

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 2013-000575

Artemio Alvarez v. Quality HR Services, et.al.

W.C.C. File No.: X030301

William Brockman v. Quality HR Services, et.al.

W.C.C. File No.: X030600

Martha Burke v. Quality HR Services, et.al.

W.C.C. File No.: X030681

Lucille Dwight v. Quality HR Services, et.al.

W.C.C. File No.: 0326238

Robert Hunter v. Quality HR Services, et.al.

W.C.C. File No.: X040142

Tammy Miller v. Quality HR Services, et.al.

W.C.C. File No.: X040301

Patricia Wade-Portee v. Quality HR Services, et.al.

W.C.C. File No.: 0907616

Jessie Pringle v. Quality HR Services, et.al.

W.C.C. File No.: 0327062

Steven Cameron v. Quality HR Services, et.al.

W.C.C. File No.: 0316901

Ruth Harmon v. Spectrum HR, et.al

W.C.C. File No: 040613..... Respondents,

v.

South Carolina Property and Casualty

Insurance Guaranty Association.....Appellant.

RECORD ON APPEAL
(VOLUME I of V)

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SC Court of Appeals

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(24) Letter from David Dennett Smith to Stirling Cooke North American Holdings, Ltd. dated October 2, 2002 (FS APA #26).....	2014

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- (26) Certificates of Liability Insurance for Quality HR Services
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- (27) Certificate of Counsel.....2023

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**DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

JESSIE PRINGLE,
CLAIMANT,)

vs.)

HEALTHCARE SERVICES GROUP
EMPLOYER,)

WCC File No. 0327062)

RUTH HARMON,
CLAIMANT,)

vs.)

SPECTRUM HR, LLC,
EMPLOYER,)

WCC File No. 0406103)

JOSEPH C. COONCE,
CLAIMANT,)

vs.)

SPECTRUM HR-PA-M, LLC,
EMPLOYER,)

WCC File No. 0408190)

STEVE CAMERON,
CLAIMANT,)

vs.)

KEITH'S WELDING/QUALITY HR
SERVICES,
EMPLOYER,)

WCC File No. 0316901

ARTEMIO ALVAREZ,
CLAIMANT,

vs.

QUALITY HR SERVICES/
EMPLOYMENT SOLUTIONS,

EMPLOYER,

WCC File No. X030301

MARTHA G. BURKE,
CLAIMANT,

vs.

QUALITY HR SERVICES, INC.,
EMPLOYER,

WCC File No. X030681

ROBERT HUNTER,
CLAIMANT,

vs.

JR CONSTRUCTION,
EMPLOYER,

WCC File No. X040142

TAMMY MILLER,
CLAIMANT,

vs.

QUALITY HR,

EMPLOYER,)
)
WCC File No. X040301)
_____)

PATRICIA WADE-PORTEE,)
CLAIMANT,)
)
vs.)
)
QUALITY HR SERVICES,)
EMPLOYER,)
)
WCC File No. 0307616)
_____)

LUCILLE DWIGHT,)
CLAIMANT,)
vs.)
)
CALHOUN CONVALESCENT CENTER,)
EMPLOYER,)
)
WCC File No. 0326238)
_____)

WILLIAM J. BROCKMAN,)
CLAIMANT,)
vs.)
)
JR CONSTRUCTION,)
EMPLOYER,)
)
WCC File No. X030660)
_____)

Hearing: Held in Columbia, South Carolina June 26-27, 2008.

Appearances:

Claimant Jessie Pringle represented by Michael J. Jordan.

Claimant Steve Cameron represented by Joseph G. Francis, Jr.

South Carolina Property and Casualty Insurance Guaranty Association
represented by J. Hubert Wood, III.

South Carolina Uninsured Employers Fund represented by David Hill Keller and Robert M. Cook, II.

Quality HR Services represented by Duke K. McCall, Jr.

O2 HR represented by Jessica C. Steadman.

Key Risk Insurance and Capital City Insurance represented by Michael W. Burkett.

ABC Investments, Fleet Source, Keith's Welding, and Capital City Insurance Company represented by Benjamin M. Renfrow.

Purpose of Hearing: To determine liable party.

Commissioner: ANDREA C. ROCHE

Filed: April 22, 2009

STIPULATIONS

Counsel for the respective parties stipulated at the time of the hearing to the following issues:

1. Venue in Richland County was proper;
2. That notices of the hearing were timely and properly served upon all parties of interest.

The Commission's file, except for unstipulated medical reports and self-serving declarations, was made a part of the record in this case.

APA SUBMISSIONS

Under the Administrative Procedures Act, the following records were submitted into evidence at the time of the hearing:

BY MR. MCCALL ON BEHALF OF HIS CLIENT:

1. Frank F. Phillips, M.D.	Carolina Sports Medicine	4/15/04	p. 1
2. Letter from Cindy Smith of Crawford	To Quality HR Services	12/2/03	p. 2
3. Bruce Holley of Amer. Ins. Marketing's Agent's Appointment for Realm	Georgia's GID 122A	3/19/03	pp. 3 — 10
4. E-mail from Mark Sioma of Realm Ins.	To Bruce Holley of AIM	6/12/03	p. 11
5. E-mail from Roni Zinnert of Realm Ins.	To Bruce Holley of AIM	6/17/03	p. 12
6. APAs WWC File No. X-030662	SC Workers' Comp. Commission v. Quality H R et al	3/2/04	pp. 13 — 85
7. Letter to Stirling Cooke North America Holding, Ltd.	From David Dennett Smith	10/2/02	pp. 86 — 89
8. Agency Agreement	Between Realm Ins. and AIM	12/1/02	pp. 90 — 100
9. ACCORD Form and Affidavit of Agency	To Quality HR 11/1/02 — 11/01/03	12/11/02	p. 101 -102
10. Letter to Quality HR	From David Dennett Smith	12/11/02	pp. 103 — 105
11. Letter to AlphaStar Ins.	From David Dennett	12/24/02	pp. 106 —

Group, Ltd	Smith		108
12. Memo to Quality HR	From Brian Imperiale, AIM	12/30/02	pp. 109 — 110
13. Realm National Ins. Co. Complaint against AIM	1st Page of Realm's lawsuit against AIM	12/30/02	p. 111
14. Notice of Dismissal of Realm's lawsuit against AIM		12/16/03	p. 112
15. AIM's Complaint	Against Stirling Cooke North America Holdings, LTD owner of Realm National Ins. Co.	10/27/03	pp. 113 — 152
16. Quality HR's letter	Honorable Richard M. Breman, US District Judge	3/5/03	p. 153
17. Quality HR's letter	Re: Meeting with Mark Sioma we Realm WCC Coverage	10/1/03	p. 154
18. AIM's FAX	David Evette of Quality HR	2/24/03	p. 155
19. Bruce Holley's FAX	AIM as agent for Realm Ins.	2/27/04	p. 156
20. Trustee in Bankruptcy's lawsuit to recover assets of Realm Natl. Insurance Co.	Complaint	5/30/06	pp. 157 - 241
21. Tennessee Department of Labor's action against Realm National Insurance	Order of Tenn. to Realm Natl. to pay WCC benefits	6/30/04	pp. 242 - 248
22. Motion of Chapter 7 Trustee for Approval of Stipulation Resolving Disputes with American Insurance Managers, Inc.	Nicholas F. Kajon Constantine D. Pourakis	8/11/06	pp. 249-257
23. Stipulation Dismissing Adversary and Resolving Motion to Modify Automatic Stay	Nicholas F. Kajon Stanley A. Coburn Brian P. Sanford	8/9/06	pp. 258-264
24. Notice of Motion of Chapter 7 Trustee for Approval of Stipulation Resolving Disputes with American Insurance Managers, Inc.	Nicholas F. Kajon Constantine D. Pourakis	8/11/06	pp. 265-268
25. Stock Purchase Agreement	Between Alphastar Insurance Group Ltd., Realm National Insurance Company, World Trade Services, Inc., Stirling		pp. 269-338

	Cooke New York Insurance Agency Service, Inc., Stirling Cooke North American Holdings, Ltd., and American Insurance Managers, Inc.		
26: Phillip C. Greig, M.D.	Upstate Maternal Fetal Medicine, P.A	11/2/06	p. 339
27. Affidavit	Richard E. Connell	11/22/06	pp. 340-341
28. Stock Certificate	Realm National which was endorsed over by the trustee in bankruptcy to American Insurance Management Group, Inc.	11/22/06	pp. 342-343
29.	US Healthworks Medical Group	3/23/04	p. 344
30. Letter from Bruce Holley, Vice President	American Insurance Managers Re: JR Construction	2/11/04	p. 345
31. Certificate of Liability Insurance	American Insurance Managers for insured, JR Construction c/o Quality HR Services	4/29/03	p. 346
32. Professional Employer Agreement	Between Quality HR Services, Inc. and J.R. Construction	2/1/02	pp. 347-358
33:-Letter from Coverage & Compliance	SC Workers' Compensation Commission Re: Alvarez	10/27/03	p. 359
34. Letter from Maria Allen, VP Corporate Claims	Tarheel Insurance Management Company	3/19/04	p. 360
35. Letter from James P. Marro, M.D	South Carolina Orthopaedic Institute Re: Jessie Pringle	8/31/04	p. 361
36. Certificate of Liability Insurance	American Insurance Managers, Inc. for Insured: Contract Services, Inc.	11/20/02	p. 362
37. Order Approving Stipulation Resolving Disputes with American Insurance Managers, Inc.	United States Bankruptcy Court, Southern District of New York	8/31/06	pp. 363-365
38. Quitclaim Bill of Sale of Realm Stock	Richard E. O'Connell, Chapter 7 Trustee of Alphastar Insurance	10/4/06	p. 366

	Group, Ltd.		
39. Affidavit	Richard E. O'Connell, Chapter 7 Trustee of Alphastar Insurance Group, Ltd.	11/22/06	pp. 367-370
40. Stock Purchase Agreement	Alphastar Insurance Group, Ltd., et al. and American Insurance Managers	3/21/03	pp. 371-442
41. Amended Complaint Trustee vs. Alpha Star.	Richard E. O'Connell v. Arthur P. Andersen LLP, et al.	11/8/06	pp. 443- 563
42. Letter from David W. Boone	To Francesca G. Bliss, Asst. Special Deputy Superintendent, NY Dept. of Insurance	1/4/07	pp. 564-565
43. Plaintiffs' Motion to Add Additional Party and Amend Complaint, Brief in Support of and Order	American Insurance Managers, Inc., et al. v. Eric It Dinallo, et at.	10/15/07	pp. 566-585
44. Motion of Chapter 7 Trustee for Order Directing Disgorgement of Pre- Petition Receipts and Disallowing Post- Petition Compensation	U. S. Bankruptcy Court, In Re: Alphastar Insurance Group (Case No. 03-17903 (SMB))	10/15/07	pp. 586-610
45. Amended Complaint for Declaratory Judgment Monetary Damages and for Other Relief	American Insurance Managers, et al. v. Eric R. Dinallo, et al.	10/15/07	pp. 611-752
46. Deposition of David Dennett-Smith	Jessie M. Pringle v. Healthcare Services Group, Inc., et al.	5/23/07	pp. 753- 1,132
47. Letter of Intent	David Dennett-Smith v. Stirling Cooke North American Holdings, Ltd.	10/2/02	pp. 1,133- 1,136
48. Agency Agreement	Realm National and American Insurance Managers, Inc.	12/1/02	pp. 1,137- 1,147
49. Certificate of Liability Insurance	American Insurance Managers for Quality HR Services, Inc.	12/11/02	p. 1, 148
50. Workers' Compensation Affidavit of Insurance	Brian W. Imperiale of American Insurance Managers, Inc.	2/4/05	p. 1, 149
51. Letter from Howard A.	To AlphaStar Insurance	12/24/02	pp. 1,150-

Becker, P.C.	Group		1,152
52. Memo from Brian Imperiale of American Insurance Managers, Inc.	To Quality HR Services	12/30/02	pp. 1,153-1,154

BY MS. STEADMAN ON BEHALF OF HER CLIENT:

APA#	Exhibits	Pages
1	Purchase Agreement of Membership Interest in O2HR, LLC, August 2005	000001-000008
2	Marketing Agreement and Termination Agreement	000009-000019
3	Affidavit of Thomas Bean	000020-000021
4	Various business filings for SpectrumHR, LLC	000022-000030
5	O2HR Schedule of Spectrum Acquisition Costs	000031
6	Registered Agent of Process for O2HR in SC	000032
7	Various e-mails between Realm National and AIM representatives	000033-000036
8	Certificate of Authority for Bruce E. Holley	000037-000044
9	Affidavit of Insurance by Bruce W. Imperiale	000045
10	Letter of Intent to purchase Realm National Insurance Company	000046-000049
11	Various Agreements between AIM and Realm National Insurance Company	000050-000079
12	Deposition of Thomas James Bean	000080-000169
13	Depositions of David Dennett-Smith	000170-000335
14	Deposition of Bruce E. Holley	000336-000435
15	Asset Purchase Agreement, May 31, 2005 (Relevant portions are Bates stamped. Entire contract provided on CD.)	000436-000473
16	Pleadings in <u>SpectrumHR, LLC v. US Insurance Group, LLC</u> , filed in State of Michigan	000474-000495
17	AIM/Realm workers' compensation cases in Tennessee,	000496-000513
18	<u>Goodson v. P.H. Glatfelter</u> , 171 N.C. App. 596, 615 S.E.2d 350 (N.C.App. 2005)	000514-000526
19	North Carolina General Statutes Annotated § 97-6	000527-000531
20	<u>Olson v. Etheridge</u> , 177 Ill.2d 396, 686 N.E.3d 563 (Ill.1997)	000532-000541

21	Restatement (Second) of Contracts, § 309, Defenses Against Beneficiary	000542-000558
22	<u>Fulmer v. Goldfarb</u> , 101 S.W.2d 1108 (Tenn. 1937)	000559-000562
23	Client/Professional Employer Organization Agreement between AdminSolutions, Inc. and ABC Investments and Management	000563-000566
24	Workers' Compensation Application, ABC Investments and Management Co., Inc.	000567-000569
25	Certificate of Liability Insurance, ABC Investments and Management	000570
26	Client Supplemental Employee Leasing Application	000571
27	Deposition of Claimant	000572-000592
28	Correspondence to SpectrumHR from ABC Investments and Management regarding non-renewal of contract	000593
29	30(b)(6) Deposition of ABC Investment and Management representative	000594-000624
30	Claimant's file from Barker Claims Services	000625-000647
23	Workers' Compensation Application, Fleet Source, Inc.	000563
24	Certificate of Liability Insurance, Fleet Source, Inc.	000565
25	Notice of Termination of Claimant	000566
26	30(b)(6) Deposition of Fleet Source, Inc. representative	000567-000590

BY MR. WOOD ON BEHALF OF HIS CLIENT:

1. New York Liquidation Bureau	05/05/08-06/02/06	Pages 1-36
2. WCC Coverage and Compliance Department	04/24/08-03/14/06	Pages 37-305
3. United States Bankruptcy Court Southern District of New York No.: 03-17903 (SMB)	05/08/07-10/11/05	Pages 306-630
4. Order of Liquidation	06/15/05	Pages 631-637
5. Stock Purchase Agreement	03/21/03	Pages 638-706
6. S.C. Secretary of State-Quality HR Filings	02/09/01	Pages 707-710
7. United States Bankruptcy Court Southern District of New York No. 03-17903 Hearing Transcript	04/11/06	Pages 711-737
8. S.C. Secretary of State AIM Filings	12/16/91-07/19/04	Pages 738-776
9. S.C. Department of Insurance Realm Agency Appointments	04/19/07-04/18/07	Pages 777-788

10. S.C. Department of Insurance AIM Filings	04/12/06-03/05/04	Pages 789-811
11. AIM/Quality HR Confidentiality Agreement	12/18/02	Pages 812-814
12. AIM Quality HR Escrow Agreement	12/18/02	Pages 815-827
13. AIM/Quality HR Executive Summary	12/17/02	Pages 828-832
14. S.C. Department of Consumer Affairs	04/21/08-09/10/03	Pages 833-1161
15. AIM Business Records	09/21/05-12/11/02	Pages 1162-1175
16. S.C. Secretary of State-Spectrum HR Filings	12/03/07-03/08/04	Pages 1176-1188
17. Ohio Secretary of State-Quality HR Filings	09/13/04-04/21/00	Pages 1189-1221
18. Dennett-Smith Declaration filed in 02-CV-10278; Exhibit A No. 04VS074668A (RMB)	01/10/03	Pages 1222-1233
19. Official Orders of the Commissioner of Insurance of the State of Texas Case No. 04-1119	11/22/04-02/26/04	Pages 1234-1247
20. Judgment Against The AIM Defendants Missouri Case No. 04- CV-613245	05/16/06	Pages 1248-1266
21. U.S. District Court Case No. 07- CV-762 Complaint for Declaratory Judgment and Various Filings	04/28/08-10/02/02	Pages 1267-1841
22. Deposition of David A. Dennett- Smith	05/23/07	Pages 1842-2113
23. Deposition of David A. Dennett- Smith	10/17/07	Pages 2114-2555
24. Depositions of Pamela Sue Evette	08/01/06-03/28/06	Pages 2556-2620
25. Deposition of David Alan Evette	04/07/08	Pages 2621-2810
26. Depositions of Jacqueline Bazemore NY Liquidation Bureau	04/10/07	Pages 2811-3338
27. Hearing Transcript RE: James E. McDaniel WCC File Nos.: 0125947 0125955	01/09/07	Pages 3339-3491
28. Decision and Order RE: James E. McDaniel WCC File Nos.: 0125947 0125955	03/26/07	Pages 3492-3515
29. Order signed by Commissioner J. Alan Bass Re: Vivian Boggs WCC File No.: 0405508	06/12/08	Pages 3516 – 3542
30. U.S. District Court Stipulation of	06/16/08	Pages 3543 – 3546

Dismissal RE: 2007-CV-00762 (RJH)		
31. Correspondence of Hana Pokorna-Williamson SC Department of Consumer Affairs to Kathryn R. Fiehrer, Esquire	02/25/08	Page 3547

BY MR. RENFROW ON BEHALF OF HIS CLIENTS:

1) Palmetto Orthopaedic and Sports Medicine Center	3/4/03-10/22/04
2) Tuomey Regional Medical Center	4/19/98-10/19/05
3) Sumter Physical Therapy Clinic	5/28/04-6/9/04
4) Claimant's SLED Check	11/12/07
5) Affidavit of Thomas J. Bean	
6) Certain-Relevant Portions of Asset Purchase Agreement between Spectrum HR and 02HR, LLC	
7) Letter from Spectrum HR to Client Companies	5/6/05
8) Fleetsource Records regarding payment to Spectrum HR	8/24/03-5/15/04
9) Records Produced by 02HR and Thomas Bean	
10) Records from AIM/David Dennett Smith	
11) Records from AIM/David Dennett Smith regarding Workers' Compensation Applications-North Carolina and South Carolina	
12) Records from AIM/David Dennett Smith regarding Workers' Compensation Applications-All other states	
13) Pending Lawsuit filed by Spectrum HR v. U. S. Insurance Group	11/30/06
14) Certain Organizational Business Filings for Spectrum HR	4/26/99-9/10/07
15) Form 50 Filed by Claimant's Attorney	7/16/07
16) Correspondences from Coverage & Compliance	
17) Certificates of Liability Insurance	4/17/03-9/21/06
18) Motion filed by Previous Attorney for Spectrum HR	
19) Tennessee Order finding Realm National Insurance Company Liable for Workers' Compensation Claim	6/30/04
20) Certain Personnel Records from Fleetsource	
21) Records Relevant to Spectrum HR only for Fleetsource	
22) Correspondence from Attorney for Guaranty Associates	
23) Correspondences from Willson Jones Carter & Baxley to various entities	10/31/07-11/12/07
24) Loan Agreement between AIM and Alphastar	10/1/02
25) AIM/Alphastar Promissory Note	10/1/02

26) Purchase Confirmation Letter of AIM to Stirling Cooke North American Holding Ltd.	10/2/02
27) Letter from Realm National Insurance to Quality HR Services, Inc.	12/10/02
28) Letter from AIM to Quality HR Services, Inc.	12/11/02
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30) Letters from Spectrum HR	12/29/03-5/6/05
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32) Collection/Distribution of Funds held in PEO's Escrow	
33) AIM Billing Receipts/Disbursements Summary	
34) Workers' Compensation Affidavit of Insurance	9/12/03
35) Letter from AIM to PEO's	9/21/05
36) E-mail from Mark Sioma (Realm National Insurance) to AIM	6/12/03
37) Correspondence from Bruce Holly to Pam Evette	6/22/06
Exhibit 1) Deposition of David Dennett Smith	5/23/07
Exhibit 2) Deposition of Thomas James Bean	1/7/08
Exhibit 3) Deposition of David Dennett Smith	
38) Certificate of Liability Insurance	4/1/03-4/1/04
39) Subpoena and Notice of Deposition for a representative of SHR Admin-V, LLC	1/9/07
40) E-mail from Thomas B. Moore	4/21/08
41) Subpoena to Barker Claim Service	10/16/07
42) Purchase Agreement of Membership Interest in 02HR, LLC	
43) Ruth Harmon's Drivers License	
44) Certain Records from Coverage and Compliance File	
45) Payroll check to Ruth Harmon from SHR Admin V LLC	3/26/04
46) Certain records from Ruth Harmon's personnel file	
47) Additional records related to Ruth Harmon	
48) SC Secretary of State search result for SHR-Admin-V LLC	
49) Detail Payroll Cost Report from AdminSolutions Inc. to ABC Investments & Management	
50) Records from First Piedmont	
51) Records from Wachovia (formerly First Union) related to Adminsolutions	
52) Records from Bank of America (reflecting payments to Spectrum HR/Adminsolutions)	
53) Invoices from SHRAAdmin-V LLC	
54) Records from AdminSolutions and Spectrum HR to ABC Investments	
55) Wire Instructions from Spectrum HR	

56) Certain records from ABC Investment related to coverage with Spectrum HR and Adminsolutions	
57) Certain records from Spectrum HR relating to Ruth Harmon	
58) Client/Professional Employer Organization Agreement between ABC Investment and Adminsolutions, Inc.	
59) Customer Service Agreement with Spectrum HR	
60) Request for Proposed Order related to Spectrum HR, Complaint filed by AdminSolutions, Asset Purchase Agreement between Adminsolutions Inc. and SHR Admin-V, LLC, Schedule 1.1 of the Purchase Agreement between Adminsolutions and Spectrum HR and Records related to Barker Claims Services handling of claim	
61) Greenville Memorial Hospital Records	10/21/03- 10/29/03
62) W. Bruce Richmond, M.D.	10/21/03- 2/13/04
63) Thomas C. McFadden, M.D.	10/24/03- 5/4/04
64) John K. Johnson, M.D.	11/18/03- 2/2/04
65) St. Francis Hospital	12/8/03
66) Roger C. Peace Traumatic Brain Injury Program	5/17/04- 9/1/04
67) Kevin W. Kopera, M.D.	9/9/04
68) Upstate Medical Rehabilitation	11/22/03- 11/6/07
69) Radiology Reports	11/22/03- 12/5/03
70) Greenville Radiology	2/17/04
71) Absher Neurology	10/19/05
72) Greenville Hospital System	9/8/05
73) Peace Rehabilitation Center; Psychological Consultation	6/25/04- 6/28/04
74) Anderson Neurological Associates	1/13/04
75) John R. Vann, M.D.	9/12/07
76) Mark Wagner, Ph. D.	7/12/07
77) SC WCC Transmittal Order	3/28/06

78) SC WCC Decision and Order	11/24/04
79) Order from Commissioner Lyndon	11/8/04
80) Form 40 Motions filed by the Claimant's Attorney	4/20/04 & 6/16/04
81) Checks from American Insurance Managers Inc. to the claimant for TTD	11/19/03- 9/22/04
82) Correspondences from Southeastern Claims Services Inc. to the claimant and his attorney	11/12/03 & 12/23/03
83) Invoices from Quality H.R. to Keith's Welding	10/23/03- 10/30/03
84) Subpoenas to other parties requesting information related to AIM and Quality H.R. Services Inc.	
85) Certificate of Liability Insurance from AIM for Quality HR Services, Inc.	
86) Response to Quality HR's Motion to Quash and Motion to Compel	3/20/08
87) Subpoena to Quality HR through their attorney requesting numerous records	2/13/08
88) Correspondence from New York Liquidation Bureau regarding Realm National Insurance Company	6/2/06
89) Notice of Deposition to Jacqueline Bazemore	3/28/07
90) Correspondence from Quality HR's attorney regarding requested records	4/8/08
91) Correspondence from Quality HR Services, Inc. to Keith's Welding Service	7/1/03
92) Invoices and breakdown of each employee leased from Quality HR and payment information	7/22/03- 12/18/03
93) Correspondences from Realm National Insurance Company to Quality HR Services, Inc.	12/10/02 & 1/3/03
94) Information from The South Carolina Secretary of State regarding Quality HR	
95) Mutual Confidentiality Agreement between American Insurance Managers, Inc. and Quality HR Services	12/18/02
96) Escrow Agreement between Atlanta Insurance Marketing, Inc and Quality HR Services, Inc.	12/18/02
97) Executive Summary from AIM	
98) Correspondence from The State of South Carolina Department of Consumer Affairs	11/7/03
99) Correspondence from Quality Business Solutions, Inc. to The State of South Carolina Department of Consumer Affairs	11/26/04
100) Certification to the Department of Consumer Affairs State of South Carolina	5/13/00
101) Application for Renewal of Staff Leasing Services License and	9/2/03

Controlling Person License	
102) Certificate of Liability Insurance from AIM to Quality HR Services, Inc	12/11/02
103) Correspondence from Bruce Holley regarding PEO's in the AIM Realm Situation	9/21/05
104) Correspondence from American Insurance Managers, Inc. to Quality HR Services, Inc	12/11/02

STATEMENT OF THE CASE

These cases were consolidated and before the undersigned on the issues of coverage and responsibility to pay. These cases involve two professional employment organizations ("PEOs"), Quality HR Services, Inc. ("Quality"), and Spectrum HR, LLC ("Spectrum"), as the putative employers in these various workers' compensation claims. It is the position of Quality, Spectrum, and the South Carolina Uninsured Employer's Fund ("the UEF") that Quality and its clients and Spectrum and its clients had coverage with Realm National Insurance Co. ("Realm") on the dates of accident encompassed by these claims. In the alternative, it is the position of Quality and the UEF that Realm is estopped from denying coverage as to the claims involving Quality. It is the position of Quality, Spectrum, and the UEF that because Quality and Spectrum had insurance, they were not uninsured employers, and therefore, the UEF would not be responsible for benefits.

Realm subsequently went into liquidation; therefore, the South Carolina Property and Casualty Insurance Guaranty Association ("the Guaranty Fund") is a party to these claims. It is the position of the Guaranty Fund that Quality and Spectrum did not have coverage with Realm; and therefore, the Guaranty Fund would not be responsible for benefits. It is also the position of the Guaranty Fund that these claims would not

constitute "covered claims" in accordance with the terms and provision of the South Carolina Guaranty Act, S.C. Code Ann. §§38-31-10 through 170.

Because the issues before me are whether Quality and Spectrum had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.

EVIDENCE OF THE CASE

A brief summary of the events follows. In 2002, American Insurance Managers, Atlanta Insurance Marketing and other companies (hereinafter collectively "AIM"), led by David Dennett-Smith, decided to put together a program wherein PEOs could obtain workers compensation insurance. This program consisted of the PEOs paying both capital contributions as well as premiums. The capital contributions would pay for ownership of a holding company that would own the insurance company providing the workers' compensation insurance. Under the plan, AIM would form the holding company that would own the insurance company. The holding company would be owned by AIM and the various PEOs that made capital contributions.

AIM entered into negotiations with Alphastar, the owner of Realm. On October 2, 2002, Alphastar and AIM signed a Letter of Intent. The Letter of Intent outlined the parties' intentions that Alphastar would sell Realm to AIM and that until the sale was accomplished, Realm would appoint AIM as an agent for Realm. The parties also agreed AIM would lend Alphastar \$3.5 million until the sale could be consummated. Alphastar

pledged its stock in the parent company of Realm as security. AIM loaned Alphastar \$1.5 million but did not lend the remainder of the \$3.5 million.

After the Letter of Intent was signed, but before Realm appointed AIM as an agent, AIM began issuing certificates of insurance to various PEOs and their clients, including Quality. Spectrum joined the program at a later date. The PEOs paid premium and made capital contributions. AIM collected all the money paid by the PEOs.

In November and December, 2002, Realm sent letters to the various PEOs and PEO clients denying coverage and disavowing the certificates of insurance. On December 30, 2002, Realm filed a lawsuit against AIM in New York Federal Court ("the Realm lawsuit"). After appearing before the judge in the Realm lawsuit, and being encouraged by the judge to work it out, the parties entered into a Stock Purchase Agreement on March 21, 2003, once again working toward the sale of Realm by Alphastar to AIM. The Realm lawsuit was eventually dismissed by Realm.

The parties did not consummate the sale. AIM filed a lawsuit in Delaware to foreclose on the stock that was pledged as security for the loan. Alphastar filed for bankruptcy. AIM filed a lawsuit in federal court in New York. That lawsuit was consolidated into the bankruptcy action. Realm was liquidated. Eventually, AIM was given a quitclaim bill of sale of Realm by the Chapter 7 Trustee of Alphastar.

Hearing Testimony

At the hearing, David Dennett-Smith testified on behalf of Quality. Dennett-Smith testified he was one of the owners of AIM. Dennett-Smith testified Steve Landin came to him with an idea for procuring workers' compensation insurance for PEOs. Dennett-Smith explained there had been a "falling out" with the insurance industry and

PEOs, and it was difficult for PEOs to buy workers' compensation coverage. According to Dennett-Smith, AIM put together a program where the PEOs would be investors in a company that would buy an insurance company that AIM would manage. The insurance company would provide workers' compensation coverage to the PEOs. AIM would also participate in ownership.

Dennett-Smith testified AIM was introduced to Realm in 2002 by an intermediary. According to Dennett-Smith, Realm's parent company, Alphastar, was in trouble and wanted to sell Realm to AIM. AIM and Alphastar executed a Letter of Intent outlining the parties' intention for Alphastar to sell Realm to AIM.

Dennett-Smith testified that while the sale was being completed, Realm agreed AIM would be an agent for Realm and that AIM could submit business to Realm that Realm would bind. Dennett-Smith testified applications would be received by AIM and then sent to the re-insurers of Realm. Once the re-insurers signed off on the business, the applications were sent to Realm, and Realm's officers bound the business.

Under the PEO program, the PEO would submit an application for the PEO and individual applications for each of the PEO's clients. Dennett-Smith testified that the applications would go to both the re-insurers and to either Roni Zinnert, underwriting manager for Realm, or Mark Sioma, president of Realm. Dennett-Smith testified once Realm received confirmation that the re-insurers accepted the application, Realm would send AIM an e-mail confirming that the risk was attached. Dennett-Smith testified that any application that came to AIM went to Realm to be bound and that AIM had no authority to bind any business.

Dennett-Smith testified regarding an agency agreement that was prepared by Realm and sent to AIM. AIM executed the agency agreement and sent it back to Realm. Dennett-Smith further testified that as a result, Realm filed an agency appointment with the state of Georgia appointing AIM and Bruce Holley, vice-president of underwriting for AIM.

Dennett-Smith testified that AIM went forward with their lawyers to finalize the sale. According to Dennett-Smith, Realm decided to withdraw from the deal and then filed notice of non-coverage for everybody. Dennett-Smith testified Realm sued AIM in federal court in New York. Dennett-Smith testified that after Realm sent the letters denying coverage, Realm president Mark Sioma and officers of Realm continued to come to AIM's offices in Atlanta in order to bind risks until the sale took place. Sioma continued to represent that the deal would go forward.

Dennett-Smith testified AIM filed a lawsuit against Alphastar and Realm in October, 2003 in federal court in New York asserting Realm had coverage and requesting Alphastar be compelled to complete the sale of Realm to AIM. AIM also filed a lawsuit in Delaware to have Alphastar transfer the Realm stock to AIM. The October, 2003 lawsuit was transferred to the bankruptcy court after Alphastar filed for bankruptcy. Dennett-Smith testified the bankruptcy court eventually issued the stock in Realm to AIM.

Dennett-Smith testified there were initially eight PEOs that signed up with Realm for the program, and that number was later expanded to 12. Dennett-Smith also testified regarding the holding company that was going to be formed to own Realm. The documents forming that company were never filed.

Dennett-Smith testified AIM loaned Alphastar \$1.5 million while the deal was pending. Dennett-Smith testified the capital contributions and premium paid into the program by the PEOs were held in trust accounts and were used to pay claims at the direction of Realm. Dennett-Smith testified AIM continued to pay claims until the funds ran out, including his personal funds. He testified he lost his house, a farm, and a condo. Dennett-Smith testified Bruce Holley, Steve Landin, and Brian Imperiale, the chief financial officer of AIM, all worked without drawing a paycheck. He further testified those at AIM believed in the venture, believed AIM would become the owners of Realm, and believed they had a responsibility to the clients to make sure Realm was acting responsibly.

Dennett-Smith testified Realm did appoint Bruce Holley as an agent in Georgia. Dennett-Smith testified Holley was subsequently qualified as a non-resident agent for South Carolina and North Carolina.

Dennett-Smith testified regarding the Stock Purchase Agreement. He testified the document outlined the purchase of Realm by AIM.

Dennett-Smith testified regarding certificates of insurance. He testified the certificates were signed by Bruce Holley. Dennett-Smith testified there was an automatic online computer system to issue certificates that only Realm could turn on and off. According to Dennett-Smith, AIM couldn't get certificates unless Realm had approved the coverage online. He testified Realm assigned the policy numbers.

Dennett-Smith testified that Realm never issued actual policies and that Realm would issue the policies at the closing of the sale. Dennett-Smith testified Roni Zinnert and Mark Sioma were still coming to AIM's office handling claims, approving coverage,

and binding coverage until 2003. Dennett-Smith testified Realm gave AIM no claims authority at first, and claims were submitted to Realm before they were paid. Dennett-Smith further testified Realm met with Crawford and Company and told them how they wanted the claims reported. Thereafter, Crawford sent copies to AIM to be transmitted to Realm, and Realm authorized payment on claims on their statements. The money was paid by AIM out of the trust account set up for Realm. Dennett-Smith testified AIM continued to pay claims out of this fund when authorized by Realm until the funds ran out.

On cross, Dennett-Smith testified he has outstanding dues of £ 300,000.00 as a result of his relationship with Lloyd's. Dennett-Smith testified Norwood Venture Capital is a partner with him in AIM.

Dennett-Smith was questioned regarding Georgia General Company, an insurance company that AIM owned. Dennett-Smith admitted Georgia General was liquidated while he was president and CEO of AIM and while AIM was managing general agent for Georgia General. Dennett-Smith admitted there was a partnership dispute at AIM where the other partners thought they could run the company better than Dennett-Smith, and Dennett-Smith was voted out of his position at AIM. Dennett-Smith sued to regain control of the company and regained control in 2001.

In 2001, AIM had no employees, no money, and no business. At that time, Steve Landin approached Dennett-Smith with the idea of the PEO program. Dennett-Smith testified Landin came to him because Dennett-Smith has the ability to obtain reinsurance due to his contacts in the reinsurance industry.

Dennett-Smith testified he had a role in securing the reinsurance, and Realm signed the contracts for reinsurance, and the cover notes were issued, but Realm defaulted and never paid.

Dennett-Smith testified the Letter of Intent was entered into in October, 2002, and the loan agreement at about the same time. Dennett-Smith testified the Letter of Intent provided for a purchase price of \$12 million. Dennett-Smith testified that at that time, AIM did not have \$12 million. Dennett-Smith testified his understanding was that the money would come from the PEOs as coverage was issued by Realm.

Dennett-Smith testified regarding the loan agreement. According to Dennett-Smith, the loan agreement provided AIM would loan Alphastar \$3.5 million. As security for the loan, AIM had a security interest in the holding company of Realm. As Realm confirmed coverage and the PEOs paid their capital contribution, AIM advanced \$1.5 million. AIM did not advance the remainder of the loan agreement because, according to Dennett-Smith, Alphastar had defaulted on their agreement.

According to Dennett-Smith, Realm bound the coverage of the PEOs from the first of October.

Dennett-Smith testified regarding the Agency Agreement. Dennett-Smith agreed it was prepared by Realm and sent to AIM. Dennett-Smith testified he executed the document and returned it to Realm. Dennett-Smith admitted there are no copies of the document executed by Realm. He further testified either Stephen Crane of Alphastar or Mark Sioma gave AIM authority to issue the certificates it issued in the first part of November, 2002.

Dennett-Smith admitted that in December, 2002, Realm took the position that the certificates were not authorized. Dennett-Smith was aware Sioma wrote several states advising them that there was no coverage. He was also aware Sioma wrote letters to the various PEOs and PEO clients. Dennett-Smith testified he was copied on these letters. After that, AIM continued to collect premium and capital from the PEOs.

Dennett-Smith testified AIM contacted the PEOs and gave them three suggestions, either file a declaratory judgment, escrow their premium money and handle the claims themselves, or get replacement coverage. Dennett-Smith testified Quality made the decision to have AIM manage their account going forward and keep paying premiums. Dennett-Smith testified it paid Quality's claims at the direction of Realm.

Dennett-Smith admitted Crawford and Company had a lawsuit pending against AIM for administration fees. He also admitted AIM's former landlord had a \$500,000 judgment. Dennett-Smith testified, however, that the landlord has dismissed the judgment.

Dennett-Smith testified the certificates of insurance that were issued by U.S. Insurance Group purporting to show coverage for Spectrum and its clients were unauthorized.

Hana Williamson testified on behalf of the Guaranty Fund. Williamson is a staff attorney for the South Carolina Department of Consumer Affairs. Williamson testified regarding the licensing of Quality as a PEO. Williamson testified when Quality was first looking to get licensed, there was a problem with David Evette being involved because of complaints about him from a prior business relationship. Quality was then structured where Pamela Neesta (who eventually married David Evette) was the owner and David

Evette was an employee. Williamson also testified Spectrum was not a licensed PEO in South Carolina.

David Evette testified on behalf of Quality. David testified his wife Pam made all the decisions regarding Quality and AIM and that she dealt with AIM. David testified they received a fax sometime in the summer of 2002 regarding the PEO program AIM was offering. In October, 2002, Quality made the decision to go forward with the PEO program. David testified regarding Quality's receipt of the letter sent by Mark Sioma denying coverage sometime in December, 2002. David also admitted receiving a letter from Dennett-Smith suggesting there were problems between AIM and Realm that AIM was trying to get worked out.

David testified he and his wife personally spoke to Mark Sioma in the summer of 2003 at AIM's office in Atlanta. David testified Mark Sioma told him Quality had coverage with Realm.

Pam Evette testified on behalf of Quality. Pam testified that once she learned about the letter from Mark Sioma denying coverage, she contacted AIM and was assured AIM was working on it. She testified she continued to receive certificates of insurance. Pam testified AIM kept her apprised of what was going on in the dispute between Realm and AIM, including legal filings that were occurring. Pam testified it seemed like a dispute between Realm and AIM, and that it was moving towards resolution.

Pam testified she spoke to Mark Sioma in person in the summer of 2003. According to Pam, Sioma assured her everything was fine. Pam testified that after the conversation with Sioma, she had no doubt that Sioma had indicated to her that Realm provided coverage for Quality. Pam testified that if she had been anything less than fully

satisfied by the representations of Sioma on July 22, 2003, she would have secured coverage elsewhere.

Pam testified once she learned Realm was going into bankruptcy (liquidation) and once the claims stopped being paid, Quality sought coverage elsewhere.

Garry Smith testified on behalf of the Guaranty Fund. Smith is the Director of the Compliance Division of the South Carolina Workers' Compensation Commission. Smith testified Spectrum had coverage with Liberty Mutual until April 1, 2003 and then obtained coverage with Property Casualty Insurance Company on May 1, 2004. Smith testified Quality was insured by Capital City until October 26, 2002 and then insured by American Zurich on April 1, 2004. Smith testified Realm did not report coverage of any of the entities involved in the cases at bar.

Smith testified he investigated coverage beginning sometime in April or May of 2003. Smith testified he had conversations with principals within AIM and Realm as well as discussions with the PEOs and client companies. Smith testified the lawyer for AIM at the time stated AIM had apparent authority to bind the coverage. Smith testified the lawyer did not make any contention at that time that Realm was actually binding the coverage themselves. Smith testified the lawyer followed up with e-mails attempting to substantiate his position as to why there was apparent authority.

Smith testified Realm represented to him that they did not provide coverage to the PEOs. Smith testified neither AIM nor anyone from AIM was authorized or appointed by Realm to write workers' compensation insurance. Smith further testified U.S. Insurance Group (the producer of Spectrum's certificates of insurance) was not authorized as a producer of insurance in South Carolina.

Smith testified it was the position of the South Carolina Workers' Compensation Commission's Coverage and Compliance Department that both Spectrum and Quality were uninsured during the relevant time periods.

Documentary Evidence

The parties submitted thousands of pages of documents. The parties also submitted several depositions, including two of Dennett-Smith. The deposition of Bruce Holley was attached as an exhibit to one of the depositions of Dennett-Smith. A description of some of the more pertinent documents, in chronological order, follows.

The parties submitted a Loan Agreement, dated October 1, 2002, between Alphastar and AIM, executed by Stephen Crane as Chairman, President and CEO of Alphastar and David Dennett-Smith as CEO of AIM. The Loan Agreement references the Letter of Intent and provides that AIM will lend Alphastar \$3,500,000 in installments. In a Pledge Agreement dated October 2, 2002 and executed by Crane and Dennett-Smith, Alphastar pledged all the shares in the holding company of Realm as security for the loan.

On October 2, 2002, Crane and Dennett-Smith executed a Letter of Intent. This letter outlined in pertinent part the parties' intent that AIM would purchase all the outstanding share of Realm. The Letter of Intent provides:

SCNAH shall use its best efforts to cause Realm, subject to any necessary regulatory approvals, to enter into a general agency agreement with AIM, pursuant to which Realm would agree to consider in good faith the writing of business introduced by AIM to the extent that it meets Realm's underwriting criteria. SCNAH further shall use its best efforts to cause Realm, subject to any necessary regulatory approvals, to enter into a claims service agreement between and among Realm, the TPAs and the insureds. Both the MGA and claims service agreements shall be subject to cancellation upon the termination of this letter of intent, or decision on the part of either party not to proceed with the closing of the transaction contemplated herein.

The record contains an Agency Agreement between Realm and AIM dated December 1, 2002. The testimony was that this document was prepared by Realm. The record contains copies that are either unsigned, or signed only by Dennett-Smith.

A letter from Mark Sioma to David Evette of Quality dated December 10, 2002 is in the record. The letter states in unambiguous terms that Realm was disputing the validity of certificates of insurance issued reflecting coverage with Realm for Quality or any of its clients.

Dennett-Smith sent a letter dated December 11, 2002 to Quality. In that letter, Dennett-Smith stated that AIM was working to reconfirm coverage. The letter also included the body of another letter that was to be sent to various insurance commissioners in the states involved. The letter stated that it was AIM's position that AIM at all times relevant was a duly authorized agent of Realm with full authority to bind coverage on Realm's behalf. The letter also discusses AIM binding coverage in states where Realm was licensed and references AIM's decision to bind coverage.

A letter from Mark Sioma to the Director of the S.C. Department of Insurance dated December 12, 2002 was submitted into evidence. In that letter, Sioma acknowledges Alphastar and AIM are in negotiations that contemplated AIM being authorized at some point to represent Realm, but that at the time the certificates were issued, AIM was not authorized to do so. Sioma stated the certificates were not authorized and do not reflect the existence of coverage.

On December 27, 2002, Realm filed a lawsuit in the Federal District Court for the Southern District of New York seeking a declaration that AIM was not authorized by Realm to issue certificates of insurance or bind coverage ("Realm lawsuit").

On December 30, 2002, Brian Imperiale sent a fax to Quality. In that fax, Imperiale states that AIM, acting as an agent for Realm with apparent authority, has placed coverage. Imperiale also stated that AIM had enlisted the services of Crawford & Company to service claims.

The record contains a letter from Mark Sioma to Quality dated January 3, 2003, basically stating that regardless of what AIM is representing to Quality, Realm did not authorize AIM to bind the coverage and that any certificates of insurance should be considered a nullity.

On February 4, 2003, Imperiale sent an e-mail to Bruce Holley, Steve Landin, Dennett-Smith and others stating that "[u]ntil further notice and under no circumstances can Realm certificates of insurance be issued by AIM or any sub agent for the PEO/WC program. This includes sending copies of previously issued certs, sample certs or certs covering the PEO proper. Strict adherence is mandatory. This COA ban will be lifted when the acquisition and agency agreement are executed, hopefully this week."

On March 21, 2003, the parties entered into a Stock Purchase Agreement. According to the testimony, the judge in the Realm lawsuit urged the parties to come to an agreement. Further negotiations led to the Stock Purchase Agreement. That agreement provided in part:

WHEREAS, the parties hereto agree and acknowledge that this Agreement does not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing.

* * *

At the First Closing:

...
(b) Buyer shall remit to Realm all premiums with respect to the coverage being bound by Realm concurrently with the First Closing . . .

(c) Realm and Buyer shall each receive tender of delivery from the Escrow Agent . . . an executed original of the General Agency Agreement. . .

(f) Seller, Realm and Buyer shall take all necessary actions to provide the PEOs . . . with Certificates of Insurance and other reasonable evidence of insurance retroactive to no earlier than October 1, 2002

* * *

Releases relating to any claims by PEOs from the issuance of disputed certificates prior to the First Closing Date to be obtained from all of the PEOs set forth . . . prior to the First Closing, collectively represent releases from all PEOs purportedly bound or whose clients were purportedly bound by AIM on behalf of Realm.

* * *

The parties shall cooperate in good faith . . . (iii) to request a waiver of any restrictions placed on coverage place by AIM purportedly on behalf of Realm in any such jurisdiction and shall confirm that PEO coverages were bound by Realm at the First Closing; provided, however, no party shall be required to disavow its position regarding any event that occurred prior to the execution of this Agreement.

* * *

(m) Compliance Employee. Immediately upon the execution of this Agreement, Realm shall, and Seller and Parent shall use their respective best efforts to cause Realm to, make available at the offices of Buyer in Atlanta, Georgia, on a full time basis or as otherwise mutually agreed to by Buyer and Seller until the earlier of the release of the Shares from the Escrow Property (either on or after the Second Closing Date) or termination of this Agreement, or as otherwise reasonably requested by AIM . . . one employee with the appropriate experience and authority to conduct underwriting review and approval and oversee compliance with the Guidelines; provided, however, that the sole remedy for the failure of Realm to make such employee available on a continuous basis shall be the ability of Buyer to bind insurance coverage for risks within the Guidelines which remained unreviewed by such employee for five Business Days after a request for such insurance coverage is made; provided, further, that Realm and Buyer shall use commercially reasonable efforts to bind such insurance coverage as promptly as practicable.

(n) Issuance of Binders. After the First Closing, Realm shall, and Seller and parent shall use their respective best efforts to cause Realm to, issue new binders on coverages proposed by AIM in accordance with the General Agency Agreement that meet the Guidelines, or are otherwise approved by Realm with effective dates no earlier than October 1, 2002.

(o) Realm to Provide Coverage. Realm shall, and Seller and Parent shall use their respective best efforts to cause Realm to, bind coverage previously purportedly bound by AIM on behalf of Realm that is outside the Guidelines so long as (i) the Reinsurers agree to bind such coverage and (ii) as certified by each insured in question, there have not been any losses incurred under the policies relating to such coverage as of the First Closing.

Realm appointed Bruce Holley as its agent in the state of Georgia effective March 25, 2003.

In the record is an e-mail dated June 20, 2003 from Mark Sioma to Steve Landin stating:

[i]n our Wednesday meeting with Lessa Kamen of Spectrum . . . , Lessa made a comment that suggested she might believe that her clients are currently bound with Realm. In an effort to avoid any possible misunderstandings you indicated that you would confirm to me in writing that coverage is not bound on this risk. . . . Obviously, once we complete the first closing, finalize licensing and appointments and determine the risk is acceptable under the underwriting guidelines the risk could be bound.

Also in the record are various underwriting e-mails dated May 15, 2003 through August 7, 2003. These e-mails are from Roni Zinnert to Bruce Holley and others at AIM. Mark Sioma is copied on the e-mails.

On September 16, 2003, Realm dismissed the Realm lawsuit in the Federal District Court for the Southern District of New York.

Mark Sioma wrote a letter dated October 10, 2003 to Spectrum advising it that Realm was denying coverage and that the certificates of insurance were issued without authority.

The record contains a letter to Quality from the South Carolina Department of Consumer Affairs dated November 7, 2003. In that letter, the Department stated Realm informed them that the certificates were not valid.

On December 3, 2003, Realm wrote Garry Smith outlining the series of events and in detail denied AIM ever had authority to issue certificates of insurance or bind coverage.

On December 15, 2003, Alphastar filed for bankruptcy under Chapter 11. On June 2, 2005, the bankruptcy was converted from Chapter 11 to Chapter 7.

In a letter dated February 20, 2004 from Mark Sioma to Spectrum, Sioma once again denied coverage and in detail outlined Realm's position on the fact that AIM was not authorized to issue certificates of insurance.

On May 4, 2004, AIM brought suit against Realm and others in the United States District Court for the Southern District of New York arising out of the disputes. That suit was transferred to the Bankruptcy Court.

FINDINGS OF FACT

After thorough review of the voluminous documentary evidence and testimony, including documentary evidence and testimony not summarized above, and after thorough review of the positions of the parties, I make the following Findings of Fact:

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.
2. AIM and Alphastar intended to enter into an agreement whereby Alphastar would sell Realm to AIM. There was an intention by both parties that AIM would be a duly

authorized agent of Realm during the pendency of the sale. The Letter of Intent provided, however, that Realm would have to enter into a general agency agreement with AIM. Although a general agency agreement was prepared by Realm, I find Realm did not execute the agreement.

3. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement. I also find the evidence does not support a finding of apparent authority. Furthermore, I find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement. I find Dennett-Smith's testimony at the hearing on this issue conflicted with positions earlier asserted by AIM in contemporaneous documents.

4. Based on the letters from Mark Sioma, I find Realm disavowed any coverage and considered the certificates of insurance *void ab initio*.

5. Based on the letters from Mark Sioma to Quality, I find Quality was aware of the coverage issue as early as December, 2002. This is not disputed by Quality.

6. I find that after the Realm lawsuit was filed, Realm, Aim, and Alphastar continued to negotiate in an attempt to consummate the sale. As a result, the parties entered into the Stock Purchase Agreement.

7. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party, including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing.

The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

8. After the signing of the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur until AIM filed the Delaware suit and Alphastar filed for bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I do not make any finding as to the actual intent of AIM, Alphastar, or Realm regarding the pending sale. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.

9. Based on the evidence in the record, I find claims from the PEOs were being adjusted and paid. I find that Crawford was adjusting claims for a period of time. The claims were being paid by AIM while the deal was still pending. I find Realm was aware of all this, and based on the e-mails, approved.

9. Pam Evette and David Evette testified at the hearing. I find Pam Evette, in particular, was a credible witness. Based on the testimony of Pam and David Evette, I find that Quality believed it had coverage with Realm. I find Pam Evette was growing uneasy regarding the ongoing dispute between AIM and Realm. I find Pam and David Evette traveled to AIM's offices in Atlanta to address their concerns. Mark Sioma, as

President of Realm, represented to Pam and David Evette on July 22, 2003 that Quality and its clients had coverage with Realm. I find that Quality relied on these representations of Mark Sioma and did not seek other coverage as a result.

10. I find the South Carolina Department of Consumer Affairs sent a letter dated November 7, 2003 to Quality. In that letter, the Department stated Realm informed them that the certificates were not valid and that Realm denied coverage.

11. I find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true. I find Quality was uninsured for any pertinent dates outside July 22, 2003 through November 7, 2003.

12. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum was uninsured during the pertinent time period.

CONCLUSIONS OF LAW

After thorough review of the voluminous testimonial and documentary evidence, thorough review of the positions of the parties, and thorough review of pertinent statutory and case law, I make the following Conclusions of Law:

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee

relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.

2. When there is a pending employee claim for compensation, the exclusive jurisdiction for the determination of questions concerning cancellation, coverage, construction of insurance contracts, and the like, is in the Workers' Compensation Commission. Labouseur v. Harleysville Mut. Ins. Co., 302 S.C. 540, 397 S.E.2d 526 S.C. (1990).

2. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement.

3. "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." Fernander v. Thigpen, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982). I find the evidence does not support a finding of apparent authority. I find Realm did not lead anyone to believe that AIM was its agent in the time preceding the Stock Purchase Agreement.

4. I find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement.

5. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party, including Realm, to bind

coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

6. After the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur up until AIM filed the Delaware suit and Alphastar filed for bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.

7. The essential elements of equitable estoppel are: (1) ignorance of the party invoking it of the truth as to the facts in question; (2) representations or conduct of the party estopped which mislead; (3) reliance upon such representations or conduct; and (4) prejudicial change of position as the result of such reliance. Pitts v. New York Life Ins. Co., 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1966). I find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true.

8. I find Quality and its clients were not insured by Realm for any pertinent dates outside July 22, 2003 through November 7, 2003.
9. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum and its clients were not insured by Realm during the pertinent time period.
10. I find claims for the period of time Realm was estopped from denying coverage are "covered claims" as contemplated in § 38-1-20 and the provisions of the Guaranty Act. I do not reach the issue of whether any of the claims are time barred pursuant to § 38-1-60(2), as I find this issue more appropriately handled on a case by case basis.

ORDER

IT IS THEREFORE, ORDERED Realm is estopped from denying coverage for Quality and its clients on claims referenced in this order with dates of accident from July 22, 2003 until November 7, 2003.

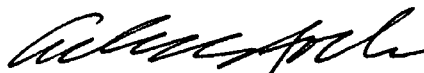
It is further ordered Quality and its clients were not insured by Realm for all claims referenced in this order with dates of accident outside July 22, 2003 through November 7, 2003.

It is further ordered Spectrum and its clients were not insured by Realm for all claims referenced in this order.

It is further ordered that claims referenced in this order involving Quality with dates of accident from July 22, 2003 until November 7, 2003 are "covered claims" as contemplated in § 38-1-20 and the provisions of the Guaranty Act.

AND IT IS SO ORDERED.

**SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION**



Andrea C. Roche, Commissioner

CERTIFICATE OF SERVICE

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

This 22nd day of April, 2009.

By Barbara Cheselbrough
Administrative Assistant to the Commissioner

CGH
DEP
SBG
GW
CES (ert. & reg.)

MJ
JGF, Jr.
JHW III
DHK
Rmc II
DKM, Jr.
JCS
MWB
BMR
LE
WFE
RET, Jr.
MWB
FDG
BCH
SBS
SC
AA (ert. & reg.)
MGB (ert. & reg.)
RH (ert. & reg.)
JR Construction (ert. & reg.)
Tm (ert. & reg.)
LEG

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Jessie Pringle	)	WCC File No: 0327062
Ruth Harmon	)	0406103
Joseph C. Coonce	)	0408190
Steve Cameron,	)	0316901
Artemio Alvarez,	)	X030301
Martha Burke,	)	X030681
Robert Hunter,	)	X040142
Tammy Miller,	)	X040301
Patricia Wade-Porter, and	)	0307616
Lucille Dwight,	)	0326238
William Brockman,	)	X030600
Employees,	)	

Claimants,

APPELLATE PANEL DECISION & ORDER

v.

Quality HR Services, Inc., and
Keith's Welding, et al.
Employers,
and
Realm National Insurance Co.,
Capital City Insurance Co., Inc., AIM)
Uninsured Employers Fund, S.C.)
Guarantee Fund Assn.)
Carriers,)
Defendants.)

Appellate Panel Review held in Columbia, South Carolina, on October 26, 2009. Notice was timely and properly served upon all parties of interest.

Appellate Panel Decision and Order filed: December 5th, 2009. 10

APPEARANCES:

South Carolina Property and Casualty Insurance Guaranty Association is represented by J. Hubert Wood, III

South Carolina Uninsured Employers Fund is represented by David Hill Keller and Robert M. Cook, II

Quality HR Services, Inc. is represented by Duke K. McCall, Jr. of Smith Moore Leatherwood, LLP, Attorneys

02 HR is represented by Jessica C. Steadman.

Key Risk Insurance and Capital City Insurance is represented by Michael W. Burkett

ABC Investments, Fleet Source, Keith's Welding and Capital City Insurance are represented by Benjamin M. Renfrow.

STATEMENT OF THE CASE

These cases were consolidated on the issues of coverage and responsibility to pay. These cases involve two professional employment organizations ("PEOs"), Quality HR Services, Inc. ("Quality"), and Spectrum HR, LLC ("Spectrum"), as the putative employers in these various workers' compensation claims. It is the position of Quality, Spectrum, and the South Carolina Uninsured Employer's Fund ("the UEF") that Quality and its clients and Spectrum and its clients had coverage with Realm National Insurance Co. ("Realm") on the dates of accident encompassed by these claims. In the alternative, it is the position of Quality and the UEF that Realm is estopped from denying coverage as to the claims involving Quality. It is the position of Quality, Spectrum, and the UEF that because Quality and Spectrum had insurance, they were not uninsured employers, and therefore, the UEF would not be responsible for benefits.

Realm subsequently went into liquidation; therefore, the South Carolina Property and Casualty Insurance Guaranty Association ("the Guaranty Fund") is a party to these claims. It is the position of the Guaranty Fund that Quality and Spectrum did not have coverage with Realm; and therefore, the Guaranty Fund would not be responsible for benefits. It is also the position of the Guaranty Fund that these claims would not constitute "covered claims" in accordance with

the terms and provision of the South Carolina Guaranty Act, S.C. Code Ann. §§38-31-10 through 170.

Because the issues are whether Quality and Spectrum had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, all other issues remaining in the consolidated claims other than these issues are preserved.

EVIDENCE OF THE CASE

A brief summary of the events follows. In 2002, American Insurance Managers, Atlanta Insurance Marketing and other companies (hereinafter collectively "AIM"), led by David Dennett-Smith, decided to put together a program wherein PEOs could obtain workers compensation insurance. This program consisted of the PEOs paying both capital contributions as well as premiums. The capital contributions would pay for ownership of a holding company that would own the insurance company providing the workers' compensation insurance. Under the plan, AIM would form the holding company that would own the insurance company. The holding company would be owned by AIM and the various PEOs that made capital contributions.

AIM entered into negotiations with Alphastar, the owner of Realm. On October 2, 2002, Alphastar and AIM signed a Letter of Intent. The Letter of Intent outlined the parties' intentions that Alphastar would sell Realm to AIM and that until the sale was accomplished, Realm would appoint AIM as an agent for Realm. The parties also agreed AIM would lend Alphastar \$3.5 million until the sale could be consummated. Alphastar pledged its stock in the parent company of Realm as security. AIM loaned Alphastar \$1.5 million but did not lend the remainder of the \$3.5 million.

After the Letter of Intent was signed, but before Realm appointed AIM as an agent, AIM began issuing certificates of insurance to various PEOs and their clients, including Quality. Spectrum joined the program at a later date. The PEOs paid premium and made capital contributions. AIM collected all the money paid by the PEOs.

In November and December, 2002, Realm sent letters to the various PEOs and PEO clients denying coverage and disavowing the certificates of insurance. On December 30, 2002, Realm filed a lawsuit against AIM in New York Federal Court ("the Realm lawsuit"). After appearing before the judge in the Realm lawsuit, and being encouraged by the judge to work it out, the parties entered into a Stock Purchase Agreement on March 21, 2003, once again working toward the sale of Realm by Alphastar to AIM. The Realm lawsuit was eventually dismissed by Realm.

The parties did not consummate the sale. AIM filed a lawsuit in Delaware to foreclose on the stock that was pledged as security for the loan. Alphastar filed for bankruptcy. AIM filed a lawsuit in federal court in New York. That lawsuit was consolidated into the bankruptcy action. Realm was liquidated. Eventually, AIM was given a quitclaim bill of sale of Realm by the Chapter 7 Trustee of Alphastar.

