

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 0909301

Gustavo Palma,

Respondent,

v.

Felicia Scott, Luis Cardona, and Pee Dee
Community Action Partnership, and Liberty Mutual
Insurance Company, Carrier for Felicia Scott, State
Accident Fund, Carrier for Pee Dee Community
Action Partnership, and SC Workers' Compensation
Uninsured Employers' Fund,

Defendants,

Of Whom,

Pee Dee Community Action Partnership, and
South Carolina State Accident Fund are,

RECEIVED
DEC 02 2013
SC Court of Appeals

Appellants,

RECORD ON APPEAL

November 25, 2013

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INDEX

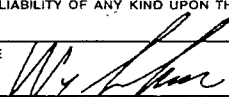
Acord Certificate of Liability Insurance Notes of March 13, 2009.....	1
Decision and Order of Commissioner, Derrick L. Williams entered February 7, 2013.....	2
Appellate Panel Decision and Order entered November 30, 2012.....	26
November 7, 2011 Hearing Transcript.....	40
Certificate of Counsel.....	118

ACORD™ CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 03/13/2009
PRODUCER CITY INS AGENCY PO BOX 425 SAINT PAULS, NC 28384		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
INSURED FELICIA SCOTT PO BOX 1824 LUMBERTON NC 28359		INSURERS AFFORDING COVERAGE INSURER A: NAUTILUS INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E:
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COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PRO-JECT ☐ LOC	NC845178	12/12/08	12/12/09	EACH OCCURRENCE \$500,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$100,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$500,000 GENERAL AGGREGATE \$1,000,000 PRODUCTS - COMP/OP AGG \$1,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below				WC STATU-TORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS INSTALLS INSIDE TRIM FOR HOMES					

CERTIFICATE HOLDER PEE DEE CAP ATTN: TONY BETHEA WT COVER ST Marion, SC 29571	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
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STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
Gustavo Palma a/k/a Carlos Lopez,)
Employee,)
)
Clamant,)
)
v.)
)
Felicia Scott, Luis Cordona, and Pee)
Dee Community Action Partnership,)
Employers,)
)
and)
)
Liberty Mutual Insurance Company,)
Carrier for Felicia Scott, State)
Accident Fund, Carrier for Pee)
Dee Community Action Partnership,)
and SC Workers' Compensation)
Uninsured Employers' Fund,)
)
Defendants.)
_____)

BEFORE THE WORKERS'
COMPENSATION COMMISSION

DECISION AND ORDER
0909301

Date of Hearing: 11/07/2011

Location of Hearing: Sumter, South Carolina

Appearances: D. Michael Kelly, Esquire, for Claimant
Ajerenal Danley, Esquire, for SC Workers' Compensation
Uninsured Employers' Fund
Samuel T. Brunson, Esquire, for Pee Dee Community Action
Partnership and State Accident Fund
Roy A. Howell, III, Esquire, for Liberty Mutual Insurance
Felecia Scott, pro se

Purpose of Hearing: To determine issues set forth on Forms 50 and 51

Hearing Commissioner: Honorable Derrick L. Williams

Date of Decision and Order: February 7, 2012

STATEMENT OF CASE

This case came before me for hearing pursuant to Forms 50 and 51 filed by the respective parties. In his Form 50, the claimant alleges that he sustained an injury by accident to his right foot/ankle arising out of and in the course of his employment with Felecia Scott and/or Pee Dee Community Action Partnership. By Order of this commission dated July 14, 2011, Luis Cordona was added as an employer to the claim. The claimant further alleges that he is entitled to temporary total disability benefits from April 30, 2009 until he reaches maximum medical improvement, additional medical treatment, and specific partial disability to his right foot.

SC Workers' Compensation Uninsured Employers' Fund (hereafter the "UEF") answered with a Form 51, generally denying the allegations of the claimant's Form 50 and alleging various other defenses in response to the claimant's Form 50.

Liberty Mutual Insurance Company (hereafter "Liberty Mutual") answered with a Form 51, generally denying the allegations of the claimant's Form 50, and further alleging that it was not the insurance carrier for Felecia Scott for workers' compensation purposes in South Carolina.

Pee Dee Community Action Partnership (hereafter "PDCAP") and State Accident Fund answered with a Form 51, generally denying the allegations of the claimant's Form 50

Felecia Scott and Luis Cordona did not file a Form 51 in response to the Form 50.

A hearing was held in this matter on November 7, 2011. Mike Kelly appeared for the claimant. Ms. Felicia Scott was advised of her right to an attorney and chose to appear pro-se. Samuel Brunson appeared for Pee Dee Community Action Partnership

and the State Accident Fund. Roy Howell appeared for Liberty Mutual Insurance Company. Al Danley appeared for the Uninsured Employers' Fund.

The purpose of the hearing was to determine the compensability of the accident and the liability, if any, for each employer/carrier. Further, a determination would be made regarding whether the claimant is entitled to temporary total disability benefits from April 30, 2009 through May 19, 2011.

Mr. Danley, counsel for the SCUEF, made an objection to pages 69 and 70 of the APA submissions from Liberty Mutual as being inadmissible hearsay and that page 69 stated legal conclusions. The objection was noted by the hearing commissioner, but was made a part of the file.

Mr. Howell raised an objection as to whether the Commission had jurisdiction over Ms. Felicia Scott on the grounds that she did not have four or more employees.

Mr. Brunson raised a general objection to jurisdiction on the grounds there was no employee/employer relationship between the claimant and Pee Dee Community Action Partnership (hereafter "PDCAP").

At the hearing, the claimant alleged he had sustained an injury to his right leg that occurred on April 30, 2009 and sought temporary total disability benefits from the date of the accident through May 19, 2011 and a ruling on his permanency. Liberty Mutual's position was that their policy for Felicia Scott was only under North Carolina, did not cover South Carolina claims, and that they should be dismissed from this claim. PDCAP alleged they are not a general contractor under Section 42-1-415 and relied on the certificate of insurance provided by Felicia Scott.

The Uninsured Employers' Fund (hereafter the "UEF") argued that PDCAP is a

general contractor under the Hopper case and Section 42-1-400. Further, the UEF alleged that PDCAP could not rely on the certificate of insurance because it did not sufficiently state the coverage and that they should be the liable party. Essentially, the UEF argued that PDCAP was involved in fraudulent business actions and should not be allowed to take advantage of 42-1-415 to transfer coverage.

Mr. Brunson objected to the characterization that the project in question was a scam and that PDCAP was involved in any fraudulent business action. Further, PDCAP argued that there was no issue of estoppel raised as by the UEF prior to the hearing.

Summary of Testimony - Gustavo Palma (as interpreted by Wilmer Aviles)

On direct examination by Mr. Kelly, the claimant testified his full name is Gustavo Palma Morales and he is twenty-six years old. He has been in the United States for approximately six years. During that time, he has been working in the fields and doing construction.

The claimant testified that he became involved in a project in Marion, South Carolina after requesting work from Luis Cardona. Mr. Cardona told him that there were some houses to work on in Marion, South Carolina. The claimant testified that he worked on this project with Luis Cardona, Luis' nephew, and a man he believed to be named Davey or David Scott. He believed that Davey or David Scott was Ms. Hart's son. He also worked with a man called "Yabo" and two other men, whose names he could not recall. However, the claimant asserted there were four or more employees. The claimant testified that he was paid ten dollars per hour and worked approximately forty hours per week, but sometimes worked more than forty hours.

The claimant stated that he was hurt while working on the roof of a house.

Specifically, he testified that he was nailing wood on the roof when the wood slipped and caused him to fall fourteen to sixteen feet to the ground. As a result of his fall, he injured his right leg and was taken to the hospital. The claimant was taken to the hospital in Luis Cardona's truck by his co-worker David.

The claimant was asked by his counsel to elaborate on giving a false history of the accident. In response, he testified that since he landed on his feet, there was some question as to whether he had suffered a sprain and that Luis Cardona wanted to relocate it. However, the claimant wanted to go to the hospital and was subsequently taken to the hospital in Dillon, SC. He indicated that he told the hospital he had fallen at home so he (Luis Cardona) wouldn't have to pay the bills.

The claimant testified that he had surgery on his leg and was eventually released by his doctor on May 19, 2011. He has four screws in his right leg as a result of the surgery and wears a hard plastic brace from his foot up to his shin. The claimant uses a brace for walking outside. The claimant testified that his foot and ankle swell quite often and he can't take the brace off very much.

Since being released on May 19, 2011, the claimant has not returned to his doctor. Following his release, he worked in the tobacco fields from the end of May until the end of July, but has not returned to construction work. The claimant doesn't believe he's capable of doing much construction work. He stated that the higher up he works on houses, the more money he would be able to make. However, he is unable to climb ladders or work on roofs anymore. Regarding field work, he is able to work fewer hours than is required in construction work. The claimant testified that he is required to work the entire day and carry heavy things in construction. Finally, the claimant stated that he

was paid in cash while doing construction work.

On cross-examination by Samuel Brunson, the claimant testified that he completed the equivalent of a ninth-grade education in Mexico and spoke some English. He does not have any tax returns as he never received any receipts or paystubs. The claimant admitted that he had worked for another contractor, Mendoza Construction, on this particular job and was responsible for putting down the footings on the floors. He did this work a long time before he worked for Luis Cardona. Prior to his injury, the claimant worked as a framer on the Marion job for approximately two months.

