

RECEIVED

Nov 20 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),

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,

Final Brief of the Appellants

Kirsten Leslie Barr, *SC Bar #15525*

Trask & Howell, L.L.C.

P.O. Box 2167

Mt. Pleasant, SC 29465

(843) 881-1027

Attorneys for Chris Thompson Services
& Bridgefield Casualty Insurance Co.

kbarr@trask-howell.com

Table of Contents

Table of Authorities.....i

Statement of Issues on Appeal.....1

Statement of the Case.....2

Standard of Review.....7

Facts.....8

Arguments

 I. The Appellants have satisfied all of the requirements of
 S.C. Code Ann. §42-1-415 and S.C. Code Reg. 67-415 with
 undisputed evidence and the Workers’ Compensation
 Commission erred as a matter of law in refusing to transfer
 liability to the Uninsured Employers Fund.....12

 II. Chris Thompson Services collected proper documentation
 of workers compensation insurance on a standard form
 “acceptable to the Commission” based upon the undisputed
 evidence and the applicable law.....15

 III. Proper documentation of workers’ compensation insurance
 for a South Carolina employer does not require a description
 of operations, locations, or coverage as a matter of law.....18

IV.	No statute or regulation requires that a policy number be listed on a Certificate of Insurance and such a requirement would serve no reasonable purpose.....	26
V.	The Certificate of Insurance was timely submitted to the Workers' Compensation Commission in accordance with a rational interpretation of S.C. Code Ann. § 42-1-415.....	32
VI.	The Petition to Transfer Liability is not "premature" but is ripe for determination because the Appellants have paid all benefits due to Rose.....	35
VII.	The law requires documentation of insurance be collected at the time a subcontractor is engaged to perform work irrespective of whether the engagement agreement is in writing.....	37
	Conclusion.....	41
	Certificate of Counsel.....	42

Table of Authorities

Cases

<u>Avant v. Willowglen Acad.,</u> 367 S.C. 315, 626 S.E.2d 797 (2006).....	30
<u>Barton v. Higgs,</u> 381 S.C. 367, 674 S.E.2d 145 (2009).....	33
<u>Bass v. Kenco Group,</u> 366 S.C. 450, 622 S.E.2d 577 (Ct.App.2005).....	8
<u>Burris v. Propst Lumber & Logging, Inc.,</u> 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011).....	30
<u>Byerly v. Connor,</u> 307 S.C. 441, 415 S.E.2d 796 (1992).....	27
<u>Carter v. Boyd Const. Co.,</u> 255 S.C. 274, 178 S.E.2d 536 (1971).....	26
<u>Carter's Dependents v. Palmetto State Life Ins. Co.,</u> 209 S.C. 67, 38 S.E.2d 905 (1946).....	18
<u>City of Camden v. Brassell,</u> 326 S.C. 556, 486 S.E.2d 492 (Ct.App.1997).....	38
<u>City of Rock Hill v. Harris,</u> 391 S.C. 149, 705 S.E.2d 53 (2011).....	19, 26
<u>Davaut v. Univ. of S.C.,</u> 418 S.C. 627, 795 S.E.2d 678 (2016).....	8
<u>Douglas v. Spartan Mills,</u> 245 S.C. 265, 140 S.E.2d 173 (1965).....	8
<u>Edge v. State Farm Ins. Co.,</u> 345 S.C. 136, 546 S.E.2d 647 (2001).....	27
<u>Grant v. Grant Textiles,</u> 372 S.C. 196, 641 S.E.2d 869 (2007).....	8
<u>Hardee v. McDowell,</u> 381 S.C. 445, 673 S.E.2d 813 (2009).....	39, 40

<u>Hargrove v. Titan Textile Co.,</u> 360 S.C. 276, 599 S.E.2d 604 (Ct.App.2004).....	7
<u>Hodges v. Rainey,</u> 341 S.C. 79, 533 S.E.2d 578 (2000).....	34
<u>Hopper v. Terry Hunt Construction,</u> 336 S.C. 310, 680 S.E.2d 1 (2009).....	23, 24
<u>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 (S.C.W.C.C. Dec. 30, 2004).....</u>	24
<u>Kennerly v. Ocmulgee Lumber Co.,</u> 206 S.C. 481, 34 S.E.2d 792 (1945).....	22
<u>Kiriakides v. United Artists Commc'ns, Inc.,</u> 312 S.C. 271, 440 S.E.2d 364 (1994).....	33
<u>Lark v. Bi-Lo, Inc.,</u> 276 S.C. 130, 276 S.E.2d 304 (1981).....	7, 38
<u>McGehee v. S.C. Power Co.,</u> 187 S.C. 79, 196 S.E. 538 (1938).....	38
<u>Pollack v. S. Wine & Spirits of Am.,</u> 405 S.C. 9, 747 S.E.2d 430 (2013).....	8
<u>South Carolina Board of Dental Examiners v. Breeland,</u> 208 S.C. 469, 38 S.E.2d 644 (1946).....	34
<u>South Carolina Uninsured Employer's Fund v. House,</u> 360 S.C. 468, 602 S.E.2d 81 (Ct. App. 2004).....	39, 40
<u>State v. Sweat,</u> 379 S.C. 367, 665 S.E.2d 645 (Ct. App. 2008), <i>aff'd</i> 386 S.C. 339, 688 S.E.2d 569 (2010)	25, 36