After hearing able arguments of counsel, reviewing the APA Exhibits and the testimony in the Transcript of Record, the Appellate Panel makes the following Findings of Facts:

FINDINGS OF FACT

1. We find that the issues before the Single Commissioner were whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, we do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship.

All other issues remaining in the consolidated claims other than these issues set forth above are preserved.

2. AIM and Alphastar intended to enter into an agreement whereby Alphastar would sell Realm to AIM. There was an intention by both parties that AIM would be a duly authorized agent of Realm during the pendency of the sale. The Letter of Intent provided, however, that Realm would have to enter into a general agency agreement with AIM. Although a general agency agreement was prepared by Realm We find Realm did not execute the agreement.
3. Based on the evidence, including the fact that Realm did not execute the agency agreement~ we find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement. We also find the evidence does not support a finding of apparent authority. Furthermore~ we find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement. We find Dennett-Smith's testimony at the hearing on this issue conflicted with positions earlier asserted by AIM in contemporaneous documents.
4. Based on the letters from Mark Sioma, We find Realm disavowed any coverage and considered the certificates of insurance void *ab initio*.
5. Based on the letters from Mark Sioma to Quality~ we find Quality was aware of the coverage issue as early as December, 2002. This is not disputed by Quality.
6. We find that after the Realm lawsuit was filed, Realm, Aim, and Alphastar continued to negotiate in an attempt to consummate the sale. As a result, the parties entered into the Stock Purchase Agreement.
7. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, we find the Stock

Purchase Agreement did not permit any party, including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

8. After the signing of the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. We find the parties continued to behave as if the sale would occur until AIM filed the Delaware suit and Alphastar filed for bankruptcy. We find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. We do not make any finding as to the actual intent of AIM, Alphastar, or Realm regarding the pending sale. We find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, we find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. We do not find these underwriting actions constituted the binding of coverage.

9. Based on the evidence in the record, we find claims from the PEOs were being adjusted and paid. We find that Crawford was adjusting claims for a period of time. The claims were being paid by AIM while the deal was still pending. We find Realm was aware of all this, and based on the e-mails, approved.

10. Pam Evette and David Evette testified at the hearing. We find Pam Evette, in particular, was a credible witness. Based on the testimony of Pam and David Evette, We find that Quality believed it had coverage with Realm. We find Pam Evette was growing uneasy regarding the ongoing dispute between AIM and Realm. We find Pam and David Evette traveled to AIM's

offices in Atlanta to address their concerns. Mark Sioma, as President of Realm, represented to Pam and David Evette on July 22, 2003 that Quality and its clients had coverage with Realm. We find that Quality relied on these representations of Mark Sioma and did not seek other coverage as a result.

11. We find the South Carolina Department of Consumer Affairs sent a letter dated November 7, 2003 to Quality. In that letter, the Department stated Realm informed them that the certificates were not valid and that Realm denied coverage.

12. We find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true. We find Quality was uninsured for any pertinent dates outside July 22, 2003 through November 7, 2003.

13. We find Realm did not bind any coverage of Spectrum or any of its clients. We find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, we find Spectrum was uninsured during the pertinent time period.

CONCLUSIONS OF LAW

After thorough review of the voluminous testimonial and documentary evidence, thorough review of the positions of the parties, and thorough review of pertinent statutory and case law, I make the following Conclusions of Law:

1. Because the issues are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, we do not reach any other issues in the claims. All other issues remaining in the consolidated claims other than these issues are preserved.

2. When there is a pending employee claim for compensation, the exclusive jurisdiction for the determination of questions concerning cancellation, coverage, construction of insurance contracts, and the like, is in the Workers' Compensation Commission. *Labouseur v. Harleysville Mut. Ins. Co.*, 302 S.C. 540, 397 S.E.2d 526 S.C. (1990).
3. Based on the evidence, including the fact that Realm did not execute the agency agreement, we find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement.
4. "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." *Fernander v. Thigpen*, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982). We find the evidence does not support a finding of apparent authority. We find Realm did not lead anyone to believe that AIM was its agent in the time preceding the Stock Purchase Agreement.
5. We find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement.
6. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, we find the Stock Purchase Agreement did not permit any party, including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

7. After the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. We find the parties continued to behave as if the sale would occur up until AIM filed the Delaware suit and Alphastar filed for bankruptcy. We find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. We find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, we find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. We do not find these underwriting actions constituted the binding of coverage.
8. The essential elements of equitable estoppel are: (1) ignorance of the party invoking it of the truth as to the facts in question; (2) representations or conduct of the party estopped which mislead; (3) reliance upon such representations or conduct; and (4) prejudicial change of position as the result of such reliance. *Pitts v. New York Life Ins. Co.*, 247 S.C. 545, 552, 148 S.E.2d 369,371 (1966). We find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22,2003, the date of the representations by Sioma until November 7,2003, the date Quality should have known Sioma's representations were not true.
9. We find Quality and its clients were not insured by Realm for any pertinent dates outside July 22, 2003 through November 7, 2003.
10. We find Realm did not bind any coverage of Spectrum or any of its clients. We find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, we find Spectrum and its clients were not insured by Realm during the pertinent time period.

11. We find claims for the period of time Realm was estopped from denying coverage are "covered claims" as contemplated in § 38-1-20 and the provisions of the Guaranty Act. We do not reach the issue of whether any of the claims are time-barred pursuant to § 38-1-60(2), as we find this issue more appropriately handled on a case by case basis.

ORDER

IT IS THEREFORE ORDERED that the Order of the Single Commissioner finding that Realm is estopped from denying coverage for Quality and its clients on claims referenced in this order with dates of accident from July 22, 2003 until November 7, 2003 shall be and hereby is Affirmed.

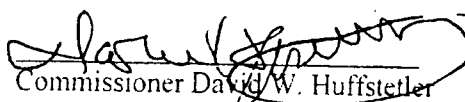
It is further ordered that the Order of the Single Commissioner finding that Quality and its clients were not insured by Realm for all claims referenced in this order with dates of accident outside July 22, 2003 through November 7, 2003 shall be and hereby is Affirmed.

It is further ordered that the Order of the Single Commissioner finding that Spectrum and its clients were not insured by Realm for all claims referenced in this order shall be and hereby is Affirmed.

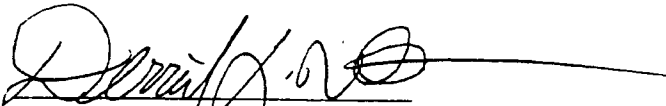
It is further ordered that the Order of the Single Commissioner finding that that claims referenced in this order involving Quality with dates of accident from July 22, 2003 until November 7, 2003 are "covered claims" as contemplated in § 38-1-20 and the provisions of the Guaranty Act shall be and hereby is Affirmed.

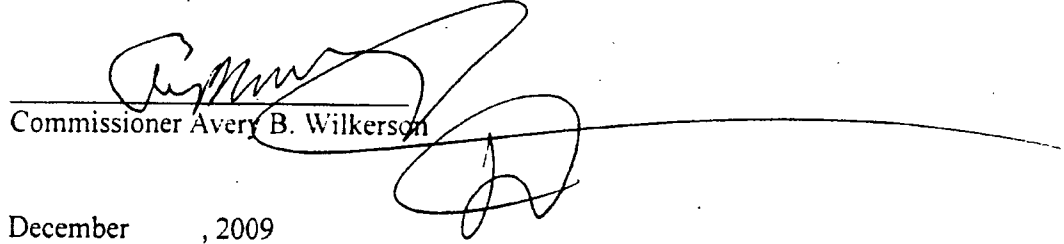
AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner David W. Huffstetler

WE CONCUR:


Commissioner Derrick L. Williams


Commissioner Avery B. Wilkerson

December , 2009

GREENVILLE 1214372.1

CERTIFICATE OF SERVICE

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

This 5th day of January, 2010
By Valerie D. Baker

Administrative Assistant to the Commissioner

See attached 4 pages

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Spectrum HR/SHR Admin-V LLC
550 Stephenson Hwy, Suite 203
Troy, MI 48083

STATE OF SOUTH CAROLINA
GREENVILLE COUNTY
IN THE COURT OF COMMON PLEAS

Ruth Harmon,
Employee/Claimant,

vs.

Spectrum HR and/or ABC Investments
and Management, et al
Employer,

Realm National Insurance Company,
Carrier,

South Carolina Uninsured Employers Fund,

Defendants.)

Arthur Mobley,
Employee,
Claimant,

-vs-

Magnolia Manor,
Quality HR Services, Inc.,

Employers,

and

Ace/ESIS for Magnolia Manor,
American Insurance Managers, Inc.;
Realm National Insurance Company;
SC Uninsured Employers' Fund;
South Carolina Property and Casualty
Insurance Guaranty Association

Defendants.)

ORDER

File No. 2010-CP-23-0739

FILED
CLERK OF COURT
GREENVILLE CO. S.C.
SEP 13 2010

Copy mailed to
Attorney Benfrow
on 9/13/2010

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RECEIVED

SEP 10 2010

Clerk of Court
Greenville County

Steve Cameron,)
Employee,)
Claimant,)
-vs-)
Keith's Welding Services, Inc.;)
Quality HR Services, Inc.,)
Employers,)
and)
Capital City Insurance Company, Inc.;)
American Insurance Managers, Inc.;)
Realm National Insurance Company;)
SC Uninsured Employers' Fund;)
South Carolina Property and Casualty)
Insurance Guaranty Association)
Defendants.)

Jessie Pringle,)
Employee/Claimant,)
vs.)
CES/Quality HR/Edisto Con/Laurel Baye)
Healthcare of Orangeburg,)
Employer,)
South Carolina Uninsured Employers Fund,)

Defendants.)

Martha Burke,
Employee,
Claimant,
-vs-
Quality HR Services, Inc.,
Employers,
and
American Insurance Managers, Inc.;
Realm National Insurance Company;
SC Uninsured Employers' Fund;
South Carolina Property and Casualty
Insurance Guaranty Association
Defendants.
Robert Hunter,
Employee,
Claimant,
-vs-
JR Construction
Employers,
and
American Insurance Managers, Inc.;
Realm National Insurance Company;
SC Uninsured Employers' Fund;
South Carolina Property and Casualty
Insurance Guaranty Association
Defendants.

Patricia Wade-Portee
Employee,
Claimant,
-vs-
Quality HR Services, Inc.,
Employers,
and
American Insurance Managers, Inc.;
Realm National Insurance Company;
SC Uninsured Employers' Fund;
South Carolina Property and Casualty
Insurance Guaranty Association
Defendants.

Aretino Alvarez,
Employee,
-vs-
Claimant,
Quality HR Services, Inc.,
Employers,
and
American Insurance Managers, Inc.;
Realm National Insurance Company;
SC Uninsured Employers' Fund;
South Carolina Property and Casualty
Insurance Guaranty Association
Defendants.



William Brockman,)
Employee,)
Claimant,)
-vs-)
Quality HR Services, Inc.,)
Employers,)
and)
American Insurance Managers, Inc.;)
Realm National Insurance Company;)
SC Uninsured Employers' Fund;)
South Carolina Property and Casualty)
Insurance Guaranty Association)
Defendants.)

Lucile Dwight,)
Employee,)
Claimant,)
-vs-)
Quality HR Services, Inc.,)
Employers,)
and)
American Insurance Managers, Inc.;)
Realm National Insurance Company;)
SC Uninsured Employers' Fund;)
South Carolina Property and Casualty)
Insurance Guaranty Association)
Defendants.)

Timmy Miller,	)
	)
	)
	)
-vs-	)
	)
	)
Quality HR Services, Inc.,	)
	)
	)
Employers,	)
and	)
	)
American Insurance Managers, Inc.;	)
Realm National Insurance Company;	)
SC Uninsured Employers' Fund;	)
South Carolina Property and Casualty	)
Insurance Guaranty Association	)
Defendants.	)

This matter comes before the undersigned based on the appeal/cross appeals of The South Carolina Property and Casualty Guaranty Insurance Association (Guaranty Association), the South Carolina Uninsured Employers Fund (UEF) and ABC Investments & Management Co. Inc. (ABC). Capital City Insurance Company (Capital City) is a respondent in the Cameron matter, only. By previous consent of the parties, the appeals of the four parties were consolidated under Case No. 2010-CP-23-0739.

Oral argument was held before the undersigned on Wednesday, August 18, 2010 in Greenville, South Carolina. Present were J. Hubert Wood, III representing the Guaranty Association, David Hill Keller representing the UEF and Benjamin M. Renfrow representing Keith's Welding Service, Inc., Capital City Insurance Company and ABC. Also present was Joseph G. Francis, Jr. who represents Steve Cameron, one of the Claimants in the underlying Workers' Compensation claims.



The facts of this case are lengthy. However, based on the determination of the undersigned only a brief rendition of the facts is necessary. These cases were combined for a single Workers' Compensation hearing on June 26 and 27, 2008 before Commissioner Andrea Pope Roche. These matters were combined for hearing on the sole issue of determining coverage for these claims. Capital City has an interest in the matter in that a previous order of Commissioner G. Bryan Lyndon ordered Capital City to pay benefits to a Claimant, Steve Cameron, pending outcome of this matter and an eventual hearing on the merits as to Mr. Cameron. ABC maintains an interest in this matter by virtue of having been a client of Spectrum HR.

These cases involve two professional employment organizations (PEO's) who attempted to obtain Workers' Compensation insurance through a program sponsored by American Insurance Managers (AIM). However, the insurance carrier involved in this matter, Realm National Insurance Company, became insolvent and never paid claims. The Guaranty Association contends Realm never was a carrier for either of the PEO's and the conditions precedent of the Association's enabling legislation have not been met. The UEF contends Realm was the carrier for Quality HR because certificates of insurance with policy numbers were issued, and that the workers' compensation doctrine of "substantial compliance" should be invoked.

After the hearing in this matter Commissioner Roche determined Realm was estopped to deny coverage on all claims of Quality HR arising between July 22 and November 7, 2003. She further determined Quality HR was uninsured during all other periods and Spectrum was uninsured at all times pertinent hereto, leaving all other claims of Quality and Spectrum open for determination of whether the UEF or a carrier and/or statutory employer were responsible. The



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matter was appealed to The South Carolina Workers' Compensation Commission which affirmed Commissioner Roche on January 5, 2010. The parties then appealed to the Circuit Court for Greenville County.

At oral argument it became clear that in order to properly evaluate these claims a remand is necessary to the full South Carolina Workers' Compensation Commission for the answering of three specific questions. See, Abel Communications, Inc. v. South Carolina Public Service Commission, 290 SC 409, 351 SE2d 151 (1986). The undersigned has therefore determined that the matter shall be remanded to the full South Carolina Workers' Compensation Commission to specifically answer the three following questions which have been properly raised on appeal and not answered by the Commission:

1) Because no party directly raised the issue of estoppel, did the determination that Realm National Insurance Company is estopped from denying coverage from July 22, 2003 through November 7, 2003 violate the due process rights of the Guaranty Association?

2) Conclusion of Law # 11 concludes the claims from November 22, 2003 to November 7, 2003 were "covered claims" as contemplated by §38-30-20 and the provisions of the Guaranty Act. On remand the Commission shall make detailed findings of fact and conclusions of law, and explain with certainty and in detail, why the claims are "covered" pursuant to the Guaranty Act, accepting or rejecting the Association's arguments in its brief.

3) In conjunction with Number 2, above, it doesn't appear that the Commission has ever addressed the issue raised by the UEF concerning whether the issuing of certificates of insurance with policy numbers attached makes the claims "covered" under the Workers' Compensation doctrine of "substantial compliance" expounded in the brief of the UEF.



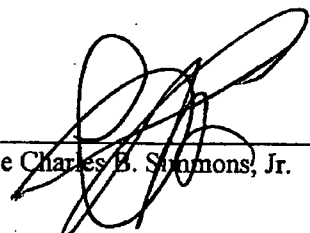
ORDER

IT IS THEREFORE ORDERED that this matter is remanded to the full South Carolina Workers Compensation Commission for the specific purpose of answering the three questions as noted above.

IT IS FURTHER ORDERED that the Commission shall issue an order in this matter, to the extent possible, within 90 days from the date of this Order being served upon it.

IT IS FURTHER ORDERED that by consent of the parties, the undersigned shall maintain jurisdiction of the matter and upon answering of the three questions herein, the matter shall be reset for oral argument before the undersigned at the earliest possible date.

SO ORDERED.



The Honorable Charles B. Simmons, Jr.

Greenville, South Carolina
September 9, 2010

Rec'd 9/4/12

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Artemio Alvarez v. Quality HR Services, et.al.)
W.C.C. File No.: X030301)
William Brockman v. Quality HR Services, et.al.)
W.C.C. File No.: X030600)
Martha Burke v. Quality HR Services, et.al.)
W.C.C. File No.: X030681)
Lucille Dwight v. Quality HR Services, et.al.)
W.C.C. File No.: 0326238)
Robert Hunter v. Quality HR Services, et.al.)
W.C.C. File No.: X040142)
Tammy Miller v. Quality HR Services, et.al.)
W.C.C. File No.: X040301)
Patricia Wade-Portee v. Quality HR Services, et.)
W.C.C. File No.: 0307616)
Jessie Pringle v. Quality HR Services, et.al.)
W.C.C. File No.: 0327062)
Steve Cameron v. Quality HR Services, et.al.)
W.C.C. File No.: 0316901)
Ruth Harmon v. Spectrum HR Services, et.al.)
W.C.C. File No.: 0406103)

**FULL COMMISSION APPELLATE
PANEL SUPPLEMENTAL ORDER
ADDRESSING QUESTIONS ON
REMAND FROM THE COURT OF
COMMON PLEAS FOR
GREENVILLE COUNTY
CASE NO. 2010-CP-23-0739**

INTRODUCTION/BACKGROUND

The above named matters are similarly situated cases in regard to coverage. Two professional employer organizations (PEOs) known as Quality HR Services (hereinafter "Quality HR") and Spectrum HR contend that they and their client companies maintained valid workers' compensation insurance coverage with Realm National Insurance Company (hereinafter

"Realm") at the time of the subject accidents associated with the various claims.¹ These, and two other, matters were consolidated by the Workers' Compensation Commission (hereinafter "Commission") for a joint hearing to determine coverage issues relative to Quality HR, Spectrum HR, and the various client companies.² The joint coverage hearing was held on June 26 and 27, 2008 in Columbia, South Carolina before Commissioner Andrea C. Roche. Commissioner Roche issued her Decision and Order dated April 22, 2009 following which three parties timely filed a Form 30 Request for Commission Review. These parties were ABC Investments, Inc. (a client company of Spectrum HR in connection with the Harmon matter), South Carolina Uninsured Employers' Fund (hereinafter "SCUEF") and South Carolina Property and Casualty Insurance Guaranty Association (hereinafter "SCPCIGA"). A hearing was held before this Full Commission Appellate Panel on October 26, 2009 in Columbia, South Carolina.³

This Appellate Panel issued its Decision and Order dated January 5, 2010 wherein we affirmed the Order of Commissioner Roche in its entirety. From our January 5, 2010 Decision and Order; SCPCIGA, SCUEF and ABC Investments, Inc. filed Notices of Appeal and Petitions for Judicial Review with the Court of Common Pleas for Greenville County pursuant to §42-17-60 of the South Carolina Code (1976, as amended). The parties were heard before The Honorable Charles B. Simmons, Jr. on August 18, 2010 following which Judge Simmons issued an Order dated September 9, 2010 and filed September 13, 2010 remanding the matter to the Commission

¹ In regard to the Steven Cameron matter, the client company Keith's Welding maintained a separate workers' compensation insurance policy with Capital City Insurance Company at the time of the subject accident relative to that claim.

² In regard to the Joseph Coonce v. Spectrum HR Services, et.al. matter (W.C.C. File No. 0408190), there was no appeal by any party to that case from the Hearing Commissioner's holding that neither Spectrum HR or its client company Fleet Source were insured at the time in question and a subsequent Order of Commissioner Andrea C. Roche in connection with the substantive Forms 50 and 51 issues confirmed dismissal of South Carolina Property and Casualty Insurance Guaranty Association as a party to that claim. Concerning the Arthur Mobley v. Quality HR Services, et.al. (W.C.C. File No. 0406356) matter, subsequent to the coverage hearing but prior to issuance of a Decision and Order by Commissioner Roche, the Commission approved an Agreement and Final Release (i.e. Clincher); therefore, the Commission would be without subject matter jurisdiction to rule on coverage issues relative to that matter. See Laboureur v. Harleysville Mutual Insurance Company, 302 S.C. 540, 397 SE2d 526 (1990).

³ This Appellate Panel consisted of Commissioner Derrick Williams, Commissioner Avery Wilkerson and Commissioner David Huffstetler. Commissioner Huffstetler is no longer a member of the Commission.

to specifically answer three questions which were properly raised on appeal and not answered by the Commission.

REMAND QUESTIONS

- I. Because no party directly raised the issue of estoppel, did the determination that Realm National Insurance Company is estopped from denying coverage from July 22, 2003 through November 7, 2003 violate the due process rights of the Guaranty Association?

On the issue of estoppel, the Court has asked whether any party raised the issue of estoppel. We find no error in Commissioner Roche's findings and conclusions of law on this issue, as it was raised. Based on a thorough and detailed review of the file and the transcript, Defendant S.C. Property & Casualty Insurance Guaranty Association directly raised this issue in their pre-hearing brief, submitted before the June 26-27, 2008 hearing before Commissioner Roche, as well as in their position statement submitted to Commissioner Roche.

- II. Conclusion of Law #11 concludes the claims from July 22, 2003 to November 7, 2003 were "covered claims" as contemplated by §38-30-20 and the provisions of the Guaranty Act. On remand the Commission shall make detailed findings of fact and conclusions of law and explain with certainty and in detail, why the claims are "covered" pursuant to the Guaranty Act, accepting or rejecting the Association's arguments in its brief.

The Guaranty Fund is arguing that these claims are not "covered claims" as defined by the statute, and therefore, the Fund is not responsible for them. Covered claims are defined as the following:

- (8) "Covered claim" means an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and (a) the claimant or insured is a resident of this State at the time of the insured event, if for entities other than an individual, the residence of a claimant or insured is the state in which its principal place of business is located at the time of the insured event or (b) the claim is for first-party benefits for damage to property permanently located in this State. 'Covered claim' does not include:

- (a) any amount awarded as extra-contractual damages unless awarded against the association;
- (b) any amount sought as a return of premium under any retrospective rating plan;
- (c) any amount due any reinsurer, insurer, insurance pool, or underwriting association as subrogation recoveries, reinsurance recoveries, contribution, indemnification, or otherwise. No such claim for any amount due any reinsurer, insurer, insurance pool, or underwriting association may be asserted against a claimant or a person insured under a policy issued by an insolvent insurer other than to the extent such a claim exceeds the association obligation limitations set forth in Section 38-31-60;
- (d) any first party claim by an insured whose net worth exceeds ten million dollars on December thirty-first of the year next preceding the date the insurer becomes an insolvent insurer; provided that an insured's net worth on such date must be deemed to include the aggregate net worth of the insured and all of its subsidiaries as calculated on a consolidated basis;
- (e) any first party claims by an insured which is an affiliate of the insolvent insurer;
- (f) any fee or other amount relating to goods or services sought by or on behalf of any attorney or other provider of goods or services retained by the insolvent insurer or an insured prior to the date it was determined to be insolvent;
- (g) any fee or other amount sought by or on behalf of any attorney or other provider of goods or services retained by any insured or claimant in connection with the assertion or prosecution of any claim, covered or otherwise, against the association; or
- (h) any claims for interest.

S.C. Code Ann. § 38-31-20.

Of course, as there was no insurance policy in these cases (in the sense that no written policy was ever issued), the Fund's argument is that the claims do not fall within the definition. We find that coverage by estoppel would constitute a "covered claim" under a Guaranty Act. California's Workers' Compensation Act defines "covered claim" a bit differently, but we think the reasoning would apply here. The California court holds the following:

We consider first whether a claim created by estoppel can be a covered claim under the Guarantee Act. The term "covered claims" now set forth in Insurance Code section 1063.1, subdivision (c)(1), is substantially similar to the definition contained in that subdivision on the date of injury.

On the date of injury, Insurance Code section 1063.1, subdivision (c)(1), stated: "*Covered claims' means the obligations of an insolvent insurer, including the obligation of unearned premiums, (i) imposed by law and arising out of an insurance policy of the insolvent insurer; (ii) which were unpaid by the insolvent insurer; (iii) which are*

presented as a claim to the liquidator in this state or to the association on or before the last date fixed for the filing of claims in the domiciliary liquidating proceedings; (iv) which were incurred prior to, on, or within 30 days after the date the liquidator was appointed; (v) for which the assets of the insolvent insurer are insufficient to discharge in full; (vi) *in the case of a policy of workers' compensation insurance, to provide workers' compensation benefits under the Workers' Compensation Law of this state* and (vii) in the case of other classes of insurance if such policy is issued to a resident of this state or claim against an insured thereunder is made by a resident of this state." (Stats.1984, ch. 564, § 1, p. 2203, emphasis added.)

The statute did not further define what constituted a covered claim. In subdivisions (c)(2) through (c)(10) of section 1063.1, the Legislature stated in detail what was *excluded* from "covered claims." Among the exclusions were obligations arising from certain types of reinsurance obligations of the insolvent insurer, instances in which other coverage existed, and claims based on subrogation. The Legislature later added other exclusions from the definition of covered claims. A claim based on estoppel was not expressly excluded on the date of injury and has not subsequently been so excluded.⁵ Our independent research of legislative intent materials has not revealed any basis for concluding that insurance obligations arising from estoppel to deny coverage are excluded from covered claims.⁶

The principles governing statutory construction are well established. "The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations.] In order to determine this intent, we begin by examining the language of the statute. [Citations.] ... '[T]he intent prevails over the letter, and the letter will, if possible, be so read as to conform to the spirit of the act.' [Citation.]" (*People v. Pieters* (1991) 52 Cal.3d 894, 898-899, 276 Cal.Rptr. 918, 802 P.2d 420.)

It is also well established that CIGA does not "stand in the shoes" of the insolvent insurer for all purposes; rather, CIGA must determine whether a particular claim falls within the statutory definition of covered claims. (*Saylin v. California Ins. Guarantee Assn.* (1986) 179 Cal.App.3d 256, 262, 224 Cal.Rptr. 493, internal quotation marks omitted.) That determination, of course, is subject to administrative interpretation and judicial review. (See *Middleton v. Imperial Ins. Co.*, *supra*, 34 Cal.3d at p. 137, 193 Cal.Rptr. 144, 666 P.2d 1 ["covered claims" is a term of art].) Research has not revealed any case considering the question of whether a claim may be a covered claim because of estoppel.⁷

CIGA argues that obligations "arising out of an insurance policy of the insolvent insurer" (Stats. 1984, ch. 564 § 1, p. 2203 [former Ins.Code, § 1063.1, subd. (c)(1)]) should be restricted to obligations arising out of *written* policies of insurance, because the term "policy" is generally defined in Insurance Code section 380 as "[t]he written instrument, in which a contract of insurance is set forth...." If the obligations are so restricted, CIGA contends, the claim of Blue Jay and Jenkins, which is not based on a written policy, would not qualify as a covered claim payable by CIGA. We do not accept that argument.

CIGA's suggested interpretation is too restrictive because it minimizes the fact that "covered claims" are primarily defined as *obligations*, and obligations on the part of an insurer can arise from contracts created by conduct or oral agreements as well as writings. (*Granco Steel, Inc. v. Workmen's Comp. App. Bd.* (1968) 68 Cal.2d 191, 197-205, 65 Cal.Rptr. 287, 436 P.2d 287.) That is what happened here. The WCJ and the

Board properly applied the doctrine of equitable estoppel in the instant case, determining that Homeland became legally obligated to Blue Jay and Jenkins by the conduct of its agent, Pixley.

"Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury. [Citations.]" (*Driscoll v. City of Los Angeles* (1967) 67 Cal.2d 297, 305, 61 Cal.Rptr. 661, 431 P.2d 245.) The elements of *Driscoll* were met by the conduct of Homeland's agent, Pixley. In *Granco Steel, Inc. v. Workmen's Comp. App. Bd.*, *supra*, 68 Cal.2d at pages 203-205, 65 Cal.Rptr. 287, 436 P.2d 287, the California Supreme Court quoted *Driscoll*'s discussion of the elements of equitable estoppel and held that an insurance company was estopped to deny coverage since its agent had promised that coverage would be provided. *Granco Steel* characterized the question of whether an oral binder of insurance has been issued because of an insurance agent's representations as a mixed question of fact and law. (*Id.* 68 Cal.2d at p. 197, 65 Cal.Rptr. 287, 436 P.2d 287.) In the instant case, CIGA does not dispute that Pixley was Homeland's agent. To the extent that factual determinations on this issue were made by the WCJ and the Board, we perceive no reason to disturb them, since they were based on substantial evidence. (*Lamb v. Workmen's Comp. Appeals Bd.* (1974) 11 Cal. 3d 274, 280-281, 113 Cal.Rptr. 162, 520 P.2d 978.) In light of *Granco Steel*, the legal determinations were equally sound. Moreover, since CIGA did not contend in its petition for reconsideration that substantial evidence does not support the finding that Homeland and CIGA are estopped to deny coverage, that contention has been waived. (Lab.Code, § 5904; *U.S. Auto Stores v. Workmen's Comp. App. Bd.* (1971) 4 Cal.3d 469, 476-477, 93 Cal.Rptr. 575, 482 P.2d 199.)

In view of the ambiguity surrounding the statutory definition of covered claims and the lack of any statutory exclusion of claims asserted under policies deemed to exist by reason of estoppel, we decline to hold that the claim of Blue Jay and Jenkins is excluded from the definition of covered claims. We hold that, although coverage of Blue Jay and Jenkins was created by estoppel, the claim of Blue Jay and Jenkins was a covered claim within the meaning of Insurance Code section 1063.1, subdivision (c)(1), and thus CIGA is obligated to pay workers' compensation benefits to Conces, the employee injured during employment by Blue Jay and Jenkins. This result is consistent with the legislative purpose of the Guarantee Act—to provide carefully limited protection to insured members of the public. The group intended to be protected by the Guarantee Act includes Blue Jay and Jenkins, who, in good faith, acted to meet their legal obligation to provide workers' compensation insurance to their employees. *California Ins. Guarantee Assn. v. Workers' Comp. Appeals Bd.*, 10 Cal. App. 4th 988, 995-98, 12 Cal. Rptr. 2d 848, 852-54 (1992).

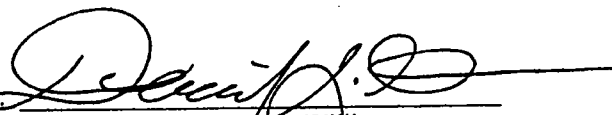
Based on the evidence as a whole, the behavior of Realm's president constitutes an "insurance policy" "issued by an insurer." Moreover, our legislature has made of list of excluded claims, but did not exclude claims created by estoppel.

- III. In conjunction with Number 2 above, it doesn't appear that the Commission has ever addressed the issue raised by the UEF concerning whether the issuing of Certificates of Insurance with policy numbers attached makes the claims "covered" under the Workers' Compensation doctrine of "substantial compliance" expounded in the brief of the UEF.

The doctrine of "substantial compliance" under the Workers' Compensation Act stems from the opinion of the South Carolina Supreme Court in the case of Yeomans v. Anheuser-Busch, Inc., 198 S.C. 65, 15 S.E.2d 833 (1941). In addition to Yeomans, the "substantial compliance" doctrine has been addressed in several subsequent cases including Sweeney v. Cape Fear Wood Corporation, 237 S.C. 471, 118 S.E.2d 70 (1961); Carter v. Associated Petroleum Carriers, 235 S.C. 80, 110 S.E.2d 8 (1959) and Herring v. Lawrence Warehouse Co., 222 S.C. 226, 72 S.E.2d 453 (1952); Marsh v. Leo's, Inc., 249 S.C. 45, 152 S.E.2d 350 (1967) and Deanhardt v. Neil C. Deanhardt Masonry Contractors, 298 S.C. 244, 379 S.E.2d 726 (Ct. App. 1989). In reviewing these cases, the doctrine of substantial compliance pertains to otherwise exempt employees and/or employers under §42-1-360 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 Codes) and waiver of those exemptions under §42-1-380 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 Codes). We conclude that the doctrine of substantial compliance has no bearing on, or applicability to, a determination of whether an employer maintained valid workers' compensation insurance at a particular time in question. Therefore, the doctrine of substantial compliance has no bearing on our holdings concerning coverage for Quality HR, Spectrum HR and their respective client companies, or the findings of fact and conclusions of law in support thereof, as set forth in our January 5, 2010 Decision and Order.

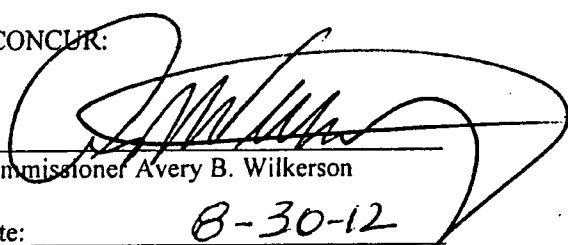
CONCLUSION

The Full Commission Appellate Panel has, therefore, addressed the remand questions as presented in the Order of The Honorable Charles B. Simmons dated September 9, 2010 and filed September 13, 2010 in the foregoing manner.

By: 
Commissioner Derrick L. Williams

Dated: 8-30-12

I CONCUR:


Commissioner Avery B. Wilkerson
Date: 8-30-12

CERTIFICATE OF SERVICE

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

This 30 day of Aug, 2012
By: Valerie D. Deller

Administrative Assistant to the Commissioner

J. Glen McDougall II
Russell T. Infanger
David H. Keller
J. Hubert Wood III
Duke K McCall Jr.
Scott B Garrett

Joseph G. Francis
Benjamin M Renfrow
Franklin D Guerrero
Benjamin W. Alkery
Thomas M. White
Robert E. Treacy Jr.
Michael W. Burkett
Glenn Walters
Lisa C. Glover
Candace G. Hendersman
Daniel E. Peagler
LaTonya Edwards
William. Thomas Bacon
Virginia H. Dupont
Ben C. Harrison

K/ 2.21.13

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) CASE NO. 2010-CP-23-0739

)
) Artemio Alvarez v. Quality HR Services, et.al.
) W.C.C. File No.: X030301
)

)
) William Brockman v. Quality HR Services, et.al.)
) W.C.C. File No.: X030600
)

)
) Martha Burke v. Quality HR Services, et.al.
) W.C.C. File No.: X030681
)

ORDER

)
) Lucille Dwight v. Quality HR Services, et.al.
) W.C.C. File No.: 0326238
)

)
) Robert Hunter v. Quality HR Services, et.al.
) W.C.C. File No.: X040142
)

)
) Tammy Miller v. Quality HR Services, et.al.
) W.C.C. File No.: X040301
)

)
) Patricia Wade-Portee v. Quality HR Services, et.)
) W.C.C. File No.: 0307616
)

)
) Jessie Pringle v. Quality HR Services, et.al.
) W.C.C. File No.: 0327062
)

)
) Steve Cameron v. Quality HR Services, et.al.
) W.C.C. File No.: 0316901
)

)
) Ruth Harmon v. Spectrum HR Services, et.al.
) W.C.C. File No.: 0406103
)

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CLERK OF COURT
JUDICIAL BRANCH
COUNTY OF GREENVILLE
SOUTH CAROLINA

INTRODUCTION

These matters are before the Court pursuant to appeals filed by South Carolina Property and Casualty Insurance Guaranty Association (hereinafter "SCPCIGA"); South Carolina Uninsured Employers' Fund (hereinafter "SCUEF") and ABC Investments from a Decision and Order of the South Carolina Workers' Compensation Commission (hereinafter "Commission") dated January 5, 2010 which affirmed the Single Commissioner's Decision and Order dated April 22, 2009, and its Supplemental Order dated August 30, 2012. The above named matters are similarly situated cases in regard to



coverage. Two professional employer organizations (PEOs) known as Quality HR Services (hereinafter "Quality HR") and Spectrum HR allege that they and their client companies maintained workers' compensation insurance coverage with Realm National Insurance Company (hereinafter "Realm") at the time of the subject accidents associated with the various claims.¹ These matters and two other matters were consolidated by the Commission for a joint hearing to determine coverage issues relative to Quality HR Services, Spectrum HR, and the various client companies.² The joint coverage hearing was held on June 26 and 27, 2008 in Columbia, South Carolina before Commissioner Andrea C. Roche. SCPCIGA is a party to this proceeding as a result of the liquidation of Realm by Order of the State of New York on June 15, 2005. At issue was whether Spectrum HR, Quality HR, and/or any of their respective client companies maintained workers' compensation insurance coverage with Realm at the time of the subject accidents relative to the various claims and whether the various claims constitute "covered claims" under the South Carolina Property and Casualty Insurance Guaranty

¹ In regard to the Steven Cameron matter, the client company Keith's Welding maintained a separate workers' compensation insurance policy with Capital City Insurance Company at the time of the subject accident relative to that claim.

² In regard to the Joseph Coonce v. Spectrum HR Services, et al. matter (W.C.C. File No. 0408190), there was no appeal by any party to that case from the Hearing Commissioner's holding that neither Spectrum HR or its client company Fleet Source were insured at the time in question and a subsequent Order of Commissioner Andrea C. Roche in connection with the substantive Forms 50 and 51 issues confirmed dismissal of South Carolina Property and Casualty Insurance Guaranty Association as a party to that claim. At the time of the coverage hearing, reference was made with regard to potential settlements of the Steven Cameron and Arthur Mobley v. Quality HR Services, et al. (W.C.C. File No. 0406356) matters. Subsequent to the coverage hearing but prior to issuance of a Decision and Order, the Commission approved an Agreement and Final Release (i.e. Clincher) in the Mobley matter. To the extent that the above named claims involve a pending employee claim for compensation, the Commission has subject matter jurisdiction to determine the coverage issues; however, to the extent the Commission has approved settlements of employee claims for compensation or the employee's claim for compensation has been finally determined, the Workers' Compensation Commission would be without subject matter jurisdiction to rule on coverage issues relative to any such case. See Laboureur v. Harleysville Mutual Insurance Company, 302 S.C. 540, 397 SE2d 526 (1990).

Association Act, §38-31-10 et.seq. of the South Carolina Code (1976, as amended) (hereinafter "Guaranty Act").

BACKGROUND

Central to the coverage hearing issues is an understanding of the relationship between various PEOs, specifically including Spectrum HR and Quality HR, and an entity known as American Insurance Managers, Inc., and its affiliates and representatives (hereinafter collectively referred to as "AIM") and AIM's relationship with Realm and Realm's parent companies (AlphaStar Insurance Group, Ltd., and Stirling Cooke North American Holdings, Inc. hereinafter referred to collectively and individually as "Realm's parent companies"). Realm was a New York Insurance Company. In accordance with New York's insurance law, the New York Superintendent of Insurance sought and obtained an Order of the State Supreme Court, New York County, dated June 15, 2005 declaring that Realm was insolvent and appointing the New York Superintendent of Insurance as liquidator of Realm with directions to take possession of Realm's assets and property and to liquidate Realm's affairs for the benefit of its policyholders, creditors and investors and resolve liabilities and claims against Realm's estate. The New York Superintendent's duties in that regard are carried out by the New York Liquidation Bureau.

AIM is a Georgia corporation. AIM is not an insurance carrier but has functioned in various capacities relative to the insurance industry. AIM embarked on a plan to create a workers' compensation insurance program for PEOs that would be affordable for the PEOs and profitable for AIM. Various issues relative to the formation of such a program including re-insurance and the participation of a licensed insurer to serve as the issuing



carrier were explored. In connection with its efforts to find an issuing carrier for the program, Realm was identified by AIM, through an intermediary, as a licensed insurance carrier that could be purchased. In order to effectuate the purchase of Realm, AIM further developed, and marketed to various PEOs, a program whereby AIM and the various PEOs would form a company known as Glastonbury which would purchase and own Realm.

On October 2, 2002, AIM entered into a letter of intent with Realm's parent companies to negotiate the purchase of all the outstanding stock of Realm subject to the approval of regulatory authorities having jurisdiction over Realm. Realm alleged that this was a non-binding letter. Prior to the negotiation of any further terms associated with the proposed transaction and prior to any regulatory approval for the transaction, AIM purported to bind workers' compensation coverage under Realm's name and along with various subproducers, began issuing Certificates of Insurance in late 2002. Realm denied that AIM was ever authorized to issue insurance certificates using Realm's name. Pam and David Evette of Quality HR also testified that they were told by Realm's President that they were covered during a meeting at AIM's Atlanta offices in July 2003.

Following the issuance of numerous Certificates of Insurance issued in Realm's name by AIM and various subproducers including U.S. Insurance Group, Realm provided written notice to various State regulators and various PEOs, including Quality HR and Spectrum HR, that the certificates were invalid and that Realm was not providing coverage to the various PEOs or their client companies. AIM advised the various PEOs of the dispute in writing. Realm's parent companies and Realm filed suit against AIM in the United States District Court, Southern District of New York seeking a declaratory

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judgment that AIM was not authorized to bind insurance on behalf of Realm and claiming damages and other relief. The Court directed the parties to engage in settlement negotiations and as a result, the parties entered into a stock purchase agreement for the sale of Realm to AIM on March 21, 2003.

As a result of the failure to close the transaction in connection with the stock purchase agreement, AIM subsequently brought suit in the Delaware Chancery Court to foreclose on the stock given as security on the interim loan to Realm's parent companies. Thereafter, Realm and Realm's parent companies voluntarily dismissed the pending District Court action and on December 15, 2003, Realm's parent companies filed for Bankruptcy Court protection in the United States Bankruptcy Court for the Southern District of New York. AIM commenced another action in the United States District Court, Southern District of New York on January 12, 2004 making allegations of fraud against the individual officers and directors of Realm and Realm's parent companies and seeking a declaratory judgment of validity of the coverage AIM had issued purportedly on behalf of Realm. On May 3, 2004, the Bankruptcy Court stayed AIM's action filed in District Court and consolidated into the Bankruptcy Court's adversary proceedings AIM's action filed in Federal District Court along with various lawsuits filed against Realm and AIM by persons to whom coverage had purportedly been sold by AIM.

Following the Order of Liquidation relative to Realm entered by the State of New York in June 2005, the Superintendent of Insurance of the State of New York, in his capacity as liquidator of Realm, filed a Motion to Dismiss from the Bankruptcy Court proceedings, various claims including those alleged by Realm against AIM and AIM against Realm. On May 4, 2006, Judge Stuart M. Bernstein of the United States



Bankruptcy Court issued an Order for dismissal relative to various claims, including those alleged by Realm against AIM and AIM against Realm, from the Bankruptcy Court proceedings. This Order effectively divorced the various claims between Realm and AIM from those associated with claims as between AIM and Realm's parent companies, which remained under the jurisdiction of the Bankruptcy Court. The Bankruptcy Court subsequently approved the assignment of Realm's parent companies' stock in Realm to AIM in August 2006 as satisfaction of AIM's claims against Realm's parent companies.

Also in conjunction with the Bankruptcy Court proceedings, AIM sought to have reference to its claims against the various individual directors and officers of Realm and Realm's parent companies removed from the Bankruptcy Court proceedings. The Bankruptcy Court granted AIM's requested relief in that regard and AIM reconstituted its prior complaint in Federal District Court alleging, *inter alia*, essentially the same causes of action set forth in the District Court action it filed in January 2004. The reconstituted complaint also named the New York Superintendent of Insurance and New York Liquidation Bureau as Defendants and sought a declaration that the coverage AIM bound with Realm on behalf of the various PEOs was effective. That action was subsequently dismissed by consent pursuant to a Stipulation and Order filed on June 16, 2008 that was executed by the attorneys for the various parties, including attorney Stanley A. Coburn on behalf of AIM, and approved by U.S. District Judge Richard J. Holwell. In summary, the various litigation in the United States Bankruptcy Court and District Court for the Southern District of New York did not yield any determination concerning the coverage issue.

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THE COMMISSION'S DECISION AND ORDER

Following the coverage hearing and submission of Post-Hearing Briefs by various parties, the Single Commissioner issued her Decision and Order dated April 22, 2009 wherein she made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.
2. AIM and Alphastar intended to enter into an agreement whereby Alphastar would sell Realm to AIM. There was an intention by both parties that AIM would be a duly authorized agent of Realm during the pendency of the sale. The Letter of Intent provided, however, that Realm would have to enter into a general agency agreement with AIM. Although a general agency agreement was prepared by Realm, I find Realm did not execute the agreement.
3. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement. I also find the evidence does not support a finding of apparent authority. Furthermore, I find the evidence does not support a finding that

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Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement. I find Dennett-Smith's testimony at the hearing on this issue conflicted with positions earlier asserted by AIM in contemporaneous documents.

4. Based on the letters from Mark Sioma, I find Realm disavowed any coverage and considered the certificates of insurance *void ab initio*.
5. Based on the letters from Mark Sioma to Quality, I find Quality was aware of the coverage issue as early as December, 2002. This is not disputed by Quality.
6. I find that after the Realm lawsuit was filed, Realm, Aim, and Alphastar continued to negotiate in an attempt to consummate the sale. As a result, the parties entered into the Stock Purchase Agreement.
7. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party, including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.
8. After the signing of the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur until AIM filed the Delaware suit and Alphastar filed for

bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I do not make any finding as to the actual intent of AIM, Alphastar, or Realm regarding the pending sale. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.

9. Based on the evidence in the record, I find claims from the PEOs were being adjusted and paid. I find that Crawford was adjusting claims for a period of time. The claims were being paid by AIM while the deal was still pending. I find Realm was aware of all this, and based on the e-mails, approved.
9. Pam Evette and David Evette testified at the hearing. I find Pam Evette, in particular, was a credible witness. Based on the testimony of Pam and David Evette, I find that Quality believed it had coverage with Realm. I find Pam Evette was growing uneasy regarding the ongoing dispute between AIM and Realm. I find Pam and David Evette traveled to AIM's offices in Atlanta to address their concerns. Mark Sioma, as President of Realm, represented to Pam David Evette on July 22, 2003 that Quality and



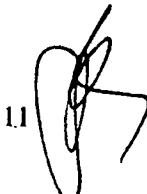
- its clients had coverage with Realm. I find that Quality relied on these representations of Mark Sioma and did not seek other coverage as a result.
10. I find the South Carolina Department of Consumer Affairs sent a letter dated November 7, 2003 to Quality. In that letter, the Department stated Realm informed them that the certificates were not valid and that Realm denied coverage.
 11. I find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true. I find Quality was uninsured for any pertinent dates outside July 22, 2003 through November 7, 2003.
 12. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum was uninsured during the pertinent time period.

CONCLUSIONS OF LAW

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.



2. When there is a pending employee claim for compensation, the exclusive jurisdiction for the determination of questions concerning cancellation, coverage, construction of insurance contracts, and the like, is in the Workers' Compensation Commission. Laboureur v. Harleysville Mut. Ins. Co., 302 S.C. 540, 397 S.E.2d 526 S.C. (1990).
2. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement.
3. "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." Fernander v. Thigpen, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982). I find the evidence does not support a finding of apparent authority. I find Realm did not lead anyone to believe that AIM was its agent in the time preceding the Stock Purchase Agreement.
4. I find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement.
5. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party,



including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

6. After the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur up until AIM filed the Delaware suit and Alphastar filed for bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.
7. The essential elements of equitable estoppel are: (1) ignorance of the party invoking it of the truth as to the facts in question; (2) representations or conduct of the party estopped which misled; (3) reliance upon such representations or conduct; and (4) prejudicial change of position as the result of such reliance. Pitts v. New York Life Ins. Co., 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1966). I find that Realm, based on the

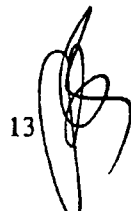
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representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true.

8. I find Quality and its clients were not insured by Realm for any pertinent dates outside July 22, 2003 through November 7, 2003.
9. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum and its clients were not insured by Realm during the pertinent time period.
10. I find claims for the period time Realm was estopped from denying coverage are "covered claims" as contemplated in §38-1-20 and the provisions of the Guaranty Act. I do not reach the issue of whether any of the claims are time barred pursuant to §38-1-60(2), as I find this issue more appropriately handled on a case by case basis.

Based on these findings and conclusions, the Single Commissioner held that Realm was estopped from denying coverage for the Quality HR claims with dates of accident from July 22, 2003 through November 7, 2003; that Quality HR and its clients were not insured for the claims with dates of accident outside July 22, 2003 through November 7, 2003; that Spectrum HR and its clients were not insured by Realm on any of the Spectrum HR claims; that the Quality HR claims with dates of accident from July 22, 2003 until November 7, 2003 are "covered claims" as contemplated in §38-1-20 (sic)



and the provisions of the Guaranty Act (i.e. the Brockman, Burke, Cameron, Hunter, and Pringle matters).

Following service of the Single Commissioner's Decision and Order on April 22, 2009, several parties timely filed a Form 30 Request for Commission Review. A Form 30 Request for Commission Review was filed by ABC Investments, Inc. in connection with the Harmon matter. SCUEF filed a Form 30 Request for Commission Review under the caption "Jessie Pringle, et.al. v. Healthcare Services Group, et.al.", (Realm National Insurance Company cases). SCPCIGA filed its Form 30 Request for Commission Review in connection with all of the above referenced cases. There was no Form 30 Request for Commission Review filed on behalf of any other party. Briefs were filed on behalf of SCPCIGA, SCUEF, ABC Investments, Inc. and Quality HR. Oral argument was held before a Full Commission Appellate Panel on October 26, 2009 in Columbia, South Carolina. Thereafter, the Full Commission Appellate Panel issued its Decision and Order dated January 5, 2010 wherein it affirmed the Order of the Single Commissioner in its entirety. From this Decision and Order, SCPCIGA, SCUEF and ABC Investments, Inc. appealed to the Court of Common Pleas for Greenville County pursuant to §42-17-60 and §1-23-380 of the South Carolina Code (1976, as amended).

**PRIOR PROCEEDINGS BEFORE THE COURT OF COMMON
PLEAS AND REMAND PROCEEDINGS BEFORE THE
COMMISSION**

In connection with the appeals of SCPCIGA, SCUEF and ABC Investments, Inc. to the Court of Common Pleas for Greenville County, the parties were heard before the undersigned on August 18, 2010. The undersigned issued an Order dated September 9, 2010 and filed September 13, 2010 remanding the matter to the Commission to

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specifically answer three questions which were properly raised on appeal and not answered by the Commission. Those remand questions were as follows:

1. Because no party directly raised the issue of estoppel, did the determination that Realm National Insurance Company is estopped from denying coverage from July 22, 2003 through November 7, 2003 violate the due process rights of the Guaranty Association?
2. Conclusion of Law #11 concludes the claims from July 22, 2003 to November 7, 2003 were "covered claims" as contemplated by §38-30-20 and the provisions of the Guaranty Act. On remand, the Commission shall make detailed findings of fact and conclusions of law and explain with certainty and in detail, why the claims are "covered" pursuant to the Guaranty Act, accepting or rejecting the Association's arguments in its brief.
3. In conjunction with Number 2 above, it doesn't appear that the Commission has ever addressed the issue raised by the UEF concerning whether issuing of Certificates of Insurance with policy numbers attached makes the claims "covered" under the Workers' Compensation doctrine of substantial compliance expounded in the brief of the UEF.

The Full Commission Appellate Panel issued its Supplemental Order dated August 30, 2012 which addressed the questions on remand from the undersigned.³ Concerning the issue of whether SCPCIGA's due process rights were denied by the Commission in disposing of the coverage issues pertinent to five of the Quality HR claims based on equitable estoppel, the Full Commission Appellate Panel found that this issue was raised prior to the consolidated coverage hearing before the Single Commissioner by SCPCIGA in its Pre-Hearing Brief and in its Position Statement submitted to the Single Commissioner. In response to the Court of Common Pleas' directive for the Commission to make detailed findings of fact and conclusions of law and explain with certainty and in detail why these five Quality HR claims are "covered" under the Guaranty Act, the Full

³ This Appellate Panel consisted of Commissioner Derrick Williams and Commissioner Avery Wilkerson. The original Appellate Panel which issued the Commission's Decision and Order dated January 5, 2010 also included Commissioner David Huffstetler who is no longer a member of the Commission.



Commission Appellate Panel relied on a California Appeals Court opinion to hold that the behavior of Realm's President constitutes an "insurance policy" "issued by an insurer" and that the South Carolina legislature has made a list of excluded claims but did not exclude claims created by estoppel. In connection with the "substantial compliance" issue raised by SCUEF, the Full Commission Appellate Panel referenced the applicable South Carolina Court decisions addressing the doctrine of substantial compliance and concluded that such pertains to otherwise exempt employees and/or employers under §42-1-360 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 codes) and waiver of those exemptions under §42-1-380 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 codes). Accordingly, the Commission concluded that the doctrine has no bearing on, or applicability to, a determination on whether an employer maintained valid workers' compensation insurance at a particular time in question and, therefore, no bearing on the Commission's prior holdings concerning coverage for Quality HR, Spectrum HR and their respective client companies, or the findings of fact and conclusions of law in support thereof as set forth in the Commission's January 5, 2010 Decision and Order. Following service of the Full Commission Appellate Panel's Supplemental Order, the matter was reset for oral argument before the undersigned on October 24, 2012 in Greenville, South Carolina.

ISSUES ON APPEAL

The specific grounds for appeal and exceptions before the Court are fully set forth in the appealing parties' Petitions for Judicial Review as follows: SCPCIGA's amended Petition for Judicial Review dated September 7, 2012; SCUEF's Petition for Judicial

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Review dated February 5, 2010; and ABC Investments' Petition for Judicial Review dated January 27, 2010. In summary, SCPCIGA contends that the Commission erred as a matter of law in connection with its findings, conclusions and holding that Realm was estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003. SCPCIGA also contends that the Commission erred as a matter of law relative to its conclusions and holdings that the Quality HR claims with dates of accident from July 22, 2003 through November 7, 2003 are "covered claims" under the Guaranty Act. SCPCIGA further contends that it was denied due process of law as a result of the Commission's decision to dispose of the coverage issues in five of the Quality HR claims based on an estoppel theory of coverage and that the Commission's holding in connection with this issue as set forth in its Supplemental Order is clearly erroneous. SCUEF argues, pursuant to the doctrine of "substantial compliance" under the Workers' Compensation Act, that coverage by Realm should be afforded on all of the claims subject to this appeal. In that regard, SCUEF asserts that the issuance of certificates of insurance with policy numbers attached to Quality HR and Spectrum HR reflecting workers' compensation insurance coverage with Realm, and the belief by Quality HR and Spectrum HR that they had secured workers' compensation insurance, effectuated coverage with Realm on the claims subject to this appeal pursuant to the doctrine of substantial compliance. SCUEF further asserts that as a result of the coverage created for Quality HR and Spectrum HR by Realm pursuant to the doctrine of substantial compliance under the Workers' Compensation Act, the claims subject to this appeal should be considered "covered claims" under the Guaranty Act and that SCPCIGA cannot rely upon the fraud of third part to contest such claims being

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considered "covered claims" under the Guaranty Act. Moreover, SCUEF asserts that the statutory intent of the Guaranty Act is more applicable to the facts of these matters than the statutory provisions of the Workers' Compensation Act creating SCUEF. ABC Investments joins in the position of SCUEF. Quality HR as a participating Respondent also joins in the position of SCUEF.

DISCUSSION AND ANALYSIS

The undersigned will first address SCPCIGA's contention that the Commission made several errors of law in connection with its findings, rulings and holding that Realm is estopped from denying coverage from Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 which effectively resulted in a "proration" of the claims as between SCPCIGA and SCUEF. The Court is cognizant that the Commission attempted to reach a very fair result in doing this "proration"; however, counsel for all participating parties have candidly conceded to the Court that such is not proper under South Carolina law. In that regard, the undersigned will address SCPCIGA's threshold legal argument that the doctrine of estoppel cannot be used to create a primary liability or coverage without the necessity of addressing the facts and evidence pertinent to the essential elements of equitable estoppel under South Carolina law as delineated in the Commission's Order relying on the case of Pitts v. New York Life Insurance Company, 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1966). As a general rule, insurance coverage may not be expanded or created by waiver or estoppel. "The weight of authority is said to support the view that the coverage, or restrictions on the coverage, cannot be extended by the doctrine of waiver or estoppel. To the same effect[,] it has been broadly stated that the doctrines of waiver and estoppel cannot be



used to extend the coverage of an insurance policy or create a primary liability, but may only affect rights reserved therein ... [U]nder no conditions can the coverage or restrictions on coverage be extended by waiver or estoppel." Campbell, Inc. v. Northern Insurance Co. of New York, 337 F.Supp. 2d 764, 769 (2004) citing Pitts and 16 Appleman, Insurance Law and Practice, Section 9090, page 629.

Accordingly, the Court finds and holds that there was no legal basis for the Commission to have "carved out" or "prorated" the claims that are subject to this appeal as between SCPCIGA and SCUEF and that to have done so by relying on the doctrine of estoppel constitutes an error of law in this instance. Therefore, the Commission's findings, rulings and holding that Realm is estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 are hereby reversed. In view of this determination, it is unnecessary for the Court to address the additional assertion of error raised by SCPCIGA in connection with this issue, specifically the assertions that the Commission erred in applying the law concerning equitable estoppel to the facts. Moreover, this determination renders as moot, SCPCIGA's contentions that it was denied due process of law and that the Commission erred as a matter of law in holding that the Quality HR claims which on Realm was held to be estopped from denying coverage constitute "covered claims" under the Guaranty Act.

The undersigned now turns to the issues raised by SCUEF in connection with its appeal and which were joined in by Appellant ABC Investments and Respondent Quality HR. South Carolina workers' compensation law is clear involving the issuance of insurance policies. The Supreme Court has held on multiple occasions that the actual

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issuance of policies under the Workers' Compensation Act is not necessary to create coverage. Case law in South Carolina supports the concept that even though an actual policy of insurance was never issued to Quality HR or Spectrum HR, the conditions necessary to create coverage under the Workers' Compensation Act and the Guaranty Act have been "substantially complied" with. Moreover, the undersigned notes that Title 42 recognizes that Certificates of Insurance can be considered valid evidence of workers' compensation coverage (see §42-1-415 of the South Carolina Code (1976, as amended)). The South Carolina Supreme Court has also recognized that the specific provisions of Title 42 as they relate to coverage of workers under the Workers' Compensation Act, need not be strictly complied with in order to establish coverage under the Act.

The doctrine of "substantial compliance" under the Workers' Compensation Act has been recognized by the Supreme Court almost from the inception of the Act. Originally, the Regulations of the Commission required a formal notice and actual filing of a policy of insurance with the Commission in order for an otherwise exempt employer to be subject to the Act. Therefore, in the case of Yeomans v. Anheuser-Busch, Inc., 198 S.C. 65, 15 S.E.2d 833 (1941), the Commission held that because Anheuser-Busch, an otherwise exempt employer, had not filed formal notice of acceptance of the Workers' Compensation Act and had not filed an actual policy of insurance, that it was not subject to the Workers' Compensation Act even though it had done all other actions necessary to cover its employees under the Workers' Compensation Act. However, the Supreme Court reversed the determination of the Commission and stated that because the employer had done all of the acts otherwise necessary other than actually filing a policy of insurance and a notice of intent with the Commission, it had "substantially complied"



with the Workers' Compensation Act. The Court held it was clear the intent of Anheuser-Busch was that it would be subject to the Act even though it had only two employees in South Carolina. Anheuser-Busch procured insurance and actually filed a policy number with the Commission but failed to file the actual policy and formal notice. The Court made it clear that it made no practical sense to allow Anheuser-Busch and its carrier to avoid the Act on a "technicality".

