

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION

69840

Commissioners Aisha G. Taylor, Gene McCaskill and Susan S. Barden

WCC FILE NO. 1200329

Juan Yslas, Jr., Employee

Appellant,

v.

Juan Yslas, Employer,  
Riverport Insurance, Alleged Carrier for Employer,  
Full Circle Construction, Alleged Statutory Employer, and  
The South Carolina Uninsured Employer's Fund,

Respondents.

RECEIVED

SEP 23 2013

SC Court of Appeals

NOTICE OF APPEAL

*Handwritten initials*

Juan Yslas, Jr. appeals the Appellate Panel Decision and Order of the South Carolina Workers' Compensation Commission in WCC File Number 1200329 filed August 21, 2013. Appellant received written notice of entry of this Order on August 23, 2013.

Pursuant to §42-17-70 of the South Carolina Code of Laws, 1976 and as amended, Appellant states the following grounds of appeal and alleged areas of law, to-wit:

1. The Appellate Panel Decision and Order is vague and ambiguous, and subject to self-contradiction. The Decision clearly and unambiguously states, on page 4, that the Order of the Single Commissioner "shall be amended to deleting all references to Findings of Facts and

Rulings of law with regard to negligence and OSHA,” yet on page 17, in Finding of Fact number 1, the Appellate Panel incorporates the findings of evidence made by the Single Commissioner. These Findings of Fact by the Single Commissioner include findings which relate to negligence and OSHA. These Findings of Fact, which are set forth on pages 13 – 16 of the Decision, include Findings of Fact numbers 3, 4, 5, 6, 7, 9, 10, 11, 12 and 25. These Findings of Fact have no relevance to the Appellant’s workers’ compensation claim and, contrary to the express finding and conclusion of the Appellate Panel as set forth on page 4 of the Decision that all references to Findings of Fact and Rulings of law “with regard to” negligence and OSHA should be admitted, these findings only have relevance to alleged negligence or OSHA violations.

2. The Appellate Panel erred in finding as a matter of fact (Finding of Fact number 14 on page 19 of the Decision) and concluding as a matter of law (Conclusion of Law number 2 on page 19 of the Decision) that the Appellant was not a statutory employee and was specifically excluded from coverage under the Workers’ Compensation Act simply because he was not covered as an insured under the insurance policy obtained through Peoples Choice Insurance. The Panel erred in equating a person’s status as a statutory employee and coverage under the South Carolina Workers’ Compensation Act with coverage under a particular policy of insurance.

3. The Appellate Panel erred in finding as a matter of fact and concluding as a matter of law that the Appellant failed to honestly complete the insurance application with Peoples Choice Insurance.

4. The Appellate Panel erred in concluding as a matter of law that the Appellant was not a statutory employee of Full Circle Construction simply because he excluded himself from coverage under the People’s Choice Insurance policy indicating that he had zero people on his

payroll.


5. The Appellate Panel erred in concluding that the Appellant did not honestly complete the insurance applications with Peoples Choice Insurance as it relates to his business practices.

6. The Appellate Panel erred in concluding as a matter of law that the Appellant was not covered by the South Carolina Workers' Compensation Act and was not a statutory employee simply because he was not covered under the Peoples Choice Insurance policy.

Respectfully submitted,

MOSS, KUHN & FLEMING, P.A.

By



James H. Moss  
1501 North Street  
Post Office Drawer 507  
Beaufort, South Carolina 29901  
(843)524-3373  
(843)524-1302 (FX)

Attorney for the Appellant

Beaufort, South Carolina  
September 20, 2013

CERTIFICATE OF SERVICE

Undersigned certifies that the **Notice of Appeal**, to which this certificate is affixed, was served upon the party (s) to this action by hand delivery or by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29201-1715

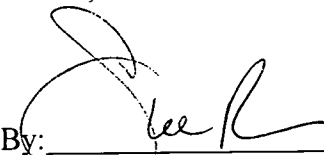
Allison M. Carter, Esquire  
Willson, Jones, Carter & Baxley, P.A.  
421 Wando Park Boulevard, Suite 100  
Mount Pleasant, South Carolina 29464  
843-284-1081 (fax)

Ryan S. Montgomery, Esquire  
Attorney at Law  
108 Mills Avenue  
Greenville, South Carolina 29605  
864-373-7334 (fax)

O. Edworth Liipfert, III, Esquire  
Griffith, Sadler and Sharp, P.A.  
Post Office Drawer 570  
Beaufort, South Carolina 29901-0570  
521-4247 (fax)

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on September 20, 2013.

MOSS, KUHN & FLEMING, P.A.

By:  \_\_\_\_\_

Sue Radford  
Post Office Drawer 507  
Beaufort, South Carolina 29901  
843-524-3373 / Fax: 843-524-1302

RECEIVED  
SEP 23 2013  
SC Court of Appeals

LAW OFFICES

MOSS, KUHN & FLEMING, P.A.

