson --
Q. What is your understanding?
A. Chris Thompson would pay Cedric Smalls and he would pay us.
Q. And who was in -- you worked for Cedric Smalls, but who was in charge of the operation?
A. Chris Thompson.
Q. Okay. You said Chris Thompson?
A. Yes.
Q. And how do you know that?
A. I was told by Cedric Smalls that he is the boss and we work for him.

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Q. Did he tell Cedric what to do and what not to do?
A. To my knowledge, yes.
Q. Okay. Who serviced your truck?
A. The tractor was serviced by Cedric Smalls. The trailer was serviced by Chris Thompson.
Q. Okay. As you're sitting here today, do you think it would be in your best interest to have some more medical treatment?
A. Yes.
Q. And have you been -- what payment have you received since this accident?
A. I've received $75 per week from Bridgefield Casualty.
Q. And our records indicate that an average weekly wage for you would be around $650?
A. Yes.
Q. Does that sound about right?
A. Yes.
Q. Okay. And so your position you deserve TTD back to the day you got hurt minus the $75 a week you've already --
A. Yes.
MR. FISHER: Thank you, sir. I don't have any other questions.

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THE COURT: Ms. Barr.
MS. BARR: Thank you.
CROSS-EXAMINATION
BY MS. BARR:
Q. Mr. Rose, we met before. But, again, my name is Kirsten Barr and I represent Chris Thompson Services and their insurance carrier. No doubt about it the night you got hurt, you were working for JJS Trucking; is that right?
A. Yes.
Q. And since that time, who have you worked for?
A. No one.
Q. Have you attempted to work for anybody?
A. No, ma'am.
Q. Have you driven a car or a truck anywhere?
A. I have driven a car. And because of the medication I am taking, I have not driven a truck.
Q. You haven't tried to drive a truck?
A. I can't deal with the vibrations of a car, so I know I can't deal with the vibrations of a truck.
Q. Have you surrendered your commercial driver's license then?
A. No. I have my license, but my medical -- my DOT card, the doctor took that from me.
Q. Which doctor?

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A. Dr. Abel.
Q. Tell me Dr. Wildstein, this doctor you've gone to, how do you pay Dr. Wildstein?
A. To my knowledge, he hasn't been paid yet.
Q. So you've got an arrangement with Dr. Wildstein that you'll just pay him from whatever you can get out of this workers' comp claim?
A. It's my understanding, yes.
Q. And who sent you to Dr. Wildstein?
A. My lawyer.
Q. Do you recall that we had a hearing scheduled in your case a few weeks ago?
A. Yes, ma'am.
Q. And you were incarcerated at the time of that hearing?
A. Yes, ma'am.
Q. How long were you incarcerated?
A. Three weeks.
Q. And where were you incarcerated?
A. St. George.
Q. And why were you incarcerated in St. George for three weeks last month?
A. I was accused of stealing a 32-inch television, some bar stools, and a laptop. The police said that a witness observed me running across a parking

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lot running from an apartment across the street to my mom's car and putting it in the car. And the police said based on what their witness said that I did, that I was arrested.
Q. And then you stayed in jail for three weeks as a result of those allegations?
A. Yes. I was told that I could only be released by a circuit judge in St. George. I had to wait for the circuit judge to come.
Q. Did you have any medical treatment while you were incarcerated?
A. No.
Q. And you were cleared to be in the general prison population?
A. No, I was not cleared to be in the population. From the day that I got there, the nurse that I spoke with and she spoke to the doctors, they kept me in the front in the holding cell under 24 hour observation.
Q. But you didn't receive any treatment?
A. The only thing they gave me was pain management and they just kept me under observation. And they gave me a few of my medications, but they told me that I was not allowed to have narcotics while there.
Q. You're wearing a neck brace here today. Back when we took your deposition several months ago, you

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testified that you only wear a neck brace when you were driving a car?
A. Yes, ma'am.
Q. Has your neck problem gotten worse since then?
A. It's hurting. It's continuous. And I still wear my back brace. I still have it on now.
Q. A back brace?
A. Yes.
Q. Why aren't you doing exercises and therapy instead of wearing a brace?
A. The doctor told me the only exercise he wanted me to do was walking. Other than that, he told me to stay off my feet as much as possible.
Q. The cane, did you just buy that at a drugstore or something?
A. No.
Q. You paid for it, right?
A. Yes, I did. I was told by Dr. Abel to get it because of dizziness. And I fell once down the stairs. When I stood up, I use it for balance.
Q. When did you fall down the stairs?
A. Last year back in November and I fell again in January.
Q. When you fell down the stairs in November, where were you?

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A. At my mother's house.
Q. And how many stairs did you fall down?
A. About five.
Q. Five stairs. How did you land when you fell down the stairs in November?
A. I landed on the ground.
Q. I assume that hurt pretty bad?
A. Yes, it did.
Q. What did you injure when you fell down the stairs in November?
A. My back and my neck was hurt. I went to Dr. Kellett out of Tri-County Spinal Care. He gave me an epidural injection and a cortisone injection in the base of my skull.
Q. And he had to do that because you had fallen down the stairs?
A. To help me manage the pain. Once he got it back under control, I just kept doing what I was told.
Q. So the pain in your back and in your neck and in your arms was worse after you fell the down stairs at your mother's house in November of 2011?
A. Yes, it was worse.
Q. And you say you fell down a flight of stairs in January 2012 as well?
A. Yes.

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Q. Where were you when you fell down the stairs then?
A. At my mother's house.
Q. How many stairs did you fall down in January?
A. About five or six.
Q. And how did you land when you fell down the stairs in January?
A. On the ground.
Q. I mean, what part of your body hit the ground?
A. My knee.
Q. Which knee?
A. Both my knees.
Q. What did you injure when you fell down the stairs at your mother's house in January of this year?
A. I irritated my back.
Q. Your low back or your neck or both?
A. Yes, both.
Q. And did you have to get some medical treatment or some medication to deal with the injuries you sustained or the worsening of your symptoms as a result of that fall in January?
A. I already had the medication. I told Dr. Abel about it. I took -- at the time was on Lortab and Oxycodone, and I took that at the time.
Q. Your symptoms were worse after you fell that

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second time at your mother's house?
A. It hurt as well.
Q. Have you fallen down any other flights of stairs or fallen anywhere else?
A. No, ma'am.
Q. Have you had any other accidents or injuries since August of 2010?
A. No, ma'am.
Q. No. Just the two falls down the stairs at your mother's house?
A. Yes.
Q. Were those carpeted stairs or hardwood stairs or --
A. Carpeted.
Q. Were you wearing shoes when you fell either of those times?
A. Slippers.
Q. And as we're here today, I don't believe -- you don't have a slip from any doctor excusing you from work at this point in time, do you?
A. I have one from Dr. Abel. It said no work.
Q. You don't have one here with you today --
A. No.
Q. -- saying you can't work at this time?
A. I gave the slip to my lawyer.

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MS. BARR: Okay. That's all the questions I have for you, Mr. Rose. I appreciate it.
THE COURT: Ms. Cofield.
MS. BARR: It appeared Mr. Smalls -- I don't know if he had a question for Mr. Rose.
THE COURT: Sure. Mr. Smalls, you're pro se.

CROSS-EXAMINATION

BY MR. SMALLS:
Q. At the accident, how long were you passed out?
A. I was told by the EMTs that I was in and out. I was awake long enough to notify you and I called my mom and that was afterwards.
Q. I recall that at the scene, I gave the state troopers all the insurance information at the scene. I also came to the hospital to provide additional insurance information at the time. I recall you stated they wouldn't -- they wouldn't do any surgery on you at that time because of lack of insurance information?
A. Right. They needed policy numbers.
Q. When you were released from the hospital, did the hospital give you a time frame in which they felt that you would be able to perform your work tasks?
A. They told me I needed to speak to -- well, I needed to go to an orthopedic surgeon and they scheduled the appointment to go to the orthopedic surgeon and that

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got cancelled twice. They gave me another appointment to see a neurologist, and that was cancelled as well. And then MUSC sent a physical therapist to the house, and that was cancelled by Dr. Abel.
Q. Okay. So when you were released, they never gave you a time frame in which they felt like you would be able to go back to work?
A. They told me not until the doctor releases me.
Q. Were you hired from JJS Trucking as an employee or a subcontractor yourself?
A. Contractor.
Q. When it came time for you to take your loads, did Cedric Smalls tell you when to take your loads or did you contact the actual loader spreader and you would come into work based on work at the mill?
A. I came based on my schedule at the mill in the afternoons, went to the loader spreader, got the loads, took the loads to North Charleston.
Q. So -- so Cedric Smalls himself never told you when to go or start work?
A. He only told -- well, Cedric Smalls only told me to work 12 hours from the time that I start and -- just 12 hours from that time. No more.
Q. Did you ever sign a document stating that you were a subcontractor, not an employee?

A. The only documents I've signed was an application.
MR. SMALLS: I don't know -- I don't know procedure, Your Honor, but Mr. Samuel Rose signed an owner driver obligation. And in that owner -- owner obligation contract it states that he was to obtain his own workers' comp if it was deemed necessary because he was actually signed on from JJS Tucking as a subcontractor. That's why he picked his own loads. He – he decided actually when he went to work, and I just wanted that to be a matter of record.
MR. FISHER: I would object unless you have a copy of that.
THE COURT: Do you have a copy of that?
MR. SMALLS: I do. It has his signature on it as well. And I also gave this document at a hearing previously.
THE COURT: Any other questions, Mr. Smalls?
MR. SMALLS: No, Your Honor.
THE COURT: All right. Ms. Cofield.
CROSS-EXAMINATION
BY MS. COFIELD:
Q. Mr. Rose, you testified a minute ago that you thought of yourself as a subcontractor, not an employee; is that correct?

A. A subcontractor for Chris Thompson working for JJS.
Q. What was your relationship with JJS? Were you a subcontractor for JJS or an employee?
A. I believe I was an employee. I worked for JJS Trucking.
Q. Okay. And you were paid per load?
A. Yes, ma'am.
Q. And your loads varied each week; is that correct?
A. Yes, ma'am.
Q. And no taxes were taken out of your check?
A. No, ma'am.
Q. And, in fact, you were given a 1099 at the end of the year, correct?
A. I have not received a 1099.
Q. Okay. Did Mr. Thompson know you were getting medical treatment?
A. Not -- I have never spoke with Mr. Thompson about my -- any treatment.
Q. Okay. When your deposition was taken in November of 2011, did you not testify that you were getting medical treatment?
A. Yes. I testified that I was being treated by Dr. Abel, Dr. Kellett, and Dr. Wildstein.

Q. Since that time has Bridgefield or Mr. Thompson offered to pay any of your medical bills?
A. I have not spoken with Mr. Thompson.
Q. Have any of your medical bills been paid?
A. Nothing has been paid.
Q. Thank you.
MS. BARR: Your Honor, we would stipulate if you found past medical bills casually-related to this accident, Bridgefield would pay medical bills that you believe are due and owing in an effort to expedite the transfer of liability.
BY MS. COFIELD:
Q. Mr. Rose, when you were arrested last month on April 12th, were you using your cane?
A. No, I didn't have my cane. No.
Q. Were you on your Oxycodone or other medications?
A. Yes, ma'am.
Q. Did you get those medicines while you were in jail?
A. They were brought to the jail, but I was told that I couldn't have a Schedule III narcotic. They gave me the Neurontin, the Viracept, the Flexeril, the ibuprofen, and Tylenol.
Q. That's what you took in jail?

A. Yes, ma'am.
MS. COFIELD: Okay. That's all I have for you.
THE COURT: All right. Mr. Warder.
MR. WARDER: I have no questions of this witness at this time, Your Honor.
THE COURT: All right. Anything further?
MR. FISHER: Yes, sir.
REDIRECT EXAMINATION
BY MR. FISHER:
Q. Mr. Smalls stated that you had signed a document and I just looked at it. Did he ever tell you that you needed to buy your own workers' compensation insurance?
A. No.
Q. Never told you that?
A. No.
MR. FISHER: Okay. Thank you.
THE COURT: Any other questions for this witness, Mr. Smalls?
MR. SMALLS: No, Your Honor.
THE COURT: Ms. Barr?
MS. BARR: Your Honor, just briefly. The document that was presented by Mr. Smalls, it's marked as Exhibit No. 1?

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THE COURT: It will be.
MS. BARR: Or will be.
RECROSS-EXAMINATION
BY MS. BARR:
Q. Mr. Rose, this is your signature on Page 2 of this owner driver contract?
A. Yes, ma'am.
Q. All right. And that's your signature dated April 28, 2011?
A. Yes, ma'am.
Q. That was prior to this accident that you were involved with. Right. And you agreed to the obligations as outlined of the driver's obligations under this contract?
A. Yes, ma'am. I never made over -- I never made over a thousand. The minimum amount it says is 1,000 per week and I never made that.
Q. Okay. And it says that you were responsible for keeping your truck in a responsible and clean manner?
A. Yes, ma'am.
Q. All right. And you were also responsible for any fines due to your own negligence?
A. Yes, ma'am.
Q. And you were responsible for all state and federal taxes?

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A. Yes, ma'am.
Q. And you were also responsible for your workers' comp insurance when applicable?
A. That's what it says. Yes, ma'am.
Q. And this was the agreement you signed on April 11th -- or April 28th of 2011?
A. That's what it says.
MS. BARR: Thank you.
THE COURT: Anything further, Ms. Barr?
MS. BARR: Nothing, Your Honor. Thank you.
THE COURT: Ms. Cofield?
MS. COFIELD: No, sir.
THE COURT: Mr. Warder?
MR. WARDER: No, Your Honor.
THE COURT: All right, sir. You may step down. Before we go any further, several of you have referred to depositions taken of Mr. Rose and Mr. Smalls. I do not see either of those in the file. Should they be here?
MS. BARR: Your Honor, I think both are contained in my APA submissions.
MR. FISHER: This is the original of Cedric Smalls.
MS. BARR: And here is Samuel Rose. That lightens my load.

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THE COURT: All right. Other witnesses, Mr. Fisher?
MR. FISHER: No more witnesses, sir.
THE COURT: All right. Ms. Barr?
MS. BARR: Your Honor, I have one witness, Mr. Chris Thompson, and he's asked for a momentary adjournment if you would allow.
THE COURT: Certainly.
(Exhibit No. 1, Owner Driver Contract, was marked and entered into evidence.)
(Off the record.)
MS. BARR: Mr. Chris Thompson.
THE COURT: I'm going to swear you in, and then please state and spell your full name for the record. Speak loudly enough so everyone can hear you.
THE WITNESS: Christopher A. Thompson.
THE COURT: Hold on, hold on. You're getting ahead of me. And then if you're asked a yes or no question, answer yes or no and not uh-huh or unh-unh. Don't shake or nod your head. Please say yes or no if it's a yes or no question.
(CHRISTOPHER A. THOMPSON, being duly sworn to tell the whole truth and nothing but the truth, testified as follows:)
THE COURT: Would you state and spell your

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full name for the record, please?
THE WITNESS: Christopher A. Thompson. C-H-R-I-S-T-O-P-H-E-R, A, T-H-O-M-P-S-O-N.
THE COURT: All right. Thank you. Ms. Barr.
DIRECT EXAMINATION
BY MS. BARR:
Q. Thank you, Mr. Thompson. Tell us where you're employed, where you do business?
A. My office is in Berkeley County, Summerville, South Carolina. We do business for a trucking company. We do business from Summerville to North Charleston.
Q. All right. And what's the name of your business?
A. Chris Thompson Services, LLC.
Q. And what is your role at Chris Thompson Services, LLC?
A. I reckon from CEO to janitor.
Q. Okay. And back in August of 2011, was JJS Trucking a subcontractor for Chris Thompson Services?
A. Yes, ma'am.
Q. And what did you engage JJS Trucking to do for you?
A. Aid in hauling the woodchips from Summerville Sawmill at SC-78 to North Charleston paper mill.
Q. Did you ever engage JJS Trucking to perform

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any other subcontract work for you?
A. No, ma'am.
Q. Who owns JJS Trucking?
A. Cedric Smalls.
Q. Do you know how many employees or subcontractors JJS Trucking may have had?
A. No, ma'am.
Q. Do you know if they had more than one office?
A. No, ma'am.
Q. Do you believe they did have more than one office?
A. No, ma'am.
Q. And did, to your knowledge, JJS Trucking operate anywhere other than the State of South Carolina?
A. No, ma'am, not to my knowledge.
Q. When did JJS Trucking start doing work for Chris Thompson Services?
A. Approximately around 2008.
Q. Okay. And at the time you engaged JJS Trucking, did you inquire as to whether or not they had workers' compensation coverage for their employees?
A. For their employees, no, ma'am. JJS -- Cedric Smalls provided Chris Thompson Services with a certificate of workman's comp. Now, did I check the depth of that policy or the parameters of that policy?

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No, ma'am, that's not something I was privileged to.
Q. But at the time you first hired JJS Trucking, you were presented by JJS Trucking with a Certificate of Insurance showing that they had workers' compensation coverage?
A. Yes, ma'am. JJS always provided workman's compensation coverage -- workman's compensation policy that JJS was covered.
Q. And why did you get that certificate? Why -- why did you have to get a Certificate of Insurance from JJS? Was that a policy of yours?
A. Yes, ma'am. Because I also have workman's comp coverage and I'm required to verify that everyone else who works for me has workman's comp or I have to pay -- or I have to pay additional premiums to my workman's comp policy.
Q. Now, did you -- after you first hired JJS Trucking or engaged them to work for you, did you ever request any updated documentation of their workers' compensation insurance coverage?
A. Once a year.
Q. And why did you do that once a year?
A. Policy -- the existing policy would expire and we would have to issue a new policy.
Q. We have submitted a document that's page -- in

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the APA of our submissions. We have submitted this document into evidence entitled, "Certificate of Liability Insurance." Are you familiar with that document? It's my 39.
A. Yes, ma'am, I am.
Q. And do you recall approximately when you received that document?
A. Judging from the date on the document, October the 18th.
Q. Of 2011?
A. 2010.
Q. 2010. And who is listed as the certificate holder for that Certificate of Insurance?
A. JJS Trucking, LLC.
Q. That's the insured or the certificate holder?
A. Certificate holder is Chris Thompson Services, LLC.
Q. Okay. And who -- from whom did you obtain this Certificate of Insurance?
A. Come faxed from Swamp Fox Agency.
Q. Had you done business with Swamp Fox yourself through Chris Thompson Services?
A. Yes, ma'am, since about 2002.
Q. So when you -- you knew that they were the agent for JJS Trucking?

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A. Yes, ma'am. And had been for quite a while.
Q. Okay. And there's a signature at the bottom of that Certificate of Insurance. Who signed that Certificate of Insurance?
A. Appears to be David Hayes.
Q. And do you know who David Hayes is?
A. Yes, ma'am. He owns Swamp Fox Insurance Agency.
Q. Now, after you received the Certificate of Insurance from Swamp Fox Agency, did you take any further actions to verify the insurance coverage that's indicated on that form? Did you speak with anybody at Swamp Fox?
A. Yes, ma'am. I spoke with Greg Hudson. That was my CSR. And I spoke with him and asked him just in conversation, you know, got the certificate, everything is good to go. He said everything is good to go, you're covered.
Q. Did you have any reason after you had reviewed that certificate and spoken with folks at Swamp Fox to question whether or not JJS Trucking had workers' compensation insurance at the time you received that certificate? Did you have any reason to suspect that --
A. No, ma'am. No, ma'am. I got a certificate which was good enough, and I verbally spoke with Greg Hudson and he told me that Cedric was good to go. Those

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were his exact words, good to go.
Q. So after you reviewed that Certificate of Insurance, did you believe that JJS in fact had workers' compensation coverage through Travelers Insurance as of October 18, 2010?
A. Yes, ma'am.
Q. And what was the coverage period for that insurance through Travelers?
A. October 8, 2010 until October 8, 2011.
Q. Now, could you tell from that Certificate of Insurance what the policy limits were for that workers' comp policy?
A. Yes, ma'am. $500,000.
Q. And could you tell who the company was who insured JJS Trucking for purposes of workers' compensation?
A. Yes, ma'am. It would be Travelers Insurance.
Q. At any time prior to Samuel Rose's accident in August of 2011, did anyone -- anyone with JJS or Swamp Fox or Travelers or anyone else at all ever give you any reason to believe that Mr. -- JJS Trucking did not have insurance coverage as described on that Certificate of Insurance?
A. No, ma'am.
Q. At any time prior to the accident in August of

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2011, did you -- were you given any reason to believe by any person at all that JJS Trucking's workers' comp insurance had lapsed?
A. No, ma'am.
Q. Now, it's my understanding that after the accident, you were informed by your own insurance company that there had been a lapse in JJS's policy; is that correct?
A. Yes, ma'am. It took almost until middle of September, that's the best I can recall at the time, middle of September, maybe even beginning of October, before I was actually positively told that he didn't have insurance. The first hint of it I called Mr. Smalls and Mr. Smalls verified, yes, I do have it. I had documentation showing that he had it. We were both -- and I believe I was the one that actually informed Mr. Smalls that -- that it was found that his policy had expired. It was a shock to both of us.
Q. So you believe that Mr. Smalls at least sincerely believed that he had continuous workers' compensation coverage through the date of the accident?
A. Yes, ma'am, I do.
Q. But you now know that that's not -- that was not true, that the policy had in fact lapsed?
A. I've been told the policy had lapsed. I still

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believe that Mr. Smalls did not know.
Q. And after -- after you learned of the lapse in JJS Trucking's workers' compensation insurance, you said you spoke with him, but did you take any further action with regard to your relationship with JJS Trucking?
A. Yes, ma'am. I stopped him immediately. I stopped him within the hour. I called him and told him I needed to meet with him immediately, not to haul -- not to load his trucks anymore under my -- my company. And he met with me and I explained to him what was going on. I verified and I can only do -- CTS can only do business with JJS Trucking until such time as he obtained proof of workman's comp coverage.
MS. BARR: Thank you very much, Mr. Thompson. I'm sure that the other attorneys may have questions for you as may well the Commissioner.
THE COURT: Mr. Smalls has a question. Are y'all comfortable with him asking him questions?
MR. FISHER: Certainly.
MS. COFIELD: That's fine.
THE COURT: All right. Mr. Smalls.
CROSS-EXAMINATION
BY MR. SMALLS:
Q. Mr. Chris Thompson, as being the certificate holder, can you think of a time in the past when an

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insurance company informed you of an -- let me make sure I say this right. You being a certificate holder, in the past was your company ever notified when a subcontractor's insurance might have been about to lapse?
A. Yes, sir. I've been notified in the past at times that I've had other subcontractors that insurance had been cancelled and you've been notified immediately, and there's been times in the past where CTS doing business with JJS Trucking it got to a time where it was extremely close. I do not know the reasons or the circumstances behind it, but it was in danger of lapsing in a couple of days. Swamp Fox notified me, gave me ample notice. I in turn notified Cedric Smalls, and Cedric Smalls brought his insurance back into compliance before any lapse ever happened. So I felt very confident with Cedric because in the past when we have gotten into rocky cases, he has done the right thing.
Q. The question is, procedure and notification. So you believe it is a procedure to be notified of a possible lapse of an insured?
A. In the past how I've been notified -- I cannot state the South Carolina laws of notifications. But in the past the way I've been notified is an immediate fax from the insurance agency followed up by a registered letter coming certified mail.