Further, in the case of Carter v. Associated Petroleum Carriers, 235 S.C. 81, 10 S.E.2d 8 (1959), the Court held that when the Workers' Compensation Act is not substantially complied with, particularly when the parties have no knowledge of an attempt to procure insurance on their behalf, the statutory requirements for coming under the Act have not been substantially complied with. In the case of Dependents of Sweeney v. Cape Fear Wood Corp., 236 S.C. 471, 118 S.E.2d 70 (1961), the Court held an employer may become subject to the Act by "substantially complying" with statutory and regulatory requirements. Accordingly, in the case of Nolan v. National Sales Co., Inc., 292 S.C. 1, 354 S.E.2d 575 (Ct.App. 1987), the Court recognized the principle of substantial compliance with the workers' compensation statutes in order to become subject to the Act. This opinion was affirmed by the Supreme Court. See Nolan v. National Sales Co., Inc., 294 S.C. 371, 364 S.E.2d 572 (1988). The Court recognized substantial compliance with the law in South Carolina is all that is necessary for a company to become subject to the Workers' Compensation Act in South Carolina.

In view of the foregoing analysis of South Carolina case law pertinent to the doctrine of substantial compliance, the undersigned therefore concludes that the Commission erred as a matter of law in its Supplemental Order dated August 30, 2012 to

the extent it concluded and held that the doctrine of substantial compliance has no bearing on, or applicability to, a determination on whether an employer maintained valid workers' compensation insurance at a particular time in question and, therefore, no bearing on the Commission's prior findings, conclusions and holdings concerning coverage for Quality HR, Spectrum HR and their respective client companies. In view of this error of law, the Commission's holding in connection with the "substantial compliance" issue is hereby reversed.

In applying the doctrine of substantial compliance to the facts in the matter on appeal, the undersigned concludes that coverage by Realm for Spectrum HR and Quality HR was effectuated. In that regard, the facts in Yeomans are parallel to the facts here. The owners of Spectrum HR and Quality HR believed they were covered. They were provided with actual Certificates of Insurance and policy numbers. While an actual policy was not issued, nonetheless, a Certificate of Insurance was issued and was used as contemplated by the statute and Regulations for proof of insurance. The fact that both Quality HR and Spectrum HR received Certificates of Insurance from AIM indicating their carrier was Realm; that Quality HR and Spectrum HR operated under the reasonable assumption they had proper insurance from Realm; and the very critical fact that Realm covered and paid claims until it became insolvent compel this conclusion and result. Moreover, while the facts of these claims on appeal do not fit squarely within either the statutory provisions establishing either SCUEF or SCPCIGA, the undersigned concludes that when looking at the larger purpose of statutory intent, it is clear that between SCUEF and SCPCIGA, SCPCIGA should provide coverage. Therefore, having concluded that coverage was effectuated for Quality HR and Spectrum HR under the Workers'



Compensation Act pursuant to the doctrine of substantial compliance; the Court further concludes that such renders the claims that are subject to this appeal to be "covered claims" under the Guaranty Act as a matter of law and that AIM, Realm and SCPCIGA are legally precluded from otherwise contesting the same. In connection therewith, the Court cites and relies on the principle advocated by SCUEF that SCPCIGA cannot rely on the purported fraud of a third party (i.e. AIM or Realm) to avoid these claims on appeal being considered "covered claims" under the Guaranty Act (see, e.g., Emmerson v. Powell, 283 S.C. 293, 321 S.E.2d 629 (Ct.App. 1984)).

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Commission's findings, rulings and holding that Realm is estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 are hereby reversed.

IT IS FURTHER ORDERED that the Commission's holding that the doctrine of substantial compliance has no bearing on, or applicability to, a determination of whether an employer maintained workers' compensation insurance coverage at a particular time in question is hereby reversed.

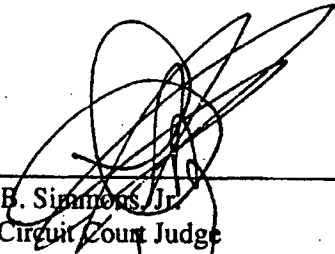
IT IS FURTHER ORDERED that the doctrine of substantial compliance applicable to the facts in this matter establish coverage by Realm for Quality HR, Spectrum HR and their respective client companies under the Workers' Compensation Act in connection with the claims that are subject to this appeal.

IT IS FURTHER ORDERED that in view of the doctrine of substantial compliance establishing coverage for Quality HR, Spectrum HR and their respective



client companies with Realm, such renders the claims that are subject to this appeal
"covered claims" under the terms and provisions of the Guaranty Act as a matter of law.

IT IS SO ORDERED.



Charles B. Simmons, Jr.
Special Circuit Court Judge

Dated: 2/13/13

coverage. Two professional employer organizations (PEOs) known as Quality HR Services (hereinafter "Quality HR") and Spectrum HR allege that they and their client companies maintained workers' compensation insurance coverage with Realm National Insurance Company (hereinafter "Realm") at the time of the subject accidents associated with the various claims.¹ These matters and two other matters were consolidated by the Commission for a joint hearing to determine coverage issues relative to Quality HR Services, Spectrum HR, and the various client companies.² The joint coverage hearing was held on June 26 and 27, 2008 in Columbia, South Carolina before Commissioner Andrea C. Roche. SCPCIGA is a party to this proceeding as a result of the liquidation of Realm by Order of the State of New York on June 15, 2005. At issue was whether Spectrum HR, Quality HR, and/or any of their respective client companies maintained workers' compensation insurance coverage with Realm at the time of the subject accidents relative to the various claims and whether the various claims constitute "covered claims" under the South Carolina Property and Casualty Insurance Guaranty

¹ In regard to the Steven Cameron matter, the client company Keith's Welding maintained a separate workers' compensation insurance policy with Capital City Insurance Company at the time of the subject accident relative to that claim.

² In regard to the Joseph Coonce v. Spectrum HR Services, et al. matter (W.C.C. File No. 0408190), there was no appeal by any party to that case from the Hearing Commissioner's holding that neither Spectrum HR or its client company Fleet Source were insured at the time in question and a subsequent Order of Commissioner Andrea C. Roche in connection with the substantive Forms 50 and 51 issues confirmed dismissal of South Carolina Property and Casualty Insurance Guaranty Association as a party to that claim. At the time of the coverage hearing, reference was made with regard to potential settlements of the Steven Cameron and Arthur Mobley v. Quality HR Services, et al. (W.C.C. File No. 0406356) matters. Subsequent to the coverage hearing but prior to issuance of a Decision and Order, the Commission approved an Agreement and Final Release (i.e. Clincher) in the Mobley matter. To the extent that the above named claims involve a pending employee claim for compensation, the Commission has subject matter jurisdiction to determine the coverage issues; however, to the extent the Commission has approved settlements of employee claims for compensation or the employee's claim for compensation has been finally determined, the Workers' Compensation Commission would be without subject matter jurisdiction to rule on coverage issues relative to any such case. See Laboureur v. Harleysville Mutual Insurance Company, 302 S.C. 540, 397 SE2d 526 (1990).



Association Act, §38-31-10 et seq. of the South Carolina Code (1976, as amended) (hereinafter "Guaranty Act").

BACKGROUND

Central to the coverage hearing issues is an understanding of the relationship between various PEOs, specifically including Spectrum HR and Quality HR, and an entity known as American Insurance Managers, Inc., and its affiliates and representatives (hereinafter collectively referred to as "AIM") and AIM's relationship with Realm and Realm's parent companies (AlphaStar Insurance Group, Ltd., and Stirling Cooke North American Holdings, Inc. hereinafter referred to collectively and individually as "Realm's parent companies"). Realm was a New York Insurance Company. In accordance with New York's insurance law, the New York Superintendent of Insurance sought and obtained an Order of the State Supreme Court, New York County, dated June 15, 2005 declaring that Realm was insolvent and appointing the New York Superintendent of Insurance as liquidator of Realm with directions to take possession of Realm's assets and property and to liquidate Realm's affairs for the benefit of its policyholders, creditors and investors and resolve liabilities and claims against Realm's estate. The New York Superintendent's duties in that regard are carried out by the New York Liquidation Bureau.

AIM is a Georgia corporation. AIM is not an insurance carrier but has functioned in various capacities relative to the insurance industry. AIM embarked on a plan to create a workers' compensation insurance program for PEOs that would be affordable for the PEOs and profitable for AIM. Various issues relative to the formation of such a program including re-insurance and the participation of a licensed insurer to serve as the issuing



carrier were explored. In connection with its efforts to find an issuing carrier for the program, Realm was identified by AIM, through an intermediary, as a licensed insurance carrier that could be purchased. In order to effectuate the purchase of Realm, AIM further developed, and marketed to various PEOs, a program whereby AIM and the various PEOs would form a company known as Glastonbury which would purchase and own Realm.

On October 2, 2002, AIM entered into a letter of intent with Realm's parent companies to negotiate the purchase of all the outstanding stock of Realm subject to the approval of regulatory authorities having jurisdiction over Realm. Realm alleged that this was a non-binding letter. Prior to the negotiation of any further terms associated with the proposed transaction and prior to any regulatory approval for the transaction, AIM purported to bind workers' compensation coverage under Realm's name and along with various subproducers, began issuing Certificates of Insurance in late 2002. Realm denied that AIM was ever authorized to issue insurance certificates using Realm's name. Pam and David Evette of Quality HR also testified that they were told by Realm's President that they were covered during a meeting at AIM's Atlanta offices in July 2003.

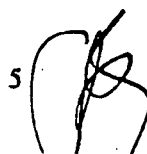
Following the issuance of numerous Certificates of Insurance issued in Realm's name by AIM and various subproducers including U.S. Insurance Group, Realm provided written notice to various State regulators and various PEOs, including Quality HR and Spectrum HR, that the certificates were invalid and that Realm was not providing coverage to the various PEOs or their client companies. AIM advised the various PEOs of the dispute in writing. Realm's parent companies and Realm filed suit against AIM in the United States District Court, Southern District of New York seeking a declaratory



judgment that AIM was not authorized to bind insurance on behalf of Realm and claiming damages and other relief. The Court directed the parties to engage in settlement negotiations and as a result, the parties entered into a stock purchase agreement for the sale of Realm to AIM on March 21, 2003.

As a result of the failure to close the transaction in connection with the stock purchase agreement, AIM subsequently brought suit in the Delaware Chancery Court to foreclose on the stock given as security on the interim loan to Realm's parent companies. Thereafter, Realm and Realm's parent companies voluntarily dismissed the pending District Court action and on December 15, 2003, Realm's parent companies filed for Bankruptcy Court protection in the United States Bankruptcy Court for the Southern District of New York. AIM commenced another action in the United States District Court, Southern District of New York on January 12, 2004 making allegations of fraud against the individual officers and directors of Realm and Realm's parent companies and seeking a declaratory judgment of validity of the coverage AIM had issued purportedly on behalf of Realm. On May 3, 2004, the Bankruptcy Court stayed AIM's action filed in District Court and consolidated into the Bankruptcy Court's adversary proceedings AIM's action filed in Federal District Court along with various lawsuits filed against Realm and AIM by persons to whom coverage had purportedly been sold by AIM.

Following the Order of Liquidation relative to Realm entered by the State of New York in June 2005, the Superintendent of Insurance of the State of New York, in his capacity as liquidator of Realm, filed a Motion to Dismiss from the Bankruptcy Court proceedings, various claims including those alleged by Realm against AIM and AIM against Realm. On May 4, 2006, Judge Stuart M. Bernstein of the United States

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Bankruptcy Court issued an Order for dismissal relative to various claims, including those alleged by Realm against AIM and AIM against Realm, from the Bankruptcy Court proceedings. This Order effectively divorced the various claims between Realm and AIM from those associated with claims as between AIM and Realm's parent companies, which remained under the jurisdiction of the Bankruptcy Court. The Bankruptcy Court subsequently approved the assignment of Realm's parent companies' stock in Realm to AIM in August 2006 as satisfaction of AIM's claims against Realm's parent companies.

Also in conjunction with the Bankruptcy Court proceedings, AIM sought to have reference to its claims against the various individual directors and officers of Realm and Realm's parent companies removed from the Bankruptcy Court proceedings. The Bankruptcy Court granted AIM's requested relief in that regard and AIM reconstituted its prior complaint in Federal District Court alleging, *inter alia*, essentially the same causes of action set forth in the District Court action it filed in January 2004. The reconstituted complaint also named the New York Superintendent of Insurance and New York Liquidation Bureau as Defendants and sought a declaration that the coverage AIM bound with Realm on behalf of the various PEOs was effective. That action was subsequently dismissed by consent pursuant to a Stipulation and Order filed on June 16, 2008 that was executed by the attorneys for the various parties, including attorney Stanley A. Coburn on behalf of AIM, and approved by U.S. District Judge Richard J. Holwell. In summary, the various litigation in the United States Bankruptcy Court and District Court for the Southern District of New York did not yield any determination concerning the coverage issue.

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THE COMMISSION'S DECISION AND ORDER

Following the coverage hearing and submission of Post-Hearing Briefs by various parties, the Single Commissioner issued her Decision and Order dated April 22, 2009 wherein she made the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.
2. AIM and Alphastar intended to enter into an agreement whereby Alphastar would sell Realm to AIM. There was an intention by both parties that AIM would be a duly authorized agent of Realm during the pendency of the sale. The Letter of Intent provided, however, that Realm would have to enter into a general agency agreement with AIM. Although a general agency agreement was prepared by Realm, I find Realm did not execute the agreement.
3. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement. I also find the evidence does not support a finding of apparent authority. Furthermore, I find the evidence does not support a finding that

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Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement. I find Dennett-Smith's testimony at the hearing on this issue conflicted with positions earlier asserted by AIM in contemporaneous documents.

4. Based on the letters from Mark Sioma, I find Realm disavowed any coverage and considered the certificates of insurance *void ab initio*.
5. Based on the letters from Mark Sioma to Quality, I find Quality was aware of the coverage issue as early as December, 2002. This is not disputed by Quality.
6. I find that after the Realm lawsuit was filed, Realm, Aim, and Alphastar continued to negotiate in an attempt to consummate the sale. As a result, the parties entered into the Stock Purchase Agreement.
7. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party, including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.
8. After the signing of the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur until AIM filed the Delaware suit and Alphastar filed for

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bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I do not make any finding as to the actual intent of AIM, Alphastar, or Realm regarding the pending sale. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.

9. Based on the evidence in the record, I find claims from the PEOs were being adjusted and paid. I find that Crawford was adjusting claims for a period of time. The claims were being paid by AIM while the deal was still pending. I find Realm was aware of all this, and based on the e-mails, approved.
9. Pam Evette and David Evette testified at the hearing. I find Pam Evette, in particular, was a credible witness. Based on the testimony of Pam and David Evette, I find that Quality believed it had coverage with Realm. I find Pam Evette was growing uneasy regarding the ongoing dispute between AIM and Realm. I find Pam and David Evette traveled to AIM's offices in Atlanta to address their concerns. Mark Sioma, as President of Realm, represented to Pam David Evette on July 22, 2003 that Quality and

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- its clients had coverage with Realm. I find that Quality relied on these representations of Mark Sioma and did not seek other coverage as a result.
10. I find the South Carolina Department of Consumer Affairs sent a letter dated November 7, 2003 to Quality. In that letter, the Department stated Realm informed them that the certificates were not valid and that Realm denied coverage.
 11. I find that Realm, based on the representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true. I find Quality was uninsured for any pertinent dates outside July 22, 2003 through November 7, 2003.
 12. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum was uninsured during the pertinent time period.

CONCLUSIONS OF LAW

1. Because the issues before me are whether Quality and Spectrum and their respective clients had coverage with Realm and who would be responsible for paying on these claims if any benefits are due, I do not reach any other issues in the claims including, but not limited to, compensability, benefits due, and employer/employee relationship. All other issues remaining in the consolidated claims other than the issue before me are preserved.

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2. When there is a pending employee claim for compensation, the exclusive jurisdiction for the determination of questions concerning cancellation, coverage, construction of insurance contracts, and the like, is in the Workers' Compensation Commission. Labouseur v. Harleysville Mut. Ins. Co., 302 S.C. 540, 397 S.E.2d 526 S.C. (1990).
2. Based on the evidence, including the fact that Realm did not execute the agency agreement, I find AIM did not have real authority to issue certificates of insurance in the time preceding the Stock Purchase Agreement.
3. "The doctrine of apparent authority provides that the principal is bound by the acts of its agent when it has placed the agent in such a position that persons of ordinary prudence, reasonably knowledgeable with business usages and customs, are led to believe the agent has certain authority and they in turn deal with the agent based on that assumption." Fernander v. Thigpen, 278 S.C. 140, 143, 293 S.E.2d 424, 426 (1982). I find the evidence does not support a finding of apparent authority. I find Realm did not lead anyone to believe that AIM was its agent in the time preceding the Stock Purchase Agreement.
4. I find the evidence does not support a finding that Realm was binding the coverage itself in the time preceding the Stock Purchase Agreement.
5. The Stock Purchase Agreement provided it did "not permit the binding of coverage or issuance of Certificates of Insurance until the First Closing." Therefore, I find the Stock Purchase Agreement did not permit any party,

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including Realm, to bind coverage or issue Certificates of Insurance for the PEO program until the First Closing. The First Closing as contemplated by the Stock Purchase Agreement never occurred; therefore, pursuant to the Stock Purchase Agreement, no coverage was bound.

6. After the Stock Purchase Agreement, the e-mails between Realm and AIM reveal both parties were actively involved in underwriting. I find the parties continued to behave as if the sale would occur up until AIM filed the Delaware suit and Alphastar filed for bankruptcy. I find the parties behaved as if the PEO program would go forward, and the coverage would be bound back to October 1, 2002 at the time of the First Closing. I find Realm actively engaged in underwriting with AIM. Contrary to what was suggested at the hearing, I find Realm was involved in assigning policy numbers. In an e-mail, Roni Zinnert wrote "[i]t appears we have assigned two policy numbers to this one client. See EBB158011 and EBB15863." Also in those e-mails, however, any reference to a client being bound is in quotes. I do not find these underwriting actions constituted the binding of coverage.
7. The essential elements of equitable estoppel are: (1) ignorance of the party invoking it of the truth as to the facts in question; (2) representations or conduct of the party estopped which misled; (3) reliance upon such representations or conduct; and (4) prejudicial change of position as the result of such reliance. Pitts v. New York Life Ins. Co., 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1966). I find that Realm, based on the

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representations of Mark Sioma, is estopped from denying coverage from July 22, 2003, the date of the representations by Sioma until November 7, 2003, the date Quality should have known Sioma's representations were not true.

8. I find Quality and its clients were not insured by Realm for any pertinent dates outside July 22, 2003 through November 7, 2003.
9. I find Realm did not bind any coverage of Spectrum or any of its clients. I find neither AIM nor US Insurance Group was authorized to bind coverage for Spectrum or any of its clients. Therefore, I find Spectrum and its clients were not insured by Realm during the pertinent time period.
10. I find claims for the period time Realm was estopped from denying coverage are "covered claims" as contemplated in §38-1-20 and the provisions of the Guaranty Act. I do not reach the issue of whether any of the claims are time barred pursuant to §38-1-60(2), as I find this issue more appropriately handled on a case by case basis.

Based on these findings and conclusions, the Single Commissioner held that Realm was estopped from denying coverage for the Quality HR claims with dates of accident from July 22, 2003 through November 7, 2003; that Quality HR and its clients were not insured for the claims with dates of accident outside July 22, 2003 through November 7, 2003; that Spectrum HR and its clients were not insured by Realm on any of the Spectrum HR claims; that the Quality HR claims with dates of accident from July 22, 2003 until November 7, 2003 are "covered claims" as contemplated in §38-1-20 (sic)

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and the provisions of the Guaranty Act (i.e. the Brockman, Burke, Cameron, Hunter, and Pringle matters).

Following service of the Single Commissioner's Decision and Order on April 22, 2009, several parties timely filed a Form 30 Request for Commission Review. A Form 30 Request for Commission Review was filed by ABC Investments, Inc. in connection with the Harmon matter. SCUEF filed a Form 30 Request for Commission Review under the caption "Jessie Pringle, et.al. v. Healthcare Services Group, et.al.", (Realm National Insurance Company cases). SCPCIGA filed its Form 30 Request for Commission Review in connection with all of the above referenced cases. There was no Form 30 Request for Commission Review filed on behalf of any other party. Briefs were filed on behalf of SCPCIGA, SCUEF, ABC Investments, Inc. and Quality HR. Oral argument was held before a Full Commission Appellate Panel on October 26, 2009 in Columbia, South Carolina. Thereafter, the Full Commission Appellate Panel issued its Decision and Order dated January 5, 2010 wherein it affirmed the Order of the Single Commissioner in its entirety. From this Decision and Order, SCPCIGA, SCUEF and ABC Investments, Inc. appealed to the Court of Common Pleas for Greenville County pursuant to §42-17-60 and §1-23-380 of the South Carolina Code (1976, as amended).

**PRIOR PROCEEDINGS BEFORE THE COURT OF COMMON
PLEAS AND REMAND PROCEEDINGS BEFORE THE
COMMISSION**

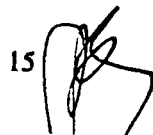
In connection with the appeals of SCPCIGA, SCUEF and ABC Investments, Inc. to the Court of Common Pleas for Greenville County, the parties were heard before the undersigned on August 18, 2010. The undersigned issued an Order dated September 9, 2010 and filed September 13, 2010 remanding the matter to the Commission to

specifically answer three questions which were properly raised on appeal and not answered by the Commission. Those remand questions were as follows:

1. Because no party directly raised the issue of estoppel, did the determination that Realm National Insurance Company is estopped from denying coverage from July 22, 2003 through November 7, 2003 violate the due process rights of the Guaranty Association?
2. Conclusion of Law #11 concludes the claims from July 22, 2003 to November 7, 2003 were "covered claims" as contemplated by §38-30-20 and the provisions of the Guaranty Act. On remand, the Commission shall make detailed findings of fact and conclusions of law and explain with certainty and in detail, why the claims are "covered" pursuant to the Guaranty Act, accepting or rejecting the Association's arguments in its brief.
3. In conjunction with Number 2 above, it doesn't appear that the Commission has ever addressed the issue raised by the UEF concerning whether issuing of Certificates of Insurance with policy numbers attached makes the claims "covered" under the Workers' Compensation doctrine of substantial compliance expounded in the brief of the UEF.

The Full Commission Appellate Panel issued its Supplemental Order dated August 30, 2012 which addressed the questions on remand from the undersigned.³ Concerning the issue of whether SCPCIGA's due process rights were denied by the Commission in disposing of the coverage issues pertinent to five of the Quality HR claims based on equitable estoppel, the Full Commission Appellate Panel found that this issue was raised prior to the consolidated coverage hearing before the Single Commissioner by SCPCIGA in its Pre-Hearing Brief and in its Position Statement submitted to the Single Commissioner. In response to the Court of Common Pleas' directive for the Commission to make detailed findings of fact and conclusions of law and explain with certainty and in detail why these five Quality HR claims are "covered" under the Guaranty Act, the Full

³ This Appellate Panel consisted of Commissioner Derrick Williams and Commissioner Avery Wilkerson. The original Appellate Panel which issued the Commission's Decision and Order dated January 5, 2010 also included Commissioner David Huffstetler who is no longer a member of the Commission.



Commission Appellate Panel relied on a California Appeals Court opinion to hold that the behavior of Realm's President constitutes an "insurance policy" "issued by an insurer" and that the South Carolina legislature has made a list of excluded claims but did not exclude claims created by estoppel. In connection with the "substantial compliance" issue raised by SCUEF, the Full Commission Appellate Panel referenced the applicable South Carolina Court decisions addressing the doctrine of substantial compliance and concluded that such pertains to otherwise exempt employees and/or employers under §42-1-360 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 codes) and waiver of those exemptions under §42-1-380 of the South Carolina Code (1976, as amended) (and/or its prior versions under the 1936, 1942, 1952 and/or 1962 codes). Accordingly, the Commission concluded that the doctrine has no bearing on, or applicability to, a determination on whether an employer maintained valid workers' compensation insurance at a particular time in question and, therefore, no bearing on the Commission's prior holdings concerning coverage for Quality HR, Spectrum HR and their respective client companies, or the findings of fact and conclusions of law in support thereof as set forth in the Commission's January 5, 2010 Decision and Order. Following service of the Full Commission Appellate Panel's Supplemental Order, the matter was reset for oral argument before the undersigned on October 24, 2012 in Greenville, South Carolina.

ISSUES ON APPEAL

The specific grounds for appeal and exceptions before the Court are fully set forth in the appealing parties' Petitions for Judicial Review as follows: SCPCIGA's amended Petition for Judicial Review dated September 7, 2012; SCUEF's Petition for Judicial



Review dated February 5, 2010; and ABC Investments' Petition for Judicial Review dated January 27, 2010. In summary, SCPCIGA contends that the Commission erred as a matter of law in connection with its findings, conclusions and holding that Realm was estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003. SCPCIGA also contends that the Commission erred as a matter of law relative to its conclusions and holdings that the Quality HR claims with dates of accident from July 22, 2003 through November 7, 2003 are "covered claims" under the Guaranty Act. SCPCIGA further contends that it was denied due process of law as a result of the Commission's decision to dispose of the coverage issues in five of the Quality HR claims based on an estoppel theory of coverage and that the Commission's holding in connection with this issue as set forth in its Supplemental Order is clearly erroneous. SCUEF argues, pursuant to the doctrine of "substantial compliance" under the Workers' Compensation Act, that coverage by Realm should be afforded on all of the claims subject to this appeal. In that regard, SCUEF asserts that the issuance of certificates of insurance with policy numbers attached to Quality HR and Spectrum HR reflecting workers' compensation insurance coverage with Realm, and the belief by Quality HR and Spectrum HR that they had secured workers' compensation insurance, effectuated coverage with Realm on the claims subject to this appeal pursuant to the doctrine of substantial compliance. SCUEF further asserts that as a result of the coverage created for Quality HR and Spectrum HR by Realm pursuant to the doctrine of substantial compliance under the Workers' Compensation Act, the claims subject to this appeal should be considered "covered claims" under the Guaranty Act and that SCPCIGA cannot rely upon the fraud of a third party to contest such claims being

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considered "covered claims" under the Guaranty Act. Moreover, SCUEF asserts that the statutory intent of the Guaranty Act is more applicable to the facts of these matters than the statutory provisions of the Workers' Compensation Act creating SCUEF. ABC Investments joins in the position of SCUEF. Quality HR as a participating Respondent also joins in the position of SCUEF.

DISCUSSION AND ANALYSIS

The undersigned will first address SCPCIGA's contention that the Commission made several errors of law in connection with its findings, rulings and holding that Realm is estopped from denying coverage from Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 which effectively resulted in a "proration" of the claims as between SCPCIGA and SCUEF. The Court is cognizant that the Commission attempted to reach a very fair result in doing this "proration"; however, counsel for all participating parties, except for counsel for Capital City/ QBE Specialty Insurance with respect to the Steve Cameron v. Keith's Welding matter, have candidly conceded to the Court that such is not proper under South Carolina law (Counsel for Capital City/ QBE Specialty Insurance with respect to the Steven Cameron v. Keith's Welding matter argued that Preferred Risk Mutual Insurance Company v. Thomas, 372 F2d 227 (4th Cir. 1967) would apply and allow the Workers' Compensation Commission to apply *Estoppel* to the facts at hand). In that regard, the undersigned will address SCPCIGA's threshold legal argument that the doctrine of estoppel cannot be used to create a primary liability or coverage without the necessity of addressing the facts and evidence pertinent to the essential elements of equitable estoppel under South Carolina law as delineated in the Commission's Order relying on the case of

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Pitts v. New York Life Insurance Company, 247 S.C. 545, 552, 148 S.E.2d 369, 371 (1966). As a general rule, insurance coverage may not be expanded or created by waiver or estoppel. "The weight of authority is said to support the view that the coverage, or restrictions on the coverage, cannot be extended by the doctrine of waiver or estoppel. To the same effect[,] it has been broadly stated that the doctrines of waiver and estoppel cannot be used to extend the coverage of an insurance policy or create a primary liability, but may only affect rights reserved therein ... [U]nder no conditions can the coverage or restrictions on coverage be extended by waiver or estoppel." Campbell, Inc. v. Northern Insurance Co. of New York, 337 F.Supp. 2d 764, 769 (2004) citing Pitts and 16 Appleman, Insurance Law and Practice, Section 9090, page 629.

Accordingly, the Court finds and holds that there was no legal basis for the Commission to have "carved out" or "prorated" the claims that are subject to this appeal as between SCPCIGA and SCUEF and that to have done so by relying on the doctrine of estoppel constitutes an error of law in this instance. Therefore, the Commission's findings, rulings and holding that Realm is estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 are hereby reversed. In view of this determination, it is unnecessary for the Court to address the additional assertion of error raised by SCPCIGA in connection with this issue, specifically the assertions that the Commission erred in applying the law concerning equitable estoppel to the facts. Moreover, this determination renders as moot, SCPCIGA's contentions that it was denied due process of law and that the Commission erred as a matter of law in holding that the Quality HR claims which on

Realm was held to be estopped from denying coverage constitute "covered claims" under the Guaranty Act.

The undersigned now turns to the issues raised by SCUEF in connection with its appeal and which were joined in by Appellant ABC Investments and Respondent Quality HR. South Carolina workers' compensation law is clear involving the issuance of insurance policies. The Supreme Court has held on multiple occasions that the actual issuance of policies under the Workers' Compensation Act is not necessary to create coverage. Case law in South Carolina supports the concept that even though an actual policy of insurance was never issued to Quality HR or Spectrum HR, the conditions necessary to create coverage under the Workers' Compensation Act and the Guaranty Act have been "substantially complied" with. Moreover, the undersigned notes that Title 42 recognizes that Certificates of Insurance can be considered valid evidence of workers' compensation coverage (see §42-1-415 of the South Carolina Code (1976, as amended)). The South Carolina Supreme Court has also recognized that the specific provisions of Title 42 as they relate to coverage of workers under the Workers' Compensation Act, need not be strictly complied with in order to establish coverage under the Act.

The doctrine of "substantial compliance" under the Workers' Compensation Act has been recognized by the Supreme Court almost from the inception of the Act. Originally, the Regulations of the Commission required a formal notice and actual filing of a policy of insurance with the Commission in order for an otherwise exempt employer to be subject to the Act. Therefore, in the case of Yeomans v. Anheuser-Busch, Inc., 198 S.C. 65, 15 S.E.2d 833 (1941), the Commission held that because Anheuser-Busch, an otherwise exempt employer, had not filed formal notice of acceptance of the Workers'

Compensation Act and had not filed an actual policy of insurance, that it was not subject to the Workers' Compensation Act even though it had done all other actions necessary to cover its employees under the Workers' Compensation Act. However, the Supreme Court reversed the determination of the Commission and stated that because the employer had done all of the acts otherwise necessary other than actually filing a policy of insurance and a notice of intent with the Commission, it had "substantially complied" with the Workers' Compensation Act. The Court held it was clear the intent of Anheuser-Busch was that it would be subject to the Act even though it had only two employees in South Carolina. Anheuser-Busch procured insurance and actually filed a policy number with the Commission but failed to file the actual policy and formal notice. The Court made it clear that it made no practical sense to allow Anheuser-Busch and its carrier to avoid the Act on a "technicality".

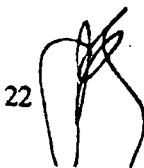
Further, in the case of Carter v. Associated Petroleum Carriers, 235 S.C. 81, 10 S.E.2d 8 (1959), the Court held that when the Workers' Compensation Act is not substantially complied with, particularly when the parties have no knowledge of an attempt to procure insurance on their behalf, the statutory requirements for coming under the Act have not been substantially complied with. In the case of Dependents of Sweeney v. Cape Fear Wood Corp., 236 S.C. 471, 118 S.E.2d 70 (1961), the Court held an employer may become subject to the Act by "substantially complying" with statutory and regulatory requirements. Accordingly, in the case of Nolan v. National Sales Co., Inc., 292 S.C. 1, 354 S.E.2d 575 (Ct.App. 1987), the Court recognized the principle of substantial compliance with the workers' compensation statutes in order to become subject to the Act. This opinion was affirmed by the Supreme Court. See Nolan v.

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National Sales Co., Inc., 294 S.C. 371, 364 S.E.2d 572 (1988). The Court recognized substantial compliance with the law in South Carolina is all that is necessary for a company to become subject to the Workers' Compensation Act in South Carolina.

In view of the foregoing analysis of South Carolina case law pertinent to the doctrine of substantial compliance, the undersigned therefore concludes that the Commission erred as a matter of law in its Supplemental Order dated August 30, 2012 to the extent it concluded and held that the doctrine of substantial compliance has no bearing on, or applicability to, a determination on whether an employer maintained valid workers' compensation insurance at a particular time in question and, therefore, no bearing on the Commission's prior findings, conclusions and holdings concerning coverage for Quality HR, Spectrum HR and their respective client companies. In view of this error of law, the Commission's holding in connection with the "substantial compliance" issue is hereby reversed.

In applying the doctrine of substantial compliance to the facts in the matter on appeal, the undersigned concludes that coverage by Realm for Spectrum HR and Quality HR was effectuated. In that regard, the facts in Yeomans are parallel to the facts here. The owners of Spectrum HR and Quality HR believed they were covered. They were provided with actual Certificates of Insurance and policy numbers. While an actual policy was not issued, nonetheless, a Certificate of Insurance was issued and was used as contemplated by the statute and Regulations for proof of insurance. The fact that both Quality HR and Spectrum HR received Certificates of Insurance from AIM indicating their carrier was Realm; that Quality HR and Spectrum HR operated under the reasonable assumption they had proper insurance from Realm; and the very critical fact that Realm



covered and paid claims until it became insolvent compel this conclusion and result. Moreover, while the facts of these claims on appeal do not fit squarely within either the statutory provisions establishing either SCUEF or SCPCIGA, the undersigned concludes that when looking at the larger purpose of statutory intent, it is clear that between SCUEF and SCPCIGA, SCPCIGA should provide coverage. Therefore, having concluded that coverage was effectuated for Quality HR and Spectrum HR under the Workers' Compensation Act pursuant to the doctrine of substantial compliance; the Court further concludes that such renders the claims that are subject to this appeal to be "covered claims" under the Guaranty Act as a matter of law and that AIM, Realm and SCPCIGA are legally precluded from otherwise contesting the same. In connection therewith, the Court cites and relies on the principle advocated by SCUEF that SCPCIGA cannot rely on the purported fraud of a third party (i.e. AIM or Realm) to avoid these claims on appeal being considered "covered claims" under the Guaranty Act (see, e.g., Emmerson v. Powell, 283 S.C. 293, 321 S.E.2d 629 (Ct.App. 1984)).

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Commission's findings, rulings and holding that Realm is estopped from denying coverage for Quality HR and its client companies on claims with dates of accident from July 22, 2003 until November 7, 2003 are hereby reversed.

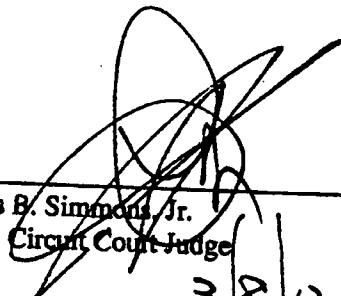
IT IS FURTHER ORDERED that the Commission's holding that the doctrine of substantial compliance has no bearing on, or applicability to, a determination of whether an employer maintained workers' compensation insurance coverage at a particular time in question is hereby reversed.



IT IS FURTHER ORDERED that the doctrine of substantial compliance applicable to the facts in this matter establish coverage by Realm for Quality HR, Spectrum HR and their respective client companies under the Workers' Compensation Act in connection with the claims that are subject to this appeal.

IT IS FURTHER ORDERED that in view of the doctrine of substantial compliance establishing coverage for Quality HR, Spectrum HR and their respective client companies with Realm, such renders the claims that are subject to this appeal "covered claims" under the terms and provisions of the Guaranty Act as a matter of law.

IT IS SO ORDERED.



Charles B. Simmons, Jr.
Special Circuit Court Judge

Dated: _____

3/8/13

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2010CP2300739

Ruth Harmon vs. Tbd

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON):
SCRPC (Vol. Nonsuit); ☐ Rule 12(b), SCRPC; ☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON):
☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

NOTICE

This is a notice to you that an Amended Final Order in this case has been filed in the Clerk of Court's Office. To obtain a certified copy, you may contact our office by phone (864) 467-8551 or email a request to lbobo@greenvillecounty.org. If you would like a copy via email, please provide a valid email address.

Dated at Greenville, South Carolina, this 11th day of March, 2013.

Court Reporter:

PRESIDING JUDGE -

Benjamin Mason Renfrow 872 S. Pleasantburg Dr.
Greenville, SC 29607
Joseph Hubert Wood III PO Box 20550 Charleston,
SC 29413

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June 25, 2008

Commissioner Andrea Pope Roche
South Carolina Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202-1715

Re: **Arthur Mobley v. Quality HR Services, et al**
 WCC File No.: 030662
 Jessie Pringle v. Healthcare Services, et al
 WCC File No.: 0327062
 Martha Burke v. Quality HR Services, et al
 WCC File No.: X030681
 Patricia Wade-Portee v. Quality HR Services
 WCC File No.: 0307616
 Robert Hunter v. JR Construction, et al
 WCC File No.: X040142
 Ruth Harmon v. Spectrum HR, et al.
 SCWCC No. 0406103
 Steve Cameron v. Keith's Welding/Quality HR Service, et al.
 WCC File No.: 0316901

Dear Commissioner Roche:

It is the position of the South Carolina Uninsured Employers Fund that the employees of any leasing company were also the statutory employees of the parent company. In any case in which there is an insurance carrier in the chain, it is the position of the Uninsured Employers Fund that insurance company is responsible for the claim as follows:

Martha Burke v. Quality HR	Crawford and Company
Steve Cameron v. Keith's Welding	Capital City Insurance Company
Arthur Mobley v. Quality HR	ACE/ESIS
Patricia Wade-Portee v. Quality HR	Capital City Insurance Company
Jessie Pringle v. Healthcare Services	Key Risk Management

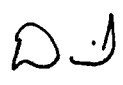
Further, it is the position of the UEF that the parent company/franchisor of Ruth Harmon's immediate employer, Choice Hotels International, is the statutory employer and they are responsible for the claim.

In the case of Robert Hunter v. JR Construction Co., there is no known insurance carrier for JR Construction. In this instance, therefore, it is the position of the UEF that the South Carolina Property & Casualty Guaranty Insurance Association is responsible for the claim.

At the time the Association's statute was created, it was necessary to file an insurance policy with the Workers' Compensation Commission. Since the statute was written, this is no longer the case. It is now only necessary that a certificate of insurance be filed and that is filed with NCCI. In all of these cases, a certificate of insurance was issued and it is the position of the UEF that this "substantially complies" with the requirements of the statute under prior South Carolina Law. Further, it is the position of the UEF that because there is a bankrupt insurance company, the Property & Casualty Guaranty Insurance Association is the proper entity and that the Association may not rely on the fraud of Realm Insurance Company, and failing to issue actual insurance policies, to avoid the intent of the statute. By copy of this letter, I will be hand delivering a copy of the South Carolina Uninsured Employers Fund position by hand delivery on the date of the hearing, June 26, 2008.

Yours truly,

DAVID HILL KELLER, P.A.



David Hill Keller

DHK/rd

- cc: Joseph G. Francis, Jr.
- Benjamin Renfrow
- David W. Boone
- Duke K. McCall, Jr.
- J. Hubert Wood, III
- Jerry Finney
- Landon Hughey
- Robert Treacy
- Michael W. Burkett
- Martha Burke
- Daniel E. Peagler
- Candace G. Hindersman
- Robert Hunter
- Ben C. Harrison
- Brad Easterling
- Jessica Steadman

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 2010-CP-23-0739

Court of Appeals Case No. _____

Artemio Alvarez v. Quality HR Services, et.al.
William Brockman v. Quality HR Services, et.al.
Martha Burke v. Quality HR Services, et.al.
Lucille Dwight v. Quality HR Services, et.al.
Robert Hunter v. Quality HR Services, et.al.
Tammy Miller v. Quality HR Services, et.al.
Patricia Wade-Portee v. Quality HR Services, et.al.
Jessie Pringle v. Quality HR Services, et.al.
Steven Cameron v. Quality HR Services, et.al.
Ruth Harmon v. Spectrum HR, et.al.

RECEIVED

MR. 19 2013

SC Court of Appeals

NOTICE OF APPEAL

WILL YOU PLEASE TAKE NOTICE that South Carolina Property and Casualty Insurance Guaranty Association ("SCPCIGA"), by and through its undersigned attorneys, files this Notice of Appeal to appeal the Amended Order of the Honorable Charles B. Simmons, Jr., Special Circuit Court Judge, dated March 8, 2013 and filed March 11, 2013 in Case No. 2010-CP-23-0739 regarding the above named matters. Appellant received written notice of entry of this Order on March 12, 2013.



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March 14, 2013

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas
Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 2010-CP-23-0739

Court of Appeals Case No. _____

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all interested parties, Greenville County Clerk of Court and South Carolina Workers' Compensation Commission by depositing a copy of it in the United States mail, postage prepaid, on March 14, 2013 addressed as follows:

Certified Mail/RRR

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Columbia, SC 29202-1715

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MAR 19 2013
SC Court of Appeals

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By 

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Attorneys for Appellant

March 14, 2013

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Steve Cameron,	)	
Employee,	)	
Claimant,	)	Civil Action No.2010-CP-230739
	)	
vs.	)	
	)	
Keith's Welding Services, Inc.; Quality HR,	)	MOTION TO RECONSIDER
Inc,	)	
	)	
Employer,	)	
and	)	
	)	
Capital City Insurance Co., Inc.,	)	
	)	
Carrier,	)	
Defendants.	)	

Pursuant to SCRP 59(e), Defendants Capital City Insurance Co., Inc., and Keith's Welding Services, Inc request the Court:

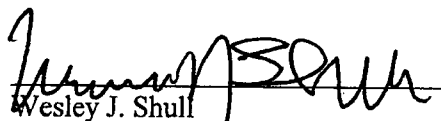
- (1) Reconsider the language placed in its February 14, 2013, Order whereby it stated, "The Court is cognizant that the Commission attempted to reach a very fair result in doing this 'proration'; however, counsel of all participating parties have candidly conceded to the Court that such is not proper under South Carolina law," because this language does not accurately reflect the position taken and argued by Keith's Welding Services, Inc. and Capital City Insurance Co., Inc at the argument.
- (2) Reconsider its reversal of the South Carolina Workers' Compensation Commission with respect to whether the Doctrine of *Estoppel* does or does not apply because its failure to address this issue is on an error of law, is arbitrary and/or capricious, is characterized by an abuse of discretion and/or is clearly an unwarranted exercise of discretion, an is clearly erroneous in review of the reliable, probative and substantial evidence on the whole record. Specifically,

the Court failed to address whether Preferred Risk Mutual Insurance Company
v. Thomas, 372 F2d 227 (4th Cir. 1967) would apply.

In Conclusion, Defendants respectfully request that this Court reconsider its decision and
Order of February 14, 2013.

Respectfully submitted,

WILLSON JONES CARTER & BAXLEY, P.A.



Wesley J. Shull
872 S. Pleasantburg Drive
Greenville, SC 29607
Attorney for Defendants

Date: February 22, 2013

STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS
Steve Cameron,	)	
Employee,	)	
Claimant,	)	Civil Action No.2010-CP-230739
	)	
vs.	)	
	)	
Keith's Welding Services, Inc.; Quality HR,	)	Certificate of Service
Inc,	)	
	)	
Employer,	)	
and	)	
	)	
Capital City Insurance Co., Inc.,	)	
	)	
Carrier,	)	
Defendants.	)	

I, Trudy R. Sharpless, do hereby certify that I am the assistant to for Wesley J. Shull, Esquire, attorney for the defendants with **WILLSON JONES CARTER & BAXLEY, P.A.** in Greenville, South Carolina, and that on the 25th day of October, 2012, I mailed the foregoing MOTION TO RECONSIDER to the following by placing a copy thereof in the United States mail, first class, proper postage affixed thereto:

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Trudy R. Sharpless

Trudy R. Sharpless, Assistant to
Wesley J. Shull, Esquire

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Greenville, SC 29607

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JESSIE PRINGLE,	)	
	)	
CLAIMANT,	)	HEARING BEFORE
	)	COMMISSIONER
vs.	)	ANDREA POPE ROCHE
	)	
HEALTHCARE SERVICES GROUP	)	WCC 0327062
	)	
EMPLOYER,	)	
_____	)	VOLUME 1
	)	
RUTH HARMON,	)	<u>PAGES 1 - 233</u>
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC 0406103
	)	
SPECTRUM HR, LLC,	)	
	)	
EMPLOYER,	)	
_____	)	
	)	
JOSEPH C. COONCE,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC 0408190
	)	
SPECTRUM HR-PA-M, LLC,	)	
	)	
EMPLOYER,	)	
_____	)	
	)	
STEVE CAMERON,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC 0316901
	)	
KEITH'S WELDING/QUALITY HR	)	
SERVICES,	)	
	)	
EMPLOYER,	)	
_____	)	

 **COPY**

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

ARTEMIO ALVAREZ,	)	
	)	HEARING BEFORE
CLAIMANT,	)	COMMISSIONER
	)	ANDREA POPE ROCHE
vs.	)	
	)	
QUALITY HR SERVICES/EMPLOYMENT	)	WCC X030301
SOLUTIONS,	)	
	)	
EMPLOYER,	)	
_____	)	
	)	
MARTHA G. BURKE,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X030681
	)	
QUALITY HR SERVICES, INC.,	)	
	)	
EMPLOYER,	)	
_____	)	
	)	
ROBERT HUNTER,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X040142
	)	
JR CONSTRUCTION,	)	
	)	
EMPLOYER,	)	
_____	)	
	)	
TAMMY MILLER,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X040301
	)	
QUALITY HR,	)	
	)	
EMPLOYER,	)	
	)	

CORA ELLIS BRUTON - COURT REPORTER
803-397-0189

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

PATRICIA WADE-PORTEE,	)	
	)	HEARING BEFORE
CLAIMANT,	)	COMMISSIONER
	)	ANDREA POPE ROCHE
vs.	)	
	)	
QUALITY HR SERVICES,	)	WCC 0307616
	)	
EMPLOYER,	)	
	)	
LUCILLE DWIGHT,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC 0326238
	)	
CALHOUN CONVALESCENT CENTER,	)	
	)	
EMPLOYER,	)	
	)	
WILLIAM J. BROCKMAN,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X030660
	)	
JR CONSTRUCTION,	)	
	)	
EMPLOYER,	)	
	)	

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND
FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE
HOUR OF 10:00 AM, THURSDAY, JUNE 26, 2008 AND
CONTINUING, COMMENCING AT THE HOUR OF 8:30 AM, JUNE
27, 2008 SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION, 1612 MARION STREET, COLUMBIA,
SOUTH CAROLINA, 29201.

CORA ELLIS BRUTON - COURT REPORTER
803-397-0189

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1 THE COURT: Today's date is June the 26th,
2 2008. We are here on WCC File No. 0327062, that's
3 the case of Jessie Pringle versus Health Care
4 Services Group. Here on behalf of the UEF in that
5 case is Attorney David Hill Keller; Michael W.
6 Burkett is here on behalf of Key Risk; J. Hubert
7 Wood, III is here on behalf of the Guaranty Fund;
8 Duke K. McCall, Jr. is here on behalf of Quality HR
9 Services; and Mr. Michael Jordan is here on behalf
10 of the Claimant.

11 We're also here on WCC File Number 0406103,
12 Ruth Harmon versus Spectrum HR, LLC. J. Hubert
13 Wood, III is here on behalf of the Guaranty Fund;
14 Mr. Benjamin M. Renfrow is here on behalf of ABC
15 Investments; David Hill Keller is here on behalf of
16 the UEF; Jessica C. Steadman is here on behalf of O2
17 HR; Attorney Brad Easterling is here on behalf of
18 Liberty Mutual, but I understand y'all have been let
19 out; is that correct Mr. Easterling?

20 MR. EASTERLING: That's correct, Commissioner.

21 THE COURT: All right. And the Claimant is
22 represented by Attorney Ben C. Harrison who notified
23 us that because of the nature of this hearing he
24 would not be attending today.

25 We're also here on WCC File Number 0408190.

1 That's Joseph Coonce versus Spectrum HR. Mr. Robert
2 M. Cook, II is here on behalf of the UEF; J. Hubert
3 Wood, III is here on behalf of the Guaranty Fund;
4 Benjamin M. Renfrow is here on behalf of Fleet
5 Source; Jessica C. Steadman is here on behalf of O2
6 HR; and the Claimant is represented by Attorney
7 Stephen B. Samuels who also, because of the nature
8 of the hearing let us know that he would not be
9 attending today.

10 MR. EASTERLING: Commissioner, Liberty Mutual
11 was also involved in the Coonce case, but we've been
12 let out of that one as well. I just wanted the
13 record to reflect that.

14 THE COURT: Okay. All right. Thank you.

15 We're also here on behalf of WCC File Number
16 0316901. That would be Steve Cameron versus Keith's
17 Welding and Quality HR Services. Attorney Duke K.
18 McCall, Jr. is here on behalf of Quality HR; David
19 Hill Keller is here on behalf of the UEF; J. Hubert
20 Wood, III is here on behalf of the Guaranty Fund;
21 Franklin Guerrero is here on behalf of -- no, I'm
22 sorry, Mr. Renfrow is here on behalf of Keith's
23 Welding and Capital -- I knew that wasn't right.
24 Mr. Renfrow is here on behalf of Keith's Welding and
25 Capital City Insurance Company; and the Claimant

1 is represented by Attorney Joseph G. Francis, Jr.

2 MR. FRANCIS: Commissioner, based on your
3 previous -- our previous conferences you've excused
4 me, so I'm going to leave shortly.

5 THE COURT: Okay. Thank you, Skip.

6 We're also here on File Number X030301.
7 Artemio Alvarez versus Quality HR Services. Mr.
8 Duke K. McCall, Jr. is here on behalf of Quality HR;
9 David Hill Keller is here on behalf of the UEF
10 although they have not technically been joined in
11 this case, but I don't think there's any objection
12 to the UEF going forward in all these types of
13 cases. Is that right, Mr. Keller?

14 MR. KELLER: That's correct, ma'am.

15 THE COURT: And Hubert -- J. Hubert --

16 MR. WOOD: You're having a hard time with that
17 today.

18 THE COURT: I know it. Hubie Wood --

19 MR. WOOD: That's fine.

20 THE COURT: -- is here on behalf of the
21 Guaranty Fund; We're also here on -- and there's no
22 -- is there anyone here representing the Claimant or
23 any other party in the Artemio Alvarez versus
24 Quality HR Services? Would somebody yell outside,
25 that case and make sure nobody --

1 While she's out making sure there's no one
2 here on behalf -- for the case of Artemio Alvarez
3 versus Quality HR, we're also here on WCC File
4 Number X030681. Martha G. Burke versus Quality HR
5 Services, Inc. Hubie Wood is here on behalf of the
6 Guaranty Fund; David Hill Keller is here on behalf
7 of the UEF; Duke K. McCall, Jr. is here on behalf of
8 Quality HR; and Ms. Martha Burke was here but due to
9 the nature of this proceeding today she elected not
10 to stay, I believe. Ms. Burke, are you in the
11 audience still?

12 MR. BURKETT: She did leave.

13 THE COURT: We're also here on WCC File Number
14 X040142, Robert Hunter versus JR Construction.
15 Hubie Wood is here on behalf of the Guaranty Fund;

16 All right. We've just been informed that
17 there was no one on the Artemio Alvarez case waiting
18 out in the hall.

19 David Hill Keller is here on behalf of the
20 UEF; and Duke K. McCall, Jr. is here on behalf of
21 Quality HR.

22 We're here also on WCC File Number X040301,
23 Tammy Miller versus Quality HR. Hubie Wood is here
24 on behalf of the Guaranty Fund; David Hill Keller is
25 here on behalf of the UEF; and Duke K. McCall, Jr.

1 is here on behalf of Quality HR. On that case too,
2 I'm not sure who's been added or who hasn't been or
3 made parties at this point, but from my
4 understanding there's no objection to going forward
5 on this particular issue on that claim; is that
6 correct?

7 MR. KELLER: That's correct, ma'am.

8 THE COURT: All right. We're also here on WCC
9 File Number 0307616, Patricia Wade-Portee versus
10 Quality HR Services. Michael Burkett is here on
11 behalf of Capital City; David Hill Keller is here on
12 behalf of the UEF; Hubie Wood is here on behalf of
13 the Guaranty Fund; Duke K. McCall, Jr. is here on
14 behalf of Quality HR; and Ernie Peagler is -
15 represents the Claimant and was present earlier, but
16 I think due to the nature of the proceedings he also
17 has elected to leave.

18 We're here on WCC File Number 0326238, Lucille
19 Dwight versus Calhoun Convalescent Center. Scott B.
20 Garrett is here on behalf of Arrow Point Capital;
21 Hubie Wood is here on behalf of the Guaranty Fund;
22 the Claimant is represented by -- and Mr. McCall is
23 here on behalf of Quality HR.

24 MR. BURKETT: Your Honor, I believe Mr.
25 Garrett left.

1 THE COURT: Okay. The Claimant is represented
2 by Attorney Glenn Walters. I did actually just
3 receive an email from Mr. Walters who states that he
4 is in Circuit Court today, unable to be here and is
5 planning on trying to get out of the case anyway
6 because he can't get in touch with the Claimant. So
7 and I believe -- I told Mr. Garrett he could leave,
8 and he did. And Mr. Keller with the UEF.

9 All right. We're also here on WCC File Number
10 X030660, William J. Brockman versus JR Construction.
11 Guaranty Fund is represented by Mr. Wood; the UEF by
12 Mr. Keller; and Quality HR by Mr. McCall. Is there
13 anybody here on behalf of Mr. Brockman?

14 MR. BROCKMAN: I'm William Brockman.

15 THE COURT: Okay. Mr. Brockman, at one time
16 you may have had a workers' compensation accident.

17 MR. BROCKMAN: That's right.

18 THE COURT: There's a lot of issues about who,
19 if there's any money coming to you, which there may
20 or not be. We're not speaking to any of that today.
21 It may have just been you got some medical treatment
22 and went on about your business, I don't know.

23 MR. BROCKMAN: Yes, ma'am.

24 THE COURT: I don't know your underlying
25 claim. And we're here today just to determine if

1 there is any further benefits who would be
2 responsible for those. You are more than welcome to
3 stay if you are interested, and you are more than
4 welcome to leave if you are not. So it's sort of up
5 to you. Also I wanted to let you know you do have
6 the right to have an attorney represent you.

7 MR. BROCKMAN: Yes, ma'am.

8 THE COURT: Do you understand all that?

9 MR. BROCKMAN: Yes, ma'am.

10 THE COURT: Okay. And you can leave if you
11 want to. All we're going deciding today is who
12 would be responsible.

13 MR. BROCKMAN: I just want to see what's
14 happening.

15 THE COURT: That's fine. That's fine too.
16 All right. Would y'all check outside for the --
17 Lucille Dwight and Tammy Miller?

18 GINGER CROCKER: Commissioner, there's no one
19 outside here, but we're checking to make sure
20 they're not in the lobby.

21 THE COURT: Okay. Great. Who's going to be
22 calling Mr. Dennett-Smith?

23 MR. McCALL: I am.

24 THE COURT: Okay. And Hubie, Ms. Williams is
25 your witness?

1 MR. WOOD: Yes, ma'am.

2 THE COURT: And whose witness is Gary?

3 MR. WOOD: He's numerous party's, but he's
4 also mine.

5 THE COURT: Okay. And the Evettes, Duke,
6 that's -- those are your witnesses?

7 MR. McCALL: Yes, they are.

8 GINGER CROCKER: No, ma'am.

9 THE COURT: Great. Thank you. We've been
10 informed that there's no one outside for the Miller
11 case or the Dwight case. All right. For the
12 record, we're here today to determine which party
13 would be liable on these claims. We're not here
14 today to determine whether any benefits are due to
15 any particular Claimant, whether any of these cases
16 are compensable or not compensable. I don't know
17 which ones have been admitted, not admitted. We're
18 only here today to determine that if there are
19 benefits due, what party would be responsible for
20 paying those benefits. We've consolidated all these
21 cases together for this issue only. We've
22 bifurcated that particular issue from all the other
23 issues in the underlying cases. I have received
24 voluminous, to say the least, APAs. Are there any
25 objections -- well, first let me say this. I have

1 received position papers from every party that was
2 interested in putting one in. Instead of reading
3 the positions into the record and taking time to do
4 that, those will become a part of the record. I'm
5 making those a part of the record now and those will
6 act as if read verbatim into the transcript what the
7 parties' positions are and all the issues. Also, I
8 have received voluminous APAs. Are there any
9 objections to the APAs, apart from Mr. -- what your
10 stated objection during the -- something that's
11 unsigned or unauthenticated?

12 MR. WOOD: Yeah, we just don't want to --

13 THE COURT: If there's a signed copy you would
14 rather have the --

15 MR. WOOD: Well, we object to the use of any
16 unsigned copy of a document, specifically any agency
17 agreement in connection with this Realm/AIM
18 situation.

19 MR. McCALL: Commissioner, I'd like --

20 MR. WOOD: It being as evidence that there is
21 a fully executed or signed agency agreement
22 somewhere that exists or ever existed.

23 MR. McCALL: Your Honor, I think you're going
24 to need testimony on that issue. I think the --
25 that is one of the key issues in the case as far

1 as the --

2 THE COURT: All right. We'll take those up as
3 it all comes up, I guess, so. Any other objections
4 to the APAs? Any objection to jurisdiction or
5 venue?

6 MR. KELLER: I just think -- just for the
7 record, this is not an objection, I think this is
8 probably in numerous position papers and documents,
9 but there are still -- they still need -- well, I
10 think there's more than. But there's one Federal
11 Court lawsuit in the -- regarding Realm and --

12 MR. McCALL: It's been resolved.

13 MR. KELLER: Yeah, it may have been resolved.
14 And then there's some State Court lawsuits that were
15 referred to in some of this case that could even
16 have any bearing on this. It doesn't have
17 necessarily any effect on what you're doing today,
18 but I just wanted that to be in the record that
19 there are -- there's a bunch of other lawsuits still
20 floating around that we know of and I think they're
21 all included in this.

22 THE COURT: Okay.

23 MR. WOOD: Commissioner, that Federal Court
24 case he's referring to in District Court in New York
25 is -- was dismissed by consent two weeks ago.

1 We've got the Order.

2 MR. KELLER: I just said it may have been
3 ruled on.

4 MR. WOOD: It's in our APAs.

5 MS. FIEHRER: It's our supplement, first
6 supplement.

7 THE COURT: All right.

8 MS. STEADMAN: And Commissioner, our objection
9 is to jurisdiction and we explained it in our
10 position statement.

11 THE COURT: Okay. All right. We definitely
12 are going to preserve everything that -- everything
13 that's in the position statements will be in the
14 record, so any objections of jurisdiction -- I guess
15 it would be with venue or anything like that, will
16 be preserved.

17 MR. FRANCIS: Commissioner, pardon me, and I
18 certainly don't want to belabor this point, but the
19 way you frame the issues with respect to the Cameron
20 case, your decision today is not going to alter the
21 way he's -- the manner in which he's currently
22 receiving compensation; is that correct?

23 THE COURT: I can't imagine that it -- that it
24 would.

25 I mean, if somebody is found responsible for his

1 -- for his comp -- if he is already getting it --

2 MR. FRANCIS: Yes, ma'am.

3 THE COURT: Which I understand he's already
4 getting it. I think he's got an admitted claim, but
5 it's been a -- my understanding is that case is at
6 Capital City with an Order to start paying on it; is
7 that correct?

8 MR. FRANCIS: That's correct, but what you're
9 going to determine with respect to his case, I
10 believe, and you can certainly correct me if I'm
11 wrong, is the issue of which entity, if any, stands
12 in the place of Realm in that case if he were
13 eventually ruled to be an employee of the HR
14 Service.

15 THE COURT: Right.

16 MR. FRANCIS: Okay.

17 THE COURT: Right.

18 MR. FRANCIS: Thank you, ma'am.

19 MR. RENFROW: And Commissioner, let me just
20 say that Capital City was Ordered to pay under
21 42-1-430 simply because they're the only insurance
22 company. It's going to be our position today that
23 if somebody else is responsible and the Order as it
24 stands today says that we're entitled to full
25 reimbursement. So I think it's possible you could

1 make a decision today that somebody else is
2 responsible, which in turn could -- we would have an
3 Order.