On cross-examination by Roy Howell, the claimant testified that he lived in Hamer, South Carolina at the time he was hired by Mr. Cardona to work on this job. He confirmed that he was hired to work on this job while in South Carolina. Regarding payment, the claimant testified that Mr. Cardona informed him of his rate of pay, paid him in cash every week, and told him when to arrive and leave from the job. Mr. Cardona also provided supervision on a daily basis and provided all the tools and equipment used on the job. The claimant further testified that he had never seen Ms. Scott before, until the prior hearing in Myrtle Beach. However, the claimant testified that another woman in the hearing room was the owner, not Ms. Scott.

The claimant confirmed that Luis Cardona told him to give a false name when he went to the hospital. After he was injured, Mr. Cardona paid him a total of three hundred dollars. However, Mr. Cardona would not pay him anymore than that because the injury was his fault and he could not pay anything else. The claimant was told by Mr. Cardona that he was working for Felicia Scott, but that he would talk with him about everything.

On cross-examination by Al Danley, the claimant testified he was not present

when Mr. Cardona hired David Scott and would not know about the relationship between the two on the Marion project. Regarding the two other employees whose names he could not remember, the claimant stated that he believed they were Hispanic. However, he was not present when Mr. Cardona hired those two other employees and would not know the working relationship between those parties. The claimant then testified that he was hired at his home by Mr. Cardona in Hamer, South Carolina.

On the date of the accident, the claimant confirmed that David Scott took him to the hospital in David Scott's truck. He further confirmed that Mr. Cardona paid him on each Friday, not Ms. Scott. Before being hired by Mr. Cardona, the claimant testified that he had spoken with Mr. Bethea two or three times about working on the Marion project after seeing him on the job site. He admitted to asking Mr. Bethea to be allowed to work on the Marion project before being hired by Mr. Cardona. After presenting Mr. Bethea to Mr. Cardona in Marion, South Carolina, he was subsequently hired at his home to work on the project by Mr. Cardona. However, the claimant testified that he was not present when any conversation took place between Mr. Cardona and Mr. Bethea.

On re-cross examination by Samuel Brunson, the claimant testified that he had worked for Mr. Cardona prior to the jobs in Marion, SC and had his phone number. However, the claimant had not spoken with Mr. Cardona in a very long while. The claimant then testified that he had worked for another contractor named Mendoza on the footings, but only for a few weeks. When that work ended, he did not contact Mr. Cardona about doing the framing work. Rather, the claimant testified that Mr. Cardona contacted him after he presented Mr. Cardona to Tony Bethea. This transpired after Mr. Cardona contacted him via telephone and the claimant told him he was working in

Marion, South Carolina and Mr. Cardona went to the job site. The claimant told Mr. Cardona that Tony Bethea was the one in charge of the home site they were working on at the time. The claimant then testified that Ms. Hart, the other woman in the hearing room, visited the job site on two or three occasions. He stated that Mr. Cardona told him he was working for Felicia Scott and that he believed Ms. Hart was actually Ms. Scott.

On re-cross examination by Roy Howell, the claimant testified that Mr. Cardona told him the insurance was in Ms. Scott's name and that he was working for her. However, he never saw Ms. Scott at the job site, only Ms. Hart. The claimant then confirmed that Luis Cardona hired him at his house in Hamer, South Carolina, supervised, paid him, and told him what to do every day on the job site.

On re-cross examination by counsel for Samuel Brunson, the claimant stated he was not paid outside of a bank in North Carolina, but rather on the job site in Marion, South Carolina.

Summary of Testimony - Tony Orlando Bethea

On direct examination by Samuel Brunson, Mr. Bethea testified that he was from Dillon, South Carolina, went to Dillon High school and finished in 1977. After high school, Mr. Bethea went into the Marine Corps for 15 years, but ended his service due to a medical discharge due to knee injuries. At the time of his discharge, Mr. Bethea was an E-7 general sergeant. After returning to Dillon, South Carolina, he went into the construction business. Mr. Bethea testified the name of his construction business was "Quality and Affordable Construction" and he built houses.

In 2008, the housing market declined and he went to work for PDCAP in July of that year. Mr. Bethea stated that PDCAP was a nonprofit organization that provided

community service to economically challenged people. Mr. Bethea worked for the self-help housing as a construction supervisor. The project was funded by the Department of Agriculture. The self-help program was a program to help low income individuals obtain quality housing and act as their own contractors. Mr. Bethea testified that the government gives the grant to PDCAP to supervise and guide those people in their construction project. The U.S. Department of Agriculture gives grants to the nonprofit organization to assist the homeowners, who get a loan for the construction directly from the department of agriculture.

Mr. Bethea testified that the first portion of this project dealt with six houses being built by six individuals. His job title was a construction supervisor and he was paid a salary by PDCAP. He believed that construction on the six houses began in June of 2008, but the site development started a year prior with the assistance of the city, county and other donors. Mr. Bethea testified that ground was broken on the first house in August of 2008.

Mr. Bethea testified that he knew the claimant and that he was on the job prior to the framing being done. He stated that the claimant had asked if he could do work on the project, but Mr. Bethea informed him he could only hire contractors, not individuals. Mr. Bethea testified that the claimant may have introduced him to Mr. Cardona, but could not remember how they actually met. However, Mr. Bethea stated he was not able to originally hire Mr. Cardona to do the frame work because Mr. Cardona did not have the proper credentials and insurance. Mr. Bethea stated he had been in the construction business to some degree in the military, essentially since 1977. He agreed that if a subcontractor has four or more employees, he got a certificate of insurance from them

and did that when he had his own business. He also did this for the individual homeowners as part of his job with PDCAP.

Mr. Bethea then stated that he met Ms. Hart first, but eventually met Ms. Scott as she was required to come. He testified that his understanding of their relationship was that Ms. Hart was her grandmother who was having medical challenges and they were switching the business over to Ms. Scott. Mr. Bethea stated that he entered into a contract with Ms. Scott to do the framing work and that she came back to the project to get her license from the city of Marion, South Carolina. He further testified that he made Ms. Scott bring copies of the workers' compensation paperwork. Mr. Bethea stated he was faxed another copy of the workers' compensation policy by the issuing company.

Regarding the accident, Mr. Bethea stated that he first heard about it approximately two months after the completion of the first phase of construction. At that time, Attorney McMillan contacted him and Mr. Bethea faxed her a copy of the workman's compensation paperwork.

On cross-examination by Roy Howell, Mr. Bethea testified that he was an employee of the PDCAP. He denied that PDCAP acted as the general contractor or hired the subcontractors for the homeowners. Mr. Bethea confirmed that he met with Ms. Hart, Ms. Scott, and Mr. Cardona, but the homeowner was not present. As the construction supervisor within this program, Mr. Bethea can interview people, purchase materials on their behalf, but they are owner-built homes. However, none of the homeowners were present during any of the conversations with Luis Cardona or Ms. Hart regarding the framing work on this job.

Mr. Bethea testified that he had a copy of the contract with the homeowner's

name on it. However, he could not identify the homeowner on the job where the claimant was injured. The homeowner is not required to have workers' compensation insurance, but the contractors are required to have that insurance.

Mr. Bethea testified that Mr. Cardona was acting on behalf of the contractor. He met with Mr. Cardona first and told him that he would be required to have workers' comp insurance to do the work. Mr. Cardona told Mr. Bethea that the company he worked for had such insurance. Following that conversation, the first person Mr. Bethea met was Ms. Hart, not Ms. Scott. Mr. Bethea did not know that Ms. Scott was only 20 years old at the time, and had a full-time job in a local diner in Lumberton, North Carolina, and had no experience in the construction business. He elaborated, stating that he assumed Ms. Hart was Ms. Scott at the time.

Regarding the workers' compensation insurance, Mr. Bethea testified that he was not provided with the entire copy of the policy, only the certificate. Mr. Bethea testified that he did not ask to see the entire policy to determine whether it covered work being done in South Carolina. However, Mr. Bethea stated that he called the company to verify coverage in South Carolina. He stated that he did not have anything in writing showing that Liberty Mutual had coverage for Felicia Scott in South Carolina, other than the certificate. Mr. Bethea testified that he did not know who he spoke with, but he told them the job was in Marion, South Carolina and involved framing. He further stated that he asked whether the policy was good in the state of South Carolina. However, he never actually got a copy of the policy, just the certificate because that is all that he required.

On cross-examination by Al Danley, Mr. Bethea confirmed that PDCAP actually applies for a grant to the federal government and that money was given to PDCAP to pay

for construction supervisor salaries and office supplies. When he first met with Mr. Cardona about the framing on the Marion project, there was no homeowner present at that meeting. Mr. Bethea reiterated that he told Mr. Cardona that he couldn't hire a contractor without workers' compensation insurance. Mr. Cardona told him that the company he worked for had those documents and Mr. Bethea required him to bring the documents to the job site.

Mr. Bethea testified that he first met with Ms. Hart regarding this project and did not know whether she still owned the business or whether Ms. Scott owned the business at that time. However, he required Ms. Scott to go to the city of Marion to get a business license to operate as a framing contractor. At the time he initially engaged Ms. Scott, he admitted that she was not even licensed to do work as a contractor, to his knowledge. Mr. Bethea then testified that he was not paid any money, cash or otherwise, by Mr. Cardona in relation to the Marion project.

On cross-examination by Ms. Scott, Mr. Bethea stated he did not know who actually got the business license. However, he testified that Ms. Scott presented the license to him. When Ms. Scott signed one of the documents, Mr. Bethea stated that all of the homeowners were listed on the document.