Q. Okay.
A. Neither one I received from JJS Trucking or from Swamp Fox Agency nor from Travelers nor from anyone. Had I received any notification, Mr. Smalls would not have been pulling and he is fully aware of that. He would not have been pulling for Chris Thompson Services had any -- any hint of workman's comp been cancelled.
MR. SMALLS: Thank you.
THE COURT: That's it?
MR. SMALLS: Yes, Your Honor.
THE COURT: Okay. Ms. Cofield.
CROSS-EXAMINATION
BY MS. COFIELD:
Q. I'm going to show you again it's that same thing you have in front of you. It's the certificate dated October 18, 2010. I'm going to be referring to that in just a second. Okay?
A. Yes, ma'am.
Q. How many subs do you use in your business?
A. Now or in the past?
Q. Both.
A. Now, none.
Q. In the past?
A. In the past, I've had up to approximately four or five at one time. The aggregate total has been

probably ten to 12, maybe 15.
Q. And I think it was your testimony that you always require your subs to provide you a Certificate of Insurance?
A. Yes, ma'am.
Q. And how long did JJS Trucking perform services for you?
A. Best I can recall from 2008 until approximately September/October of 2011.
Q. Okay. And it's your testimony I believe, too, that he always provided you a Certificate of Insurance; is that correct?
A. Yes, ma'am.
Q. Because if he hadn't, you wouldn't let him work?
A. Yes, ma'am.
Q. Where do you keep your certificates?
A. In my file in my office at my house.
Q. Okay. So if I subpoenaed from you all the certificates you have for JJS, would you have one for each year he's performed services for you?
A. No, ma'am, probably not. We're not required to keep them once the certificate gets outdated. It's no longer a benefit. Generally it's purged.
Q. So when you get a new one, you purge the old

one?
A. Generally, yes, ma'am.
Q. Okay. Do you take an opportunity to look at and read the certificates when you get one?
A. Yes, ma'am.
Q. Well, when you look at this certificate here that you have there dated October 18th, is there any description in the description of operations box?
A. No, ma'am, there's not.
Q. And when you look at the automobile liability on here, it gives you a policy number, doesn't it?
A. Yes, ma'am, it sure does.
Q. When you look at the workers' comp section, there is no policy number, is there?
A. No, ma'am. It says binder.
Q. It says binder.
MS. COFIELD: I have another certificate that was also in her brief, Your Honor, dated September 29, 2011. It's in there too, I believe, but you can look at mine. Is that in your brief?
MS. BARR: No, it's not.
MS. COFIELD: It's not?
MR. FISHER: What is it?
MS. COFIELD: I'm going to mark this one.
THE COURT: Show it to Mr. Fisher.

(Exhibit No. 2, Certificate of Insurance, was marked and entered into evidence.)
BY MS. COFIELD:
Q. I'm going to show you what they've now marked as Exhibit No. 2, a Certificate of Insurance whereas the insured is JJS Tucking, LLC. Certificate holder is Chris Thompson Services, LLC. Looks like it was faxed that same day, September 29, 2011. You would agree with me that September 29, 2011 is sometime after the claimant's accident in this case?
A. Yes, ma'am.
Q. And you would agree that this certificate shows an actual policy number?
A. Yes, ma'am.
Q. Okay. Why did you receive this -- this certificate if you had already released JJS from your services?
A. Personally I don't know exactly the date I released him of his services. He might have still been -- he might have still been at this time. I don't know. I'd have to double check. I don't know the exact date of the last time that he pulled a load for CTS. Down here it says it's a revised certificate.
Q. Stop right there. Stop right there. You testified as soon as you found out about the accident,

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you found out there was no insurance and you let him go?
MS. BARR: Objection.
THE WITNESS: No, ma'am, I did not. That's incorrect.
BY MS. COFIELD:
Q. Well, tell me what you said.
A. I said that at the time of the accident, everyone assumed -- everyone was under the belief -- or the assumption -- was fully belief we had workman's comp coverage. It took until sometime in -- sometime in September or October, I'm a little fuzzy on the time frame, for Bridgefield Casualty to tell me that Cedric Smalls's insurance -- and that was the first person that actually could positively tell me. I called Swamp Fox and I asked them. Swamp Fox said as far as they knew, it was in effect. Bridgefield Casualty is the first person to actually tell me, no, JJS Trucking's policy was not in effect.
Q. So which of them did you rely on before you quit using JJS?
A. The only person that could tell me -- the first time I was told by Bridgefield Casualty -- the first time I was told pointblank without any doubt that JJS workman's comp policy is not in effect. We have researched it. He does not have a valid policy. At that

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point when I hung up the phone, I immediately called Cedric Smalls's number and immediately stopped him from hauling at that point right then. That was the first time. Swamp Fox, everyone else I spoke to still said as far as we know, he has workman's comp, we'll have to look into it. And I -- and I -- as far my documentation showed that he had it. So until I got positive evidence that said that he didn't have it, everything I showed, showed that he had it.
Q. So you kept using JJS for some weeks then after the accident?
A. Yes, ma'am.
Q. Okay. Why did you get this -- this certificate?
A. I don't really know.
Q. Okay. And you would agree with me that on the workers' comp section here, it at least gives a policy number this time, correct?
A. Yes, ma'am, it does.
Q. Okay. Do you know the difference between a binder and a policy?
A. Yes, ma'am.
Q. Tell me the difference.
A. My understanding is the difference is when a policy is issued for workman's comp, that the policy is

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bound. It's a legally binding policy that you have workman's coverage is in effect and that it has not gone to the agent, been processed through the actual underwriter, and a policy number issued and sent back. I also know there's -- and I don't really understand how this works. Once again, I'm a truck driver, not an insurance agent. My understanding is that there's also a workman's comp pool that sometimes that have to get signed and I have had binders that I've had for six to eight weeks, nine, ten weeks before a policy has been issued.
Q. Have you ever had one that lasted ten months?
A. Yes, ma'am. That one right there.
MS. COFIELD: Exactly. All right. Thank you. I have no more questions.
THE COURT: All right. Mr. Warder?
MR. WARDER: Your Honor, I really don't have any questions for this witness.
THE COURT: All right. Mr. Fisher?
MR. FISHER: No questions, sir.
THE COURT: Anything else, Ms. Barr?
MS. BARR: Just briefly.
REDIRECT EXAMINATION
BY MS. BARR:
Q. Mr. Thompson, when you initially reviewed the

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Certificate of Insurance dated October 18, 2010, APA Page 39, did you notice that it said binder instead of specifying a policy number?
A. Yes, ma'am. Every -- every single workman's comp policy says binder when you first get it. There is a time lapse.
Q. All right. You needed it quickly after this policy started. And what was the date of the -- the period of this coverage that's represented on the certificate?
A. 10/08/2010.
Q. And what was the date of the certificate?
A. 10/18/2010.
Q. So ten days later would you have expected or thought it unusual to not have an actual policy number?
A. I would have thought it more unusual to have a policy number than to be binder. Binder is what should be expected on all new policies for workman's comp.
Q. Simply because it says binder there instead of listing a series of letters and numbers, did that cause you to question whether or not Cedric -- JJS Trucking was covered for the purposes of workers' compensation as stated on this Certificate of Insurance?
A. No, ma'am.
Q. So you believed he was in fact covered?

A. Absolutely.
Q. And based on what you've heard here today, is it your understanding that Travelers actually did cover him for the purposes and as indicated on the Certificate of Insurance until the policy lapsed sometime in January or February of 2012?
A. Yes, ma'am.
Q. And, again, after you received this, not only did you review it, you actually called the Swamp Fox Agency, the producer of this policy?
A. Yes, ma'am. Swamp Fox Agent Greg Hudson is my agent and is also Cedric Smalls's agent and a lot of things happened verbally, you know, conversations about insurance that CTS had. We have several different lines of insurance with them. I was on the phone with Greg Hudson. Did I call -- have any reason to call Greg Hudson and verify that certificate individually? No. While I was on the phone with him, I brought up Cedric Smalls, and he said Cedric Smalls is good to go. His insurance is great. And I believe -- I fully believe that if Swamp Fox had any knowledge, I certainly hope they would have notified Cedric Smalls and myself with a simple phone call.
Q. And based on your work history with Mr. Smalls and his company, JJS Trucking, you've experienced him to

be forthright in his representations to you in the past regarding his workers' comp insurance coverage?
A. Yes, ma'am. And he's been put through the test because there's been times that he's gotten very close and he's been very honest with it.
MS. BARR: Thank you very much, Mr. Thompson.
THE COURT: Ms. Cofield?
RECROSS-EXAMINATION
BY MS. COFIELD:
Q. So it's your testimony that he did not purposely defraud you?
A. I don't believe he defrauded me.
Q. Okay. He did not purposely give you a false Certificate of Insurance, did he?
A. It's my belief that -- my understanding and my belief is that Cedric Smalls fully believed until the time I told him -- Bridgefield Casualty told me and I immediately told him, I believe he thought he had -- was fully -- fully believed he had workman's comp coverage in effect.
MS. COFIELD: Okay. That's all I have.
THE COURT: Mr. Warder?
CROSS-EXAMINATION
BY MR. WARDER:
Q. Quick question, sir. This is my APA Page 73.

This is a -- what appears to be -- it speaks for itself. Do you have any -- let me ask it this way: Is it a possibility that Swamp Fox Agency as indicated by this record here was notified of the cancellation of JJS Trucking's insurance and never informed you?
A. I can't say it's possible or impossible. I don't know. There's certainly nothing on there from Swamp Fox Agency showing that that they received it.
Q. There's not? What does it say here?
A. It says received from Swamp Fox Agency. But I'm assuming --
Q. What date, sir?
A. Sir, I'm assuming it was sent by Travelers. And if Travelers sent it, how could Swamp Fox get on it and you get a copy back unless you got a signed copy sent back to you?
Q. I am Travelers.
A. Sir, I'm telling you that's between you and Swamp Fox and I'm not inclined to comment on it.
Q. Okay. Understood. But is it possible that the notice of cancellation was mailed to both JJS Trucking who I don't represent, I represent Travelers, and it was also sent to Swamp Fox as indicated by their received date stamp here on the cancellation -- notice of cancellation?

A. Sir, I -- I would -- I would not venture to say that. I have no knowledge what transpired between Travelers and JJS and Travelers and Swamp Fox and I would decline to comment on any -- any business y'all had.
MR. WARDER: Understood.
THE COURT: Anything else, Mr. Fisher?
MR. FISHER: No, sir, I have nothing.
THE COURT: Mr. Smalls?
MR. SMALLS: Yes, Your Honor.
MS. BARR: And, Your Honor, we don't take an issue with the cancellation at this point.
RECROSS-EXAMINATION
BY MR. SMALLS:
Q. On the definition of defraud, has JJS Trucking ever forwarded you a Certificate of Insurance dealing with workers' comp or any type of insurance?
A. No, sir. And in his defense, I would not have accepted anything directly from any -- any owner operator, any subcontractor. It all has to come directly from the insurance company or a fax with their -- something indicating that they sent it.
MR. SMALLS: Thank you.
THE COURT: Anything else, Ms. Barr?
MS. BARR: No, thank you, Your Honor. We appreciate your time.

THE COURT: Anything else from anyone?
MS. COFIELD: No, sir.
MR. WARDER: No, sir.
THE COURT: All right, sir. You may step down. Other witnesses, Ms. Barr?
MS. BARR: No, Your Honor. Thank you.
THE COURT: Witnesses, Ms. Cofield?
MS. COFIELD: We're going to rely on the deposition transcript of Mr. Smalls that's already been submitted. So, therefore, we won't have to call him today.
THE COURT: Okay. Any witnesses, Mr. Warder?
MR. WARDER: No, Your Honor.
THE COURT: All right. Anything else from anyone?
(No response.)
THE COURT: All right. That concludes this hearing.

CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript of proceedings was taken before me on the date and at the time and location stated on page 1 of this transcript; that the witness was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the witness and all objections made at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript of proceedings as typed is a true, accurate and complete record of the testimony and of all objections made at the time to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of June, 2012, at Richland County, South Carolina.

_____
Kimberly T. Power, Court Reporter
Notary Public, State of South Carolina
My Commission Expires: 07/22/2015

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Samuel Rose, taken before Laci Bearden, Court Reporter and Notary Public, at the George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 9:45 a.m.

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I N D E X

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E X H I B I T S

(No exhibits produced.)

SAMUEL ROSE

was sworn (affirmed) and testified as follows:

EXAMINATION BY MS. BARR:

Q Mr. Rose, my name is Kirsten Barr and I represent a company called Bridgefield Casualty Insurance Company, and Chris Thompson Services regarding your worker's compensation claim. And I'm sure Mr. Fisher's explained to you what we're doing here today, but again, it's called a discovery deposition, and it really is just what it sounds. It's my chance to discover a little bit more about you as a person and about the accident and your injuries and how you've been doing since then. My questions are intended to be straight forward, so if I ask something that is unclear or doesn't make sense, please ask me to rephrase or repeat my question. I'm happy to do that. Because otherwise, if you answer my questions, number one, I'm going to assume you're answering truthfully, and number two that you understood the question before you answered it; fair enough?

A Okay.

Q The other thing is the court reporter is going to take down everything we say here today. This is the microphone, so we just need to speak up and speak clearly. I'll understand you if you nod your head here today, but she can't take that down on paper very well, so we just need to remember to say yes or no and just again, answer it to the

best of your ability.

If you would state your full name for the record?

A Samuel Archiedell Rose.

Q Could you spell your middle name for me?

A A-R-C-H-I-E-D-E-L-L.

Q And Mr. Rose, what is your date of birth?

A [redacted] 1970.

Q And your social security number?

A [redacted]

Q And are you married, single, divorced?

A Single.

Q Have you ever been married?

A No.

Q Do you have any children?

A No.

Q And what is your current you address?

A 17 Ashton Street, Charleston, South Carolina.

Q And who do you live with at [redacted] Ashton Street?

A My cousin.

Q And how long have you lived there?

A I grew up there.

Q And it's just the two of you living there?

A Yes.

Q Anybody depending on you for support?

A No.

Q Tell me, it's my understanding you were working for a company called JJS Trucking at the time of this accident; is that right?
A Yes.
Q And who did you work for at JJS Trucking?
A Sedrick Smalls.
Q And when did you start working for Sedrick Smalls at JJS Trucking?
A Back in February or March.
Q Of 2011?
A Yes.
Q And what were you hired to do for JJS Trucking?
A To haul woodchips from Summerville to North Charleston.
Q And that was to North Charleston to the Capstone plant?
A Yes.
Q Did you have a set work schedule that you did?
A From 12:00 o'clock until 12 noon. Either 12 noon or 2:00 o'clock, and I worked a 10 to 12 hour shift.
Q And during your ten to 12 hour shift, I guess it would be a ten hour shift if you started at 2:00 o'clock in the afternoon?
A Yes -- well, no. From the time I started, I worked either 10 to 12 hours, and I worked until the plant closed.
Q And to your knowledge, what time did the plant close?
A It's suppose to close at 3:30, but sometimes it closes

early.
Q And would you work until the North Charleston plant closed or the saw mill up in Summerville closed?
A Summerville. North Charleston is open 24/7.
Q So you would begin and start your day at Summerville?
A Yes.
Q Did you keep the truck you used at your home or JJS Trucking, how did your day start?
A It was parked in Summerville at the saw mill.
Q So would you drive your personal vehicle to the saw mill then?
A Yes.
Q Did you have to punch a time card or anything like that, or how did you keep track -- how would JJS keep track of your time?
A Our daily logs.
Q What would you keep track of in your daily log?
A The time that I start work, the inspection of the truck, and number of runs I made.
Q And would you also get receipts from either the saw mill or from the mill in Charleston as far as what you loaded or unloaded?
A Each load that we pick up we received a receipt. When we got to Capstone we received another receipt.
Q And what would you do with these receipts?

A We turned them in at the end of the week.
Q And who did you turn the receipts in to?
A They went to Chris Thompson. He has a mailbox placed at the saw mill in Summerville, and we fill out our work sheet, and we put everything in the envelope for him.
Q And then how would you get paid?
A By check. Sedrick Smalls is the one that paid me.
Q And what was the basis of your pay? How did he calculate how much you would earn per week?
A $25 dollars per load.
Q So someone would add up all those receipts and there would be $25 even for each load that you would get paid?
A Yes.
Q And how many loads would you average per shift?
A Anywhere from six, seven loads per shift.
Q And how many days per week did you do this?
A Five.
Q Was it Monday through Friday?
A Yes. We worked on weekends as needed?
Q How frequently would you work weekends.
A Not often?
Q And how did it work? Would Mr. Smalls pay you in check, or would he give that to you personally? Was it mailed to you?
A It was given personally.

Q By Mr. Smalls?
A Yes.
Q And what day of the week would he give you your check?
A Friday.
Q So every Friday you would get a check?
A Yes.
Q And how much was your average check that you were paid on Fridays by Mr. Smalls?
A It ranged from 650 to 750 depending on how many loads I ran for the week.
Q And so you would get the whole 650 to 750?
A Yes.
Q He didn't take out any taxes?
A He took out a hundred dollars for damages to the truck for an escrow account.
Q He took that out each week or just the beginning?
A Each week.
Q What is your job status with Mr. Smalls? Are you still employed by him?
A Yes, to my understanding.
Q Do you still have funds in that escrow account?
A I have no idea.
Q When was the last time you got a paycheck from Mr. Smalls?
A The week prior to the accident.

Q Have you spoken to Mr. Smalls since the accident?
A Once or twice.
Q Did he come see you in the hospital?
A Yes.
Q Has he done anything to help you with your lost wages or your medical bills?
A Nothing.
Q Have y'all discussed that?
A When I asked him about it, he told me about the insurance. When I contacted the insurance, nothing.
Q And what did he tell you about insurance?
A That he had insurance.
Q Did he tell you, like, auto insurance or worker's comp, or did he tell you what kind?
A He said he had workers' comp insurance for us.
Q And he gave you the name of a company to call?
A Yeah. I gave that to the lawyer. I don't remember the name. He also said that he spoke with Chris Thompson, and Chris Thompson told him that he would cover the medical bills.
Q Did you ever speak with anybody at Mr. Smalls insurance company, or did you just pass that on to your attorney?
A They contacted me at first, after the accident. They sent me a card and then after that, nothing. I passed all that information on to my attorney.

Q As I understand it, you had legal representation pretty quickly after the accident; is that fair to say?
A Yes, I called him.
Q I mean, that was within like a day or two after the accident you had somebody working on your behalf?
A In two days.
Q Where did you work prior to JJS Trucking?
A Leopard, Incorporated.
Q Leopard?
A Yes.
Q What does Leopard, Incorporated do?
A It's a tire company. We distribute tractor trailer tires.
Q How long did you work for Leopard?
A About seven years.
Q And where's Leopard located?
A It's headquartered out of New Jersey. It's local office is here in North Charleston.
Q You said that they distribute tractor trailer tires. Were you doing long distance hauling, trucking?
A Both. My job required mostly local driving.
Q So local within South Carolina?
A No. South Carolina, North Carolina, Florida, Georgia.
Q And why did you leave Leopard, Incorporated?
A The work slowed down, and I needed money.

Q When did you last work for them?
A February, the latter part of February.
Q Of this year?
A Yes.
Q How much were you earning on average at Leopard?
A About 500 a week.
Q And is that the same you would earn from them say in 2010 or 2009?
A Yeah.
Q One of the things we have to do in worker's comp is try to get an idea of how much money you were making in the past year. So was there any other income from any sources other that Leopard, Incorporated or from Sedrick Smalls in this past year, 2011?
A Allstate Logistics.
Q What did you do for Allstate Logistics?
A Local runs. That's just to supplement my income.
Q When was the last time you worked for Allstate Logistics?
A Back in January. The company went out of business.
Q So around the time of this accident, say July or August of 2011, any other supplemental sources of income?
A No.
Q The checks that you would get from Sedrick Smalls, would it be on a JJS checking account?

A Yes.
Q Would it always be the same looking check, or did you ever get a check personally from Sedrick?
A Always from JJS Trucking.
Q And if we needed to try to track down how much those checks were, would you have a habit of cashing them somewhere or depositing them into a checking or saving account?
A I always cashed it at First Citizens Bank.
Q Did you have an account there or was that where Mr. Smalls did?
A That's where Mr. Smalls had his account.
Q Was there a particular branch that you used?
A Summerville, Main Road.
Q Tell me, on the day of this accident, I believe it was August 10, 2011, what were you doing before the accident occurred or what were you in the process of doing when the accident, occurred?
A That was my last run for the night, and I was on my way to Capstone to drop the load.
Q Did you ever turn in the receipts from that day to Sedrick Smalls?
A No. The receipts were left inside the truck. My log book and everything was left in the truck.
Q And tell me, as a result of the accident, what

happened. Did you stay inside the cab of truck, were you thrown from the cab of the truck, what happened to you specifically?

A After the accident, I was pulled out of the truck. Some people stopped, and they pulled me out of the truck and tossed me over the wall, the median of the highway.

Q Are there air bags in the truck or any other restraint devises?