Statutes

S.C. Code Ann. § 1-23-380.....	8, 38
S.C. Code Ann. § 38-73-540.....	30

S.C. Code Ann. § 42-1-130.....	39
S.C. Code Ann. § 42-1-415.....	<i>passim</i>
S.C. Code Ann. § 42-5-70	21
S.C. Code Ann. § 42-5-80.....	26
S.C. Code Ann. § 42-9-10	5, 11, 35
S.C. Code Ann. § 42-9-30	7
S.C. Code Ann. § 42-17-50	7

Regulations

S.C. Code Reg. 67-206(E).....	33
S.C. Code Reg. 67-415.....	<i>passim</i>
S.C. Code Reg. 67-211.....	33

Other Authorities

NCCI Assigned Risk Plan Supplement 7.....	30, 31
NCCI's Basic Manual User's Guide, Reference ID: BU-EXUI-R9BC1 and BU-WOCA-EF2ED.....	22, 23
9 Arthur Larson, LARSON'S WORKERS' COMPENSATION LAW § 151.01 and § 151.02 (2009).....	21, 22
9 Arthur Larson & Lex K. Larson, LARSON'S WORKERS' COMPENSATION LAW § 150.05 [3] (2000).....	31

Statement of Issues on Appeal

- I. Did the Appellants satisfy the requirements of S.C. Code Ann. §42-1-415 and S.C. Code Reg. 67-415 to transfer liability to the Uninsured Employers Fund with undisputed evidence?
- II. Did the Workers' Compensation Commission err in failing to find and conclude that Chris Thompson Services collected proper documentation of workers compensation insurance on a standard form "acceptable to the Commission" as defined by S.C. Code Reg. 67-415?
- III. Did the Workers' Compensation Commission err in requiring a description of operations, locations, and coverage to document workers' compensation coverage for a South Carolina employer in contravention of the plain terms S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415?
- IV. Did the Workers' Compensation Commission err in concluding that a policy number must be listed on a Certificate of Insurance when there is no legal authority or rational basis for such a requirement?
- V. Did the Workers' Compensation Commission err as a matter of law in failing to find that the Appellants timely submitted the Certificate of Insurance to the Workers' Compensation Commission in accordance with S.C. Code Ann. § 42-1-415?
- VI. Did the Workers' Compensation Commission err in concluding that the Petition to Transfer Liability is "premature" despite undisputed evidence that the Appellants have paid all benefits currently due to the Claimant as required by S.C. Code Ann. § 42-1-415?

VII. Did the Workers' Compensation Commission err in applying a new legal standard, in contravention of statutory authority, for collecting documentation of insurance when a subcontractor is engaged by parol agreement?

Statement of the Case

On September 14, 2011, the Claimant, Samuel Rose, filed a workers' compensation claim alleging that he was injured in an accident on August 20, 2011. (R. p.169). Rose named his direct employer, JJS Trucking, LLC, and its upstream contractor, Chris Thompson Services, LLC, as Defendants. On October 7, 2011, the Appellants (Chris Thompson Services and Bridgefield Casualty) filed an answer specifically raising S.C. Code Ann. § 42-1-415 as a defense. (R. p.173). Under S.C. Code Ann. § 42-1-415,

“upon 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 or project owner, or his insurance carrier may petition the commission to transfer

responsibility for continuing compensation and benefits to the Uninsured Employers' Fund.”

Thereafter, the Appellants submitted documentation to the Commission, specifically a Certificate of Insurance dated October 18, 2010, showing that JJS Trucking had represented to Chris Thompson Services that JJS Trucking was insured for workers' compensation by Travelers Insurance.

The Uninsured Employer's Fund (“UEF”) stipulated that “Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011.” (R. p.101, #6, R. p.187). The Appellants requested to transfer liability to the UEF under S.C. Code Ann. § 42-1-415 pursuant the Form 58 filed November 4, 2011. (R. p.177). The Appellants filed a formal Petition to Transfer Liability to the South Carolina Uninsured Employers Fund (UEF) on January 24, 2012. (R. p.203). No hearing was held on Rose's claim until May 15, 2012. (R. p.327).

Following this initial hearing on May 15, 2012, Commissioner Gene McCaskill issued a Decision and Order dated August 23, 2012, where he concluded, *inter alia*, that Rose “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.” (R. pp.1—11). The Appellants filed a Notice of Appeal (Form 30), and the Appellate Panel issued an Order on May 15, 2013, summarily affirming Commissioner McCaskill's conclusion that the Petition for Transfer of Liability was “not ripe for adjudication” without any analysis or discussion. (R. pp.12—22).

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 that appeal as interlocutory. (R. pp.36–39).

Over the next seven years, the merits of the claim were actively litigated before the Workers’ Compensation Commission and the appellate courts. These appeals were concluded with an unpublished decision by the Court of Appeals on August 10, 2022, after which a prior lump sum award of temporary disability compensation became due. (R. pp.87–94). The Appellants tendered payment in the amount of \$125,399.76 to Rose – the balance of 500 weeks of compensation plus interest -- and notified the Commission of the final payment of compensation. (R. p.232). Rose’s medical benefits continued to be paid by the Appellants.