On re-cross examination by Al Danley, Mr. Bethea testified that Ms. Scott followed him into the city of Marion to sign the paperwork to get the business license. However, he testified that he just showed Ms. Scott the location of the office and that they did not get the business license at that time due to lack of funds. When Ms. Scott did provide the business license, she was awarded the construction contract. Mr. Bethea stated that Ms. Scott was awarded the contract because she had the business license, had

the workers' compensation insurance, as he understood at that time, the prices were acceptable and they were ready to start construction. He further testified that he took extra precaution because there were so many different individuals and insured that Ms. Scott was the one that was being hired. Ms. Scott authorized her supervisor to act on her behalf. However, Mr. Bethea admitted that he initially talked to Ms. Hart about the project, and when he talked to her, he did not know the status of her construction business.

On re-cross examination by Ms. Scott, Mr. Bethea stated that prior to the date of hearing, he had only seen Ms. Scott on three or four occasions. Mr. Bethea testified that Ms. Scott told him she would not be able to come back and forth to the job site and that her superintendent could act on her behalf. As a result, Mr. Bethea asked for and received written permission for him to do so on the day the contract was signed.

Upon questioning by the Hearing Commissioner, Mr. Bethea stated that he was not currently working at PDCAP and had been laid off for a while. However, he was getting ready to go back now. He testified that since beginning the project in 2008, he had worked on eleven houses in total. With these projects, Mr. Bethea stated that they typically try to focus on local area contractors within fifty miles. When asked whether it was odd that Ms. Scott was an out of state contractor, Mr. Bethea testified that she was in a town close to the border. With certain contractors, such as drywall, they typically come from North Carolina. Local contractors were solicited, but none met the qualifications. Mr. Bethea stated that they appeared at the job site, met the qualifications and he didn't focus on the fact that they were from North Carolina. While objected to by counsel for the UEF, Mr. Bethea stated he thought Ms. Scott had more than 4 employees.

Summary of Testimony - Ms. Hart

Upon direct examination by Al Danley, Ms. Hart testified that she lived in Lumberton, North Carolina and had lived there for eighteen and a half years. Ms. Hart is the grandmother of Felicia Scott. Prior to April 30, 2009, she owned a boxing and framing construction business. Ms. Hart testified that prior to April 30, 2009, Luis Cardona inquired as to whether she would let him use her workers' compensation insurance. She told Mr. Cardona that it was not in her name, but rather in her granddaughter's name. Mr. Cardona asked whether he could use it for a couple houses and then he would get his own insurance. At some point in time, the insurance in Ms. Scott's name was given to Mr. Bethea.

Ms. Hart testified that Mr. Cardona called her and said he had some work to do, that he already had done two houses in the Marion project and needed insurance to work on the rest of the houses. Mr. Cardona told Ms. Hart that Mr. Bethea required the insurance and Mr. Bethea then called Ms. Hart to discuss the issue. Ms. Hart stated that she went with Felicia Scott to Marion, South Carolina to sign a contract that only had two names on it.

Ms. Hart testified that both she and Ms. Scott took the certificate of insurance to Mr. Bethea. She stated that Ms. Scott signed the papers and Mr. Bethea told her there it had two names on it and that he would give her a copy. At that time, Mr. Bethea went into the house to make a copy, but then stated his copy machine was broken and he would give her a copy at a later time. Ms. Hart stated that Ms. Scott never received a copy. However, Ms. Hart stated that there were only two names on the paper and nothing about pricing. Further, nothing was discussed regarding money whatsoever.

Ms. Hart stated that she had not had any conversation with Mr. Cardona regarding pricing on this project or any discussion with the homeowners regarding being hired onto the project. She testified that she spoke with Mr. Bethea about doing the vinyl siding, but he kept putting her off and that was one of the reasons she let Mr. Cardona work under Ms. Scott's name. She indicated Mr. Cardona was supposed to give her the boxing and siding and she went to the job about three times and spoke with Mr. Bethea. Mr. Bethea told her she would be able to do the boxing and siding work. Mr. Bethea further told her that he had to let the homeowners get their own people and that they had to put so much work into it. Ms. Hart testified that she went to the work site and spoke with Mr. Bethea.

Regarding the business license, Ms. Hart testified that she, her ex-husband and Mr. Bethea went into Marion to apply for the business license in Ms. Scott's name. However, Ms. Scott was not with them at that time. She further stated that Mr. Bethea went into the building and told her who to talk to. After she got the application for the business license, she paid for it and left. However, she did not have any involvement in paying any of the persons who worked on the Marion project. Ms. Hart also testified that Mr. Cardona gave her the money back for the business license.

Ms. Hart testified that Mr. Cardona would bring a check from PDCAP to the bank; Ms. Scott would cash the check and give it back to Mr. Cardona in an envelope. She was present for each of these transactions. Sometimes there would be two different checks. Ms. Hart stated that Mr. Cardona would give her \$100.00 or \$150.00. She took the money because she was not working at the time, but was still carrying the insurance in case she did get any work. The insurance she carried was taken out at City Insurance with Liberty Mutual of Omaha. Ms. Hart stated that she did not have any other

discussions with Mr. Cardona about persons he might have paid money to out of the Marion Street Project. However, she spoke with him about the injury, and some papers were faxed indicating how much Mr. Cardona had paid the claimant.

Specifically, Ms. Hart testified that Mr. Cardona told her he had to pay Mr. Bethea \$900.00 per house to get the houses. She stated that she never got any of the vinyl siding and other work she thought she was going to get from the project. Ms. Hart stated that if Ms. Scott had done any framing or construction work, she would have known about it because Ms. Scott was living with her up until a month prior to the hearing.

On cross-examination by Roy Howell, Ms. Hart stated that in 2009, Ms. Scott was not in the framing contracting business and had never been in that business. Ms. Scott had never had any employees in either North or South Carolina. In 2009, Ms. Hart stated Ms. Scott was working at Jeff's Corner Café as a waitress and that was her only source of income. Ms. Scott's only involvement in this issue was at Ms. Hart's suggestion and was limited to her name being on the insurance policy. Ms. Hart stated that Mr. Bethea knew about this because she told him. If Ms. Hart were to get any work, it would be using the insurance policy under Ms. Scott's name. She testified the reason for this was due to her heart attack in May of 2009, a stroke shortly thereafter, and she had applied for social security disability. She believed that she would be denied social security disability if she showed any income.

On cross-examination by Samuel Brunson, Ms. Hart testified that she had a ninth-grade education and learned the construction business through her ex-husband. Ms. Hart stated that she was a laborer for a few years in the past. She did not intend to turn over

her construction business to her granddaughter. Ms. Hart stated that she was still running a construction business in North Carolina, but was not working at that time. She stated she went to the insurance company and took out insurance in someone else's name because she was filing for disability. However, she denied trying to defraud the federal government because she would have filed taxes if she had made anything. Ms. Hart testified that she was not running the construction business and applying for disability at the same time. She took out the insurance because she was told she was going to get vinyl siding work. Mr. Cardona called her and said he needed workers' comp insurance and she let him use it out of stupidity.

Ms. Hart further testified that Mr. Cardona had not worked for her in the past seven or eight years. She stated she appeared in Marion with her granddaughter and signed the contract at Mr. Bethea's house and all of the checks were made payable to Ms. Scott. These checks were cashed at the Wachovia in Lumberton, North Carolina. Only part of the construction crew would be present at those times. She stated that the crew included her son David, Larry Carter and Mr. Cardona's nephew. Ms. Hart paid a premium for the insurance, but could not remember exactly when that occurred.

On re-direct examination by Al Danley, Ms. Hart stated she told Mr. Bethea that Ms. Scott really was not the employer in the Marion project. However, she did not know who the claimant's employer was because she had never met him. She may have seen him on the job site, but did not know who he was.

On re-cross examination by Roy Howell, Ms. Hart stated that she did not hire any of the workers on this job, including the claimant. Further, Ms. Hart testified that Ms. Scott did not hire the claimant.

APA SUBMISSIONS

On behalf of Claimant:

	Description of Report	Date of Report(s)	Page #'s
1.	McLeod Orthopaedic Associates	11/18/2010-05/19/2011	5

On behalf of Liberty Mutual:

1.	McLeod Medical Center	04/30/2009	9
2.	Thomas Mezzanotte, M.D.	05/01/09-05/19/11	17
3.	Application for W/C Ins.-N.C.	12/12/2008	4
4.	Liberty Mutual Policy	12/16/08-12/16/09	35
5.	Letter to Commission re:denying Form 19	05/11/2010	1
6.	Memo from Gary Smith re:coverage	09/28/2010	1
7.	Memo from Gary Smith to Lois McMillan re: coverage investigation	09/28/2010	1

On behalf of PDCAP:

1.	Certificate of W/C Insurance	03/13/2009	1
2.	Business License, City of Marion	04/20/2009	2
3.	Building Group Membership and Labor Agreement		19
4.	Letter of Coverage, Liberty Mutual	01/06/2011	1

FINDINGS OF FACT:

Based on a preponderance of the evidence, it is found as a fact that:

1. Gustavo Palma was the direct employee of Luis Cardona on April 30, 2009, when Mr. Palma sustained an injury by accident arising out of and in the course of his employment with Mr. Cardona to his right leg. This finding is based on the medical evidence as a whole and Mr. Palma's testimony, which was credible on the accident and as to his complaints.
2. The applicable average weekly wage is Four Hundred and 00/100 (\$400.00) Dollars, which yields a compensation rate of Two Hundred Sixty Six and 68/100

(\$266.68) Dollars.