4 THE COURT: Has there been adjudication that
5 he was an employee of Keith's Welding?

6 MR. FRANCIS: Well, there's some --

7 MR. RENFROW: No.

8 MR. FRANCIS: -- there's some findings in that
9 -- there's some findings in 2004 by Commissioner
10 Lyndon that he was an employee of Keith's Welding.
11 Now, you know, certainly I don't object to Ben's
12 right to be reimbursed, you know, to remain open and
13 viable, but I want to leave here today knowing that
14 --

15 THE COURT: He's still going to be getting his
16 check. I mean, unless -- y'all just need somebody
17 to go after in that if you find out y'all aren't
18 responsible.

19 MR. FRANCIS: I think that's the way I
20 understand it --

21 MR. RENFROW: And not necessarily --

22 MR. FRANCIS: -- that you're going to rule.
23 And then once you make that determination that there
24 is an entity there for Realm then Mr. Renfrow's
25 client can go further and seek reimbursement

1 against them if they so choose.

2 MR. RENFROW: Well, Commissioner, it's not
3 quite that simple. I mean, right now Capital has
4 never had a hearing on the merits. A Form 40 Motion
5 was filed. Commissioner Lyndon said Capital City is
6 here today. They are potentially a party.

7 THE COURT: Y'all will still get a hearing on
8 the merits -- you know, if there's not been a
9 hearing on the merits there still will be one.
10 Skip, you can make those arguments there at that
11 time that he's, you know, that it's been
12 adjudicated, what the Law of the Case it is, an
13 employee of Keith's Welding. All I'm determining
14 today is who would step in for Realm, I guess.

15 MR. RENFROW: Okay.

16 MR. FRANCIS: Then I'll leave.

17 THE COURT: It doesn't alleviate Capital City
18 from continuing to pay on that until there's a
19 hearing later on. There will be a hearing before
20 that would occur.

21 MR. FRANCIS: Okay.

22 THE COURT: You might need to make sure, Ben,
23 that we note that in the -- that y'all may would
24 have a right to go against somebody if it is, but
25 y'all can't quit paying on that until another

1 hearing to determine who has to pay on that
2 particular claim.

3 MR. RENFROW: Okay.

4 (Mr. Francis exits the hearing)

5 THE COURT: Is there anything -- and I don't
6 want anybody restating their position papers, but
7 anything in addition that anybody needs to state for
8 the record? All right. Mr. McCall, if you would
9 please call your first witness.

10 MR. MCCALL: I call David Dennett-Smith. We
11 may have to move some boxes in order to get to the
12 witness stand over here.

13 THE COURT: Is it Dennett-Smith; is that
14 correct?

15 THE WITNESS: Yes.

16 THE COURT: Mr. Dennett-Smith, if you would
17 please raise your right hand. Do you swear to tell
18 the truth, the whole truth and nothing but the
19 truth?

20 THE WITNESS: Yes.

21 THE COURT: Please state your full name for
22 the record.

23 THE WITNESS: David Alfred Dennett-Smith.

24 THE COURT: Okay. Mr. McCall, your witness.

25 David Dennett-Smith,

1 Having first been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. McCALL:

4 Q Mr. Smith, you have testified several
5 times in many of these cases and are well known to
6 the lawyers, but you're not well known to the
7 Commissioner. I'm going to take just a minute to go
8 back over your background, and with the
9 Commissioner's indulgence, I may do a little leading
10 on that background. Would you tell us basically
11 what you did before AIM came into existence?

12 A I started off in 1964, '65 as a messenger
13 on the floor at Lloyd's. Was pulled up through the
14 floor at Lloyd's as a broker. Ended up as managing
15 director and chairman of the managing agency of the
16 Lloyd's Broking House over here.

17 Q And, after you left Lloyd's, did you
18 operate an insurance company at one point in time?

19 A We did. We handled a company called
20 Georgia General.

21 Q And after Georgia General, how did you
22 get into AIM? What -- what caused the creation of
23 the three companies that make up AIM?

24 A AIM was the original company that was
25 Coastal International. It was formed by Kaiser

1 Steel, Bowater International, London which is a
2 Lloyd's Broking House and when we parted company I
3 bought the American agency because they determined
4 they didn't want to stay doing American business --

5 Q Okay.

6 A -- and left to do marine and aviation.

7 Q The -- are there three companies that
8 fall under the acronym AIM?

9 A There's probably more than that. There's
10 American Insurance Managers; Atlanta Insurance
11 Marketing; there's AIM Premium Finance, all of which
12 are non-operating companies at the present time.

13 Q Okay. What I want to focus on are the
14 companies that were involved with the Realm National
15 Purchase. Which were those -- those companies were
16 which ones?

17 A American Insurance Managers was the agent
18 and Atlanta Insurance Marketing was the company that
19 entered into the agreement to purchase.

20 Q Was there a third company called American
21 Insurance Group that was the holding company?

22 A That was the holding company, yes.

23 Q Okay. You were -- were you the owner of
24 all three companies?

25 A I was one of the owners.

1 Q One of the owners? Steve Landis
2 got involved in this at some point. Can you tell us
3 who he is and what his involvement was?

4 A Steve Landon or Landis?

5 Q Landon, I think, maybe.

6 A Right, Landon. He was a gentleman that
7 came to me with the PEO scenario. He worked with us
8 for a while and then he went off to do his own
9 thing. I haven't heard from him for two, three
10 years.

11 Q The PEO scenario, where did that -- where
12 was that scenario when you first started getting
13 involved? What was going on with -- with the PEOs
14 from what you saw and what led to the creation of
15 AIM getting involved with the PEOs?

16 A There was basically a falling out at the
17 time with the insurance industry and the PEOs to the
18 extent that most PEOs were finding it extremely
19 difficult to buy workers' comp insurance and the
20 program was put together so that they could, in
21 fact, be investors in their own insurance company
22 and have the workers' comp coverage handled under
23 it.

24 Q The concept of AIM, what did AIM want
25 to do and how was AIM going to do it? What was

1 that -- what did you present to the PEOs, what was
2 this concept that you presented?

3 A We presented a concept where the PEOs
4 could become investors in a company that was to be
5 formed to buy an insurance company and that AIM
6 would manage the company and provide them with
7 workers' comp within that said company.

8 Q Would AIM be also a part owner in this
9 insurance company?

10 A Yes, it would have been.

11 Q Okay. Now, how did AIM get in contact
12 with Realm National? How did that come about?

13 A We were contacted by an intermediary,
14 Joe Zaffereese, and he worked for the Midland Agency
15 at the time. And we were introduced to Realm and to
16 their investment bankers.

17 Q I don't believe I've asked you, but
18 you're not from South Carolina are you?

19 A No.

20 Q Where are you from?

21 A Originally London, now from Georgia.
22 I've been living in Georgia since 1981.

23 Q You've been in Atlanta since 1981?

24 A Yeah.

25 Q When you started out, what was

1 the condition of Realm National as you found it to
2 be in those early years? What year was this that
3 you got in touch with this broker that put you in
4 touch with Realm National?

5 A 2002.

6 Q 2002?

7 A It had a statutory statement that
8 reported that it had 14 million in capital surplus.

9 Q That was in New York?

10 A Correct.

11 Q Okay. And what was your purpose -- what
12 was AIM's -- when I say your purpose I'm talking
13 about American Insurance Marketing. What was AIM's
14 purpose as far as it related to Realm National?

15 A We -- we originally approached Realm
16 National to be an issuing carrier and to issue
17 workers' comp, which they were very interested in
18 doing. Very shortly thereafter they declared that
19 their parent company was in trouble financially and
20 they would like to sell Realm National to us, and
21 we agreed to purchase it.

22 Q All right. Was it your idea when you
23 started out to buy Realm National or was that -- was
24 the first move for the sale of Realm National to
25 you, was that something they brought to the table

1 or did you approach them?

2 A No, they brought it to us.

3 Q So Realm National came to you and asked
4 you if you were interested in buying that company?

5 A Right. We were originally only going to
6 provide them with surplus notes to carry our product
7 on the marketplace.

8 Q Let me hand you a document known as
9 Agency Agreement, which is Number 8 under our APAs,
10 starting at page 90 and ask if you recognize that.

11 A Yes.

12 Q Okay. The date on that Agreement is --
13 is when? It would be on that first page, usually in
14 the first paragraph.

15 A First day of December, 2002.

16 Q Okay. Where were the discussions in late
17 2002? Where -- where was AIM's discussion with
18 Realm National?

19 A In New York.

20 Q In New York?

21 A In their offices.

22 Q Okay. What was the status of the
23 negotiations at that point between AIM and Realm
24 National?

25 A I'm pretty sure we already executed

1 a Purchase Agreement or an Intent to Purchase
2 letter, which I think we handled in early December.

3 Q Let me ask you --

4 A Incidentally there is an executed -- I
5 executed this. I signed it and there's a copy of it
6 that we signed and sent it back to the company.

7 Q All right. Let me -- before we get on
8 the Agency Agreement, and I'm sorry I overlooked
9 that, let me hand you this document which is APA
10 Number 8, beginning at page number 87. Ask if you
11 recognize that, please?

12 A Yes. It was our intent -- it was our
13 Letter of Intent to buy Realm National.

14 Q And who signed that on behalf of Realm
15 National?

16 A Stephen Crane, who was the President and
17 CEO. Sorry, he wasn't the President of Realm
18 National, he was the President of AlphaStar.

19 Q Right. Who was AlphaStar?

20 A AlphaStar was the holding company that
21 was formerly Stirling Cooke Brown that was the
22 holding company that owned all the stock of Realm
23 National.

24 Q Okay. So this document, this Letter of
25 Intent was signed between Stirling Cooke North

1 American and -- or Atlanta Insurance Marketing,
2 Inc.?

3 A Correct.

4 Q In fact your signature is on this
5 document?

6 A Correct.

7 Q Okay. Now, after this Letter of Intent
8 was signed, I showed you first and Agency Agreement,
9 which I believe was APA Number 8.

10 A Right.

11 Q Tell me about that Agency Agreement.

12 A Whilst we were completing the transaction
13 of purchasing the company, Realm National agreed
14 that we would be an agent of Realm National, able to
15 submit business to them for binding and they would
16 bind workers' comp business for us.

17 Q Did American Insurance Marketing ever
18 bind workers' comp coverage for any client?

19 A No.

20 Q Okay. What was the process, to your
21 knowledge?

22 A The process was the applications were
23 received by American Insurance Managers. They were
24 sent to the re-insurers of Realm which were fairly
25 extensive. When the re-insurers had signed off that

1 they found the risks acceptable it was then sent to
2 Realm and Realm's officers then bound the business.

3 Q Okay. The -- Bruce Holley is a name
4 that's come up in some of these depositions. Who
5 was Bruce Holley?

6 A Bruce Holley was AIM's Underwriting
7 Manager that handled all of these authorities.

8 Q Okay. So if Quality HR wanted to do
9 business with American Insurance Marketing what
10 would they -- they would submit an application and
11 would there be some other information with that
12 application?

13 A They submitted an application for Quality
14 HR; they submitted individual applications for each
15 of their clients; and they submitted at least a
16 three year record for each client, individually,
17 together with their modifiers, etc.

18 Q So they would submit their MOD rates with
19 you as well?

20 A Correct.

21 Q Did y'all -- did y'all. Did AIM have
22 guidelines for accepting applications?

23 A Yes.

24 Q When the application was reviewed,
25 once AIM accepted the application, where did

1 the application go from there?

2 A It went to two places. It went to the
3 re-insurers or the intermediary to the re-insurers
4 and it went to Realm National.

5 Q Okay. Who at Realm got those
6 applications?

7 A Either Roni Zinnert, who was the
8 Underwriting Manager or Mark Sioma, who was the
9 President.

10 Q Okay. And what would Mark Sioma or Roni
11 Zinnert do?

12 A They would wait until they got
13 confirmation that the re-insurers accepted it, and
14 then they would send us an email confirming that
15 subject to a inspection that the risk was attached.

16 Q The Agency Agreement, was that prepared
17 by AIM or Realm National?

18 A It was prepared by Realm National.

19 Q So Realm National submitted this
20 to American Insurance Marketing? Did you sign it,
21 you said?

22 A I think I signed -- either I signed it or
23 Bruce Holley signed it.

24 Q And then it was sent where?

25 A It was sent back to Realm National,

1 and as a result of that they filed an Agency
2 Appointment with the State of Georgia.

3 Q And that was appointing Bruce Holley as
4 an agent?

5 A AIM and Bruce Holley, yes.

6 Q Okay. After the appointment of AIM and
7 Realm National, did Realm -- did AIM ever take any
8 steps to bind coverage for any care -- any party at
9 all?

10 A Did we bind coverage --

11 Q Yes.

12 A -- or did we approach Realm to bind
13 coverage?

14 Q Which -- what happened?

15 A Any application that came to us went to
16 Realm National to be bound. We had no authority to
17 bind any business.

18 Q How was -- how did the negotiations go
19 for the purchase of Realm National with American
20 Insurance Marketing from there, from this point
21 forward after the Agency Agreement, after the Letter
22 of Intent was signed? What happened next?

23 A We went forward with Alston Byrd
24 representing us to formalize the full Purchase and
25 Sale and Coverage Agreement which was finally

1 drafted. Realm decided they wanted to withdraw and
2 filed Notice of Non-coverage for everybody. We
3 ended up being sued in Federal Court. We went to
4 Federal Court, the judge who was Judge Berman in the
5 Federal District Court ruled that there was, in
6 fact, a transaction and it was intended to --

7 MR. WOOD: Commissioner, I'm going to object
8 to that -- to that testimony. The Court records are
9 in the APA submissions. I think it's hearsay
10 testimony.

11 THE COURT: I think the records actually will
12 speak for themselves what the Judge ruled.

13 MR. McCALL: Well, as the Judge ruled, but
14 obviously we're trying to cut through a lot of this
15 with the depositions already in, just trying to
16 summarize with this fashion.

17 THE COURT: You can ask him what his
18 understanding of the Court ruling.

19 DIRECT EXAMINATION RESUMES

20 BY MR. McCALL:

21 Q What was your understanding of the
22 Court's ruling?

23 A My understanding was that the closing
24 would take place and the Judge was not going to let

1 either party leave the Court until the closing took
2 place.

3 Q All right. Before we got -- you got into
4 Court, and I, because of the documents I'm going to
5 go back and -- there are voluminous documents, I
6 want to talk about that. Did Mark Sioma ever issue
7 a letter in January of '03 to the -- to your PEOs,
8 to your knowledge?

9 A Yes.

10 Q What was basically that letter? What was
11 he saying in that letter?

12 A He was saying that there was no coverage.

13 Q Okay. After he wrote that letter did he
14 continue to come to Atlanta to the AIM's office?

15 A Yes, the contract required an officer of
16 Realm to be in our office at all times to bind risks
17 until the closing took place.

18 Q Were they making trips to the AIM office
19 usually on a weekly basis?

20 A Yes.

21 Q And even after that letter were they
22 coming in and reviewing claim files?

23 A They were reviewing claims files, they
24 were renewing -- reviewing submissions and
25 adjudicating whether or not there was coverage

1 being issued.

2 Q Even after Mark Sioma wrote that
3 letter, was he communicating with you that this
4 deal was going to go forward?

5 A Correct.

6 Q Did Realm file a lawsuit in New York
7 against AIM?

8 A Yes.

9 Q When did that take place; do you
10 remember?

11 A The first one was in -- I don't remember.
12 The first one was filed and they stated that there
13 was no coverage and we had no authority and they
14 dismissed it. And then we filed for coverage and
15 damages and to complete the compulsion of the
16 Purchase and Sale Contract.

17 Q Well, Realm first filed a suit early 2003
18 against AIM; is that correct?

19 A Correct.

20 Q That lawsuit lasted what, roughly six or
21 seven months and then they dismissed the lawsuit?

22 A Correct.

23 Q Was Mark Sioma still coming in your
24 office at this time --

25 A Yes, he was.

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1 Q -- still reviewing claims --

2 A Yes.

3 Q -- still binding coverage?

4 A Yes.

5 Q Then subsequently AIM turned around in
6 October of '03 and filed a lawsuit in the United
7 States District Court, New York against Realm?

8 A Correct.

9 Q Or was it against AlphaStar?

10 A It was against AlphaStar and Realm. It
11 was filed against Realm for the coverage because
12 that was the only place we could file for coverage.
13 And it was filed against AlphaStar for compulsion to
14 complete on the transaction.

15 Q After that lawsuit was filed in the
16 United States District Court in New York was Mark
17 Sioma and Roni Zinnert still coming to your office
18 --

19 A Yes, they were.

20 Q -- reviewing claims, reviewing
21 applications --

22 A Yes.

23 Q -- and approve -- binding coverage?

24 A Yes..

25 Q What happened to the lawsuit in New York?

1 A Ultimately or --

2 Q Ultimately?

3 A -- during the interim period?

4 Q Well, let me just --

5 MR. McCALL: If I may, Commissioner.

6 Q Did the lawsuit in New York get
7 transferred to Delaware?

8 A No, we filed a separate lawsuit in
9 Delaware.

10 Q Okay.

11 A Because that was the home of Stirling
12 Cooke for Motion to Compel for them to transfer the
13 stock of Realm into our name.

14 Q All right. While that Motion was pending
15 in Delaware and before the Judge ruled did AlphaStar
16 then put Realm into liquidation?

17 A No.

18 Q Bankruptcy?

19 A No. We put -- you can't bankrupt an
20 insurance company.

21 Q Okay.

22 A They filed bankruptcy for AlphaStar.

23 Q AlphaStar?

24 A And filed for the removal of the Federal
25 Court Southern District to the Bankruptcy Court and

1 we were then removed into bankruptcy where it was
2 held captive for two years, three years.

3 Q And did the Bankruptcy Court
4 ultimately issue Realm -- American Insurance
5 Marketing the stock --

6 A Yes, they did.

7 Q -- for Realm National?

8 A Yes.

9 Q And AIM now holds the stock of Realm
10 National?

11 A For the moment.

12 Q Let me go back to the very beginning.
13 Initially were there eight PEOs that signed up with
14 American Insurance Marketing for workers' comp
15 coverage with Realm National?

16 A Yes.

17 Q And that later was expanded to 12?

18 A Correct.

19 Q Was each of those PEOs required to pay
20 both premium and a capital contribution --

21 A Yes.

22 Q -- to AIM?

23 A Yes.

24 Q Would AIM accept any PEO without
25 the premium payment and the capital

1 contribution payment?

2 A No.

3 Q There was a company referred to
4 called, and I may not say it quite correctly, is my
5 understanding was Glastonbury?

6 A Glastonbury was a company that was to be
7 formed to be the holding company.

8 Q Was Glastonbury ever formed?

9 A No.

10 Q Did Glastonbury ever get off the planning
11 sheet?

12 A No, because all - well, to say it doesn't
13 get off the planning sheet; all directive
14 documentation and all the documents were prepared by
15 Alston and Byrd, but it was never filed because we
16 ended up in Court prior to that happening.

17 Q Did any PEO ever sign any of the
18 documents pertaining to Glastonbury?

19 A No.

20 Q Now, at some point Realm National came to
21 AIM and -- or AlphaStar came to AIM and asked for
22 money; did they not?

23 A Correct.

24 Q How much money did AlphaStar get from
25 AIM?

1 A Just over one and a half million.

2 Q And what happened to that one and a half
3 million to your knowledge?

4 A No idea.

5 Q Has -- did AIM ever receive that money
6 back from AlphaStar at any point in time?

7 A No.

8 Q What happened to the insurance premiums
9 paid in by the PEOs and the capital contributions
10 paid in by the PEOs; what happened to those?

11 A We kept them in trust accounts and paid
12 claims from those accounts at the direction of
13 Realm.

14 Q And after AlphaStar took Realm into
15 bankruptcy, was AIM still paying those claims at the
16 direction of Realm?

17 A For a while, yes, but it -- it stopped
18 when the funds ran out; and AIM's funds ran out.

19 Q Did you put your personal funds in AIM's
20 account to pay those claims?

21 A Yes.

22 Q You put all your funds in those accounts
23 to pay those claims?

24 A Yes.

25 Q Did you lose your house, your car --

1 A Didn't lose my car, nobody wants that.

2 But --

3 Q Did you lose everything else?

4 A Yeah, I lost our house, a condo in Beaver
5 Creek, a farm.

6 Q When Bruce Holley, Steve Lander and Brian
7 Imperiale worked for AIM did they ever get paid?

8 A No.

9 Q Did they get some of their expenses
10 reimbursed?

11 A Yes, they did.

12 Q But they never drew a paycheck?

13 A No.

14 Q How long did they work for you?

15 A Just over a year.

16 Q Did Bruce Holley work for you about two
17 years?

18 A Probably. He's still working with me now
19 to try and resolve all these issues.

20 Q What kept these gentlemen going? What
21 kept you going? Why did you put your money, your
22 personal money, into this venture?

23 A Because a) we believed in the venture; b)
24 we believed that we would, in fact, become the
25 beneficial owners of Realm and the program would go

1 forward; and c) we had an obligation to the clients
2 to make sure that Realm was acting responsibly.

3 Q Was Realm, to your knowledge, licensed
4 in the State of South Carolina?

5 A Yes.

6 Q Did -- did AIM or anyone on AIM's behalf
7 ever take any action relating to either coverage or
8 claims without Realm National's approval?

9 A No.

10 Q After AIM went into bankruptcy there was
11 a program with the Guaranty --

12 A No, AIM never went into bankruptcy.

13 Q I'm sorry. After AlphaStar went into
14 liquidation --

15 A No --

16 Q -- or bankruptcy? AlphaStar --

17 A No, AIM never went anywhere. AlphaStar
18 went into bankruptcy.

19 Q Okay. I -- I apologize. After AlphaStar
20 went into bankruptcy was there an agreement worked
21 out on a short term with Guaranty Insurance Company
22 --

23 A Yes.

24 Q -- in which -- what were you trying to do
25 with that?

1 A We were trying to do exactly the same
2 thing but Guaranty decided it was far too profitable
3 to share and they moved into their own agency and
4 it's still operating.

5 Q Was AIM going to purchase Guaranty?

6 A No.

7 Q Was AIM simply acting as agent for
8 Guaranty?

9 A Correct, and providing surplus notes to
10 support its underwriting, which it did.

11 Q And did Guaranty ever pay AIM a
12 commission --

13 A No.

14 Q -- off that business?

15 A No.

16 Q I want to hand you a letter, this is APA
17 Number 12, pages 109, 110 and ask you if you are
18 familiar with this letter from Brian Imperiale to
19 David Evette?

20 A I'm aware of the letter, yes.

21 Q What was the policy of American Insurance
22 Marketing about keeping the PEOs informed of what
23 was going on?

24 A We advised all PEOs, all insurance
25 departments on a monthly basis.

1 Q Okay. Was that a part of those monthly
2 reports?

3 A No, the reports were much more extensive
4 than this. This was just a confirmation that Realm
5 had not cancelled the coverage in any way, shape or
6 form.

7 Q Was, and this is what I'm having a hard
8 time understanding, Mr. Smith. Even though on the
9 paper in the Courts Realm was fighting AIM, were
10 they still coming to your office all this time?

11 A Yes.

12 Q Still binding coverage?

13 A Yes.

14 Q Were they still telling you that the deal
15 was going to go forward?

16 A Yes, they, in fact, advised a closing
17 date or we advised a closing date. We turned up for
18 the closing date and they didn't show, despite they
19 were advised, in my opinion, by the Federal Court
20 Judge to go to closing and they agreed to go to
21 closing.

22 Q But they never did?

23 A No. Sorry.

24 Q I want to show you what's been
25 marked, our APA Number 3 and pages 3 through 10

1 and just ask you if you could identify that?

2 A It was a confirmation from Bruce that
3 Georgia had, in fact, issued or had, in fact,
4 registered the agency with Realm National with
5 Bruce Holley.

6 Q And this was filed in what state?

7 A The State of Georgia.

8 Q And did Mr. Holley, was he subsequently
9 qualified as a non-resident agent for South Carolina
10 and for North Carolina, to your knowledge?

11 A Yes, and Realm National contacted the
12 licensing bureau to have Bruce Holley licensed in
13 all states.

14 Q Could he have gotten licensed without
15 Realm's participation?

16 A No, the insurance company has to license
17 -- sorry, not license him, but has to appoint him
18 individually. And there is correspondence backwards
19 and forwards between Mark Sioma and the agency.

20 Q I want to hand you what's been marked
21 Exhibit 25 in our APAs entitled "Stock Purchase
22 Agreement, pages 269 through 338 and ask if you
23 recognize this document?

24 A In oversight, the answer is yes.

25 Q Tell me what -- what that was and

1 what its intent was, and what happened to it?

2 A It was the Purchase and Sale Agreement
3 between Stirling Cooke which became AlphaStar to buy
4 Realm National, World Trade Services and Stirling
5 Cooke with two MGAs acted on behalf of AlphaStar in
6 New York. I don't know whether it was this
7 iteration or a later one also included the
8 confirmation that coverage was being provided to the
9 PEOs, that they confirmed coverage to.

10 Q This agreement was drawn up by AIM's
11 attorneys?

12 A AIM, well, the machination of AIM's was
13 the originating document and Realm National's -- or
14 sorry, Stirling Cooke Brown's attorneys.

15 Q Were there extensive negotiations of this
16 document?

17 A Yes.

18 Q Was it ever submitted to Realm -- I'm
19 sorry, AlphaStar, the owner of Realm National?

20 A Yes, they executed it. It was executed
21 by Realm National. It's executed by Stirling Cooke
22 and it's executed by AlphaStar.

23 MR. McCALL: Commissioner, I'm not handing up
24 these documents since they're in the APAs.

25 Q Does this basically outline the

1 purchase of the Realm National stock by AIM?

2 A Yes. And if it's the right version,
3 confirmation of coverage being provided.

4 Q Looking at what's our APA Number 31,
5 page 346, I want to hand you this document and ask
6 if you recognize that document?

7 A It's one of our outlines of coverage.
8 But, I mean, did I see it specifically, no.

9 Q Whose signature, if you recognize it --

10 A Bruce Holley.

11 Q Bruce Holley? That's your Vice President
12 of Underwriting?

13 A Correct.

14 Q What was the purpose of Mr. Holley
15 issuing a Certificate of Insurance Coverage like
16 this? I assume he issued several to the PEOs?

17 A Yes.

18 Q What was the purpose of issuing that?

19 A To evidence coverage.

20 Q When the Certificate of Insurance was
21 signed by Mr. Holley, was a -- was a copy sent to
22 Realm National?

23 A Yes. There was an automatic online
24 computer system to issue Certificates, and the only
25 person who could switch on and off coverage was

1 Realm National. We couldn't get Certificates unless
2 they had approved the coverage online.

3 Q There's a policy number shown on this
4 Certificate of Coverage. Where did that -- who --
5 how was the policy numbers generated for the
6 Certificates of Coverage?

7 A They were assigned by Realm National.

8 Q Okay. Was that also on a computer
9 system?

10 A Yes.

11 Q To your knowledge, in the midst of all of
12 this litigation, were actual policies ever issued?

13 A No.

14 Q Did Realm indicate it was going to issue
15 policies and didn't, or did they just not issue
16 policies?

17 A They said that they would issue policies
18 at closing.

19 Q They said they'd what?

20 A They would issue policies at close -- at
21 the closing of the Purchase Agreement.

22 Q And there never was a closing of the
23 Purchase Agreement was there? That they
24 participated in?

25 A They actually participated because

1 they were in bankruptcy, but the Bankruptcy Court
2 recognized the Purchase and Sale Agreement and
3 signed Realm over to us as part of that Agreement.

4 Q But the policies -- the stock
5 wasn't signed over to American Insurance Marketing
6 until 2004 or 2005 or 2006?

7 A 2006, I think. No, later than that;
8 2007. And after they had transferred all the assets
9 out of the company and filed it into liquidation.

10 Q So only after, I think APA 28 is the --
11 let me ask you -- hand you that two pages of
12 document -- APA 28, pages 342 and 343.

13 A Yeah.

14 Q What was the date the Trustee of
15 Bankruptcy signed that stock over to AIM?

16 A 2006.

17 Q November of 2006?

18 A Yeah. As a result there's a Federal
19 Court Bankruptcy Court Order --

20 Q So --

21 A -- stating this would be done.

22 Q -- the Letter of Intent which Realm
23 National, Mark Sioma signed in October of 2002 to
24 sell the stock or convey the stock to American
25 Insurance Marketing never actually took place until

1 the Bankruptcy Court signed it over on November
2 22nd, 2006?

3 A Correct.

4 Q During this period of time from 2002
5 to 2006, before they went into bankruptcy, was Mark
6 Sioma still coming to your office with Roni Zinnert
7 handling claims, approving coverage and binding
8 coverage?

9 A Not through 2006, through 2003.

10 Q Okay. That's when they went into
11 liquidation -- I mean, sorry, bankruptcy?

12 MR. WOOD: AlphaStar went into bankruptcy?

13 MR. McCALL: Yes.

14 Q After the bankruptcy of AlphaStar, was
15 there an action taken by the Trustee in Bankruptcy
16 against the officers of AlphaStar?

17 A Yes.

18 Q And what's the status of that?

19 A The Bankruptcy Court found that all the
20 allegations were correct and that the officers did,
21 in fact, --

22 MR. WOOD: Commissioner, I'm going to object
23 again. Same objection on the testimony.

24 Q Well, your understanding. I'll ask
25 not what the Bankruptcy Court found, but

1 your understanding of what the Bankruptcy Court
2 found.

3 A Okay. It was -- everything that was
4 alleged did, in fact, take place, but the officers
5 were incompetent businessmen and were not
6 responsible for their actions, and it was dismissed.

7 Q What, if anything, has the State of
8 Georgia done after the dismissal of that lawsuit?

9 A There was a hearing last week with the
10 Insurance Office of America, AIM, obviously nobody
11 was representing Realm, and the State of Georgia has
12 asked that we assign rights to them under the
13 ownership of Realm, together with AIG who paid the
14 claims, and the State of Georgia, together with AIG
15 would pursue the assets of Realm.

16 Q AIG was the E&O Carrier for Realm
17 National?

18 A No, for Insurance Office of America.

19 Q Okay. I want to hand you a series of
20 documents and ask if you will look at these and see
21 if you can tell me what they are?

22 A They're updates on the state of coverage
23 for Quality HR's business.

24 Q And who are -- who are -- where are those
25 documents from?

1 A Roni Zinnert who is -- she was V.P. of
2 Underwriting of Realm National.

3 Q And where did those documents come from?

4 A The origination of them or the copies?

5 Q The copies?

6 A The copies came from our files.

7 Q From your files?

8 A I believe.

9 Q Okay. Let me show them to these
10 attorneys, and I'm going to offer this as an
11 exhibit.

12 MR. KELLER: Are these not in the APAs, Duke?

13 MR. McCALL: They're not in the APAs. They
14 were just discovered this morning.

15 MR. WOOD: We'd like time to look at them. I

16 --

17 THE COURT: Yeah --

18 MR. WOOD: -- I mean study them. I'm going to
19 object to them until I can do that.

20 MR. KELLER: Can I make a suggestion that we
21 put this in as a proffer, get copies to everybody
22 and then in our final briefs whatever objections we
23 have, if any. Would that suit everybody?

24 MR. WOOD: Well, I mean, we -- we need to
25 prepare a cross examination on the subject. I want

1 to know what's in there. We -- this case has been
2 going on for three, four years. Mr. McCall shows up
3 this morning with some new documents from AIM's
4 computer system. We'd like to investigate.

5 MR. McCALL: No, it's not from AIM's
6 computer system, it's Realm National's computer
7 system that came out of AIM's files.

8 MR. WOOD: Excuse me, out of AIM's files.

9 MR. McCALL: I do not represent AIM.

10 MR. WOOD: I understand.

11 MR. McCALL: I represent Quality HR.

12 MR. WOOD: I understand, but you show up today
13 with new documents, and the case has been going on
14 for three -- three years. You want to put them into
15 evidence, we're entitled to investigate and cross
16 examine.

17 THE COURT: Yeah, let's put them as a proffer
18 right now, y'all look at them at lunch. If you need
19 more time then let me know and we'll go from there.

20 MR. McCALL: May I ask maybe if copies could
21 be made by the Workers' Comp Commission for the
22 attorneys? I'm sure Coverage and Compliance may
23 like a copy as well.

24 DIRECT EXAMINATION RESUMES

25 BY MR. McCALL:

1 Q These emails have just gone into evidence
2 as a proffer at this time. Where did they come
3 from, Mr. Smith?

4 A They were emails that we thought we had.
5 We printed them off the -- you advised us that you
6 didn't have the copies and I asked Bruce if he could
7 run an additional set of copies and fax them to you
8 this morning.

9 Q Okay. Did -- inside the operation of
10 AIM, so that I understand it, what was your job
11 primarily in AIM's operation? What did you -- what
12 were your -- the scope of your duties and
13 responsibilities?

14 A Was to run the company. I wasn't
15 involved in day-to-day underwriting. I handled the
16 reinsurance placements with Realm's intermediaries.
17 And that was it.

18 Q Brian Imperiale, what was his scope of
19 his duties and responsibilities as far as --

20 A He was Chief Financial Officer. He
21 handled all the money issues.

22 Q Okay. If premiums were being paid,
23 contributions made, money coming in, would that go
24 to Brian?

25 A Go to Brian, yes.

1 Q If checks were being written to pay
2 claims, who would write those checks?

3 A Brian Imperiale and Bruce Holley.

4 Q And Bruce Holley's primary responsibility
5 was what?

6 A Underwriting and at the time it
7 was heading up claims as well.

8 Q Okay. So he also looked at claims?

9 A Correct.

10 Q Before -- before a claim was paid was
11 that claim submitted to Realm?

12 A Yes, all -- they gave us no claims
13 authority 'til they worked with Crawford and
14 Company. They met with Crawford, they told them how
15 they wanted the claims reported. Crawford sent
16 copies to us to be transmitted to Realm and Realm
17 authorized the payments on their statements.

18 Q Well, since they were Realm's claims why
19 was the money coming out of American Insurance
20 Marketing?

21 A It was Realm's trust account.

22 Q Okay. This was the money set aside to --
23 to purchase --

24 A To purchase and premiums that were coming
25 in, yes.

1 Q So Realm was authorizing payments of
2 those funds out of the trust account that was set
3 up?

4 A Yes.

5 Q And this was right up until AlphaStar's
6 bankruptcy or did it continue past that?

7 A It continued until the funds ran out.

8 Q Until the funds ran out? Including your
9 personal funds?

10 A Correct.

11 Q Did you ever get a salary out of this?

12 A No.

13 Q Did AIM ever make a dime of profit out of
14 this operation over this four year or six year
15 period?

16 A No, AIM lost almost \$6,000,000.

17 Q You personally, how much did you lose?

18 A Probably close to seven.

19 MR. McCALL: Commissioner, there are probably
20 a lot more details, but Mr. Smith's deposition has
21 been taken; David Dennett-Smith's deposition. You
22 have three separate depositions up there.

23 THE COURT: Okay.

24 MR. McCALL: I'm going to stop at this time
25 and let my colleagues ask him questions. I'm sure

1 there are things I haven't covered but I believe
2 they were covered in the deposition.

3 THE COURT: All right. Mr. Wood.

4 CROSS EXAMINATION

5 BY MR. WOOD:

6 Q Hello, Mr. Dennett-Smith.

7 A Hi, how are you?

8 Q Good to see you again. We met in
9 Greenville last year about this time, then over the
10 telephone back in October. So we've conversed a few
11 times on this subject. I want to go back in your
12 background a little bit. As I understand it, you
13 quit school and went to work on the floor at Lloyd's
14 at age 16.

15 MR. McCALL: Commissioner, some of this is in
16 the depositions. I don't mind it doing again, but
17 if we're going to go into detail cross then I'm not
18 -- I don't see any purpose for the depositions.

19 MR. WOOD: They're in the APAs, they've
20 already been admitted, so they're in.

21 THE COURT: I mean, I don't mind doing, you
22 know, do a little bit, Hubie, obviously, but --

23 MR. WOOD: Well, I think his credibility is
24 central to the case, Commissioner. I mean, that's
25 why we advised it was going to be a two day hearing.

1 (Mr. Jordan exits the hearing)

2 (Mr. Cook exits the hearing)

3 CROSS EXAMINATION RESUMES

4 BY MR. WOOD:

5 Q Is that correct?

6 A Did I quit school?

7 Q Quit school at 16 and went to work--

8 A At 16 I finished school.

9 Q You finished school at 16?

10 A In England you finish school at 16 unless
11 you're wealthy enough to go on to university..

12 Q Okay. And you don't have any formal
13 education beyond that?

14 A No.

15 Q Okay. And you worked there in London for
16 a number of years and eventually became a syndicate,
17 part of Lloyd's?

18 A No. I became a member of a Syndicate.

19 Q Member of a Syndicate?

20 A But that's a passive position. I was
21 Lloyd's Broking House Director and I was eventually
22 Managing Director of the Lloyd's American Division
23 of that broking house.

24 (Mr. Cook returns)

25 Q Okay. And what happened to

1 your relationship with -- with Lloyd's?

2 A In what way?

3 Q Well, it's my understanding that you were
4 basically removed, or you were delinquent on your
5 dues, or your Syndicates went down and you owe them
6 a bunch of money; is that -- isn't that sort of
7 the deal?

8 A The Syndicates went broke.

9 Q Right.

10 A And as now I'm responsible for the
11 difference between what was there and if I've got
12 the money I owe I have to pay them the money, yes.

13 Q Okay. I think the figure is --

14 A The same as any other business.

15 Q Right. But you left your involvement
16 with Lloyd's owing them money; correct?

17 A No.

18 Q You don't owe them 300,000 Pounds?

19 A No I did not leave Lloyd's -- first of
20 all you don't work for Lloyd's unless you're an
21 employee of the corporation. So I was never an
22 employee of Lloyd's Corporation. I worked for a
23 Lloyd's Broking House and I was member of several
24 Syndicates. Membership of a Syndicate is like being
25 an investing partner. Didn't leave Lloyd's, didn't

1 leave them, didn't leave them owing any money. The
2 Syndicates that I participated in went broke.

3 Q Okay. And you have outstanding dues with
4 Lloyd's of 300,000 Pounds; is that correct?

5 A Correct.

6 Q All right. You came to the U.S. --

7 A No, not -- sorry, not Lloyd's, with the
8 Syndicates.

9 Q With the Syndicates? Okay. I'm sorry
10 I'm not an expert on Lloyd's. I apologize.

11 A Not Lloyd's, the Syndicate.

12 Q But the bottom line is you owe somebody
13 300,000 Pounds as a result of your involvement in a
14 Lloyd's Syndicate; correct?

15 A Correct.

16 Q All right. You came to Atlanta in '81.
17 I think your former company or a company you were
18 working with at the time started up the American
19 operation; is that correct?

20 A Correct.

21 Q What was the name of that company?

22 A Kaiser Steel, Bowater International.

23 Q Okay. All right. And AIM sort of
24 evolved from there?

25 A Correct.

1 Q And the company is -- the holding company
2 is American Insurance Management Group?

3 A Correct.

4 Q Okay. And as part of that you have the
5 various entities you've talked about --

6 A Correct.

7 Q -- Atlanta Insurance Marketers; American
8 Insurance Management?

9 A Correct.

10 Q And it's okay for us to collectively
11 refer to that as AIM?

12 A Correct.

13 Q All right. You were the -- eventually
14 you took -- you separated out from your -- the
15 company you started with, Kaiser, and kind of took
16 AIM on your own; correct?

17 A Correct.

18 Q All right. And you've had some partners
19 over the years?

20 A Correct.

21 Q All right. One of which is Norwood
22 Venture Capital?

23 A Correct.

24 Q Okay. And they're still involved with
25 you in AIM today; correct?

1 A Correct.

2 Q All right. Along with a fellow by the
3 name of Osborne, or Chuck -- what's his --

4 A Chuck Osborne, yes.

5 Q Chuck Osborne? Okay. So as it exists
6 today to the extent AIM does exist, the partners are
7 Venture -- Norwood Venture Capital, yourself and Mr.
8 Osborne has a small interest; is that correct?

9 A Correct.

10 Q All right. Now, Mr. McCall asked you
11 about the Georgia General Company. Let's talk a
12 little bit about Georgia General. Georgia General
13 was -- what was Georgia General?

14 A It was a Georgia domestic company that
15 wrote basically non-standard auto business.

16 Q Insurance company?

17 A Correct.

18 Q And it was domiciled, licensed in the
19 State of Georgia?

20 A Correct.

21 Q And AIM owned Georgia General; is that
22 correct?

23 A Correct.

24 Q And you were the President and CEO of AIM
25 during this time?

1 A Correct.

2 Q This is 1992 or so and the State of
3 Georgia ordered or liquidated Georgia General; is
4 that correct?

5 A Correct.

6 Q All right. Now, at that time AIM was the
7 managing general agent for Georgia General; correct?

8 A Correct.

9 Q All right. So basically we've got 1992,
10 a company that you're President and CEO of, owns
11 Georgia General, a liquidated insurance company by
12 the State of Georgia?

13 A Correct.

14 Q And the State of Georgia obviously
15 determined that Georgia General was insolvent?
16 That's why they ordered it liquidated? Is that your
17 understanding?

18 A We -- we both believed it was -- neither
19 of us believed it was necessarily insolvent, but the
20 accounting records were incorrect.

21 Q Okay. And all that was on your watch?

22 A Correct.

23 Q All right. So you continued on with AIM
24 after the liquidation of Georgia General? What was
25 AIM doing, say from '92 to '99?

1 A It was doing medical stock loss.

2 Q Okay. Was that all you had going from
3 '92 to '99?

4 A Yes.

5 Q All right. And then in '99 there was a
6 dispute, partnership dispute; correct?

7 A Correct.

8 Q All right. And what -- what -- tell us
9 about that partnership dispute. What was the
10 situation there?

11 A The other partners believed they could
12 run the company better than I could, and they took
13 over running the company and failed dismally. And
14 after a law battle it was returned to me.

15 Q What was it they had a problem -- what
16 were you doing that they had a problem with?

17 A They, at the time, medical stock loss was
18 going through a very difficult period and we
19 couldn't buy any reinsurance, and they felt they
20 could buy reinsurance if I wasn't running the
21 company; and they never managed to buy any
22 reinsurance.

23 Q Well, why did they view you as an
24 obstacle to buy reinsurance?

25 A Because one of the parties of

1 American National was being sued by us for his
2 involvement with Georgia General, plus other things.

3 Q There was litigation ongoing relative to
4 the Georgia General insolvency or liquidation?

5 A Correct. Correct.

6 Q You were a party or a --

7 A A plaintiff, correct.

8 Q Okay. You were a plaintiff?

9 A I was the plaintiff, yes.

10 Q Okay. All right. And ultimately they
11 voted you -- your partners voted you out of your
12 position with AIM in 1998; is that correct?

13 A They voted me out for 12 months in the
14 event that they could provide a better management
15 system of the company.

16 Q And then you sued them to get control of
17 the company back; correct?

18 A After they failed to return it to me
19 after 12 months.

20 Q You sued them?

21 A Correct.

22 Q Okay. And eventually --

23 A Well, they were party to the American
24 National suit and the Georgia General suit with
25 regards to their mishandling of the funds of

1 Georgia General.

2 Q I'm sorry? What was that about the
3 mishandling --

4 A Their mishandling of the funds or the
5 accounting of Georgia General.

6 Q Okay. Bottom line is there was a bunch
7 of litigation back and forth between you and your
8 partners relative to the running and control of AIM
9 in the 1998, 2001 time period; correct?

10 A Correct.

11 Q All right. And you've eventually,
12 through the course of litigation, come back in as
13 the main guy at AIM, so-to-speak, in 2001; is that
14 right?

15 A Correct.

16 Q All right. And I think in addition to
17 the litigation that was associated with control of
18 the company, which I understand resolved, there was
19 continuing litigation ongoing, at least at the time
20 one of these depositions was taken last year
21 relative to you suing the guys that who were in
22 control of AIM from '98 to 2001 alleging that they
23 plundered the company out of millions of dollars?

24 A Correct. But it's not ongoing, it's all
25 been dismissed.

1 Q It's been dismissed?

2 A Yes.

3 Q Your suit alleging that they had
4 plundered the company out of millions has been
5 dismissed?

6 A Correct.

7 Q All right. So 2001 comes around, through
8 the course of litigation you've got -- you've got --
9 you're back in at AIM? You're the President and CEO
10 again; right?

11 A Correct.

12 Q All right. And let's talk about the
13 status of AIM in 2001 when you came back in. As I
14 understand your testimony from these depositions AIM
15 has not maintained any Errors and Omissions, any
16 type of professional liability insurance coverage
17 since 1998?

18 A Correct.

19 Q You have testified that you personally
20 have not received a salary or a paycheck from AIM
21 since 1998, or through the business at AIM; is that
22 correct?

23 A I -- from the period that I left I
24 received a salary for approximately one year. I
25 can't remember the dates, but --

1 Q It's been about ten years since you got a
2 paycheck though?

3 A Yes.

4 Q Okay. When AIM, in 2001 when you come
5 back AIM has no employees?

6 A Correct.

7 Q Has no money?

8 A Correct.

9 Q Has no business?

10 A Correct.

11 Q It's nothing really but a name; right?

12 A You're right; absolutely.

13 Q Okay. All right.

14 A It also has destroyed records, destroyed
15 computers, you name it.

16 Q Is that all from your former partners?

17 A Yes.

18 Q That took the company over from '98 to
19 '01?

20 A Yes.

21 Q Okay. All right. So really no business
22 activities at all until Mr. Landon, Mr. McCall made
23 reference to a fellow by the name of Steve Landon?

24 A That's correct.

25 Q Okay. And just to clear it up, I

1 don't think it's a big point, but as I understand it
2 Mr. Landon had worked for AIM previously?

3 A Correct.

4 Q He has not worked for AIM since you came
5 back in in '01 as an employee.

6 A Correct.

7 Q And he's the one that approached you in
8 2001 with this idea of the PEO program that brings
9 us all here today?

10 A He approached me because he understood
11 that my ability to put workers' comp reinsurance
12 together was still there, which in fact it was.

13 Q I'm sorry, can you cover that again with
14 me?

15 A My relationship with Lloyd's and other
16 international companies is still such that I can put
17 reinsurance back together with them on a
18 professional basis fairly easily.

19 Q You've got a lot of contacts in the
20 reinsurance world?

21 A Correct.

22 Q A lot of folks in Bermuda, London, those
23 types of places?

24 A Germany, yes.

25 Q Germany? Okay. But Landon, as

1 I understood your deposition testimony that we've
2 taken two times, and we have the deposition
3 testimony from the NES litigation that's ongoing
4 down in Georgia. So there are three deposition
5 transcripts in here, but as I understand it in '01
6 he's the one that brought this idea of the PEO
7 program, at least in it's raw, early stages to you
8 as a business idea?

9 A Correct.

10 Q Okay. And as a result of any -- and
11 again, at that time you don't have any staff, you
12 don't have -- it's just you is all it is; right?

13 A Correct.

14 Q Okay. And at that time you decided to
15 explore the possibilities in the reinsurance world?

16 A Yes.

17 Q Okay. And I got a kick out of your --
18 one of your -- somewhere in your deposition
19 testimony as to the reaction your contacts in London
20 apparently had when you brought up the notion of
21 reinsurance for these -- for PEOs. What was the
22 reaction -- the initial reaction you got from the
23 brokers or the intermediaries?

24 A It was something that they didn't want
25 to get involved with because of the ongoing

1 disputes within the insurance industry.

2 Q Okay. And what were those disputes
3 about, to your understanding?

4 A Whether they were necessarily reporting
5 accurately, whether the loss ratios were worthy of
6 getting involved with. Whether or not all the PEOs
7 were necessarily moral.

8 Q Did they pretty much tell you that the
9 PEOs, that the re-insurers didn't want to have
10 anything to do with the PEOs?

11 MR. MCCALL: Commissioner, I'm going to
12 object. He's asking for hearsay at this juncture.

13 THE COURT: Sustained.

14 MR. WOOD: I don't think it's really to prove
15 the truth of the matter asserted. It's just to sort
16 of kind of lay how the genesis of this program,
17 which I think getting the full understanding of it
18 is important to dispose of the case. But I'll --

19 THE COURT: Mr. Wood maintains he is not
20 asserting it for the truth of the matter asserted
21 then it's not hearsay. You can answer the question.

22 CROSS EXAMINATION RESUMES

23 BY MR. WOOD:

24 Q The intermediaries and brokers, the
25 reinsurance brokers you first touched base with

1 concerning the possible PEO program were not real
2 receptive; is that fair to say?

3 A Not the intermediaries, the reinsurance
4 market was not really receptive.

5 Q Okay. And I think you decided that
6 that was the place nobody else wanted to be so that
7 was a good place for you to be; is that right; this
8 PEO program and an insurance plan to cover PEOs?
9 You thought you could make it work?

10 A No, I thought that I could re-present the
11 programs to the re-insurers to the point where they
12 would find it acceptable.

13 Q Okay. You thought --

14 A I could not make it work on my own.

15 Q What did you need to make it work?

16 A We needed an issuing carrier, we needed
17 reinsurance, we needed or the issuing carrier needed
18 their own intermediary that was working on their
19 behalf, and we needed brokers to come to us to pull
20 the business together.

21 Q Okay. So what did you do then?

22 A What did I do when?

23 Q After you made the initial contacts with
24 the reinsurance -- your contacts in the reinsurance
25 industry?

1 A We went back and said we would underwrite
2 the business based upon the PEOs after they had been
3 investigated to the point where we could either
4 recommend them or not recommend them. But instead
5 of issuing a overall policy we would get the issuing
6 carrier to bind and underwrite each individual case
7 as though it was an individual company buying
8 workers' comp and individual policies would be
9 issued. And the reinsurance market found that
10 acceptable.

11 Q Okay. So the next step was to find an
12 issuing carrier?

13 A Correct.

14 Q All right. And we've got a guy named,
15 how do you say it, Zaffereese.

16 A Zaffereese.

17 Q Zaffereese? And who is Mr. Zaffereese?

18 A Joe Zaffereese was the intermediary that
19 came to us from Midland and said he could place the
20 workers' comp, and he was the intermediary for Realm
21 National.

22 Q And he's the one that put you in touch
23 with Realm?

24 A Correct.

25 Q And there was a meeting -- who was

1 the investment banker involved, the officers you
2 met? Do you remember?

3 A Advest.

4 Q Advest? Okay. And there was a
5 meeting with you and Mr. Zafferese and who -- who
6 from AlphaStar or Realm was there?

7 A Crane and Lawless, their general counsel.

8 Q James Lawless?

9 A Correct.

10 Q Okay. And at that point in time is when
11 you discovered that Realm was willing to participate
12 in the program or expressed an interest in
13 participating in the program, but that they wanted
14 to sell the -- or at least the owners of Realm
15 wanted to sell the carrier to the PEOs?

16 A Correct.

17 Q In other words they weren't -- they
18 weren't just going to be the issuing carrier, they
19 were going to sell the issuing carrier to the PEOs?

20 A They were prepared to be the issuing
21 carrier. They were going to sell the company to a
22 holding company which the PEOs were investors in.
23 And prior to the sale, they were prepared to be the
24 issuing carrier and retain ten percent of the risk.

25 Q Okay. Was it before or after the

1 meeting at Advest that you undertook steps to form
2 Glastonbury, which was going to be the holding
3 company?

4 A We had already been talking, no, we
5 took steps afterwards to form Glastonbury.

6 Q So it's your testimony here today that
7 there had been no action on AIM's part in
8 conjunction with any PEOs to form Glastonbury as a
9 holding company that would purchase the issuing
10 carrier?

11 A Correct.

12 Q There was no need for that, because you
13 didn't know that Realm was going to be for sale --

14 A Correct.

15 Q -- until after the meeting; right?

16 A Correct.

17 Q Okay. All right. Now after -- what did
18 you do then? What was the next step from AIM's
19 standpoint after the meeting with Lawless and Crane,
20 Zafferese and Advest at the Advest office in New
21 York?

22 A Mark Sioma and I traveled to Bermuda
23 securing the reinsurance and the reinsurance
24 meetings. Stephen Crane went to London and met with
25 the London intermediaries and met with the London

1 underwriters. And the reinsurance program was put
2 into place to Mr. Crane's satisfaction. He signed
3 off on it, gave the order for it. And then Realm
4 asked to have monies advanced to it against the
5 purchase price whilst we were going through the
6 motions to close the company.

7 Q Okay. I'm going to come -- we're going
8 to come back and talk about that in detail in a
9 minute, but I want to focus a minute on the
10 Zafferese --

11 A Zafferese.

12 Q Zafferese, after the meeting where he set
13 up the initial talks between you and AlphaStar and
14 the owner of Realm, he was designated -- he was
15 going to be the broker or the intermediary with
16 respect to the reinsurance?

17 A Correct.

18 Q And you had some role in assisting in
19 that, but Realm was going to be responsible for
20 securing the reinsurance and purchasing the
21 reinsurance?

22 A Correct.

23 Q Okay. And Realm never did that did they?

24 A Yes, they gave the order.

25 Q Okay. But they never paid any

1 premiums, the reinsurance was cancelled?

2 A Correct.

3 Q Okay. So in reality the reinsurance
4 deal, while there was a proposal out there and you
5 say Realm, the folks at Realm had said go ahead with
6 this, it never really came together because they
7 never paid for it; right?

8 A It came together, the contracts were
9 signed, the cover notes were issued to Realm and
10 Realm defaulted of it.

11 Q They never paid?

12 A Correct.

13 Q All right.

14 A But the contracts were in place.

15 Q Okay. Now what time period are we in
16 with the reinsurance setup with Realm and -- that we
17 just spoke of? What time period are we in; early
18 '02, summer of '02, October --

19 A '03, '03.

20 Q '03?

21 A Now '03.

22 Q Well, let me -- let me try to help you
23 get your bearings. I'm not trying to trick you.

24 A Right.

25 Q I want to get the timeline right.

1 I think your Letter of Intent to Purchase Realm was
2 from October of '02, if I'm not mistaken.

3 A Right.

4 Q Well, using that as a reference point,
5 let's -- let's sort of try to understand when the
6 reinsurance deal was going down.

7 A It was through the beginning of '03.

8 Q So that was not until after -- the
9 reinsurance program that you just discussed, the
10 contracts, that -- that didn't even come into place
11 until after the first of '03?

12 A No. What I'm saying is the reinsurance
13 relationship was there through '03. We met with
14 re-insurers in December, October, December. In fact
15 Sioma specifically asked the re-insurers to cover
16 the accounts back to the first of October.

17 Q Okay. Was it before or after when you
18 met with the re-insurers and finalized the program,
19 was that before or after you issued the Letter of
20 Intent to Purchase Realm National?

21 A The actual negotiations with the
22 re-insurers preceded October.

23 Q Okay.

24 A The Letter of Intent was signed in
25 October. Mark Sioma was traveling with me to meet

1 his new re-insurers and Joe Zaffere's intermediary
2 through several visits through March of '03,
3 April '03.

4 Q Okay. All right. Now, how did you get
5 word out on the street, how did you let like the
6 folks at Quality HR, Spectrum, NES, how did they all
7 -- what's your understanding of how they became
8 aware of this -- this -- this program you were
9 putting together to help them with their workers'
10 comp insurance problems?

11 A Steve Landon knew of several and once
12 people knew that there was a place to go we were
13 inundated with submissions.

14 Q Okay. So word spread pretty quickly?

15 A Yes.

16 Q And I want to kind of get us in a time
17 period when that started going on. Again, relative
18 to your Letter of Intent I think that's a good, sort
19 of benchmark date for us to work off of, the Letter
20 of Intent from October '02.

21 A From July, August '02 onwards.

22 Q Okay. The Letter of Intent goes out in
23 October of '02 and almost concurrent with that is
24 the loan agreement; correct?

25 A Correct.

1 Q Is that October '02 as well?

2 A Somewhere in there.

3 Q Okay. Now, the Letter of Intent provided
4 for a purchase price of 12 million?

5 A Correct.

6 Q Okay. AIM obviously didn't have 12
7 million bucks at that point?

8 A Correct.

9 Q We just talked about in '01 you had
10 nothing, no business, no money, nothing.

11 A Correct.

12 Q So you send this Letter of Intent out and
13 you hadn't collected any money from any PEOs at this
14 point is what you've told me in your deposition or
15 in the depositions. When you sent this Letter of
16 Intent to Realm or AlphaStar, let's make sure we're
17 talking correctly here. You were going to purchase
18 Realm from AlphaStar?

19 A Correct.

20 Q Okay. You sent the Letter of Intent to
21 AlphaStar in October of '02?

22 A Correct.

23 Q And is it correct when I stated a minute
24 ago that according to your testimony here at that
25 point in time you had not collected a nickel

1 from any of the PEOs?

2 A Correct.

3 Q And you, yourself, hadn't -- hadn't had a
4 paycheck in a few years at that point; right?

5 A Correct.

6 Q All right. How about Mr. Holley or Mr.
7 Imperiale, and that's really what AIM was at that
8 point in time, was it not; it was just three of you
9 guys? Bruce Holley, David Dennett-Smith and
10 Imperiale?

11 A Imperiale.

12 Q Imperiale. That was it?

13 A Yes.

14 Q Okay. Did Norwood Venture Capital put up
15 any money for it?

16 A For what?

17 Q Well, had they put -- infused AIM with
18 any money in October '02?

19 A They had infused money into AIM to keep
20 it operating, yes.

21 Q Okay. All right. But you didn't have 12
22 million bucks, obviously?

23 A No, the understanding was that the money
24 would come from the PEOs as coverage was issued by
25 Realm.

1 Q Okay. And you hadn't collected any
2 money from the PEOs at that point?

3 A Correct.

4 Q And I think your testimony is that you
5 didn't begin collecting any money from PEOs until
6 November '02; is that correct?

7 A Correct.

8 Q All right. The loan, that was executed.
9 That was a fully -- that's one of the fully executed
10 documents we've got in all of these documents;
11 right? There was no question there was a loan
12 agreement?

13 A There's no question that there was a
14 Letter of Intent Agreement.

15 Q Right.

16 A There's no question that there was a
17 Purchase and Sale Agreement.

18 Q Right.

19 A There's a big question of whether there's
20 a fully executed and signed agency agreement though;
21 right?

22 A No.

23 Q There's no question there wasn't?

24 A I don't believe so. I executed it
25 and sent it back to the company originated it,

1 and that's what normally happens.

2 Q Okay. We'll come back -- I want to talk

3 --

4 A And -- and --

5 Q Go ahead.

6 A -- and Realm took the trouble to appoint
7 us an agent according to the regulations in Georgia.

8 Q We're going to spend quite a bit of time
9 on that a little bit later, but let's talk right now
10 about the loan agreement.

11 A Yes.

12 Q All right. The loan agreement provided
13 that -- the essential terms were that AIM was going
14 to loan AlphaStar up to \$3.5 million dollars?

15 A Correct.

16 Q Okay. And as security for that loan AIM
17 would have a security interest in AlphaStar stock in
18 Realm National?

19 A In Stirling Cooke Brown, North America.

20 Q Okay. And that's a -- fill us in on what
21 Stirling Cooke is now relative to AlphaStar and
22 Realm.

23 A Stirling Cooke Brown, North America was
24 the holding company that owned Realm, World Trade
25 and Stirling Cooke Brown Agency.

1 Q It's all part of AlphaStar? All these
2 companies are under the AlphaStar --

3 A Correct.

4 Q Okay. All right. And how much did you
5 loan?

6 A There was a payment schedule which
7 required the first payment of a million and a half.
8 It had lots of warranties with it that they had to
9 comply with. And as the PEO -- as Realm confirmed
10 the coverage and the PEOs advanced their capital
11 contribution, we advanced a million and a half
12 dollars.

13 Q Okay. So when are you saying that the
14 PEOs were bound for coverage by Realm?

15 A The first of October.

16 Q The first of October of 2002?

17 A 2002, yes.

18 Q Even before the Letter of Intent?

19 A The Letter of Intent had nothing to do
20 with Realm providing coverage.

21 Q Okay. So it's your testimony here today
22 that on October 1, 2002 -- which PEOs were bound for
23 coverage by Realm National at that point in time?