JAMES H. MOSS  
H. FRED KUHN, JR.  
CORY H. FLEMING\*

1501 North Street P.O. Drawer 507 - Beaufort, South Carolina 29901-0507  
TELEPHONE 843-524-3373  
FAX 843-524-1302

KIMBERLY L. SMITH  
EVE M. FLEMING

\*ALSO MEMBER OF GA BAR

September 20, 2013

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: Juan Yslas, Jr. v. Juan Yslas, Employer, Riverport Insurance, Alleged Carrier for Employer, Full Circle Construction, Alleged Statutory Employer, and The South Carolina Uninsured Employer's Fund  
WCC File No.: 1200329

Dear Mrs. Kitchings:

Enclosed for filing is an original and one (1) copy of the notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on Respondent.
2. A copy of the orders which is to be challenged on appeal.
3. A filing fee of \$100.00.
4. A self-addressed stamped envelope for the return of the filed copy.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.

  
James H. Moss

JHM:sr  
Enclosures

cc: SC Workers' Compensation Commission (w/enclosure)  
Allison M. Carter, Esquire (w/enclosure)  
Ryan S. Montgomery, Esquire (w/enclosure)  
O. Edworth Liipfert, III, Esquire (w/enclosure)

RECEIVED

SEP 23 2013

SC Court of Appeals

LAW OFFICES

MOSS, KUHN & FLEMING, P.A.

JAMES H. MOSS  
H. FRED KUHN, JR.  
CORY H. FLEMING\*

1501 North Street P.O. Drawer 507 - Beaufort, South Carolina 29901-0507  
TELEPHONE 843-524-3373  
FAX 843-524-1302

KIMBERLY L. SMITH  
EVE M. FLEMING

\*ALSO MEMBER OF GA BAR

September 20, 2013

SC Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29201-1715

RE: Juan Yslas v. Full Circle Construction, LLC  
WCC File No.: 1200329

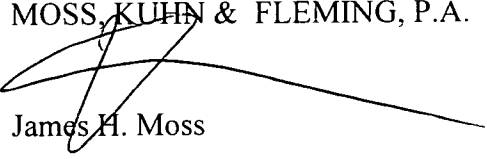
Dear Sir or Madam:

Enclosed for filing is the Notice of Appeal in the above-referenced matter.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.

  
James H. Moss

JHM:sr  
Enclosure

cc: Allison M. Carter, Esquire  
Ryan S. Montgomery, Esquire  
O. Edworth Liipfert, III, Esquire

RECEIVED

SEP 23 2013

SC Court of Appeals

3726

P. GREEN S. MIDYEL I:GRI  
HOOK - 2000  
7) OR VISIT UPS.COM®

1ZE68212221001 0721 1030  
JSC0701J SCC0140 SEP 23 07 11:21 2013  
US 2950 HIP 12.1.6 ZEBR2H000  
AIR SERVICE IS AS LISTED ABOVE AIR

SHIP TO: BEAUFORT, NC  
S. WORTCHWALKER, 11111  
S. WORTCHWALKER, 11111

- For UPS Worldw... documents of n... of pages you ca...
- Do not use UPS envelope. For U... or other dire subj...
- Do not send cash

04315  
FROM: F 66212  
SHIP NUMBER

TELEPHONE  
843-524-3373

017254\_P1

17316346

MOSS KUHN & FLEMING PA  
1501 NORTH ST  
BEAUFORT SC 29902

DELIVERY TO: BEAUFORT, NC  
TELEPHONE

Use this etc... 300  
Use inkjet printer  
United Parcel Service, Louisville, KY  
C101911202609 1105 S

HEIGHT	DIAGONAL WEIGHT	CUSTOMER PACKAGING	INSIDE
		EXPRESS (UNIT)	
		DOCUMENTS ONLY	

SATURDAY DELIVERY

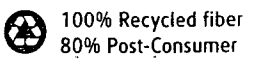
1Z F66 212 22 1001 0721  
1Z F66 212 22 1001 0721

EXPORT EXPORT

UPS Next Day Air

1Z F66 212 22 1001 0721  
1Z F66 212 22 1001 0721

SHIP NUMBER F6621279 YWT



International Shipping Notice — Carriage hereunder may be subject to the rules relating to liability and other terms and/or conditions established by the Convention for the Unification of Certain Rules Relating to International Carriage by Air (the "Warsaw Convention") and/or the Convention on the Contract for the International Carriage of Goods by Road (the "CMR Convention"). These commodities, technology or software were exported from the U.S. in accordance with the Export Administration Regulations. Diversion contrary to U.S. law prohibited.

010195103 05/05 PAC United Parcel Service, Louisville, KY

Insert shipping document from the

Edited™