3. I personally viewed Mr. Palma's right leg and foot, and I observed the swelling and other issues with his lower extremity.
4. Mr. Palma uses a brace that runs from his ankle up his leg to his knee cap.
5. Based on the evidence as a whole, Mr. Palma reached maximum medical improvement on May 19, 2011. He has sustained 47% permanent partial disability to his right leg as a direct and proximate cause of his work-related accident on April 30, 2009.
6. Mr. Palma was temporarily totally disabled from work from April 30, 2009 through May 19, 2011.
7. As a result of his injury, Mr. Palma sustained a right distal tibial pilon fracture. It was treated surgically with open reduction and internal fixation. Mr. Palma will need further surgery on his right leg and continued medical care in the future for the ankle and foot arthrosis and pain management as opined by Dr. Mezzanotte on May 19, 2011.
8. The UEF's contentions are that PDCAP knew that Luis Cardona was the direct employer of Mr. Palma; that Felicia Scott was not; that PDCAP, through James Bethea, knew Luis Cardona did not have workers' compensation insurance coverage in South Carolina, but PDCAP allowed Luis Cardona to ostensibly use the workers' compensation insurance coverage of Felicia Scott to perform work for PDCAP on the project on which Mr. Palma was injured. The UEF further contended that PDCAP did not assure that either Luis Cardona or Felicia Scott had coverage in South Carolina, therefore, PDCAP should not be allowed to transfer liability pursuant to 42-1-415.
9. Based on the evidence as a whole in the record, the UEF's position in this case is the strongest and most persuasive, and the evidence supports its contentions.

10. The credible evidence in the record establishes that PDCAP was the general contractor on the project on which Mr. Palma was injured. PDCAP hired Luis Cardona to work on this project as a subcontractor. After Luis Cardona told PDCAP that he did not have insurance, Luis Cardona was then allowed by PDCAP to try to work under the insurance policy issued to Felecia Scott, which did not provide workers' compensation coverage in South Carolina.
11. Luis Cardona regularly employed 4 or more employees at the time of Mr. Palma's injury. Luis Cardona was not insured for workers' compensation coverage in South Carolina, and was operating as an unqualified self-insured. PDCAP knew Luis Cardona did not have coverage in South Carolina, which is why PDCAP allowed Luis Cardona to try to use the insurance coverage of Felecia Scott.
12. Luis Cardona provided the tools, directed Mr. Palma's work, provided payment to Mr. Palma, and had authority to hire or fire Mr. Palma. There is no such evidence in the record in relation to Felecia Scott. In fact, Mr. Palma did not even meet Felecia Scott until the initial hearing in this case.
13. Mr. Palma never met Felecia Scott; Felecia Scott was never in the framing business; never had any employees, and never did any work in South Carolina. The fact that Felecia Scott's grandmother used Felecia Scott's name, and tried to transfer the business to her does not make Felecia Scott an employer under the S.C. Workers' Compensation Act.
14. PDCAP knew that Luis Cardona did not workers' compensation insurance coverage. However, PDCAP participated in a scheme whereby PDCAP allowed Luis Cardona to work as a subcontractor on the project, ostensibly as an employee of Felecia

Scott and to use Felecia Scott's purported workers' compensation insurance coverage in South Carolina. PDCAP got a Certificate of Insurance from Felecia Scott that clearly covered only North Carolina claims. The coverage was procured in North Carolina at a North Carolina insurance agency, and all addresses show North Carolina on the form. Assuming, even *arguendo*, that Felecia Scott was the direct employer, PDCAP could not rely on the Certificate of Insurance provided, as that would allow PDCAP to turn a blind eye to information which is readily evident upon a cursory inspection of the Certificate that coverage was not likely in South Carolina, and not take sufficient steps to properly document that the subcontractor has the appropriate workers' compensation coverage.

15. The workers' compensation insurance policy ostensibly issued to Felecia Scott only provided coverage in North Carolina, not South Carolina. Liberty Mutual is relieved of any and all liability, and is dismissed from this claim.

16. PDCAP participated with Luis Cardona in his effort to obtain work as a subcontractor for PDCAP, while PDCAP knew all along that Luis Cardona did not have the appropriate workers' compensation insurance coverage in South Carolina. PDCAP allowed Luis Cardona to appear as though he was working for Felecia Scott and to ostensibly use Felecia Scott's workers' compensation coverage. The Certificate of Insurance provided to PDCAP clearly shows it was issued by a North Carolina agency to an insured in North Carolina. The certificate failed to provide any information in the block titled "Description of operations/locations/vehicles/special items". Minimal steps to document coverage in South Carolina would have revealed that if that section had been completed, the certificate would have indicated that the location of operations covered by the policy was North Carolina only.

17. Based on Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009), PDCAP's reliance on the Certificate of Insurance obtained by PDCAP is not valid and is misplaced. PDCAP did not take sufficient action to assure that the policy indicated in that Certificate of Insurance covered South Carolina claims. Therefore, PDCAP cannot shift liability for this claim to the UEF.

18. The UEF is hereby relieved of any and all liability and is dismissed from this claim.

19. PDCAP is the responsible party for paying this claim. PDCAP is responsible for all causally-related medical treatment to date (past, present, and future), reimbursement to Mr. Palma for any causally-related treatment, payment of temporary total disability, and payment of permanent partial disability.

CONCLUSIONS OF LAW

I conclude as a matter of law that:

1. Pursuant to S. C. Code Ann. §42-1-130 (1976, as amended), Gustavo Palma was an employee of Luis Cardona's on April 30, 2009.
2. Pursuant to S. C. Code Ann. §42-1-140 (1976, as amended), Luis Cardona was the direct employer.
2. Pursuant to S. C. Code Ann. §42-1-410 (1976, as amended), PDCAP was the general contractor.
3. Pursuant to S. C. Code Ann. §42-1-160 (1976, as amended), Gustavo Palma sustained an injury by accident arising out of and in the course of his employment with Luis Cardona as the direct employer and PDCAP as the statutory employer on April 30, 2009.

4. Pursuant to S. C. Code Ann. §42-7-200 (1976, as amended), Luis Cardona was uninsured and was operating as an unqualified self-insurer on April 30, 2009.
5. Pursuant to S. C. Code Ann. §42-1-415, PDCAP failed to obtain sufficient proof of workers' compensation insurance coverage. PDCAP failed to take sufficient steps to assure coverage for workers' compensation in South Carolina, therefore, PDCAP cannot transfer liability for this claim to UEF. *Hopper*, supra.
6. Pursuant to S. C. Code Ann. §42-9-10 and SCWCC Reg. 67-502, PDCAP should pay temporary total disability to Mr. Palma from April 30, 2009 through May 19, 2011.
7. Pursuant to S. C. Code Ann. §42-9-30(16) (1976, as amended), PDCAP should pay Mr. Palma 91.65 weeks of permanent partial disability, which represents 47% permanent partial disability to his right leg.
8. Pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 574, 514 S.E.2d 593 (S.C. App. 1999), PDCAP should provide additional medical treatment to Mr. Palma in the form of pain management as recommended by Dr. Mezzanotte on May 19, 2011 and possible surgery.

ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ordered that:

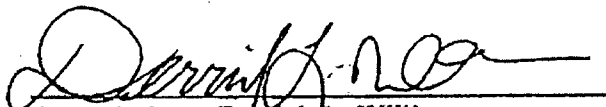
1. Liberty Mutual and the UEF are dismissed as parties from this case.
2. PDCAP shall pay Gustavo Palma temporary total disability at the rate of Two Hundred Sixty Six and 68/100 (\$266.68) Dollars per week from April 30, 2009 through May 19, 2011.
3. PDCAP shall pay Gustavo Palma permanent partial disability in a lump sum in

the amount of Twenty Four Thousand Four Hundred Forty One and 22/100 (\$24,441.22)
Dollars.

4. PDCAP shall continue to provide treatment to Gustavo Palma for so long as the treatment will tend to lessen his period of disability in the form of pain management and surgery.

IT IS SO ORDERED.

SC WORKERS' COMP. COMMISSION


Commissioner Derrick L. Williams

CERTIFICATE OF SERVICE

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

February 8, 2012

By: Renee Smith, Administrative Assistant to Commissioner Williams

DMK
AD
STB
RAH
FS (reg/cert)

W.C.C. FILE NUMBER: 0909301

26

APPEARANCES: D. Micheal Kelly, Esquire, for Claimant
Andrew Fajardo, Esquire, for SC Workers' Compensation
Uninsured Employers' Fund
Samuel T. Brunson, Esquire, for Pee Dee Community Action
Partnership and State Accident Fund
Roy A. Howell, III, Esquire, for Liberty Mutual Insurance
Felicia Scott, pro se

STATEMENT OF THE CASE

This claim came before the Single Commissioner pursuant to Forms 50 and 51 filed by the respective parties. In his Form 50, the claimant alleged that he sustained an injury by accident to his right foot/ankle arising out of and in the course of his employment with Felicia Scott and/or Pee Dee Community Action Partnership. By Order of this commission dated July 14, 2011, Luis Cardona was added as an employer to the claim. The claimant further alleged that he is entitled to temporary total disability benefits from April 30, 2009 until he reached maximum medical improvement; that he is also entitled to additional medical treatment, and specific partial disability to his right foot.

The South Carolina Workers' Compensation Uninsured Employers' Fund (hereafter the "UEF") answered with a Form 51, generally denying the allegations of the claimant's Form 50 and alleging various other defenses in response to the claimant's Form 50.

Liberty Mutual Insurance Company (hereafter "Liberty Mutual") answered with a Form 51, generally denying the allegations of the claimant's Form 50, and further alleging that it was not the insurance carrier for Felicia Scott for workers' compensation purposes in South Carolina.

Pee Dee Community Action Partnership (hereafter "PDCAP") and State Accident Fund answered with a Form 51, generally denying the allegations of the claimant's Form 50.

Felicia Scott and Luis Cardona did not file a Form 51 in response to the Form 50 filed by the claimant.