On September 29, 2022, the Appellants refiled their Petition to Transfer Liability to the Uninsured Employers Fund with the Commission. (R. pp.234–243). By Order dated May 15, 2023, Commissioner Avery B. Wilkerson ruled 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. 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.” (R. pp.97–106). However, based on the same facts¹, the Appellate Panel

¹ On February 13, 2023, the Commission’s Appellate Panel held a hearing to review another of Commissioner Wilkerson’s Orders (granting Rose’s request to compel an out-

determined by Order of June 22, 2023, “that there are no compensation or medical benefits to be enforced at this time,” as Rose had 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. (R. p.117, p.128).

The Appellants filed a Form 30 on May 26, 2023, raising 27 grounds for review of Commissioner Wilkerson’s May 15, 2023, Order. (R. pp.266-271). A review hearing was held before the Commission’s Appellate Panel on August 28, 2023. (R. p.158). On September 13, 2023, the Appellate Panel directed the UEF’s attorney to prepare a proposed order affirming Commissioner Wilkerson’s decision with

“a new finding of fact #26. We find the medical treatment recommended by Dr. Poletti will tend to lessen claimant’s period of disability.” (R. p.156).

However, Commissioner Wilkerson’s May 15, 2023, Order that was before the Appellate Panel had only 14 findings of fact and in no way concerned medical treatment with Dr. Poletti. (R. p.105). A different order issued by Commissioner Wilkerson on August 22, 2023 (regarding Rose’s Motion for Rule to Show Cause, which was not appealed), did contain 26 findings of fact and specifically concerned treatment recommended by Dr.

of-state witness to testify at a hearing in South Carolina). Based upon the very same facts regarding the payment of benefits considered by Commissioner Wilkerson at the hearing on February 14, 2023, the Appellate Panel concluded “that there are no compensation or medical benefits to be enforced at this time” because the Claimant, Rose, has already been paid the statutory maximum 500-weeks of compensation benefits under S.C. Code Ann. § 42-9-10 and Rose continues to receive causally related medical treatment at the expense of the Appellants. (R. p.102, pp.107–132).

Poletti. (R. p.150). Therefore, it appears that the Appellate Panel reviewed and affirmed the wrong order and the Appellants requested clarification.

The Appellate Panel subsequently issued “corrected” directives affirming Commissioner Wilkerson without the previously requested, or any other, amendment. (R. p.157). Neither the “corrected” directives, nor the formal Decision and Order issued by the Appellate Panel on March 8, 2024, addressed any of the 27 issues raised by the Appellants in their Form 30 and or any of the factual or legal arguments raised by the Appellants in their Briefs to the Appellate Panel. (R. p.157, pp.158—168). Instead, the Appellate Panel summarily affirmed Commissioner Wilkerson’s denial of the Petition to Transfer Liability. (R. pp.166-167).

Contrary to the directives, the Appellate Panel’s March 8, 2024, Order did amend Commissioner Wilkerson’s finding that “Thompson did not supply the certificate of insurance ... ‘at the time a claim is filed by the injured employee’ ... but turned it over 3 months later” (Wilkerson finding #8) to state instead that the certificate was “turned over later,” without specifying any date (Appellate Panel finding# 14). (R. p.105, p.166). Both Commissioner Wilkerson’s original finding and the amended finding by the Appellate Panel on this apparently seminal issue entirely ignored the UEF’s stipulation that “Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011.” (R. p.101, #6).

In addition, the Appellate Panel did not adopt Commissioner Wilkerson’s prior conclusions of law (R. p.106), but instead the Appellate Panel substituted two new conclusions:

- “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.” (R. p.166).

These are the only conclusions of law in the March 8, 2024, Appellate Panel Order and neither has any relevance to the issues before the Appellate Panel or the Petition to Transfer Liability to the UEF.

The Appellants filed a Notice of Appeal with the Court of Appeals on April 3, 2024. The Appellants respectfully request that the Court of Appeals reverse the Workers' Compensation Commission as a matter of law and 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, because the Appellants have met all requirements of S.S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415 with undisputed evidence.

Standard of Review

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions of the Workers' Compensation Commission. Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981); Hargrove v. Titan Textile Co., 360 S.C. 276, 599 S.E.2d 604 (Ct.App.2004). Under the APA, a reviewing court may reverse or modify a decision of the Commission if the findings, inferences, conclusions, or decisions of that agency are "clearly erroneous in view of the reliable, probative and

substantial evidence on the whole record." Bass v. Kenco Group, 366 S.C. 450, 457, 622 S.E.2d 577, 580 (Ct.App.2005); S.C. Code Ann. § 1-23-380(A)(6)(e) (2005).

The APA further provides that a reviewing court may reverse or modify a decision of the Commission if "the administrative findings, inferences, conclusions, or decisions" are in violation of statutory provisions, made in excess of statutory authority, affected by error of law, or otherwise arbitrary, capricious, or characterized by abuse of discretion. S.C. Code Ann. § 1-23-380(5). The same is true when the facts are not in dispute. In such cases, the appellate courts are "free to decide" the case as a matter of law. Davaut v. Univ. of S.C., 418 S.C. 627, 795 S.E.2d 678, 681 (2016) (citing Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007) and Douglas v. Spartan Mills, 245 S.C. 265, 266, 140 S.E.2d 173 (1965)). Where the evidence is undisputed, the appellate court is not constrained by the "substantial evidence" standard of review. See Pollack v. S. Wine & Spirits of Am., 405 S.C. 9, 13-14, 747 S.E.2d 430, 432 (2013).