24 A I honestly don't remember.

25 Q Well, let's talk about the two we've

1 got involved in these cases. Let's talk about
2 Quality HR. When was Quality HR bound for coverage
3 by Realm National according to you?

4 A I'm not sure, I'd have to go look at the
5 records.

6 Q You don't know the answer to that
7 question?

8 A No.

9 Q All right. How about Spectrum HR?

10 A Same answer.

11 Q You don't know?

12 A No.

13 Q Okay.

14 A Or I don't remember I should say.

15 Q All right. Let's talk about the
16 requirements of the PEOs to participate in this
17 program, kind of focus on that a little bit. This
18 wasn't like going over to the State Farm, Good
19 Neighbor corner and saying, you know, I've got a
20 business, I need workers' comp insurance; can I get
21 some workers' comp insurance. And you write them a
22 check and they give you a binder, and then 30 days
23 later you get a policy? It didn't work like that
24 did it?

25 A No.

1 Q Okay. A little bit more complex? You
2 sent out a flyer, sort of a disclaimer, did you not?
3 It's in the APAs submissions. A disclaimer
4 explaining the risk to PEOs for coming into this
5 program, sort of like a hedge fund; isn't that
6 right? Isn't that how you characterized it?

7 A Yes, we did.

8 Q Okay. All right. To participate in the
9 program you were putting together the PEOs had to
10 not only pay premium, but they had to contribute
11 capital to be part of the workers' comp program you
12 were putting together? Fair; is that right?

13 A Other way around.

14 Q Okay. Well, why don't you state it then?

15 A In order to be considered, the
16 underwriting guidelines said that that had to be a
17 participatory owner of the holding company.

18 Q You couldn't have the purported workers'
19 comp insurance coverage without contributing capital
20 for the purchase of Realm?

21 A Correct.

22 Q All right. Now, I know you and I have
23 sparred on this topic several times and hopefully we
24 can short circuit, but -- and I'm not making a
25 judgment on whether it's required or not, but I do

1 want to ask you the question. Was that program, and
2 specifically the prerequisite contributed to the
3 capital fund in order to get the insurance, was that
4 ever presented to the South Carolina Department of
5 Insurance or the South Carolina Workers'
6 Compensation Commission for approval?

7 A There was no need for them to approve.

8 Q I understand your viewpoint on that, and
9 we may disagree on that and that's fine. But my
10 question is simply whether it was done or not?

11 A It wasn't required.

12 Q Was it submitted to the Department of
13 Insurance or the State Workers' Compensation --

14 MR. McCALL: Commissioner, I think the
15 question's been asked and answered.

16 MR. WOOD: He hasn't --

17 THE COURT: You just need to say whether or
18 not it was done.

19 MR. WOOD: That's right.

20 THE COURT: I agree -- just answer whether or
21 not y'all did it.

22 CROSS EXAMINATION RESUMES

23 BY MR. WOOD:

24 A We never submitted it.

25 Q Okay. Fair enough. All the money

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1 that came in came to AIM?

2 A Correct.

3 Q You turned over -- you made reference to
4 these trust accounts, bank accounts; AIM basically
5 maintained three accounts; correct?

6 A Correct.

7 Q I think you've told us it was with the
8 Wachovia Bank over in Atlanta, one of the branches
9 over there.

10 A Correct.

11 Q All right. You had the capital account?

12 A Correct.

13 Q You had the premium account?

14 A Correct.

15 Q And you had the, what was the third
16 account?

17 A An operating account.

18 Q Operating account? So all the money that
19 the PEOs, including Quality HR and Spectrum, every
20 nickel that they paid to be in this program went to
21 AIM?

22 A Correct.

23 Q All right. Have you produced any bank
24 records to anybody, this purported trust account for
25 Realm and all that that you've testified about?

1 Have we seen -- have we seen any bank records on any
2 of that?

3 A I think you asked for them and they were
4 sent to you.

5 Q All right. Mr. McCall, does he have
6 them?

7 A If he asked for them he'll have copies of
8 them.

9 Q Okay. All right.

10 A You are most welcome to them.

11 Q I appreciate that. So the money that you
12 loaned to AlphaStar, 1.5 million at that point in
13 time was money that you were collecting from the
14 PEOs?

15 A Correct.

16 Q All right. And that's all you loaned
17 them. You never got up to the 3.5 million; right?

18 A They had defaulted on their agreement by
19 then.

20 Q Okay. All right. Now when did -- when
21 did you first -- when did AIM start issuing
22 Certificates of Insurance for workers' comp relative
23 to any of the PEOs that were involved in the
24 program?

25 A October, November, I don't

1 remember exactly.

2 Q '02?

3 A '02.

4 Q Okay. Now, I want to talk a little bit
5 about the -- certainly at that point in time you
6 hadn't closed on the -- on the deal with Realm
7 National? We've been through that with Mr. McCall's
8 direct examination, it was --

9 A It doesn't have anything to do with
10 coverage.

11 Q I'm just asking you the questions, okay.

12 A I'm just answering.

13 Q Well, had you closed on Realm at that
14 point in time when you were issuing Cert -- starting
15 issuing Certificates?

16 A No, because it wasn't part of the
17 transaction.

18 Q Okay. All right. Now, I'm a little hazy
19 on one thing about the purchase agreements. I know
20 we got the Stock Purchase Agreement for '03, but as
21 I understood your direct testimony and some of your
22 deposition testimony, you believe that there was
23 another Stock Purchase Agreement that had been in
24 place prior to that? Say in the November, December
25 '02 time?

1 A No, no it was all in '03.

2 Q Okay. So there really was no Buy/Sell
3 Agreement, Stock Purchase Agreement executed between
4 AIM and the AlphaStar folks until March of '03?

5 A Probably.

6 Q Well, is that right or not?

7 A Right. I think that's right.

8 (12:08, Mr. Easterling exits the hearing)

9 Q Okay. All right. Let's talk a little
10 bit about the Agency Agreement now. The one Mr.
11 McCall showed you. Do we have that?

12 MR. MCCALL: It's in the APAs.

13 MR. WOOD: We pulled that out a little while
14 ago. I think it's Number 8.

15 Q Mr. McCall asked you about this document.
16 I think it's Number 8 in his APA submission
17 documents. That's dated December 2 of '02; is that
18 right?

19 A The first of December, '02, yes.

20 Q Okay. And you say that you executed
21 that. That that was prepared by Realm National or
22 somebody on behalf -- somebody on Realm National's
23 behalf, and that you executed it and sent it back in
24 to Realm National?

25 A Yes.

1 Q Do you have any copies of that document
2 that have your signature or anybody on behalf -- or
3 anybody authorized on behalf of AIM or anybody
4 authorized on behalf of Realm National?

5 A We have copies somewhere, the executed
6 document with my signature on it.

7 Q But you -- you admit that there -- that
8 you've never seen and you don't know if any exists,
9 a fully executed Agency Agreement with both AIM's
10 binding signature and Realm National's binding
11 signature? Do you agree with that?

12 A I agree with that, yes.

13 Q Okay. All right. One thing I want to --
14 I'm a little confused on, and I enjoy trying to
15 learn this insurance terminology in the insurance
16 industry, but I've sort of, kind of got a -- I'm
17 confused as to testimony about authority to bind
18 business pursuant to an Agency Agreement versus not
19 having any authority to bind business and I -- I
20 mean, I can go through and pick out in the depo
21 transcripts, I've made notes of all of them while
22 I've been reading them the last few days, but you've
23 testified numerous times in various cases that there
24 -- you -- that AIM did not have authority to bind
25 business on behalf of Realm.

1 A Without Realm's authority.

2 Q Okay. All right. But you're -- so you
3 agree then that this Agency Agreement was never in
4 effect?

5 A No, I don't.

6 Q You don't?

7 A All Agency Agreements say binding because
8 the agent is the person that issues the Certificate.

9 Q Okay. You're saying you had an Agency
10 Agreement or you believed you had an Agency
11 Agreement?

12 A Yes.

13 Q You were their agent?

14 A Yes.

15 Q But you admit, you've testified on
16 numerous occasions you didn't have authority to bind
17 business?

18 A Most agencies have the issue to -- issue
19 coverage but not to bind the company without the
20 company's authority.

21 Q Okay. All right. Who, specifically,
22 gave you the authority to be issuing the
23 Certificates that you started issuing in the first
24 part of November, '02?

25 A It was either Crane or Sioma.

1 Q Okay. And have you got any --have you
2 got any of that in writing? Is there anything --
3 and we're just relying on your testimony here today

4 --

5 A I believe that --

6 Q -- any confirmation in any of that
7 anywhere; any written confirmation?

8 A I believe there was a written
9 confirmation that we would issue Certificates.

10 Q All right. Have you got that? Have you
11 produced that to anybody involved in this case here
12 today?

13 A I would have thought so by now, but I
14 don't know and I'm sure we can provide it.

15 Q Okay. All right. And I would have
16 thought Mr. McCall would have asked you for that.
17 Have you given it to him?

18 A I have no idea what we've given to him.

19 Q Okay.

20 MR. McCALL: And we would ask for it.

21 Q After the Certificates went out Realm
22 received some contact from a few -- a couple of
23 different State Regulators concerning the
24 Certificates; are you aware of that?

25 A Yes.

1 Q Okay. I think Texas and Florida made
2 contact with Realm National's offices about
3 Certificates relative to PEOs that were in this
4 program; are you aware of that?

5 A Not specifically.

6 Q Well, at some point in December of 2002
7 Realm let it be known that these -- that it was
8 their position that these Certificates were not
9 authorized, and that they were not providing
10 coverage and that the Certificates had been issued
11 by you and various sub-producers without
12 authorization. You're aware they took that position
13 in December of '02; correct?

14 A Correct.

15 Q All right. In fact, in December of '02
16 the -- Mr. Sioma wrote numerous states, The
17 Department of Insurance Commissioners, Workers'
18 Compensation State Regulators concerning the
19 situation with these Certificates that they had been
20 made aware of?

21 A Yes.

22 Q Okay. And they advised State Regulators,
23 Insurance Department Commissioners, Workers' Comp
24 Regulators that there was no coverage, that that was
25 their position there was no coverage; right?

1 A It was their position at that time.

2 Q Okay. And in addition to writing the
3 various State Regulators they also wrote letters to
4 the various PEOs that they were aware of who were
5 purporting to have coverage through this program?

6 A Correct.

7 Q And you were copied on those various
8 letters?

9 A Correct.

10 Q Okay. So you knew in December of '02 at
11 least Realm's position on -- on the coverage and
12 your authority to be issuing these Certificates and
13 so forth?

14 A Correct.

15 Q All right. You continued to collect
16 money from the PEOs?

17 A After discussions with Realm.

18 Q Did you continue to collect money from
19 the PEOs?

20 A Yes.

21 Q Okay. Premium and capital?

22 A Correct.

23 Q All right. Now, you also notified, in
24 response to the letters that Realm was writing, you
25 contacted the PEOs, you or somebody with AIM,

1 contacted the PEOs, either you or Mr. Imperiale I
2 believe, contacted the PEOs and gave them three
3 suggestions?

4 A Yes.

5 Q Okay. You told them that they should do
6 one of three things. That they should either file a
7 State Declaratory Judgment -- a Declaratory Judgment
8 Action in their respective states seeking to have
9 the coverage confirmed; or escrow their premium
10 money and handle the claims themselves; or get
11 replacement coverage?

12 A Correct.

13 Q Okay. And that written notice or that
14 written memorandum was sent to all the PEOs who were
15 participating at that time?

16 A Correct.

17 Q Okay. Now, you mentioned you weren't
18 sure when Quality HR came in the mix and Spectrum HR
19 came in the mix, but do you believe that Quality HR
20 was in the program or was a participant --

21 A Yes.

22 Q -- at that time?

23 A Yes.

24 Q Okay. And we know we've got -- we've
25 got various letters. Have you seen the

1 various letters from Mr. Sioma with Realm to the
2 PEOs --

3 A Yes.

4 Q -- including David Evette with Quality
5 HR?

6 A Yes.

7 Q Evette, I'm sorry. I apologize.

8 A I've also seen the coverage that they
9 confirmed and that they never cancelled it.

10 Q Okay. We'll go back to that.

11 A Okay.

12 Q Spectrum HR, did you receive the copies
13 of the correspondence sent to Spectrum HR by Mr.
14 Sioma advising of Realm's position on the coverage
15 and whether the Certificates were authorized or not?

16 A I don't recall.

17 Q Okay. How were you going to continue to
18 raise the money to purchase Realm at that point?
19 You've loaned them -- by December of '02 you had
20 loaned them a million and a half bucks; right?

21 A Yes.

22 Q All right. Well, the closing price or
23 the sales price was supposed to be \$12 million;
24 right?

25 A No.

1 Q That's not what was in the Letter of
2 Intent?

3 A No.

4 Q Well, what's your position on what the
5 closing price is?

6 A It says \$12 million or as per an audited
7 financial.

8 Q Ah. Okay. So the purchase price of
9 Realm National was very much in question for both
10 sides?

11 A No, that's normal procedure. It was by
12 March or April, but when we entered into the Letter
13 we had to take their statutory statement as what it
14 is, but all purchases of whatever company is subject
15 to due diligence and audit.

16 Q Okay. Right. They've got to be able to
17 show that, you know, what they're telling you in
18 terms of the net worth of the company is accurate.

19 A Absolutely.

20 Q Okay. Now, that -- that's interesting
21 because I asked you in one of the depositions, or
22 one of the lawyers asked you in one of the
23 depositions why it was, what was your opinion as to
24 why Realm started back peddling on this thing and
25 said, no, those Certificates aren't authorized,

1 there's no coverage? And you offered some very
2 interesting testimony on that subject. Do you
3 remember what it was?

4 A I said I didn't think they had their
5 assets and they probably had entered some agreement
6 with the Insurance Departments that we didn't know
7 about.

8 Q Well, what was the effect, and you've
9 been around the insurance business a long time and I
10 think you've got a lot of experience -- we didn't
11 cover this in your background, but it's in the
12 record in the depositions; you had a lot of
13 experience in workers' compensation, in particularly
14 the administration and self insurance programs;
15 right?

16 A There wasn't a self insurance program.

17 Q No, no, no. I'm not talking about this
18 program. I'm talking about your background; in the
19 past, going back to the --

20 A Correct.

21 Q -- pre-ouster days from 1991 -- I mean,
22 1999. You had been involved in workers'
23 compensation and self insurance programs?

24 A Yes.

25 Q Okay. Well, what -- if all these

1 Certificates are out there hitting the streets and
2 coming to the attention of people like Mr. Smith and
3 the Department of Insurance in South Carolina and
4 other states that Realm is covering these PEOs,
5 what's that -- what's that going to do to Realm and
6 Realm's status and the way they're viewed by the
7 State Regulators?

8 A Provided they're licensed to do business
9 within the state, it shouldn't do anything.

10 Q Well, it's not going to make them look
11 like they've got a lot of surplus funds out there is
12 it? It's going to make them look like they've got a
13 lot of liability; right? Isn't that right?

14 A No.

15 Q You've got PEOs that are at that point in
16 time, according to your own testimony, were
17 virtually uninsurable; correct?

18 A I didn't say all PEOs.

19 Q Well, you --

20 A And I also told you we weren't insuring
21 the PEOs, we were insuring individual clients.

22 Q Okay. So you're saying you didn't insure
23 the PEOs?

24 A No, we didn't.

25 Q Okay. All right.

1 A Well, we named them as an additional
2 insured, yes.

3 Q So you were insuring them?

4 A As an additional insured.

5 Q Okay. But again you testified, did you
6 not, that Realm started back peddling on this thing.
7 Your opinion of why they started back peddling on it
8 was because when the Certificates hit the street it
9 was putting them in disfavor in terms of their
10 assets versus their liabilities with the various
11 State Regulators?

12 A I never testified to that.

13 Q Okay. All right. We'll review that at
14 lunch and get that testimony up to talk about. Did
15 Quality HR -- what did Quality HR do in response to
16 your three suggested actions?

17 A They never filed a dec action and they
18 asked us to manage their account going forward,
19 which we did.

20 Q And when you say "manage their account"
21 what does that mean?

22 A Collect their premiums, pay their claims.

23 Q That was all done by AIM?

24 A Correct.

25 Q Okay.

1 A With the direction of Realm.

2 Q All right. All right. And even though
3 at that point in time -- you don't dispute -- I know
4 you dispute the merits of Realm's position, but you
5 don't dispute that in various Court filings, various
6 correspondence to State Regulators, Realm has
7 maintained or did maintain while it was in
8 existence, steadfastly, that there was no coverage
9 and that they did not bind this business and that
10 AIM and its sub-producers didn't have authority to
11 be issuing these Certificates and the workers'
12 compensation insurance? That's been their position
13 the whole time hasn't it?

14 A No.

15 Q That's not been their position in the
16 various letters to the State Regulators and in the
17 Court filings that have been made throughout all
18 these lawsuits?

19 A You said in all instances.

20 Q No, I -- well I -- I know what you're
21 saying they told you, that they were coming to your
22 office and binding coverage --

23 A No, they dismissed the claims. They
24 dismissed the lawsuit that disputed the coverage and
25 the Certificates. They signed the Purchase and Sale

1 Contract that acknowledged the coverage, and then
2 they continued coming to our office to manage the
3 program. They were the sole people handling the
4 claims and we were working at their direction.

5 Q So it's your testimony here today that
6 everything that they were saying in written
7 correspondence to State Regulators and in Court
8 filings was just a bald face lie?

9 A Yes.

10 Q Okay. All right. How were you going to
11 get the money? Whatever the purchase price was how
12 were you going to get the money to buy it? Whether
13 it was 12 million or 10 million, 8 million, where
14 were you getting the rest of the money?

15 A I think you've answered that question.

16 Q No, I'm asking you.

17 A We audited it, we acknowledged it, we
18 noticed a closing for one and a half million because
19 that's what we thought we -- was more than a fair
20 price.

21 Q Okay.

22 A And we are now the beneficial owners, so
23 we have bought it.

24 Q Wasn't your plan all -- well, we'll talk
25 about that in a minute, but wasn't your plan all

1 along to try to devalue Realm National so you could
2 buy it as cheaply as possible?

3 A No.

4 Q That wasn't your plan?

5 A No.

6 Q Realm's alleged that haven't they?

7 AlphaStar has alleged that haven't they?

8 A Yes, they've alleged it on numerous
9 occasions.

10 Q Okay. And that is replete in all the
11 Bankruptcy Court documents and Federal Court filings
12 that are part of the records in this case; their
13 allegations in that regard?

14 A Obviously worthless or they wouldn't have
15 put the company into liquidation.

16 Q All right. And you know, that's sort of
17 -- I mean, you know, if you look at -- you've got
18 your background with Georgia General, you've got
19 your background with your partners that plundered
20 the company. I mean, this is just a continuation of
21 your whole story isn't it? Everybody else is
22 stealing the money and taking --

23 MR. McCALL: Commissioner, I think the
24 question has been asked and answered a number of
25 times. We've got the depositions in evidence here.

1 THE COURT: Well, I'm going to give him some
2 latitude on cross.

3 Q Isn't that -- isn't that just your style?

4 A No.

5 Q It's not?

6 A No.

7 Q You just happen to be the victim of
8 everybody else plundering money away from you?

9 A Georgia General never had any money
10 plundered from it, and that was resolved with the
11 Georgia Insurance Department. What Realm did within
12 its own confines before we were the owner has
13 nothing to do with me what-so-ever. And the dispute
14 with AIM was how they decided they would run the
15 company, it was not a dispute on plundering cash.

16 Q How much are you in debt personally?

17 A God knows, \$16 million.

18 Q \$16 million? Let's talk about some of
19 these other judgments. We're going to come back to
20 it too, but I mean, the State of Texas and there's
21 orders in there, concerning AIM's activities in
22 connection with this program, and unauthorized
23 transactions of insurance business; issuing these
24 Certificates without authorization. They've made
25 findings, the State of Texas has. You're aware

1 of those Orders.

2 A But we never defended them. I couldn't
3 defend every single action and you know that as well
4 as I do.

5 Q Okay. How much -- how much has AIM been
6 fined by the State of Texas in connection with this
7 whole program, your actions in connection with this
8 --

9 MR. McCALL: I object. That's not relevant to
10 --

11 MR. WOOD: This man's credibility is --

12 THE COURT: Yeah, I'm going to allow it.

13 MR. WOOD: -- critically relevant to the whole
14 case.

15 Q How much did the State of Texas fine AIM
16 for its actions in connection with this PEO program
17 that brings us all here together today?

18 A I think it was \$4 million.

19 Q \$4 million? Okay. So we've got you in
20 the hole for \$16 million, got \$4 million from the
21 State of Texas. How about Missouri? How much did
22 they fine AIM for its actions in connection with
23 this PEO program?

24 A I think it was \$4 to \$6 million.

25 Q All right. There's another four to

1 six. By the way, do you know when that Order -- do
2 you know when the Order assessing, making the
3 findings against AIM in the State of Missouri, when
4 that Order was entered?

5 A No.

6 Q Was it entered before or after you
7 testified at this NES Litigation? You want me to
8 give you the dates of your testimony in the NES
9 Litigation? August 3rd and 4th of '06. Does that
10 sound right to you?

11 A Yeah, but the NES Litigation has been
12 dismissed.

13 Q Okay. Well, you gave deposition
14 testimony in the lawsuit -- NES had sued AIM as
15 well. That's another lawsuit you're out there
16 defending, right?

17 A It was dismissed.

18 Q Okay. Who dismissed it?

19 A They did.

20 Q They dismissed it because there's no E&O
21 Coverage, no money; right?

22 A No. We got --

23 Q Kind of a waste of time isn't it?

24 A Will you let me answer the question?

25 Q Sure.

1 A When we met with the Georgia Insurance
2 Commission, we went through -- AIG paid the E&O from
3 IOA and the Georgia Insurance Department and AIG are
4 going to seek recovery against Realm's assets and
5 officers.

6 Q Let me let you take a look at this. This
7 is the Missouri judgment against the AIM Defendants.

8 MR. WOOD: Commissioner, it's our APA Number
9 20 and it starts at page 1248.

10 Q Let me let you take a look at that there
11 Mr. Dennett-Smith.

12 A Yes.

13 Q What's the date on that thing?

14 A May 26, '06.

15 Q Page 1918 of our APA submissions. Your
16 testimony in the NES case. What did you tell
17 counsel at that time -- ask the deposing counsel at
18 that time about what the status of the State of
19 Missouri's actions were?

20 MR. McCALL: Your Honor, I object to the
21 witness being cross examined by a deposition given
22 in another case.

23 THE COURT: I think it's been submitted hasn't
24 it?

25 MR. WOOD: It's in the record.

1 MR. McCALL: But I'm still noting an
2 objection.

3 THE COURT: Okay. But I'm going to allow it.

4 CROSS EXAMINATION RESUMES

5 BY MR. WOOD:

6 A Then we went to see Missouri.

7 Q Did you tell them it was on hold?

8 A I thought it was.

9 Q All right. They gave you another chance
10 to answer the question again, page 1954 of our APAs.
11 You told them again that the Missouri case was on
12 hold.

13 A They told us that they passed a judgment
14 and they were holding everything until the outcome
15 of the ownership of Realm was resolved. So that's
16 what I thought --

17 Q Did you lead counsel to believe that the
18 State of Missouri wasn't taking any action against
19 AIM in connection with these -- this PEO program
20 that you were putting together?

21 A No, not at all.

22 MR. KELLER: He can't answer what somebody
23 else who isn't here thought, Your Honor.

24 THE COURT: Yeah, you need to reword that.

25 MR. WOOD: I'll withdraw that question.

1 I think I made the point.

2 CROSS EXAMINATION RESUMES

3 BY MR. WOOD:

4 Q Crawford and Company has got a lawsuit
5 pending against -- at least we -- one of the
6 depositions you told me they've got a lawsuit
7 pending against AIM for not paying administration
8 fees on each claim?

9 A Correct.

10 Q All right. Your former landlord where
11 you were doing business at the Tower Creek Drive
12 office in Atlanta; when were you there?

13 A October '02, '03.

14 Q Okay. They've got a \$500,000 judgment
15 against you, according to your testimony, for not
16 paying your rent.

17 A They've now dismissed it.

18 Q They dismissed it? Did they have a
19 \$500,000 judgment against you --

20 A Yes.

21 Q -- for not paying rent?

22 A Yes.

23 Q Okay. Did you pay it off?

24 A No. They decided to dismiss it.

25 Q Okay. Your own personal life style

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1 and living expenses has been funded by advances from
2 Norwood Venture Capital for the last, what, eight
3 years, nine years or so?

4 A Yes.

5 Q You haven't earned a paycheck except from
6 selling cars, I think, since 1998?

7 A Correct.

8 Q Is it fair to say that you have got an
9 awful lot on the line in terms of this whole
10 Realm-AIM transaction and the coverage issue in
11 connection with this PEO program; isn't that fair to
12 say?

13 A I'm not sure.

14 Q Thank you. As I understand it, the first
15 lawsuit between Realm and AIM in connection with
16 this whole situation was brought by Realm in Federal
17 District Court in New York in January of 2003; is
18 that correct?

19 A Correct.

20 Q All right. And that was basically a
21 Declaratory Judgment Action on the coverage
22 question?

23 A Correct.

24 Q All right. And the authorization of the
25 Certificates?

1 A Correct.

2 Q And y'all filed some counterclaims?

3 A No, we didn't.

4 Q You didn't file any counterclaims at that
5 point?

6 A No.

7 Q Okay.

8 A I'm sorry, we did.

9 Q Okay. What did you allege?

10 A No, no, we did not.

11 Q Well, --

12 A We didn't. We were going to file
13 counterclaims, but on advice of counsel they said it
14 would be disruptive to the continuation of the
15 completion of the contract, and Realm dismissed the
16 claims. If there would -- in the blinding light of
17 hindsight, if we had filed the counterclaims they
18 wouldn't have walked away from the lawsuit.

19 Q So you think you should have filed a
20 counterclaim?

21 A Yes, I do.

22 Q All right.

23 A Now.

24 Q All right. Let's take it in a little --
25 I like to take it in a little more incremental

1 approach than you do, so let's just sort of take it
2 step by step. You mentioned the dismissal and we'll
3 come back to that one. Settlement negotiations were
4 ordered when the case first got filed; correct?

5 A Correct.

6 Q The judge told all of you to get in there
7 and work it out, you're not going to see my
8 courtroom until you work it out?

9 A Correct.

10 Q All right. And that's what led to the
11 March 2003 Stock Purchase Agreement?

12 A Yes.

13 Q Okay. And that's one of the executed
14 documents we've got; right? You've got that one;
15 Mr. McCall has asked you about it?

16 A Yes.

17 Q All right. I know I asked this and I
18 don't even remember the answer frankly, but -- and
19 you might not have known, but I want to ask you
20 again, and I apologize for being repetitive. But do
21 you believe that's the only executed Stock Purchase
22 Agreement that ever existed?

23 A I'm not --

24 Q On March '03?

25 A I'm not sure. If that's the one

1 that includes the confirmation of coverage, that was
2 the final document.

3 Q Okay. Now, you don't dispute -- going
4 back to the Letter of Intent in October of '02 as
5 well as the March of 2003 Stock Purchase Agreement
6 that those -- those documents specifically addressed
7 AIM's underwriting authority? Do you dispute that
8 those documents specifically address --

9 A I don't.

10 Q -- whether and when and under what
11 conditions AIM had underwriting authority?

12 A I'm not sure that they ever addressed
13 underwriting authority.

14 Q You don't know?

15 A Not anymore. I don't remember.

16 Q You didn't read them before coming here
17 to testify today?

18 A No.

19 Q Okay. All right. Well, I did. When did
20 you bring -- when did AIM bring the lawsuit in
21 Delaware to foreclose on the stock due to the
22 default on the loan repay?

23 A At the same time we filed the lawsuit in
24 Federal Court in New York to enforce performance
25 under the Contract.

1 Q Okay. Are you saying that was after
2 Realm voluntarily dismissed the DJ action that it
3 had filed in January of '03?

4 A Yes.

5 Q Okay. All right. Let's talk about the
6 closing because that's a very important -- if you
7 read the -- I think. If you read the Stock Purchase
8 Agreement from March of '03, the closing is very
9 important.

10 A Correct.

11 Q Okay. Why couldn't you get to the
12 closing? What was the excuse that Realm was
13 offering you as to why you couldn't get to the
14 closing?

15 A They didn't offer an excuse, they just
16 didn't turn up.

17 Q Was there no discussion about the audit
18 and financial statements from KPMG? Was that not a
19 -- was that not the, at least what you viewed as the
20 ruse as to why they weren't showing up?

21 A No. Because under the Purchase and Sale
22 Agreement it said if they were unable to provide
23 audited financials we could provide a third party's
24 view as to the value of the company and we would
25 adjust the price after we had.

1 Q Adjust the price? And I assume that
2 would be, if they couldn't come up with audited
3 financials from KPMG you were going to adjust the
4 price down; right?

5 A Could be up.

6 Q Well, what was it in reality?

7 A It was their wording, not ours.

8 Q Okay. Well, I understand. We're just
9 talking about your -- what you perceive to be your
10 rights under the contract, but as a practical matter
11 that meant if they couldn't come up with audited
12 financial statements they weren't -- you weren't
13 going to pay them \$12 million dollars?

14 A No, it didn't mean that at all.

15 Q How much were you going to pay them? I
16 think you just testified a little while ago you
17 thought a million and a half was all it was worth?

18 A We obtained a third party, Israloff,
19 Trattner, went in and they were doing an audit and
20 they gave a fair value indication, which is what the
21 Contract --

22 Q It was your auditor? It was your
23 auditor?

24 A It was our auditor, yeah.

25 Q Okay.

1 A It was also the auditor for the State of
2 New York.

3 Q And what did that come back showing the
4 price to be?

5 A It said a million and a half dollars,
6 maximum.

7 Q Which is what you had already loaned
8 them?

9 A Right.

10 Q Okay. Did you find that coincidental?

11 A No, because the company was worth less
12 than a million and a half dollars.

13 Q Did the fact that there was this
14 purported coverage out there through the PEO
15 programs and all these potential liabilities have
16 anything to do with that?

17 A No.

18 Q None?

19 A Nothing.

20 Q So your testimony is, despite the fact
21 that Realm supposedly bound all this coverage and
22 you've got this virtually difficult to insure class
23 of purported insured's out there, PEOs, that those
24 potential liabilities this coverage had allegedly
25 been bound had no effect whatsoever on the

1 purchase price of Realm National?

2 A Correct. We never took it into
3 consideration.

4 Q Okay. All right. There never was a
5 closing?

6 A Depends what you define --

7 Q Well let me just -- I'll agree with you
8 if you want to call it a closing when the Bankruptcy
9 Court and the Bankruptcy Trustee in August of 2006
10 gave AIM the AlphaStar stock in Realm. You want to
11 call that a closing? I'll be fine to agree to that
12 if you want to just call it a closing for sake of
13 discussion.

14 MR. McCALL: Commissioner, I think arguing
15 with the client is not proper. I object to that.

16 MR. WOOD: A client?

17 MR. McCALL: I'm sorry, the witness.

18 MR. WOOD: I'm sorry. Excuse me.

19 MR. McCALL: I misspoke.

20 MR. WOOD: I thought you said earlier you
21 weren't representing AIM, I wanted to make sure.

22 MR. McCALL: Let me make sure that I make very
23 clear on the record that I do not represent AIM. So
24 this witness --

25 THE COURT: Yeah, you're here for HR

1 Services. We've got that on the record, so. He
2 just misspoke.

3 ^{Phonetic}
MR. McCALL: I'm sorry, Duke. I apologize.

4 CROSS EXAMINATION RESUMES

5 BY MR. WOOD:

6 Q Do you want to -- can we just for the
7 sake of our conversation consider the assignment by
8 the Bankruptcy Trustee of AlphaStar's stock in Realm
9 to be a closing in August of '06; you want to call
10 that a closing?

11 A That's what our attorneys refer to it as.

12 Q Okay. Well, that's fine. But the bottom
13 line is to the extent there was a closing, and
14 that's considered a closing, it never occurred until
15 August of 2006?

16 A Correct.

17 Q There was no other closing that ever went
18 through before that?

19 A Correct.

20 Q Okay. And by the way, in August of 2006
21 -- try to get my timeline right, but in August of
22 2006 obviously AlphaStar was already in Bankruptcy
23 Court.

24 A Correct.

25 Q They declared bankruptcy? The

1 Trustee gave you a Quit Claim Title to the stock;
2 right?

3 A Correct.

4 Q Okay. And I think the records reflect
5 that Realm was liquidated by the State of New York
6 and its assets taken under the control of the New
7 York Liquidation Bureau as the liquidator in June of
8 2005; is that your understanding?

9 A Previous to us getting the Quit Claim
10 Deed, yes.

11 Q Before you got the Quit Claim Deed? So
12 when you got the Quit Claim Deed, what you really
13 got was stock in an insurance company that had been
14 liquidated and its assets taken control of by the
15 State of New York's Liquidation Bureau?

16 A Agreed.

17 Q Okay. Would you agree with me that if
18 you're the Bankruptcy Trustee, Mr. Connell or
19 O'Connell, I forget, one or the other; that if you
20 could get rid of an entire class of creditors by
21 giving them stock in a liquidated insurance company
22 that would be a pretty good deal wouldn't it? Get
23 rid of a whole class of creditors by giving them a
24 bunch of worthless stock?

25 A Are you asking me whether it got rid

1 of it?

2 Q I'm asking you if you think that's a good
3 deal if you're the Bankruptcy Trustee?

4 A They didn't get rid of us as a creditor.

5 Q They didn't?

6 A No, we're still there with a million and
7 a half dollars.

8 Q Okay. Are you still there?

9 A Well, it's been dismissed now.

10 Q Oh, it has? This was -- was that the -
11 well, let's get into the procedure because I'm
12 fascinated by the procedure. I'm just an old
13 workers' comp lawyer here in South Carolina, but I'm
14 fascinated with federal practice, federal procedure
15 going back to law school. The Bankruptcy Court
16 allowed you, after you took the Quit Claim Title to
17 the stock --

18 A Yes.

19 Q -- you and your lawyers or AIM and
20 through its lawyers petitioned the Bankruptcy Court
21 to remove reference to the prior claims that you had
22 made against the Realm National and AlphaStar
23 officers and directors and so forth, so that you
24 could reconstitute that lawsuit as a federal lawsuit
25 in Federal District Court? Isn't that what

1 happened?

2 A I'm not sure of the technical procedures,
3 but the agreement was that they would give us the
4 stock and we would remove the Federal Court case
5 that was originally in the Southern District Court
6 and remove the bankruptcy back to the Federal Court.

7 Q Okay. I agree with that. I agree with
8 what you just said there. I think that's a fair
9 characterization of it. And in addition -- and once
10 that happened, you, through your lawyers, or AIM
11 through its lawyers also added or attempted to add
12 the New York Liquidation Bureau as a defendant in
13 that case; correct?

14 MR. WOOD: What's the page number? Let me get
15 the APA. Commissioner, I believe that's in Folder
16 21 of our APAs, that entire Court case file from the
17 deposition.

18 A I'm not sure whether we added them or
19 they entered -- they entered their name into the
20 lawsuit in Bankruptcy, and when it got removed it
21 was an automatic addition.

22 Q They became a party to the lawsuit?

23 A Yes, because they controlled Realm. It
24 wasn't that we sought to do it. We would have done
25 it but I think it was automatic.

1 Q You felt -- it was felt they were proper
2 to the lawsuit because they had control of Realm's
3 assets?

4 A I think that's how it happened.

5 Q Okay. But your attorneys filed an
6 Amended Complaint or Reconstituted Complaint --

7 A I --

8 Q -- seeking to have the coverage issue
9 decided by the Federal District Court up there as
10 part of that lawsuit against the New York
11 Liquidation Bureau; correct?

12 A No, we didn't add that, that was part of
13 the original complaint.

14 Q Okay. It was an issue that was pending
15 in this case reconstituted Federal -- regardless of
16 how it got there, it -- the coverage issue was
17 there?

18 A Correct, because that was the only place
19 we could file.

20 Q All right. Well, you could have gone to
21 the New York Liquidation Court and State Court up
22 there couldn't you? Couldn't you have gone to the
23 Liquidation Court?

24 A I don't know. I don't think we could
25 because the Contract for Coverage was between Realm

1 and the insured, not between Realm and ourselves.
2 So we had no right to appeal coverage other than
3 under the Contract.

4 Q Okay. Well, that's really a legal
5 question, but anyway.

6 A You asked it.

7 Q I know. I'm sorry. I'm sorry. I told
8 you I was fascinated with Federal practice.

9 A Okay.

10 Q Civil Procedure. Some of the
11 Commissioners sometimes don't like me for that
12 because I try to bring that into workers' comp.

13 MR. McCALL: Object, Your Honor, move to
14 strike.

15 MR. WOOD: I'm just -- I'm just --

16 THE COURT: He's just --

17 MR. WOOD: -- making light. I'm sorry, Mr.
18 McCall, I apologize.

19 THE COURT: Just so you'll know, I answered
20 cid pro both times.

21 MR. WOOD: Good. I felt good when I was able
22 to answer a question in Federal practice that the --
23 that our Law Review -- who's the head person at Law
24 Review didn't know the answer to, that was my claim
25 to fame when I was in class.

CROSS EXAMINATION RESUMES

BY MR. WOOD:

Q That lawsuit that had the coverage question, regardless of how it got there and all that, was dismissed a couple of weeks ago by consent of the parties; correct?

A Correct.

Q Okay.

A Would you like to know why?

Q Well, do you want to tell us why?

A Because they said that res judicata applied and whatever happened in the Bankruptcy Court would apply in the Federal Court and all the attorneys agreed, and they dismissed it.

Q Okay. All right.

A And seeing as they were contingency attorneys, I didn't have a lot of say about it.

Q Well, that's good. I'm surprised Mr. Boone isn't here today with you. I want to get back -- I got a little bit ahead because we started talking about that -- the closing date. We started talking about the bankruptcy stuff and -- Let's go back to '03 and you've indicated there was no closing before the transaction with the Bankruptcy Court in August of '06; you agreed with that. Let's

1 talk about this -- this agency appointment, Mr.

2 McCall's APA with Bruce Holley as the --

3 A This one here?

4 Q No, we've got that. Right here. I think
5 he showed it to you, but take a minute to look at
6 that and make sure you're familiar with what we're
7 talking about.

8 A Yes.

9 Q This is Quality HR's APA Number 3?

10 A Right.

11 Q When did that occur?

12 A When did Mr. Crane execute it; is that
13 what you're saying?

14 Q Yeah, when was the appointment of Bruce
15 Holley as an agent for Realm in the State of
16 Georgia, when was that document filed?

17 A Some time in March.

18 Q 2003?

19 A Correct.

20 Q Okay. And it was shortly after the --
21 the execution of the Purchase -- the Stock Purchase
22 Agreement?

23 A Correct.

24 Q All right. Did the State - has there
25 ever been any documents produced that shows that the

1 State of Georgia approved that or whatever the
2 necessary steps were? That's the filing that Realm
3 and Mr. Holley made; right?

4 A With John Oxendine last week and he's
5 quite happy with the knowledge that Mr. Holley was,
6 in fact, an appointed agent for Realm.

7 Q In Georgia?

8 A In Georgia.

9 Q Okay. But again, the closing never
10 happened -- would you agree with me that Mr. Holley
11 --

12 A The closing has nothing to do with
13 coverage.

14 Q Well, you just said you hadn't read the
15 Stock Purchase Agreement coming in here today.

16 A No, I said it indicates coverage but it
17 doesn't indicate that Realm did not bind coverage.

18 Q Okay. But I'm asking you about this
19 situation with Mr. Holley here and this appointment
20 in the State of Georgia.

21 A Mr. Oxendine thinks that Mr. Holley was
22 an appointed agent.

23 Q I don't know who Mr. Oxendine is, but my
24 question to you is, was his ability, Mr. Holley's
25 ability to underwrite, to write and bind business

1 and issue Certificates not conditioned upon certain
2 contractual requirements, including a first closing
3 pursuant to the terms of the Stock Purchase
4 Agreement?

5 A No, it was not.

6 Q All right. Okay. Did you say earlier
7 that Mr. Holley had been appointed as an agent of
8 Realm? I made my notes here. In your direct
9 testimony, I made a note here that you alleged in
10 your direct testimony that Mr. Holley was licensed
11 as an agent for Realm in the State of South Carolina
12 and North Carolina.

13 A No, I didn't say that.

14 Q That's not true is it? He's not?

15 A No.

16 Q Okay.

17 A I never said that. I said --

18 Q Well, I -

19 A -- he -- I said he was --

20 Q -- I could have taken it down --

21 A -- I said he was a licensed agent, I
22 didn't say for Realm.

23 Q Okay. Well, again, I just was sort of
24 hastily making some notes down, but I thought that
25 was an important point, that it's a fine point I

1 wanted to clarify. Mr. Holley was never appointed
2 as an agent to write and bind business on behalf of
3 Realm National in the State of South Carolina?

4 A Mark Sioma was processing through the
5 Agent Services to get him licensed in all states.

6 Q Okay.

7 A We have correspondence that proves that.

8 Q You do?

9 A Yes, we do.

10 Q Is it here today?

11 A No. Well, I don't know. If it -- I
12 assume that one of you should have it.

13 Q Okay. Well, again, my question is simply
14 whether he was or he was not appointed as an agent
15 to write and bind business on behalf of Realm
16 National in the State of South Carolina?

17 A No.

18 Q Okay. Realm dismissed the DJ Action
19 August '03; correct? It voluntarily dismissed it?
20 Sound right?

21 A Yeah.

22 Q Okay. And you've indicated it was after
23 that that you brought the -- I guess I would call it
24 a foreclosure action, I don't know what -- the
25 action you brought in Delaware.

1 A Motion to Compel.

2 Q Okay. You wanted --

3 A Sorry, go on.

4 Q -- you wanted either the loan repaid or
5 you wanted to take the -- take the stock?

6 A Correct.

7 Q All right. And in response to that,
8 AlphaStar goes to the Bankruptcy Court seeking
9 protection?

10 A As a result of the Chancellor advising
11 that they were going to award us the company,
12 AlphaStar went to Chapter -- and filed bankruptcy,
13 yes.

14 Q Okay. All right. And then you got tied
15 up in the Bankruptcy Court for two years?

16 A Yes.

17 Q Realm National is liquidated during that
18 period of time?

19 A Yes.

20 Q And then we've sort of talked about
21 everything that happened after that, and that's
22 pretty much a summary of the litigation. I think
23 y'all had filed another lawsuit that eventually got
24 -- against Realm or AlphaStar in District Court in
25 New York that got thrown into the Bankruptcy

1 Court as well?

2 A Which was a Motion to Compel.

3 Q Okay. All right. And the bottom line is
4 is that the Courts up there, Bankruptcy Court,
5 District Court, there's never been any adjudication
6 on this coverage question that's sort of the
7 centerpiece of what we're here on today?

8 A Correct.

9 Q All right. And you're aware of the New
10 York Liquidation Bureau's position on -- on whether
11 there was coverage?

12 A Correct.

13 Q They've told my client, their counterpart
14 in South Carolina, The South Carolina --

15 MR. KELLER: I object. It's in the record and
16 I don't want Mr. -- I object to Mr. Wood's
17 testifying rather than to think what it says.

18 Q Are you --

19 THE COURT: I'd like to actually hear what it
20 says.

21 Q Okay. Are you aware -- let me ask the
22 question this way? Are you aware of what the New
23 York Liquidation Bureau has told my client, The
24 South Carolina Property and Casualty
25 Insurance Guaranty Association --

1 A No.

2 Q -- well, let me finish the question. If
3 you don't know anything -- you don't know what --
4 well, you know what their position on coverage is?

5 A I know what their position on coverage
6 is.

7 Q Was your -- do you have a lawyer by the
8 name of David Boone that's been involved with you in
9 a variety -- in a lot of this litigation? He and
10 his law partner were involved in some of this
11 litigation with your partners back at AIM in the
12 late '90's, but was he not at those depositions of
13 the New York Liquidation Bureau representative that
14 Mr. McCall and I were at in New York by the counsel
15 over the telephone?

16 A I don't know. Or, I don't remember.

17 Q Well, I hope he's on a contingency basis
18 on that trip. The New York Liquidation Bureau has
19 advised AIM as to its position on -- on whether
20 there was coverage; right?

21 A I don't think so.

22 Q They've never told you that they take the
23 position that there's no coverage on this PEO
24 program; that Realm did not have coverage?

25 MR. KELLER: I take the same

1 objection, Commissioner.

2 THE COURT: Well, he -- I think -- the witness
3 has said he knows what their position is and he can
4 just say what his understanding of --

5 MR. WOOD: Well, I'm asking --

6 THE COURT: -- what the position of the Board
7 is.

8 MR. WOOD: I'll let -- I'll defer to you
9 Commissioner, if you want to ask him the question.

10 THE COURT: Do you know what the New York
11 Liquidation Board's position is on that?

12 THE WITNESS: We know what they've told other
13 Claimants, and we filed a Notice to Rehabilitate
14 Realm and to provide coverage, and they won't
15 respond to us.

16 CROSS EXAMINATION RESUMES

17 BY MR. WOOD:

18 Q Do you know what the New York Liquidation
19 Bureau's position is on these claims in terms of
20 what type of status my client, The Guaranty
21 Association would have if it was ordered to pay the
22 claims in terms of priority back on Realm's estate,
23 which is management? Do you know where we would
24 fall in the tier of creditors --

25 A No.

1 Q -- against the Realm estate?

2 A No idea.

3 Q Jacqueline Basemore --

4 MR. WOOD: All of them are in there? APA 26,
5 Commissioner, all the various depositions on various
6 cases existing at the time that we were aware of,
7 Jacqueline Basemore's deposition in New York was
8 taken, and it's in our APA.

9 A I'll assume that it's above mine.

10 Q I'm sorry?

11 A I'll assume that it's above mine.

12 Q You must be hungry, like me?

13 MR. WOOD: Now -- do you want to -- I mean,
14 now is good -- I need to look over this stuff Mr.
15 McCall's produced this morning, so I mean --

16 THE COURT: All right. We'll go off the
17 record, we'll take a recess and we'll reconvene at
18 2:00.

19 (Off the record at 12:54 p.m.)

20 (On the record at 2:12 p.m.)

21 THE COURT: All right. We'll go back on the
22 record. I'd like for the record to reflect the
23 Exhibit that was proffered by Mr. McCall during the
24 direct examination has now been -- there's
25 no objection? Is that my understanding, Mr. Wood

1 --

2 MR. WOOD: Yes, ma'am. No objection.

3 THE COURT: -- no objection from you and no
4 objection from the UEF; is that correct?

5 MR. KELLER: No, ma'am.

6 THE COURT: Any objection from any other
7 lawyer in the room? All right. So there's no
8 objection to that and it's now been marked as
9 Defendant's Exhibit Quality HR, Number 1. It has
10 now been made a part of the record.

11 (Defendant's Exhibit - Quality HR, Number 1,
12 marked for identification).

13 THE COURT: All right. Mr. Wood. Oh, Mr.
14 Dennett-Smith please, remember that you are under
15 oath still.

16 THE WITNESS: Okay.

17 THE COURT: Mr. Wood.

18 MR. WOOD: Thank you, Commissioner.

19 CROSS EXAMINATION RESUMES

20 BY MR. WOOD:

21 Q Mr. Dennett-Smith, while we -- since we
22 just addressed this evidentiary issue on the emails
23 that were marked as Quality HR 1 --

24 MR. WOOD: And I think they're also an APA?

25 MR. McCALL: They're -- one of them is

1 APA Number 7, I think.

2 MR. WOOD: Okay.

3 Q Have you looked at these?

4 A I just looked at them briefly.

5 Q Okay. Just take a look at the band of

6 dates sort of on the --

7 A Yes.

8 Q Okay. What are the band of dates on

9 there?

10 A From the 26th of June to the 28th of

11 June. Is that what I'm looking at?

12 Q Well, I'm trying -- I think they're --

13 MR. WOOD: Are they in sequence, Mr. McCall?

14 MR. McCALL: Start at the back.

15 Q Start at the back. There should be a

16 beginning date and an ending date that accompanied

17 --

18 A Is this what I'm looking at?

19 Q -- encompasses all of the emails. That's

20 the tack line --

21 A Oh, as to --

22 Q -- on the fax. I think you've got the

23 dates.

24 A Okay. August the 7th '03 to the 15th

25 of May '03.

1 Q Okay.

2 A Is the earlier ones.

3 Q May '03 to August of '03 is --

4 A Correct.

5 Q -- when those emails are dated?

6 A Correct.

7 Q All right. And just so we're clear on
8 that, that was after the March 2003 Stock Purchase
9 Agreement?

10 A Correct.

11 Q And before any type of closing that
12 arguably occurred in August of 2006 with the
13 Bankruptcy Court's action?

14 A Correct.

15 Q Okay. Good. Now, you remember earlier
16 in my cross examination I had asked you the question
17 about, I said I was going to try to find this
18 testimony during the break. I had asked you, we
19 were talking about the price of Realm and how the
20 Certificates that were issued by AIM may have
21 affected Realm's financial standing. Remember that
22 question?

23 A Yes.

24 Q All right. Let me -- page 1886 of
25 our APAs. This was your testimony in the case

1 of Jessie Pringle versus Healthcare Services, and I
2 had asked you the question, I said, "What were the
3 issues that arose, your understanding as to why
4 Realm started this letter writing campaign; why did
5 they do it?" You said, "I have no idea." I said,
6 "Do you have a theory or a view on that, an
7 opinion?" And you said, "Now, in hindsight?" And I
8 said, "Yes." And then you offered your opinion on
9 that. Would you read that for us, please sir?

10 A "I think they had internal agreements in
11 various states where they were licensed that would
12 be able address their capital and surplus, the
13 situation before issuing new business or sending out
14 new Certificates. It was a problem for them."

15 Q Okay. That was your testimony --

16 A Right.

17 Q -- when I asked you the question?

18 A That was what I guessed their problems to
19 be.

20 Q Okay. All right. That was your theory
21 on their situation, the impact on why they were
22 going -- why they were backing out of this deal?

23 A Not because of our certificates. I
24 think they probably had an agreement not to
25 write new business before they wrote our business.

1 Q Okay. And you said, "And when the
2 Certificates hit the streets it was a problem."

3 A Obviously, if they had that agreement.

4 Q Okay. All right.

5 A But we were unaware that they had. That
6 was just a surmise.

7 Q I understand. I understand. It was your
8 surmise?

9 A Yes, it was my surmise.

10 Q Okay. Okay. Now let's talk a little bit
11 more -- I want to go back to the program, to the
12 concept a little bit and ask you about some
13 testimony that you offered in connection with the
14 NES lawsuit. I'm going to get Ms. Fiehrer to hand
15 you up pages 1931 through 1939 of our APAs, which is
16 your transcript from that deposition, part of your
17 transcript from that deposition. Let's start on
18 page 1931.

19 A Right.

20 Q You were asked at that time, there on
21 pages 74 and 75, you made reference to this being a
22 self-insured program. And the counsel asked you
23 there on line 23 of page 74 of the deposition; "What
24 do you mean by the entire self-insured program?"
25 And you said, "Like I said, we went to Bermuda and

1 the reason why the capital contribution was required
2 and the captive was put into place is the PEOs were
3 entering into a self-insured program. The purpose
4 of Realm was solely to be a compliance issue in
5 order to be the issuing carrier for the self-insured
6 program." That's how you characterize the program
7 in your testimony of August of '06; correct?

8 A Correct.

9 Q All right. On page 1936, that's the
10 number on the right -- bottom right hand corner,
11 page 94 of that deposition transcript you asked, you
12 were asked a question by counsel. "Now, you said at
13 that meeting you discussed the Realm Insurance and
14 the PEO program with Mr. Cates; correct?" And your
15 response to that question was, "Realm was an issuing
16 carrier, it was not for writing insurance." That
17 was your testimony in August of '06; correct?

18 A Correct.

19 Q Flipping over to the next page, 1937,
20 page 99 of the transcript, you characterized this
21 program as a segregated self-captive; correct.

22 A Where are you?

23 Q I'm on page 99 -- page 1937 on the
24 bottom right hand corner, and then on that page
25 99, lines ten through 20.

1 A Okay. It's a misprint. "It was insured
2 in a segregated cell-captive, but a segregated cell
3 cannot reinsure the issuing carrier."

4 Q Right. Segregated cell, c-e-l-l?

5 A Correct.

6 Q But that's how you characterized this
7 thing, as a segregated cell-captive?

8 A No. The segregated cell was a
9 participating re-insurer. We were --

10 Q Okay.

11 A -- talking about how it was being run.

12 Q Okay. All right. And flipping over
13 there to page 1939 at the bottom right hand corner,
14 page 107 of the depo transcript, didn't you describe
15 this whole setup as basically a way for PEOs to
16 participate in a self-insured program despite state
17 laws and regulations prohibiting such?

18 A No.

19 Q That's not -- that's not what you were
20 testifying to at that time?

21 A No.

22 Q All right. Certainly this program had an
23 element of self-insurance didn't it?

24 MR. KELLER: I'm going to object to the
25 form of the question simply because I think

1 there are a number of legal issues about what self-
2 insured versus insured versus high deductibles and I
3 doubt that Mr. Dennett-Smith has any expertise in
4 that area. I think possibly Mr. Smith might be able
5 to or doesn't seem like he would be able to address
6 those. But I would object to his basis of
7 knowledge, and it's also cross leading to a
8 conclusion by a non-legal expert.

9 THE COURT: Do you want to speak to that Mr.
10 Wood.

11 MR. WOOD: I don't -- I mean, I think the
12 deposition testimony speaks for itself. I'm just
13 trying to paint a picture of what this program was.
14 So, I mean, I think it's ultimately up to you to
15 draw the conclusions from his response.

16 THE COURT: Yeah. I'll sustain the objection,
17 because I believe that it is ultimately he would
18 have to draw a conclusion.

19 MR. WOOD: Okay.

20 DIRECT EXAMINATION RESUMES

21 BY MR. WOOD:

22 Q Okay. I've got several places marked in
23 here, I hope I don't have to go to the transcript on
24 this one. But no policies were ever issued in
25 connection with the program by Realm or AIM; is

1 that correct?

2 A Correct.

3 Q Okay. And no recording of a policy or
4 recording of a coverage for any of these PEOs,
5 including Quality HR and Spectrum HR was reported to
6 the National Council on Compensation Insurance;
7 correct?

8 A I don't know.

9 Q You don't know whether it was or not?

10 A Correct.

11 Q Did AIM report the coverages to the
12 National Council on Compensation Insurance?

13 A No.

14 Q Did Realm?

15 A I don't know.

16 Q You don't have any indication or evidence
17 that it was reported to the National Council on
18 Compensation?

19 A I said I didn't know.

20 Q Okay. And specifically, just so we're
21 clear, the records clear, no policy of workers'
22 compensation insurance was issued by Realm or AIM to
23 Quality HR or Spectrum HR to your knowledge?

24 A Correct.

25 Q All right. And we have some

1 discussion and some testimony concerning Mr. Holley
2 and this appointment in the State of Georgia and we
3 clarified, made sure I got your testimony right that
4 he was not appointed as an agent to write and bind
5 business on behalf of Realm National in the State of
6 South Carolina?

7 A Correct.

8 Q Okay. Now let's talk about the
9 Certificates that were issued, and they're in
10 submissions that the Commissioner has got up there
11 and those Certificates pertain to Workers'
12 Compensation Insurance Certificates issued to
13 Spectrum HR and its client companies by an entity
14 known as U.S. Insurance Group. Let's talk about
15 that first, okay? No sub-producer, including U.S.
16 Insurance Group was authorized by AIM or Realm to be
17 issuing these Certificates of Insurance; correct?

18 A Correct.

19 Q Okay. So to the extent that U.S.
20 Insurance Group issued a Certificate of Insurance
21 purporting to show coverage for Spectrum HR or any
22 of its client companies, that was an unauthorized
23 Certificate of Insurance; correct?

24 A Correct.

25 Q All right. I asked you about Mr.

1 Holley, and I'm just trying to be thorough. I asked
2 about Mr. Holley. Was there anybody else affiliated
3 with AIM in any capacity that was appointed as an
4 agent to write or bind business for Realm National
5 Insurance Company for property and casualty
6 insurance in the State of South Carolina?

7 A No.

8 Q Okay. All right. This is -- this is
9 part of the transcript of your deposition testimony
10 in the Pringle case, pages 1889 and 1890 of our APA
11 submissions. Let me get -

12 MR. McCALL: What page of the deposition?

13 MR. WOOD: I'm sorry. Hold on one second, Mr.
14 McCall. 1889 is on the bottom right hand corner of
15 our -- it's pages 125 through pages 132 of that
16 deposition transcript.

17 Q Now the various Certificates pertaining
18 to Quality HR and its client companies with respect
19 to the alleged coverage with Realm National, those
20 were signed only by Bruce Holley or Brian Imperiale;
21 correct?

22 A As far as I know.

23 Q Do you know any that were signed by any
24 individuals other than Mr. Holley or Mr. Imperiale?

25 A No.

1 Q Okay. Now you made reference down on
2 page 128 there --

3 A Yes.

4 Q -- the last page, it's on 1889. I asked
5 you -- I asked you about Mr. Holley whether he was
6 appointed in South Carolina. You indicated, no.
7 And you went on to say, and this continues over to
8 the next page. "He had to have the sub-signature of
9 the agent who was approved." And then on 129 I
10 asked you, "All right. Are any of those
11 sub-signatures on any of the Certificates of
12 Insurance relevant to Quality HR?" Your answer to
13 that questions was "No"; correct?

14 A Correct.

15 Q So even by your standards these
16 Certificates issued Quality HR and Quality HR's
17 client companies were deficient in the fact that
18 they did not have a sub-signature by an authorized
19 and appointed agent of Realm National in the State
20 of South Carolina; correct?

21 A I'm not sure. I don't know that the
22 person has to be appointed by Realm.

23 Q Well, your own testimony was that
24 Bruce Holley had to have the sub-signature of
25 the agent who was approved. That's what you

1 said; right?

2 A Yes.

3 Q Okay.

4 A But I may have misspoke.

5 Q Okay. All right. You had mentioned that
6 Realm assigned these policy numbers. Do you know
7 whether these policy numbers are in any way, shape
8 or form similar, comparable to the configuration of
9 Realm National's other insurance policies that are
10 on file with the Workers' Compensation Commission's
11 reporting agency, NCCI?

12 A I have no idea.

13 Q But it's still your testimony that Realm
14 assigned these policy numbers?

15 A As far as I'm aware.

16 Q Well, you testified on direct examination
17 they did. You don't know?

18 A No, I'm saying, as far as I'm aware they
19 assigned the policy numbers.

20 Q Well, would Mr. Holley have been in a
21 better position -- or would Mr. Holley have been in
22 a better position as the underwriting guy to know
23 that -- to know the answer to that question, who
24 assigned the policy numbers?

25 A Yes.

1 Q Okay. And of course, we've got his
2 deposition that's attached as an exhibit to -- his
3 testimony in the NES litigation is attached as an
4 exhibit to your deposition in the Pringle case. Do
5 you have an office? Does AIM have an office now?

6 A No.

7 Q I think the last few times we've -- or a
8 couple of times we've deposed you you've been using
9 your lawyer's address as AIM's business address;
10 correct?

11 A Correct.

12 Q You haven't had an office, as I
13 understand it, since 2004?

14 A We haven't been in business.

15 Q Well you're still in existence though
16 aren't you?

17 A Unfortunately.

18 Q But you are -- AIM as a corporate entity
19 in South Carolina has been in forfeiture for some
20 time?

21 A Correct.

22 Q You've indicated that it's still a valid
23 organization or entity under Georgia law.

24 A It's now not, it's just fallen out.

25 Q Oh, it has?

1 A As of April, but we're going to reinstate
2 it.

3 Q Okay. Bear with me one second.

4 MR. WOOD: That's all I have. Thank you.

5 THE COURT: All right. Mr. Keller.

6 MR. KELLER: If you don't mind, I have a few
7 questions.

8 CROSS EXAMINATION

9 BY MR. KELLER:

10 Q I believe, Mr. Dennett-Smith, it was your
11 earlier testimony that the Certificates of Insurance
12 were issued after you received authority from Realm
13 in Florida; in their Florida office?