A hearing was held in this matter before the Single Commissioner on November 7, 2011 at which time all parties were present, medical evidence was submitted and testimony was given.

On February 7, 2012, the Single Commissioner issued his Decision and Order, making the following findings of fact:

1. Gustavo Palma was the direct employee of Luis Cardona on April 30, 2009, when Mr. Palma sustained an injury by accident arising out of and in the course of his employment with Mr. Cardona to his right leg. This finding is based on the medical evidence as a whole and Mr. Palma's testimony, which was credible on the accident and as to his complaints.
2. The applicable average weekly wage is Four Hundred and 00/100 (\$400.00) Dollars, which yields a compensation rate of Two Hundred Sixty Six and 68/100 (\$266.68) Dollars.
3. I personally viewed Mr. Palma's right leg and foot, and I observed the swelling and other issues with his lower extremity.
4. Mr. Palma uses a brace that runs from his ankle up his leg to his knee cap.
5. Based on the evidence as a whole, Mr. Palma reached maximum medical improvement on May 19, 2011. He has sustained 47% permanent partial disability to his right leg as a direct and proximate cause of his work-related accident on April 30, 2009.
6. Mr. Palma was temporarily totally disabled from work from April 30, 2009 through May 19, 2011.
7. As a result of his injury, Mr. Palma sustained a right distal tibial pilon fracture. It was treated surgically with open reduction and internal fixation. Mr. Palma will need further surgery on his right leg and continued medical care in the future for the ankle and foot arthrosis and pain management as opined by Dr. Mezzanotte on May 19, 2011.
8. The UEF's contentions are that PDACP knew that Luis Cardona was the direct employer of Mr. Palma; that Felicia Scott was not; that PDCAP, through James Bethea, knew Luis Cardona did not have workers' compensation coverage in South Carolina, but PDCAP allowed Luis Cardona to ostensibly use the workers' compensation insurance coverage of Felicia Scott to perform work for PDCAP on the project on which Mr. Palma was injured. The UEF further contended that PDCAP did not assure that either Luis Cardona or Felicia Scott had coverage in South Carolina, therefore, PDCAP should not be allowed to transfer liability pursuant to 42-1-415.
9. Based on the evidence as a whole in the record, the UEF's position in this case is the strongest and most persuasive, and the evidence supports its contentions.

10. The credible evidence in the record establishes that PDCAP was the general contractor on the project on which Mr. Palma was injured. PDCAP hired Luis Cardona to work on this project as a subcontractor. After Luis Cardona told PDCAP that he did not have insurance, Luis Cardona was then allowed by PDCAP to try to work under the insurance policy issued to Felicia Scott, which did not provide workers' compensation coverage in South Carolina.
11. Luis Cardona regularly employed 4 or more employees at the time of Mr. Palma's injury. Luis Cardona was not insured for workers' compensation coverage in South Carolina and was operating as an unqualified self-insured. PDCAP knew Luis Cardona did not have coverage in South Carolina, which is why PDCAP allowed Luis Cardona to try to use the insurance coverage of Felicia Scott.
12. Luis Cardona provided the tools, directed Mr. Palma's work, provided payment to Mr. Palma, and had the authority to hire or fire Mr. Palma. There is no such evidence in the record in relation to Felicia Scott. In fact, Mr. Palma did not even meet Felicia Scott until the initial hearing in this case.
13. Mr. Palma never met Felicia Scott, Felicia Scott was never in the framing business, never had any employees, and never did any work in South Carolina. The fact that Felicia Scott's grandmother used Felicia Scott's name, and tried to transfer the business to her does not make Felicia Scott an employer under the S.C. Workers' Compensation Act.
14. PDCAP knew that Luis Cardona did not [have] workers' compensation insurance coverage. However, PDCAP participated in a scheme whereby PDCAP allowed Luis Cardona to work as a subcontractor on the project, ostensibly as an employee of Felicia Scott and to use Felicia Scott's purported workers' compensation insurance coverage in South Carolina. PDCAP got a Certificate of Insurance from Felicia Scott that clearly covered only North Carolina claims. The coverage was procured in North Carolina at a North Carolina insurance agency, and all addresses show North Carolina on the form. Assuming, even *arguendo*, that Felicia Scott was the direct employer, PDCAP could not rely on the Certificate of Insurance provided, as that would allow PDCAP to turn a blind eye to information which is readily evidence upon a cursory inspection of the Certificate that coverage was not likely in South Carolina, and not take sufficient steps to properly document that the subcontractor has the appropriate workers' compensation coverage.
15. The workers' compensation insurance policy ostensibly issued to Felicia Scott only provided coverage in North Carolina, not South Carolina. Liberty Mutual is relieved of any and all liability, and is dismissed from this claim.
16. PDCAP participated with Luis Cardona in his effort to obtain work as a subcontractor for PDCAP, while PDCAP knew all along that Luis Cardona did not have the appropriate workers' compensation insurance coverage in South Carolina. PDCAP allowed Luis Cardona to appear as though he was working for Felicia Scott and to ostensibly use Felicia Scott's workers' compensation coverage. The Certificate of Insurance provided

to PDCAP clearly shows it was issued by a North Carolina agency to an insured in North Carolina. The certificate failed to provide any information in the block titled "Description of operations/locations/vehicles/special items." Minimal steps to document coverage in South Carolina would have revealed that if that section had been completed, the certificate would have indicated that the location of operations covered by the policy was North Carolina only.

17. Based on *Hopper v. Terry Hunt Construction*, 383 S.C. 310, 680 S.E.2d 1 (2009), PDCAP's reliance on the Certificate of Insurance obtained by PDCAP is not valid and is misplaced. PDCAP did not take sufficient action to assure that the policy indicated in that Certificate of Insurance covered South Carolina claims. Therefore, PDCAP cannot shift liability for this claim to the UEF.
18. The UEF is hereby relieved of any and all liability and is dismissed from this claim.
19. PDCAP is the responsible party for paying this claim. PDCAP is responsible for all causally-related medical treatment to date (past, present and future), reimbursement to Mr. Palma for any causally-related treatment, payment of temporary total disability, and payment of permanent partial disability.

The Single Commissioner further made conclusions of law as follows:

1. Pursuant to S.C. Code Ann. §42-1-130 (1976, as amended), Gustavo Palma was an employee of Luis Cardona's on April 30, 2009.
2. Pursuant to S.C. Code Ann. §42-1-140 (1976, as amended), Luis Cardona was the direct employer.
3. Pursuant to S.C. Code Ann. §42-1-410 (1976, as amended), PDCAP was the general contractor.
4. Pursuant to S.C. Code Ann. §42-1-160 (1976, as amended), Gustavo Palma sustained an injury by accident arising out of and in the course of his employment with Luis Cardona as the direct employer and PDCAP as the statutory employer on April 30, 2009.
5. Pursuant to S.C. Code Ann. §42-7-200 (1976, as amended), Luis Cardona was uninsured and was operating as an unqualified self-insurer on April 30, 2009.
6. Pursuant to S.C. Code Ann. §42-1-415, PDCAP failed to obtain sufficient proof of workers' compensation insurance coverage. PDCAP failed to take sufficient steps to assure coverage for workers' compensation in South Carolina, therefore, PDCAP cannot transfer liability for this claim to UEF. *Hopper*, supra.
7. Pursuant to S.C. Code Ann. §42-9-10 and SCWCC Reg. 67-502, PDCAP should pay temporary total disability to Mr. Palma from April 30, 2009 through May 19, 2011.

8. Pursuant to S.C. Code Ann. §42-9-30 (16) (1976, as amended), PDCAP should pay Mr. Palma 91.65 weeks of permanent partial disability, which represents 47% permanent partial disability to his right leg.
9. Pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 572, 514 S.E.2d 593 (S.C. App. 1999), PDCAP should provide additional medical treatment to Mr. Palma in the form of pain management as recommended by Dr. Mezzanote on May 19, 2011 and possible surgery.

Within the statutory period, Appellant PDCAP filed an Application for Review and Form 30 in the case setting forth its grounds for review, copies of which were furnished to all interested parties. Briefs were submitted prior to oral arguments which were scheduled to be presented before the Appellate Panel on September 17, 2012. All proffered testimony has been taken. Such, together with all documentary evidence, has been delivered by oral argument to individual members of the Appellate Panel and has since been under study and consideration.

By appeal, PDCAP respectfully submitted the following:

1. The Hearing Commissioner erred in his Finding of Fact #8 in finding that the Uninsured Employers' Fund contentions were Finding of Fact. The Hearing Commissioner also erred in his Findings of Fact #9 in finding that the evidence supported contentions of the Uninsured Employers' Fund.
2. The Hearing Commissioner erred in his Finding of Fact #10 in finding that the PDCAP was the general contractor on the project. The Hearing Commissioner further erred in finding the PDCAP hired Luis Cardona to work on the project as a subcontractor.
3. The Hearing Commissioner erred in his Finding of Fact #4 in finding that Luis Cardona regularly employed four (4) or more persons at the time of Mr. Palma's injury, the error being that Mr. Cardona was a supervisor for Felicia Scott and the evidence so shows.
4. The Hearing Commissioner erred in finding that Felicia Scott never had employees and never did any work in South Carolina, the error being that the evidence in the case supports that she was the framing subcontractor on the job in question.
5. The Hearing Commissioner erred in characterizing the relationship between the parties as a "scheme." Furthermore, the Hearing Commissioner erred in his Finding of Fact #14 in finding that the PDCAP did not take sufficient steps to properly document that the subcontractor in question had appropriate Workers' Compensation insurance, the error being that the only evidence showed that the PDCAP contacted the insurance agency in question and confirmed proper coverage.