A Seatbelt.

Q Do you recall hitting in particular on the inside of the cab, or did the seatbelt restrain you?

A My knee shattered the steering column. My head bounced off the rear glass and steering wheel.

Q You said the rear glass?

A Yes, it was a day cab.

Q Anything else that you can really recall hitting?

A Just my right knee when it shattered the steering column and just hitting -- I blacked out when I hit the glass, but I do remember getting pulled from the cab, and then they threw me over the wall before the truck blew up.

Q When you blacked out were you totally out cold, or did things just kind of go hazy for you a little bit?

A I was told I was out cold.

Q It's my understanding you were taken to MUSC; is that right?

A Yes.
Q How long did you stay at MUSC?
A A day and a half.
Q And when they released you from MUSC were you referred to any particular doctors or what was your plan of care after your release from MUSC?
A They scheduled me an appointment with the neurologist. They gave me a physical therapist and told me I needed to see an orthopaedist as well.
Q Do you have a family physician?
A No, not at the time, no.
Q In the past, have you had a personal family doctor?
A No, I just use military doctors.
Q Did you serve in the military?
A No, my parents.
Q So when you were younger, you would just see VA doctors?
A Yeah.
Q But you haven't seen anybody at the VA since this accident?
A No.
Q And if you need to take a break, just let me know.
A I took pills before.
Q What sort of pills might have you taken today?
A Flexeril, Fioricet, Ellevill, Ibuprofen.

Q Do those medications have any effects on you, side effects? Do they make you drowsy or --
A Drowsy, dizzy but they are suppose to help me cope with pain.
Q Now, after MUSC, did you -- you said that they scheduled a appointment with a neurologist; is that right?
A Yes.
Q Did you see the neurologist?
A No, they kept canceling my appointment.
Q Have you seen a neurologist at all since the accident?
A I'm scheduled to see one next week.
Q Who are you scheduled to see next week?
A Dr. Weinsteen(sic).
Q Doctor who?
A Weinsteen.
Q Weinsteen? Is this somebody that you're --
MR. FISHER: Wildsteen.
MS. BARR: Wildsteen.
Q And you're to see Dr. Wildsteen about your neck?
A My neck, my back, and my knee.
Q Now, I know MUSC had talked to you about seeing an orthopedist about your knee. Did you see any of the orthopedists at MUSC for your knee?
A No. They canceled the appointments as well.
Q There was talk about you seeing Dr. Hartsock(ph). Did

you ever see him? He's an orthopedist at MUSC?
A He's the one that canceled the appointment. There was a problem with the insurance.
Q You've seen Dr. Wildsteen already; is that right?
A I've spoken with him, but I haven't went to his office yet.
Q Have you seen any doctor since you were released from MUSC?
A Yes.
Q And who has treated you?
A Dr. Able, Dr. Keller, Dr. Willis.
Q Dr. Able, what kind of doctor is Dr. Abel; do you know?
A General practitioner.
Q And how did you find Dr. Able?
A Through my lawyer's office.
Q And what has Dr. Able been doing for you?
A He's the initial one that treated me for my neck, my back, and my knee. He's been --
Q Giving you the medications?
A Some of it. I'm just monitoring my treatment. Dr. Kellet(ph) is the pain specialist. He's the one -- he's been trying to help me cope with my pain. He's given me Oxycodone, Lortab, just things to help with the pain. I've token two epidurals, cortisone shots.
Q And were your epidurals for your neck or for your lower

back?
A My lower back. The cortisone shots were for my neck. And he referred me to Dr. Wildsteen.
Q Have you seen anybody in Dr. Wildsteen's office.
A No. I took an MRI already, and I'm waiting for my appointment.
Q Where did you have the MRI done?
A Trident County Radiology.
Q And was that for your neck or for you or lower back?
A My neck. I've had an MRI of my knee done at MUSC.
Q All right. Do you have any appointments with any doctors that deal specifically with the knee problem or the main problem, your neck and your back at this point?
A My neck and my back at this point.
Q And you mentioned Dr. Willis; is that right?
A Yes.
Q What has Dr. Willis done for you?
A Mostly it's just therapy, physical therapy and just to help me deal with the pain.
Q Any doctors other than Dr. Able, Dr. Kellet, Dr. Willis?
A No.
Q And then of course you saw a number of doctors while you were a patient at MUSC.
A Yes.

Q After -- I know you spent the night there but after your release did you ever go back to see any doctors at MUSC?
A No. I went to my appointments but they kept getting canceled. And the also assigned me a physical therapist. And I forgot who that was.
Q Did you get any therapy done there?
A Three times.
Q And I know you said you scheduled Dr. Wildsteen. Any other doctors appointment?
A No. Doctor Ables, yes.
Q What sort of schedule to you have with Dr. Able? Do you see him like once a week or once a month?
A Every two weeks.
Q And the pain medicines you have now you said you get some from Dr. Able and then some from Dr. Kellet?
A Yeah.
Q Tell me a little bit about the pain you're feeling now, where you're feeling it, and help me understand how you describe it.
A Dizziness.
Q And how frequently are you dizzy?
A Daily.
Q Is it something that comes and goes?
A If I move too fast then my head starts spinning. If I

get up, when I first stand up I have to orient myself. There's a throbbing in the back of my head that hurts. My neck, if I hold it up too long it starts hurting. My lower back is still in pain. And my knee, if I go for walks in the neighborhood to exercise, walking less than a block I just need help or need some rest just to get back on.

Q And that's your right knee?

A Yeah.

Q Does it lock up or it just hurts?

A It locks up and it hurts.

Q Do you feel the pain anywhere else?

A My whole back. My entire back.

Q Is there anything that helps with the pain or improves it even a little bit as far as your back pain goes. A position or activity that helps?

A Showers, warm Showers, Bengay.

Q But you have been doing some exercises with the physical therapist?

A Yes.

Q Do they have you doing anything at home as far as exercising or stretching to help with your back?

A Stretching helps my back and my neck.

Q Are you good? Some people are better than others about actually doing the stretches and exercises. Do you do them?

A I do some of them, but it hurts.

Q You mentioned that the medication that you've taken before you came here today, do you take any other medications say like at bedtime?
A Yeah.
Q What other medications do you take?
A Flexeril.
Q Your handing me a list and it look likes --
A Those are all the medication that I take.
Q So it's Flexeril, Amitriptyline, Fioricet, Ellevill, Ibuprofen, Lortab, the Ibuprofen, and you also have Neurontin and Oxycodone?
A Right?
Q And the Oxycodone, is that something that you take when the pain gets really bad?
A Yes.
Q And the Neurontin you take everyday?
A Yes.
Q Have you ever had surgery before?
A No.
Q Have you ever been hospitalized for any reason prior to this accident?
A No.
Q Have you ever had a workmen's compensation claim or a personal injury claim?
A Never.

Q Have you ever been in an automobile accident prior to this?
A Yes.
Q And when was that?
A I think it was '07.
Q In 2007?
A Yes.
Q And where did that accident occurred?
A Here in Charleston.
Q Were you injured in that accident?
A No.
Q Was there any sort of settlement with the insurance company over that accident?
A Yes.
Q Do you recall about how much you received in that settlement?
A No.
Q Was it a couple hundred dollars, a couple thousand dollars?
A It was a few hundred. And the owner of the car is the one that got his car repaired. I borrowed the car.
Q Did they take you hospital or anything after the accident?
A No.
Q Do you have any chronic medical conditions like high

blood pressure, diabetes anything like that.
A High blood pressure. Asthma.
Q Do you take prescription medications for either of those conditions?
A For high blood pressure Lotensin.
Q And who prescribes Lotensin for you?
A Dr. Able.
Q And before Dr. Able, who --
A I was not on any medication for high blood pressure.
Q Were you aware you had high blood pressure before the accident?
A Yes, but it wasn't dangerously high.
Q Do you monitor your blood pressure now?
A Now, I do, yes.
Q Do you have it under control now?
A Yes.
Q And just so I'm clear, you may have already told me this, but Dr. Able -- you never saw Dr. Able until after this accident in August?
A Right. The blood pressure medicine, they first assumed the headaches I was having was because of the blood pressure. Then the blood pressure came under control and then I still had the headaches.
Q Does the pain medication that you're taking, does that help with the headaches?

A No, not really.
Q How would you describe the type of headaches you have. Where do you feel it and what does it feel like?
A The back of my head. It's like a buildup of pressure, throbbing.
Q Does that change through the course of the day, the intensity?
A Sometimes it gets worse and sometimes it's milder, but it's there.
Q I noticed your wearing a soft collar around your neck. Where did you get that?
A Dr. Able.
Q When do you wear that?
A Whenever I have to keep my head up.
Q So like you don't wear that around the house or that sort of thing?
A No. Right now just keeping my head up it hurts, and my collar is just to help me keep it up.
Q So you kind of rest your chin on it a little bit?
A Yeah.
Q And the cane, I notice that your off carrying the cane?
A Dizziness and balance.
Q Have you talked to Dr. Able about maybe your medications effecting you making you a little dizzy?
A He said that the whiplash effect, I'm going to be dizzy

for another year. I'll still have side effects from it.
Q But you have not gone to a neurologist to have that checked out.
A Not yet.
Q And you don't think any appointments are scheduled right now with the specialist?
A No. They've taken X-rays, and Dr. Kellet is the last to take X-rays of my neck, and he referred me to the neurologist.
Q And that's in his same practice together, Dr. Wildsteen and Dr. Kellet; is that right?
A Dr. Willis and Dr. Kellet is in the same practice. Dr. Able is in a different practice.
Q Have you had any sources of income since the accident?
A Just family and money that I've borrowed.
Q You don't have like a AFLAC policy or any kind of insurance policy?
A No.
Q And your medical bills, have you started getting bills from MUSC or any of the other providers?
A Yes.
Q Have you paid any of your medical bills?
A No.
Q When was the last time you spoke to Sedrick Smalls?
A It's been over a month ago.

Q And you said that he told you that you were covered by workmen's? He had a worker's comp policy that covered you?
A That was in the hospital after the accident he told me that and that was back in August.
Q Did you subsequently find out that he didn't have a policy in effect?
A Yes.
Q Did you talk to him about that?
A I spoke with my lawyer.
Q But you never confronted Mr. Smalls, and said hey, your policy was no good?
A Yeah. I asked him about it, and he still showed me that it was good.
Q Do you have a gut feeling, do you believe him, do you think he had a workmen's compensation policy?
A At the time of the accident, I did believe him.
Q What about now, do you know what to think?
A Right now I was told they didn't that the policy lapsed.
Q Do you think, you know, if Mr. Smalls said he had it, do you think he knew it had lapsed, or do you think he was telling you the truth --
A At the time, I assumed he was telling me the truth.
Q If we needed you to help us figure out how much you had earned while working for JJS Trucking, do you have any sort

of record like a check stub or anything like that that you could --

A I didn't save any.

Q You didn't save any.

A We probably can go to the bank and ask for copies of the check.

Q But you said they were always on a JJS Trucking checking account?

A Yes.

Q And then there would have also been somebody would have kept a log --

A Sedrick Smalls.

Q Did your log survive the accident; do you know?

A I have no idea.

Q With the log that you would have had with you on the night of the accident, been your only log you ever had working for JJS Trucking, or would there have been other log?

A Copies of the logs are kept by Chris Thompson when we turned in the logs at the end of the week.

Q Did you ever see him personally and like hand him the log, or was there just left in the place?

A We left it in a place.

Q Was that left at Capstone?

A No, it was left in Summerville.

Q At the saw mill in Summerville?
A Yes.
Q Would it have been at that front office where you drop in?
A No, back at the scales.
Q Would you talk to anybody when you dropped that off?
A No. We put it in a envelope in the mailbox. The mailbox was for CTS Trucking, and we just put it in an envelop for CTS Trucking.
Q There was just some kind of lobby with the mailbox in it?
A It's outside.
Q Outside. And it's over there by the scales?
A Yes. And if there was any problems CTS would contact me or Sedrick Smalls would contact me.
Q As far as problems with the logs?
A Yes.
Q Mr. Rose, I think that's all the questions I have for you. Mr. Killen may have some questions for you and your lawyer might have some, too.
EXAMINATION BY MR. KILLEN:
Q I'm Tim Killen. I represent the state agency involved in this case. This is Workmen's Compensation Uninsured Employer Fund. When you went to work for JJS Trucking, did your route ever vary?

A We took the interstate or we went the back way through Hanahan and Goose Creek.
Q But you were always going to the same place from the same place; is that correct?
A Yes.
Q How did you know you were hauling these loads for Chris Thompson?
A Chris Thompson was the contractor and everything coming out of Summerville saw mill is either hauled for Don Sweet or Chris Thompson. Everybody else were just subcontractors under those two.
Q How did you know you were you working under Chris Thompson?
A I was told.
Q Who told you that?
A Sedrick Smalls.
Q Did you ever work for anybody else other than Chris Thompson?
A At the saw mill, no.
Q You said that Chris Thompson would contact you?
A No, his secretary.
Q His secretary would contact you?
A If there's a problem with the logs or paperwork that I turn in, they left either notes in the box for us, or when we picked up our checks, we received the note from them, or

they would call us on the phone, or our boss would tell us, relay the message to us.

Q Did somebody from Chris Thompson call you more often, or did your boss Sedrick Smalls?

A Mostly Sedrick Smalls. Once I was contacted by someone from Chris Thompson's office?

Q Just once?

A Twice.

Q Are you sure?

A Yes.

Q I don't want you to guess. I just want you to tell us what you know. And when you were contacted by someone from Chris Thompson what did they want?

A First time, was my hours of service. I went over 12 hours, and they told me not to do that, and the second time it was for truck inspections.

Q What in regards to truck inspections?

A I needed to take the truck over to his shop to have them inspect it.

Q You needed to take your JJS Trucking truck over to Chris Thompson's shop; is that correct?

A Yes.

Q So that someone from Chris Thompson's outfit could inspect your truck?

A The trailer. The trailers that we hauled belonged to

Chris Thompson. The trucks belong to JJS Trucking, and they were responsible for the maintenance on the trailer. JJS Trucking was responsible for maintenance on the truck.

Q Every time you hauled a load the trailer was Chris Thompson's?

A Yes.

Q When you were hurt the trailer on your out truck was Chris Thompson's?

A Yes.

Q Did JJS Trucking own any of the trailers?

A No, just the truck.

Q Could you have done the job without the trailer?

A No. The trailer is used to haul the chips.

Q And so in order to get the job done you needed Chris Thompson's trailer?

A Right.

Q Did you ever have any direct interaction with Chris Thompson himself?

A His mechanics.

Q What would they do?

A They were the ones that inspected the trucks, took care of the maintenance on the trucks, fix the tires, just the regular maintenance on the trailer.

Q You said the trucks, you mean the trucks or the trailer or both?

A The trailer. The day before the accident they inspected the trucks, the truck itself.
Q And that JJS Trucking's truck?
A Yes. Chris Thompson mechanic inspected the truck itself. The tractor, the day before the accident and prior to that they were only inspecting the trailer and just done any maintenance or anything that we found wrong with the trailer, they would fix it.
Q Do you know why they would inspect your truck the day before the accident?
A One of trucks that belonged to JJS Trucking had a tire problem. The treads on the tires was worn. The mechanics inspected it when it was parked at Summerville saw mill. He left a note saying it needed to get repaired, and then he wanted to see all the trucks and inspect the tires.
Q He being who?
A The head mechanic. A guy named Tim.
Q Tim working for?
A Chris Thompson. And to my knowledge he wanted every truck that JJS drove inspected by him.
Q Did you talk to Sedrick Smalls about that?
A Yes.
Q What did Sedrick Smalls tell you?
A The truck that I was driving I had to take it to the mechanic to get some tires replaced, and after I had the

tires replaced, I took it to have Tim, Chris Thompson's mechanic to have it inspected.

Q What did Sedrick Smalls tell you about the inspections?

A That we passed the inspection.

Q Did he tell you anything else?

A No. He just you told me to go get the trailer from Chris Thompson, so I could continue my work for the day.

Q Did you ever hand in your logs to Sedrick Smalls or JJS Trucking?

A Yes.

Q How frequently would you do that?

A When I first started, I gave him my logs personally. But after approximately two weeks I started putting it in the box.

Q And giving it directly to Chris Thompson's company?

A Yes.

Q Beside the truck and the trailer, was there anything else you needed to do your job?

A Fuel.

Q And you needed the logs; right.

A Yep.

Q How was fuel paid for?

A Tonya Smalls, Sedrick's wife, we met her at the gas station on Monroe Gray Avenue. She would fill up the truck. She did it twice a week.

Q Did you ever --
A Plus she would pay for it after we filled it up.
Q Did you fill up your truck any other way than that?
A No.
Q And when you got those new tires on the truck how was that paid for?
A He paid for it himself. Sedrick Smalls paid for it.
Q Did anybody working for JJS Trucking ever get fired while you worked there?
A Nobody got fired.
Q Did anybody ever get reprimanded while you were there?
A Not to my knowledge.
Q Did you ever get reprimanded in any way?
A Once for my hours of service.
Q You got reprimanded by Chris Thompson's secretary.
A Both. Chris Thompson secretary and Sedrick Smalls.
Q And you got paid $25 a load?
A Yes.
Q And all the load you were hauling were --
A Woodchips.
Q In Chris Thompson's trailers.
A Yes.
Q Do you know whether or not Chris Thompson had a right to fire you?
A He would recommend that we be fired.

Q What do you think would you happen if he made that recommendation?
A We would be fired.
Q Is it your understanding that Chris Thompson said he would pay for your medical bills?
A That's what I was told.
Q You were told that by Sedrick Smalls?
A Yes.
Q And none of your medical bills have been paid?
A Nothing.
Q And you have not received any form of weekly compensation while you have been out?
A No.
Q Did Chris Thompson subcontract this work out to any other companies other than JJS Trucking?
A I wouldn't know that.
Q Were you aware of any drivers from other companies hauling loads using Chris Thompson's trailers?
A I wouldn't know that.
Q Capstone ever have any drivers?
A None that came in contact with it. Everybody that drove there just came from all over the state.
Q You never saw any Capstone employers driving your truck doing the same things that you were you doing?
A I wouldn't know if they were Capstone employees.

Q So you don't know; is that the right?
A Right.
Q How often do you take the Oxycodone?
A I take the oxycodone when the pain is unbearable.
Q When's the last time you took it.
A Last night.
Q Before that, when's the last time you took it?
A When I took my MRI.
Q How long ago was that?
A Last week, Monday.
Q Do you ever take it more than a couple times a week?
A No.
Q And you said you were tossed over the median when you got out of the truck?
A The people that pulled me out of the truck. They tried to pull me away from it. I remember one guy saying get him on the other side against the wall, and then I felt them throw me over the wall, and when I came, to the police and firemen was dragging me further away from the truck while it was burning.
Q What was burning?
A The truck blew up. The tractor that hit me blew up, and my truck was burning. It caught on fire.
Q You didn't get any burns yourself?
A Smoke Inhalation, no.

Q Who pulled you out of the truck?
A I have no idea.
Q Do you know who hit you?
A I was told it was the driver by the name of Robbie.
Q Do you know Robbie?
A No.
Q Have you ever met him prior to that night?
A Just speaking saying hi and bye.
Q Where would you see him?
A When I'm leaving or coming to work. When I'm leaving the saw mill or coming to work to the truck.
Q Saw mill. That's where you would start your work every day?
A Yes.
Q What business is there?
A Summerville saw mill. That's where we picked up the woodchips to take to Capstone.
Q Where did you keep your --
A All the trucks were parked across the street from the saw mill property. All of Chris Thompson's trucks and JJS trucks, they were parked there.
Q Where there any other trucks from any other companies parked in the same lot?
A There used to be, but back in June or you July Don Sweet, he had his drivers bring his trucks to him, and his

sub contactors parked their trucks somewhere else. The only people that parked there was Chris Thompson and JJS trucks.
Q Do you know anything about who paid who to park there?
A No.
Q Do you know anything about the agreement between JJS Trucking and Chris Thompson?
A No.
Q Do you know how much -- and I know I just asked you this question. Do you know what percentage Chris Thompson took from each of your loads.
A No.
Q Did you have an understanding what would have happened had your truck not passed that inspection by Chris Thompson's personnel that day?
A I would have either had to drive a different truck or not work.
Q Do you know whether or not Sedrick Smalls had any discussions with Chris Thompson when you were hired?
A I don't know.
Q That's all I have.
MS. BARR: Thank you, sir. That's all we have for you if Mr. Fisher doesn't have any questions.
(The deposition was concluded at 10:40 a.m. November, 14th, 2011.)

STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF DORCHESTER)

I, Laci B. Bearden, Court Reporter and Notary Public, certify that I did have Samuel Rose to appear before me at 9:45 a.m. on Monday, November 14th, 2011, at the law offices of George Sink, P.A., 7011 Rivers Avenue, n. Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of November, 2011.

_____

Laci B. Bearden

Notary Public for South Carolina

My Commission Expires: September 29, 2021

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Sedrick Smalls, taken before Laci Bearden, Court Reporter and Notary Public, at the George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina on November 14th, 2011, commencing at 11:00 a.m.

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E X H I B I T S

Plaintiff's Exhibit Number One 8

SEDRICK SMALLS

was sworn (affirmed) and testified as follows:

EXAMINATION BY MR. FISHER:

Q My name is Joe Fisher. I represent Samuel Rose with the worker's compensation claim that we filed arising out of an accident that occurred on August 10, 2011. I want to ask you some questions about your relationship with my client, a work relationship and your work relationship, business relationship with a gentleman named Chris Thompson and his company Chris Thompson Services, LLC; okay?

A Yes, sir.

Q Will you please state your name for the record?

A Sedrick Smalls.

Q Mr. Smalls, where do you live at?

A 137A Gordon Street, Charleston, South Carolina, 29403.

Q And are you familiar with the company called JJS Trucking?

A Yes.

Q And how are you familiar with that company?

A I am the owner, president. I think that's it, the president.

Q Are there any other owners, any other shareholders, anything like that in JJS Trucking?

A No.

Q Your a sole proprietor?

