

**APPELLATE PANEL DECISION AND ORDER OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION  
W.C.C. FILE NO. 1200329**

JUAN YSLAS, JR. , Employee

APPELLANT,

-V-

JUAN YSLAS, Employer,

AND

RIVERPORT INSURANCE, Alleged Carrier for Employer,

AND

FUL CIRCLE CONSTRUCTION. Alleged Statutory Employer,

AND

THE SOUTH CAROLINA UNINSURED

EMPLOYER'S FUND,

RESPONDENTS.

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Appellate Panel Review held in Columbia, SC

On May 20, 2013 per notices timely and properly served on all

Parties/persons of interest

Appellate Panel Decision and Order filed 8-21, 2013

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**APPEARANCES:**

Appellant represented by James Moss of Beaufort, South Carolina

Respondent, Riverport Insurance, represented by Allison Carter of Charleston, South Carolina

Respondent, Full Circle Construction, represented by Ryan Montgomery of Greenville, South Carolina

Respondent, S.C. Uninsured Employer's Fund, represented by O. Edworth Liipert, III

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## STATEMENT OF THE CASE

### *A. Claimant's Position*

It was the position of the claimant that on or about January 16, 2012, he was working when he fell from scaffolding injuring his bilateral ankles, legs, and his back. The injury was denied by all carriers based upon coverage issues but it was the position of the claimant that 1. Mr. Yslas has insurance for himself under the Riverport Insurance Policy and that Riverport should accept this claim and provide coverage; 2. In the alternative, it was the position of the claimant that Full Circle was the statutory employer and should pick up this claim and pay in the first instance as it was uncontested that Mr. Yslas was working on a job where Full Circle Construction was the general contractor; and 3. That Mr. Yslas, did not exclude himself from the South Carolina Workers' Compensation Act and therefore can avail himself to benefits under the South Carolina Workers' Compensation Act.

The claimant sought an award that the injury was compensable, covered under the South Carolina Workers' Compensation Act, requested temporary total disability benefits back to January 17, 2012 – present, and requested retroactive and ongoing medical treatment. Claimant contended that his average weekly wage was \$1,000 with a corresponding compensation rate of \$666.70 (.6667% of the AWW claimed on the claimant's Form 58).

### *B. Full Circle Construction's Position*

It was the position of Full Circle Construction that it was undisputed that the claimant sustained an injury. However it was the position of Full Circle Construction that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring

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himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

In the event Juan Yslas, Jr. did not exclude himself under the South Carolina Workers' Compensation Act, then it was Full Circle's secondary position that the claimant was covered by the insurance of Riverport Insurance the direct carrier with whom Mr. Yslas, Jr. had a policy. Finally, if Full Circle was ordered to pay this, then Full Circle requested that this be immediately transferred to the S.C. Uninsured Employer's Fund pursuant to Section 42-1-415.

*C. Riverport Insurance's Position*

It was the position of Riverport Insurance that it was undisputed that the claimant sustained an injury. However it was the position of Riverport Insurance that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself. In addition, the claimant had been audited and it was determined that he had employees on his payroll and still to this day had not paid the retroactive premium per the audit.

*D. S.C. Uninsured Employer's Fund (UEF)*

It was the position of the UEF that it was undisputed that the claimant sustained an injury. However it was the position of UEF that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

If somehow it was found that Mr. Yslas was covered and that Full Circle Construction had to pay in the first insurance then Full Circle could not transfer to the UEF as the Certificate of Insurance was not on an "ACCORD" form but instead on an older version of the Certificate of Insurance.

Claimant appealed the Order of the Single Commissioner to specifically include the findings addressing "negligence", OSHA violations, and the referral of the claimant to the Attorney General office for a fraud investigation.

Oral arguments were presented before the full commission appellate panel on May 20, 2013. All proffered testimony has been taken. The Appellate Panel has properly considered such, together with all the documentary evidence submitted by the parties along with their respective oral arguments. For these reasons set forth herein, we **AFFIRM WITH AMENDMENTS** in that the Order shall be amended to deleting all references to Findings of Facts and Rulings of law with regard to negligence and OSHA.