Facts

The Claimant, Samuel Rose, was employed by JJS Trucking as a truck driver. Cedric Smalls, the sole proprietor of JJS Trucking, testified that his company employed a total of three truck drivers at that time. (Transcript of 5/15/2012 Hrg. pp.4-5). Smalls further testified that he lives at 137-A Gordon Street in Charleston, South Carolina, and this is where JJS Trucking is located. Smalls testified 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.”

Smalls understood that if he did not provide those certificates of insurance, he “would be terminated.” (R. p.389, p.393, ll.10–16).

Chris Thompson, proprietor of Chris Thompson Services, also testified that he hired JJS Trucking to haul woodchips from a sawmill in Summerville to a paper mill in North Charleston. (R. p.338 (p.48, ll.21–24)). Thompson 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. (R. p.338 (p.48) – p.339 (p.49)).

At Thompson’s request, an authorized representative of Travelers Insurance, the Swamp Fox Agency, issued a Certificate of Insurance to Chris Thompson Services documenting that Travelers insured JJS Trucking for workers’ compensation for the period from October 8, 2010, through October 8, 2011. (R. p.457). Nothing about the October 18, 2010, Certificate of Insurance, which describes the insured as “JJS Trucking, LLC, 137-A Gordon Street, Charleston, South Carolina,” was inconsistent with 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. The testimony of 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.

In addition, 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.” (R. p.329 (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, 2021 (R. p.463), 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 and legitimately existed and was in full force and effect.

In addition, 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, 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.” (R. p.339 (p.52, l.9) – p.340 (p.53, l.1)).

Unfortunately, JJS Trucking allowed their workers’ compensation insurance policy with Travelers lapse prior to Samuel Rose’s accident on August 20, 2011. Neither JJS Trucking, nor Travelers Insurance, nor the Swamp Fox Agency, notified Chris Thompson Services of this lapse in coverage until after Rose’s accident.

Rose filed a workers’ compensation claim with the Commission on September 14, 2011. (R. p.169). The Commission then notified the Bridgefield Casualty, JJS Trucking, and the Uninsured Employers Fund that a claim had been established by letter dated September 20, 2011, sent by U.S. Mail. (R. p.171). Thereafter, the Workers’ Compensation Commission was promptly provided with a copy of the Certificate of Insurance dated October 18, 2010. (R. p.187). The Uninsured Employer’s Fund (“UEF”) stipulated that “Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011.” (R. p.101, #6).

No hearing was held on Rose’s claim until May 15, 2012. (R. p.327). Appeals regarding Rose’s claim concluded with an unpublished decision by the Court of Appeals on August 10, 2022. (R. pp.87–94). At that time, the Appellants tendered payment in the amount of \$125,399.76 to Rose, representing the balance of 500 weeks of compensation plus interest (the maximum allowable under S.C. Code Ann. § 42-9-10), and notified the Commission of the final payment of compensation. (R. p.232). Rose’s medical benefits continue to be paid by the Appellants.

Arguments

- I. **The Appellants have satisfied all of the requirements of S.C. Code Ann. §42-1-415 and S.C. Code Reg. 67-415 with undisputed evidence and the Workers' Compensation Commission erred as a matter of law in refusing to transfer liability to the Uninsured Employers Fund.**

S.C. Code Ann. § 42-1-415(A) provides that,

“upon 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.”

The Appellants respectfully contend that JJS Trucking represented himself to Chris Thompson Services as having workers’ compensation insurance at the time JJS was engaged to perform work. The Appellants submitted this documentation (an ACORD Form Certificate of Insurance dated October 18, 2010) to the Commission within weeks of Rose filing a workers’ compensation claim. The UEF stipulated that documentation was submitted to the Commission “by October 18, 2011.” (R. p.101, #6).

S.C. Code Ann. § 42-1-415(A) further provides that,

“In the event that employer is uninsured ... the higher tier subcontractor, contractor, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor or project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers’ Fund.” (emphasis added).

The Appellants filed such a Petition on September 29, 2022, after tendering payment in the amount of \$125,399.76 to the Claimant, Samuel Rose, representing the balance of 500 weeks of compensation (the statutory maximum under S.C. Code Ann. § 42-1-10) plus interest. (R. p.232, pp.234–243). This fact is not in dispute.

The Appellants respectfully contend that they have satisfied all of the requirements to transfer liability in accordance with S.C. Code § 42-1-415(B). According to that section,

“[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.”

Chris Thompson Services collected such documentation at the time JJS Trucking was engaged to perform work by obtaining an ACORD Form Certificate of Insurance from an authorized representative of JJS Trucking's workers' compensation insurance carrier. The owners of Chris Thompson Services and JJS Trucking both testified to this fact and the UEF submitted no evidence to the contrary. (R. p.339—340, p.389, p.393).

According to S.C. Code Reg. 67-415, the Workers' Compensation Commission has specifically designated that the ACORD Form Certificate of Insurance "is acceptable as documentation of insurance" for "purposes of Section 42-1-415." Further 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 Appellants respectfully contend that they have met these requirements of Regulation 67-415 by undisputed evidence, which includes the ACORD Form Certificate of Insurance dated October 18, 2010, indicating a valid South Carolina address for JJS Trucking, that is dated, signed, and issued by an authorized representative of Travelers Insurance, as confirmed by the attorney for Travelers Insurance. (R. p.187, R. p.329). On this basis, and for the reasons set forth more particularly below, the Appellants respectfully contend that the Workers' Compensation erred as a matter of law in

refusing to order a transfer of liability to the Uninsured Employers Fund as required by S.C. Code Ann. § 42-1-415.