6. The Hearing Commissioner erred in finding that Liberty Mutual did not provide coverage in South Carolina. The letter from Liberty Mutual introduced into evidence conclusively shows coverage. In addition, the agent for Liberty Mutual confirmed coverage to representatives of PDCAP and, thus, Liberty Mutual is estopped from denying coverage.
7. The Hearing Commissioner erred in his Finding of Fact #16 in finding that the Certificate of Insurance did not provide coverage in South Carolina.
8. The Hearing Commissioner erred in his Finding of Fact #17 in finding that the PDCAP did not take sufficient action to assure the policy indicated covered South Carolina claims, the error being that PDCAP contacted the agency in question and confirmed coverage.
9. The Hearing Commissioner erred in finding that the Uninsured Employers' Fund is relieved from any and all liability in this claim.
10. The Hearing Commissioner erred in finding that the PDCAP is responsible for paying the claim.

Prior to oral arguments in this case, PDCAP and State Accident Fund withdrew their appeal against Liberty Mutual.

In an appellate review, the Appellate Panel shall, pursuant to S.C. Code Ann §42-17-50 (1976, as amended), review the Award, weigh the evidence as presented at the initial hearing and, if good grounds be shown therefore, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Counsel for the parties appeared at the scheduled hearing to present oral arguments on behalf of the parties. By way of agreement prior to the Appellate Panel hearing, PDCAP stipulated that Liberty Mutual should be dismissed from this claim. Having heard oral arguments on behalf of the parties, considered their briefs and viewed the record as a whole, the Appellate Panel makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. We find that Gustavo Palma was the direct employee of Luis Cardona on April 30, 2009, when Mr. Palma sustained an injury by accident arising out of and in the course of his employment with Mr. Cardona to his right leg. This finding is based on the medical evidence as a whole and Mr. Palma's testimony, which was credible on the accident and as to his complaints.

2. We find that the applicable average weekly wage is Four Hundred and 00/100 (\$400.00) Dollars, which yields a compensation rate of Two Hundred Sixty Six and 68/100 (\$266.68) Dollars.

3. We find that the Hearing Commissioner personally viewed Mr. Palma's right leg and foot and he observed swelling and other issues with his lower extremity.

4. We find that Mr. Palma uses a brace that runs from his ankle up his leg to his knee cap.

5. We that based on the evidence as a whole, Mr. Palma reached maximum medical improvement on May 19, 2011. He has sustained 47 % permanent partial disability to his right leg as a direct and proximate cause of his work-related accident on April 30, 2009.

6. We find that Mr. Palma was temporarily totally disabled from work from April 30, 2009 through May 19, 2011.

7. We find that, as a result of his injury, Mr. Palma sustained a right distal tibial pilon fracture. It was treated surgically with open reduction and internal fixation. Mr. Palma will need further surgery on his right leg and continued medical care in the future for the ankle and foot arthrosis and pain management as opined by Dr. Mezzanotte on May 19, 2011.

8. We find that the UEF's contentions are that PDACP knew that Luis Cardona was the direct employer of Mr. Palma; that Felicia Scott was not; that PDCAP, through James Bethea, knew Luis Cardona did not have workers' compensation coverage in South Carolina, but

PDCAP allowed Luis Cardona to ostensibly use the workers' compensation insurance coverage of Felicia Scott to perform work for PDCAP on the project on which Mr. Palma was injured. The UEF further contended that PDCAP did not assure that either Luis Cardona or Felicia Scott had coverage in South Carolina, therefore, PDCAP should not be allowed to transfer liability pursuant to 42-1-415.

9. We find, based on the evidence as a whole in the record, that the UEF's position in this case is the strongest and most persuasive, and the evidence supports its contentions.

10. We find that the credible evidence in the record establishes that PDCAP was the general contractor on the project on which Mr. Palma was injured. PDCAP hired Luis Cardona to work on this project as a subcontractor. After Luis Cardona told PDCAP that he did not have insurance, Luis Cardona was then allowed by PDCAP to try to work under the insurance policy issued to Felicia Scott, which did not provide workers' compensation coverage in South Carolina.

11. We find that Luis Cardona regularly employed 4 or more employees at the time of Mr. Palma's injury. Luis Cardona was not insured for workers' compensation coverage in South Carolina and was operating as an unqualified self-insured. PDCAP knew Luis Cardona did not have coverage in South Carolina, which is why PDCAP allowed Luis Cardona to try to use the insurance coverage of Felicia Scott.

12. We find that Luis Cardona provided the tools, directed Mr. Palma's work, provided payment to Mr. Palma, and had the authority to hire or fire Mr. Palms. There is no such evidence in the record in relation to Felicia Scott. In fact, Mr. Palma did not even meet Felicia Scott until the initial hearing in this case.

13. We find that Mr. Palma never met Felicia Scott, Felicia Scott was never in the framing business, never had any employees, and never did any work in South Carolina. The fact that Felicia Scott's grandmother used Felicia Scott's name, and tried to transfer the business to her does not make Felicia Scott an employer under the S.C. Workers' Compensation Act.

14. We find that PDCAP knew that Luis Cardona did not have workers' compensation insurance coverage. However, PDCAP participated in a scheme whereby PDCAP allowed Luis Cardona to work as a subcontractor on the project, ostensibly as an employee of Felicia Scott and to use Felicia Scott's purported workers' compensation insurance coverage in South Carolina. PDCAP got a Certificate of Insurance from Felicia Scott that clearly covered only North Carolina claims. The coverage was procured in North Carolina at a North Carolina insurance agency, and all addresses show North Carolina on the form. Assuming, even *arguendo*, that Felicia Scott was the direct employer, PDCAP could not rely on the Certificate of Insurance provided, as that would allow PDCAP to turn a blind eye to information which is readily evidence upon a cursory inspection of the Certificate that coverage was not likely in South Carolina, and not take sufficient steps to properly document that the subcontractor has the appropriate workers' compensation coverage.

15. We find that the workers' compensation insurance policy ostensibly issued to Felicia Scott only provided coverage in North Carolina, not South Carolina. Liberty Mutual is relieved of any and all liability, and remains dismissed from this claim.

16. We find that PDCAP participated with Luis Cardona in his effort to obtain work as a subcontractor for PDCAP, while PDCAP knew all along that Luis Cardona did not have the appropriate workers' compensation insurance coverage in South Carolina. PDCAP allowed Luis Cardona to appear as though he was working for Felicia Scott and to ostensibly use Felicia

Scott's workers' compensation coverage. The Certificate of Insurance provided to PDCAP clearly shows it was issued by a North Carolina agency to an insured in North Carolina. The certificate failed to provide any information in the block titled "Description of operations/locations/vehicles/special items." Minimal steps to document coverage in South Carolina would have revealed that if that section had been completed, the certificate would have indicated that the location of operations covered by the policy was North Carolina only.

17. We find that, based on Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009), PDCAP's reliance on the Certificate of Insurance obtained by PDCAP is not valid and is misplaced. PDCAP did not take sufficient action to assure that the policy indicated in that Certificate of Insurance covered South Carolina claims. Therefore, PDCAP cannot shift liability for this claim to the UEF.

18. We find that the UEF is hereby relieved of any and all liability and is dismissed from this claim.

19. We find that PDCAP is the responsible party for paying this claim. PDCAP is responsible for all causally-related medical treatment to date (past, present and future), reimbursement to Mr. Palma for any causally-related treatment, payment of temporary total disability, and payment of permanent partial disability.

20. PDCAP and State Accident Fund withdrew their appeal against Liberty Mutual prior to oral arguments in this case.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. §42-1-130 (1976, as amended), Gustavo Palma was an employee of Luis Cardona's on April 30, 2009.

2. Pursuant to S.C. Code Ann. §42-1-140 (1976, as amended), Luis Cardona was the direct employer.
3. Pursuant to S.C. Code Ann. §42-1-410 (1976, as amended), PDCAP was the general contractor.
4. Pursuant to S.C. Code Ann. §42-1-160 (1976, as amended), Gustavo Palma sustained an injury by accident arising out of and in the course of his employment with Luis Cardona as the direct employer and PDCAP as the statutory employer on April 30, 2009.
5. Pursuant to S.C. Code Ann. §42-7-200 (1976, as amended), Luis Cardona was uninsured and was operating as an unqualified self-insurer on April 30, 2009.
6. Pursuant to S.C. Code Ann. §42-1-415, PDCAP failed to obtain sufficient proof of workers' compensation insurance coverage. PDCAP failed to take sufficient steps to assure coverage for workers' compensation in South Carolina, therefore, PDCAP cannot transfer liability for this claim to UEF. *Hopper, supra*.
7. Pursuant to S.C. Code Ann. §42-9-10 and SCWCC Reg. 67-502, PDCAP should pay temporary total disability to Mr. Palma from April 30, 2009 through May 19, 2011.
8. Pursuant to S.C. Code Ann. §42-9-30 (16) (1976, as amended), PDCAP should pay Mr. Palma 91.65 weeks of permanent partial disability, which represents 47% permanent partial disability to his right leg.
9. Pursuant to *Dodge v. Bruccoli, Clark, Layman, Inc.*, 334 S.C. 572, 514 S.E.2d 593 (S.C. App. 1999), PDCAP should provide additional medical treatment to Mr. Palma in the form of pain management as recommended by Dr. Mezzanote on May 19, 2011 and possible surgery.
10. PDCAP and State Accident Fund withdrew their appeal against Liberty Mutual prior to oral arguments in this case.