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**EVIDENCE OF THE UNDERLING CLAIM/CASE**

***A. Testimony of Ricardo Yslas***

Ricardo is the brother of Juan Yslas, Junior and began working for Junior when they began the Hampton Lake project under the Full Circle Construction general contractor. See Dep. Tr. of Ricardo Yslas, p. 10. According to Ricardo, Junior's company was "running the show" and showing people what to do on the job site. Id. At 11. At the time of the accident and on the Hampton Lake project, Junior had 3-4 additional guys other than Ricardo, Juan Junior and Juan Yslas, III. Id. At 12. In addition to those people there were other people that would come and go. Id. At 13.

***E. Testimony of Letvy Jacquelyn Fernandez***

Ms. Fernandez was employed with Peoples Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7. Ms. Fernandez has a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8. When completing the application Junior indicated that he had no employees. Id. At 12. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. Id. At 13, 21 and 22.

Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways. In Junior's case, he did not ask for this quote to be run as it was not noted in her file and

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therefore he had excluded himself from the insurance policy. Id. At 17-19. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.

Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business.

***F. Testimony of Cheryl Perkins***

Ms. Perkins was offered as the representative for Riverport Insurance but she was an employee of Berkley Risk as Berkley contracts to provide administrative services, day to day dealings with insurance applications, policies, binders, etc. See Dep. Tr. Of Cheryl Perkins, p. 5. In South Carolina a person applying for workers' compensation insurance has the ability to either include or exclude themselves from South Carolina Workers' Compensation coverage. Id. At p. 8. Mr. Yslas, Jr. excluded himself from South Carolina Workers' Compensation coverage. Id. At 9.

Deposition Exhibit 1 was referenced during the course of the deposition and accepted as evidence in this case as there were no objections argued at the hearing to exclude that information. See Hr. Tr. Within that exhibit was an application that dealt with payroll and Junior had indicated that he was a sole proprietor and had no employees nor payroll. Id. At 12-13. If employees had been hired at a later date then that employer was to notify the carrier in writing of the payroll change. This was not done. Id. At 13-14. Junior was only charged \$750

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for an annual insurance premium based upon his representation that he had zero (0) employees. Id. At 18.

According to Cheryl Perkins, had Ylas, III, been an employee of Junior then he would have been covered under Junior's workers compensation policy with Riverport. Id. At 35. At some point, Riverport went back and audited Junior and determined that he had employees where workers' compensation insurance premium was due. Ms. Perkins was to provide a copy of the audit where it would identify what employees were listed and premiums requested. Id. at 35-37.

***G. Testimony of Juan Yslas, III***

***1. Deposition Testimony***

Juan Yslas, III was born on August 25, 1975 and appeared as a Hispanic male who currently resides at 70 Hickory Hill in Beaufort County, South Carolina. See Dep Tr. Of Juan Yslas, III, p. 7. The Third has a history of working manual labor jobs to include tomato farming and construction work. The Third had a previous workers' compensation injury by way of a broken ankle and treated with Dr. Leland Stoddard. Id. at p. 17-18.

The Third testified that he used to run his own construction company but that at some point his insurance lapsed. Id. At p. 13-14. He then went to work for other builders with the most recent builder being his father, Junior. It was the testimony of The Third that he was an employee only and as his father told him he was getting workers' compensation insurance under his name. Id. At p. 30. The Third switched jobs from working for a Naun Ruiz and switched to his dad (Junior) as his employer. When this occurred he began to make \$20 per hour which was a raise of \$2/per hour compared to when he was working for Naun Ruiz. Id. At 35. At the time the Third came to work for Junior, the Third no longer had a construction company. Id. The Third

never had any conversations with Junior regarding workers' compensation insurance or who was included/excluded. Id. At 39.