A Yes.
Q Sole owner?
A Yes. President, yes.
Q And do you know a gentlemen named Samuel Rose?
A Yes.
Q How do you know Mr. Rose?
A I employed him at JJS Trucking.
Q Do you remember when he went to work for you?
A I believe it was the fourth month.
Q I think he testified earlier he went to work for you in April of 2011. Would that be about right?
A Correct, correct.
Q Was he working for you in August of 2011?
A Yes.
Q And JJS Trucking, you guys subcontract work for Chris Thompson Services; is that correct?
A Correct.
Q And how long have you had a relationship to work with Chris Thompson Services?
A For over three plus years.
Q And what is that relationship?
A I'm a subcontractor. He -- I pull loads for him. He provides a trailer, and I provide my insurance coverage to him, and he pays me by the ton to carry each load.
Q And where do these loads go to, and where do the loads

come from?
A They come from a lumber mill in Summerville, and then they go to a paper mill in Charleston, and the lumber mill is off of Highway 78 and they go to Virginia Avenue.
Q And that's your exclusive contract with him?
A Yes.
Q You don't haul anything else anywhere other than this route from Summerville to the paper mill; is that right?
A Correct.
Q And let me see, my client had started working for you in April of 2011. Did you pay my client?
A Yes, I paid him. Yes.
Q And how did you pay him?
A I paid him as a subcontractor by the per load. For every load that he received, he got paid for each load.
Q And how much did he get paid per load?
A Twenty-five dollars per load.
Q And how many loads would you say he could make on average in a day?
A Focus -- he would on average per day it was normally around five loads. Sometimes a little bit more, sometimes a little bit less, but on average for Mr. Samuel every week, he typically got 25 to 30 loads every week. I do have some documentation for that.
Q You do. Could I see what you have?

A Yes.
Q Take your time.
A Here we go. If you want to make a copy of that.
Q That would be great.
A That's the same thing I provided to the insurance company.

(Where upon an off the record discussion took place.)

Q Sir, you provided us with what looks like a payroll log, is that what that is? What is that? And I'll show you a copy of it.
A Exactly. This is what we call a load sheet and for each ticket number you see represents a load. For each load that's turned in, that's how he gets paid his $25. It just verifies what he done that particular week.
Q And for example on 7/12/2011, if you'll take a look at that.
A Correct.
Q Which is one, two, three, four, five, six, seven numbers; is that correct? One, two, three, four, five, six, seven numbers.
A Correct.
Q Does that mean he made seven loads that day?
A Correct.
Q And then on the 13th it shows one, two, three, four,

five numbers, so he made five loads that day; correct?
A Correct.
Q And I would assume it varies on traffic and other things; is that correct?
A Correct.
Q As to how many loads you could get a day. And what you've given us is from July 12, 2011, through August 9, 2011; is that correct?
A Correct. But I do have all of his since he was employed. I just thought it might be handy here today because that's for the insurance company. They just wanted "X" amount for representation so, but that's what you're looking at right there.
Q I would like to mark this is as Plaintiff's Exhibit One, please.

(Plaintiff's Exhibit No. 1 was marked for identification.)

Q Now, what was your arrangement with Chris Thompson Services, your business arrangement?
A My arrangement was to -- and we only had a verbal agreement, but my arrangement was to haul loads, and I was to receive compensation for each load that I carried, and I would turn in my sheets at the end of the week, and then the following week he would relinquish me a check for what I did the previous week.

Q Were you paid by the ton?
A Correct.
Q And then he was also paid by the ton. "He" being Chris Thompson, did he get paid so much per ton as well?
A I believe so, yes.
Q Who paid Chris Thompson?
A I would believe he got paid from Capstone because that's the -- maybe -- matter of fact, he might have got paid from the lumber mill. Actually, I really don't know, but I know that's where we delivered it to, Capstone.
Q And Chris Thompson would cut a check JJS Trucking --
A Correct.
Q -- every week and then you would cut a check to your employees --
A Yes.
Q -- or is it the fellows who drove a truck for you --
A Correct.
Q -- and that's how that worked?
A Correct.
Q And how many trucks did you have working for you at the time of this accident?
A Three.
Q Three. And how many trucks do you own?
A Four.
Q Four trucks. Who all drove a truck for you?

A At that time of the incident, it was me, Samuel Rose, Shaun Thompson -- Shaun Thomas, and Reggie Washington. Reggie was really part time. He didn't run every day.
Q Did you have a truck driver named Terri?
A Yes, I did, but he was not employed with me at that time. He was a subcontractor for me at that time.
Q Did you have a truck driver named Max?
A Yes. I did at that time, but he was not working for me at that time.
Q The deal with Chris Thompson was in order for you to work for him you had to provide him with copies of your certificates of insurance --
A Correct.
Q -- to cover your drivers and yourself for worker's compensations purposes; is that right?
A Correct.
Q And what would happen if you didn't provide those certificates of insurance to Chris Thompson?
A I would be terminated.
Q And who paid for the gas for the trucks that you drove?
A I did.
Q What about the tires?
A I did. All maintenance to the vehicles, I was responsible for?
Q But the trailers were owned by Chris Thompson?

A Exactly. But excluding the trailer. Everything on the trailer would be Chris Thompson's.
Q How long have you had JJS Trucking?
A If I'm not mistaken -- I know I got a date for when it was established, but I would say somewhere around seven years.
Q Have you ever had any trouble with insurance like what's going on now?
A No, sir.
Q Now, you've provided and I believe your insurance agency provided some insurance certificates to us, and the state has concluded that your insurance had lapsed from February 5, 2011. Until September 23, 2011. Did you ever receive a letter from the state?
MR. KILLEN: Let me just object to the form of that question.
Q Well, if you could just answer that. Have you ever received a letter from the South Carolina Workmen's Compensation Commission by a gentlemen named Gary Smith?
A Please repeat that question.
Q Have you ever received a copy of this letter right here, I want to show you?
A No, sir.
Q It says it was mailed to 137A Gordon Street?
A Let's see, this is on October -- okay, October the

28th. Okay. Okay.
Q Is this your address here, 137A Gordon Street?
A Yes. Well, what I want to say is I haven't actually seen it myself, but they have sent quite a bit of letters to me.
Q And has any insurance company or anyone told you that your insurance had lapsed starting February 5, 2011, through September 23, 2011?
A I had not received anything from my actual insurance carrier.
Q But have you talked with anyone at the State of South Carolina Workmen's Compensation Commission about that?
A No, sir.
Q And no one's discussed any sort of fine with you for not having it --
A I did receive a letter saying that if I do not show that I had insurance over "X" amount of years that I would receive a fine.
Q Now, are you aware that the insurance company -- your worker's compensation carriers has said that you didn't have insurance at the time of this accident?
A I am aware that they said that.
Q Have you talked to them about that since then?
A Have I talked with them?
Q Your insurance company?

A I have, and they still stand by the fact that I do not have worker's compensation.
Q And which company said that, is it Travelers, Zurich, do you remember?
A Towers.
Q After Mr. Rose was in the accident, when did you find out this accident happened?
A I found out immediately. I mean, within an hour.
Q Did you go to the hospital and see him?
A Yes, I did.
Q Did you ever talk to Chris Thompson about this accident?
A Yes, I did.
Q What did Chris Thompson and you discuss?
A I informed him that at this scene his driver hit my driver in the rear, that at the scene DOT and South Carolina State Troopers had faulted his driver at fault and that my driver was in no way -- they called it not contributing. So I informed him of all of this.
Q After this accident, did you and Chris Thompson ever discuss worker's compensation coverage?
A We did later on once I found out that I was not being covered.
Q What did Mr. Thompson tell you?
A That when he informed me that --

MS. BARR: Object to the hearsay.
Q Go ahead and answer the question.
A He informed me that I can no longer work for him based on the fact that my insurance had lapsed at that time. That's what he said.
Q Did he ever say anything about his insurance taking care of this claim with regard to Mr. Rose?
A What he stated is that --
MS. BARR: Same objection to hearsay.
Q Go ahead.
A What he stated was that Sedrick -- that I was responsible for keeping my worker's comp coverage current. He stated that he was not informed that my insurance had lapsed. Actually, I was looking for it here, but I don't have it. But I was going to ask you -- remember I faxed you two copies of -- he in turn said to me, Sedrick -- so the bottom line I was terminated. Later on, a week or so later he informed me that he did an investigation or he had come across the fact that my insurance had not lapsed, and he provided me with documents. I in turn called my insurance agent that happened to look into this because ever since I worked for Mr. Thompson, if my insurance was ever in jeopardy of lapsing, my insurance carrier always would inform him because he's listed down there, but all I can say is, he said, Sedrick, you know you can't be employed here,

but I don't know what's going on because if you look at those documents, it would state that you would have it, but again, if I don't I don't, but I was not aware that I did not.

Q Is this the documents you were just asking me about?

A Yes, sir.

Q And one of them is dated 10/18/2010. Can you take a look at that? Number one it has Tower Insurance Company. Below it it has Travelers Insurance; is that correct?

A Correct.

Q And it shows the date covered 10/8/10 to 10/8/11?

A I know on this policy, if I'm not mistaken, I had just renewed it after the incident because after I found out, I went to go get reinstated, you know, and so that's what we're looking at right here.

Q And this was generated after the accident; is what you're saying?

A That's right, that's right.

Q And where it says binder down there, what does that mean?

A That means that I'm covered.

Q That's your understanding that it means you're covered. Then I have this other one from Swap Fox Agency? Is this your agency?

A No. No. No. We're looking at the wrong thing. I'm

sorry. This is not what I'm looking at because this here says 10/2/2010 --
Q Yes, sir.
A -- through 10/2/2011.
Q Yes, sir.
A So therefore when I look at this I would have been covered through -- because I received a couple of them now, so let me retrack what I stated.
Q This is another one that you -- no, this one's dated 9/29/11.
A Okay. There we go. This is the one probably I was referring to.
Q And this one, the 10/8/10, that says -- does that say Travelers Insurance?
A Yeah, that says Travelers Insurance; correct.
Q And this 9/29/11, now whose insurance company picks up coverage at that point.
A Zurich America Insurance Company.
Q And that's good from August 24, 2010, it says, to August 24, 2011; is that correct.
A Correct.
Q But you didn't purchase it until 9/29/11; is that correct?
A Actually -- the best thing I can say to you is -- purchase -- I was under the impression that I didn't -- if

this is 9/29/11 -- I wasn't the person -- that was not a purchase actual date because if that's a purchase date, why would it be 9/29/11 where it actually says here, you know, coverage 8/24/10 through 8/24/11. I --

Q That's a good question.

A I was under the impression that that's when probably someone actually sent it out verifying the date it was sent out but not the actual date of coverage. These -- from my interpretation -- these are the actual dates of coverage.

Q Why would there have been one from August 24, 2010 for Zurich and one from October 8, 2010 from Travelers? I don't have any idea.

A The only idea that I could have is maybe the insurance had lapsed and somebody else picked it up. I don't know. What I do is I make my payments to Swap Fox and -- but I don't know.

Q Have you ever went and showed these and discussed these with anyone at Swap Fox?

A We talked -- I sent it back to Swap Fox. I have not gotten a response back from Swap Fox, and that would be attention Gregg Hudson, I believe, operations manager via Swap Fox.

Q When you hired Samuel Rose, his job was to haul woodchips from Summerville to the Capstone Plant; is that correct?

A Correct.
Q And you furnished the truck; is that correct?
A Correct.
Q You paid for the gas; is that correct?
A Correct.
Q You paid for the maintenance on the truck; is that correct?
A Correct.
Q And really all he did was he was suppose to get in the truck and drive it safely to and from Summerville, dumped in Capstone, come back. His job was just to drive the truck?
A His job was just to drive the truck; yes.
Q And you told him where to go?
A No, I did not.
Q You didn't tell him where to go?
A No, sir. At Summerville, we have a loader box and each driver has a shift, but you can start your shift earlier or later. I did not make that determination.
Q Not when, but where? I mean, he had your truck. His job was to drive your truck from Summerville saw mill, to Capstone. He couldn't just take that truck if he wanted to haul chips to Savannah or something like that?
A No, sir.
Q Well, thank you, sir. I don't have any other questions. Appreciate it.

EXAMINATION BY MS. BARR:

Q Mr. Smalls, my name is Kirsten Barr. We met briefly before we went on. I represent Chris Thompson and the insurance carrier. Do you recall making payments to Swap Fox or to anybody else for worker's comp insurance in 2011?

A No, ma'am.

Q Would you have written one check. I mean, do you recall making any payments toward the purchase of a worker's comp insurance policy in the year prior to the accident?

A Yes, ma'am.

Q Now, do you have business records showing -- would you write the check to Swap Fox then?

A Sometimes I made them to Swap Fox and sometimes I -- like, if I was close to being terminated, they would say, hey, just make it out to us and make sure it stays current.

Q At any time in the months prior to this accident that happened in August of 2011, did you stop making your regular payment?

A Focus. I'm not going to say that I didn't -- I might not have had some times when I might have been late. But what would happen is that my insurance agent would say, Smalls, well this is where you are and this is what you need to do. But, yes, ma'am -- and -- focus -- if my insurance had lapsed, I would have to go in and sign something saying that I didn't for that particular period that might have

just lapsed that I was not covered, so again, the best way I can put it is that I'm not going to say that I didn't have any issues, but at the time of this incident, I was under the impression that I was covered.

Q Would you be able to put your hand on like the canceled checks or check stubs that you would have written to pay for your worker's compensation insurance in the months prior to Mr. Rose's accident?

A I'm pretty sure I could go back and find documentations of payments.

Q Do you recall ever getting a notice from Swap Fox or from the worker's comp insurance company saying that your policy had lapsed --

A No.

Q -- or that they were going to cancel it?

A No, ma'am.

Q You still get your insurance with Swap Fox?

A As of now, I'm out of business pretty much. I'm exhausted.

Q Were you running trucks for anybody other than --

A No. No, ma'am.

Q -- what you did for Chris Thompson?

A Exactly. That was everything for me.

Q And you have four trucks?

A Yes.

Q Do you still have the four trucks?
A I still have -- yes, I still have them.
Q And where do you keep your trucks?
A I keep one of them at the shop that broke, but I have three in a yard, what they call Red Top.
Q Is that something that you own or --
A It's a friend's property.
Q And where in Red Top is that?
A That's off of Charleston -- I think that's Old Charleston Road.
Q And who owns the property where they're located?
A Rodney Doctor.
Q Doctor?
A Yes, ma'am.
Q And do you pay him rent to keep those trucks there, or is he just a friend, or what's the arrangement?
A Oh, no, he's a friend.
Q And you say that you have not worked or done any kind of work with JJS Trucking since you talked to Mr. Thompson about the lapse in your worker's comp insurance?
A Yes, ma'am.
Q Just a quick question. We've marked this as Claimants One, but I think you said this was a load sheet; is that what you called it?
A Yeah. By definition, we call them load sheets, but

that's how we determine compensation.
Q And would this be something that an employee like Mr. Rose would turn in to you each week?
A Yes. But technically he turned it in to the office. He didn't really turn them in to me, but I look at it as being turned in to me. Every week he would fill it out just like I did and put it in a box, and then when the checks came from Chris Thompson then it would come back to me.
Q So when you say he leaves it in a box, this was a box at Capstone?
A Correct.
Q But Chris Thompson didn't write a check to Samuel Rose. He wrote you a check?
A Exactly. He wrote me a check. Yes, ma'am.
Q I think Mr. Killen probably has some questions for you. That's all I have for you right now.
EXAMINATION BY MR. KILLEN:
Q Mr. Smalls, I'm Tim Killen. I represent South Carolina Worker's Compensation Uninsured Employers Fund, and this load sheet, this is filled out by Samuel Rose; is that correct?
A Correct.
Q And did Mr. Rose do the calculations on this document?
A No. No. Chris Thompson did the calculations on the sheet.

Q So Mr. Rose would leave this in a box for Chris Thompson; is that correct?
A Correct.
Q And Chris Thompson or someone in his company would do these calculations?
A Correct.
Q And then Mr. Thompson's company would pay you --
A Correct.
Q -- and send these sheets back?
A Correct.
Q And then you would have them for your records; is that right?
A Correct.
Q So would you just then write a check to Samuel Rose for the amount shown on the bottom of this load sheet?
A No. I would write a check to him for each load -- his compensation was $25.
Q That's right.
A I would count each load that was turned in to verify, and I would cut him a check for those amount of loads.
Q Did Mr. Rose ever tell you how many trips he took in a certain week?
A Sometimes we would discuss -- you know, he would say, well, yes Smalls, I got 25 loads, or I got 30 loads and then, so we would discuss it and then what would happen is

when this came back this was like double checking what the verbal communication was.

Q The verbal communication was just informative; right?

A Correct.

Q This document, this load sheet, I mean, that's the holy grail.

A Yes.

Q That's the document where everything is based off of; right?

A Correct.

Q Let me ask you a few background questions. What's your date of birth?

A [redacted]/70.

Q And your social security number?

A [redacted].

Q And your driver's license number?

A [redacted]

Q And that's South Carolina?

A Correct, sir.

Q I know your home address, is that your business address as well?

A Correct, sir.

Q Have you ever operated any other locations other than the Gordon Street location?

A No, sir.

Q Where do you house your trucks?
A Red Top or if I was --
Q I'm sorry. Let me ask that a better way. When you were in business, where did you house your trucks?
A In Summerville at the mill.
Q And who owns that mill?
A Well, owns the mill would be Capstone.
Q And so you would park your trucks there, did you pay anyone for the space?
A No, sir.
Q Who did you negotiate that with?
A Well, you use the word, "negotiate." I was just authorized by Mr. Chris Thompson to be able to park there.
Q And you went into business with Chris Thompson about three and a half years ago; right?
A Yes, sir.
Q You never had a written contract with him?
A No, sir.
Q But you had a written contract with all your drivers?
A Yes, sir, most of them.
Q You're the only member of your LLC?
A Yes, sir.
Q How are you taxed?
A When you say, how am I taxed?
Q Are you taxed like a sole proprietor? Do you know?

It's okay if you don't know.
A I mean, I got some tax documents, but I know there's different ways you can be taxed.
Q Do you pay corporate taxes for your income through your LLC? If you don't know, it's okay?
A Well, I know on my taxes my corporation is listed so.
Q Okay. Your LLC?
A Yes, sir.
Q You pay personal income tax?
A Can I make a call? Because my accountant might answer the phone.
Q It's all right. Who's your accountant?
A Liberty Tax. Warren -- Warren Frazier.
Q Where is he located?
A Goose Creek.
Q Do you own the property at Gordon Street?
A Yes, I do.
Q Personally?
A Yes.
Q Does your LLC own any property?
A No, sir.
Q Who owns those trucks?
A My corporation.
Q Their titled in the name of JJS Trucking, LLC; is that correct?

A Correct.
Q Where do you bank?
A First Citizens.
Q Do you have personal accounts there?
A I don't have a personal account.
Q All your bank accounts there -- if their -- is there more than one?
A No. It's just one, JJS Trucking.
Q And it's just a checking account?
A Yes.
Q Do you have a mortgage on your house at Gordon Street?
A I do.
Q Is that in your name alone?
A It is.
Q How do you pay the mortgage?
A By check.
Q Out of your JJS Trucking, LLC account?
A Most of time I would assume so, yes.
Q You would assume so or yes or no?
A I would say yes.
Q So you use that JJS Trucking account for your personal needs?
A I guess you can say it like that.
Q Do you separate your money from your corporation with your personal money?

A Oh, no, I see what you're saying. No, I do pull it out.
Q How do you pull it out?
A I write a check to myself.
Q And then you cash it?
A Correct.
Q At First Citizens?
A Correct.
Q How do you pay your electric bill?
A I would pay it off of my account.
Q From your corporate account?
A Correct.
Q What about when you go get groceries?
A I pay cash.
Q Do you ever write a check for groceries?
A No, sir.
Q Do you own any automobiles personally?
A Yes, sir.
Q How do you get gas?
A I pay for it with the cash.
Q You pay cash for your gas at all times?
A Correct.
Q You never use your corporate account to pay for your personal vehicle's gas.
A No, sir.

Q What kind of cars do you own personally?
A I got a Kia Sorento and a F250 true cab truck and a F150 that's an older truck.
Q Any other automobiles or trucks?
A No, sir.
Q Does your wife own those vehicles as well?
A No.
Q Did you ever take money out of any of your drivers checks to pay for worker's comp insurance?
A No.
Q Did Chris Thompson ever take money out of what he paid you to pay for worker's compensation insurance?
A No.
Q Did the terms of your agreement with Chris Thompson ever change at any time during the course of your relationship?
A No.
Q So he took the same percentage out when you started as he did from your last load?
A Same percentage out -- same percentage out. I would say -- you say take the same percentage out. I would word it as I was paid by the ton, but that would change based off of fuel cost or what he was being compensated with because it did go up and down. But I don't see it as -- you say take something out.

Q So when it changed, how did you find out that it changed?
A I saw it on the -- I mean, I got the load sheet -- the statement.
Q When you got paid, that's when you learned?
A Correct.
Q There was no negotiating those factors?
A No, sir.
Q What Chris Thompson paid you, you got; is that correct?
A Correct.
Q And you didn't have any say so in that?
A No, sir.
Q And you said earlier your job was to provide insurance coverage, and his job was to provide the trailer?
A Well, I mean, no. My job was to provide a truck and a driver.
Q Okay.
A But under the terms, I was supposed to make sure I keep my insurance, you know, current.
Q And that's your liability insurance and your worker's comp insurance?
A Correct.
Q I believe Mr. Fisher showed you a certificate of insurance earlier. I don't think we made it an exhibit. There's one dated 10/18/2010.

(Where upon an off the record discussion took place.)

Q Do you have a copy of that certificate dated 10/18/2010 or do you need --

A I got it.

Q Now, in October of 2010, did you get a new policy through the Swap Fox Agency for worker's comp insurance?

A I'm sorry. Which one am I looking at?

Q Your looking at the one dated 10/18/2010.

A Okay.

Q That's the one that we're dealing with here. That's the most important one, in my opinion.

Did you get a new policy of insurance that year in October of 2010 for worker's comp; do you remember that?

A A new?

Q Yes.

A 10th, the 18th, 10/18/10, did I get a new?