II. Chris Thompson Services collected proper documentation of workers compensation insurance on a standard form “acceptable to the Commission” based upon the undisputed evidence and the applicable law.

For the Appellants to transfer liability to the UEF under S.C. Code Ann. § 42-1-415, there must first be a showing that “documentation of insurance” was collected “on a standard form acceptable to the commission.” The Workers’ Compensation Commission failed to address whether the October 18, 2010, Certificate of Insurance collected by Chris Thompson Services documenting workers’ compensation coverage for JJS Trucking constitutes a “standard form acceptable to the commission.” (R. p.166). In fact, the Workers’ Compensation Commission’s March 8, 2024, findings and conclusion do not even mention the governing regulation, S.C. Code Reg. 67-415, which specifically defines what the Commission considers “acceptable as documentation of insurance” for “purposes of Section 42-1-415.” (R. pp.165–166). Respectfully, these failures constitute plain legal error.

Pursuant to S.C. Code Reg. 67-415, the Workers’ Compensation Commission designated the ACORD Form Certificate of Insurance as “acceptable documentation of insurance” for “purposes of Section 42-1-415,” provided that the Certificate (1) indicates “a valid South Carolina address for the insured” and (2) is “dated, signed and issued by an authorized representative of the insurance carrier for the insured.” The regulation

contains no other requirements for a South Carolina employer like JJS Trucking in order to be deemed “acceptable documentation of insurance.”

Clearly, the October 18, 2010, ACORD Form Certificate of Insurance relied upon by the Appellants meets the requirements of Regulation 67-415. (R. p.187). The Certificate lists the address for the insured, JJS Trucking, LLC, as “137-A Gordon Street, Charleston SC 29403.” Not only is this a “South Carolina address,” but it is also a “valid” address, as evinced by property tax records submitted into evidence.² These tax records show that Cedric Smalls, the owner of JJS Trucking, LLC, also owns the property at 137-A Gordon Street. (R. p.488). Therefore, because the Certificate “indicates a valid South Carolina address for the insured,” S.C. Code Reg. 67-415(A)(2) does not require any further affirmations or statements about coverage details, as may be required for out-of-state employers.

The Certificate of Insurance has a “DATE” section in which the date “10/18/10” is entered. The Certificate 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). These dates document workers’ compensation insurance coverage for a period that includes August 10, 2011, the date 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.,”

² There is no evidence that “137-A Gordon Street” is not a “valid South Carolina address.”

and it is signed by “David W. Hayes” as “AUTHORIZED REPRESENTATIVE” of Travelers Insurance, which provided workers’ compensation insurance for JJS Trucking.³ The record contains documentation that David W. Hayes is the Registered Agent of the Swamp Fox Agency. (R. p.455). Counsel for Travelers also stipulated on the record before the Workers’ Compensation Commission 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.” (R. p.329 (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 necessary for the Certificate to be deemed “acceptable documentation of insurance” for purposes of S.C. Code Ann. § 42-1-415. (R. p.187). No statute or regulation requires any other information to properly document workers’ compensation insurance for a South Carolina Employer like JJS Trucking. Additional information is only required when the named insured is not a South Carolina Employer. Accordingly, the Appellants respectfully request that the Court of Appeals conclude that the October 18, 2010, Certificate of Insurance is “acceptable documentation of insurance,” as defined by S.C. Code Reg. 67-415 for purposes of S.C. Code Ann. § 42-1-415, based upon undisputed evidence in the record.

³ There is no evidence that the Certificate of Insurance was not “signed and issued by an authorized representative of the insurance carrier for the insured.”

III. Proper documentation of workers' compensation insurance for a South Carolina employer does not require a description of operations, locations, or coverage as a matter of law.

According to the Workers' Compensation Commission, the Certificate of Insurance is "incomplete" and "may not be used to transfer liability" because it "is blank as to the description and locations of operations," and it "does not note where coverage applies or to what job entity." (R. p.166). The Commission did not explain why a three-man trucking company with the word "trucking" in their name and "South Carolina" in their address would need any further description of the nature or location of their operations in their insurance documentation.

The Commission's failure to elucidate the basis for this decision is compounded the fact that the attorney for Travelers Insurance, Traveler's authorized agent (the Swamp Fox Agency), and the Workers' Compensation Commission's own 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 South Carolina workers' compensation insurance at the time the Certificate of Insurance was issued on October 18, 2010. (R. p.329 (p.11, l.25 -- p.12, l.4), R. p.182). 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 Trucking's three employees, and Chris Thompson Services were all located and where all of their work was performed). (R. p.187). Additionally, no reasonable person familiar with the law would question the coverage documented on the

Certificate, as workers' compensation coverage must be coextensive with JJS Trucking's entire liability in the state as a matter of law.

The Appellants respectfully contend that it was legal error for the Commission to find and impliedly conclude that S.C. Code Reg. 67-415 or S.C. Code Ann. § 42-1-415 mandate additional requirements not expressly enumerated, such as a "description and location of operations" or "job entity" for a Certificate of Insurance to be acceptable documentation. By enumerating specific requirements – that the Certificate show "a valid South Carolina address for the insured" and that the Certificate be "dated, signed and issued by an authorized representative of the insurance carrier for the insured" -- the law creates a negative implication, as the expression of one thing 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.").