Insofar as the accident is concerned, Juan Yslas, III testified that Junior lost his balance while on the scaffolding and started to fall thereby pulling or knocking the Third down with him. Id. 43-44. The Third landed on his heels and sustained injury. He has treated with Dr. Leland Stoddard.

## *2. Hearing Transcript Testimony*

The third testified he resides at 70 Hickory Hill, the same address where his dad lives. Hr. Tr. p. 116. He first started working in South Carolina in the Tomato business which consisted of dumping the tomatoes in boxes. Hr. Tr., p. 108. The Third worked in construction since 1994 or 1995 when he began as a framer. Hr. Tr., p. 109. On January 16, 2012 he was on one end of a wall and his dad (Junior) was on the center of the scaffold. Id. The third was walking towards Junior to tell him that he needed to get down off of the scaffold and put a younger guy up on the scaffold. Id. Junior grabbed the truss being passed up and then let it go causing him to lose his balance. Hr. Tr. Pp. 109-110. As he lost his balance he reached out with his arms thereby hitting the Third with his backhand and they both fell to the ground below. Id. at p. 110.

The Third fractured both heels. Id. At the time of the injury, the third was working for Junior. Hr. Tr. P. 112. The Third had no involvement in the management of Junior's company as the Third did not negotiate the jobs, did not furnish the tools, and reported to his father (Junior) as the boss. Id. at 112-113.

While the Third did not negotiate the jobs, he would on occasion help draw up the proposals as his father is "not good with words and he's not good with spelling". Hr. Tr., p. 121.

The Third further testified that he had a previous construction company with valid S.C. Workers'

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Compensation Insurance until it was cancelled for non-payment of premium. Id. at 123. The address used for the workers' compensation insurance at that time was the same address of 70 Hickory Hill. Id. at 124.

In so far as the scaffolding from which the Third and Junior fell, the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130. The scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131. Even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132. While this is not the only way to complete this work it was the way the Third and Junior chose to do it that day. Id. In addition, the scaffolding was constructed by Junior and/or his workers and not by Full Circle Construction. Hr. Tr., p. 132. The tools that the Third and Junior used to construct the scaffolding were Junior's tools. Id. at 132.

#### ***H. Testimony of Juan Yslas, Jr. (Junior)***

##### ***1. Deposition Transcript***

Junior also testified that he too lived at the 70 Hickory Hill Road address. He appeared as a 54-year-old Hispanic male. Dep Tr. Of Juan Yslas, Jr. at p. 11. Junior was originally employed by Naun Ruiz. Id. At 31-32. When he left the employment of Ruiz, Junior obtained his own workers' compensation insurance through First Choice later determined to be People's Choice. Id. At 32. When he applied for insurance he met with Jackie. When he took out workers' compensation insurance he did not know whether or not he was covered. Id. At 33. He didn't even know if it covered the "whole crew." Id. When Junior took over the project and no longer worked for Ruiz, Junior provided his own tools on the job site. Id. At 33.

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According to the testimony of Junior, he believes he started his own company on or around November 22, 2011. Id. P. 35. When he started his company he paid his workers' compensation insurance premium. Id. According to Junior there were 6 employees all together working for him besides The Third, Junior and Ricardo Ylsas. Id. At 51.

On the day of the accident, Junior was on a walk board that he built. Id. p. 53. This walk board and/or scaffolding was constructed with Junior's tools. Id. at 54. No one at Full Circle Construction instructed Junior how to build the scaffold because "they knew how to do that". Id. at 54.

Junior testified similarly to the Third with respect to how the accident occurred. Junior also fell and sustained injury to his feet/ankles. Other body parts were claimed and in dispute. Junior also treated with Leland Stoddard and there was no dispute as to the fact the accident occurred nor any issue with the medical treatment provided thus far.