Q Let me go through this certificate with you. This purports to show that the document was created on October 18, 2010 by someone at Swap Fox Agency, and it has insure B Travelers Insurance or Indemnity and Affiliates. I can't read, it and that's where your worker's comp policy would be in effect. That insure B up there at the top is referencing this right here where it says binder and then these dates of effective coverage down here, 10/8/10 through

10/8/11. Did you go get a new insurance policy around that time?
A If that's the 10/18/10 -- I would -- are you saying this is the time when I was renewing it?
Q I'm asking you. Did you renew a policy, or did you get a new one or what?
A I renew it every year, so if I'm renewing it every year and it starts on the 10th, the 8th, the 10, 10th the 2nd and then this date up here is -- I would have believed that this is the beginning of a new policy.
Q It shows binder down there. Did you ever have an actual policy issued to you from Travelers?
A I'm pretty sure I would have had to. I mean --
Q When did you make your payments to Swap Fox?
A Oh, wow, I mean, normally there would have been a deposit made, and I would be making monthly payments.
Q So around the time, you either renewed or get a new policy you make a deposit; is that correct?
A Correct.
Q And then from the rest of the year you make --
A Correct.
Q -- equal monthly installments; is that correct?
A Pretty much.
Q And there were times in the past where you would fall behind?

A Correct.
Q But someone from Swap Fox would contact you and let you know and then you would catch up; correct?
A Correct.
Q Now, the worker's comp commission is showing a -- that this policy was canceled sometime in February of 2011. Now, between October of 2010 and February of 2011, were you missing payments to Swap Fox or Travelers?
A Okay. Say that one more time, please.
Q Between October of 2010 and February of 2011, that's about what, four months?
A Okay. Between October -- go ahead now.
Q Did you miss any of your payments?
A For my worker's comp, I'm going to say I really don't recall missing any payments, but if worker's comp says -- well, not worker's comp but if they say my insurance lapsed in January, I would have to say obviously I didn't make a payment.
Q Are you telling me you know that you didn't make a payment or just because this paperwork, which is not binding, says it.
A Exactly.
Q Are you relying on these documents?
A Yeah, pretty much.
Q Solely for your recollection?

A Pretty much.
Q Are you telling me that it's possible you missed a payment or two?
A I'm saying it is possible.
Q Is it probable?
A Probable? If that the same meaning as saying possible, I'm going to say it's possible.
Q Did you ever get a call from anyone at Swap Fox during that time?
A No, sir.
Q Did you ever get a letter from anyone at Swap Fox during that time telling you your policy was getting ready to lapse?
A No, sir.
Q Did you ever get a letter from Travelers during that period of time telling you your policy was getting ready to lapse and what you could do to cure that?
A I don't recall it, no, sir.
Q Did you ever get any of your premiums refunded to you?
A No, sir.
Q Neither Travelers nor Swap Fox ever wrote you a check for any worker's compensation insurance you paid for, but they weren't providing coverage for you?
A No, sir.
Q How frequently would you send certificates over to

Chris Thompson?
A I myself don't send certificates over to Chris Thompson. My agent would send it over to Chris Thompson.
Q Did you ever ask your agent to do that?
A In the past I think one time I did. It wasn't in the last year. I think one time before my -- he questioned me on my insurance renewal date, and I called my agent and say could you send over Chris Thompson a current, you know, certificate of insurance, but that was -- that had probably happened two years plus ago.
Q How long was your agreement with Chris Thompson supposed to last?
A He never -- we never discussed a time frame for how long it was supposed to last.
Q How long did it actually last?
A I'm going to say about three and a half years.
Q So for three and a half years, you two companies never had a written agreement?
A No, sir.
Q Three and a half years you two companies, both of your LLCs, never put anything on paper to show that you two had a contract with each other?
A No, sir.
Q And nothing changed since three and a half years before the contract terminated, as far as the terms of contract are

concerned; is that correct?
A Yes, sir, that's what I am saying.
Q After Chris Thompson terminated the contract with your company, did your company receive full payment for the work it had already performed?
A If you are saying if anything was owed to me from him, did I receive it, then I would say, yes.
Q Was it effective immediately, or did you get a 30 day grace period?
A Immediately.
Q And you would make your insurance payments to Swap Fox Agency?
A Yes, sir, sometimes, yes.
Q Sometimes?
A Yes, sometimes.
Q Where would you make them if you weren't making them directly to Swap Fox?
A If I'm not mistaken it would have been to like a finances company maybe. I don't know if it was actually to Towers or Zurich, but sometimes it would be like a finance company that would be established, and I would pay them.
Q When is the last time you remember making payments to a finance company?
A I would have to go and look at my records. Right this second I --

Q Just to the best of your recollection?
A I would -- I would believe in this -- in the early portion of this year because like I said, I know I was making payments.
Q So you were making payments in 2011?
A 2011.
Q It's 2011.
A Yes.
Q It is your testimony that you never received notice of a cancellation?
A No, sir.
Q By notice of cancellation, I mean a letter from the insurance company or the agent saying that they were getting ready to cancel your policy unless you followed up with the payment?
A It's a possibility they might have sent me something. Also when I was aware of a possible lapse then, I would bring it current. In this particular case here, I was not aware that my insurance had lapsed, and any other time if my insurance was about to lapse, Chris Thompson would have been all over me because he did not want my insurance to lapse, so I can't say I didn't make a mistake. What I can say is that ever since I dealing with Swap Fox and ever since I've been running for Chris, I never had this problem, and when he brought it to my attention, I didn't have nothing to say.

Q "He" being who?
A Chris Thompson.
Q And he didn't know about this problem until after the accident; is that correct?
A Correct.
Q That's all the questions I have.
EXAMINATION BY MR. FISHER:
Q Let me ask you one, Mr. Smalls: The finance company, whenever you say sometimes you made insurance payments through a finance company and not directly to Swap Fox, what finance company would that be, and how did that work?
A The best way I can put it is Swap Fox was my insurance agent. Normally, when I would go and establish a insurance binder, I would have to put "X" amount of dollars down, and then it would say, okay, well, to the balance on this -- if the policy was $5,000, I might put down $2,000. They might finance 3,000. I would give Swap Fox a check and then what would happen would be I would either make payments to a -- normally, I don't think it was the actual insurance, I think it was to like a finance company. And then if I got in trouble, you know, they would say, Hey, you know your insurance is about to cancel. I would talk to my insurance agent and say, Hey, what's the deal, well, you got "X" amount of time. Sometimes I would just cut them a direct check, you know, and they would deal with it however they

deal with my policy. They might have had a more faster, efficient way of dealing with the situation.

Q Well, there's this note here -- cancellations, reinstatements, non renewals and it shows on 1/6/11 that your policy was canceled, and it says by the request of the finance company?

MR. KILLEN: Can you tell him where that is, Joe?

MR. FISHER: Yeah.

Q It says TOC inquiry on line with South Carolina. This is something to show whether or not you had insurance. But anyway, the finance company, if you don't make a payment to the finance company, does your coverage lapse?

A I would say I'm sure it would lapse. I guess, that's an answer.

Q Do you know what finance agency it was that you were dealing with at this time?

A I would have to really go back and talk to my agent. I can find that out.

Q It would be worth it for you to do that. Thank you, sir. I don't have any other questions.

EXAMINATION BY MR. KILLEN:

Q Quick follow up. Did you ever sign a contract with the finance agency?

A You know something, I have to go back and look at my documents because like I said, normally when I start the

policy I would sign "X" amount of papers, and I'd have to go back and try to start looking at all those things to verify that.

MR. FISHER: Okay. Thank you. That's all.

(The deposition was concluded at 12:10 p.m. November, 14th, 2011.)

STATE OF SOUTH CAROLINA)

: C-E-R-T-I-F-I-C-A-T-E

COUNTY OF DORCHESTER)

I, Laci B. Bearden, Court Reporter and Notary Public, certify that I did have Sedrick Smallsto appear before me at 11:00 a.m. on Monday, November 14th, 2011, at the law offices of George Sink, P.A., 7011 Rivers Avenue, N. Charleston, South Carolina; that the witness was sworn and cautioned to tell the truth, the pages constitute a true and accurate transcript of the testimony given at that time and place.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this the 14th day of November, 2011.

_____

Laci B. Bearden

Notary Public for South Carolina

My Commission Expires: September 29, 2021

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ARREST RECORD
S.C. LAW ENFORCEMENT DIVISION

Since neither fingerprints nor an identifying number which is indexed in our files accompanied your request, SLED cannot guarantee in any manner that this material concerns the individual in whom you are interested.

TO: REC21A-09985 Mon Apr 30, 2012 14:23:31 OPHDRVBORPKM
FROM: SCCH-00561 Mon Apr 30, 2012 14:23:31

ICHR REQUEST FOR RAP SHEET
ORI-SCLED0000 SID-1354050 PUR-E
ATN-SELF, LB

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PAGE-01 DATE-04/30/2012 TIME-14:23:31
REQ ORI-SCLED0000 S C LAW ENF DIV
SID-SC01354050 FBI-
NAME-ROSE, SAMUEL ARCHIEDE SEX-M RACE-B
HEIGHT-601 WEIGHT-165 EYES-BRO HAIR-BLK SKIN- BORN-SC
FPC- HENRY-
PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY
-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--02/23/2001 DATE OF LAST UPDATE--04/23/2012

ADDITIONAL IDENTIFIERS	BIRTH DATES	MARKS	SOC SEC	MISC NUM
ROSE, SAMUEL ARCHIEDELL	[redacted]1970			
ROSE, SAMUEL				
ROSE, SAMUEL A				
RSE, SAMUEL ARCHIEDELL				
	[redacted]1970			
ARCHIEDELL, ROSE SAMUEL				
ROSE, SAMUEL ARCHEIDELL				

CONTRIBUTOR/SUBJECT	DOA/RCVD	CHARGE/DISPOSITION/ETC
ROSE, SAMUEL ARCHIEDE	02/07/2001	
SC0100600 NORTH CHARLESTON PD		
CASE-01-999999B		
CHN-		
		ARREST CHARGE 01-INDECENT EXPOSURE

PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-TRESPASS
OFFENSE DATE-02/07/2001
DOC-01GS1003669 WARR-G536930 COURT CHARGE 01-INDECENT

EXPOSURE
COURT DISP-CONVICTED;3 YRS
SUS PROB 5 YRS/CRED STARTE
D 2-7-01/SEX
COURT DATE-07/18/2001
ATN-

DOC-R84 WARR-G536915 COURT CHARGE 02-TRESPASSING
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-03/20/2001

SC040055C R & E CENTER COLA 07/24/2001 CUSTODY STATUS-RECEIVED
CASE-276934 START DATE-07/24/2001
CIT-16-15-130-MISDEMEANOR
COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;2YRS SS
2YRS WITH 5YRS PROBATION
ATN-

OSE, SAMUEL 10/03/2002
SC0100000 CHARLESTON CNTY SO
CASE-029999999X

TN-
CIT-N/A-MISDEMEANOR
ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-10/03/2002
PHOTOGRAPH AVAILABLE

OSE, SAMUEL ARCHIEDE 10/08/2002
C0100000 CHARLESTON CNTY SO
ASE-02015011B
TN-
ARR-H099911
IT-23-3-470(A)(B)(1)-MISDEMEAN
ARREST CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
OFFENSE DATE-10/08/2002
PHOTOGRAPH AVAILABLE

IT-23-3-470(A)(B)(1)-MISDEMEAN
C-03GS1000111 WARR-H099911 COURT CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
COURT DISP-CONVICTED;197

DAYS/CRED GIVEN FOR TIME
SERVED BY SC DOC
COURT DATE-06/24/2003
ATN-

SC040015C SC DEPT CORRECTIONS 12/30/2002 CUSTODY STATUS-RECEIVED://///
CASE-276934
SC01454479 CONSOLIDATED
START DATE-12/30/2002
CIT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS

ATN-500300026890

ROSE, SAMUEL ARCHIEDE 02/12/2004
SC0100100 CHARLESTON POLICE DE
CASE-03-25363C
ATN-10X004043021
WARR-H407261
CIT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 01-INDECENT
EXPOSURE
OFFENSE DATE-02/12/2004

PHOTOGRAPH AVAILABLE

ARR-H407262
IT-N/A-MISDEMEANOR

ARREST CHARGE 02-SIMPLE ASSAU
LT
OFFENSE DATE-02/12/2004

CT-16-15-130-MISDEMEANOR
OC-04GS1003067 WARR-H407261

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATN-10X004043021

T-C/L-UNCLASSIFIED
C-04GS1003068 WARR-H407262

COURT CHARGE 02-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED:10 YRS
SERVE 3 YRS BAL SUS 3 YRS
PROB/CRED FOR
COURT DATE-01/03/2006

SE, SAMUEL ARCHIEDE 10/25/2004

100100 CHARLESTON POLICE DE
-04023850C
0X004299044

3

ERY OF HIGH AND AGGRAVATED
NATURE
OFFENSE DATE-10/25/2004
PHOTOGRAPH AVAILABLE

CIT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 02-INDECENT
EXPOSURE
OFFENSE DATE-10/25/2004

CIT-16-15-130-MISDEMEANOR
DOC-05GS10000518 WARR-H865013

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3YRS
SERVE 2YRS BAL SUS 3YRS

PROBATION CREDIT TIME
SERVED
ATN-10X004299044

ROSE, SAMUEL ARCHIEDELL 11/17/2004

SC0100100 CHARLESTON POLICE DE
ATN-
WARR-H749964
CIT-16-15-130-MISDEMEANOR

ARREST CHARGE 01-INDECENT
EXPOSURE
PHOTOGRAPH AVAILABLE

CIT-16-15-130-MISDEMEANOR
DOC-05GS1000768 WARR-H749964

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATN-

OSE, SAMUEL 02/28/2005
SC0100100 CHARLESTON POLICE DE
CASE-165 738
ATN-990000031005
WARR-H768017
CT-16-3-654-FELONY

ARREST CHARGE 01-CRIMINAL

SEXUAL CONDUCT - THIRD
DEGREE
OFFENSE DATE-02/28/2005

T-16-3-654-FELONY
C-00GS10 WARR-H768017

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - THIRD
DEGREE
COURT DISP-NON-CONVICTION;
DISM/NOL PROS/PROS ENDED

ATN-990000091000

3C0400150 SC DEPT CORRECTIONS 01/1_/2006 CUSTODY STATUS-RECEIVED
'ASE-200601 START DATE-01/12/2006
'IT-16-15-130-MISDEMEANOR
COURT CHARGE 01-INDECENT EXPOSURE
COURT DISP-CONVICTED;3 CTS 3 YRS 3S2YRS 3YRSPROEBEA
COURT DATE-01/12/2006
ATN-500200045680

'IT-C/L,-MISDEMEANOR
COURT CHARGE 02-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;1YRS33YR S3YRSPROBCC
COURT DATE-01/12/2006

'IT-C/L-UNCLASSIFIED
COURT CHARGE 03-ASSAULT OF A HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS SS 3 YRS 3 YRS PROB CC
COURT DATE-01/12/2006

3C0400150 CENTRAL PPP 06/30/2006 CUSTODY STATUS-PROBATION
'ASE-SC0100 START DATE-06/30/2006
'IT-C/L-UNCLASSIFIED
COURT CHARGE 01-ASSAULT OF A HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS SUSP 3YRS W/3YRS PROBATION
ATN-990000209935

'ND OF PAGE 01 - PAGE 02 TO FOLLOW

'N Mon Apr 30, 2012 14:23:31 000305513716/220

'UT Mon Apr 30, 2012 14:23:32 REC21A MSG# 09985 SAN: OPHDRVBORPKM

TO: REC21A-09986 Mon Apr 30, 2012 14:23:32 OPHDRVBORPKM
ROM: SCCH-00562 Mon Apr 30, 2012 14:23:32

AGE-02 DATE-04/30/2012 TIME-14:23:31
EQ ORI-SCLED0000 S C LAW ENF DIV
ID-SC01354050 FBI-

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 02-INDECENT EXPOSURE
COURT DISP-CONVICTED;3YRS SUSP 2YRS W/3YRS PROBATION

CIT-C/L,-MISDEMEANOR

COURT CHARGE 03-ASSAULT/BATTERY OF HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS SUSP 3YRS W/2YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 04-INDECENT EXPOSURE
COURT DISP-CONVICTED;3YRS 2YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 05-INDECENT EXPOSURE
COURT DISP-CONVICTED;3YRS SUSP 2YRS W/3YRS PROBATION

OSE, SAMUEL 02/26/2008
C0100156 CHARLESTON PPP
ASE-20080225
TN-10D100526242
ARR-W10081703 *
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION VIOLATION
OFFENSE DATE-02/26/2008
PALM PRINTS AVAILABLE

OSE, SAMUEL 07/14/2008
C0100156 CHARLESTON PPP
ASE-20080714

TN-10D100541133
ARR-W10081703 *
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION VIOLATION
OFFENSE DATE-07/14/2008
PALM PRINTS AVAILABLE

0400156 SC DEPT CORRECTIONS 07/16/2008 CUSTODY STATUS-RECEIVED
SE-071620 START DATE-07/16/2008
T-C/L-UNCLASSIFIED

COURT CHARGE 01-ASSAULT OF A HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS

6

ATN-500200058694

CIT-C/L,-MISDEMEANOR

COURT CHARGE 02-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;10 YRS
SS 3 YRS 3 YRS PROB CC

COURT DATE-07/16/2008

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 03-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 CTS 3
YRS SS 2 YRS 3 YRS PRO
COURT DATE-07/16/2008

ROSE, SAMUEL ARCHIEDELL 04/14/2012
SC0180000 DORCHESTER CNTY SO
CASE-12004033
ATN-18D100513871
WARR-M473169
CIT-16-11-311-FELONY

ARREST CHARGE 01-BURGLARY -
FIRST DEGREE
OFFENSE DATE-04/14/2012
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-M473168
CIT-16-13-180(B)(1)-MISDEMEANOR

ARREST CHARGE 02-RECEIVING
STOLEN GOODS <$2,000

OFFENSE DATE-04/14/2012

- WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

ASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01354050
HIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
ONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
HANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
SE OF THIS RECORD IS ALLOWED.

>>> *** N O T I C E *** <<<

****

THE SUBJECT OF THIS RECORD IS A CONVICTED SEX OFFENDER. ADDITIONAL *
INFORMATION MAY BE OBTAINED FROM THE SOUTH CAROLINA SEX OFFENDER *
REGISTRY AT: > WWW.SLED.SC.GOV < *

****

7

NDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
OUTH CAROLINA

NFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
ONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
CQUIRE A HANDGUN.

NDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
URSUANT TO FEDERAL GUN CONTROL ACT OF 1968

NFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
ONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
WO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
HEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
IREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
EFINED BY THE GUN CONTROL ACT OF 1968 (18.USC 922(G)).

* 3 C CJIS END OF RECORD **

N Mon Apr 30, 2012 14:23:32 000305515414/220
UT Mon Apr 30, 2012 14:23:33 REC21A MSG# 09986 SAN: OPHDRVB0RPKM

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328
Carrier File # 943450
Carrier Code #
Employer FEIN

Samuel A. Rose ~~347-55-3390~~
Claimant's Name SSN

~~17 Ashton St.~~ Charleston, SC 29403
Address City State Zip

~~(843) 577-3988~~
Home Phone Work Phone

JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
Employer's Name

106 New Hope Dr. Summerville, SC 29483
Address City State Zip

Bridgefield Casualty Insurance Co.
Insurance Carrier

Kirsten L. Barr (843) 881-4228
Preparer's Name Phone #

1. Date of injury: August 10, 2011 (month day year)

2. Total Weeks of Compensation Paid: 35 weeks

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TTD From: 8/11/11 To: 4/12/12

Type: From: To:

Type: From: To:

4. Date of First Payment: 8/11/11 (month day year)

5. Total Amount Paid (a) Compensation: $2,625.00

(b) Medical (Include Nursing, Hospital Drugs, Etc.): $1,055.85

6. Informal Conference is Requested: ☐ yes ☐ no (check one)

7. Use these lines to send a memo to the Commission:

Kristen L Barr (843) 881-4228
Employer's Representative Phone

April 10, 2012
Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

WCC FORM # 18 REV. DATE 3/96 **18** PERIODIC REPORT 15

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
1	Dr. Robert B. Lowery	10/20/22	1-5

Rose, Samuel Archiedell **MRN: 3012920**

Office Visit 10/10/2022
RSFPP Orthopaedics East Bay

Provider: Robert B Lowery, MD (Orthopedic Surgery)
Primary diagnosis: Chronic pain of both knees
Reason for Visit: Knee Pain

Progress Notes

Robert B Lowery, MD (Physician)
Orthopedic Surgery

ROPER ST. FRANCIS
PHYSICIAN PARTNERS

RSFPP PHYSICIANS GROUP
RSFPP ORTHOPAEDICS EAST BAY
255 EAST BAY STREET
CHARLESTON SC 29401-2632
Dept: 843-853-3474

10/10/2022

Samuel Archiedell Rose (DOB: [redacted]1970) is a 52 y.o. male, here for evaluation of the following chief complaint(s): No chief complaint on file.

SUBJECTIVE/OBJECTIVE:

History of Present Illness: The patient is a 52-year-old gentleman who is referred for independent medical evaluation in regards to an injury to his right knee that occurred on August 10, 2011. At that time he was a driver driving for a trucking company. He was rear ended and his rig was jackknifed and pushed into a median. He notes that the truck caught on fire. He was pulled out of the truck. He was taken to the medical University where evaluation and treatment was performed. Complete and thorough trauma evaluation was performed. He had a traumatic brain injury with loss of consciousness, right knee laceration, right shin laceration, he was admitted at that point. Because of knee pain the patient did undergo an orthopedic evaluation at that time. The MRI scan was obtained which did show a mild impaction fracture of the medial femoral condyle with associated bone marrow knee edema. Prior changes consistent with Osgood-Schlatter's was noted.

Subsequently the patient did have issues with his neck and back. These evidently have been ongoing and he is scheduled for neck surgery in the near future. Currently in regards to his right knee he states that his right knee did give him some trouble for several years with pain but has diminished since then. He notes intermittent cracking in his knees and was told that he would have arthritis in his knees in the future.

Currently he is not working because of his neck and back. Other than cracking he notes that his right knee does not give him significant problems.