14 A No.

15 Q Well, where did that come from?

16 A It came from their -- it sometimes came
17 from Roni Zinnert entering their computer system.

18 Q And he was where?

19 A Roni is a female. She was in our office.

20 Q She was in --

21 A AIM's office in Georgia, but she operated
22 through their email facility out of New York.

23 Q Okay. And -- but you did not issue
24 those until you had authority, as you understood
25 it, from Realm to issue those Certificates; is

1 that correct?

2 A Correct.

3 Q Okay. When those were issued what did
4 you do with them? I mean, after they get printed
5 off how do they -- what did you do with the actual
6 Certificates?

7 A I'm going to have to assume, I never
8 handled them directly they would have been sent to
9 the PEOs.

10 Q Okay. And I think you said that you --
11 you did not personally ever -- or excuse me, AIM, to
12 your knowledge, never sent anything to NCCI?

13 A Correct.

14 Q Why was that that you didn't send them to
15 NCCI?

16 A Because the insurance company's duty is
17 to report to the NCCI, not the agent.

18 Q Okay. Now, earlier we had -- and I just
19 kind of want to lay one more piece of groundwork
20 that I think has been left out of this. Earlier Mr.
21 Wood was talking to you about the reinsurance market
22 and the insurance market. Was there a crisis in the
23 reinsurance market at the time that all of this was
24 going on?

25 A No, not particularly.

1 Q There wasn't?

2 A No.

3 Q What happened on September 11th, 2001?

4 This is not a trick question.

5 A No, no.

6 Q I mean, there was a huge crisis in the
7 insurance industry after 9/11; is that not correct?
8 And that -- that went across the board; is that not
9 true?

10 A Correct.

11 Q Okay. And isn't it true that probably
12 one of the reasons these Realm folks wanted you
13 involved in this thing in the first place was
14 because they couldn't find the right people to -- to
15 do the stuff that they needed to do for reinsurance,
16 and they knew you had the contacts? Don't you think
17 that's reasonable?

18 A I had to get Realm reinstated as an
19 authorized issuing carrier, yes.

20 Q Right. And to do that you had to get
21 reinsurance in a reasonably difficult market?

22 A Yes.

23 Q And I think you said this previously, but
24 your opinion, I think you said, as to why Realm
25 re-nigged is that they had had, in your o

1 pinion, some agreements with State Regulators that
2 they wouldn't do this and they got caught with their
3 hands in the cookie jar; is that -- and felt like
4 they had to save their face and their whatever?

5 A That was the only assumption I could
6 make. It was definitely not a professional manner.

7 Q Okay. Now, I was confused about one
8 point, and I may be the only person in the room that
9 is confused about this, but you were talking about a
10 hearing was held in Georgia last week concerning
11 Georgia Regulators?

12 A Correct.

13 Q Can you elucidate me to that? I'm afraid
14 I didn't understand exactly what occurred.

15 A The Insurance Commissioner called a
16 hearing between Insurance Office of America which
17 was the broker on the account, --

18 Q Okay.

19 A -- NES and ourselves and Realm if anybody
20 wanted to show up and obviously they didn't, to
21 resolve the issue of coverage.

22 Q Okay. Just in Georgia? I mean, is there
23 an Order that I somehow have missed?

24 A No, well, I don't know that -- no,
25 there wasn't an Order. AIG who is the E&O

1 Carrier for IOA agreed with us there was coverage
2 and that the agency had issued the Certificates
3 without our authority, so they paid the claims.

4 Q Which claims have they paid? This is
5 what I'm confused about.

6 A I think there are two in Tennessee and
7 one somewhere else. I'm not quite sure where.

8 Q Okay.

9 A And they asked, along with the Insurance
10 Department if they could have an interest in Realm
11 to go after people. AIG is turning it over to their
12 asset recovery to go after Realm for recovery, the
13 liquidator for recovery, the officers of Realm for
14 recovery.

15 Q Okay. And AIG has voluntarily stepped
16 in, as you understand? There's no Order, there's
17 just -- they just agreed or do you know? You may
18 not know. If you don't know --

19 A They agreed that they would do it without
20 a slight arm twisting --

21 Q Yeah, I understand. There's voluntarily
22 and there's voluntarily, I understand. Yes, sir.
23 And as I understand what Realm's role is, and you
24 correct me if I'm -- if I'm wrong, is that, and
25 we've laid a lot of groundwork on this, so just --

1 just briefly, as I understand it, you had PEOs that
2 you brought on as insureds?

3 A Correct.

4 Q Okay. And generally speaking just for
5 want of a better way to put it, the PEOs are
6 normally considered the employers of these leased
7 employees or whatever. So you had these employers
8 who you were selling insurance to; correct?

9 A Correct.

10 Q And I realize you can't speak for
11 anybody, but in your understanding I assume that
12 they -- these people thought they had insurance
13 through Realm National Insurance Company; is that
14 fair to say?

15 A That's correct.

16 Q Okay. And there were Certificates of
17 Insurance issued; correct?

18 A Correct.

19 Q And those were issued to those
20 individuals, to those PEOs?

21 A Correct. Or to the companies.

22 Q To the companies? All right. And
23 according to your testimony those -- the issuance of
24 those was authorized by Realm?

25 A Correct.

1 Q Okay. There was a TPA hired, Third Party
2 Administrator hired; correct?

3 A Crawford, an adjuster.

4 Q Okay. And reserves were actually
5 established on claims?

6 A Correct.

7 Q Claims were actually paid for a period of
8 time?

9 A Correct.

10 Q And then for whatever reason, probably
11 because of improper or poor capitalization, Realm
12 went insolvent, went belly up?

13 A Subsequently, yes.

14 Q Okay.

15 A Ultimately.

16 Q But Realm never had -- who -- who hired
17 the Third Party Administrator, the -- Crawford? Was
18 that you or Realm?

19 A Realm.

20 Q Okay. So they hired a Third Party
21 Administrator to administrate -- to adjust claims?
22 Claims were actually adjusted like an insurance
23 company would do; correct?

24 A Correct.

25 Q And for whatever reason Realm

1 couldn't live up to the -- to their end of the
2 bargain in paying the claims? For whatever reason
3 that was, in the assets, improper capitalization,
4 whatever it was, they couldn't pay the claims?

5 A They -- at the time they could have.
6 They had money. Money was taken out of the company
7 during the period of bankruptcy by various maneuvers
8 that were or were not legal depending on who --

9 Q Okay. The claims were being paid, Realm,
10 for whatever reason as you understand it, stopped
11 paying them?

12 A Correct.

13 Q Subsequently they went -- they became an
14 insolvent insurance company?

15 A Correct.

16 Q And a bunch of lawsuits have since ensued
17 for a substantial portion of the lives of the people
18 in this room; is that fair to say?

19 A That's fair to say.

20 Q Okay. Now, is it fair to say that Realm
21 at least, whether it was or it wasn't, Realm was
22 acting like an insurance company that went bankrupt
23 or that went insolvent?

24 A Correct.

25 Q Okay. And the only thing that -- the

1 two things -- the main thing Realm didn't do is they
2 never issued any policies and then they quit paying
3 claims?

4 A Correct.

5 Q Okay. Now you said earlier that Realm
6 has been reconstituted. Can you explain that to us,
7 please sir?

8 A No, it --

9 Q Oh, I thought you did say that.

10 A I said we made an offer to go to the
11 liquidator.

12 Q Okay. In New York?

13 A In New York. That we would rehabilitate
14 Realm if we were able.

15 Q Okay. And what's the status of that?

16 A They have not -- they have informed us
17 that they don't have to respond to us, and are not
18 going to respond to us.

19 Q Okay. And this is -- I'm just asking
20 your personal opinion, okay. Not a legal opinion,
21 not a conclusion, just your opinion. Do you think
22 personally that the people who owned Realm, all
23 those people that we've talked about from Stirling
24 Cooke and subsequent people, do you think that there
25 was fraud on their part in this case? Do you

1 think they were fraudulent intentionally?

2 A Yes.

3 Q Now, and I -- you also said Mr. Sioma and
4 Mr. is it Zinnert?

5 A Zinnert, yes.

6 MR. McCALL: It's a lady. Ms. Roni Zinnert.

7 MR. KELLER: Oh, I'm sorry, Ms. -- Ms.

8 Zinnert, yeah. I'm sorry, I keep confusing that.

9 Q They actual -- even after a lot of these
10 problems developed they were still in your office in
11 Atlanta giving you authority to bind coverage or
12 they were binding it themselves; is that correct?

13 A You have to understand one more thing.

14 Q Okay.

15 A When we -- we were in Federal Court the
16 Judge told both Realm and ourselves that we had a
17 Contract. It was their contractual agreement to
18 provide coverage and to sell the company to us and
19 close the company. And we were told that we had
20 entered into that agreement with them, and the
21 transaction would take place, and all the terms of
22 the Contract would be met. And they would not -- he
23 would not let us out -- told us we could die in his
24 jury room if we wanted to, but we were not going
25 to leave the building until that closing took place.

1 Q And that's when you reached the agreement
2 to do the \$1.5 million dollars?

3 A No, we had already done that.

4 Q You had already paid the \$1.5 million at
5 that point?

6 A We had already paid the \$1.5 million.

7 Q Bear with me just one second.

8 A That's -- that's the reason why it
9 carried on for so long, we were under instructions
10 by Federal grounds to continue.

11 Q Bear with me just one moment.

12 A Sure.

13 Q I believe that's all I have. Thank you,
14 sir.

15 THE COURT: Mr. Cook.

16 MR. COOK: Madame Commissioner, could I defer
17 to Mr. Renfrow's cross?

18 THE COURT: Okay.

19 MR. COOK: Thank you.

20 THE COURT: Mr. Renfrow:

21 CROSS EXAMINATION

22 BY MR. RENFROW:

23 Q All right. Mr. Dennett-Smith, I just
24 have a few quick questions for you, and I promise
25 these will be fairly simple in light of what you've

1 been dealing with. Let's be clear about this. At
2 one point or another during -- at one point or
3 another as part of your program, Quality HR who is
4 here today and Spectrum HR were, in fact, PEOs and
5 took part in that program; is that correct?

6 A The answer is yes, totally as far as
7 Quality HR is concerned, Spectrum for a period.

8 Q Okay. And that's all I'm asking.

9 A And when we sent the letter out they
10 decided to keep their money and pay their own
11 claims.

12 Q Okay. But at one point or another, at
13 least for some period of time Spectrum HR was a part
14 of that program?

15 A Correct.

16 Q Okay. Now, I want you to explain
17 something to me, the way this worked for the PEOs.
18 It's my understanding, and I think Mr. Wood asked
19 you questions about self-insurance, but it was my
20 understanding from my simple mind and wrapping my
21 mind around this -- this experiment that you had,
22 that the PEOs actually had some ownership in the
23 deal; is that right?

24 A They would have been investors in
25 the holding company of Realm, yes.

1 Q Okay. So the folks like Quality HR and
2 Spectrum HR, if they took part in this program in
3 addition to the advantage of finally being able to
4 find somebody to provide coverage for the PEOs, they
5 also had an ownership right in this whole scheme;
6 correct?

7 A Program.

8 Q And what, as part of the program what did
9 -- what was in it for them; I mean, what did they
10 get as having ownership in the -- in the program?

11 A They had, subject to their loss ratio,
12 the right to be insured under the program. It got
13 rid of their deductible position. They were
14 entitled to the profits that were earned off of it
15 when they were able to disburse profits on an
16 aggregate basis, and it closed their balance sheet
17 inasmuch as they weren't exposed dollar one up to a
18 \$1 million dollars, or whatever their deductible
19 programs were.

20 Q Okay. So there was some -- there was
21 some advantage they had to derive from the success
22 of your program; correct?

23 A Correct.

24 Q Okay. Now, out of fairness to you, and
25 I don't have a lot of -- I don't really have a

1 dog in the fight that we're here about today between
2 Realm and AIM, but do you know where Mark Sioma is
3 today?

4 A No.

5 Q Do you know Mark Sioma personally?

6 A I had never -- do I know him personally;
7 only from my dealings with Realm. I had never met
8 him before.

9 Q Okay. Do you know if he's ever taken
10 part or volunteered to take part in any of the
11 depositions that any of the lawyers from South
12 Carolina had noticed?

13 A I don't know.

14 Q Okay. Do you know if he's ever shown up
15 for any of the hearings involving these matters in
16 South Carolina?

17 A No.

18 Q All right. Because Mr. Wood spent a good
19 deal of time today going over your financial
20 situation and your credibility, but we haven't had
21 an opportunity to find out the other side of the
22 story from these folks. Do you know where Mr. Sioma
23 is?

24 A No.

25 Q Okay. Now, as I understand this

1 thing, you, AIM, -- the initial idea was AIM would
2 have eventually acquired Realm; is that right?

3 A AIM was acquiring Realm -- it was not the
4 initial idea. All AIM wanted was an issuing
5 carrier. The acquisition came at a later date and
6 we would provide surplus notes to support the
7 writings that we were going to do. But AIM, the
8 Contract actually says, I believe, AIM and/or its
9 Assignees. Because AIM was only buying it, as far
10 as the Contract was concerned while **** was being
11 formed.

12 Q And as I understand it you have -- you,
13 AIM has made an offer to rehabilitate Realm National
14 Insurance Company; is that correct?

15 A We have made an offer subject to --

16 Q Okay. So in light of your --

17 A -- on what its financial position -- I
18 mean, we do know that during the period of
19 bankruptcy something like \$14 million dollars was
20 taken out of the company by the officers of Realm.

21 Q So in light of your testimony, whether
22 AIM's responsible or Realm's responsible, assuming
23 you are able to acquire Realm, you're going to lose
24 either way in this matter; correct?

25 A More than I have already, yes.

1 Q Correct. Okay. I want to ask you about
2 some checks that we have.

3 MR. RENFROW: This is Tab 81 of my pre-hearing
4 brief, Commissioner.

5 Q These are some checks that were actually
6 written to a gentleman by the name of Steve Cameron.
7 Have you ever heard of Steve Cameron?

8 A I believe it is a claim.

9 Q Okay. And these checks are on -- well,
10 I'll let you look at them. What's the --

11 A Yes.

12 Q Is that your check?

13 A Yes.

14 Q Okay. Is that -- did that come out --
15 you said you paid some of these claims personally
16 and you paid some of these through AIM?

17 A No, I never paid any of them personally.

18 Q Oh, I thought you said you had some
19 personal funds tied up in this?

20 A I put my funds into AIM.

21 Q Okay. But these are definitely checks
22 that were written on AIM's check?

23 A Correct.

24 Q Correct. And the signatures down in
25 the bottom right hand corner, do you recognize

1 those signatures?

2 A It's Brian Imperiale and Bruce Holley.

3 Q Okay. And they were employees of yours?

4 A Correct.

5 Q Okay. Did you ever sign any of these
6 checks?

7 A I never had any check signing authority.

8 Q Okay. Were you aware that Steve Cameron,
9 for at least a year, received temporary total
10 disability checks from AIM? Did you know this was
11 going on?

12 A It if was authorized by Realm, then the
13 answer is did I know individually, no. But it could
14 well have been.

15 Q Okay. I have no further questions.
16 Thank you.

17 THE COURT: Ms. Steadman.

18 MS. STEADMAN: I don't have any questions.

19 THE COURT: Burkett and Mr. Easterling are
20 gone. Mr. Cook did you have any in addition?

21 MR. COOK: No, ma'am. Thank you.

22 THE COURT: Mr. McCall, redirect.

23 MR. McCALL: Thank you.

24 REDIRECT EXAMINATION

25 BY MR. McCALL:

1 Q Mr. Smith, are you here voluntarily?

2 A Yes.

3 Q Nobody subpoenaed you, subpoenaed and
4 asked you to come?

5 A No.

6 Q It's been -- I called you up and asked
7 you would you come, and you said yes, you wanted --
8 is that correct?

9 A That's correct.

10 Q Now, when you started, and I'm going to
11 go back to when AIM started out and start with when
12 the three companies were set up and AIM put out this
13 inquiry about looking for a carrier and found out
14 through the agent that Realm was interested. You,
15 at that time, had a plan and we've talked about your
16 plan where premium contributions and then operating
17 accounts would be established?

18 A Correct.

19 Q But things didn't work according to plan?

20 A They started to.

21 Q They started to, but the investment
22 company never came out of a lawyer's office?

23 A Correct.

24 Q No PEO ever became a member of a
25 holding company to be an owner of Realm?

1 A Correct.

2 Q That never occurred?

3 A Correct.

4 Q But the PEOs did pay premiums and Quality

5 HR paid all of its premiums, did it not?

6 A I think there's a small adjustment due,

7 but in principle, yes.

8 Q They paid all their contributions?

9 A Yes.

10 Q They paid everything that AIM has asked

11 them to pay?

12 A Correct.

13 Q And all the monies that they have paid

14 in, and whatever -- and not all the PEOs paid in all

15 the monies that they were supposed to, did they?

16 A No.

17 Q If they had, if every PEO had paid in

18 their assessed premiums and their assessed

19 contributions that would have been how many millions

20 of dollars projected?

21 A 26, 27 million.

22 Q And out of that 26, 27 million how much

23 did you actually -- did AIM actually receive?

24 A I'd have to go back and refresh,

25 but either six or seven.

1 Q \$6 or \$7 million? And out of the \$6 or
2 \$7 million, one and a half was loaned to Realm
3 National?

4 A Correct.

5 Q And Realm then wrote a letter in January
6 of '02, sorry January of '03 --

7 A Sorry, we didn't write a check to Realm
8 National. We wrote a check to AlphaStar.

9 Q To AlphaStar, excuse me, I apologize. I
10 misspoke. Mark Sioma wrote a letter in January of
11 '02 and he said Realm did not authorize AIM to do
12 anything; is that correct? Was not authorized to
13 issue Certificates of coverage --

14 A Correct. When -- just out of interest,
15 when he was -- that letter went out he was down with
16 the re-insurers in Bermuda with Joe Zafferese and
17 myself.

18 Q And right after that letter went out, in
19 February of '03 -- March of '03, Steve Crane, the
20 CEO of AlphaStar signed the approval for Bruce
21 Holley to serve as an agent --

22 A Correct.

23 Q -- for Realm National?

24 A Correct.

25 Q The very -- within 60 days after

1 that letter went out saying Realm had nothing to do
2 with it, Realm turned around and appointed Bruce
3 Holley as its agent?

4 A Correct.

5 MR. McCALL: That's our APA Number 3,
6 Commissioner.

7 Q And after that appointment, looking at
8 Defendant's Exhibit 1, Roni Zinnert, the Underwriter
9 for Realm, was emailing AIM in May, June, July, and
10 August about coverage and claims?

11 A Correct.

12 Q And at the same time they had filed a
13 suit in New York saying that they wanted out of
14 their relationship with AIM?

15 A No.

16 Q Didn't they file a lawsuit?

17 A They filed a lawsuit in February. I
18 think it was February --

19 Q Of '03?

20 A -- which they dismissed.

21 Q Right. But they filed a lawsuit saying
22 that they wanted out of their relationship with AIM,
23 did they not? They later dismissed it, but they
24 told the Court they wanted to get out of
25 that relationship?

1 A They told the Court it was never a
2 relationship.

3 Q Right. But at the same time they were
4 appointing your Vice President as its -- as it's
5 agent, and they were in your office every week
6 binding coverage and adjusting claims while they
7 were telling the Judge in New York they wanted
8 nothing to do with AIM?

9 A Correct.

10 Q And when you filed suit in the State of
11 New York asking for specific performance to the
12 Contract, they were still in your office binding
13 coverage and adjusting claims while telling the
14 Judge up there that you should not buy Realm
15 National; is that correct?

16 A No, that's not correct.

17 Q What was -- straighten me out.

18 A We filed the Strict Performance and
19 Confirmation of Coverage. Realm answered it and
20 said they weren't party to it, etc., etc., etc. We
21 then went -- we were in front of Judge Bernstein and
22 he said in his determination there was a Contract,
23 we did enter into an Agreement in good faith. Both
24 parties should perform as they were supposed to
25 perform, and he told us we would not leave his

1 office -- or his rooms until we had come to that
2 conclusion and we had entered a closing agreement
3 and the transaction would go through. We would own
4 Realm, they would issue the coverage, and it would
5 all be copacetic.

6 Q At the same time wasn't Mark Sioma and
7 Roni Zinnert coming down to your office --

8 A Yes, they were.

9 Q -- in Atlanta? And at the same time were
10 they not binding coverage on new clients and also
11 adjusting claims?

12 A Yes, they were.

13 Q While they -- all this was going on in
14 New York?

15 A Yes.

16 Q Did you have any expectation that that
17 deal with Realm National would close any day?

18 A We expected it to be closed everyday.

19 Q Everyday?

20 A Everyday.

21 Q Would you have stayed there and worked
22 for four years without a salary if you didn't expect
23 that?

24 A No.

25 Q Would you have put your own money

1 in there if you didn't expect that?

2 A No.

3 Q Do you think Brian Imperiale or Bruce
4 Holley would have done -- would have worked there
5 without a paycheck for --

6 A No.

7 Q -- the year or two years they worked?

8 A As soon as the funds would have been
9 released AIM would have been whole. I would have
10 been -- I wouldn't have had the same house, but I
11 would have been made whole. Everybody would have
12 been made whole.

13 Q And AIM -- this is the same company that
14 told you the policy numbers to put down on the
15 Certificates of Insurance?

16 A Correct. They didn't just tell us, they
17 met with the computer companies, they set out the
18 format. They met with Crawford in their offices,
19 set out the format, set out the claims numbers, set
20 out the policy numbers. They met with -- there was
21 probably 33 people in the room that they were
22 meeting with as far as loss control and engineering,
23 inspection companies. Crawford, the computer
24 company that they contracted with to issue
25 Certificates online so that the clients could dial

1 in and get a Certificate issued into their office
2 which only Roni or Mark Sioma could switch on or
3 switch off. We had no control over it whatsoever.
4 They met with the computer company, with the
5 consulting company, the accounting groups; they met
6 with everybody.

7 Q And when did they tell you they were
8 furnishing those policies?

9 A As soon as we closed.

10 Q As soon as you closed? And you expected
11 that closure to take place when?

12 A In March.

13 Q Of what year?

14 A '03.

15 Q And after March of '03?

16 A We would just stop -- we were sitting
17 there with a Federal Judge saying -- the only reason
18 that we got out of the offices was the -- the
19 attorneys for Realm, Fox went to the Judge and told
20 him that they were going to go to the closing table
21 the next week, and Crane persuaded God to turn the
22 lights off in New York so that the whole New York
23 went dark.

24 Q Mr. Wood asked you a question about
25 in the Agency Agreement or Stock Purchase

1 Agreement about binding coverage. Would you explain
2 that to me again? What's the difference between an
3 agent binding coverage and coverage being bound by
4 the carrier?

5 A The agent normally has the ability to
6 issue documentation to show that the client is
7 covered. So, in fact, they are issuing a binding
8 document, but it depends upon the procedures. If
9 they have a Contract Agreement that allows them to
10 issue, they can issue. Under our Agreement, we had
11 to get reinsurance authority and get Realm to sign
12 off on the binding of each individual risk before we
13 could confirm coverage to the client.

14 Q So, with Realm National, who bound the
15 coverage?

16 A Realm.

17 Q Was there anything that Realm's officers,
18 Mark Sioma, Roni Zinnert or anyone else on Realm's
19 behalf ever did that was honest and open and
20 forthright in your opinion?

21 A We believed that they were acting in
22 good faith at all times. I don't think Roni Zinnert
23 knew that anything was untoward. She acted as
24 though she was an underwriter for the company and
25 she was underwriting the business and she was

1 underwriting it to the best of her ability. She was
2 making sure that we complied with the reinsurance
3 requirements. Mark Sioma certainly acted as though
4 the program was in existence and wanted a job with
5 us going forward.

6 Q Is this group, AlphaStar, Stirling Cooke,
7 were they in with Legion Insurance Company or
8 Reliance Insurance Company, to your knowledge?

9 A They're a UK company.

10 Q They're a UK company?

11 A They're a UK company, they're a Bermuda
12 company. Realm workers' comp programs for both
13 Legion and Reliance. Both of which --

14 Q And those companies ended up the same
15 just like Realm National, didn't they?

16 A Correct.

17 MR. McCALL: That's all I have.

18 THE COURT: All right. Any re-cross Mr. Wood?

19 MR. WOOD: Yes, ma'am.

20 RE-CROSS EXAMINATION

21 BY MR. WOOD:

22 Q Realm never executed the Contract with
23 Crawford; right?

24 A Correct.

25 Q Y'all -- and AIM entered into a

1 contract with Crawford?

2 A No, they didn't.

3 Q You and Mr. Holley haven't testified
4 about there being a temporary Contract in place
5 between Crawford and AIM, they administered --

6 A Sorry, Mr. Holley did enter into a
7 temporary Contract.

8 Q Okay. All right. And, in fact, we spoke
9 earlier, Crawford's actually suing AIM right now
10 over that non-payment of adjusting fees; correct?

11 A Correct.

12 Q All right. Now, Mr. Keller made it sound
13 like Realm was paying the claims. That isn't
14 accurate, is it?

15 A It was their money. We were paying for
16 it with their funds.

17 Q Well, all the money, and you've testified
18 a couple of different times; I can pull out the
19 transcripts again if we need to, but you've
20 testified a couple of different times that all the
21 money the PEOs sent in went to AIM and that it was
22 used for this loan and to eventually purchase Realm
23 from AlphaStar as well as to pay claims. In fact,
24 Mr. Renfrow just produced some checks where you had
25 paid -- you were paying claims -

1 temporary compensation to Mr. Cameron; isn't that
2 correct?

3 A At the direction of Realm.

4 Q Well, that's what you say; right?

5 A That's what I say.

6 Q Okay. All right. AIM collected the
7 money from the PEOs; right?

8 A Correct.

9 Q AIM had the bank accounts at Wachovia in
10 Atlanta?

11 A Correct.

12 Q And AIM spent the money on claims?

13 A At the direction of Realm.

14 Q Okay. All right. So it wasn't like
15 Realm was paying the claims. Nobody was getting a
16 check from Realm National Insurance Company were
17 they?

18 A It's not unusual for an agency to collect
19 money. It's not unusual for an agency to pay
20 claims.

21 Q Is it unusual for a compensation check to
22 be sent out to a claimant that doesn't reference the
23 carrier in some capacity?

24 MR. WOOD: Mr. Renfrow, can I see those
25 checks?

1 Q These are handwritten checks. Looks like
2 what I was using when I started my law firm up.

3 A Then you know what it's like to --

4 MR. McCALL: I object to that comment, Your
5 Honor. That's not appropriate for cross
6 examination.

7 Q Is this -- does this make any reference
8 --

9 THE COURT: Wait a minute.

10 MR. WOOD: I'm sorry.

11 THE COURT: We need to make a Motion to
12 Strike. I'll strike the comment about the law
13 offices.

14 RE-CROSS EXAMINATION RESUMES

15 BY MR. WOOD:

16 Q These checks that Mr. Renfrow asked you
17 about --

18 MR. WOOD: Are these part of your APA
19 submissions?

20 MR. RENFROW: Tab 81.

21 Q Tab 81. These are handwritten checks
22 drawn on American Insurance Managers, Inc. account.
23 Wachovia bank. It's got the account number, and
24 they're hand written and signed by Mr. Imperiale;
25 correct?

1 A Correct.

2 Q And Mr. Holley?

3 A You pointed out that we were a very small
4 company.

5 Q Right. All right. Nobody there, no
6 payroll, no staff, no money, nothing?

7 A There you go.

8 Q And nowhere on here does it make any
9 reference to Realm National, American Insurance
10 Managers on behalf of Realm National. American
11 Insurance Managers on behalf of Realm National PEO
12 program. Nothing along those lines on these
13 compensation checks are there?

14 A Correct.

15 Q All right. It's been your contention
16 that Realm and AlphaStar and the people associated
17 therewith acted fraudulently; right? That's what
18 you testified to a minute ago?

19 A Do I believe so now, yes.

20 Q Okay. They've made the same allegations
21 back and forth against you and your people; right?

22 A Absolutely.

23 Q Okay. Now, I want to get this time
24 sequence straight, because it's very important. And
25 I went over it with you in detail, and Mr. McCall

1 just touched on it again. He suggested that Bruce
2 Holley was being appointed an agent in the State of
3 Georgia at the same time that Mr. Sioma was sending
4 letters to various State Regulators; isn't that --

5 A Correct.

6 Q Do you remember that question?

7 A Yes.

8 Q And he did make the point that they were
9 60 days apart --

10 A Yes.

11 Q Roughly 60 days apart? But you had the
12 letter writing campaign of Mr. Sioma in December of
13 '02 to the various State Regulators?

14 A Correct.

15 Q You had the January 2003 Declaratory
16 Judgment Action by Realm trying to declare that the
17 coverage wasn't valid?

18 A Correct.

19 Q Okay. As the result of that lawsuit, the
20 Judge told you to work it out?

21 A That lawsuit was dismissed.

22 Q I understand, it was dismissed in August
23 of 2003; correct?

24 A Correct.

25 Q Okay. Well, let's just stay where

1 we are, okay. The lawsuit was filed in January of
2 '03?

3 A Correct.

4 Q The Judge said get in the room back there
5 and work it out?

6 A Correct.

7 Q You've said that 15 times in here.

8 A Correct.

9 Q Okay. And as a result of those
10 discussions, the March 2003 Stock Purchase Agreement
11 was entered into?

12 A Correct.

13 Q Which you said you have not read in
14 preparation for your testimony?

15 A Correct.

16 Q Okay. And it was following execution of
17 that Stock Purchase Agreement that Mr. Holley was
18 appointed the agent in the State of Georgia and the
19 various emails generated between Roni Zinnert, Bruce
20 Holley that are part of the Exhibit that we talked
21 about earlier, all that took place after the Stock
22 Purchase Agreement; correct?

23 A Correct.

24 Q And it was moving toward a closing?

25 A Correct.

1 Q But the closing never occurred until the
2 Bankruptcy Court Action in August of '06?

3 A Correct.

4 Q That's the timeline; right?

5 A Correct.

6 Q Okay.

7 MR. WOOD: That's all I have.

8 THE COURT: Okay.

9 MR. KELLER: I have just one question,
10 Commissioner.

11 RE-CROSS EXAMINATION

12 BY MR. KELLER:

13 Q I think you said this earlier, but I just
14 want to make sure I'm right. The documents that you
15 entered into, am I correct that the final document,
16 the final Agreement specifically said that Realm
17 would accept coverage of all these claims itself?

18 A Accept coverage, yes.

19 Q And then were you willing to go through
20 with that Agreement; at any time?

21 A Yes.

22 Q Okay. And do you know whether -- was it
23 Mr. Sioma that didn't want to go through, or do you
24 know? You wanted to go through. Mr. Sioma was the
25 head of -- was the other party; correct?

1 A Well, no, Sioma was President of Realm.

2 Q Right.

3 A I'm not sure that he was on the Board of
4 AlphaStar. Crane and Lawless and Del Tufo were the
5 three Executive Officers of AlphaStar. Obviously in
6 the blinding light of hindsight they didn't want to
7 go through with the Agreement because they had
8 falsified their Statutory Statements.

9 Q And you were ready, willing and able at
10 any time to go through with that Agreement; correct?

11 A Correct.

12 Q And you're here today testifying
13 voluntarily; correct?

14 A Correct.

15 Q Do you know where any of these other guys
16 are? Anybody from Realm, AlphaStar or any of those
17 people?

18 A No.

19 Q They're not here testifying are they?

20 A No.

21 Q Thank you, sir.

22 THE COURT: All right. Mr. Renfrow.

23 RE-CROSS EXAMINATION

24 BY MR. RENFROW:

25 Q And just again, out of fairness,

1 Mr. Dennett-Smith I want to make sure we're all
2 informed here. I want to show you here -- do you
3 recognize this document? This is --

4 MR. RENFROW: Commissioner this is my
5 submission 85 is the Certificate of Insurance
6 regarding Quality HR and Keith's Welding in the
7 Steve Cameron case.

8 Q Have you ever seen that document before?

9 A Probably one of the depositions, but did
10 I see it when it went out, no.

11 Q Okay. And I think you testified earlier
12 that the policy numbers that are stated on those --
13 the Certificate of Insurance were assigned by Realm
14 National?

15 A As far as I'm aware, yes.

16 Q What is the policy number down on that
17 Certificate of Insurance?

18 A QHR1403-SC3.

19 Q All right. Now, let me show you these
20 checks again, and Mr. Wood brought up a point that
21 there was no reference on these checks to what you
22 were paying these funds for or based on what -- who
23 you were paying it on behalf of. I'm going to show
24 you a check dated -- keep them in nice order.

25 A I'm sure you'll find --

1 Q Check, this is check 6619 and it's for
2 \$933.34 and it's under my Tab 82, and it's FS04298
3 is the page number. Look at that check. Down at
4 the bottom left hand corner on it references what's
5 being paid for. What -- is there -- is that same
6 account number for that same policy number written
7 in that area?

8 A Yes, it is.

9 Q And what does that say?

10 A 7/6/04 to 7/19/04, QHR14030.

11 Q All right. And that's the same policy
12 number that's on the Certificate of Insurance?

13 A Correct.

14 Q And that you say Realm National assigned?

15 A Correct.

16 Q Okay. And you had no -- you didn't play
17 a part in assigning these or AIM didn't play a part
18 in assigning these policy numbers?

19 A No, they met with the computer systems
20 people to set up the coding totally.

21 Q Okay. And there's numerous checks in
22 here that bring up some other interesting questions.
23 There's one here that penalties were paid for TTD.
24 Do you know who would have assessed those penalties
25 for TTD, for late TTD?

1 A No. I'd have to know -- I'd have to get
2 Bruce to pull up the claims forms.

3 Q And Bruce Holley would be the person that
4 could testify to that? Would you assume that it was
5 the State Workers' Compensation Commission?

6 A Yes.

7 Q Okay. No further -- oh, one other
8 question. There is a payment in here for medical
9 prescriptions. Would you have had any role or would
10 you know if these medical -- the medical bills were
11 paid per the South Carolina Fee Schedule or would
12 you have any knowledge?

13 A He would know.

14 Q Bruce Holley would know the answer to
15 that?

16 A Bruce Holley would know.

17 Q All right. Thank you.

18 THE COURT: Mr. Cook.

19 MR. COOK: No, thank you, Your Honor.

20 THE COURT: Ms. Steadman.

21 MS. STEADMAN: Nothing more.

22 THE COURT: Any re-redirect?

23 MR. McCALL: Not at this time, Your Honor.

24 THE COURT: Mr. Wood, anything in response to
25 any of the other questions?

1 MR. WOOD: I don't want to prolong it, but I
2 do want to ask -- clarify these policy numbers.

3 MR. McCALL: Your Honor, I object. If I don't
4 go through re-direct there shouldn't be any further
5 cross.

6 THE COURT: It's in response to what Mr.
7 Renfrow asked.

8 RE-CROSS EXAMINATION

9 BY MR. WOOD:

10 Q The policy numbers you've testified you
11 don't know who assigned them that are on these
12 Certificates?

13 A I was told that Realm by Realm that they
14 would assign the policy numbers.

15 Q Okay. Well, you agreed, did you not,
16 that Mr. Holley would be the best person to testify
17 on that subject?

18 A Correct.

19 Q Okay. All right.

20 MR. WOOD: That's all I have. Thank you.

21 THE COURT: Mr. McCall, any redirect as a
22 response to Mr. Wood's question?

23 MR. McCALL: No, and I'd like to excuse this
24 witness if I may.

25 MR. KELLER: We have no objection.

1 THE COURT: Any objection to excusing the
2 witness?

3 MR. WOOD: No, ma'am.

4 THE COURT: You are excused. We can go ahead
5 with Ms. Williams. I think she's Mr. Wood's
6 witness. Mr. Wood, if you would, please call your
7 witness. All right. Please raise your right hand.
8 Do you swear to tell the truth, the whole truth, and
9 nothing but the truth?

10 THE WITNESS: I do.

11 THE COURT: Please state your full name for
12 the record.

13 THE WITNESS: My name is Hana Williamson.
14 That's spelled H-A-N-A Williamson.

15 THE COURT: Mr. Wood, your witness.

16 MR. WOOD: Thank you, Commissioner.

17 Hana Williamson,
18 Having first been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. WOOD:

21 Q Hana, where are you employed?

22 A I'm employed as a Staff Attorney by The
23 South Carolina Department of Consumer Affairs.

24 Q Okay. And how long have you been there;
25 roughly?

1 A Since about 1989, as an attorney since
2 1990.

3 Q Okay. And what -- what do you do there
4 as a Staff Attorney at the Department of Consumer
5 Affairs?

6 A I deal with some matters of insurance
7 rates, I think. In the last four years I also as an
8 attorney supervised the licensing of Professional
9 Employer Organizations or Staff Leasing, whichever
10 term.

11 Q What role does the South Carolina
12 Department of Consumer Affairs have with respect to
13 Staff Leasing Companies or PEOs, Professional
14 Employment Organizations?

15 A Nobody can perform Professional Employer
16 Services in the state unless they first obtain a
17 license from the Department of Consumer Affairs. In
18 the process of licensing we look at a lot of issues
19 that are defined in the Statute, including like
20 financial standing, character issues of owners or
21 managers, and also whether or not the insurance they
22 may obtain on behalf of the client companies
23 conforms with the requirements of our licensing
24 Statute.

25 Q Okay. You mentioned that Staff

1 Leasing Companies can't operate in the State without
2 a license; right?

3 A That's correct.

4 Q But are there some that do anyway?

5 A Yes.

6 Q Okay. All right. Now, what role does
7 the Department of Consumer Affairs have specifically
8 with regard to Workers' Compensation Insurance and
9 Staff Leasing Companies, the PEOs?

10 A Under our Statute, a PEO may not procure
11 on behalf of the client companies a workers'
12 compensation policy that is self-funded or self-
13 insured, you know, they have to be fully insured
14 product. We verify to the degree we can, that the
15 Certificates they submit with the applications are,
16 in deed, valid certificates. That's sort of in a
17 nutshell.

18 Q Okay. And is the South Carolina
19 Department of Consumer Affairs charged with that, I
20 guess to protect the folks out there who use Staff
21 Leasing Companies?

22 MR. McCALL: Excuse me, Your Honor. This is
23 not cross examination. I object to leading.

24 THE COURT: To the leading? Just watch
25 the leading.

1 MR. WOOD: I'm sorry.

2 Q Is workers' compensation insurance a
3 licensing requirement for PEOs?

4 A No.

5 Q You don't have to have Workers
6 Compensation Insurance to be a licensed --

7 A No. And but some of the clients -- let's
8 say if a PEO gets a new client.

9 Q Right.

10 A And that client may have already an
11 existing Workers' Compensation Policy and may be
12 happy with it. It doesn't mean that that PEO would
13 necessarily force that particular client into the
14 policy that PEO may obtain on behalf of their client
15 companies. In reality though, that's -- the
16 Workers' Comp Policy procured by a PEO is one of the
17 major draws why the client companies go into a PEO
18 relationship. It's not the only one, but it's one
19 of the major ones, so. But it's not a requirement
20 that the PEO has to have it.

21 Q Okay. All right. Let's talk about
22 Spectrum HR a minute. What does -- what does your
23 agency -- at my request have you researched the
24 records relative to both Quality HR and Spectrum HR?

25 A Yes, we did. We received that for

1 that information request and we replied as best as
2 we could.

3 Q Okay. And we've had an ongoing dialogue
4 for a couple of years now; correct?

5 A It's --

6 Q Close to it?

7 A Close to it.

8 Q All right. Was -- what records does your
9 agency have with regard to Spectrum HR?

10 A We didn't locate any.

11 Q Okay. What is the Department of Consumer
12 Affairs' position on whether Spectrum HR has ever
13 been a licensed Staff Leasing Company or
14 Professional Employment Organization?

15 A Never was.

16 Q Okay. Let's talk about Quality HR. When
17 did you -- when did the Department of Consumer
18 Affairs first receive an application or has -- have
19 you ever received an application for licensing from
20 Quality HR?

21 A Yes, we did and it had to be
22 approximately like in 2000; in the year 2000.

23 Q Okay. And were they licensed at that
24 time?

25 A No, they were not.

1 Q Okay. Why not?

2 A It came to our understanding that Quality
3 HR operated as a -- then we used only the Staff
4 Leasing expression, but what's now the PEO in South
5 Carolina, however operated without a license. They
6 subsequently applied for a license.

7 Q Okay. And was that granted?

8 A Yes and no.

9 Q All right.

10 A And if I may explain.

11 Q Sure.

12 A There is basically two licenses that we
13 issue when we license. I mean, two kinds of
14 licenses that we issue when we license a PEO. The
15 first one is like, sort of like a business license
16 that really attaches to a business entity. However,
17 as every business is run by people and in the PEO
18 business which relies on a whole lot of trust,
19 because those people handle a lot of your money, we
20 also issue so called Controlling Person Licenses for
21 which everybody is either owner or manager of the
22 business entity has to apply. So we really have
23 like two sets of things, and the Statute has
24 different criteria, you know, when we should or
25 should not give it. So when Quality HR first

1 applied in approximately in 2000 sometime by the
2 early 2001 the staff of the Department came to the
3 conclusion that the Controlling License Application
4 of Mr. Evette will not be granted and the staff
5 came, likewise to the conclusion that the Business
6 Application for Quality HR also will not be granted.
7 Subject to the regular provision that entity or an
8 individual whose license is denied by the staff can
9 request a hearing. The adminis -- at that time the
10 hearings were before the Administrator of the
11 Department of Consumer Affairs. The Administrator
12 denied the Controlling Person Application for Mr.
13 Evette.

14 Q Okay. Why was that denied?

15 A Based on my review of the documents and
16 the records we have, it was denied primarily because
17 Mr. Evette misappropriated a certain sum of money
18 from a previous PEO where he worked and where of
19 which he was also a partner.

20 Q Okay. And what did Quality HR, if
21 anything, do to remedy that situation?

22 A Based on my review of the records in that
23 file, Quality H -- I don't know whether it was
24 Quality HR or Mr. Evette, but there was some
25 restitution in accounting for the funds

1 done subsequently.

2 Q Was he -- did he -- was there any
3 divestiture by him in his interest in Quality HR;
4 was that part of that --

5 A No, that was not, in my recollection and
6 review, very recent review of the file, no, it was
7 not.

8 Q Okay. All right. At that point was
9 Quality HR licensed?

10 A The Administrator, in his Order, denied
11 the license for Quality HR. However, he also stated
12 in the very same Order that if certain things
13 happened then he might be disposed to issue a
14 probationary license to Quality HR; not to Mr.
15 Evette. One of the conditions that Quality HR had
16 to satisfy was that they will have to pay an
17 Administrative fine to the Department that was, if
18 I'm not mistaken, the amount of \$11,000 for
19 operating for a while without a license. And that
20 Mr. Evette will have no direct or managing role in
21 the Quality HR business in South Carolina.

22 Q Now, do you know when that occurred?

23 A That occurred like in 2001, April, May,
24 I don't have -- the file is really big. I
25 don't have it in front of me, but it was in 2001.

1 Q Okay. And the materials, the documents
2 we've received from you, except for what you've
3 given us today --

4 A Uh-huh.

5 Q -- and we'll talk about that in a minute,
6 we've put all that in the record under our APAs.

7 MR. WOOD: What's the folder number?

8 MS. FIEHRER: 14.

9 MR. WOOD: 14?

10 Q Okay. So was Quality HR licensed after
11 that?

12 A Yeah. Well, after that point Quality HR
13 was licensed to do business in South Carolina as a
14 PEO.

15 Q Okay. And that was contingent upon Mr.
16 Evette --

17 A Not being --

18 Q -- I'm sorry.

19 A -- not functioning as a controlling
20 person.

21 Q Okay. You mentioned other things. I
22 want to make sure I'm clear on that. It's
23 management --

24 A Paying -- paying the fine of \$11,000,
25 which they did. And there was one more thing, and

1 again, I don't have the Administrator --
2 Administrator's Order in front of me but since they
3 satisfied all those criteria, the license was issued
4 on a one year probationary period subject to sort of
5 a higher scrutiny by our staff to see if the company
6 is following the, whatever the Administrator
7 requested of the company to do in order to be
8 licensed.

9 Q Okay. And thereafter, did the Department
10 of Consumer Affairs have any information or
11 knowledge as to Mr. Evette's actions and
12 responsibilities with regard to Quality HR's
13 procurement of Workers' Compensation Insurance for
14 Quality HR and its client companies?

15 A I'm not really sure.

16 Q Okay. You don't know --

17 A I know that at that time one of the
18 recommendation to the Administrator that a two year
19 -- two months after the issuance of the Order which
20 says this is what you need to do, that Mr. Evette
21 was not involved at that point.

22 Q Okay. That was the Department's
23 understanding?

24 A That was the Department's
25 understanding. There also was a -- tell us that

1 the business was transferred to Ms. Neesta.

2 Q Okay. All right.

3 A Because that was our concern initially.

4 It was the Department's concern initially that even
5 if on paper Mr. Evette will not function as a
6 controlling person, as long as he owns the business
7 it's almost like, you know, you cannot make a
8 divorce basically.

9 Q I guess what I'm getting at is did the
10 Department of Consumer Affairs have any knowledge as
11 to Mr. Evette's involvement in the Workers'
12 Compensation Insurance that Quality HR was procuring
13 for itself and its client companies during the 2002,
14 2003 time period?

15 A No. Based on the review of the entire
16 file, we did not.

17 Q Okay. Now, were there any other issues
18 that arose with respect to Quality HR and its
19 license status after that situation was resolved?

20 A Yes. The licenses that we issue are
21 basically issued every two years, and the licensing
22 cycle runs from September 30, I would say, of '01 to
23 September 30, '03 for example. So sometimes around
24 August and September, the PEOs have to submit
25 renewal applications. So, yes, that's the time --

1 in between they submit some quarterly reports, but
2 the renewal -- so the renewal came up in 2003.

3 Q Okay. And what happened then?

4 A At some point during the renewal process
5 we became aware of the situation with one of the
6 insurance entities for their Workers' Comp Coverage
7 was Realm, and the other was AI --

8 Q AIM?

9 A Yeah.

10 Q Okay.

11 A Yeah. And that there were problems with
12 the coverage. So then we were looking further more
13 into the situation.

14 Q Now, who did you get the information from
15 concerning the coverage -- coverage?

16 A I believe it was Mr. Gary Smith.

17 Q Okay. And what information did you
18 obtain from Mr. Smith in that regard?

19 A Again, based on the review of the file,
20 because I was not then person -- I was not then
21 personally involved with reviewing the file, for
22 which I'm responsible now. That, you know, the
23 claims were not paid or different issues. I can't
24 recall exactly. I mean, there is a fairly long
25 narrative provided by Mr. Smith to the Department

1 of Consumer Affairs.

2 Q Okay.

3 A It was a copy, actually, of his report
4 that he writes for the Workers' Comp Commission.

5 Q Okay. And let me show you -- who is
6 Helen Fennell?

7 A Helen Fennell is one of the attorneys in
8 our department.

9 Q Okay. Let me let you look at that.

10 MR. WOOD: And that's pages 842 and 843 of our
11 APAs, and it's a correspondence to Ms. Neesta with
12 Quality HR Services, dated November 7, '03.

13 Q Let me let you take a minute to look at
14 that.

15 A Yeah, I'm familiar --

16 Q You're familiar with it? Okay.

17 A -- that letter.

18 Q What happened as a result of the Workers'
19 Compensation situation, the information from Mr.
20 Smith and so forth, what action did the Department
21 of Consumer Affairs take at that point?

22 MR. McCALL: Excuse me. As to what you're
23 referring to a page number, my APAs from you are not
24 numbered so can you tell me --

25 MR. WOOD: Ms. Fierher --

1 MR. McCALL: -- what documents they are?

2 MR. WOOD: -- will give you a copy of that.

3 MS. FIERHER: You want to know where it is?

4 MR. WOOD: That'll be fine.

5 MR. McCALL: My pages -- my pages are not
6 numbered on this so --

7 MR. WOOD: They didn't number them on the
8 scanned copies.

9 DIRECT EXAMINATION RESUMES

10 BY MR. WOOD:

11 Q Are you familiar with that? I can just
12 show that to Mr. McCall if you're familiar with it.

13 A Yes, I am.

14 Q Okay. To speed up things.

15 MR. WOOD: Here you go.

16 MS. FIERHER: This is just the beginning of
17 our APAs. Number 14.

18 MR. WOOD: I can give you another disk.

19 MR. McCALL: Thank you.

20 MR. WOOD: You want me to go ahead and proceed
21 or wait on the copy?

22 MR. McCALL: No, go ahead.

23 DIRECT EXAMINATION RESUMES

24 BY MR. WOOD:

25 Q What was the situation -- what was

1 the disposition at that point with regard to Quality
2 HR's license status?

3 A It was then staff recommended the license
4 be not issued. This was not an administrative
5 action at that point. The way we go about making
6 these licensing decisions, especially if the staff
7 had reviewed the application comes to a conclusion
8 that a license should not be issued, writes a letter
9 to the company. That's basically like a staff
10 decision --

11 Q Right.

12 A -- informing the company that whatever is
13 the procedure on the APA they may request a hearing.
14 In that case it would, again, before the
15 Administrator. So that was basically informing the
16 company why they would not be licensed at that
17 point.

18 Q Why were they not licensed?

19 A Because of the issues with the Workers'
20 Compensation policies by Realm and AIM that they
21 held.

22 Q Okay. All right. And Ms. Fennell's
23 correspondence details that?

24 A Details that, yes.

25 Q Okay. Did they request a hearing

1 before the contested case hearing in follow up to
2 that letter?

3 A I could not locate any record that would
4 say that they requested a hearing.

5 Q Okay. And you advised us today through
6 the letter that you sent to Ms. Neesta and -- well,
7 was that correct? Did you --

8 A Yes.

9 Q Okay.

10 A Yes, I did.

11 Q Okay. Have I conversed with you over the
12 telephone specifically asked you whether there was
13 any further action by Quality HR in follow up?

14 A That's correct. You did.

15 Q And you told me not to your knowledge?

16 A Not to my knowledge.

17 Q Okay. Until today?

18 A Because --

19 Q Right?

20 A -- yes.

21 Q Let me show Mr. Keller and Mr. McCall
22 copies of this. You can have that one. Subsequent
23 to the November 7, '03 letter to Ms. Neesta you
24 indicated there was no request for a contested case
25 review of --

1 A Not in the file that I reviewed.

2 Q Okay. And -- but apparently there --
3 you've now discovered that there were some
4 discussions --

5 A Yes.

6 Q -- concerning a provisional license
7 contingent upon an ultimate disposition by the
8 Workers' Comp Commissioner?

9 A That's correct. And if I may -- if I may
10 explain. At some point Ms. Neesta formed a separate
11 entity called Quality Business Solutions and
12 apparently this document that says that the license
13 was issued was mistakenly placed, not in the file
14 for Quality HR Services, but for the new entity that
15 she formed.

16 Q Quality Business Solutions?

17 A Quality Business Solutions, that's
18 correct, and for some reason I just had this idea
19 that maybe there was something else and let's look
20 one more time --

21 Q Okay.

22 A -- and there it was.

23 Q All right. Well, let me ask you this.
24 This was a -- this license --

25 A Yes.

1 Q -- that's referenced in this June 14, '04
2 letter was issued on a contingency basis pending the
3 outcome of Quality HR Services' hearing with the
4 South Carolina Workers' Compensation Commission
5 regarding Realm Insurance and AIM?

6 A Yeah, that's verbatim what that letter
7 says.

8 Q Okay. And the contingency license
9 expired on September 30 of '05?

10 A Yeah, it would have to, every license
11 would expire on September '05.

12 Q Okay. And it was never renewed after
13 that?

14 A It was not renewed because the PEO
15 business would at some point since 2004, been
16 conducted from a new business entity, the Quality
17 Business Solutions. And so then when the renewal
18 came, based again on the review of the files that we
19 have, the Quality Business Solutions obtained --
20 obtained a PEO license and has held it ever since
21 with no like staff issues that would, you know,
22 suggest that they were not in compliance.

23 Q They've been in -- Quality Business
24 Solutions has been in compliance?

25 A They are, you know, was in

1 compliance. And we were, again based on my review
2 of the file, all the PEO clients of Quality HR
3 Services were placed into the new business entity,
4 Quality Business Solutions.

5 Q Okay. Let me ask you one final question,
6 and that is, if Mr. David Evette had been involved
7 in the procurement of Workers' Compensation
8 Insurance for Quality HR and its client companies
9 for the period after the 2001 Order that you spoke
10 of earlier, during the period of 2002 and 2003, what
11 would have been -- what would have been the
12 Department of Consumer Affairs position had it had
13 that knowledge?

14 A We would certainly look much more into it
15 because it was a specific condition of letting
16 Quality HR to operate as a licensed PEO since 2001.
17 I cannot tell you we would do A or B, but we would
18 go and look at it and would have to look at the, I
19 would say, extent of his involvement in that
20 business or the materiality of his involvement in
21 that business. I mean, obviously there, you know,
22 you have to make those judgments.

23 Q I understand.

24 A But if he were materially involved
25 in that business we might have a serious

1 compliance issue that would have to be addressed.

2 Q Okay.

3 MR. WOOD: All right. Commissioner, I'm going
4 to move, since we just go this via email during the
5 cross, the resumed cross of Mr. Dennett-Smith, I
6 would move to supplement this just so that the
7 record is complete. I suspect that there's no
8 objection from Quality, but I don't know.

9 THE COURT: Any objection?

10 MR. KELLER: You're talking about the June
11 14th --

12 MR. WOOD: Yeah, we just got that today.

13 MR. McCALL: I was going to hand it up as an
14 exhibit to clarify the record.

15 MR. KELLER: No problem.

16 MR. WOOD: What's our last page on our
17 Department of Consumer Affairs?

18 THE COURT: We'll just mark it as an Exhibit.

19 MR. WOOD: Okay, that's fine. Thank you. I
20 don't have any further questions.

21 (Defendant's (SC Guaranty Fund) Exhibit Number
22 1, marked for identification).

23 THE COURT: Mr. McCall, your cross.

24 CROSS EXAMINATION

25 BY MR. McCALL:

1 Q Ms. Williamson, you are the staff
2 attorney for the South Carolina Department of
3 Consumer Affairs?

4 A That's correct.

5 Q And I understand you have no firsthand
6 knowledge of Quality HR Services?

7 A No.

8 Q So the only thing you're doing is reading
9 records and giving your interpretation of them?

10 A That's correct. The records go before my
11 personal involvement with the entire PEO Program.
12 I'm responsible for these files.

13 Q Right.

14 A I'm working the PEOs --

15 Q Have you had the opportunity to talk with
16 the folks who generated the records?

17 A To the extent they still work at the
18 Department, yes.

19 Q And who have you talked with that
20 generated the records?

21 A The main person that was dealing with the
22 issue in 2001 was a financial analyst that no longer
23 works at the Department, so obviously I did not talk
24 with her. But I did talk to Timmie --

25 Q Do you know whether -- excuse me. Do

1 you know whether she still works in Columbia?

2 A I have no way of knowing. She left --
3 she left many years back.

4 Q Do you know whether she's still available
5 and did she --

6 A I have no idea.

7 Q Okay.

8 A But I did talk, since your question was
9 whom do I did talk to. I did talk to Ms. Timmie
10 Gibson who has been working with our Department on
11 the PEO issues since that responsibility was
12 assigned to the Department.

13 Q Okay. And does she still work in the
14 Department?

15 A She is still working in the Department.

16 Q Is she available by subpoena?

17 A She would be.

18 Q And she has firsthand knowledge of this
19 development?

20 A To some degree.

21 Q What degree is that? So I may understand
22 her involvement in this --

23 A Yes.

24 Q -- as related to your testimony, what
25 involvement did she have?

1 A At the time when the first, the very
2 first application by Quality HR was being processed
3 by our Department, we had two financial analysts, so
4 I don't know what exactly the job title was, but
5 basically in the nature of a financial analyst who
6 were reviewing applications, and somehow they had
7 them divided. So at the inception, it was the other
8 analyst who no longer works there that worked with
9 the Quality HR. Ms. Gibson started to deal with --
10 after that lady left, Ms. Gibson was the sole
11 financial analyst at the Department and so from
12 about 2000 -- and I can't, without looking at the
13 file, tell you what exactly, but from about like
14 2002 she was involved with that company. And to
15 some degree she was involved with the company even
16 before the other analyst left, because it's a small
17 group of people, so if you have an issue everybody
18 talks about it.

19 Q Okay. Who made the determination about
20 Mr. Evette?

21 A It was either the head of the legal
22 department in our Department that -- that is Mr.
23 Danny Collins.

24 Q Is he still there?

25 A Yes, he's still there.

1 MR. McCALL: Commissioner, I'm going to move
2 to strike this testimony as the person or persons
3 who have firsthand knowledge are not here, but are
4 available, and have not been subpoenaed.

5 THE COURT: I think she's in charge of the
6 file at this point; is that correct?

7 THE WITNESS: That's correct.

8 MR. McCALL: But there are conclusions in that
9 file that are no necessarily correct. Those who
10 made those conclusions, those who -- whatever
11 testimony they drew from it -- she does not have
12 that information that -- you don't have that
13 investigative information those financial analyst
14 made or Mr. Collins made do you?

15 A I have the file.

16 Q May I see the file?

17 MS. FIERHER: We've submitted it all.

18 MR. WOOD: We've -- it's in the record.

19 MS. FIERHER: It's APA 14.

20 MR. WOOD: It's in the APAs.

21 MR. McCALL: Well, I'm -- she says she's got
22 the file. I'm asking her about the file.

23 MR. WOOD: Excuse us. We're just letting you
24 know we put the file in that we received.

25 THE WITNESS: I mean, sir, I meant that

1 we have the -- I might have misspoken. I meant to
2 say that we have the file in our office and a
3 majority of the information contained in that file
4 or files we turned to Mr. Wood subject to where
5 there was some information that we cannot disclose,
6 and that's basically just the financial statements.
7 The State just says we cannot disclose them.

8 MR. McCALL: Commissioner, again I would move
9 --

10 THE COURT: Well, I'm going to deny the
11 Motion.

12 MR. McCALL: Okay.

13 CROSS EXAMINATION RESUMES

14 BY MR. McCALL:

15 Q The information you do have, Ms.
16 Williamson, was that fines were assessed and those
17 fines were paid?

18 A That's correct.

19 Q Stipulations were issued and to your
20 knowledge they were complied with?

21 A That's correct.

22 Q That a license, in fact, was issued to
23 Quality HR?

24 A That's -- to the business entity to
25 Quality HR, the license was issued.

1 Q Right. From September 30th, 2003 to
2 September 30th, 2005?

3 A That's correct.

4 Q And was there a license issued prior to
5 that date?

6 A Yes, the license was issued following the
7 hearing in 2001.

8 Q Okay.

9 A So, we issued the license from '01 to
10 '03. Then in 2004, after some discussions that
11 apparently were had, we issued, and our records show
12 that on June 14th, 2004 a license was issued that
13 expired on September 30, 2005.

14 Q So according to your records, Quality HR
15 has been licensed since 2001 with the Department --

16 A That's correct.

17 Q -- of South Carolina Consumer Affairs?

18 A That sounds correct.

19 Q And it was licensed until it ceased
20 operation in 2005?

21 A That's correct. Now, there -- the
22 physical license --

23 Q Well, let me -- answer my question and
24 then you can explain. Is that correct?

25 A That's correct.

1 Q Okay. Now, you may explain.

2 A The physical license was issued on June
3 14, 2004 following the initial determination by the
4 staff and that it would be by Ms. Helen Fennell,
5 that it shouldn't be issued, but in the end it was
6 issued. So --

7 Q And did I understand you to stay that
8 restitution had been made? Did I hear that word?

9 A Yes. To what extent I am not aware. But
10 based on the information we had, the Administrator
11 of the Department of Consumer Affairs was satisfied
12 that that was sufficient and that he would allow
13 that first license, the 2001 to 2003 to be issued.

14 Q And obviously that wouldn't have been
15 done -- had done if it was just a partial
16 restitution, you would have required full
17 restitution would he have not?