Furthermore, it is important to recognize that the ACORD Form 25 required by S.C. Code Reg. 67-415 is a multi-purpose "Certificate of Liability Insurance" that was not specifically or exclusively designed to document only workers' compensation coverage. Instead, the ACORD Form Certificate 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. For this reason, the ACORD Form 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 ACORD Form has blanks and boxes that can be completed to document whether commercial general liability is a "claims-made" or "occurrence" policy; whether a general aggregate limit applies per policy, project, 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 of the ACORD Form 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." However, workers' compensation insurance policies have no coverage limits, and these blanks and boxes do not need to be completed to properly document workers' compensation coverage.

In order to more fully describe the coverage provided by general liability policies, the ACORD Form has a section 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 an 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. The Acord Form also asks whether automobile liability insurance applies to "any auto," "owned autos only," "hired autos only," "scheduled autos," or "non-owned autos only." However, proper documentation of workers' compensation coverage requires no additional descriptions because there are no such exclusions in workers' compensation policies.

In fact, 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, *WORKERS COMPENSATION LAW*, this express provision compels “a certain minimum coverage in insurance contracts” and is illustrative

“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).

⁴South Carolina, like most states, also utilizes standard language in all policies of workers' compensation insurance, including the following: “[w]e will pay promptly when due the benefits required of you by the workers compensation law.”

Essentially, our law requires that workers' compensation insurance coverage 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 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 an ACORD Form 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

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.

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 law 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 and any attempt to limit coverage with a detailed description of operations or locations in a Certificate of Insurance would have been void.

To the extent that the Commission'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 2009 decision in Hopper v. Terry Hunt Construction, 336 S.C. 310, 680 S.E.2d 1, any such reliance on Hopper is misplaced. Not only is Hopper factually distinguishable from the case *sub judice*, but the holding of Hopper has since been superseded by regulation promulgated in 2010.

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 or 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 workers' compensation coverage in South Carolina.

Factually, Hopper concerned a Georgia subcontractor with a Georgia address, a Georgia higher tier contractor/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 those facts, the Georgia 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 higher tier contractor/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 or coverage in any other state.

Not only is the present case clearly distinguished factually from Hopper, but a new regulation governing 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 Certificate of Insurance that "indicates a valid South Carolina address for the insured, is dated, signed and issued by

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).

an authorized representative of the insurance carrier for the insured.” However, additional requirements are now 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.”⁸

By applying an express requirement for out-of-state employers to a South Carolina employer, like JJS Trucking, the Appellate Panel rendered the second sentence of S.C. Code Reg. 67-415(A)(2) superfluous in contravention of the plain language actually promulgated by the Workers’ Compensation Commission in. *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). Neither Hopper, nor

⁸ Under Regulation 67-415, not even out-of-state employers are required to describe their operations or jobs to properly document workers’ compensation insurance.

S.C. Code Reg. 67-415, nor S.C. Code Ann. § 42-1-415, require that the Certificate of Insurance for JJS Trucking 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.”). Therefore, the Appellants respectfully contend that the Court of Appeals should reverse findings of fact number 15 and 16 as a matter of law and conclude that the Certificate of Insurance dated October 18, 2010, is “acceptable documentation of insurance,” as defined by S.C. Code Reg. 67-415 for purposes of S.C. Code Ann. § 42-1-415.

IV. No statute or regulation requires that a policy number be listed on a Certificate of Insurance and such a requirement would serve no rational purpose.

As explained more fully above, 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 the Commission 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 – which the Commission failed to even mention - - 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 Chris Thompson’s testimony, he spoke to Greg Hudson, a customer service representative at the Swamp Fox Agency, the authorized agent of Travelers Insurance and producer of the workers’ compensation policy issued to JJS Trucking. (R. p.339–340). Admittedly, Hudson

“said everything is good to go, you’re covered ... he told me that Cedric⁹ was good to go. Those were his exact words, good to go.” (R. p.339 (p.52, l.9) – p.340 (p.53, l.1)).¹⁰

Having confirmed the existence of coverage, 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 Insurance to JJS

⁹ Cedric Smalls is the sole proprietor of JJS Trucking.

¹⁰ The UEF did not dispute this testimony or present any evidence to the contrary.

Trucking, not only did 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 by Travelers Insurance to JJS Trucking for a one-year 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.” (R. p.329 (p.12)).

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 February 5, 2011 (approximately four months after the Certificate of Insurance was issued to Chris Thompson Services) based upon NCCI records. (R. p.182, p.191--192). 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 Commission's Coverage and Compliance Division subsequently confirmed that the Travelers policy insured JJS Trucking “from 10/8/2010 to 2/5/2011.” (R. p.463).

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 further guarantees the coverage provided by Travelers Insurance 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 an ACORD Form 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 the Court of Appeals reverse the Commission's finding of fact number 17 and the implied conclusion that documentation of insurance requires that a policy number be listed based upon the undisputed evidence and the applicable law.

V. **The Certificate of Insurance was timely submitted to the Workers' Compensation Commission in accordance with a rational interpretation of S.C. Code Ann. § 42-1-415.**

According to the Commission's March 8, 2024, 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 later." (R. p.166).

The UEF actually stipulated that "Thompson turned over the certificate of insurance from JJS to the Commission by October 18, 2011" and this stipulation is recited in Hearing Commissioner Wilkerson's May 15, 2023, Order (R. p.101); however, the Appellate Panel failed to acknowledge the stipulation (R. pp.158–167). Considering that October 18, 2011, is only 34 days after Rose's claim was filed on September 14, 2011, and only 28 days after the Commission sent notice of the existence of a claim to the Appellants by U.S. Mail, the Appellants contend the Commission's impermissibly vague finding of fact regarding the timeliness of the Certificate is arbitrary and without merit.