Review of Systems:Non contributory other than as HPI

Current Outpatient Medications

Medication	Sig	Dispense	Refill
• amLODIPine (NORVASC) 10 MG tablet	1 tablet Orally Once a day for 90 days		
• hydrocortisone 1 % cream	1 application to		

	affected area Rectal Twice a day for 30 day(s)
• ibuprofen (ADVIL;MOTRIN) 800 MG tablet	1 tablet with food or milk as needed Orally Three times a day
• lisinopril-hydroCHLOROthiazide (PRINZIDE;ZESTORETIC) 20-25 MG per tablet	1 tablet Orally Once a day for 90 days

No current facility-administered medications for this visit.

Not on File

No past medical history on file.

No past surgical history on file.

No family history on file.

Social History

Socioeconomic History
- Marital status: Unknown
  Spouse name: Not on file
- Number of children: Not on file
- Years of education: Not on file
- Highest education level: Not on file

Occupational History
- Not on file

Tobacco Use
- Smoking status: Not on file
- Smokeless tobacco: Not on file

Substance and Sexual Activity
- Alcohol use: Not on file
- Drug use: Not on file
- Sexual activity: Not on file

Other Topics Concern
- Not on file

Social History Narrative
- Not on file

Social Determinants of Health

Financial Resource Strain: Not on file
Food Insecurity: Not on file
Transportation Needs: Not on file
Physical Activity: Not on file
Stress: Not on file

Social Connections: Not on file
Intimate Partner Violence: Not on file
Housing Stability: Not on file

There were no vitals filed for this visit.

Ancillary Data Reviewed: Medical records from the medical University of South Carolina, Dr. Weil stain, Tri-County radiology health first and Southeastern spine has been reviewed.

Physical Examination:
HEENT: Normocephalic atraumatic

Neck: Supple, no JVD

Ocular: Sclera clear

Mouth: Oral mucosa pink and moist

Upper extremity: Good range of motion shoulders elbows wrists without deformity

Chest: No audible wheezes

Cardiovascular: Regular rate, no peripheral edema

Lower extremity: Good range of motion hips knees and ankles

Neurologic: No focal defects noted

Dermatologic: No lesions on exposed areas

Imaging
XR KNEE LEFT (MIN 4 VIEWS) (CLINIC PERFORMED)
4 view x-ray of the left knee is taken today. This shows normal bone contours. No signs of arthritis or bone lesions. No other bony abnormalities noted. Patella noted to track central
XR KNEE RIGHT (MIN 4 VIEWS) (CLINIC PERFORMED)
4 view x-ray of the right knee is taken today. This does show normal bone contours. No signs of arthritis or joint space narrowing. Remnants of Osgood-Schlatter's noted. Patella noted to track central

ASSESSMENT/PLAN:

Progress Notes (continued)

1. Chronic pain of both knees
- XR KNEE RIGHT (MIN 4 VIEWS) (CLINIC PERFORMED)
- XR KNEE LEFT (MIN 4 VIEWS) (CLINIC PERFORMED)

2. Right knee injury, sequela

We have reviewed his examination and x-rays. Both look good today. The following is my opinion within a reasonable degree of medical certainty. He has fully recovered from the injury to his right knee. He is at maximal medical improvement. No further medical treatment is needed. No work restrictions are noted.

Orders Placed This Encounter
- XR KNEE RIGHT (MIN 4 VIEWS) (CLINIC PERFORMED)
- XR KNEE LEFT (MIN 4 VIEWS) (CLINIC PERFORMED)

Return if symptoms worsen or fail to improve.

An electronic signature was used to authenticate this note.

ROBERT B LOWERY, MD

Instructions

Return if symptoms worsen or fail to improve.
AVS (Automatic SnapShot taken 10/10/2022)

Communications

Chart Review Routing History

Recipients	Sent On	Sent By	Routed Reports
MALLORY MORRIS / TRASK HOWELL Fax: 843-881-8784	10/12/2022 10:25 AM	Elizabeth Nelson	Office Visit on 10/10/2022 with Robert B Lowery, MD Cover Page Message : Good morning Mallory,

Encounter Status

Signed by Robert B Lowery, MD on 10/10/22 at 17:28

BestPractice Advisories Rose, Samuel Archiedell [3012920]

Active

Date	User	Actions Taken	Triggers
10/10/22 1646	Robert B Lowery, MD [65468]	None	General BPA section
10/10/22 1633	Tanisha Gordon Morrison, MA [67192]	None	General BPA section

Encounter Messages

No messages in this encounter

Orders Placed

XR KNEE LEFT (MIN 4 VIEWS) (CLINIC PERFORMED) (Resulted 10/10/2022)
XR KNEE RIGHT (MIN 4 VIEWS) (CLINIC PERFORMED) (Resulted 10/10/2022)

Outpatient Medications at End of Encounter as of 10/10/2022

amLODIPine (NORVASC) 10 MG tablet	1 tablet Orally Once a day for 90 days
hydrocortisone 1 % cream	1 application to affected area Rectal Twice a day for 30 day(s)
ibuprofen (ADVIL;MOTRIN) 800 MG tablet	1 tablet with food or milk as needed Orally Three times a day
lisinopril-hydroCHLOROthiazide (PRINZIDE;ZESTORETIC) 20-25 MG per tablet	1 tablet Orally Once a day for 90 days

Medication Changes As of 10/10/2022 5:28 PM

None

Medication List at End of Visit As of 10/10/2022 5:28 PM

	Refills	Start Date	End Date
amLODIPine (NORVASC) 10 MG tablet 1 tablet Orally Once a day for 90 days Patient-reported medication			
hydrocortisone 1 % cream 1 application to affected area Rectal Twice a day for 30 day(s) Patient-reported medication			
ibuprofen (ADVIL;MOTRIN) 800 MG tablet 1 tablet with food or milk as needed Orally Three times a day Patient-reported medication			
lisinopril-hydroCHLOROthiazide (PRINZIDE;ZESTORETIC) 20-25 MG per tablet 1 tablet Orally Once a day for 90 days Patient-reported medication			

Visit Diagnoses

Primary: **Chronic pain of both knees** M25.561, M25.562, G89.29
Right knee injury, sequela S89.91XS

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
2	Dr. Steven C. Poletti	12/19/22	6

SOUTHEASTERN SPINE INSTITUTE
1625 Hospital Drive, Mt. Pleasant, SC 29464
(843) 849-1551 • (843) 884-0629 • (800) 432-0274

Patient Name: Samuel Rose Encounter Date. 12/19/2022 Date of Birth: [redacted]1970
Account Number: 600980

Mr. Rose is postoperative from discectomy and fusion of C5-6 and C6-7. He is having generalized pain. He does not have a focal deficit.

AP and lateral cervical x-rays show good position of the interbody device and anterior screws.

I do not want him to take another steroid dosepak. I have refilled his Flexeril and oxycodone.

Again, x-rays show optimal position of the anterior plate and anterior screws.

He is on off-duty status. He will follow up with me in one month.

Imaging Orders:
AP and Lateral views of the cervical spine were ordered, obtained and interpreted from an orthopedic standpoint.
Diagnosis Codes:
Z47.89 Encounter for other orthopedic aftercare

Treatment Plan: A work status report was created and given to the patient. X-rays of the cervical spine on return. Patient to return in 6 weeks for follow up.

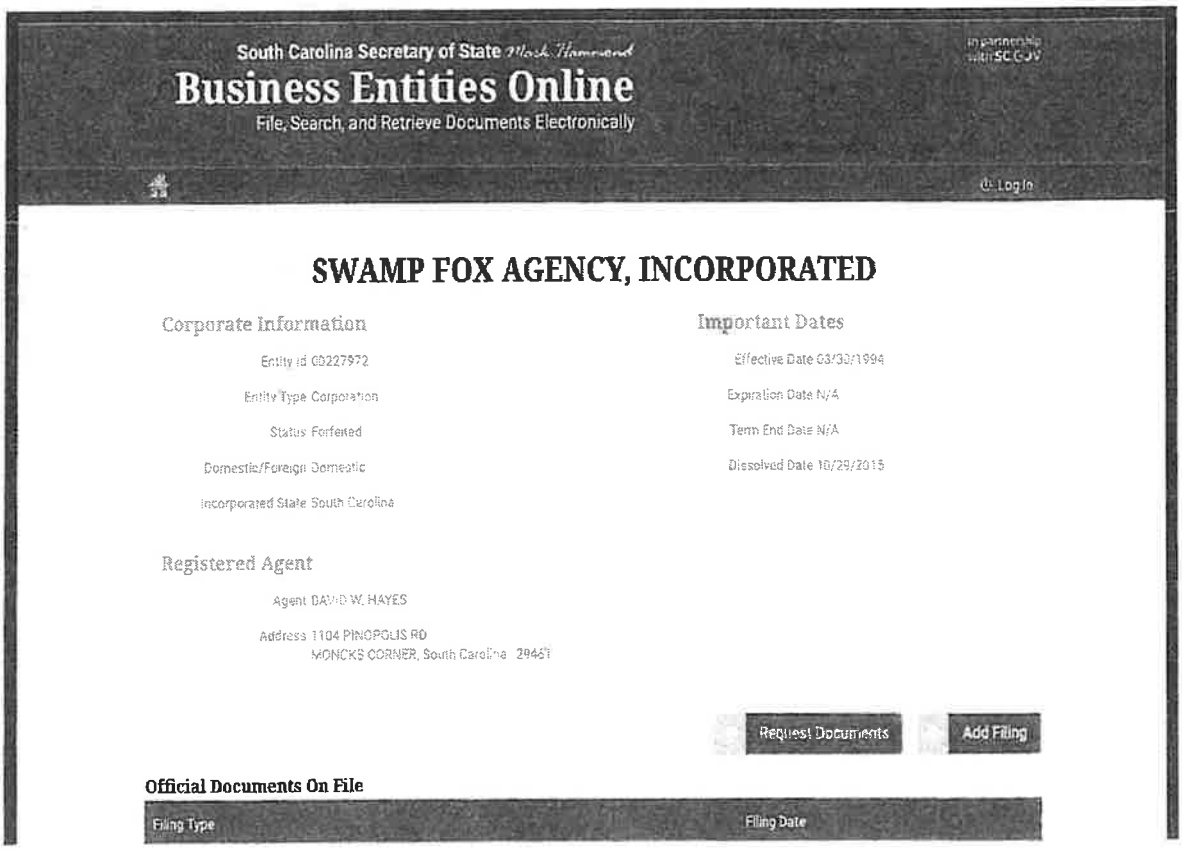
Steven C. Poletti, MD

SCP/jbe

ELECTRONICALLY SIGNED BY Steven C. Poletti, MD
12/20/2022

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
3	Secretary of State Record for the Swamp Fox Agency	3/30/94—10/29/15	7


South Carolina Secretary of State Mark Hammond
Business Entities Online
File, Search, and Retrieve Documents Electronically
Login
SWAMP FOX AGENCY, INCORPORATED
Corporate Information
Entity Id C0227972
Entity Type Corporation
Status Forfeited
Domestic/Foreign Domestic
Incorporated State South Carolina
Important Dates
Effective Date 03/30/1994
Expiration Date N/A
Term End Date N/A
Dissolved Date 10/29/2015
Registered Agent
Agent DAVID W. HAYES
Address 1104 PINOPOLIS RD
MONCKS CORNER, South Carolina 29461
Request Documents
Add Filing
Official Documents On File
Filing Type
Filing Date

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
4	Certificate of Liability Insurance	10/18/10	8

ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID PT JJSTRUC | DATE (MM/DD/YYYY) 10/18/10

PRODUCER
Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax:843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Tower Ins. Co. of New York	
INSURER B: Travelers Indem. & Affiliates	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE	$
	☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
	☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
					PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
A	AUTOMOBILE LIABILITY	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
	☐ ANY AUTO				BODILY INJURY (Per person)	$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	☒ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
	☐ HIRED AUTOS					
	☐ NON-OWNED AUTOS					
	☒ UM/UIM 75,000					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
	☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
	☐ DEDUCTIBLE					$
	☐ RETENTION $					$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATU-TORY LIMITS ☒ OTH-ER	
B	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	BINDER	10/08/10	10/08/11	E.L. EACH ACCIDENT	$500,000
					E.L. DISEASE - EA EMPLOYEE	$500,000
					E.L. DISEASE - POLICY LIMIT	$500,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 688-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2009/01)

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Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
5	Medical Paid by Carrier	10/4/11—1/10/23	9-11

	B	C	D	E	F	G	H	I	L	M	O
1	Check Date	Check Number	Check Type	ayment Ty	ayment De:	Amount	Paid From Date	Paid To Date	np T	Payee Name	Date Cleared
2	1/10/2023	228208	E	21	MED	54.73	11/21/2022	11/21/2022	TT	ADVA-NET	
3	1/10/2023	228207	E	20	MED	893.37	11/7/2022	11/7/2022	TT	ADVA-NET	
4	12/23/2022	223230	E	20	MED	331.52	11/11/2022	11/16/2022	TT	MEDCOMP USA INC DBA MTI	
5	12/22/2022	222764	E	20	MED	165.76	11/15/2022	11/15/2022	TT	MEDCOMP USA INC DBA MTI	
6	12/21/2022	222404	E	21	MED	339.95	12/7/2022	12/7/2022	TT	ADVA-NET	
7	12/20/2022	222028	E	25	MED	3900	11/21/2022	11/21/2022	TT	MEDCOMP USA INC DBA MTI	
8	11/29/2022	212447	E	21	MED	304.55	9/21/2022	9/21/2022	TT	ADVA-NET	
9	11/21/2022	209347	E	21	MED	165.94	10/6/2022	10/6/2022	TT	ADVA-NET	
10	11/10/2022	205262	E	21	MED	272.8	9/21/2022	9/21/2022	TT	ADVA-NET	
11	9/12/2022	2840376	C	21	MED	1000	10/3/2022	10/3/2022	TT	ROPER ST FRANCIS PHYSICIAN PARTNERS	10/31/2022
12	9/6/2022	2839432	C	27	MED	2500	8/18/2022	8/18/2022	TT	PMSI SETTLEMENT SOLUTIONS LLC	9/12/2022
13	6/30/2022	2826310	C	27	MED	7206	4/8/2022	4/8/2022	TT	BRIGHAM AND ASSOCIATES, INC	7/8/2022
14	3/22/2022	2806875	C	26	MED	4126.5	11/4/2021	3/16/2022	TT	EK HEALTH	3/29/2022
15	7/12/2021	1800	R	21	MED	-3700	8/11/2020	8/11/2020	TT	MICHAEL WILDSTEIN MD	
16	8/25/2020	2664316	C	21	MED	3700	8/11/2020	8/11/2020	TT	MICHAEL WILDSTEIN MD	8/31/2020
17	6/25/2018	2373406	C	27	MED	17.77	5/23/2018	5/23/2018	TT	IOD INC	7/2/2018
18	5/5/2015	1999561	C	27	MED	474.6	4/27/2015	4/27/2015	TT	PRO-LEGAL COPIES INC	5/11/2015
19	1/22/2014	1781255	V	21	MED	-1850	8/15/2013	8/15/2013	TT	CHARLESTON NEUROSURGICAL ASSOCIATES	
20	11/18/2013	1803922	C	21	MED	62.05	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	11/22/2013
21	10/31/2013	1797200	C	27	MED	194.71	10/22/2013	10/22/2013	TT	PRO-LEGAL COPIES INC	11/8/2013
22	10/23/2013	1793699	C	27	MED	688.37	10/4/2013	10/4/2013	TT	PRO-LEGAL COPIES INC	11/27/2013
23	10/8/2013	1786639	C	21	MED	108.4	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	10/15/2013
24	10/4/2013	1785216	C	22	MED	459.13	8/23/2011	8/23/2011	TT	MEDICAL UNIVERSITY HOSPITAL	10/8/2013
25	9/30/2013	1782874	C	21	MED	454.9	9/6/2011	9/6/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	10/3/2013
26	9/30/2013	1783097	C	23	MED	238.05	9/3/2013	9/3/2013	TT	EXPRESS SCRIPTS INC	10/4/2013
27	9/30/2013	1783097	C	23	MED	15.3	9/3/2013	9/3/2013	TT	EXPRESS SCRIPTS INC	10/4/2013
28	9/30/2013	1783097	C	23	MED	16.13	9/3/2013	9/3/2013	TT	EXPRESS SCRIPTS INC	10/4/2013
29	9/25/2013	1781314	C	22	MED	821.31	8/10/2011	8/11/2011	TT	MEDICAL UNIVERSITY HOSPITAL	9/30/2013
30	9/25/2013	1781255	C	21	MED	1850	8/15/2013	8/15/2013	TT	CHARLESTON NEUROSURGICAL ASSOCIATES	
31	9/24/2013	1780685	C	21	MED	60.7	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	9/27/2013
32	9/18/2013	1778283	C	21	MED	8.63	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	9/23/2013
33	9/17/2013	1777482	C	21	MED	171.31	8/11/2011	8/11/2011	TT	MUSC PHYSICIANS	9/20/2013
34	9/17/2013	1777482	C	21	MED	111.75	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	9/20/2013
35	9/17/2013	1777482	C	21	MED	9.62	8/11/2011	8/11/2011	TT	MUSC PHYSICIANS	9/20/2013
36	9/17/2013	1777482	C	21	MED	8.94	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	9/20/2013
37	9/16/2013	1776800	C	21	MED	8.62	8/10/2011	8/10/2011	TT	MUSC PHYSICIANS	9/19/2013
38	9/16/2013	1776682	C	21	MED	456.59	9/15/2011	9/15/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/26/2013
39	9/16/2013	1776682	C	21	MED	405.72	10/11/2011	10/11/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/26/2013
40	9/11/2013	1774932	C	21	MED	213.5	9/2/2011	9/2/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
41	9/11/2013	1774932	C	21	MED	175.14	9/6/2011	9/6/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013

	B	C	D	E	F	G	H	I	L	M	O
42	9/11/2013	1774932	C	21	MED	50.53	9/6/2011	9/6/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
43	9/11/2013	1774932	C	21	MED	0.26	9/15/2011	9/15/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
44	9/11/2013	1774932	C	21	MED	15.3	9/27/2011	9/27/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
45	9/11/2013	1774932	C	21	MED	206.5	9/27/2011	9/27/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
46	9/11/2013	1774932	C	21	MED	50.4	10/11/2011	10/11/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
47	9/11/2013	1774932	C	21	MED	171.5	9/22/2011	9/22/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
48	9/11/2013	1774932	C	21	MED	115.5	9/29/2011	9/29/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
49	9/11/2013	1774932	C	21	MED	206.5	9/20/2011	9/20/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
50	9/11/2013	1774932	C	21	MED	115.5	9/13/2011	9/13/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
51	9/11/2013	1774932	C	21	MED	115.5	9/8/2011	9/8/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
52	9/11/2013	1774932	C	21	MED	130.9	10/6/2011	10/6/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
53	9/11/2013	1774932	C	21	MED	130.9	10/4/2011	10/4/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
54	9/11/2013	1774932	C	21	MED	21	9/2/2011	9/2/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	9/20/2013
55	9/10/2013	1774683	C	24	MED	25.43	4/8/2013	7/15/2013	TT	SAMUEL A ROSE	9/19/2013
56	9/10/2013	1774683	C	24	MED	16.95	9/3/2013	9/3/2013	TT	SAMUEL A ROSE	9/19/2013
57	9/9/2013	1773666	C	21	MED	800	8/16/2011	9/20/2011	TT	ALAN N ABEL	9/13/2013
58	9/9/2013	1773666	C	21	MED	600	9/29/2011	12/15/2011	TT	ALAN N ABEL	9/13/2013
59	9/9/2013	1773666	C	21	MED	600	12/30/2011	3/15/2012	TT	ALAN N ABEL	9/13/2013
60	9/9/2013	1773666	C	21	MED	600	5/10/2012	8/23/2012	TT	ALAN N ABEL	9/13/2013
61	9/9/2013	1773666	C	21	MED	600	9/12/2012	1/2/2013	TT	ALAN N ABEL	9/13/2013
62	9/9/2013	1773666	C	21	MED	600	1/25/2013	4/8/2013	TT	ALAN N ABEL	9/13/2013
63	9/9/2013	1773666	C	21	MED	500	4/18/2013	7/30/2013	TT	ALAN N ABEL	9/13/2013
64	8/26/2013	1768045	C	23	MED	473.6	7/30/2013	7/30/2013	TT	EXPRESS SCRIPTS INC	8/30/2013
65	8/26/2013	1768045	C	23	MED	16.13	7/30/2013	7/30/2013	TT	EXPRESS SCRIPTS INC	8/30/2013
66	8/26/2013	1768045	C	23	MED	14.44	7/30/2013	7/30/2013	TT	EXPRESS SCRIPTS INC	8/30/2013
67	7/30/2013	1756128	C	23	MED	16.13	7/2/2013	7/2/2013	TT	EXPRESS SCRIPTS INC	8/5/2013
68	7/30/2013	1756128	C	23	MED	5.57	7/2/2013	7/2/2013	TT	EXPRESS SCRIPTS INC	8/5/2013
69	7/30/2013	1756128	C	23	MED	431.15	7/2/2013	7/2/2013	TT	EXPRESS SCRIPTS INC	8/5/2013
70	7/30/2013	1756128	C	23	MED	14.44	7/2/2013	7/2/2013	TT	EXPRESS SCRIPTS INC	8/5/2013
71	7/15/2013	1749051	C	21	MED	20.2	7/8/2013	7/8/2013	TT	ALAN N ABEL MD	7/19/2013
72	6/28/2013	1743918	C	23	MED	250.85	6/6/2013	6/6/2013	TT	EXPRESS SCRIPTS INC	7/8/2013
73	5/28/2013	1730087	C	21	MED	40.8	4/16/2013	4/16/2013	TT	CHARLESTON SPINE & PHYSICAL MEDICIN	5/31/2013
74	5/28/2013	1730287	C	23	MED	239.86	5/2/2013	5/2/2013	TT	EXPRESS SCRIPTS INC	6/3/2013
75	5/20/2013	1726965	C	21	MED	2156	3/20/2013	3/20/2013	TT	CHARLESTON SPINE & PHYSICAL MEDICIN	5/31/2013
76	5/6/2013	1721215	C	23	MED	11.88	4/8/2013	4/8/2013	TT	EXPRESS SCRIPTS INC	5/10/2013
77	4/29/2013	1718308	C	23	MED	14.95	3/29/2013	3/29/2013	TT	EXPRESS SCRIPTS INC	5/6/2013
78	4/22/2013	1715243	C	23	MED	5.7	3/29/2013	3/29/2013	TT	EXPRESS SCRIPTS INC	4/29/2013
79	4/15/2013	1712078	C	23	MED	219.21	3/21/2013	3/21/2013	TT	EXPRESS SCRIPTS INC	4/29/2013
80	4/9/2013	1709650	C	23	MED	14.95	3/18/2013	3/18/2013	TT	EXPRESS SCRIPTS INC	4/15/2013
81	4/3/2013	1707261	C	24	MED	870.95	8/16/2011	3/21/2013	TT	SAMUEL A ROSE	4/9/2013
82	4/2/2013	1706114	C	21	MED	1516	2/25/2013	2/25/2013	TT	CHARLESTON SPINE & PHYSICAL MEDICIN	4/18/2013