According to Junior, he was instructed by representatives of Full Circle that he could not begin the job until he provided Full Circle with proof of workers' compensation insurance. Id. at 87. When Junior applied for insurance he told Jackie with People's Choice that he planned to hire one or two employees. Id. at 90. Junior then testified that this was untrue because he had 5-6 employees at the time of applying for the application. In addition to having these employees, Junior had provided his accountant with documents for tax purposes that indicated he had several employees. Id. at 91.

Junior did not tell Jackie how many employees he had. Id. at 93-94. Junior testified whether or not he and Jackie had discussed whether he wanted to be included or excluded and he could not remember whether he could afford to be included. Id. at 96-97. He does however remember getting a copy of the policy in the mail but never read it. Id. at 98.

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Mr. Yslas, Jr. was asked to review various pages of information related to insurance coverage and applications. He reviewed p.36 of the exhibit which was p. 39 of Allison Carter's APA dealing with insurance inclusions and exclusions. As he reviewed this document, he interpreted this document to mean he was excluded from coverage. See Hr. Tr. PP. 99-100.

Also of significant importance is that Junior testified that when he began work on the Full Circle job, his son, the Third, was the lead man- "he was an employee" of Junior. *Id.* at 118.

## *2. Hearing Transcript and Testimony*

Junior testified that he was injured on Lot 181 where Full Circle was a general contractor for the job site. Hr. Tr. generally and at p. 38. The contract itself was for \$12,118.50 and that proposal prepared by Junior's daughter. *Id.* at p. 39. On January 16, 2012, Junior was injured when he fell from scaffolding to the ground below. Junior hand his crew began to lift the trusses by hand. There were no cranes on site. Hr. Tr. pp. 41-42. The scaffold was built by Junior and/or his crew. Hr. Tr. p. 42. As he was lifting a truss, he had to put it back down. At that point, the Third came over to help him and he must have lost his balance or when he turned around after setting the truss down Junior hit the Third and then both went down together. Hr. Tr. p. 42.

Junior testified that he had employees working for him. Hr. Tr. p. 44. After the fall, Junior sustained various injuries some of which were in dispute at the time of the hearing. *Id.* at p. 47.

With respect to the insurance issue in this case, Junior was instructed by Full Circle Construction that he must obtain workers' compensation insurance. *Id.* at p. 48. He went to

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People's Choice (sic First Choice). Hr. Tr. p. 48. Junior testified that he and his son had not affiliation in each other's businesses. Hr. Tr. p. 49-50.

On cross examination, Junior conceded that at the time he began the job at lot 181 where he was the employer, he had employees. Hr. tr. p 63-64 and Riverport APA, p. 12. According to those documents, at the time of the application for insurance by Junior he had six (6) employees working for him. Hr. Tr. p. 65, ll. 5-8. In addition, when he applied for insurance he was in a hurry to get the insurance. *Id.* at 65. Junior also verified that he signed the application (at Riverport APA, p. 37) where it was indicated he had no employees and was excluding himself from workers' compensation coverage. Riverport APA, p. 37 and Hr. Tr., p. 66. The information contained in the signed application came from Junior (emphasis added). Hr. Tr. p. 66. On that application Junior indicated he had no employees and had no payroll. Hr. Tr. p. 68. Junior further conceded that he did not tell Jackie Fernandez that he had any employees at all which at the time he had six (6) (emphasis added). Hr. Tr. p. 69. According to the Junior's tax records he supplied to his accountant, he started paying employees on November 19, 2011. *Id.* at 87 and Riverport APA, p. 12.

Finally, Junior never indicated to the insurance company that he wanted to be included in any type of workers' compensation coverage. Hr. Tr. p. 82. The claimant never returned to the insurance agent and requested that he be included or covered under the workers' compensation coverage. *Id.* The premium associated with his policy was \$750 which he was able to pay but went on to testify that if it had been \$3,600 as indicated in the Riverport audit, he would not have been able to pay that premium. *Id.* at 83.