Respectfully, it would strain credulity to suggest that the phrase "at the time a claim is filed by an injured employee" contained in S.C. Code Ann. § 42-1-415 actually requires a defendant employer to file a Certificate of Insurance on the same day as the claimant employee's claim is filed, as this would necessarily require either improper collusion between opposing parties, or impossible clairvoyance. In fact, S.C. Code Reg.

67-206 does not even require that an employee even serve his employer or their insurance carrier with notice of a workers' compensation claim, instead regulations require that the Commission notify the employer's representative of that a claim has been filed and there is no prescribed deadline for this notification.¹¹ Therefore, the law does not even contemplate that an employer or carrier would even have notice of a claim on the very day it is filed.

Nevertheless, the UEF argued before the Appellate Panel that liability cannot be transferred "even if a certificate of insurance is submitted one day after a claim is filed." Respectfully, the UEF's construction of S.C. Code Ann. § 42-1-415, which was adopted by the Commission, is plainly absurd and should be reversed. See 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"). It is simply untenable to suggest that the employer and carrier, in order to preserve their rights under S.C. Code Ann. § 42-1-415, must file a responsive documents with the Commission on the same day a claim is filed when they are not even guaranteed notice of a claim within any set time period.

Here, not only did the Appellants supply the Commission with the Certificate of Insurance promptly after the claim was filed and they were notified of this claim, but the Certificate was admittedly in the possession of the Commission (and the UEF) more

¹¹ The Commission notified Bridgefield Casualty, JJS Trucking, and the UEF that a claim had been filed by letter dated September 20, 2011, which was sent by U.S. Mail. (R. p.171). The Claimant's attorney also served the parties, including the UEF, by U.S. Mail, because the claim was established with the filing of a Form 50, hearing request, governed by S.C. Code Reg. 67-211(A), in addition to S.C. Code Reg. 67-206(E). (R. p.170).

than six months before the May 15, 2012, hearing when the merits of Rose’s claim were first addressed by the Commission and more than twelve years before the Appellate Panel issued the March 8, 2024 Order. 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).

In addition, had the Legislature intended to literally 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”).

Therefore, the Appellant’s respectfully contend that because the Commission’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 the Commission’s finding of fact

number 14 is otherwise arbitrary, capricious, and without any explanation or evidentiary support, the Court of Appeals should reverse this finding and conclude that the Certificate of Insurance was timely submitted to the Commission in accordance with S.C. Code Ann. § 42-1-415(B) as a matter of law.

VI. The Petition to Transfer Liability is not “premature” but is ripe for determination because the Appellants have paid all benefits due to Rose.

The hearing on the Appellant’s Petition to Transfer Liability to the UEF was heard by Commissioner Wilkerson on February 14, 2023, at which time the evidentiary record was closed.¹² One day earlier, on February 13, 2023, the Commission’s Appellate Panel considered a tangential matter in this claim and on the very same record concluded “that there are no compensation or medical benefits to be enforced at this time” because the Claimant, Rose, has already been paid the statutory maximum 500-weeks of compensation benefits under S.C. Code Ann. § 42-9-10 and Rose continues to receive causally related medical treatment at the expense of the Appellants. (R. p.232, p.482, pp.107–132). Despite the undisputed evidence and despite the Appellate Panel’s June 22, 2023, finding – which was not appealed and is the law of the case – the Appellate Panel’s March 8, 2024, Order inexplicably found that “all benefits due and owing to Claimant have not been paid to date” and concluded that the “Petition to

¹² The UEF submitted no evidence that Rose is entitled to any additional compensation or to any medical benefits that have not been authorized or paid by the Appellants.

transfer liability is premature.” (R. p. 117, p.128, p.166). The Commission gave no explanation for this finding and cited no evidence to support it.

Not only is there no evidence in the record to support a finding that “all benefits due and owing to the Claimant have not been paid to date,” not only did the Commission fail to reconcile its wholly inconsistent orders on the same issue, but the March 8, 2024, conclusion regarding alleged prematurity is clearly affected by an error of law. Respectfully, it is 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 the Commission’s implicit interpretation to the contrary (*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). Section 42-1-415 plainly states that a 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 become due in the future; however, if benefits are current as of the time of the Petition to Transfer Liability, the Petition should be considered ripe for adjudication. Any other interpretation of the statute would render the word “continuing” mere meaningless 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 to Rose under the Workers’ Compensation Act and having paid or authorized all medical benefits that are

currently “due,” the Appellants respectfully contend that the Appellate Panel’s March 8, 2024, finding of fact number 18 should be reversed by the Court of Appeals based upon the undisputed evidence and the applicable law. Instead of finding the Petition to Transfer Liability “premature,” the Court of Appeals should immediately order a transfer liability for “continuing compensation” to the UEF, as well reimbursement to the Appellants for all medical and compensation benefits paid to date with interest, in accordance with the plain language of S.C. Code Ann. § 42-1-415.

VII. The law requires documentation of insurance be collected at the time a subcontractor is engaged to perform work irrespective of whether the engagement agreement is in writing.