	B	C	D	E	F	G	H	I	L	M	O
83	3/12/2013	1697171	C	23	MED	37.34	2/18/2013	2/18/2013	TT	EXPRESS SCRIPTS INC	3/18/2013
84	2/18/2013	1687027	C	23	MED	51.52	1/25/2013	1/25/2013	TT	EXPRESS SCRIPTS INC	2/25/2013
85	12/31/2012	1666507	C	23	MED	37.34	12/7/2012	12/7/2012	TT	EXPRESS SCRIPTS INC	1/7/2013
86	12/11/2012	1656863	C	27	MED	16.98	11/29/2012	11/29/2012	TT	IOD CORPORATION	12/17/2012
87	11/19/2012	1647365	C	23	MED	37.02	10/25/2012	10/25/2012	TT	EXPRESS SCRIPTS INC	11/26/2012
88	10/3/2012	1626636	C	23	MED	37.02	9/12/2012	9/12/2012	TT	EXPRESS SCRIPTS INC	10/9/2012
89	8/29/2012	1615622	C	23	MED	31.32	8/7/2012	8/7/2012	TT	EXPRESS SCRIPTS INC	9/4/2012
90	8/9/2012	1604645	C	27	MED	22.8	7/17/2012	7/17/2012	TT	ALAN N ABEL MD	8/15/2012
91	7/31/2012	1598268	C	27	MED	18.39	7/23/2012	7/23/2012	TT	IOD CORPORATION	8/6/2012
92	7/31/2012	1598268	C	27	MED	51.75	7/23/2012	7/23/2012	TT	IOD CORPORATION	8/6/2012
93	6/25/2012	1580203	C	27	MED	20.2	6/5/2012	6/5/2012	TT	WILDSTEIN SPINE CENTER	7/5/2012
94	6/6/2012	1571701	C	27	MED	21.5	4/27/2012	4/27/2012	TT	WILDSTEIN SPINE CENTER	6/14/2012
95	5/17/2012	1562458	C	27	MED	17.47	4/20/2012	4/20/2012	TT	IOD CORPORATION	5/23/2012
96	1/11/2012	1503797	C	27	MED	45	10/31/2011	10/31/2011	TT	TRI-COUNTY SPINAL CARE CENTERS	1/19/2012
97	12/29/2011	1498313	C	27	MED	18.38	11/22/2011	11/22/2011	TT	IOD CORPORATION	1/5/2012
98	12/6/2011	1486628	C	27	MED	57.04	11/13/2011	11/13/2011	MO	IOD CORPORATION	12/13/2011
99	11/30/2011	1484014	C	27	MED	5	10/21/2011	10/21/2011	MO	STATE OF SOUTH CAROLINA	12/6/2011
100	11/30/2011	1484022	C	27	MED	16.28	10/21/2011	10/21/2011	MO	HEALTHPORT	12/5/2011
101	10/4/2011	1454459	C	21	MED	93	8/23/2011	8/23/2011	MO	UNIVERSITY MEDICAL ASSOCIATES	10/11/2011
102											

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-

Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

March 30, 2012

F. Reid Warder, Jr.
Wood & Warder LLC
P O Box 20550
Charleston, SC 29413

Carrier Code No. 00000

Carrier File No. NRHR20110920

Re: **Claim file:**
WCC File No. 1112328
SAMUEL ROSE v. CHRIS THOMPSON SERVICES, LLC et al
Date of Injury: 08/10/2011

Compliance file:
WCC File No. X110953
SCWCC v. JJS Trucking LLC

Dear Mr. Warder:

This is in response to your call to me yesterday in which you indicated my deposition that was scheduled for today in Columbia has been cancelled. You said in lieu of my deposition you would accept a letter from me that states the Compliance Division's position regarding whether or not Travelers Indemnity insured JJS Trucking, LLC on the date of the accident, which was 8/10/2011. The position of the Compliance Division is it did not. The documentation of this is presented below.

The Compliance Division's investigation determined that JSS Trucking, LLC is a limited liability company, as evidenced by SC Secretary of State registered agent information shown as **Exhibit A.**

Cedric Smalls, owner of JJS Trucking, LLC, responded to the Compliance Division's request for information by completing the Employer Questionnaire shown as **Exhibit B.** The questionnaire has attachments that include certificates of insurance indicating Travelers provided coverage to JJS Trucking, LLC from 10/8/2010 to 10/8/2011, and Zurich provided coverage to JJS Trucking, LLC from 8/24/2010 to 8/24/2011. However, both Travelers and Zurich denied they provided coverage to JJS Trucking, LLC on the date of the accident, as evidenced by the denial letters shown respectively as **Exhibit C** and **Exhibit D.**

The insurance records of the Commission indicate that Travelers Indemnity Company provided coverage to JJS Trucking, LLC from 10/8/2010 to 2/5/2011 and from 9/23/2011 to 11/10/2011, as evidenced by the proof of coverage documents shown respectively as **Exhibit E** and **Exhibit F**.

Accordingly, the position of the Compliance Division is that Travelers Indemnity did not provide coverage to JJS Trucking, LLC on the date of the accident, and my recommendation is Travelers Indemnity should be released as a carrier of record for the claim.

Further, the position of the Compliance Division is that JJS Trucking, LLC was subject to the SC Workers' Compensation Act and uninsured from 2/5/2011 until 9/23/2011, and from 11/10/2011 through the date of this letter. JJS Trucking, LLC came under the Act by obtaining insurance, lapsed or did not renew its policy, but continued under the Act. In order to come out from under the Act, an eligible employer – one that does not now regularly have four employees -- must file a Form 38 to withdraw from the Act. That was not done. (See R67-403 and R67404.) The issue as to whether the employer was also subject to the Act by regularly having four or more employees has not been addressed in this compliance action, but that could be the case as well.

If you have questions or comments about the above, please call me directly,

Sincerely,

Garry Smith
Compliance Division, Director
803-737-5707

Enclosures: **Exhibit A - F**

c:
JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Kirsten L. Barr, Esquire
Trask & Howell, LLC
PO Box 2167
Mt. Pleasant, SC 29465

Joseph B. Fisher, Esquire
George Sink, PA
P O Box 63506
North Charleston, SC 29419-3506

Timothy B. Killen, Esquire
100 Executive Center Drive Suite 101
Santee Bldg
Columbia, SC 29210

South Carolina
Secretary of State
Mark Hammond

JJS TRUCKING, LLC

Note:This online database was last updated on 10/3/2011 6:01:29 PM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CEDRIC SMALLS
ADDRESS:	137-A GORDON STREET
CITY:	CHARLESTON
STATE:	SC
ZIP:	29403
SECOND ADDRESS:	

FILE DATE:	07/22/2005
EFFECTIVE DATE:	07/22/2005
DISSOLVED DATE:	/ /

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	07/22/2005	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at their own risk.

EXHIBIT A

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715

Tel: (803) 737-5700
Fax: (803) 737-1258
www.wcc.sc.gov

Workers' Compensation Commission

September 20, 2011

JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

Dear JJS TRUCKING, LLC:

A workers' compensation claim has been filed on behalf of the above-named claimant. The defendant in the caption is stated to have been the employer. Additional information is required to determine if insurance coverage for JJS TRUCKING, LLC exists. Please furnish the following information within five (5) days from the date of this letter.

Name of insurance agent: Swamp Fox Agency
Agent's phone number: 843-761-3999
Insurance carrier: Travelers
Policy number: 0216-CB-EQ53181-K
Name as it appears on policy: JJS Trucking, LLC
Effective dates of policy: OCTOBER 8, 2010 to JANUARY 4, 2011
Employer's FEIN: [redacted]
Name of person completing form: Cedric Smalls
Telephone number: [redacted]

If you have any questions you may contact me at 803-737-5711 or MFelton@wcc.sc.gov.

Sincerely,

Michael Felton

Michael Felton
Compliance Investigator

Enclosure: Questionnaire

EXHIBIT 6

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICES

Questionnaire for Uninsured Employer

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

1. Official business name: JJS Trucking, LLC
2. Official business address: 137-A Gordon Street Chas SC. 29403
3. Owner(s) of business: Cedric Smalls
4. Number of employees in SC at time of alleged accident: 4
5. Number of subcontractors in SC at time of alleged accident: 0
6. Business FEIN: [redacted]
7. Was the above-named claimant the employee of the employer at the time of the alleged accident? ✓ Yes. _____ No.

If applicable: How much was the claimant paid?
Hourly gross N/A or weekly gross N/A
Number of hours the claimant worked per week: driver is paid by loads

8. Was the business providing service or subcontracting for an "upstream" employer or general contractor when the alleged injury occurred? If so, please provide the business name and address:

Chris Thompson Services, LLC
106 New Hope Drive
Summerville, S.C. 29483

9. Are there any extenuating circumstances or facts about this claim and accident that need to be made known? If so, please describe:

JJS employee was found Not at fault at time of Accident. Enclosed is a copy of Accident report.

10. Name of person completing form: Cedric Smalls
11. Telephone #: 843-270-4031

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICE

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Mail FR-10 to: Office of Financial Responsibility
SC Department of Public Safety
PO Box 1498, Columbia, SC 29216

SOUTH CAROLINA DEPARTMENT

[redacted]

Date	Time	County	Jurisdiction	Collision Location
08-10-2011	0340	10	1- Municipal 4- Secondary 2- U.S Primary 5- County 3- SC Primary 6- PR	526 / X 26

To Vehicle Owner/ Operator

Failure to comply could result in appropriate action under 56-[redacted] of laws of S.C. as amended, if vehicle subject to registration in S.C. [redacted] the Department must suspend your driving and/or registration privileges [redacted] have been met under the above sections of law.

E-079899

Driver/Pedestrian's Full Name: ROSE SAMUEL A

Unit	Sex	Race	Street R.F.D.
01	M	B	[redacted] ASHTON ST

Birth Date: [redacted]-1970
City, State, & Zip: CHARLESTON SC 29405

State	Driver's License #	Class	Insurance Company
SC	008776497	A	TOWER INS CO

Year	Body	Vehicle Make	VIN #
1999	TR	INTL	[redacted]4

State	Year	License Plate #	Owner's D.L. #
SC	2011	[redacted]	

Home Telephone: (843) 5775988
Owner's Full Name: 235 TRUCKING LLC
Bus. Telephone: ( )
Street R.F.D.: 137 GORDON ST APT A
Continued To Collision: Yes (No)
City, State, & Zip: CHARLESTON SC 29403

E-079900

Driver/Pedestrian's Full Name: CLARK ROBBIE

Unit	Sex	Race	Street R.F.D.
02	M	B	213 WYATT LN

Birth Date: [redacted]-1962
City, State, & Zip: SUMMERVILLE SC 29485

State	Driver's License #	Class	Insurance Company
SC	[redacted]	A	TOWER INS CO

Year	Body	Vehicle Make	VIN #
1999	TR	INTL	[redacted]

State	Year	License Plate #	Owner's D.L. #
SC	2012	[redacted]	

Home Telephone: ( )
Owner's Full Name: CHRIS THOMPSON SERVICES LLC
Bus. Telephone: ( )
Street R.F.D.: 108 NEW HOPE DR
Continued To Collision: Yes (No)
City, State, & Zip: SUMMERVILLE SC 29483

Driver/Pedestrian's Full Name:

Unit	Sex	Race	Street R.F.D.

Birth Date:
City, State, & Zip:

State	Driver's License #	Class	Insurance Company

Year	Body	Vehicle Make	VIN #

State	Year	License Plate #	Owner's D.L. #

Home Telephone: ( )
Owner's Full Name:
Bus. Telephone: ( )
Street R.F.D.:
Continued To Collision: Yes (No)
City, State, & Zip:

All Units Insurance Information
(to be completed by investigating Officer)

Accident Insurance Information for Unit # 01
Company Name: TOWER INS CO
Area Code/Phone Number: ( )
Agency Name:
Policy Number:

Accident Insurance Information for Unit # 02
Company Name: TOWER INS CO
Area Code/Phone Number: ( )
Agency Name:
Policy Number:

Accident Insurance Information for Unit #
Company Name:
Area Code/Phone Number: ( )
Agency Name:
Policy Number:

Insurance Information

Notice of Requirement Accepted → Signature
Y N Refused to Affix Signature?
Y N Vehicle Subject to Registration in SC?

To Be Completed By Insurance Agency, Broker, Or Other Company Representative

Reference to Unit # _____, hereby affirm that to the best of my knowledge the vehicle described above was insured by the below stated insurance company on the date of the collision.

[redacted] knowingly and willfully make any false statement concerning any fact material to the above matter shall be guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Insurance Company:
Policy #:
Signature:
Title:
Beginning Date:
Ending Date:
Policy Holder:
NAIC# Assigned by S.C. Dept of Ins.
Bus. Telephone: ( )

Notice: Failure to have this form completed by your insurance broker, agent, or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.

If any of the below are applicable, disregard the above portion.

Check here if a Form SR-22, Fleet Policy or 25 or more vehicles is on file with the Department covering the vehicle.
Check here if a certificate of self-insurance has been issued by the Department covering the vehicle and list the certificate number SI - _____
Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.
Signature:
Date:

Form FR-10 Not Issued: Section 56-10-270 56-10-520
No FR-10 Issued to Operator/Owner of Unit #
Summons Issued to:
For operating or allowing the operation of an uninsured vehicle
Summons Number:
Signature:

Investigating Officer's Name	Rank	Badge #	Code	Date	Reviewer's Name	Rank	Highway Patrol's Office
MCLEOD - D A	L/CPL	T775	HP06				Troop 1

SCWCC
SEP 29 '11
INSURANCE & MEDICAL SERVICES

70

CERTIFICATE OF LIABILITY INSURANCE

OP ID: PT
JUSTRUC

DATE (MM/DD/YY): 10/18/10

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

VJB TRUCKING, LLC
197-A Gordon St.
Charleston SC 29403

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Tower Ins. Co. of New York	
INSURER B: Travelers Indem. & Affiliates	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY PROJECT LOC				EACH OCCURRENCE DAMAGE TO RENTED PREMISES (Ea occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS - COMP/OP AGG	$ $ $ $ $ $
A	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS X SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS X UM/UIM 75,000	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (Ea accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)	$1,000,000 $ $ $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY: EA ACC AGG	$ $ $
	EXCESS / UMBRELLA LIABILITY OCCUR CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE AGGREGATE	$ $ $ $ $
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	BINDER	10/08/10	10/08/11	TORY LIMITS X OTH-ER E.L. EACH ACCIDENT E.L. DISEASE - EA EMPLOYEE E.L. DISEASE - POLICY LIMIT	$500,000 $500,000 $500,000
	OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 686-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2009/01)

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SCWCC

OCT 18 '10

INSURANCE & MEDICAL SERVICES

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09/29/2011 11:27 FAX

CERTIFICATE OF LIABILITY INSURANCE

OP ID JP
JJSTRUC

DATE (MM/DD/YYYY)
09/29/11

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Eingpolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Ins. Co.	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

INSURED

JJS TRUCKING, LLC
137-A Gordon St
Charleston SC 29403

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	ADDL INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS	
		GENERAL LIABILITY				EACH OCCURRENCE	$
		☐ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
		☐ CLAIMS MADE ☐ OCCUR				MED EXP (Any one person)	$
						PERSONAL & ADV INJURY	$
		GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
		☐ POLICY ☐ PRO-JECT ☐ LOC				PRODUCTS - COMP/OP AGG	$
		AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
		☐ ANY AUTO				BODILY INJURY (Per person)	$
		☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
		☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
		☐ HIRED AUTOS					
		☐ NON-OWNED AUTOS					
		GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
		☐ ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
						AGG	$
		EXCESS / UMBRELLA LIABILITY				EACH OCCURRENCE	$
		☐ OCCUR ☐ CLAIMS MADE				AGGREGATE	$
		☐ DEDUCTIBLE					$
		☐ RETENTION $					$
A		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	6ZZUB9907M95409	08/24/10	08/24/11	WC STATU-TORY LIMITS X OTH-ER	
		ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y / N ☐				E.L. EACH ACCIDENT	$100,000
		If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$100,000
						E.L. DISEASE - POLICY LIMIT	$500,000
		OTHER					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

THIS IS A REVISED CERTIFICATE FOR 08/24/10-08/24/11 TO PROVIDE POLICY NUMBER.

CERTIFICATE HOLDER

CHRISTE

CHRIS THOMPSON SERVICES, LLC
FAX: 843-698-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE
DAVID W. HAYES

ACORD 25 (2009/01)

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OCT 18 '11

INSURANCE & MEDICAL SERVICES 72

TRAVELERS

The Travelers Indemnity Company
P.O. Box 473502
Charlotte, NC 28247-3502

09/08/2011

Samuel A. Rose
17 Ashton St
Charleston, SC 29403

Employer: Jjs Trucking, LLC
Employee: Samuel A. Rose
Date of Loss: 08/10/2011
File Number: 026-CB-EQS3181-K
State Case Num:

Dear Samuel Rose

We have completed our investigation of your Workers' Compensation claim and have decided that we cannot accept it as being compensable. There is a possibility that other insurance coverage is available to pay part or all of your related expenses if you should decide to pursue this.

It appears this injury occurred outside of the Travelers policy period of 10/08/10 to 01/04/11.

We regret that our decision could not be more favorable for you, but we are obligated to accept only the claims that are compensable under South Carolina state laws.

If you disagree with our decision, you may ask the South Carolina Workers' Compensation Commission for a hearing.

Sincerely,

Florence Hudson, CI Rep
(704)544-3584 Fax: (877)389-4687
(800)759-6194 Ext.
FGHUDSON@travelers.com
Workers' Compensation Unit

cc: George Sink P A
Workers' Comp Commission
Jjs Trucking, LLC

C22948WSSC

SCWCC
OCT 18 '11
INSURANCE & MEDICAL SERVICES

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ZURICH

September 07, 2011

Attn: Joseph Fisher
George Sink, P.A.
PO BOX 63506
N. Charleston, SC 29419-3506

RE: Claim #: 2800076183
Employer: JJS Trucking LLC
Date of Loss: 08/10/2011
Claimant: Samuel Rose
SCWCC: Pending

Zurich North America

Claims
P.O. Box 968080
Schaumburg, IL 60196

Telephone (800) 808-6412
Fax (704) 551-3402
http://www.zurichna.com

Dear Mr. Fisher:

We recently received the enclosed Letter of Representation on the above mentioned case. However, we cannot locate any policy for of the above named employer. I have spoken with Cherri Hood of the Swamp Fox Agency who was the agency for the employer in the past. They indicated that they could not locate a WC Policy with Zurich either. They advised that JJS Trucking did have a WC Policy with Travelers Insurance until January 2011. Here is the policy information:

Travelers
Policy Number 7PKUB4408P09210
10/8/2010-10/8/2011
Cancelled 01/07/2011

At this time I request that your office amend any Form 50 that has been filed which indicates that Zurich is the correct carrier. Please also consider this letter our Notice of Denial on the above mentioned claim.