18 A I really do not know.

19 Q Okay.

20 A And -- yeah, I do not know.

21 Q But you don't know that it was or wasn't,
22 whether it was full or partial, you know restitution
23 was made?

24 A I know that restitution was made.

25 Q Okay. And you said there was

1 another entity, Quality Business Solutions?

2 A That's correct.

3 Q And that is a licensed PEO; did I hear
4 you say that?

5 A That is correct. That is up to this day
6 a licensed PEO.

7 Q Okay. Quality HR Services, Inc. and
8 Quality Business Solutions are not the same
9 companies are they?

10 A No, they are not.

11 Q Do you have a website?

12 A Yes.

13 Q And do you post companies that are
14 licensed on your website?

15 A Yes, we do.

16 Q And you have had Quality HR Services
17 posted on your website as a licensed entity since
18 2001, have you not?

19 A I don't know when we started to post them
20 on the website, so I wouldn't go as far to say that
21 it was there from 2001 or that it was ever listed
22 there. I don't know. That particular list had a
23 little shaky start as far as the management on the
24 web is concerned. But generally, when we issue a
25 license or going to renew a license it is

1 supposed to be posted --

2 Q Right.

3 A -- on that website.

4 Q And --

5 A And now it is.

6 Q -- is there any information you have that
7 Quality HR Services was not posted as a licensed PEO
8 on that website since 2001?

9 A I don't know.

10 Q Okay.

11 A I don't know, but it wouldn't be posted
12 now, because it's not a licensed entity --

13 Q Thank you, ma'am.

14 A -- anymore since it's not engaged in the
15 PEO business.

16 Q So you're sure about that?

17 A Well, if you said Quality HR --

18 Q Services, Inc.?

19 A Services, Inc., I'm not sure. Shouldn't
20 be posted.

21 Q But you're not sure it isn't?

22 A No.

23 Q Okay. Thank you, ma'am.

24 THE COURT: All right. Mr. Keller?

25 MR. KELLER: I have nothing. Thank you.

1 THE COURT: Mr. Renfrow.

2 MR. RENFROW: Just real quickly. I want to
3 make sure I'm clear on a few things.

4 CROSS EXAMINATION

5 BY MR. RENFROW:

6 Q Now, the Department of Consumer Affairs
7 regulates and administers the Staff Leasing Act;
8 correct?

9 A That's correct.

10 Q Is that a fair assessment? And just
11 because somebody doesn't have a license and more so
12 Spectrum HR in this case and Quality HR, but just
13 because somebody doesn't have a Staff -- a license
14 doesn't mean that they're not governed by the Staff
15 Leasing Act if they're providing Professional
16 Employment Services; correct?

17 A That would be my professional conclusion.

18 Q Okay. Because the Act itself provides
19 for penalties if you don't have a license?

20 A That's correct.

21 Q So you may penalize somebody, but it
22 doesn't say if you don't have a license these
23 provisions don't apply?

24 A No, no, no.

25 Q Okay.

1 A We would interpret it that way.

2 Q All right.

3 MR. RENFROW: No further questions.

4 THE COURT: Mr. Cook.

5 CROSS EXAMINATION

6 BY MR. COOK:

7 Q The testimony that you just gave in
8 relation to Mr. Renfrow's question, are you aware of
9 any reported Court case indicating that an
10 unlicensed Staff Leasing Company is still governed
11 by the provisions of 40-68-10, except insofar as
12 they might be subject to a penalty for providing
13 those services without a license?

14 A I cannot cite you any -- any authority.
15 I have not -- I have not done the research because I
16 didn't really have a need to. When we catch,
17 so-to-speak, somebody that operates without a
18 license we try to license the person and bring them
19 to conformity with all the provisions.

20 Q But if you are a licensee under that Act,
21 the Act specifies in numerous places what has to be
22 contained within the Contract between the licensee
23 and the client company does it not?

24 A That's correct.

25 Q And it states things about who is

1 to provide Workers' Comp Coverage and that that has
2 to be written out and clear and things of that
3 nature; correct?

4 A That's correct.

5 Q And it's also correct that the language
6 of those Statutes speaks in terms of a licensee
7 which is defined as someone who actually has a
8 license to operate those type services?

9 A But the Statute also says that you cannot
10 be engaged in this business without having a
11 license, so I think the standard interpretation, not
12 just of this PEO Statute, but just of about any
13 licensing Statute. If I would be operating as an
14 attorney without a license, I mean, could I take
15 other people's money and spend it freely?

16 Q A No. I think you might misunderstand my
17 question. My question is this. I think you would
18 agree with me that the Legislature worded the
19 Statute; correct? I need a yes or no from
20 you, ma'am.

21 A Yes.

22 Q The Legislature chose to put the word in
23 "Licensee" did it not?

24 A Yes.

25 Q All right. The Legislature, and I

1 know this is always a stretch, but they're presumed
2 to know what they're doing and they passed the
3 Statute, are they not?

4 A Can you say the end of that question.

5 Q They're presumed --

6 A I kind of -- my mind wandered.

7 Q They are presumed to both know what
8 they're doing and to mean what they say --

9 A I'm familiar with that line -- that line
10 of law, yes sir.

11 Q All right. And in those sections of the
12 Act, specifically 60 and 70 which pertain to what
13 has to be in the Contract, it uses the phrase
14 "Licensee" and not just somebody engaging in Staff
15 Services; correct?

16 A It does use it there but we also have
17 the line of law which says that the overall
18 interpretation of the Statute shouldn't be absorbed,
19 and in the Legislation -- Legislature so wished that
20 nobody will perform Staff Leasing Services without a
21 license, then to split, yeah, but if you choose not
22 to be licensed, you know, if everybody else is
23 licensed and two guys run around without a license
24 we still want them to do the same thing. Get the
25 license and provide all the services like they

1 are supposed to. You cannot split the part.

2 Q Is it the position of the Department of
3 Consumer Affairs that it has jurisdiction to
4 determine who should provide Workers' Comp Coverage
5 for a Staff Leasing Services as opposed to the
6 Workers' Comp Commission?

7 A No. No, we -- our position is that if a
8 PEO provides Workers' Compensation Coverage it has
9 to satisfy certain criteria.

10 Q And in terms of employment relationships
11 between injured workers and insured employers or
12 non-insured employers, for that matter, if the
13 decision as to what that employment relationship is,
14 is that a decision for the Workers' Comp Commission
15 to make or for the Department of Consumer Affairs to
16 make?

17 A I'm don't really understand your
18 question, but let me see if I do. If when we get an
19 initial PEO application and they submit for our
20 consideration the Contract they have with a client
21 company. We look at it from the perspective or
22 rather from within the frameworks in the PEO
23 Licensing Statute. Which provisions that Contract
24 has to contain or which provisions might be
25 offended. In that respect it really does not double

1 up with the work that the Workers' Compensation
2 Commission does. So it -- but our Statute goes a
3 little bit above them. Our Statute requires that
4 you cannot have self-insured coverage, self-insured
5 policies. And that's in addition to what Workers'
6 Compensation does, because the Legislature, in its
7 wisdom, thought that in a relationship such as that
8 between the PEO and a client company, a relationship
9 of trust, the Legislation did not want PEOs to
10 obtain self-insured policies. Both for health and
11 workers' comp.

12 Q I believe you indicated initially, your
13 Department has no process for adjudicating issues
14 regarding Workers' Compensation Coverage insofar as
15 they relate to Staff Leasing Companies; do you?

16 A No, we don't deal with individual
17 coverages, but we may receive a complaint that, you
18 know, which will then would deal whatever is the
19 nature of the complaint with the Workers'
20 Compensation Commission. While we do have a
21 jurisdiction over whether or not, for example the
22 PEO submitted a truthful information regarding the
23 coverage or whether the policy itself is policy
24 which conforms to the requirement of our Statute, or
25 whether Mr. Joe Smith has claimed such and such,

1 that clearly would go within the jurisdiction of the
2 Workers' Comp.

3 Q Until this afternoon have you ever
4 testified under oath with regard to whether or not
5 the Agreement, the contractual portions of the Act
6 apply to an unlicensed Staff Leasing Company?

7 A No, I didn't testify under oath on that.

8 Q Thank you.

9 THE COURT: Ms. Steadman.

10 MS. STEADMAN: Yeah. I just -- quickly.

11 CROSS EXAMINATION

12 BY MS. STEADMAN:

13 Q Hi, Ms. Williamson. How are you?

14 A I'm fine.

15 Q Good. I just have a quick question to
16 follow up on what Mr. Wood asked you earlier. He
17 asked you if you had any knowledge about Spectrum
18 HR, if they had been licensed in South Carolina and
19 you said that it hasn't?

20 A I looked at what is in our archives.
21 There may be applications that came and were denied,
22 and I specifically asked people who worked at that
23 point with these companies whether or not an
24 application ever was received. Now, I have to
25 qualify that because we didn't receive any

1 application under that name, if the company would
2 rename itself to Your Friendly Neighborhood PEO, you
3 know, that -- that might be qualified as that
4 respect. But under that name, there is no record in
5 our Department.

6 Q Have you -- do you know anything about
7 licensing situation of Spectrum HR-PA-M?

8 A I don't.

9 Q SHR Admin-V?

10 A Our records do not show anything on any
11 PEO that would have Spectrum something in its name,
12 if that makes it easier.

13 Q Okay. Yes. Thank you.

14 MS. STEADMAN: That's it.

15 THE COURT: All right. Mr. Wood, any
16 redirect?

17 MR. WOOD: No, no redirect.

18 THE COURT: Any questions in response to any
19 of the cross that has occurred? Is there any
20 objection to excusing this witness?

21 MR. COOK: Your Honor, I have no objection,
22 but I'd like to make a Motion at this time with
23 regard to her testimony. Insofar as her Motion --
24 insofar as her testimony related to issues beyond
25 what you're deciding today, which is whether or not

1 Realm have coverage for these claims, I would ask
2 that it be struck, because it went beyond that with
3 regard to when she's testifying about the effect of
4 the Act on an unlicensed Staff Leasing Company. As
5 I understand it that's not the issue before you
6 today, and that testimony now exists and I would ask
7 that it be struck.

8 THE COURT: Anybody want to comment on that?

9 MR. McCALL: We would join in that Motion.

10 MR. RENFROW: I mean, Commissioner I'm not
11 sure what the relevance would be to have to bring
12 this nice lady back again and ask her the very same
13 questions. They're under oath. She's testified to
14 what they are whether you need to use them for this
15 or for the next hearing it doesn't matter. They are
16 under oath and there's a record of it and we can
17 just use it next hearing.

18 MR. COOK: You know, and I'm sure that if I
19 was Ben I would say the same thing because I would
20 have perceived that testimony to have been favorable
21 to me. Because I'm who I am and representing who I
22 am it was unfavorable, but that's really besides the
23 point. The issue before you today is Realm's status
24 and things about unlicensed Staff Leasing Companies
25 or unlicensed PEO have no relevance whatsoever to

1 your decision on Realm. And as such went beyond the
2 scope of what's before you.

3 MR. WOOD: I disagree with that. I think the
4 licensing issue is key to whether there is a valid
5 policy of Workers' Compensation Insurance in
6 accordance with the terms and provisions of
7 insurance laws and the Department of Consumer -- I
8 mean, the PEO Act, the Workers' Compensation Act and
9 the Guaranty Act. And that's why we brought her
10 here in the first place.

11 MR. COOK: And I'm not --

12 MR. WOOD: One of the reasons we brought her
13 here.

14 MR. COOK: -- asking that all of her testimony
15 be struck, Your Honor. I'm asking that that limited
16 portion of her testimony where she expressed her
17 understanding of the Department's view of the
18 Statute as to whether or not that portion of the
19 Statute applies to an unlicensed Staff Leasing
20 Company be struck.

21 THE COURT: I'm not going to strike the
22 testimony because that's not a decision -- just
23 because she testified to that doesn't make it so.
24 That would be ultimately the decision of a decision
25 maker.

1 MR. COOK: Well, I mean, it's a fact that's
2 going to have to be found, I agree with that. But I
3 do think it goes beyond what, at least, my
4 understanding of what the testimony -- of what the
5 hearing is going to be.

6 THE COURT: I'm not going to strike the
7 testimony because there are issues -- I'm not going
8 to strike that particular either, because if you,
9 you know, it may be something somebody wants to use
10 later and all of these issues are sort of
11 intertwined at this point in all these cases.

12 MR. COOK: That's the whole point,
13 Commissioner.

14 THE COURT: I know, you can bring her back
15 again, but it -- you know, I understand that. But
16 I'm going to leave the testimony in.

17 MR. COOK: Thank you, Your Honor.

18 THE COURT: I'm denying the Motion. Any
19 objections to excusing the witness?

20 MR. WOOD: None from us.

21 MR. McCALL: None.

22 THE COURT: All right. Duke, do you want to
23 go ahead and put up the -- your folks so they can
24 get out of here or --

25 MR. McCALL: Yes, I'd like to.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

JESSIE PRINGLE,

CLAIMANT,

vs.

HEALTHCARE SERVICES GROUP

EMPLOYER,

RUTH HARMON,

CLAIMANT,

vs.

SPECTRUM HR, LLC,

EMPLOYER,

JOSEPH C. COONCE,

CLAIMANT,

vs.

SPECTRUM HR-PA-M, LLC,

EMPLOYER,

STEVE CAMERON,

CLAIMANT,

vs.

KEITH'S WELDING/QUALITY HR
SERVICES,

EMPLOYER,

HEARING BEFORE
COMMISSIONER
ANDREA POPE ROCHE

WCC 0327062

VOLUME 2

PAGES 234-492

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WCC 0408190

WCC 0316901

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803-397-0189

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	)	COMMISSIONER
CLAIMANT,	)	ANDREA POPE ROCHE
	)	
vs.	)	
	)	
QUALITY HR SERVICES/EMPLOYMENT	)	WCC X030301
SOLUTIONS,	)	
	)	
EMPLOYER,	)	
	)	
MARTHA G. BURKE,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X030681
	)	
QUALITY HR SERVICES, INC.,	)	
	)	
EMPLOYER,	)	
	)	
ROBERT HUNTER,	)	
	)	
CLAIMANT,	)	
	)	
vs.	)	WCC X040142
	)	
JR CONSTRUCTION,	)	
	)	
EMPLOYER,	)	
	)	
TAMMY MILLER,	)	
	)	
CLAIMANT,	)	
	)	
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EMPLOYER,	)	

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1 MR. WOOD: Commissioner, can we take a brief
2 recess to use the facilities?

3 THE COURT: Let's take a ten minute recess.
4 We'll start back at ten after four.

5 (Off the record at 4:00 p.m.)

6 (On the record at 4:10 p.m.)

7 THE COURT: All right. Let's go on the
8 record. Mr. McCall, I believe you have a witness to
9 call.

10 MR. McCALL: I call Mr. David Evette.

11 THE COURT: Okay. Mr. Evette, please raise
12 your right hand. Do you swear to tell the truth,
13 the whole truth, and nothing but the truth?

14 THE WITNESS: I do.

15 THE COURT: Please state your full name for
16 the record.

17 THE WITNESS: David Alan Evette.

18 THE COURT: Mr. McCall, your witness.

19 David Alan Evette,
20 Having fires been duly sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. McCALL:

23 Q Mr. Evette, by whom are you employed?

24 A Quality Business Solutions.

25 Q And have you in the past worked

1 for Quality HR Services, Inc.?

2 A I have.

3 Q Before that, what was your business?

4 A Prior to Quality HR Services?

5 Q Yeah, were you in a business called
6 Priority One?

7 A I was.

8 Q Tell me a little bit about that business.

9 A Well, Priority One started out as a
10 payroll company and we were just payroll processors.
11 I did that for a couple of years. I partnered with
12 a couple of people and we actually formed a leasing
13 company called Priority One Services.

14 Q Okay. You didn't have any trouble with
15 your partners on payroll services did you?

16 A Not on the payroll side.

17 Q What about on the leasing side?

18 A We had difference of opinions quite
19 often.

20 Q And when you were getting checks in what
21 happened sometimes on those checks?

22 A Well, I was processing payroll for other
23 companies as well as for the leasing company, and
24 most of the time the clients would write the check
25 to Priority One. They wouldn't spell out, you know,

1 what it was for, and so a lot of times checks got
2 put in the wrong account.

3 Q Was there a dispute over a particular
4 account?

5 A No.

6 Q With Priority Services as opposed to a
7 deposit you made to the payroll account?

8 A Yes.

9 Q And what happened on that?

10 A Money was deposited in the wrong account,
11 in Priority One Payroll versus Priority One
12 Services.

13 Q Did your partners complain?

14 A Yeah. I mean, I think that was the --
15 that was just something that they could complain
16 about.

17 Q Right.

18 A It gave another reason to complain.

19 Q And as a result did you pay that money
20 back?

21 A I did.

22 Q And did you separate from your partners?

23 A At that point I resigned.

24 MR. RENFROW: Commissioner, sorry to
25 interrupt. Before we go any farther, we've got two

1 witnesses from the same company going to testify
2 what I think it might be to sequester one of them.

3 THE COURT: I don't have any problem with
4 that.

5 MR. McCALL: We haven't sequestered any
6 witness up to this point in time.

7 THE COURT: That's because nobody's asked yet,
8 but Mr. Renfrow has asked now.

9 (Ms. Evette exits the hearing)

10 DIRECT EXAMINATION RESUMES

11 BY MR. McCALL:

12 Q When did you leave Priority One Payroll
13 Services? When did you stop that business?

14 A Well, Priority One Payroll was my
15 business.

16 Q Right.

17 A I left Priority One Services in the year
18 2000.

19 Q After you left Priority One Services,
20 when did you become involved with Quality HR
21 Services?

22 A I believe it was May of 2000.

23 Q May of 2000? Did anyone with the
24 Department of Consumer Affairs ever talk to you?

25 A I had talked to -- I believe I had

1 talked to Timmie Gibson at some time in 2000.

2 Q And after you had that conversation --
3 was that -- what, in your opinion, prompted that
4 conversation?

5 A My previous partners were upset that I
6 had left the business and in turn started another
7 business.

8 Q That you had left Priority One Services,
9 Inc. and now gone into Quality HR Services?

10 A Correct.

11 Q They didn't like the competition?

12 A Exactly.

13 Q Tell me a little bit about Quality HR
14 Services, how did that operate and what was your
15 position there?

16 A I was basically in sales. Kind of the
17 customer service type person. Not only did I do
18 sales but try to make sure that the clients were
19 happy, got them what they needed.

20 Q Right. Were you the owner of Quality HR
21 Services?

22 A No, I was not.

23 Q And I think Pam Neesta was the owner?

24 A Correct.

25 Q And you subsequently got to know

1 the owner?

2 A Correct.

3 Q She's your wife now?

4 A That is correct.

5 Q Did you have any, other than in sales and
6 in customer service, did you have anything else to
7 do with that business as far as insurance, Workers'
8 Compensation Insurance, things of that nature?

9 A Well, I dealt with that on a client
10 standpoint. When sales were involved, I would let
11 them know what the costs were involved.

12 Q Okay. Who dealt with AIM?

13 A Pamela dealt with AIM.

14 Q Is that your wife?

15 A That's correct.

16 Q And now I notice that there were a couple
17 of letters from AIM addressed to you. Why did they
18 come to you?

19 A I don't know why they were addressed
20 directly to me.

21 Q Who made the decisions as it related to
22 AIM and Realm National?

23 A Ultimately, Pam made all the decisions --

24 Q Okay.

25 A -- when it would come to Quality HR

1 doing business with AIM and Realm.

2 Q And I believe Quality HR Services went
3 out of business in December of '05?

4 A I believe that's correct.

5 Q And is it your understanding that Quality
6 HR Services had a license with the Department of
7 Consumer Affairs from 2001 until 2005?

8 A That was my understanding.

9 Q Thank you. Would you answer any
10 questions these other folks might have?

11 THE COURT: Mr. Wood.

12 CROSS EXAMINATION

13 BY MR. WOOD:

14 Q Hello, Mr. Evette. Good to see you
15 again. We've met once before and over the telephone
16 at least once. The Priority -- what was the name of
17 the Priority business, Priority Payroll, Priority
18 One; what was it?

19 A Well, I had the Priority One Payroll.
20 The leasing was Priority One Services.

21 Q Okay. So it was two different companies?

22 A Uh-huh.

23 Q Same partners?

24 A No. Priority One Payroll was a sole
25 proprietor. That was me.

1 Q Okay. And the leasing company was the
2 one you had partners with?

3 A Correct.

4 Q Okay. Did y'all have a partnership
5 agreement or operating agreement?

6 A I don't think there was an agreement in
7 place.

8 Q Okay. And you decided -- you left that
9 business when?

10 A I think it was early 2000, it could have
11 been late '99, but early 2000, somewhere in that
12 timeframe.

13 Q Okay. And what did you do immediately
14 after that?

15 A I don't think I did anything immediately
16 after that. I'd say within a few months that I had
17 known Pam for a while and we had talked about
18 starting a business, doing something together.

19 Q Okay. And I -- I know at some point
20 y'all got married; correct?

21 A Correct.

22 Q Okay. When would that have been?

23 A See, you're trying to get me in trouble
24 again, aren't you?

25 Q No, well, she's not in here -- that's

1 why Mr. Renfrow asked her to be sequestered.

2 A No, July of '05.

3 Q July of '05? Okay. And so in some of
4 the documents where we see Pamela Neesta that's Pam
5 Evette, your wife; correct; same person?

6 A Correct.

7 Q All right. And I think Mr. Renfrow asked
8 you some of these questions at the -- at your
9 deposition over the telephone in the, I guess it was
10 the Coonce matter. Excuse me, the Cameron matter.
11 Y'all were just friends at that point, you didn't --
12 I mean, just friends?

13 A Absolutely.

14 Q Okay. And when Quality HR was formed,
15 Quality HR as I understand it, when it was in
16 existence was an Ohio corporation?

17 A Correct.

18 Q Okay. And at some point it registered
19 to do business with the Secretary of State's Office
20 as a foreign corporation, registered to do business
21 here in South Carolina. Is that your understanding?

22 A That's my understanding.

23 Q Okay. At the time that it registered to
24 do business in South Carolina you were a Director
25 and a designated Agent for Service of Process

1 in connection with Quality HR; correct?

2 A I believe that's correct.

3 Q Okay. And we've got the -- a lot of this
4 stuff was referenced in your deposition.

5 MR. WOOD: It's Number 25 of our APA folders.

6 Q And when did the situation arise with the
7 complaints from your partners from the Priority
8 leasing company, when did that surface?

9 A I guess in -- based on the start of the
10 company being around May of 2000, it was probably
11 late 2000.

12 Q The start of --

13 A When Quality HR Services, or -- yes,
14 Quality HR Services started in May of 2000, so I
15 think the complaint probably arose in late 2000.

16 Q Okay. Are you certain that it was 2000
17 or could it have been '01? Do you know?

18 A I'm pretty sure it was 2000.

19 Q Okay. All right. And what was the
20 allegation?

21 A The allegation?

22 Q Of the partners from the -- your former
23 partners?

24 A Well, we had had an ongoing dispute
25 for quite some time and then when the allegation

1 of the misappropriation of money, that was the
2 allegation.

3 Q Okay. And I was a little bit confused on
4 your testimony on direct. Did you say you paid that
5 back before you left the company or you subsequently
6 resolved the matter with them?

7 A Subsequently, we resolved the matter.

8 Q So you left the company to go into
9 business with Pam with Quality HR?

10 A No.

11 Q No? You were doing nothing at that time?

12 A That's correct.

13 Q Okay. And when did you reimburse them
14 for the disputed monies? Or when you paid the
15 disputed monies?

16 A It was in 2000, I just don't know exactly
17 when it was.

18 Q Was that before or after the situation
19 arose with your controlling person status in Quality
20 HR with the Department of Consumer Affairs?

21 A Probably some time around the same time.

22 Q Okay. You think the issue arose with the
23 Department of Consumer Affairs and then you made the
24 restitution or the other way around?

25 A No, I think it had started prior to that.

1 Q And in terms of when you ultimately made
2 the restitution, was that after the matter had been
3 brought before the Department of Consumer Affairs?

4 A I'm not sure.

5 Q Okay. When Quality HR first started, who
6 was your Workers' Compensation Insurance with?

7 A Quality HR Services?

8 Q Yes, sir.

9 A I believe it was with Ace Fire.

10 Q Okay. And was that voluntary or assigned
11 risk?

12 A Voluntary.

13 Q Okay. And let's talk about Workers'
14 Compensation -- let's sort of kind of rewind back to
15 '01, early '02. What was the situation out there
16 facing Professional Employment Organization Staff
17 Leasing Companies with respect to Workers'
18 Compensation Insurance?

19 A What timeframe?

20 Q '01 and '02?

21 A Grave.

22 Q What does that mean?

23 A 9/11, the insurance market turned upside
24 down. Carriers were not -- were scrambling for
25 reinsurance.

1 Q Okay. All right. And I guess PEOs were
2 -- well, they weren't one of the more favorable
3 classifications at that time? Is that a fair
4 statement?

5 A Fair statement.

6 Q Okay. And I would think that in your
7 business; I'm not in your business, but I would
8 think -- well, let me -- strike that and let me
9 start over. Did Quality HR generally with its
10 client companies provide workers' compensation for
11 the client companies? Was that part of the service
12 you were providing?

13 A In a lot of cases.

14 Q Okay. The majority of your cases?

15 A A big percentage.

16 Q Okay. All right. And I would imagine
17 that the costs of Workers' Compensation Insurance
18 along that time was a big factor in not only your
19 profit margin, but your ability to compete with
20 other folks who were in the business; is that fair?

21 A Well, I'd say more the ability to
22 compete.

23 Q Okay. Because you were just passing it
24 along? You passed it along?

25 A Correct.

1 Q Okay. But it was a factor in terms of
2 say, Spectrum HR for instance trying to get the
3 account as opposed to you getting the account?

4 A Who had the best pricing.

5 Q Right. Okay.

6 A Yes.

7 Q All right. So -- and was Workers'
8 Compensation Insurance, in terms of your discussions
9 with your clients and in your business sales and
10 that type of thing, was workers' compensation, was
11 that a primary reason why companies would use Staff
12 Leasing Companies or Professional Employment
13 Organizations, in your experience?

14 A I'd say it would be one of the three main
15 reasons.

16 Q What would be the other two?

17 A Payroll processing, workers' comp and
18 benefits.

19 Q Okay. So it's one of the major -- one of
20 the primary three factors?

21 A Correct.

22 Q In your opinion? Okay. Now, one thing I
23 was curious about in reading your deposition was how
24 you first came in contact with this -- with AIM,
25 American Insurance Management Group,

1 Atlanta Insurance Marketers. You've heard Mr.
2 Dennett-Smith's testimony today, the various
3 entities that comprise AIM. When did you first
4 become aware of that entity?

5 A I would say somewhere around the summer
6 of '02.

7 Q Okay. And can you describe how that --
8 how your contact with them came about?

9 A I remember getting a fax from them.

10 Q Just at the office?

11 A Uh-huh.

12 Q Okay. And what -- what did the fax --
13 what did it say?

14 A Just, to the best of my memory, it was
15 just announcing a program that they had for PEOs
16 regarding workers' comp.

17 Q Okay. And did you make any -- I mean, I
18 get faxes at the office all the time myself. Did
19 you make a response to that or did they follow up
20 with you?

21 A Pam made a response to that.

22 Q Okay. And were there further
23 discussions?

24 A I'm sure there were.

25 Q Did you participate in any of

1 the discussions?

2 A Initially, no.

3 Q Okay. When did you participate in any of
4 the discussions with AIM relative to their proposed
5 workers' comp program?

6 A I didn't discuss primarily with AIM
7 anything, but I would -- Pam would get with me when
8 we got down to particular numbers whether or not
9 that program would work for us or not.

10 Q Okay. And what period of time are we in
11 when that -- when those conversations with Pam
12 occurred?

13 A Probably, you know, August, September of
14 '02.

15 Q Okay. And did y'all make a decision?

16 A We made a decision, I think in October of
17 '02.

18 Q Okay. What was that decision?

19 A To go with the program they offered.

20 Q What -- other than talking to the AIM
21 folks who else did you speak with or consult with
22 concerning the -- the program and the product that
23 AIM was offering?

24 A Well, we would have talked probably with
25 our current broker that was writing our business.

1 Q Okay.

2 A To see if that was going to be a good fit
3 for us.

4 Q Right. Was the current broker -- was
5 your broker involved in between you guys and AIM or
6 --

7 A No, she was our current -- she had our
8 current workers' comp business at that time.

9 Q Okay. So you had your loss runs you
10 needed to get and --

11 A Correct.

12 Q I assume y'all were going to give them an
13 opportunity to try to do as good or better on the --

14 A I had given them an opportunity, there
15 just wasn't a whole lot out there.

16 Q Okay. All right. After -- you've seen
17 the document that the Disclaimer document, the
18 Executive Summary, the information that AIM, the
19 literature AIM produced on the -- on their whole
20 business plan? Are you familiar with that?

21 A No.

22 Q Bear with me one second. Let's take a
23 look at these documents and you reviewed these in
24 the deposition that you gave on the Cameron case
25 over the telephone that day. Take a look at

1 these documents and let me ask -- this is page --

2 MR. McCALL: May I see what you're showing the
3 witness?

4 MR. WOOD: Sure. I'm sorry. One more, Duke.
5 I'm sorry.

6 Q These are in our APA Folder Number 25
7 which contains your deposition on the Cameron case,
8 and these are the exhibits we questioned you on,
9 some of the exhibits we questioned you on.

10 MR. WOOD: And it's pages 2741, Commissioner,
11 through 2763.

12 Q Take a minute and sort of review that,
13 familiarize yourself with it and I'll have some
14 questions for you.

15 A Okay.

16 Q Had you ever seen those documents? I
17 think you were not certain when we took your
18 deposition as to whether you had ever seen these
19 documents prior to that deposition. Do you know
20 when you first saw these documents from AIM or
21 related to the AIM transaction?

22 A The complete package of documents I don't
23 know when I saw outside of through the course of
24 these hearings.

25 Q Right. Okay. Well, when y'all

1 were considering going into this program what was
2 the -- did you have some understanding as to the
3 fact that you were not only going to be trying to
4 get insurance coverage for work comp liabilities,
5 but that you were also in this investment plan to
6 purchase Realm National Insurance Company?

7 A I don't know the total plan as far as the
8 -- I know the dollars that we were putting into the
9 plan. I don't know what the dollars were being used
10 for.

11 Q Okay. Did you understand that there were
12 additional sums to be used for something other than
13 just premiums for insurance coverage?

14 A Yes.

15 Q And what did you understand those other
16 dollars, non-premium dollars to be for?

17 A I knew that based on what I had been told
18 they were premiums, and then there was a capital
19 investment that we had to make into the plan.

20 Q Okay. And I don't know if you had a
21 chance to read it in detail obviously, but were you
22 -- was there a Disclaimer contained in the documents
23 that AIM presented to you which basically said, you
24 know, there's a risk here as with any investment,
25 there's a risk? That you could lose all the money?

1 A I probably didn't read through all that.

2 Q Did you consult with counsel before you
3 -- did Quality HR Services consult with counsel
4 before they moved into this AIM Program, sent money
5 to AIM?

6 A That, I don't know.

7 Q You don't know?

8 A No.

9 Q Okay. You did -- you do recall signing
10 a Certification with the Department of Consumer
11 Affairs in early 2001 or so concerning the no self
12 -- that Quality HR Services would not offer -- I'll
13 show it to you. That you would not offer any self
14 or partially self-funded plans of insurance for
15 workers' compensation, health, life or disability to
16 any employee in the State of South Carolina? Do you
17 recall signing that, certifying that on behalf of
18 Quality HR back in May of 2000?

19 A That's my signature, yes.

20 Q Okay. Now, that date of May of 2000, is
21 that -- you were with Quality HR Services already in
22 May of 2000. I thought I understood your testimony
23 to be a little while ago that you were basically
24 doing nothing along that time period.

25 A No, I said we started about May of 2000.

1 Q Okay. All right. How much -- where --
2 where did the money -- where did the money that was
3 part of this program AIM was advertising, where did
4 the money go? Where did Quality HR Services' money
5 -- who was it sent to?

6 A Well, I didn't send the money to them,
7 but I'm -- from what I recall, it was sent to AIM.

8 Q Okay. You never wrote any checks to
9 Realm National Insurance Company?

10 A I didn't write any checks period.

11 Q Well, Quality HR Services, did it write
12 any checks to Realm National Insurance Company?

13 A Well, I didn't write checks for Quality
14 HR Services, not to my knowledge.

15 Q Okay. Well, you've been involved in
16 these cases for several years now. At least you've
17 known about them going on. Are you aware of any
18 money or any funds that Quality HR Services sent
19 directly to Realm National Insurance Company?

20 A Not to my knowledge.

21 Q Okay. And in connection with this PEO
22 Program that we're here on today, all of Quality
23 HR's money went to AIM?

24 A The premium, capital monies that we had
25 to pay were sent to AIM to the best of my knowledge.

1 Q Okay. All right. Now, when did your
2 insurance -- when did you make the transition from
3 your prior coverage with -- I think we thought it
4 was Ace? When did that -- when did that coverage
5 end, to your recollection?

6 A I think we were there for two years, so I
7 think it ended in May of '02.

8 Q Okay. May of '02?

9 A Uh-huh.

10 Q Did you have any coverage with anybody
11 else after May of 2002?

12 A Yes.

13 Q And who was that with?

14 A At that point we had to move all of our
15 clients to the assigned risk.

16 Q Okay. And that was a pretty expensive
17 proposition, I would imagine?

18 A Yes, it was.

19 Q Okay. So you've gone through the
20 voluntary market to the assigned risk pool, workers'
21 compensation is one of the three major factors, and
22 the assigned risk pool is very expensive. That's
23 sort of the context of what leads up to y'all
24 deciding to go into this AIM Program?

25 A Yes, sir.

1 Q Okay. There was no broker acting in
2 between Quality HR and AIM?

3 A That, I don't know about.

4 Q Okay. How much money have y'all sent to
5 AIM?

6 A I -- I couldn't say. I'm not 100 percent
7 sure how much was sent to AIM. It would be a guess.

8 Q Well, what's your best estimate?

9 A Probably between \$200,000 and \$300,000.

10 Q Okay. And you were expecting that to be
11 part of the capital as well as the premium for the
12 program; for the coverage?

13 A I didn't get into the details of the
14 plan, but it was to cover our premiums.

15 Q Okay. And the capital contributions was
16 separate?

17 A Whatever was required.

18 Q Okay.

19 A Yes.

20 Q All right. Now, what period of time did
21 Quality HR Services contend that it was covered by
22 Realm National through the AIM PEO Program? What's
23 your contention on the band of dates that you had
24 coverage?

25 A To the best of my knowledge, it was

1 some time around late 2002, I think November of '02
2 through I think maybe February, March of '04. I'm
3 guessing.

4 Q And what are you relying on -- what is it
5 that you're relying on in support of that? What do
6 you have that makes you believe you had insurance
7 coverage with Realm through AIM for that period of
8 time?

9 A Well, we had the Certificate of
10 Insurance.

11 Q Who issued you the Certificate of
12 Insurance?

13 A I guess that AIM would have issued that
14 Certificate.

15 Q Got it.

16 A I don't know where -- I don't where the
17 Certificate came from. It had Realm National as the
18 Carrier on the Certificate.

19 Q Was American Insurance Managers the
20 producer?

21 A I'm not sure.

22 Q Well, do you have any type of -- are all
23 the Certificates of Insurance you've got that you
24 rely on for your contention regarding coverage, were
25 they all signed by either a Mr. Bruce Holley or

1 a Brian Imperiale?

2 A I have seen Certificates with both of
3 their names on there.

4 Q Right. But you don't have any that
5 purport to show coverage for Quality HR or its
6 client companies with Realm National that were
7 signed by anybody other than those two gentlemen, do
8 you?

9 A Without looking through the Certificates
10 that we got I couldn't say.

11 Q Okay. All right. And how did it work?
12 Y'all sent the money -- did you send the \$200 or
13 \$300 that you estimated down there all at one time
14 or did -- was it -- was it in installments?

15 A I believe --

16 Q What was the schedule?

17 A I believe it was installments, but I'm
18 not 100 percent sure.

19 Q Okay. And when would the last
20 installment have been?

21 A I -- that, I do not know.

22 Q Now, did you take these Certificates that
23 you received, that you've indicated you relied on
24 for the coverage with Realm, did you tender those to
25 the PEOs -- I mean, excuse me, to the client

1 companies or did the client companies receive those
2 directly from AIM? How did that work?

3 A I don't know if they received one
4 directly from the producer or not. I know that if
5 they requested one and one was sent to me, I would
6 have faxed a copy or mailed a copy to the client.

7 Q Now, did you know at that time, the fall
8 of '02, October of '02, November of '02 that AIM was
9 in the process of attempting to purchase Realm
10 National?

11 A I don't think that I knew the particulars
12 of the plan at that point in time.

13 Q Okay. Let me show you your testimony on
14 this on page 2688 page 88 of the depo. That was my
15 question right there and that's your answer. Why
16 don't you take a look at that and in that time
17 period you were aware of that?

18 A Yeah, well, you asked me in October or
19 November specifically. I just said in late 2002. I
20 didn't know exactly what month.

21 Q All right. Late '02 you were -- you
22 gained some knowledge about the transaction?

23 A Exactly.

24 Q Okay. All right. I also asked you if
25 you viewed -- who were -- who you viewed AIM as

1 being an agent of? Do you remember what you told me
2 on that question?

3 A No, I do not.

4 Q I asked you did you view them as your
5 agent or Quality HR's agent? And your testimony was
6 that you viewed them -- you viewed AIM as Quality
7 HR's agent.

8 A That's correct.

9 Q Okay. So that was, from Quality HR's
10 standpoint, AIM was your agent?

11 A For Realm National.

12 Q Well, were they acting as your agent or
13 Realm National's agent or both?

14 A Well, from my standpoint I felt like they
15 were acting as my agent. I don't know about the
16 other side.

17 Q They didn't make that clear?

18 A I don't know that it was ever discussed.

19 Q Okay. All right. Now, when did you
20 first get some knowledge that -- gain some knowledge
21 that Realm was saying there's no coverage here,
22 AIM's issuing unauthorized Certificates? When did
23 that first come to the -- when did Quality HR first
24 come to discover that?

25 A I know it was shortly after we went

1 in the program. I don't know if it was December or
2 January of '02 or '03.

3 Q December '02 --

4 A January '03.

5 Q January -- okay. Let's talk about that
6 a little bit. Let me show you this item here, Mr.
7 Evette. Am I pronouncing that right? I'm sorry, I
8 get confused?

9 A You are.

10 Q Okay. Thank you. Let me let you take a
11 look at this document here?

12 MR. KELLER: What are you looking at, Mr.
13 Wood?

14 MR. WOOD: I'm sorry. It's the --

15 MS. FIERHER: Number 1 in our APAs. It's page
16 10.

17 MR. KELLER: Let me just see what it is, if I
18 may.

19 MR. McCALL: It's that note from Mark Sioma.

20 MR. KELLER: Oh, okay. Thank you.

21 CROSS EXAMINATION RESUMES

22 BY MR. WOOD:

23 Q Do you know what that document is there?

24 A Well, this is the letter -- I believe
25 a letter the Mr. Sioma sent out disputing

1 the coverage.

2 Q Okay. And the date on that letter is?

3 A December 10, '02.

4 Q And there's a copy of a certified receipt
5 I think, acknowledging that you or one of your
6 agents received it on what day?

7 A 12/13/02.

8 Q And you don't dispute having received
9 that document?

10 A I have seen this letter. I don't know
11 when I saw it the first time.

12 Q Okay. Well, would it be fair to say that
13 by December 12th or 13th of '02, that Quality HR had
14 some written information from Realm that they were
15 denying that this coverage existed?

16 A I say it would be fair to say we knew
17 there was a situation between Realm and AIM at this
18 time.

19 Q Well, what's -- what is ambiguous about
20 that letter in terms of Realm's position on
21 coverage?

22 A Their position was that AIM was not
23 authorized to issue Certificates.

24 Q Okay. So -- and did that -- do you not
25 -- do you agree that that letter, regardless of

1 the merits of Realm's position, but do you not agree
2 that that letter made it crystal clear that Realm
3 was saying they didn't have coverage and these
4 Certificates that were being issued were being done
5 on an unauthorized basis.

6 A I understood that was Realm's position.

7 Q Okay. And that was clear?

8 A Based on their side, yes.

9 Q Okay. And so you knew of Realm's
10 position on that by the middle of December of '02?

11 A Yes.

12 Q Now, what did you do, if anything in
13 response to receiving that letter?

14 A Well, I'm sure Pam probably had contact
15 with AIM at that point in time.

16 Q She didn't contact anybody with Realm?

17 A I don't know if she contacted anybody
18 with Realm at that time.

19 Q Okay. And what did AIM say? Do you have
20 any understanding of AIM replied?

21 A They assured us, you know, verbally and
22 in writing that our coverage was in place.

23 Q AIM did?

24 A Yes.

25 Q And who with AIM made that assurance?

1 A It would have been either David
2 Dennett-Smith, Bruce Holley or Brian Imperiale.

3 Q Okay. Now, there's been some discussion
4 about a memorandum. I don't know if it was an
5 exhibit to your deposition or not, but you heard Mr.
6 Dennett-Smith testifying today about a memorandum
7 that was sent out by AIM in response to the
8 correspondence that Realm was sending to State
9 Regulators and to the PEOs themselves suggesting
10 that they do one of three things. That they either
11 get replacement coverage, bring a Declaratory
12 Judgment Action in their State, or escrow the
13 premiums and pay the claims. Do you remember
14 receiving a memorandum from AIM to that effect in
15 response or in follow up to this letter of Mark
16 Sioma of December 10, '02?

17 A I personally don't remember receiving
18 that letter.

19 Q Okay. Well, what action did Quality HR
20 -- did Quality HR pursue either of those three
21 recommended courses of action made by AIM?

22 A I'm not sure exactly what discussions Pam
23 had with AIM regarding those three options. I'm not
24 100 percent sure of exactly which avenue was taken.

25 Q Did Quality HR continue to send

1 money to AIM after that December 10 -- after
2 receiving that December 10, '02 letter from Mr.
3 Sioma?

4 A To the best of my knowledge, yes.

5 Q Okay. Why?

6 A Because they were confirming that we had
7 coverage.

8 Q AIM was?

9 A Yes.

10 Q Well, you know, when you purchased your
11 -- when you purchased your workers' compensation
12 with Ace and you'd been in the business -- you'd
13 been in the business for a little while, typically
14 when you get your Workers' Compensation Insurance at
15 some point you get a Policy of Insurance; correct?

16 A Correct.

17 Q The Carrier usually sends you a policy
18 that says --

19 A Well, in a lot of cases they send it to
20 the agent.

21 Q Okay. Are you -- did you ever receive a
22 Policy of Insurance from Realm National?

23 A Not to my knowledge.

24 Q Do you know if any of the client
25 companies, your client companies, Quality HR's

1 client companies ever received a Policy of Insurance
2 from Realm National?

3 A Not to my knowledge.

4 Q Do you know whether coverage for Quality
5 HR was reported -- with Realm National was reported
6 to the National Council on Compensation Insurance?

7 A Not to my knowledge.

8 Q Okay. If you got -- if you got this
9 letter from the Carrier, from Realm, and you've got
10 AIM who you indicated you viewed as your agent
11 telling you one thing that's different from what the
12 Carrier's saying, why didn't you make demand to get
13 a Policy of Workers' Compensation Insurance?

14 A Well, I can't answer that because I
15 wasn't directly involved in negotiations with AIM.

16 Q Why didn't you get replacement coverage
17 if there was a question over whether this Realm
18 Insurance was really valid or not?

19 A I would say it's because we were being
20 confirmed that coverage was in place.

21 Q By AIM?

22 A Correct.

23 Q All of the assurances, all of the so
24 called confirmations about coverage were provided to
25 you by AIM, individuals with AIM, nobody else?

1 A No. There was -- there was a time that I
2 had a conversation with the President of Realm; Mark
3 Sioma.

4 Q Okay. And that was in the summer of '03?

5 A Some time in the summer of '03, right.

6 Q And that was after this Stock Purchase --
7 you were here for Mr. Dennett-Smith's testimony.
8 That was after the March 2003 Stock Purchase
9 Agreement was executed?

10 A It would have been after that, yes.

11 Q All right. But at least from December of
12 '02 all the way up until the summer of '03, you were
13 just relying on what AIM was telling you. You
14 didn't have a Policy of Insurance and you were still
15 sending money down to AIM; correct?

16 A For that time period. But you -- I was
17 wanting to clarify that other than AIM I did receive
18 confirmation at some point in time from Realm.

19 Q When?

20 A In the summer of '03.

21 Q And what do you have to that effect?

22 A I actually spoke with Mr. Sioma --

23 Q Okay.

24 A -- in AIM's office.

25 Q Okay. And again, that was after

1 the March '03 close -- Stock Purchase Agreement;
2 correct?

3 A It was in June of '03. June or July of
4 '03.

5 Q And that was prior to any kind of closing
6 on the deal between Realm and AIM; correct?

7 A I don't know when their actual closing
8 took place.

9 Q All right. So you got the
10 representations of AIM. You've got -- for six or
11 seven months or so, and then you have this verbal
12 conversation with Mr. Sioma. Beyond that, you don't
13 have any kind of written instrument indicating a
14 promise or an agreement of Realm National to pay
15 Quality HR and its client companies workers' comp
16 liabilities in South Carolina?

17 A I don't have anything, because I don't
18 think it would have been addressed to me.

19 Q Well, have you produced anything or any
20 kind of written instrument to that effect other than
21 these Certificates we've talked about that you would
22 argue constitutes a Policy of Insurance?

23 A Other than the letter from AIM, no.

24 Q Okay. All right. And you didn't escrow
25 the premiums, you kept sending them to AIM?

1 A To my understanding.

2 Q Okay. And AIM was paying some of these
3 claims for a period of time? I think Mr. Renfrow's
4 had some checks out here -- Steve Cameron. Steve
5 Cameron was one of your leased employees; correct?

6 A Correct.

7 Q Or you call the assigned employees; I'm
8 sorry. Because if you're the client company is it a
9 leased -- I don't want to use --

10 A It goes either way.

11 Q Okay. All right. You don't have any
12 indication, any kind of written documentation that
13 Realm ever was paying any of these claims do you?

14 A I don't know if I've ever seen anything
15 that said Realm was paying the claims.

16 Q Who did you procure -- why did you decide
17 in February of 2004 or thereabouts to get different
18 Workers' Compensation back?

19 A When the point in time -- it finally came
20 to a point where we needed to produce Certificates
21 of Insurance for our clients. The letters that we
22 were getting from AIM were not being sufficient and
23 we were losing business.

24 Q Why couldn't you get the Certificates at
25 that point?

1 A I guess because of litigation.

2 Q The ongoing litigation that Mr.
3 Dennett-Smith testified extensively about between
4 Realm and AIM or other litigation?

5 A I would say between Realm and AIM.

6 Q Okay. Did Quality HR ever join the
7 adversary proceedings in the Bankruptcy Court in New
8 York?

9 A I'm not sure.

10 Q Okay. Did Quality HR ever join or seek
11 to intervene in or become a party to the proceedings
12 involving Realm, AIM and the New York Liquidation
13 Bureau that were in Federal District Court in New
14 York?

15 A I'm not sure about that.

16 Q Has Quality HR Services ever made a claim
17 with the Liquidation Court in the State of New York
18 relative to the coverage issue that we're here on
19 today?

20 A I wouldn't be aware.

21 Q You're not aware of that?

22 A Huh-uh.

23 Q Bear with me one second and I'll wrap up
24 here. Now, when you had -- were there some
25 discussions with the Department of Consumer Affairs

1 in the middle of 2003 as Quality HR's license was
2 coming up for renewal at that point? I think the
3 license renewal is from September 30th of '03; is
4 that your recollection?

5 A I think it was in September, yes.

6 Q Well, in the weeks leading up to the
7 renewal deadline did you have discussions with the
8 -- anybody with the Department of Consumer Affairs
9 concerning Quality HR's workers' compensation
10 coverage status?

11 A I didn't, no.

12 Q Do you know whether Pam did or not?

13 A No, I'm not aware of any conversations.

14 Q Okay. Was it represented at the
15 Department of Consumer Affairs that you had Workers'
16 Compensation Insurance with Realm National as that
17 license renewal was approaching?

18 A I believe that they required an affidavit
19 of coverage.

20 Q Okay. And where did you get that
21 affidavit? Who signed that affidavit that was
22 presented to the Department of Consumer Affairs?

23 A I'm not sure who signed it.

24 Q Was it signed -- it's in the
25 APAs somewhere, but was it signed by -- do you

1 know if it was signed by Bruce Holley or Brian
2 Imperiale?

3 A I wouldn't. I'm not 100 percent sure.

4 Q Okay. It was signed by somebody from AIM
5 though; right?

6 A I believe, but I'm not 100 percent sure
7 on that.

8 Q Okay.

9 MR. WOOD: That's all I have, Commissioner.
10 Thank you.

11 THE COURT: All right. Mr. Keller.

12 MR. KELLER: Thank you, ma'am.

13 CROSS EXAMINATION

14 BY MR. KELLER:

15 Q Mr. Evette, I represent the Uninsured
16 Employers Fund. I'm sure you know that. And
17 typically in Uninsured Employers Funds cases a small
18 employer like a construction company or a small
19 manufacturing company that is supposed to have comp
20 insurance and then they don't procure it, they don't
21 get it and then somebody gets hurt and somebody gets
22 to step in and pay the claim. Most of the claims,
23 in fact all the claims I've ever dealt with before
24 this one have been exactly like that; small
25 companies with about four, five, six employees

1 who just don't go get comp insurance. Is that you?

2 A No, sir.

3 Q Okay. Now, at the time, and you
4 discussed this earlier, but at the time all this was
5 going on the insurance market was tight in general
6 and almost nonexistent for Staff Leasing Companies;
7 is that not fair to say?

8 A It was very tough.

9 Q Okay. And I think you already said you
10 got kicked into the assigned risk pool and your
11 rates went sky high?

12 A Yes.

13 Q And you were basically losing your
14 competitive edge and you were looking for some way
15 to deal with that?

16 A That's correct.

17 Q Okay. And this situation came up, and
18 y'all had discussions obviously with the various
19 people and ended up getting involved with this --
20 with what you thought was Realm National Insurance
21 Company; correct?

22 A With AIM and their Carrier, correct.

23 Q Okay. And when all this was going on you
24 weren't trying to evade the Workers' Comp Act and
25 not get comp insurance were you?

1 A Absolutely not.

2 Q You were trying to exactly the opposite
3 weren't you? I mean, exactly the opposite, you were
4 trying to get comp insurance, you were trying to do
5 what the law required; correct?

6 A Absolutely.

7 Q And you actually thought you had
8 insurance with Realm National Insurance Company?
9 You were wrong, but that's what you thought?

10 A I always thought we had coverage with
11 Realm.

12 Q And you actually had a conversation with
13 Mark Sioma who told you you had coverage with Realm
14 National Insurance Company; is that not correct?

15 A That is correct.

16 Q He lied didn't he?

17 A Apparently.

18 Q So we know he's a liar. Now, you heard
19 Mr. Dennett-Smith's testimony for about four hours
20 today. Anything that you heard him say that you
21 think he lied about, that you personally think he
22 lied about?

23 A Me personally, no.

24 Q Looking around the Courtroom do you see
25 Mr. Sioma?

1 A No, I do not.

2 Q So you thought you had insurance. You
3 got a Certificate of Insurance with a policy number
4 on it, with -- numerous Certificates of Insurance
5 with policy numbers. They were fraudulent as it
6 turned out, but you got them; right?

7 A I did receive them.

8 Q You did what you were supposed to do.
9 You actually had comp claims that were being
10 adjusted by Crawford and Company and claims were
11 being paid and reserves were being set; is that not
12 correct?

13 A That's correct.

14 Q All those kinds of things that insurance
15 companies do?

16 A Correct.

17 Q So what you saw looked and walked and
18 quacked like a duck, like an insurance company;
19 correct?

20 A Correct.

21 Q Okay. Now, Mr. Wood asked you a
22 hypothetical question that when you got this letter
23 from Mr. Sioma, which he later repudiated, why
24 didn't you immediately run out and get replacement
25 coverage? And isn't the answer to that is because

1 you were trying to get out of the assigned risk pool
2 and all that was available was the assigned risk
3 pool; correct?

4 A At that time, that's correct.

5 Q And you were getting assurances, first
6 from AIM and subsequently from Realm itself that you
7 had insurance coverage?

8 A I was receiving some documents, yes I
9 did.

10 Q And you actually -- but you actually had
11 a conversation with the President of Realm Insurance
12 Company who told you you had coverage; is that not
13 true?

14 A In person, I did.

15 Q Okay. And he lied -- we know he lied,
16 but you had that conversation with him?

17 A That's correct.

18 Q Okay. And everything up to that point
19 was being done as if you were covered by an
20 insurance company, and that's what you apparently
21 thought; fair to say?

22 A That's correct.

23 Q Apparently that was -- somebody
24 apparently defrauded you; would that be fair to say?

25 A That would be fair to say.

1 Q And apparently Mr. Sioma flat slam lied
2 to you?

3 A That's correct.

4 Q So you did everything you were supposed
5 to do and you just got screwed by somebody else who
6 was doing whatever bad thing they were doing;
7 correct?

8 A Correct.

9 Q Thank you, sir. That's all.

10 THE COURT: Mr. Renfrow.

11 CROSS EXAMINATION

12 BY MR. RENFROW:

13 Q All right. Real quickly Mr. Evette. Am
14 I saying that right? Hubie's got me messed up on
15 that. All right. You testified to a letter that
16 you received on December 10th, 2002 from Mr. Sioma;
17 correct?

18 A Dated, yeah -- dated the 10th.

19 Q December 10th, 2002?

20 A Yes.

21 Q All right. How long after that letter
22 did you actually go to the office in Atlanta at AIM
23 and meet with Mark Sioma and him say everything's
24 okay, proceed?

25 A It was -- it was in the summer. I'd

1 say June or July of '03.

2 Q So, seven or eight months later, or six
3 or seven months later?

4 A Correct.

5 Q All right. During that six or seven
6 month period where everything was sort of in limbo,
7 did you ever call Keith's Welding and tell them
8 about all the confusion and chaos that was going on
9 with the insurance carrier that you were purporting
10 would cover their leased employees?

11 A Well, they knew of the chaos that was
12 going on.

13 Q How did they know?

14 A Well, when they -- they needed
15 Certificates of Insurance for the people that they
16 were working for.

17 Q Okay. Did you -- was a letter ever sent
18 to them saying here's the situation, we're having
19 all these problems, there may or may not be coverage
20 there. Was that letter ever sent by Quality HR,
21 that you know of, to Keith's Welding informing them
22 of what was going on?

23 A They -- there was a letter sent to them
24 from AIM assuring them that they had coverage.

25 Q Have you seen that letter?

1 A I haven't seen it recently.

2 Q You've seen it before?

3 A Yes.

4 Q Do you know where that letter is?

5 A No, I do not.

6 Q Okay. Have you produced that letter
7 today?

8 A I have -- no, not that particular letter.
9 The same letter with the same format was issued to
10 any of our clients that requested Certificates.

11 Q Okay. Now, I have --

12 MR. RENFROW: And this is -- Commissioner,
13 this is my APA submission 104, my very last
14 submission.

15 Q FS04633 is a letter dated December 11th,
16 2002. And this -- well, let me ask you first. This
17 was sent to Quality HR Services at 20 Walnut Lane,
18 Travelers Rest, South Carolina. Is that y'all's
19 address?

20 A At the time, yes.

21 Q Okay. Look -- just take a brief look at
22 that letter, if you will.

23 MR. McCALL: When you respond -- the witness
24 responds I'd like to see the letter.

25 MR. RENFROW: I think it's in your brief,

1 but you can look at it.

2 MR. McCALL: I'd still like to know what you
3 handed him.

4 MR. RENFROW: Sure, sure.

5 CROSS EXAMINATION RESUMES

6 BY MR. RENFROW:

7 Q Do you recall receiving this letter on or
8 around December 11th, 2002?

9 A I believe I have seen that letter.

10 Q Okay. Do you know if your company
11 received it back when it says it was sent, December
12 11th, 2002?

13 A I don't know the exact date and I don't
14 know if I received it initially or if Pam would have
15 seen it first.

16 Q But this -- would you agree that this is
17 a letter from David Dennett-Smith himself suggesting
18 that there were problems?

19 A Well, it's not signed, but it's from
20 David, yes.

21 Q Okay. But you've seen this letter
22 before; right?

23 A I've seen something -- a similar letter
24 to that, yes.

25 Q Okay. Well, is it -- look at it a

1 little closer. Other than the signature is there
2 something about that letter that you don't remember
3 seeing?

4 A Well, I can't -- I mean, without --
5 without it being original I don't know if there's
6 anything different in this than in what the original
7 letter said.

8 Q Fair enough, fair enough. In this letter
9 I think David Dennett-Smith says it was his
10 intention, and I'm going to read it. "Please be
11 advised that AIM is proceeding with the intention of
12 reconfirming that Quality HR and its clients have
13 coverage for workers' compensation." So, on
14 December 10th you get a letter sent to you from
15 Sioma saying no coverage. The next day a letter is
16 sent from David Dennett-Smith saying it's our intent
17 to try and make sure there is coverage, but it's
18 fairly clear from that letter that there -- there's
19 some question about coverage. After this letter was
20 sent did Quality HR ever inform Keith's Welding in
21 writing about all the chaos that was going on with
22 Realm National Insurance Company and AIM?

23 A I -- I'm guessing here, okay. We'd have
24 to go to the record, but I'm not even sure Keith's
25 Welding was a client at that time.

1 Q Okay. All right.

2 A I would have to go back and look. I'm
3 not 100 percent sure.

4 Q Did you let your other PEOs know what was
5 going on at the time?

6 A Probably not that day or the next day,
7 but within a matter of days or weeks, yes.

8 Q So at some point between finding that out
9 and then going to meet with Sioma and the folks at
10 AIM, you let the PEOs that you were handling at that
11 -- or the client companies that you were servicing
12 at the time know about the problems that were going
13 on?

14 A Most all the clients knew that there was
15 a dispute.

16 Q Did you send them a letter in writing?

17 A I think if they got anything in writing
18 it would have come from AIM.

19 Q Okay. All right. Now, it's my
20 understanding from the testimony that you've given
21 earlier, and I just want to make sure this is clear.
22 That you started paying premiums to AIM or Realm,
23 AIM and Realm in late 2002; is that correct?

24 A That sounds correct.

25 Q Okay. And then you ended your

1 relationship with AIM and Realm some time in 2004?

2 A Correct.

3 Q Okay. I want to ask you a little bit
4 about how AIM would be notified, at least by Quality
5 HR of a workers' compensation claim? What -- you
6 were the workers' comp coordinator; correct?

7 A I would have probably been the one to
8 file the claims, yes.

9 Q So if you found out that one of your
10 employees were -- had been injured on the job how
11 would you notify AIM?

12 A Probably through a First Report of
13 Injury.

14 Q Okay. And would you actually notify AIM
15 first or Realm? Would you ever notify Realm
16 directly or would you do it through AIM?

17 A I don't know, I'm not 100 percent sure in
18 this particular case. A lot of times we sent it
19 directly to the TPA.

20 Q Okay. And who was your TPA on October
21 21st, 2003 when Mr. Cameron was injured?

22 A I'm not sure.

23 Q Okay. And I -- what I'm getting at here
24 is these checks that we've all talked about today
25 and we've asked questions to Mr. Dennett-Smith about

1 these checks, who would have -- who would the
2 adjuster, whoever was handling this claim, have
3 called at Quality HR to determine if this was a
4 compensable claim or not; would that have been you?

5 A Probably.

6 Q Okay. Did you know that AIM was, in
7 fact, paying TTD checks to Mr. Cameron for over --
8 for over 11 months?

9 A Not at the time.

10 Q You didn't know at the time these checks
11 were being written by AIM that they were paying him?

12 A No.

13 Q So they weren't -- they weren't
14 discussing with you whether this was even a
15 compensable claim, they were just paying the claim?