ORDER

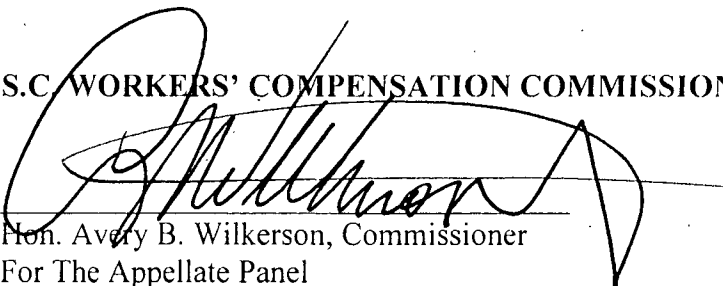
IT IS THEREFORE ORDERED:

The Decision and Order of the Single Commissioner filed in the above entitled matter on February 17, 2012 is hereby **affirmed in full** by the Appellate Panel of the South Carolina Workers' Compensation Commission.

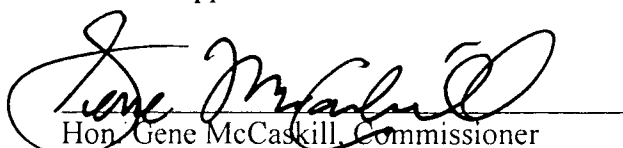
1. PDCAP and State Accident Fund withdrew their appeal against Liberty Mutual prior to oral arguments in this case. Liberty Mutual and the UEF are dismissed as parties from this case.
2. PDCAP shall pay Gustavo Palma temporary total disability at the rate of Two Hundred Sixty Six and 68/100 (\$266.68) Dollars per week from April 30, 2009 through May 19, 2011.
3. PDCAP shall pay Gustavo Palma permanent partial disability in a lump sum in the amount of Twenty Four Thousand Four Hundred and Forty One and 22/100 (\$24,441.22) Dollars.
4. PDCAP shall continue to provide treatment to Gustavo Palma for so long as the treatment will tend to lessen his period of disability in the form of pain management and surgery.

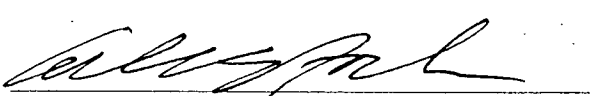
IT IS SO ORDERED!

S.C. WORKERS' COMPENSATION COMMISSION


Hon. Avery B. Wilkerson, Commissioner
For The Appellate Panel

WE CONCUR:


Hon. Gene McCaskill, Commissioner


Hon. 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 persons in the cause by depositing a copy hereof, postage prepaid, in the United States mail addressed to the attorney or attorneys for said parties.

This 30 day of November, 2012
By Valerie D. Oeller

Administrative Assistant to the Commissioner

D. Michael Kelly

Andrew Fajardo

Samuel T. Brunson

Roy A. Howell

Felicia Scott, (Reg & cert)

Matthew C. Robertson

Lois E. McMillan

Lous Cordona (Reg & cert)

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0909301

 **COPY**

EMPLOYEE/CLAIMANT: GUSTAVO PALMA AKA CARLOS LOPEZ

EMPLOYER: FELICIA SCOTT/PEE DEE COMMUNITY ACTION

CARRIER: LIBERTY MUTUAL INSURANCE COMPANY/STATE ACCIDENT
FUND/SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 7TH DAY OF
NOVEMBER, 2011, COMMENCING AT THE HOUR OF 12:02 P.M.,
IN SUMTER, SOUTH CAROLINA, BEFORE THE HONORABLE DERRICK
L. WILLIAMS, ATTENDED BY COUNSEL AS FOLLOWS:

TIMMI A. PARRISH
VERBATIM REPORTER

TIMMI A. PARRISH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, SC 29376
864-921-8743

APPEARANCES

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FLORENCE, SOUTH CAROLINA 29503

ATTORNEY FOR PEE DEE COMMUNITY ACTION
PARTNERSHIP AND THE STATE ACCIDENT FUND.

INTERPRETER: MR. WILMER AVILES

ALSO ATTENDING: MS. BRENDA HART
MR. TONY O. BETHEA

INDEX

PAGE

GUSTAVO PALMA:

DIRECT EXAMINATION BY MR. KELLY.....	13
CROSS EXAMINATION BY MR. BRUNSON.....	21
CROSS EXAMINATION BY MR. HOWELL.....	23
CROSS EXAMINATION BY MR. DANLEY.....	26
RE CROSS EXAMINATION BY MR. BRUNSON.....	30
RE CROSS EXAMINATION BY MR. HOWELL.....	31
RE CROSS EXAMINATION BY MR. BRUNSON.....	32

TONY ORLANDO BETHEA:

DIRECT EXAMINATION BY MR. BRUNSON.....	33
CROSS EXAMINATION BY MR. HOWELL.....	41
CROSS EXAMINATION BY MR. DANLEY.....	48
CROSS EXAMINATION BY MS. SCOTT.....	51
RE CROSS EXAMINATION BY MR. DANLEY.....	53
RE CROSS EXAMINATION BY MS. SCOTT.....	55

BRENDA WILSON HART:

DIRECT EXAMINATION BY MR. DANLEY.....	61
CROSS EXAMINATION BY MR. HOWELL.....	69
CROSS EXAMINATION BY MR. BRUNSON.....	71
REDIRECT EXAMINATION BY MR. DANLEY.....	74
RE CROSS EXAMINATION BY MR. HOWELL.....	76
CERTIFICATE OF NOTARY PUBLIC.....	78

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN SUMTER, SOUTH
4 CAROLINA.

5 * * * * *

6 PRIOR TO HEARING, THE INTERPRETER WAS DULY SWORN TO
7 INTERPRET THE PROCEEDINGS TRULY, ACCURATELY, AND TO THE
8 BEST OF HIS ABILITY.

9 * * * * *

10 **BY COMMISSIONER WILLIAMS:**

11 TODAY'S DATE, NOVEMBER 7, 2011. THIS IS THE
12 WORKERS' COMPENSATION CASE OF MR. GUSTAVO PALMA AKA
13 CARLOS LOPEZ VERSUS FELICIA SCOTT, PEE DEE COMMUNITY
14 ACTION. THE UNINSURED EMPLOYERS' FUND IS A PARTY.
15 LIBERTY MUTUAL IS A PARTY. THE STATE ACCIDENT FUND
16 IS THE CARRIER FOR PEE DEE COMMUNITY ACTION. THIS
17 IS WCC FILE NUMBER 0909301. DATE OF ACCIDENT
18 ALLEGED IS APRIL 30TH OF 2009. ATTORNEY MIKE KELLY
19 FOR THE CLAIMANT. MS. FELICIA SCOTT APPEARS PRO SE.
20 I HAVE ADVISED HER OF HER RIGHT TO HAVE AN ATTORNEY,
21 AS I PREVIOUSLY DID WHEN WE MET IN MYRTLE BEACH.
22 SHE HAS ADVISED ME SHE IS GOING TO GO FORWARD
23 WITHOUT HAVING HER OWN LAWYER. IS THAT CORRECT?

24 **BY MS. SCOTT:**

25 YES, SIR.

1 BY THE COMMISSIONER:

2 AND YOUR ADDRESS IS STILL P.O. BOX 1824,
3 LUMBERTON, NORTH CAROLINA?

4 BY MS. SCOTT:

5 NO, THAT'S HER P.O. BOX. MINE IS 2998 WEST
6 CARTHAGE ROAD, LUMBERTON, NORTH CAROLINA.

7 BY THE COMMISSIONER:

8 WASTE?

9 BY MR. KELLY:

10 WEST CARTHAGE.

11 BY MS. SCOTT:

12 WEST CARTHAGE, LUMBERTON, NORTH CAROLINA 28360.

13 BY THE COMMISSIONER:

14 HOLD ONE ON SECOND. 2998 WEST ---

15 BY MS. SCOTT:

16 CARTHAGE, C-A-R-T-H-A-G-E, ROAD.

17 BY THE COMMISSIONER:

18 ROAD.

19 BY MS. SCOTT:

20 LUMBERTON.

21 BY THE COMMISSIONER:

22 LUMBERTON.

23 BY MS. SCOTT:

24 NORTH CAROLINA 28360.

25 BY THE COMMISSIONER:

1 GOT YOU. PRESENT FOR PEE DEE COMMUNITY ACTION
2 IS ATTORNEY BUBBA BRUNSON, AND THEIR CARRIER, THE
3 STATE ACCIDENT FUND. PRESENT FOR LIBERTY MUTUAL,
4 AND SOLELY LIBERTY MUTUAL, IS ATTORNEY ROY HOWELL.
5 PRESENT FOR THE UNINSURED EMPLOYERS' FUND IS
6 ATTORNEY AL DANLEY. THIS HEARING IS TO DETERMINE
7 WHAT EMPLOYER/CARRIER, IF ANY, IS LIABLE AND TO
8 DETERMINE COMPENSABILITY OF THE ACCIDENT,
9 PERMANENCY, AND TEMPORARY TOTAL, WHICH THE CLAIMANT
10 ALLEGES FROM APRIL 30TH, '09, TO MAY 19TH OF 2011.
11 ALL RIGHT. I HAVE APA SUBMISSIONS HANDED UP FROM
12 ALL OF THE PARTIES, AS WELL AS THE DEPOSITION OF
13 JOSE LUIS CARDONA, DEPOSITION OF FELICIA SCOTT,
14 DEPOSITION OF BRENDA WILSON. ANY OBJECTIONS TO
15 JURISDICTION, VENUE, OR THE APA SUBMISSIONS? MR.
16 KELLY?