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***I. Relevant Exhibits and APA Submissions***

- Payroll Information for Juan Yslas, Jr., Riverport APA p. 12-14;

- Signed Insurance Application stating zero employees and excluding Junior from coverage. Riverport APA, 34-37 and 61-67;
- Certificate of Insurance from Junior to Full Circle, Full Circle APA 2;
- Berkley/Riverport Audit showing premium retroactively owed and Juan Yslas, III being named as employee/subcontractor and a premium requested for him from Junior; Full Circle APA 4.

**The Single Commissioner's Finding of Facts were as follows:**

**FINDINGS OF FACT**

1. *I hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim;*
2. *I find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;*
3. *I find that the scaffold from which the claimant and Junior fell was built by Junior and or his crew. Dep of Juan Yslas, Jr. at P. 53, ll. 3-6;*
4. *I find that the scaffold from which the claimant and Junior fell was built with the tools provided by Junior;*
5. *I find that no one instructed the claimant on how to construct this scaffolding as they had the know how to do that on their own. Hr. Tr. p. 132;*
6. *I find that neither Junior nor anyone on his crew built hand rails on the scaffolding Hr. Tr., p. 131;*

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7. *I find that the Junior was lifting a truss which according to his son, the claimant, was too heavy and a younger worker should have been lifting. Hr. tr. p. 108;*
  8. *I find that Junior lost his balance on the scaffolding and struck the Third while trying to regain his balance causing both to fall. Hr. Tr. p. 109-110;*
  9. *I find that that the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130.*
  10. *I find that the scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131.*
  11. *I find that even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132.*
  12. *I find that the way they were lifting the trusses on the day of the accident was not the only way to do this job Junior chose to do it that day. Id.*
  13. *I find that Ms. Fernandez was employed with People's Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6.;*
  14. *In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7.*
  15. *Ms. Fernandez had a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8.*
  16. *When completing the application Junior indicated that he had no employees. Id. At 12.*
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17. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. *Id.* At 13, 21 and 22.
  18. Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways.
  19. I find that in Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. *Id.* At 17-19.
  20. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. *Id.* At 19.
  21. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. *Id.* At 20. He signed this policy indicating this. *Id.* At 21-22.
  22. Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. *Id.* At 31. She went on to testify that the documents, including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business;
  23. I find that there is enough evidence in this file to warrant that the claimant be referred to the South Carolina Attorney General Office to determine whether or not fraud or some other violation has been committed. See Findings of Fact #33-34;
  24. I further find that the claimant would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage,
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*indicated he had 0 people on his payroll and failed to correct the insurance policy and/or endorsement as a result thereof;*

*25. I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of a the trussed;*

*26. In addition, I further find that the sole reason Mr. Yslas, Jr. is not covered by the workers compensation insurance of Full Circle is Junior's complete failure to include himself in coverage and honestly complete insurance applications as it relates to his business practices.*

**The Single Commissioner's Conclusions of Law were as follows:**

#### **CONCLUSIONS OF LAW**

*Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:*


- 1. All findings of fact are incorporated herein by reference as well as the hearing transcript and APA Submissions;*
- 2. Pursuant to the South Carolina Workers' Compensation Act, the claimant specifically excluded himself from workers' compensation coverage and therefor is not entitled to benefits under the South Carolina Workers Compensation Act;*
- 3. Nothing in this order in any way affects the Uninsured Employers' Fund's right to pursue collection of its costs pursuant to SC Code Ann. §42-7-200 as it pertains to the employer, Juan Yslas, Jr.;*
- 4. Based upon the claimant's willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, I find that the claimant*

*shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;*

5. *Nothing in this Order prevents Riverport Insurance from additional litigation to recover its premium owed by Yslas, Jr;*
6. *Nothing in this Order impact's Full Circle's ability to see monetary damages at law from Junior as it relates to the completion of the job or that otherwise may be permitted.*

**After consideration of all of the evidence contained within the record, we AFFIRM WITH AMENDEMENTS and hereby outlining the below and applicable findings of facts and Conclusions of Law:**

**FINDING OF FACTS**

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1. We hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim where consistent with out Amendments;
  2. We find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;
  3. We find that Ms. Fernandez was employed with People's Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6.;
  4. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7.