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.” On this point, the record contains uncontradicted testimony from Chris Thompson (owner of the higher tier contractor Chris Thompson Services) and from Cedric Smalls (owner of the subcontractor JJS Trucking) confirming that JJS Trucking provided documentation of insurance at the time he was originally engaged to perform work for Chris Thompson Services. (R. pp.339-340, p.389, p.393). Both Thompson and Smalls further testified, without contradiction, that JJS Trucking was required to provide Chris Thompson Services with updated documentation of insurance on an annual basis thereafter. (R. p.339 (p.50); p.417, l.25 – p.418, l.12). Despite the plain language of the governing statute and despite the uncontradicted evidence, the Commission’s March 8, 2024, Order vaguely suggests that “as no written contract

existed, each transaction would be a new job requiring a certificate of insurance.” (R. p.166 #16). The Commission did not cite any legal authority for this proposition or otherwise explain why additional requirements not expressed in any law or regulation should be required to transfer liability to the UEF in this case. The Appellants respectfully contend that no such legal authority or rational explanation exists. 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”).

In addition, there is no evidentiary basis for the Commission's suggestion that JJS Trucking performed more than one job for Chris Thompson Services. 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. (R. p.338 (p.48, l.21) – p.339 (p.40, l.2); p.341 (p.58); p.388, l.18 – p.389, l.9; p.412, ll.14 – 17; p.418, l.12 – p.419, l.2). Therefore, the implied finding that JJS Trucking was engaged to perform more than one job for JJS Trucking must be reversed by the Court of Appeals in accordance with the Administrative Procedures Act's substantial evidence standard of review. S.C. Code Ann. § 1-23-380; Lark v. Bi-Lo, Inc., 276 S.C. 130, 276 S.E.2d 304 (1981).

The Appellants respectfully contend that, in accordance with the requirements of S.C. Code Ann. § 42-1-415(B), as interpreted by the South Carolina Supreme Court, documentation of insurance was “collected at the time the contractor or subcontractor [was] engaged to perform work” and the fact that this engagement was not reduced to writing does not change this. Indeed, 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 the Commission and advocated by the UEF violate the plain meaning 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 in Hardee, “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 the Commission’s vague legal conclusion. It is generally accepted that most employment contracts in South Carolina are not written contracts and even S.C. Code Ann. § 42-1-130 specifically states that contracts of hire can be “expressed or implied, oral or written.” However, no reasonable person would suggest that an oral

contract of hire necessarily has a duration of only a single day. For example, Rose was himself engaged under an oral contract of hire, yet no reasonable person would ever 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 his relationship with JJS Trucking. Yet this is precisely how the UEF and the Commission suggest JJS Trucking’s engagement to perform work for Chris Thompson Services should be construed¹³ and this suggestion is no less ridiculous than the aforementioned example.

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 until Rose was injured and it was discovered that JJS Trucking’s workers’ compensation insurance had lapsed. (APA p, 96, pp.16–17, p.40, ll.14–17). Like the subcontractor in House, supra, JJS Trucking performed services for Chris Thompson Services under “only one contract and one point of hire.” Chris Thompson Services did not have a continuing duty to check the validity of JJS Trucking’s insurance status on a daily basis. Therefore, the Appellants respectfully request that the Court of Appeals reverse the Commission’s finding of fact number 16 as a matter of law and based upon undisputed evidence that documentation

¹³ The UEF’s Brief to the Appellate Panel argued “[e]ach time Thompson hired JJS to carry a load, a new engagement was created.” (R. p.313). Respectfully, there is no evidence or legal authority to support this allegation.

of insurance was collected by Chris Thompson Services at the time JJS Trucking was engaged to perform work and regularly thereafter in accordance with S.C. Code Ann. § 42-1-415, as interpreted by prior decisions of our appellate courts.

Conclusion

The Appellants, Chris Thompson Services and Bridgefield Casualty Insurance respectfully request that the Court of Appeals reverse the March 8, 2024, Order of the Workers' Compensation Commission on the basis that the Commission's findings of fact and implied conclusions of law are not supported by the greater weight of the evidence or the applicable law, are impermissibly vague, and are otherwise affected by an unwarranted abuse of discretion and made in excess of authority. The Appellants 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 with undisputed evidence. Therefore, the Appellants request that the Court of Appeals order that the Appellants are entitled to immediately transfer liability for continuing medical benefits to the Uninsured Employers Fund and that they are entitled to reimbursement from the Uninsured Employers Fund for all compensation and medical benefits paid to date, with interest.

Respectfully submitted,



Kirsten Leslie Barr, SC Bar #15525

Trask & Howell, L.L.C.

P.O. Box 2167

Mt. Pleasant, SC 29465

(843) 881-1027

Attorneys for Chris Thompson Services
& Bridgefield Casualty Insurance Co.

kbarr@trask-howell.com

November 20, 2024
Mt. Pleasant, South Carolina

RECEIVED

Nov 20 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),

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,

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Final Brief of the Appellants complies with Rule 211(b), SCACR, and Supreme Court Order 2007-08-16-02, dated August 13, 2007, requiring redaction of personal data identifiers.

November 20, 2024

Kirsten Leslie Barr

Kirsten Leslie Barr, *S.C. Bar #15525*
Trask & Howell, L.L.C., (843) 881-1027
P.O. Box 2167
Mt. Pleasant, SC 29465
Attorneys for Chris Thompson Services
& Bridgefield Casualty Insurance Co.
kbarr@trask-howell.com