16 A I don't know who the checks -- I knew he
17 was getting checks, I just didn't know who was
18 writing the checks.

19 Q Okay. And would that be the process
20 though? Would somebody have called you with as the
21 workers' comp coordinator and say here's the deal,
22 this guy says he fell off a roof. Is it compensable
23 or not, have you investigated it? Would you have
24 had that conversation with somebody at either the
25 Third Party Administrator or with AIM or Realm?

1 A From my experience in filing claims,
2 which is not very extensive, but typically if we
3 feel that there's a question, we will send a letter
4 up front with the initial report saying it's an
5 alleged or we have a -- you know, we're not sure
6 about it actually being a claim.

7 Q But did the buck stop with David Evette
8 and Pam Evette when a claim was filed and a
9 determination needed to be made whether it was
10 compensable or not or whether you were going to
11 accept it or not?

12 A We never argued that it wasn't a claim.

13 Q Okay. So you accepted this claim
14 essentially and instructed the TPA to start paying
15 medicals; is that correct?

16 A We didn't instruct them to, but we never
17 disputed it being a claim, a valid claim.

18 Q Okay. All right. No further questions.
19 Thank you.

20 THE COURT: Mr. Cook.

21 MR. COOK: If it pleases the Commission.

22 CROSS EXAMINATION

23 BY MR. COOK:

24 Q Mr. Evette, my name is Robert Cook and
25 along with Mr. Keller I represent the UEF, but in

1 different cases than the one he's representing them
2 on. You got a letter dated December 10th, '02 from
3 Realm National indicating that they were denying
4 that they had issued any coverage to you; is that
5 correct?

6 A The letter is -- I guess they were saying
7 that AIM didn't have the authority.

8 Q Okay. But you -- but the import of the
9 letter was is that Realm was indicating that they
10 didn't feel like they had any coverage to you,
11 whether that was through AIM or anything else;
12 correct?

13 A I think that's correct.

14 Q All right. And apparently the next day a
15 letter was sent out by David Dennett-Smith telling
16 you sort of like we're looking into it; is that fair
17 to say? Or, I hope we can straighten it out?

18 A I think it was more of a letter assuring
19 us that the coverage was in place.

20 Q Okay. Now, up to that point, you had --
21 you had obtained entry into this plan obviously some
22 time before those letters; correct?

23 A Correct.

24 Q And up to that point you had made
25 your premium payments, plus whatever the

1 capital contribution was, directly to AIM, not to
2 Realm?

3 A To the best of my knowledge.

4 Q That's your understanding?

5 A Correct.

6 Q Okay. After those two letters, December
7 10th and December 11th you still continued to send
8 the premiums payments and the capital contributions
9 the same way as you had before? In other words,
10 directly to AIM, not to Realm National; correct?

11 A I'm not sure how they were sent, but I'm
12 pretty sure that all the payments were sent to AIM.

13 Q Okay. And for whatever reason nothing
14 about either two of those letters changed the way
15 that you were making what you perceived to be your
16 premium payments?

17 A That's correct.

18 Q All right. Now, at some point, and you
19 believe it to be June or July of 2003, you actually
20 went to AIM's office in Atlanta?

21 A Correct.

22 Q At which time you had a conversation with
23 Mark Sioma who is the President of Realm National
24 Insurance Company?

25 A That's correct.

1 Q How did you know it was Mark Sioma as
2 opposed to somebody else?

3 A He introduced himself as Mark Sioma.

4 Q Okay. Did he also introduce himself as
5 the President of Realm National Insurance Company?

6 A Well, David Dennett-Smith introduced him
7 as Mark Sioma, and he come out and also said the
8 same.

9 Q Okay. He didn't -- he didn't deny that
10 he was the President of Realm National did he?

11 A No, he did not.

12 Q Okay. You understood that's who you were
13 talking to?

14 A Correct.

15 Q Okay. Why was it that you went from
16 wherever you normally did business to Atlanta for
17 this meeting?

18 A I think all the meetings that Pam had
19 gone to, and I probably had accompanied her on a
20 couple, were all at their Atlanta office.

21 Q Okay. Had you ever met anybody -- had
22 you ever met Mark Sioma before that time?

23 A No, I had not.

24 Q All right. Did you go to that meeting
25 expecting to meet Mark Sioma?

1 A We didn't know he was there.

2 Q Okay. And at that time at that meeting
3 in either June or July of 2003 you had the
4 opportunity to discuss with him your coverage status
5 with Realm; is that correct?

6 A I think Pam had had some conversations
7 with him.

8 Q Okay. But you also spoke to him at that
9 time; is that right?

10 A That day, yes.

11 Q Yes, yeah.

12 A Yes.

13 Q And coverage was discussed; is that
14 right?

15 A Yes.

16 Q All right. And he made a -- the
17 President of the insurance company made a
18 representation to you that your company had coverage
19 through Realm National Insurance Company?

20 A He assured us that we had coverage.

21 Q Was his assurance contingent on anything?
22 Like I've got to go talk to underwriting, or in any
23 way was it contingent?

24 A He said he was there reviewing all the
25 files for all the PEOs and that since we were there

1 he would go pull ours out right then. If there was
2 any questions he would get it answered then. He
3 never came back.

4 Q All right. Did he -- do you know whether
5 or not he actually looked at your file?

6 A I do not.

7 Q Okay. Did he ever contact you later to
8 say, you know, I was wrong, I told you you had
9 coverage but you don't?

10 A I never had another conver -- I
11 personally never had another conversation with him.

12 Q Did anyone else lower than the President
13 of Realm National Insurance Company ever call you or
14 send you a letter or in any way contacted you or
15 anyone at your company to say the President
16 misspoke, you don't have coverage?

17 A Not to my knowledge.

18 Q Well, you would know, wouldn't you?

19 A If they spoke directly to me, yes. I
20 don't know that they ever relayed that to Pam or
21 not, but I --

22 Q Well, let me ask it this way. If --
23 would you not think it logical that if your wife had
24 been told, she had gotten the call from Realm she
25 would have told you?

1 A Yeah, I -- I don't know if anybody talked
2 to either one of us.

3 Q Okay. You certainly are not aware of any
4 conversations to that effect; right?

5 A That's correct.

6 Q All right. And from that date in time,
7 either June or July of '03 to some point in 2004,
8 you continued to make your premium payments and your
9 capital contributions for this coverage the way you
10 always had; right?

11 A To my understanding, that's correct.

12 Q Okay. You didn't go looking for other
13 coverage because you thought you had coverage; is
14 that right?

15 A During that timeframe, that's correct.

16 Q All right. Now, had -- had the President
17 of Realm indicated to you at that meeting, I don't
18 know what you're talking about, we have no coverage
19 for you; what would you have done?

20 A Hard to say.

21 Q Well, --

22 A I mean --

23 Q -- let me ask you this. Do you think you
24 would have gone looking for insurance coverage
25 elsewhere?

1 A I'm sure we would have.

2 Q All right. Given that you were dealing
3 directly with the President of the insurance
4 company, would you have been more inclined to take
5 his word as to an assurance of coverage over David
6 Dennett-Smith's word?

7 A For an assurance of coverage?

8 Q Right.

9 A Well, they both assured me that I had
10 coverage. I felt better coming from the President
11 of the insurance company.

12 Q Of course you would. Anybody would. And
13 you, at that point you felt like there was nothing
14 you needed to do to change your Workers' Comp
15 Insurance coverage situation, based upon those
16 assurances; correct?

17 A I felt better at that point.

18 Q Okay. Well, you didn't do anything to
19 change that --

20 A That's correct.

21 Q -- your situation did you? And in fact,
22 your conversation with Mr. Sioma predates by what,
23 six or so months this injury that Mr. Renfrow was
24 talking to you about that you later found out there
25 wasn't coverage for?

1 A About that timeframe, yes.

2 Q All right. So you lost the opportunity
3 to do anything to get coverage for that injury?

4 A The conversation with Sioma?

5 Q Yes.

6 A Prior to the injury?

7 Q Right.

8 A Correct.

9 Q Right. And had you known there wasn't
10 coverage or had he told you there was some problems
11 with coverage you would have done something else
12 wouldn't you?

13 A Absolutely.

14 Q All right. Is there anybody else that
15 you think could have given you a more authoritative
16 statement as to whether or not your company had
17 coverage with Realm National than the President of
18 Realm National?

19 A Well, let me say, I mean, the brokers had
20 always affirmed that our coverage was in place. The
21 President of Realm affirmed that our coverage was in
22 place. I was confident from either one of those. I
23 felt much better after speaking with the President
24 of Realm.

25 Q And did you seek any additional

1 assurances after that?

2 A No.

3 Q Did you feel like you needed to?

4 A I personally did not.

5 Q Thank you. That's all that I have.

6 THE COURT: All right. Ms. Steadman.

7 MS. STEADMAN: I don't have any questions.

8 THE COURT: Any redirect? Mr. McCall.

9 MR. McCALL: Just briefly.

10 REDIRECT EXAMINATION

11 BY MR. McCALL:

12 Q The Certificate of Coverage, is this the
13 Certificate of Coverage we've been talking about
14 from Realm National to Quality HR?

15 A Yes, that's correct.

16 MR. McCALL: That's APAs page 101, I believe
17 that is Tab 10 or Tab 9. Tab 9.

18 Q Let me show you APA Number 12, page 109,
19 110, a letter from Brian Imperiale dated December
20 30th of '02. Do you recognize that?

21 A Yes.

22 Q What did Mr. Imperiale say to you in that
23 letter?

24 A This letter was sent to me because a
25 client was requesting verification of coverage, and

1 he was assuring me that there was issues between the
2 two --

3 Q Between the two who, though?

4 A Between AIM and Realm.

5 Q Right.

6 A And that coverage was placed for our
7 client with Realm National. And unfortunately until
8 their issue was resolved, the letter -- that Mark --
9 that that was the reason Mark Sioma needed to send
10 that letter out to -- he sent the letter out to
11 cover his self prior to these issues being resolved.

12 Q You've got me very confused over what
13 you're talking about.

14 A Okay. Well, I was reading -- I was
15 thinking this letter, as I read more into it, it
16 says of course there are issues to resolve. Realm
17 felt it necessary to issue the letter received
18 signed by Realm's President, Mark Sioma.

19 Q So he was addressing Sioma's letter?

20 A Correct.

21 Q And what was he saying about that letter?
22 According to your understanding?

23 A That Realm had given them authority to
24 bind coverage.

25 Q Okay. So was Mr. Imperiale telling

1 you you had coverage?

2 A Yes.

3 Q That was your understanding?

4 A That was my understanding.

5 MR. WOOD: Mr. McCall, may I see that document
6 you just showed him? The one you just showed him.

7 Q When you met Mark Sioma at AIM's office
8 in Atlanta, you and Pam were not married at that
9 time were you?

10 A No, we were not.

11 Q That was in 2003?

12 A That's correct.

13 Q Y'all didn't get married until 2005?

14 A That's correct.

15 Q Are you aware of the letter she wrote
16 dated October 1st, 2003?

17 MR. McCALL: Page 154 in our APAs, and I
18 believe that is APA Number 16.

19 A Yes, I have seen this letter.

20 Q And is that letter basically confirming
21 the conversation that you and your wife, your now
22 wife, had with Mark Sioma?

23 A That's correct.

24 Q And that was memorialized in a letter by
25 your wife dated October 1st, 2003?

1 A Correct.

2 Q Was there anything done by either AIM or
3 Realm National after your conversation with Mark
4 Sioma that led you to believe that you did not have
5 coverage with Realm National?

6 A No.

7 Q In fact it was to the contrary, wasn't it
8 David?

9 A That's correct.

10 Q Thank you.

11 THE COURT: Mr. Wood.

12 MR. WOOD: Thank you, Commissioner.

13 RE-CROSS EXAMINATION

14 BY MR. WOOD:

15 Q Mr. Evette, Mr. McCall was kind of
16 interested in Mr. Cook's questioning. As I
17 understood his line of questioning, he asked you
18 whether you would have, in your verbal conversation
19 with Mr. Sioma in the summer of 2003, he asked you
20 the question if Mr. Sioma had told you no, you
21 didn't have coverage, that you would have done
22 something about it. Remember that?

23 A I said that.

24 Q Remember that question?

25 A Yeah.

1 Q And you said --

2 A I also -- I also said that I was
3 confident that coming from either AIM or Realm I was
4 confident. I was embraced more or I felt better
5 about it coming from Mr. Sioma.

6 Q Okay. But you said -- you -- in response
7 to his question that if Mr. Sioma had told you that
8 you didn't have coverage at that time, you'd have
9 gone out and done something about it. Gone out and
10 gotten replacement coverage and you didn't have that
11 opportunity because he allegedly told you otherwise;
12 right?

13 A I would say we would have probably looked
14 for other coverage.

15 Q But yet when you got a written letter,
16 certified mail from the President of the insurance
17 company in writing in December of 2002, you did
18 nothing, you kept sending money to AIM; right?

19 A I believe that's correct.

20 Q Okay. Is it your position that a verbal
21 representation to the extent what you've testified
22 to is -- actually happened to the extent that it did
23 happen, that that constitutes a policy of insurance?

24 A Well, I had always been assured that I
25 had a policy from my agent.

1 Q But you never got a policy?

2 A No.

3 Q Okay. Now, there was a question as to
4 whether anything happened after this verbal
5 conversation that you've testified to with Mr. Sioma
6 in the summer of 2003. You knew there was supposed
7 to be a closing in connection with the purchase
8 transaction which you were an investor in the
9 purchase of Realm; correct?

10 A I learned about the closing after the
11 litigation had started.

12 Q Okay.

13 A I knew nothing about that prior to us
14 joining the plan.

15 Q So you really don't have any knowledge as
16 to the significance of the closing occurring or not
17 following the March 2003 Stock Purchase Agreement,
18 as it relates to this whole question of coverage?

19 A I didn't see it had any relevance to my
20 question of coverage.

21 Q Through AIM, you don't know of any
22 relevance to that coverage you had?

23 A I don't know of their closing, of their
24 deal, having anything to do with the fact that my
25 coverage was enforced.

1 Q Okay. All right. Have you ever read
2 that Stock Purchase Agreement, by the way?

3 A I can't say I've read the whole thing,
4 no.

5 Q Now, Mr. Keller's asked you a question --
6 he asked you a question about if you saw Mr. Sioma
7 anywhere in the Courtroom here today and you said
8 you hadn't seen him. Do you know whether Mr.
9 Keller, Mr. Cook and their client, The South
10 Carolina Uninsured Employers Fund, your client, Mr.
11 McCall or anybody else involved in this case has
12 made an effort to obtain testimony from Mr. Sioma or
13 anybody they wanted to over the last couple of
14 years?

15 A I do not know.

16 Q Okay. But you are aware that my client
17 has been to New York to take the deposition of the
18 New York Liquidation Bureau which has custody and
19 control of Realm's assets at this point; papers and
20 what not; correct?

21 A I'm not -- no, I'm not aware of exactly
22 what's been done.

23 Q You didn't send Mr. McCall up there on
24 your behalf to that deposition?

25 A You said your client.

1 Q Yeah, but you knew we took the
2 deposition; right?

3 A I knew he went on our behalf.

4 Q Okay. The Uninsured Employers Fund, they
5 hadn't noticed Sioma's deposition or Lawless or any
6 of those people; right?

7 A I have no clue.

8 Q Do you know whether Mr. Smith's had any
9 conversations with those folks in addition to the
10 AIM folks?

11 A No, I do not.

12 Q Okay. The fact of the matter is you
13 really don't have a lot of expertise or knowledge
14 about the whole transaction between Realm and AIM
15 and what their relationship was?

16 A I didn't deal directly with AIM on the
17 program, no.

18 Q Okay. Mr. Keller said you got
19 screwed; right? Isn't that what he asked you and
20 you agreed?

21 A That's what he said.

22 Q Okay. But you really don't know
23 ultimately whether you got screwed by Realm or AIM
24 do you?

25 A That wasn't the question.

1 Q Okay. Well, I'm asking you the question
2 now. You don't know whether you got screwed by
3 Realm or AIM do you?

4 A I felt like I -- yeah, I felt like it's
5 Realm.

6 Q That's your opinion?

7 A That's my opinion.

8 Q Okay. Because you had sent a bunch of
9 money to AIM and there's no coverage with Realm --

10 MR. KELLER: He asked the question and he got
11 an answer he didn't like, but he got an answer, Your
12 Honor.

13 MR. McCALL: Well, ask him another question.

14 THE COURT: Well, he's crossing him. That's
15 all right.

16 CROSS EXAMINATION RESUMES

17 BY MR. WOOD:

18 Q You're better off to side with AIM
19 in this thing because if you do that and the
20 coverage pans out then you're off the hook. If it
21 goes the other way and AIM was the entity in the
22 wrong and there was no authority to bind and no
23 coverage, then you're on the hook; right? A lot of
24 money at stake here isn't it? Not to mention the
25 couple of hundred thousand dollars you sent down

1 to AIM; right?

2 A That's an opinion, I don't know.

3 MR. RENFROW: Objection, Commissioner. I
4 think there were three questions combined into one.
5 I think the first question was --

6 MR. WOOD: I'll withdraw the question.

7 MR. RENFROW: Okay.

8 Q You've got a tremendous financial stake
9 in the outcome of this coverage question; is that
10 correct?

11 A I've always felt I had coverage.

12 Q My question is do you have a significant
13 financial interest in the outcome of this coverage
14 question?

15 MR. McCALL: Your Honor, I think he's asking
16 for a legal conclusion that is the whole purpose of
17 this litigation. It is the Commissioner's decision
18 to determine what the -- where the coverage is.

19 THE COURT: I don't think the question went to
20 where the coverage was. I think the question went
21 to whether or not he had significant --

22 MR. McCALL: But he's got to make a legal
23 decision at that point on coverage in order to --

24 THE COURT: No, I think -- depending on
25 which way it comes out he stands to lose money,

1 and if you would just answer the question yes or no.

2 CROSS EXAMINATION RESUMES

3 BY MR. WOOD:

4 A I don't know.

5 Q You don't know whether you have a
6 significant financial interest in the outcome of
7 this case?

8 A No, I do not.

9 Q Okay. Let's talk about this memo here
10 that Mr. Imperiale sent from AIM that Mr. McCall
11 just asked you about; right?

12 A Uh-huh.

13 Q Okay. Imperiale is telling -- and the
14 date of this is December 30th of '02; right?

15 A Correct.

16 Q And you've heard Mr. Dennett-Smith come
17 in here and testify today about whether -- whether
18 AIM actually had authority to bind business
19 and write coverage and that sort of thing; right?

20 A Yeah.

21 Q You heard his testimony today. And here
22 is Imperiale saying, not that Realm had bound you,
23 but that American Insurance Managers acting as Agent
24 for Realm National Insurance Company with apparent
25 authority has placed Workers' Compensation Insurance

1 Coverage for Employment Solutions with Realm
2 National under policy number -- that's a little bit
3 different story isn't it? I mean, which is it? Did
4 Realm bind it like Mr. Dennett-Smith said here
5 today? Or did AIM do it with apparent authority of
6 did they have an Agency Agreement? Which is it?

7 A I do not know.

8 Q You don't know? Okay. One other
9 question I found interesting about this memo is that
10 it says down here that AIM has enlisted the services
11 of Crawford and Company to service the claims. Is
12 that right? Is that what it says?

13 A That's what it says.

14 Q Okay. What did Mr. Dennett -- didn't Mr.
15 Dennett-Smith lead us -- you heard his testimony
16 today. Didn't he say -- or he initially said that
17 Realm had retained Crawford to administrate the
18 claims; right?

19 A Initially he said that.

20 Q Thank you, sir.

21 THE COURT: Mr. Keller.

22 MR. KELLER: Just briefly.

23 RE-CROSS EXAMINATION

24 BY MR. KELLER:

25 Q I think there was one thing I was

1 unclear on, maybe you were a little misleading.
2 Mr. Wood asked you, he said after you got the letter
3 of 12/10 you did nothing. I thought that you
4 testified also previously on previous cross
5 examination by Mr. Wood that you did -- that you did
6 do something. You made contacts, you and Pam,
7 contact inquiries. There were things going on after
8 12/10, after that 12/10 letter from Realm?

9 A Right.

10 Q Okay. You weren't just going to sit
11 around waiting for the sky to fall, you took some
12 action to try to find out what was going on; is that
13 fair to say?

14 A That's fair to say.

15 Q Okay. And I don't know that we've gotten
16 into your -- I know at some point we got your
17 educational background, but you're not -- you're not
18 a lawyer of any kind or not versed in the law
19 are you?

20 A Absolutely not.

21 Q Because I was a little confused when Mr.
22 Wood was reading the letter. Do you know the
23 difference between "bind with apparent authority", I
24 mean, do you know what that means from a legal
25 standpoint?

1 A I'm not familiar with that.

2 Q You don't have a clue do you?

3 A No.

4 Q Okay. Thank you.

5 THE COURT: Mr. Renfrow.

6 MR. RENFROW: Nothing else.

7 THE COURT: Mr. Cook.

8 MR. COOK: No, thank you, Your Honor.

9 THE COURT: Ms. Steadman.

10 MS. STEADMAN: No questions.

11 THE COURT: Any re-redirect?

12 MR. McCALL: No, Your Honor. I'd like to

13 excuse this witness.

14 THE COURT: All right. Any objections to this

15 witness being excused?

16 MR. KELLER: None.

17 MR. WOOD: No, ma'am

18 MS. STEADMAN: No.

19 THE COURT: Mr. McCall, please call your next

20 witness.

21 MR. McCALL: All right.

22 THE COURT: Please raise your right hand. Do

23 you swear to tell the truth, the whole truth and

24 nothing but the truth?

25 THE WITNESS: Yes, I do.

1 THE COURT: Please state your full name for
2 the record.

3 THE WITNESS: Pamela Evette.

4 THE COURT: Mr. McCall, your witness.

5 DIRECT EXAMINATION

6 BY MR. McCALL:

7 Q Ms. Evett, even though your testimony has
8 been taken a couple of times, for the benefit of the
9 Commissioner can you tell us briefly a little bit
10 about your background?

11 A I'm an accountant by trade. I started in
12 the PEO industry in Ohio probably in mid -- no,
13 probably early '90s. I worked as a Controller at a
14 PEO there for a few years and then I became a
15 consultant in the PEO industry and was an accounting
16 consultant for a number of PEOs around the country
17 in the best way to do accounting practices.

18 Q And then you opened your own company?

19 A Opened my own company, and that was
20 Quality HR Services.

21 Q When did you start Quality HR Services?

22 A Oh my gosh, in 2001. I'm really bad at
23 dates. I'm sorry, but approximately 2001.

24 Q No, back in Ohio when did you start the
25 business?

1 A Well, that was -- that's when it -- it's
2 an Ohio based corporation.

3 Q Right.

4 A And it was 2000, 2001 I'm thinking.

5 Q It came to South Carolina, you moved --
6 qualified to do business in South Carolina and was
7 that 2000, 2001?

8 A Yeah, right around the same time.

9 Q Right. When you first came in you --
10 well, you had known David Evette before --

11 A For a number of years.

12 Q -- you came to South Carolina?

13 A Uh-huh.

14 Q And you asked him to serve as your Agent
15 in South Carolina for service of process and all?

16 A Yes.

17 Q Okay. And I think you had a little
18 problem with him initially to come in and serve,
19 but you got your license?

20 A Got my license and we kind of moved
21 forward with business at hand. And everything was
22 going, I thought very well.

23 Q All right. The insurance -- workers'
24 comp insurance you had first, was that with Ace?

25 A Yes, it was with Ace, I think Fire

1 and Casualty.

2 Q All right. And that was what, for about
3 two years?

4 A It was. We had a very good record with
5 them and they were actually pulling out of the PEO
6 market but kept us on for an additional year and
7 gave us a year to try and figure out what the market
8 was going to do.

9 Q Did 9/11 have any impact on the PEO
10 market?

11 A It seemed like it hit all the markets
12 that we dealt with. Health, comp, you know,
13 everybody was kind of running for cover. Nobody
14 knew what was going to happen, and so it seemed like
15 the players kind of moved away from the PEO market.
16 I wouldn't even say it was just the PEO market
17 because other people had trouble finding and
18 securing comp. I mean, people who were in the PEO
19 industry were complaining that, you know, they
20 couldn't find a good comp carrier in the state.

21 Q Were you forced to go into the Assigned
22 Risk Pool for a short period?

23 A We were. We weren't -- we were at -- we
24 were at kind of a bad spot. We weren't large enough
25 that a lot of the big players would look at us, and

1 so we had to get individual policies within the
2 Assigned Risk Market.

3 Q Okay. Now, tell me how that works,
4 because I'm not sure maybe Commissioner Roche is
5 aware of that. For a PEO you have -- you go to a
6 company and you lease employees and do their payroll
7 and provide benefits for that company?

8 A Yeah.

9 Q Do you also provide workers'
10 compensation?

11 A With some of our clients. You know, some
12 -- like if a client or potential client would come
13 to us and let's say are part of a building
14 association and they are in a -- already like a comp
15 pool and they are really coming to somebody to say I
16 want to make sure my taxes are getting paid on time,
17 I want to make sure, you know, I'm taking out the
18 right taxes, you know, that's what I want you to do,
19 but I'd like to keep my own policy. Then what we do
20 is basically in our quote to them just note that the
21 client is keeping their own policy and they're not
22 -- we're not managing that for them.

23 Q For those clients who want workers'
24 compensation coverage, do you provide an umbrella
25 policy for those clients or is a policy written

1 for each client?

2 A Well, that has changed too over the
3 years. With Ace the policy was in Quality HR
4 Services' name and all the clients just fell
5 underneath that. And then when you go into the
6 Assigned Risk Market they don't -- that's not the
7 way they operate. Quality HR Services had a policy
8 and then every one of our clients had a policy. It
9 was like an MCP policy actually under us. Then we
10 -- when we went with Realm it was kind of the same
11 thing. It was we had -- every client had their own
12 individual policy and that kind of looked the trend
13 that the market was going, is that they were going
14 to start having policies in each client's name to
15 tract their risk.

16 Q In fact, when once you started working
17 with Realm did you have to have each of your clients
18 that you were doing business with submit a period of
19 history and their loss ratio and their claims ratio
20 --

21 A Yeah.

22 Q -- their individual MOD rates to be
23 reviewed by Bruce Holley and then to be approved?

24 A Exactly. We had to submit just as if we
25 would submit to the Assigned Risk Market. Every

1 client was judged on their own merit. If their MOD
2 seemed too high, if they didn't have enough loss
3 risk then they had the -- Realm would have the first
4 right of refusal. If they said this isn't an
5 interest we want to take then we had the option of
6 keeping that client with getting them a policy in
7 the Assigned Risk Market.

8 Q All right. Did all your clients qualify
9 with Realm National?

10 A I'm not 100 percent sure. I know we
11 still had some clients sitting in the risk market.
12 We still had a client that was part of an
13 association. So you know, for different reasons I
14 can't say 100 percent that all of them went over or
15 all of them were taken.

16 Q Right. How did y'all find out about what
17 was going on with AIM and Realm National?

18 A Initially there was the letter. A
19 letter came out from Mark Sioma and actually I think
20 one of our clients got the letter before we did and
21 called us and said Pam what's going on? And I went,
22 I don't know, fax me the letter. They faxed it. My
23 initial call was to my Broker.

24 Q Now, you're getting a little bit ahead of
25 me.

1 A Oh, okay.

2 Q How did Quality HR find out about AIM and
3 the PEO Program that AIM was coming up with and
4 later ended up with Realm National as the Carrier?

5 A I'm assuming we got information on that
6 because of our association with NAPEA which is our
7 national organization. Because we got kind of like
8 a runoff sheet like this is a program we're going to
9 implement and we'd like to propose it to you. And
10 at that time all of our business was sitting in the
11 Assigned Risk Market.

12 Q Okay. What did you do? How did you
13 investigate the program?

14 A I think initially I made a call and it
15 was Mr. Landon is who I -- is who we spoke with.

16 Q Okay. At American Insurance Marketing?

17 A Yes.

18 Q And took a trip to Atlanta and they
19 had laid out their program. Talked to David
20 Dennett-Smith, talked to Brian Imperiale and talked
21 to Steve Landon.

22 A What was the program they laid out?

23 Q Basically like everybody else had talked
24 about today, we were going to -- we were going to
25 become part of a larger company. In the scheme of

1 things I think we were going to have to pay a
2 certain amount in as, I don't know what he called it
3 off the top of my head, and then we would pay our
4 premiums. And eventually that would -- that amount
5 would dwindle down as we performed well. And we
6 would be a part of this plan that would be secured
7 for PEOs, an actual plan that would be PEO friendly,
8 I guess.

9 Q Would your customers, your clients be a
10 part of this investment plan or just Quality HR
11 itself?

12 A No, just Quality HR itself.

13 Q Did you pay, after investigating the
14 matter, did you pay premiums and investment, make
15 investment payments to American Insurance Marketing
16 to get into this plan and to have coverage by Realm
17 National?

18 A Yes, we did.

19 Q You started to tell me about the letter
20 from Mark Sioma, so tell me about it.

21 A I didn't know which letter you were
22 talking about. I'm sorry. Mark Sioma sent a letter
23 out that actually, like I said, one of our clients
24 received before we did. They called, said Pam
25 what's going on? I don't know, let me look into it.

1 I called and I -- I don't know if it was Brian I got
2 or Bruce Holley, and I said what's going on? A
3 client just faxed me this letter. And they said to
4 the effect that everything was going to be fine.
5 That they knew that this letter had gone out and
6 that they working on it. You know, they were
7 working on fixing the problem that they were having
8 with Realm. So at that point I really wasn't sure,
9 the problem to me, it was some kind of bigger
10 dispute and somebody was handling it. So at the
11 time I said okay, I need to know what's going on
12 because I don't want my clients feeling uneasy about
13 where their coverage is placed.

14 Q Were you getting Certificates of Coverage
15 at this time?

16 A Yes, we were.

17 Q And let me show you, well, I believe
18 it's our APA Number 9, page 101, ask you if this
19 is a Certificate of Coverage that you received?

20 A Yes.

21 Q Okay. That was the policy period running
22 from November of '02 to '03?

23 A Yes.

24 Q Does it have a Policy of Insurance number
25 on it?

1 A Yes. All of the policies had QHR
2 starting, and then like a client number attached to
3 them.

4 Q All right.

5 A So that when those came I could identify
6 it with one of our clients. QHR started the policy
7 number before all their --

8 Q And were all of these Certificates placed
9 with Realm National?

10 A Yes, they were.

11 Q Now, did you later receive a copy of
12 Bruce Holley's appointment as agent for American
13 Insurance Marketing?

14 A At some point in time we did. I'm not
15 sure when in the timeline of things because so many
16 things were -- so many things -- we were getting so
17 many things.

18 Q After the conversations you had
19 with Brian Imperiale and Bruce Holley how did you
20 keep abreast of what was going on with Realm
21 National?

22 A At one point I was always in contact with
23 AIM because they were our Brokers. That's who I was
24 depending on to keep me abreast of everything.

25 Q Was AIM also a Broker for Realm National?

1 A I believe so.

2 Q They were a dual Broker?

3 A I'm not really sure how those
4 relationships work.

5 Q Okay. You kept in contact with AIM you
6 said?

7 A Yes.

8 Q Who did you keep in contact with at AIM?

9 A I pretty much talked to everybody there.
10 I had talked to David Dennett-Smith, I had talked to
11 Brian Imperiale, I had talked to Bruce Holley. We
12 --

13 Q How often did you do that?

14 A Probably weekly. And they were very good
15 about saying like this has been filed in Court, you
16 know, they've made a Motion, you know, we're making
17 a Motion. Those Motions meant nothing to me in the
18 big picture, because I was an accountant, but it
19 seemed that it -- things were moving forward. It
20 was described that it was a dispute between them,
21 and it was something that was going to be resolved.
22 And we were getting letters from Alston & Bird,
23 which were the attorneys that were representing AIM.
24 That seemed very impressive to me. They were a very
25 well known law firm and I was going by that

1 that everything was getting handled.

2 Q All right. Did you have occasion back in
3 the summer of '03 to actually go to AIM's office in
4 Atlanta?

5 A Yes. I went to Atlanta because this was
6 taking a long time and I was getting -- I was
7 wanting to know when the end was going to be near,
8 when this was finally going to be done and their
9 dispute would be over. And it just so happened that
10 the day I was there Mark Sioma was in their office
11 reviewing files and I asked to speak with him. Mark
12 Sioma was, I believe, President of Realm. He was
13 the one who initiated the letter. I asked David
14 Dennett-Smith, I'm like, is there any way I can talk
15 to him, and he said sure. He went back and got Mark
16 from I don't know where and they came -- he came in
17 the conference room and introduced himself. And I
18 asked him so what is going on? I mean, is
19 everything okay? And he said I just reviewed your
20 file, everything is fine. Everything is moving
21 forward. That gave me a very good feeling that this
22 was, you know, this was the initial person in my
23 eyes that was causing all these problems within my
24 company and my clients and the Commission. He's
25 telling me everything looks fine. Your files look

1 fine, if he had any questions he would get back to
2 me; that everything looked fine and everything was
3 moving forward.

4 Q Did you subsequently write a letter dated
5 October 1st, 2003.

6 MR. McCALL: I believe that's page 154 of our
7 APAs. I believe that's Number 17.

8 A Yes, I wrote this.

9 Q Why did you write the letter?

10 A This actually went to the Judge in a New
11 York suit because I just wanted it put on the record
12 somewhere that I had talked to him. And when I
13 talked to my attorneys, my attorneys thought that
14 was a very good idea. So I wrote up this letter
15 recapping our conversation while it was fresh and
16 sent it to, I believe this went to Judge Berman in
17 the New York dispute to say that I had talked with,
18 again, Mark Sioma and he had informed me that
19 everything was fine and everything was moving
20 forward.

21 Q How did -- how did things go after this
22 conversation with Mark Sioma?

23 A Well, I thought everything was going
24 fine. It seemed like there was going to be some
25 kind of conclusion to this. And again, there's a

1 very long timeline of when things transpired and
2 when all these suits got filed. But at some point
3 after that that's when everything went into -- I
4 think it went into bankruptcy or -- yeah, I think
5 that's when everything started turning into
6 bankruptcy.

7 Q Was that 2004?

8 A Again, I'm not sure of the dates. It was
9 just too many dates for me to say for sure.

10 Q When things started going into bankruptcy
11 did Quality HR then move out of the Realm National
12 coverage --

13 A Yes.

14 Q -- and secure its own coverage?

15 A Yes.

16 Q And Quality HR has coverage today? Well,
17 I mean, Quality Business Solutions has coverage
18 today?

19 A Yes, we do.

20 Q And is licensed today?

21 A And is licensed.

22 Q Did you have a chance to look at the
23 Department of Consumer Affairs Website?

24 A Yes. Yes.

25 Q What did you find?

1 A Well, for a long time Quality HR stayed
2 out there as an acting company right by Quality
3 Business Solutions, even after they weren't
4 operating.

5 Q In your opinion and in your understanding
6 who had the workers' compensation coverage for
7 Quality HR Services from November of 2002 through
8 December of 2004?

9 A Realm National.

10 Q Okay. Did you pay premiums for that
11 coverage?

12 A Yes, I did.

13 Q Did you receive Loss Reports from AIM on
14 claims --

15 A Yes.

16 Q -- that came from your clients?

17 A Yes.

18 Q I hand you a document I'm going to ask
19 to be marked Quality HR's two, if there are no
20 objections.

21 THE COURT: Any objection?

22 MR. WOOD: It's an AIM document; is that
23 correct? What is it represented to be? If it's
24 represented to be an AIM document I don't have any
25 objection to it.

1 MR. McCALL: It's an AIM document that was
2 sent to Quality HR.

3 MR. WOOD: I don't have any objection.

4 MR. McCALL: Isn't that correct?

5 THE WITNESS: Yes.

6 (Defendant Quality HR, Exhibit Number 2,
7 marked for identification).

8 DIRECT EXAMINATION RESUMES

9 BY MR. McCALL:

10 Q Tell me what this is and what is your
11 understanding of this document?

12 A This was a Claims Loss and Reserve
13 Report. Basically as claims would happen they would
14 be -- we would -- we would receive -- I don't -- I
15 think we received it monthly. No, we might have
16 received it twice a month where they would add
17 claims, tell us who was injured, what they paid,
18 what they were going to reserve on the claim
19 and that's just how we tracked it just like we do
20 now.

21 Q I understand that -- there are several
22 little notes on here.

23 A Those are my notes because I was trying
24 to keep track of things when -- after the fact.

25 Q The -- I notice that, for Ben

1 Renfrow's benefit, there is a Steve Cameron on this?

2 A Yes.

3 Q What was your understanding of this
4 report as where the money was coming from to take
5 care of and pay these claims?

6 A Well, it was -- when -- when all this
7 happened we were given assurance that if the claims
8 were filed properly the claims would be paid. I
9 know there's a letter to that. In fact I've seen it
10 before in deposition. And so we were under the
11 assumption that as long as we filed those reports
12 there were monies that were being set aside to make
13 sure that those employee's claims were being handled
14 properly.

15 Q And were you receiving these reports
16 through the time that you left Realm coverage until
17 December of 2004?

18 A Yes.

19 Q Were you receiving them from basically
20 shortly after you started in November of '02 through
21 that period of time?

22 A Yes.

23 Q Did you rely upon this document as being
24 an indicator that you had coverage with Realm
25 National?

1 A Yes.

2 Q I hand you a document consisting of two
3 pages and ask you to take a look at that.

4 MR. McCALL: As soon as the attorneys have a
5 chance to look at it I'd like to offer this -- these
6 two pages as Quality HR's Exhibit Number 3.

7 THE COURT: Any objection?

8 MR. WOOD: Commissioner, I don't have any
9 objection as long as it's represented to be an AIM
10 document, not a Realm document.

11 THE COURT: Is that what it is, an AIM
12 document?

13 MR. McCALL: It's a document from AIM.

14 (Defendant Quality HR, Exhibit Number 3,
15 marked for identification).

16 DIRECT EXAMINATION RESUMES

17 BY MR. McCALL:

18 Q Can you tell me what this document
19 is according to your understanding?

20 A It's a list of all the PEOs that were
21 involved in the AIM-Realm Program. And basically
22 what all of our fees are broken down to be based on
23 premium dollars.

24 Q And how much was Quality HR's Premium,
25 Capital and Fees Due?

1 A \$367,381.00.

2 Q And at the time this report was issued
3 how much had been paid?

4 A \$246 -- I'm adding down, because they're
5 showing Premiums Paid and Indemnity Paid. So out of
6 that \$223,011.00.

7 Q All right.

8 A And I think -- I'm going to add this top
9 column -- I'm trying to remember back. That initial
10 -- that was an initial premium due. We had some
11 clients that could not rely on the Cert Letters so
12 they came out of that. So that was like an estimate
13 going into the plan, how much our premiums were
14 estimated to be, but during the time of it when we
15 couldn't get Certs, there were some clients who
16 relied on Certs that had to take to other programs.
17 And so that -- that top number could have been
18 smaller. I can't for sure say that there were --
19 that we owed anything more. Am I making that clear
20 or am I kind of muddying the water?

21 Q Well, look -- look at page two if you
22 will.

23 A Okay.

24 Q Under Quality HR.

25 A Yeah. Because you can see our numbers

1 go down there. You know, it looks as if they're --
2 yeah, they're showing the premium out here to be
3 \$367 and then the manual premium here is at \$285,
4 the developed premium at \$249 and the pro-rated
5 premium at \$222.

6 Q And the amount that you paid here as of
7 this report?

8 A \$194,148.50.

9 Q Okay. Did you subsequently receive from
10 AIM bills for the balance of these fees?

11 A Yes.

12 Q Did you pay them?

13 A Yes.

14 Q Did you pay everything that -- every bill
15 that AIM sent to you?

16 A Yes, we did.

17 Q You paid all of your premiums and you
18 paid all of your capital contributions?

19 A Yes.

20 Q Did you ever get any opportunity to
21 become an investor in an Investment Holding Company
22 that AIM set up?

23 A No.

24 Q Did you ever receive any ownership
25 or indicators that you, Quality HR was an \

1 investor of any kind or type in any insurance
2 company?

3 A No.

4 Q Have you ever received any reimbursement
5 of any monies that you've paid in to this program?

6 A No.

7 Q From the time you've been involved with
8 Realm National were your claims being paid by your
9 client -- the injured folks from your customer
10 clients, were their claims being paid up to a point?

11 A Yes.

12 Q Was that some time in 2004?

13 A Yeah, that was almost to the very end
14 when some of our clients hadn't gotten paid.

15 Q Was that --

16 A But through the whole process everybody,
17 you know, we had paid our premiums in. Our claims
18 were being paid. You know, this dispute was going
19 on on the side, but as far as it affected us
20 day-to-day, our premiums were paid in, we believed
21 coverage was with Realm, our client -- our claims
22 were being paid. So except for this sidebar suit it
23 was kind of business as normal.

24 Q When your claims stopped getting paid,
25 is that when you made the decision to get out

1 and get another Carrier?

2 A Yes.

3 Q Is that what you did?

4 A Yes, we did.

5 Q Would you answer any questions that Mr.
6 Wood might have?

7 THE COURT: Mr. Wood.

8 MR. WOOD: Thank you, Commissioner.

9 CROSS EXAMINATION

10 BY MR. WOOD:

11 Q Ms. Evette, we haven't taken your
12 testimony, I haven't at least, since August 1st of
13 2006. Since that time a lot more information that
14 we had at the time we took your deposition. Again,
15 Quality HR started in Ohio originally; correct?

16 A Correct.

17 Q Okay. And it started doing business here
18 in South Carolina in 2000, 2001 somewhere in that
19 neighborhood?

20 A Yes.

21 Q And it -- when the business was formed in
22 terms of shareholders and directors, who were the
23 shareholders and the directors? Excuse me, let me
24 rephrase the question. When the business was
25 registered as a Foreign Corporation in South

1 Carolina who were the shareholders and the
2 directors?

3 A David Evette and myself.

4 Q Okay. And y'all were not married at that
5 time?

6 A No, we were not.

7 Q Okay. And when did -- did David continue
8 to maintain a role in the business?

9 A Uh-huh.

10 Q You need to -- if you don't mind answer
11 yes or no --

12 A Oh, I'm sorry..

13 Q -- so that she can get your response
14 accurately.

15 A Yes, he did.

16 Q And how long did he stay involved in the
17 business?

18 A With Quality HR Services?

19 Q Yes.

20 A Up until the time it stopped doing
21 business. He took care of sales.

22 Q And that was in what year?

23 A 2005.

24 Q 2005? Okay. All right. Now, how did --
25 it's my understanding from your deposition testimony

1 that the PEO Program that's the subject of this --
2 subject of the whole hearing today, that you had
3 received marketing information on that from the
4 National P -- I think you --

5 A NAPEA?

6 Q Yeah. That's the acronym, what does that
7 stand for?

8 A National Association of Professional
9 Employers.

10 Q Okay. And they -- this was marketed at a
11 conference or something along those lines?

12 A I think what -- no, it came to our
13 office, but I'm assuming it went to a lot of PEOs,
14 that they -- that's where -- that's how we got it is
15 because we were part of that organization.

16 Q And do you know when that was?

17 A No, not exactly.

18 Q Okay. Well, roughly, I mean, are we in
19 '02, '01?

20 A Well, our policy started in '02, so it
21 was early '02, mid '02.

22 Q And you just received a fax at the office
23 one day?

24 A Yeah, that there was a program that
25 they were introducing and if we wanted to have

1 more information on it that we should contact them.

2 Q And who sent out that letter?

3 A AIM.

4 Q Okay. That's American Insurance
5 Management Group and various other companies that
6 Mr. Dennett-Smith referenced this morning?

7 A Yeah.

8 Q Okay. Did you make an immediate
9 response?

10 A I can't tell you how immediate it was. I
11 probably looked it over and then called.

12 Q You called AIM?

13 A Yes.

14 Q Can you recall who you spoke with?

15 A Steve Landon.

16 Q Okay. Do you know whether Mr. Landon was
17 an employee of AIM at that time or --

18 A I don't know.

19 Q What did he tell you?

20 A That he would love to sit down and talk.

21 Q Did you go down there or did he come to

22 --

23 A I went to Atlanta.

24 Q Okay. And when did that meeting occur?

25 A I'm not sure.

1 Q Some time in '02?

2 A Yes, probably mid '02.

3 Q Now, when Quality HR first started doing

4 business in South Carolina you had insurance with

5 ACE?

6 A Yes.

7 Q And that was a voluntary policy?

8 A Yes, it was.

9 Q Okay. And then did they cancel you or

10 non-renew or what happened with the Ace policy?

11 A They were pulling out of the PEO Market.

12 Q Okay.

13 A For no other reason except they just

14 didn't want to write PEO exposure any more.

15 Q Well, do you know whether it was

16 cancelled or not renewed? Do you know that?

17 A Just not renewed.

18 Q Okay. All right. And at that point

19 in time you had to go into the Assigned Risk

20 Pool; correct?

21 A Correct.

22 Q All right. Now, talk about the cost.

23 What was the impact of having to go into the

24 Assigned Risk Pool on your business?

25 A It was more. A little more money.

1 Q Okay. How was that affecting you in the
2 marketplace for PEO Services?

3 A Well, if you can't be competitive comp
4 wise then you're not writing a line of business.

5 Q Okay. All right. Fair. When did you --
6 did you understand when you were going into this
7 arrangement with AIM that you were not only
8 purchasing Workers' Compensation Insurance, or
9 attempting to purchase Workers' Compensation
10 Insurance, but you were also an investor in an
11 investment program? In other words, --

12 A I know. I know what you're trying to
13 say. No. I mean, my focus at that point was to try
14 and secure comp from a Carrier that was authorized
15 to do business in South Carolina.

16 Q Through AIM?

17 A Exactly.

18 Q Okay. Well, how much money did you send
19 AIM in total?

20 A I don't have the figures in front of me.
21 It was in the high \$200,000, almost \$300,000.

22 Q Okay. And over what period of time was
23 that money given to AIM?

24 A There was a deposit beforehand,
25 then there were subsequent payments made probably

1 in the first few months of the program.

2 Q All right. Well, let me ask you,
3 beforehand, when you say beforehand, what -- before
4 what?

5 A Well, any time you write a workers' comp
6 policy you have to put up money before they'll ever
7 write the policy, before they'll bind the policy.

8 Q You've got to pay a premium?

9 A Exactly.

10 Q Okay. And you -- but you also had to --
11 to contribute money to this capital program to fund
12 the purchase of Realm National; correct?

13 A Correct.

14 Q And you understood you were doing that?

15 A Yes.

16 Q And you understood that the PEOs would
17 basically be in business with AIM owning Realm
18 National?

19 A I knew that that was like some -- to
20 me it was like a far off dream that was going to
21 happen. I was concerned in comp coverage, and that
22 was -- it was a good Carrier, it was a Carrier in
23 South Carolina in good standing, and that was my
24 avenue to get it. And so the fact that I would or
25 would not ever own a piece of an insurance company I

1 really didn't care about that piece at all. That
2 really meant nothing to me.

3 Q Well, you were paying money though;
4 right?

5 A I was.

6 Q Okay. How much money were you paying of
7 the \$300,000 in total that you gave to AIM, how much
8 was -- was for the capital and how much was for the
9 premium?

10 A I don't remember the exact percentages.
11 There was a percentage. I don't even want to
12 speculate because I don't know where to shoot from.

13 Q Well, you don't have any idea how much
14 the capital contribution was?

15 A No. It was a percentage of the premium
16 within each payment.

17 Q Okay. You don't have any clue of that?

18 A No.

19 Q You understood your money was at risk
20 on that investment? That you could lose it? You've
21 seen the disclaimer that was provided?

22 A Yes.

23 Q You have seen that?

24 A Yes.

25 Q Okay. So you knew that you stood to

1 lose that money that was the capital portion;
2 correct; if the deal didn't go through?

3 A The capital portion, exactly.

4 Q And did you understand that you could not
5 get the coverage through this program, the purported
6 coverage through this program without being a
7 capital investor?

8 A Yes.

9 Q Okay. You had to -- you had to
10 contribute -- okay.

11 A Exactly.

12 Q All right. Did you ever -- I asked you
13 in your deposition a few times at the early stages
14 when you -- in '02 when you were making the decision
15 and initially going into this program that you
16 didn't have any direct discussions with anybody from
17 Realm National?

18 A No.

19 Q All your discussions were with the
20 AIM folks; correct?

21 A Correct.

22 Q All right. Did you -- I understand you,
23 and you told me at the deposition back in August '06
24 that you had investigated whether Realm was a
25 licensed Carrier or not or an admitted Carrier?

1 A Correct.

2 Q Did you ever conduct any investigation or
3 consult with anybody about this program that AIM was
4 marketing, other than the AIM folks?

5 A No.

6 Q And you've relied really on what they've
7 told you all through this thing; correct?

8 A I've relied on them just like I rely on
9 my Brokers now.

10 Q Okay. Well, did you -- did you undertake
11 to -- to determine whether AIM was an authorized
12 Agent for Realm National to write Property and
13 Casualty Insurance in the State of South Carolina or
14 any of the other states that you did business?

15 A I didn't understand that relationship. I
16 would have -- in hindsight if I could -- if I knew
17 now what I knew then would I have asked different
18 questions, maybe.

19 Q Okay.

20 A But back then all I worried about was
21 from Gary Smith's conference I went to is to make
22 sure that that Carrier that you get paper on is a
23 licensed Carrier in the State of South Carolina.

24 Q In hindsight do you view it as a
25 mistake not to have consulted and learned more

1 about this program and so forth before you went into
2 it?

3 A I wish I -- yeah, I wish I would have --
4 I wish I would have knew better questions to ask.

5 Q Okay. All right. And what are some of
6 those questions?

7 A Is -- by -- does Realm giving you
8 authority to bind my coverage mean my coverage is
9 bound? Am I going to have a problem six years from
10 now?

11 Q Well, let me ask you a question, on your
12 Ace Policy and on your Assigned Risk coverage that
13 you had that you made reference to --

14 A Yes.

15 Q -- did you at some point, you and your
16 client companies actually get a policy in the mail
17 from the Carrier from your Agent who got the
18 coverage for you?

19 A No. Our -- when we had Ace our Agent
20 kept that -- those things. All we ever -- when I
21 would see like insurance documents it was all when
22 our clients would need a Certificate of Insurance
23 and I would call our Agent, they would get a
24 Certificate of Insurance, they would fax it to us.
25 We would provide it to our client.

1 Q But as a -- as a buyer of an insurance
2 policy did you -- do you expect to get an insurance
3 policy at some point? If you're an insured, you
4 purchase insurance, whether it be comp or automobile
5 insurance or whatever, you expect to get a policy at
6 some point don't you?

7 A Well, again, in hindsight, but back then
8 that seemed very customary that with my Broker was
9 getting the policy; they were handling that for me.
10 That's why they were getting a commission or a
11 brokerage fee. That's what they did; they made sure
12 my coverage was good. I paid for it, they monitored
13 it.

14 Q Was AIM your Broker?

15 A That's what I perceived them to be, they
16 were my Broker.

17 Q You perceived AIM as your Broker and your
18 Agent?

19 A To me actually that's one and the same.

20 Q Okay. All right. When did you
21 first send some money down there to AIM?

22 A Again, I'm not sure of the exact date.
23 It would have been before the inception of that
24 policy.

25 Q Okay. Which policy?

1 A The AIM policy -- the AIM-Realm Policy.

2 Q Do you have the --

3 A The Realm Policy.

4 Q Do you have that policy anywhere?

5 A No, I do not.

6 Q Have you ever seen it?

7 A No, I did not.

8 Q When you went down to the AIM offices,
9 did they have it, your Broker down there? Did they
10 have --

11 A I didn't ask them.

12 Q Okay. All right. What -- I want to make
13 sure -- I was a little confused with Mr. McCall's
14 question. What is your contention with regard to
15 the time period that you were covered, Quality HR
16 was allegedly covered for workers' comp in South
17 Carolina by Realm National?

18 A It was November, I believe 2003 through
19 2004.

20 Q Well, let me show you some documents
21 and -- I mean, let me show you these because these
22 are the easiest. I'm going to ask you about them
23 later, but just to help refresh your memory. Could
24 it have been '02 instead of '03?

25 A It could have been.

1 Q I'm not trying to trick you on that.

2 A No, that's fine, I mean, if I could see
3 the paper then I could --

4 Q Well, these are letters that you wrote
5 that you were examined on by Mr. McCall, in March of
6 '03 and October of '03, so --

7 A Okay.

8 Q Would it be a better estimate, I guess,
9 that the coverage began in '02 as opposed to '03?

10 A Yes.

11 Q Okay. I just wanted to make sure I'm
12 clear on what you -- your contention is.

13 A Okay..

14 Q So November 1, '02 through -- what was
15 the end date?

16 A It was '03, it was a policy period that
17 went from 11/1 to -- that would be '02 to 11/1/03,
18 and then there was a few months lap that went into
19 like the next policy period before -- that was
20 before the -- before Realm went into bankruptcy.

21 Q All right. Well, again, what I'm trying
22 to find out from you is the period of time that you
23 claim to have had Quality HR Services and its client
24 companies that you were obtaining comp for, claimed
25 to have had Workers' Compensation Insurance

1 in effect through Realm National?

2 A That's what I'm trying to tell you. I
3 don't -- I can't give you the specific date. I can
4 tell it was for a one policy period and then a
5 partial of another policy period, a few months of
6 like a second policy period, but without that in
7 front of me I'm just not going to throw a date out
8 in the air. That will just be confusing.

9 Q When did you get some different type of
10 coverage, or different workers' compensation
11 coverage?

12 A Once we -- once -- we had gotten word
13 that Realm was going into bankruptcy. Once our
14 clients or not our clients, our employees stopped
15 getting their claims paid then we left the program.

16 Q Okay. And you secured different coverage
17 or coverage with a different Carrier when? When
18 would that have been?

19 A A date?

20 Q Approximate date, a month, a year?

21 A Okay. I would say early 2004.

22 Q Okay. All right. Now, would you have
23 sent money down to AIM prior to the start date that
24 you've indicated you contend coverage began on
25 November 1, '02?

1 A You would send money to secure it, so it
2 could have conceivably gone down a week or two
3 before that 11/1 date.

4 Q Okay. And how much money was sent at
5 that time, approximately?

6 A I don't know. All those -- we have
7 turned all that stuff over to our attorneys over all
8 these years and I don't -- I just don't know. I
9 mean, I could -- if I had everything in front of me
10 I would be happy to read that to you, but I don't
11 have anything in front of me.

12 Q You don't have any idea how much you
13 initially sent to AIM?

14 A No.

15 Q Okay. All the money you sent in
16 connection with this purported coverage was sent to
17 AIM; correct?

18 A Correct.

19 Q You never sent anything directly to Realm
20 National --

21 A No.

22 Q -- or any other entity other than AIM?

23 A No, I did not.

24 Q Okay. And over what period of time
25 did this installment -- were the installments

1 paid after the initial payment?

2 A Every month. There was an installment of
3 some -- until it was -- until it was paid in. On
4 how many installments I don't know. I know that
5 some money was wired, some money was sent as a
6 check.

7 Q Well, I'm just curious as to how long the
8 payments continued on a month's basis to AIM?

9 A Again, without -- without that sitting in
10 front of me I don't want to speculate.

11 Q You don't have any idea?

12 A No.

13 Q Okay. All right. When did you first
14 become aware there was a problem or a potential
15 problem with this alleged coverage?

16 A When Mark Sioma started sending out
17 letters. Like I just testified with Duke, a client
18 company had called saying they received a letter. I
19 still had not received anything. I asked them to
20 fax that letter and that was, I want to say the
21 beginning of -- we started November 1 so I want to
22 say it was like January or February of the next
23 year.

24 Q Bear with me one second, please
25 ma'am. Let me show you these two

1 correspondence letters. Take a look at this one
2 first.

3 MR. McCALL: May I inquire what you're showing
4 my client?

5 MR. WOOD: Yeah. Same thing we showed your
6 other client.

7 MR. McCALL: Okay.

8 CROSS EXAMINATION RESUMES

9 BY MR. WOOD:

10 Q While Mr. McCall is reviewing the other
11 one, let me ask you about that one right there. Can
12 you identify that document, Ms. Evette?

13 A It appears to be a letter from Realm to
14 Quality HR.

15 Q To Mr. Evette's attention?

16 A Yes.

17 Q Okay. And that -- the date of that is
18 when?

19 A December 10th, 2002.

20 Q Okay. And is it fair to say that when
21 you received that letter or Mr. Evette received that
22 letter that there was -- you were aware that there
23 was a potential problem concerning this coverage
24 issue?

25 A Yes, that's when I would have made

1 the call to AIM's office.

2 Q You made the call to AIM?

3 A I would have made a call to AIM.

4 Q Okay. And who did you talk to at AIM?

5 A I would have either talked to Brian or
6 Bruce.

7 Q All right. What did they tell you?

8 A That they knew of the dispute and that
9 they -- everything was being worked out. They knew
10 about it and it was -- the matter was being handled.
11 I probably actually called before I got this letter,
12 because I got faxed the letter before I ever got a
13 copy sent to us, so I had already known about it
14 when this came.

15 Q All right. Let me show you this
16 document, and ask you to identify this.

17 A Okay.

18 Q Do you recognize that document?

19 A I've seen this document.

20 Q Okay. And what is that? What's the date
21 on that document?

22 A It is December 11th, 2002.

23 Q And what is it?

24 A I'm finishing reading it.

25 Q Take your time.

1 A I'm just quickly reading it over --

2 Q Take your time. Have you ever seen it
3 before?

4 A Yes, it looks familiar. It looks
5 like they're just describing their position on it
6 all.

7 Q Okay. Did they make some recommendations
8 as to what the PEOs may want to do in response to
9 the letter that Mr. Sioma had sent to PEOs from
10 client companies and State Regulators?

11 A I don't see it.

12 Q Let me just ask you the question this
13 way.

14 A Okay.

15 Q Did AIM, after Mr. Sioma's letters of
16 December '02, did AIM suggest that you do one of
17 three things; either file a dec -- Declaratory
18 Judgment Action on the coverage question in your
19 state; escrow your premiums and handle the claims
20 or; get replacement coverage?

21 A I don't remember that conversation.
22 I know -- I remember something about a dec page,
23 which I didn't understand at the time I talked to
24 our attorney about. I had no idea what that was.
25 They -- I kind of relied on the fact that this was

1 being sought in Federal Court and was moving forward
2 and forward and we stayed with the program.

3 Q You stayed with AIM?

4 A Yes. We stayed with Realm.

5 Q Well, you didn't have any direct dealings
6 with Realm at that time did you, other than these
7 letters about no coverage; right?

8 A Well, but they -- I was being assured by
9 AIM that they were our Carrier.

10 Q You were relying on what AIM was telling
11 you?

12 A Correct.

13 Q Now, here's another -- let me ask you
14 about this document. This is in Mr. McCall's APAs,
15 your APAs, pages 109 and 110. That's from Mr.
16 Imperiale to Quality HR; correct?

17 A Yes.

18 Q Okay. And did it tell you in there that
19 AIM had apparent authority and had placed coverage
20 with Realm?

21 A Yes. And that if there was an injury and
22 it was filed correctly that the injury would be
23 paid.

24 Q Okay. He didn't say anything about
25 Realm binding coverage, he said that AIM

1 had placed you with Realm and they had apparent
2 authority; correct?

3 A Correct.

4 Q And he also said in there, incidentally,
5 that they had retained the services of Crawford --
6 that AIM had retained the services of Crawford and
7 Company to adjust claims; correct?

8 A Yes.

9 Q Okay. Now, other than contact AIM what,
10 if anything, did you do after receiving this letter
11 from Mr. Sioma which raised the question of whether
12 you had valid coverage or not?

13 A I talked to Mr. Lawless.

14 Q You talked to Mr. Lawless, the counsel?

15 A Yes.

16 Q Okay. When did you talk to him?

17 A I want to say in January.

18 Q Okay. In January -- did you get -- did
19 you acknowledge your company Mr. Evette received in
20 this correspondence here.

21 MR. WOOD: It's 2765. Let me show that --
22 I've already showed it to Mr. McCall.

23 A Okay. Didn't I already look at this?

24 Q I don't think so. I think this one's
25 dated January 3, '03, and this one is December 10.