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5. Ms. Fernandez had a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8.
  6. When completing the application Junior indicated that he had no employees. Id. At 12.
  7. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. Id. At 13, 21 and 22.
  8. Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways.
  9. We find that in Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. Id. At 17-19.
  10. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19.
  11. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.
  12. Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents, including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business;

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13. We find that there is enough evidence in this file to warrant that the claimant be referred to the South Carolina Attorney General Office to determine whether or not fraud or some other violation has been committed. See Findings of Fact #33-34;
  14. We further find that the claimant would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage, indicated he had 0 people on his payroll and failed to correct the insurance policy and/or endorsement as a result thereof;
  15. In addition, we further find that the sole reason Mr. Yslas, Jr. is not covered by the workers compensation insurance of Full Circle is Junior's complete failure to include himself in coverage and honestly complete insurance applications as it relates to his business practices.

#### **CONCLUSIONS OF LAW**

Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:

1. All findings of fact are incorporated herein by reference as well as the hearing transcript and APA Submissions;
  2. Pursuant to the South Carolina Workers' Compensation Act, the claimant specifically excluded himself from workers' compensation coverage and therefor is not entitled to benefits under the South Carolina Workers Compensation Act;
  3. Nothing in this order in any way affects the Uninsured Employers' Fund's right to pursue collection of its costs pursuant to SC Code Ann. §42-7-200 as it pertains to the employer, Juan Yslas, Jr.;
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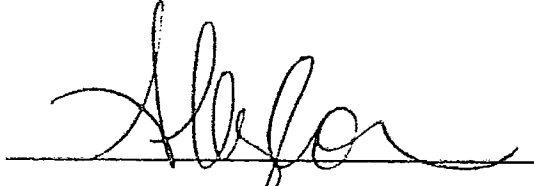
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4. Based upon the claimant's willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, we find that the **claimant shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;**
  5. Nothing in this Order prevents Riverport Insurance from additional litigation to recover its premium owed by Yslas, Jr;
  6. Nothing in this Order impact's Full Circle's ability to see monetary damages at law from Junior as it relates to the completion of the job or that otherwise may be permitted.

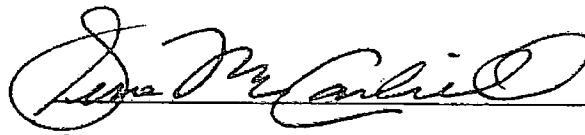
**ORDER**

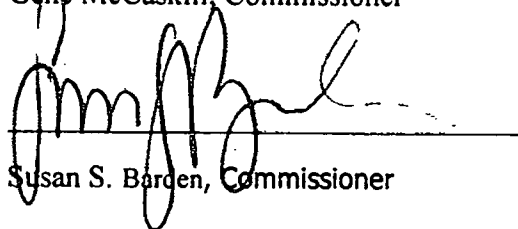
1. The claimant specifically excluded himself from workers' compensation coverage and therefore his request for benefits is hereby DENIED;
  2. The **claimant shall be referred to the Attorney General to determine if prosecution is appropriate** based upon the evidence herein and above and incorporated herein;
  3. Full Circle Construction and Amerisure Insurance shall be dismissed with prejudice and removed from the caption of this claim;
  4. Riverport Insurance shall be dismissed with prejudice and removed from the caption of this claim;
  5. The South Carolina Second Injury Fund shall be dismissed with prejudice and removed from the caption of this claim
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6. That no defendant or carrier shall not be required to file any more WCC Forms associated with this claim nor be subject to fines associated with Form filing;

**IT IS SO ORDERED.**

  
Aisha G. Taylor, Commissioner

  
Gene McCaskill, Commissioner

  
Susan S. Borden, Commissioner

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 mail addressed to any unrepresented party.

***By Valerie Deller on August 21, 2013***