Very truly yours,
Zurich American Insurance

Brad Fauler
Claims Specialist
704-551-3481

Cc: South Carolina Workers Compensation Commission

CC: JJS Trucking Company
137-A Gordon Street
Charleston,SC 29403

EXHIBIT
D

SCWCC
OCT 18 '11
INSURANCE & MEDICAL SERVICES

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NCCI **POC Online Inquiry**

Main Page | Log Out

Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr:	7PKUB4405P09210	Cov Prvdr ID:11347	Pol Eff Dt: 10/08/2010	Pol Exp Dt:	10/08/2011
Primary Insured Name:	JJS TRUCKING LLC			Primary Insured FEIN:	710985219
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	

Primary Insured Information

Primary Insured Name:	JJS TRUCKING LLC
Street:	137 GORDON ST APT A
City:	CHARLESTON
State:	SC
Zip Code:	284033598

Coverage Provider Information

Cov Prvdr ID-Cov Prvdr Name:	11347 - TRAVELERS INDEMNITY CO
Street:	POB 3658
City:	ORLANDO
State:	FL
Zip Code:	328023658
Group ID:	10804
Branch:	138

Orig Pol Rcvd Dt: 11/04/2010 | Orig POC Rcvd Dt: | Last Rcvd Dt: 06/06/2011 | Last Activity Dt: 06/06/2011

Prior Pol Nbr:

State Cov Prvdr:	
State Eff Dt:	10/08/2010
State Exp Dt:	
Gov Class:	7228
Legal Nature of Insured:	10 - LIMITED LIABILITY COMPANY (LLC)
Wrap Up Pol:	2 - NON-WRAP-UP POLICY
Employee Leasing Code:	1 - NON-EMPLOYEE LEASING POLICY
Pol Type Plan:	02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 05 AND 06
Pol Type Cvrg:	01 - STANDARD WORKERS' COMPENSATION POLICY

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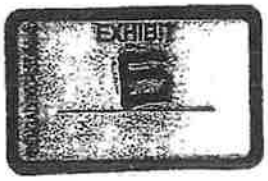
Coverage Cancelled
2/5/2011



NCCI **POC Online Inquiry**

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr: 7PKUB4408P09210 | Pol Eff Dt: 10/08/2010 | Pol Exp Dt: 10/08/2011
Primary Insured Name: JJS TRUCKING LLC | Cov Prvdr ID: 11347

C/R/H Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/06/2011	01/04/2011	01/06/2011	01 - CANCELLATION	02 - CANCELLED PRO-RATA	20 - CANCELLED AT REQUEST OF THE FINANCE COMPANY
01/05/2011	01/12/2011	01/05/2011	02 - REINSTATEMENT	00	00
12/05/2010	01/12/2011	12/05/2010	01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM

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Coverage Cancelled 30 days after receipt by NCCI of the Cancellation Document, Makes the Effective Date of Cancellation 2/5/2011

NCCI **POC Online Inquiry**

Main Page | Log Out

Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr:	7PKUB4855P01211	Cov Prvdr ID:11347	Pol Eff Dt: 09/23/2011	Pol Exp Dt:	09/23/2012
Primary Insured Name:	JJS TRUCKING LLC			Primary Insured FEIN:	710986219
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	

Primary Insured Information

Primary Insured Name:	JJS TRUCKING LLC
Street:	137 GORDON ST APT A
City:	CHARLESTON
State:	SC
Zip Code:	294033696

Coverage Provider Information

Cov Prvdr ID-Cov Prvdr Name:	11347 - TRAVELERS INDEMNITY CO
Street:	POB 3558
City:	ORLANDO
State:	FL
Zip Code:	328023558
Group ID:	10804
Branch:	138

Orig Pol Rcvd Dt: 10/10/2011 | Orig POC Rcvd Dt: | Last Rcvd Dt: 10/11/2011 | Last Activity Dt: 10/12/2011

Prior Pol Nbr:

State Cov Prvdr:	
State Eff Dt:	09/23/2011
State Exp Dt:	
Gov Class:	7228
Legal Nature of Insured:	10 - LIMITED LIABILITY COMPANY (LLC)
Wrap Up Pol:	2 - NON-WRAP-UP POLICY
Employee Leasing Code:	1 - NON-EMPLOYEE LEASING POLICY
Pol Type Plan:	02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 05 AND 06
Pol Type Cvrg:	01 - STANDARD WORKERS' COMPENSATION POLICY

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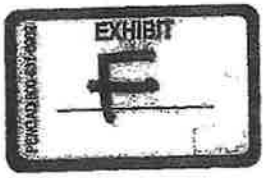
The Employer Came back into Compliance on 9/23/2011 but the Policy Cancelled on 11/10/2011



NCCI **POC Online Inquiry** Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider | Names and Addresses | Names | Addresses | Canc/Reinst/Non-Renew | Transaction History

Policy Nbr: 7PKUB4856P01211 Pol Eff Dt: 09/23/2011 Pol Exp Dt: 09/23/2012
Primary Insured Name: JJS TRUCKING LLC Cov Prvdr ID: 11347

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
10/11/2011	10/04/2011	10/12/2011	01 - CANCELLATION	03 - CANCELLED SHORT-RATE	03 - CANCELLED BY EMPLOYER

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Coverage Cancelled 30 days after receipt by NCCI of Cancellation NOTICE, making the Effective date of Cancellation 11/10/2011

SWAMP FOX AGENCY INC

5466296 10/18/10 1532868

STANDARD PREMIUM FINANCE MANAGEMENT CORP. PO BOX 522941 MIAMI, FLORIDA 33152-2941

CONTRACT NO. PENDING

PREMIUM FINANCE AGREEMENT

THIS AGREEMENT is made on the date indicated between the insured and STANDARD PREMIUM FINANCE MANAGEMENT CORPORATION, a Florida Corporation hereinafter called "SPFMC", for the financing of the balance of the premiums on the following insurance policies:

POLICY NUMBER	Full Name and Address of Insurance Company and Name & Address of General Agent to which policy premium is paid	FOR SPFMC USE ONLY	INCEPTION DATE	POLICY EXPIRES	TYPE OF COVERAGE	PREMIUM
	N.C.C.U.		10/8/2010	10/8/2011	WORKERSCOMP	34,680.00 30.00 30.00 30.00 60.00
	○ Cheque ○ ACH ◉ Directly Billing					

(A) CASH PRICE (Total Premiums)	(B) YOUR CASH DOWN PAYMENT	(C) AMOUNT FINANCED The Amount of credit provided to you or on your behalf. Unpaid balance of cash price.	(D) FINANCE CHARGE The dollar amount the credit will cost you.	(E) DOCUMENTARY STAMPS State required documentary stamps	(F) Total of Payments (BALANCE DUE) The amount you will have paid after you have made all payments as scheduled.	(G) ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	(H) DEFERRED PAYMENT PRICE (B plus F)
4560.00	1140.00	3420.00	258.38	0.00	3679.38	17.85	34,819.38

3420.00

State Documentary Stamp Tax where Applicable by Law in the amount stated above will be paid directly to the Department of Revenue.

YOUR PAYMENT SCHEDULE WILL BE:

Amount of Each Payment	Number of Payments	Payments are Due Monthly Beginning (DAY OF BILLING MONTH)
406.82	9	11/8/2010

Each of the monthly payments is due on the same day of each succeeding month until paid in full.

SECURITY: You are giving a security interest in any and all unearned return premiums, dividends and loss payments which may become payable under the policies.
LATE CHARGE: If a payment is 5 days late, you will be charged 5% of the late installment, but no less than $1.50 for example, Florida, Alabama and Mississippi not less than $1.00 for South Carolina, in Texas and Tennessee, if a payment is 10 days late, you will be charged 5% of the installment, but no less than $2.00 for Tennessee or all amounts prescribed by the state jurisdiction (not to exceed $10.00 on personal lines in Florida).
PREPAYMENT: If you payoff early, you may be entitled to a refund or part of the finance charge, although you may have to pay a prepayment penalty. See the reverse side/page 2 of this document for additional information about prepayment, default, and prepayment penalties.

FEDERAL TRUTH IN LENDING DISCLOSURES

FOR VALUE RECEIVED the undersigned Insured promises and agrees to pay to the order of "SPFMC" the sum of (being the total of payments above) pursuant to all of the terms and conditions contained in the Schedule above and in the Terms and Conditions of this agreement, all of which are incorporated herein. 3679.38

NOTICE: SEE REVERSE SIDE/PAGE 2 FOR IMPORTANT INFORMATION

NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE.

DO NOT SIGN THIS AGREEMENT UNTIL ALL REMAINING CONDITIONS ON REVERSE SIDE/PAGE 2 HAVE BEEN READ BY YOU.

THE UNDERSIGNED EXECUTED THIS LOAN AGREEMENT AND RECEIVED A COPY THEREOF THIS 8 DAY OF OCTOBER 2010

Policy will be cancelled for Non-Payment

(PRINT OR TYPE)

LJS TRUCKING, LLC
INSURED NAME (as stated in policy)

DBA

137-A GORDON ST
Address

CHARLESTON, SC 29403
City, State, Zip Code

8435773858 8434629171
Home phone Work phone

SIGNATURE OF INSURED (If Corporation, Title of Officer Signing)

X Cedric Smalls

X

710585219
S.S.# or Business I.D.#

Driver's License

AGENT'S NOTE: The undersigned agent hereby certifies that all policies listed above hereof have been issued and delivered and that the down payment as shown in the contract has been paid by or on behalf of the insured and that all policies listed therein were issued by this agency. The undersigned warrants that the above contract evidences a bona fide and legal transaction, that the assured is of legal age and has capacity to contract, that the signature is genuine and that he has delivered a copy of this contract to the insured. The agent further states that none of the policies listed hereon contain an audit or reporting form. Agent acknowledges that it is not affiliated in any capacity or manner with SPFMC and agrees in the event of cancellation to remit the gross unearned commissions or unearned premiums to SPFMC when required.

SWAMP FOX AGENCY, INC 40095

P. O. BOX 522

PENDPOLIS, SC 29469
PRINT NAME AND ADDRESS OF AGENT OR BROKER OF THE INSURANCE POLICY HER

X Melanie Jordy 10-13-10
SIGNATURE OF BROKER OR AGENT

"THIS CHATTEL PAPER OR INSTRUMENT HAS BEEN COLLATERALLY ASSIGNED TO BRANCH BANKING AND TRUST COMPANY, AS SECURED PARTY, AND ANY FURTHER ASSIGNMENT WILL VIOLATE THE RIGHTS OF SUCH SECURED PARTY."

TRAVELERS
2420 LAKEMONT AVENUE
P.O.BOX 3556
ORLANDO, FL 32802-3556

Account Bill

Account No. 5568D3149
Date of This Bill 11/08/10

TOTAL BALANCE
$1,655.00
MINIMUM DUE
$1,655.00

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

PAYMENT MUST BE RECEIVED BY:
NOVEMBER 23, 2010

ACCOUNT BILLING SUMMARY

POLICY	TYPE	POLICY PERIOD	MIN. DUE	BALANCE
4408P092 UB	Workers Comp	10/08/10 To 10/08/11	$1,655.00	$1,655.00
TOTAL BALANCE			$1,655.00	$1,655.00

TRANSACTIONS SINCE LAST STATEMENT

Payment Received - Thank You	-4,560.00
Total Transactions (See Transaction Detail Section)	+6,215.00
TOTAL BALANCE	$1,655.00

TRANSACTION DETAIL

POLICY NUMBER 4408P092 UB Workers Comp	
10/08/10 New Policy	6,215.00
TOTAL TRANSACTIONS	$6,215.00

CONTINUED ON NEXT PAGE

TO ENSURE PAYMENT IS PROPERLY APPLIED, detach the return payment stub and mail to the return address below.
ASSIGNED RISK WORKERS COMPENSATION INSURANCE

648842H 2010312 7235 701 075LMK

Payment Coupon

Make checks payable to: Travelers

SWAMP FOX AGENCY INC
JJS TRUCKING, LLC

5568D3149

Travelers
One Tower Square
Remittance Box 96359
Hartford, CT 06183-9042

Include Account Number on the check.

☐ Change of Address?
Place an "X" here.
Print changes on reverse side.

PAYMENT MUST BE RECEIVED BY
NOVEMBER 23, 2010

TOTAL BALANCE
$1,655.00
MINIMUM DUE
$1,655.00
AMOUNT ENCLOSED

1334343038163039322010110820101123000165500000000000000096359000000000060

80

SPECIAL MESSAGES

Your payment must be received by the "Due Date". Failure to pay the amount due may affect your insurability under the state Workers Compensation Insurance Plan.

You must pay at least the minimum due or up to the total balance due. If at any time you pay us more than the minimum due, and it covers your future installments you will not receive a bill.

If you dispute any of the amount due on this bill, you must do the following by the due date in order to avoid cancellation procedures from being initiated.

1) Provide to us written documentation outlining and explaining the specific areas of dispute as well as your estimate of the undisputed amount due and your method of calculation. You must pay the undisputed amount by the "due date".

2) Make a written request to the plan administrator for a hearing on the dispute. You may contact us in writing for the name of the plan administrator in your state.

All written correspondence should be mailed to the address found in the Customer Service Contacts section of this invoice.

To order Loss Control Services, please call the 1-800 number found in the Customer Service Contacts section of this invoice.

The account number shown above consists of your billing policy number and policy form. For the complete policy number refer to your policy paper.

This bill is rendered by THE TRAVELERS INDEMNITY COMPANY affiliated company indicated on the policy shown on this notice.

PRODUCER

TRAVELERS
2426 LAKEMONT AVE STE 100
ORLANDO FL 32814

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ACKNOWLEDGEMENT

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

NOTICE OF CANCELLATION – NONPAYMENT OF PREMIUM FINANCED POLICY

POLICY NUMBER: (7PKUB-4408P09-2-10)

EFFECTIVE DATE OF CANCELLATION: 01-04-11

THIS NOTICE IS TO:

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

INSURER:
THE TRAVELERS INDEMNITY COMPANY

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

This policy has been financed by a premium finance company. The Premium Finance Company has exercised its right to cancel this policy as provided in its agreement with the insured, due to the Insured's delinquent payment status.

Inquires regarding the outstanding balance should be made directly to the Premium Finance Company.

PLEASE NOTE: The Insurance Company is under no obligation to reinstate this policy in the event the Premium Finance Company should resind their cancellation request.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY. FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR PRODUCER.

RECEIVED
JAN 18 2011
Swamp Fox Agency Inc.

DATE OF ISSUE: 01-05-11
POL EFF. DATE: 10-08-10 POL. EXP. DATE: 10-08-11 ST ASSIGN: SC
OFFICE: DIRECT ASSIGNMENT
PRODUCER: SWAMP FOX AGENCY INC

WUNN8K96

004883

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TRAVELERS
2420 LAKEMONT AVE STE 100
ORLANDO FL 32814

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

CANCELLATION

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

CANCEL NOTICE - NONPAYMENT OF PREMIUM FINANCED POLICY

THIS NOTICE IS TO:

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

EFFECTIVE DATE OF CANCELLATION: 01-04-11

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

AMOUNT DUE: $

POLICY NUMBER: (7PKUB-4408P09-2-10)

We wish to inform you that your policy designated herein is cancelled in accordance with its terms as of the effective date of cancellation indicated herein, and at the hour on which the policy became effective. Any premium adjustment required by the policy will be made.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY. FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR PRODUCER.

INSURER: THE TRAVELERS INDEMNITY COMPANY

DATE OF ISSUE: 01-05-11 SJ
POL. EFF.DATE: 10-08-10 POL. EXP. DATE: 10-08-11 ST ASSIGN: SC
OFFICE: DIRECT ASSIGNMENT 701
PRODUCER: SWAMP FOX AGENCY INC 75LMK

WUNT2D00

004884

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Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
9	SCWCC Form 19	9/9/22	102

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328
Carrier File # 0196-943450
Carrier Code #
Employer FEIN

Samuel A. Rose	[redacted]3390	JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company	
Claimant's Name	SSN	Employer's Name	
[redacted]	Charleston, SC 29403	106 New Hope Dr.	Summerville, SC 29483
Address	City State Zip	Address	City State Zip
([redacted]		Bridgefield Casualty Insurance Co.	
Home Phone	Work Phone	Insurance Carrier	

Kirsten L. Barr (843) 881-4228
Preparer's Name Phone #

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	500	8/11/11	9/8/22	$ 216,670.57
2. Number of weeks T.P.				$ 0
3. Number of weeks P.P.				$ 0
4. Disfigurement				$ 0
5. Agreement and Final Release				$ 0
Total Compensation Paid (includes interest payment of $33,541.11)				$ 250,211.68
6. Total Medical Benefits* Paid				$ 29,975.72
7. Funeral Benefits				$ 0

☐ Case Denied

Date of Injury: August 10, 2011
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above.

By: _____ Claimant

By: Kirsten L. Barr Employer's Representative

Date: September 9, 2022

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party $ _____

B. Attorney's Fee Paid by Employer $ _____

C. Attorney's Fee Paid by Claimant (Non contingent fees, only) $ _____

File this form with the Claims Department according to R 67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied

WCC FORM # 19 REV. DATE 3/96 **19** **STATUS REPORT AND COMPENSATION RECEIPT**

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Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
10	DOI Records for David W. Hayes Swamp Fox Agency	1/30/23	103-105

NAIC National Association of Insurance Commissioners

South Carolina
State Based Systems

License Type: Insurance Producer

This document may serve in lieu of a Letter of Certification or Clearance

Licensee Demographics

Name: HAYES, DAVID W
Domicile Country: United States

NPN: [redacted]
Resident?: Yes

Domicile State: South Carolina
Business Address:
MONCKS CORNER, SC 29461

License Quick View

License Class	License Status	Status Date	Effective Date	Expiration Date
Insurance Producer	Active	06/01/2021	08/01/2021	07/31/2023
Surplus Lines Broker	Inactive	03/01/2021	06/01/2018	08/31/2020

Phone, Email, Website

Phone		Email		Website
Type	Number	Type	E-mail	No results found.
Fax Phone	(843) 761-6186			

License Information

License Status: Active
Status Date: 06/01/2021
Designated Home State:

License Type: Insurance Producer
First Active Date: 07/09/1993
Expiration Date: 07/31/2023

License Number: [redacted]
Effective Date: 08/01/2021
Legacy License ID: 201643

Line of Authority

Line Name	Qualification	School Code	Exam/Cert Date	Line Status	Status Date	Effective Date
Property	Exam		07/09/1993	Approved	06/01/2021	07/09/1993
Casualty	Exam		07/09/1993	Approved	06/01/2021	07/09/1993

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Alias Names

No results found.

Relationships

No results found.

Continuing Education Information

CE Compliant: Yes

Compliance Date: 08/01/2021

CE Start Date: 08/01/2021

CE End Date: 07/31/2023

Design/Over 25 years: No

CE Exemption Type: Permanent Exemption

CE Exemption Reason: Age Exemption

Life/Health Target:	Life/Health Credits:	Life/Health Carryover Credits:
0	0	1

General Target:	General Credits:	Ethics Target:	Ethics Credits:
0	0	0	0

Property/Casualty Target:	Property/Casualty Credits:	Property/Casualty Carryover Credits:
0	0	0

Appointments

Show 10 entries

Showing **1** to **10** of **41** entries

Filter

Company Name	NAIC CoCode	License Type	Line of Authority	Appointment Type	Appointment Date	Effective Date	Expiration Date
AMERICAN INTERSTATE INSURANCE COMPANY	31895	Insurance Producer	Casualty	Local	04/09/2010	09/02/2022	09/30/2024
AMERICAN INTERSTATE INSURANCE COMPANY	31895	Insurance Producer	Property	Local	04/09/2010	09/02/2022	09/30/2024
BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY	20044	Insurance Producer	Property	Local	09/15/2017	09/21/2022	09/30/2024
BERKSHIRE HATHAWAY HOMESTATE INSURANCE COMPANY	20044	Insurance Producer	Casualty	Local	09/15/2017	09/21/2022	09/30/2024
CYPRESS INSURANCE COMPANY	10855	Insurance Producer	Casualty	Local	10/02/2013	09/21/2022	09/30/2024
CYPRESS INSURANCE COMPANY	10855	Insurance Producer	Property	Local	10/02/2013	09/21/2022	09/30/2024
FORESTRY MUTUAL INSURANCE COMPANY	10941	Insurance Producer	Casualty	Local	10/04/2006	09/11/2022	09/30/2024
HARTFORD ACCIDENT AND INDEMNITY CO	22357	Insurance Producer	Property	Local	10/28/2021	09/12/2022	09/30/2024
HARTFORD ACCIDENT AND INDEMNITY CO	22357	Insurance Producer	Casualty	Local	10/28/2021	09/12/2022	09/30/2024
HARTFORD UNDERWRITERS INSURANCE COMPANY	30104	Insurance Producer	Property	Local	06/30/2021	09/12/2022	09/30/2024

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Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328

APA #	DESCRIPTION	DATES	PAGES
11	Charleston County Property Record for 137A Gordon Street	1/30/23	106-107

REAL PROPERTY RECORD

CHARLESTON COUNTY, S C

1.	T. M. No. 463 — 10 — 4 LOT 75	GEOGRAPHICAL AREA	CITY OF CHARLESTON				TAX DISTRICT NO.	7-1
2.	TITLE OF OWNERSHIP	DATE OF MO DAY YR	DEED BOOK	DEED PAGE	$ INDICATED PURCHASE PRICE	CODE	MAILING ADDRESS	
3.	WAY, Mary Ellen L. and Charles S. Jr.	11-59	V68	57				
4.	WAY, Charles S., Jr.	10-63 v	P77	290		17	1029 Lenwood Dr.	
5.	LEE, Jake and Edna C.	9-23-70	E95	29	18,700	3	5/6 3716 Old Pine Circle N. Chas. S.C. 29405	
6.	LEE, Edna C.	12-27-94	Z250	336				X
7.	SMALLS, Cedric	1-11-95	N251	102	65,000		137 Gordon St. Chas 29403	
8.								
9.								

10. PROPERTY LOCATION: 137 A/K GORDON STREET — SUBDIVISION

11. Lot 3 — Block — Tract No — Parcel No — Other

12. ACREAGE: High Land — Marsh Land — Total Acres — ACREAGE TAKEN FROM: DEED ( ), PLAT ( ), COMPUTATIONS ( )

13. MEASUREMENTS: Road Frontage 56.6 x 102.2 x 56.6 x 102.2 x x x x

14. PLATS RECORDED IN F-214 — COPY OF CURRENT PLAT IN TAX MAP WORK SHEET FOLDER ✓

15. 12/169 S GORDON LT 3

16.	YEAR ASSESSMENT FOR	1969			COMPUTERIZED						
17.	LAND ASSESSMENT $		COMPUTERIZED		MAR 13 1995						
18.	BUILDING ASSESSMENT $		JAN 9 1995		BY: P A E						
19	TOTAL ASSESSMENT $	1400	BY B.T.								
20.	NUMBER OF BUILDINGS	1									
21.	TOTAL APPRAISED VALUE $										

22.	BUILDING PERMIT ISSUING AUTHORITY	PERMIT NUMBER	DATE OF MO DAY YR	DESCRIPTION OF WORK	ESTIMATED COST AS TAKEN FROM PERMIT $	1960-68 TAX MAP CODE
23.						TMS 24 BLOCK 4 LOT 13
24.						
25.						"X" IN LAST COLUMN, SEE REVERSE SIDE FOR ADDITIONAL REMARKS

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LINE #6--Deed 2250-336 is a deed of distribution, see file #92-ES-10-01081. 1/6/95 cdf

RECEIVED
Nov 01 2024
SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

The Honorable Aisha Taylor, Commissioner

Appellate Case No. 2024-000533

S.C. W.C.C. File No. 1112328

Samuel Rose, Claimant,

v.

JJS Trucking and Chris Thompson Services (Statutory Employer)

and

Bridgefield Casualty Insurance Co. (Carrier for Statutory Employer) and South Carolina Uninsured Employers' Fund, Carriers Defendants,

of which Chris Thompson Services and Bridgefield Casualty Insurance are the Appellants

and South Carolina Uninsured Employers' Fund is the Respondent,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by the parties and not any other material.

November 1, 2024

Kirsten Leslie Barr, *S.C. Bar #15525*
Trask & Howell, L.L.C.
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Mt. Pleasant, SC 29465
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& Bridgefield Casualty Insurance Co.
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