17 **BY MR. KELLY:**

18 NONE.

19 **BY THE COMMISSIONER:**

20 MS. SCOTT, WHAT I'M ASKING IS DO YOU HAVE ANY
21 OBJECTIONS TO THE SOUTH CAROLINA WORKERS'
22 COMPENSATION COMMISSION HEARING THE WORKERS' COMP
23 CLAIM TODAY?

24 **BY MS. SCOTT:**

25 NO, SIR.

1 BY THE COMMISSIONER:

2 ALL RIGHT. ANY OBJECTIONS TO US HEARING THIS
3 CASE IN SUMTER, SOUTH CAROLINA?

4 BY MS. SCOTT:

5 NO, SIR.

6 BY THE COMMISSIONER:

7 ANY OBJECTION TO THE SUBMISSION -- TO THE
8 DOCUMENTATION HANDED UP TODAY?

9 BY MS. SCOTT:

10 NO, SIR.

11 BY THE COMMISSIONER:

12 MR. DANLEY, ANY OBJECTION?

13 BY MR. DANLEY:

14 COMMISSIONER, I DO HAVE AN ISSUE WITH PAGES 69
15 AND 70 OF THE APA SUBMISSION FROM LIBERTY MUTUAL. I
16 BELIEVE THOSE ARE HEARSAY, INADMISSIBLE AS APA
17 SUBMISSIONS, AND PARTICULARLY PAGE 69 KIND OF GOES
18 -- STATES LEGAL CONCLUSIONS.

19 BY THE COMMISSIONER:

20 THAT'S NOTED. I WILL TELL YOU, I BELIEVE I
21 HAVE SEEN -- I BELIEVE THESE ARE IN THE COMMISSION
22 FILE ALREADY. BUT THAT'S NOTED. HOWEVER, THEY ARE
23 A PART OF MY FILE ANYWAY. MR. HOWELL, ANY
24 OBJECTIONS TO JURISDICTION, VENUE, OR THE APA
25 SUBMISSIONS?

1 BY MR. HOWELL:

2 NO. I'M NOT SURE THE COMMISSION HAS
3 JURISDICTION OVER MS. SCOTT, BUT THAT'S NOT MY --
4 BECAUSE SHE DIDN'T HAVE FOUR OR MORE EMPLOYEES.

5 BY THE COMMISSIONER:

6 MR. BRUNSON, ANY OBJECTION TO JURISDICTION,
7 VENUE, OR THE APA SUBMISSIONS?

8 BY MR. BRUNSON:

9 OF COURSE WE HAVE A GENERAL OBJECTION TO
10 JURISDICTION, MEANING THAT WE DON'T BELIEVE THERE IS
11 ANY EMPLOYEE/EMPLOYER RELATIONSHIP BETWEEN THE
12 CLAIMANT AND MY AGENCY. HOWEVER, WE ADMIT THAT THE
13 COMMISSION HAS JURISDICTION TO DECIDE THOSE
14 JURISDICTIONAL ISSUES.

15 BY THE COMMISSIONER:

16 VERY GOOD. THEN THE COMMISSION FILE IS PART OF
17 THE RECORD WITH THE EXCEPTION OF ANY SELF-SERVING
18 DECLARATIONS OR ANY UNSTIPULATED MEDICAL REPORTS.
19 IT APPEARS MS. SCOTT PREVIOUSLY -- I'M SORRY;
20 LIBERTY MUTUAL WAS PREVIOUSLY -- THEY WERE ADDED AND
21 THEN THEY WERE DISMISSED. DID SOMEONE ADD THEM BACK
22 IN?

23 BY MR. KELLY:

24 YES; COMMISSIONER BARDEN.

25 BY MR. HOWELL:

1 THEY WERE IN THE CASE. THEN THEY WERE
2 DISMISSED IN THE CASE, BUT I DON'T THINK THERE WAS
3 AN ORDER, AND THEN THERE WAS A 50 REFILED BUT DID
4 NOT NAME LIBERTY MUTUAL AS A PARTY, AND THEN
5 COMMISSIONER BARDEN ADDED THEM AGAIN.

6 BY MR. KELLY:

7 THAT'S RIGHT.

8 BY MR. DANLEY:

9 I THINK THAT WAS FOLLOWING A HEARING WHERE MATT
10 ROBERTSON AT THAT TIME WITH MY OFFICE APPEARED.

11 BY MR. KELLY:

12 THAT'S RIGHT; IN FLORENCE.

13 BY MR. DANLEY:

14 RIGHT.

15 BY MR. KELLY:

16 ONE OF THE MANY TRIPS ON THIS CASE TO FLORENCE.

17 BY THE COMMISSIONER:

18 OKAY. VERY GOOD. ANYTHING THE PARTIES WANT TO
19 STATE FOR THE RECORD OUTSIDE OF WHAT I'VE STATED?
20 DENIED ACCIDENT. CLAIMANT ALLEGES AN INJURY TO HIS
21 RIGHT LEG THAT OCCURRED ON APRIL 30TH, 2009. HE
22 WOULD SEEK TEMPORARY TOTAL FROM THE DATE OF THE
23 ACCIDENT THROUGH MAY 19TH AND A RULING ON HIS
24 PERMANENCY. THE EMPLOYER AND CARRIER WOULD
25 CERTAINLY ALLEGE THE CLAIMANT HAS TO PROVE HE

1 SUSTAINED A COMPENSABLE INJURY BY ACCIDENT. I
2 BELIEVE LIBERTY MUTUAL HAS STATED THEIR POSITION
3 THAT THEIR POLICY FOR MS. SCOTT IS ONLY UNDER NORTH
4 CAROLINA. IT DOES NOT COVER SOUTH CAROLINA CLAIMS.
5 THEY SHOULD BE DISMISSED WITH PREJUDICE FROM THIS
6 CLAIM. PEE DEE COMMUNITY ACTION WOULD ALLEGE THEY
7 ARE NOT A GENERAL CONTRACTOR UNDER SECTION 42-1-415,
8 WOULD RELY ON THE CERTIFICATE OF INSURANCE PROVIDED
9 BY MS. SCOTT. AND THE UNINSURED EMPLOYERS' FUND
10 WOULD ARGUE THAT PEE DEE COMMUNITY ACTION IS A
11 GENERAL CONTRACTOR UNDER THE HOPPER CASE AND 42-1-
12 400. PEE DEE COMMUNITY ACTION COULD NOT RELY ON THE
13 CERTIFICATE OF INSURANCE IN THAT IT DOES NOT
14 SUFFICIENTLY STATE THE COVERAGE IN THIS PARTY. THEY
15 SHOULD BE THE LIABLE PARTY. I'M GOING TO JUST GO
16 AROUND AND MAKE SURE THERE'S NOTHING ELSE FOR THE
17 RECORD.

18 **BY MR. KELLY:**

19 NOTHING FROM THE CLAIMANT.

20 **BY THE COMMISSIONER:**

21 ALL RIGHT. MS. SCOTT, ANYTHING YOU WANT TO
22 STATE FOR THE RECORD?

23 **BY MS. SCOTT:**

24 NO, SIR.

25 **BY MR. DANLEY:**

1 THAT'S ESSENTIALLY IT FOR THE FUND,
2 COMMISSIONER. AGAIN, BECAUSE OF WHAT WE BELIEVE TO
3 HAVE BEEN A SCAM, WE BELIEVE THAT TO THE EXTENT THAT
4 PEE DEE COMMUNITY ACTION MAY HAVE BEEN INVOLVED,
5 THAT THEY SHOULD NOT BE ALLOWED TO TAKE ADVANTAGE OF
6 42-1-415 TO TRANSFER COVERAGE TO THE FUND.

7 BY THE COMMISSIONER:

8 MR. HOWELL?

9 BY MR. HOWELL:

10 I THINK YOU'VE SUCCINCTLY STATED IT.

11 BY THE COMMISSIONER:

12 OKAY. MR. BRUNSON?

13 BY MR. BRUNSON:

14 COMMISSIONER, I'D JUST OBJECT TO ANY
15 CHARACTERIZATION OF THIS PROJECT AS A SCAM. I MEAN,
16 I DON'T KNOW OF ANY LAW OR KNOW WHERE THEY'VE RAISED
17 ANY ISSUE OF ESTOPPEL, WHICH IT SOUNDS LIKE THEY'RE
18 SAYING, PRIOR TO TODAY.

19 BY THE COMMISSIONER:

20 I DON'T THINK HE'S SAYING THE PROJECT IS A
21 SCAM. I BELIEVE HE'S SAYING MAYBE THE CONTRACTORS
22 THAT WERE USED WERE FRAUDULENT.

23 BY MR. BRUNSON:

24 WELL, I MEAN, WE'D JUST OBJECT TO ANY -- IT'S
25 JUST A GOVERNMENT PROGRAM THAT WE FOLLOWED THE BEST

1 WE COULD.

2 BY THE COMMISSIONER:

3 ALL RIGHT; FAIR ENOUGH. ALL RIGHT. LET'S
4 SWEAR THE CLAIMANT IN, PLEASE.

5 * * * * *

6 WILMER AVILES,

7 BEING FIRST DULY SWORN, INTERPRETED ON HIS OATH AS
8 FOLLOWS:

9 * * * * *

10 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
11 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
12 MATTER HEREIN:

13 GUSTAVO PALMA,

14 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
15 FOLLOWS:

16 BY THE COMMISSIONER:

17 ALL RIGHT, MR. KELLY. AND I THINK FOR THE
18 RECORD, I MEAN, OBVIOUSLY I HAVE THE MEDICAL
19 EVIDENCE HERE. WE CAN STREAMLINE SOME OF IT.

20 BY MR. KELLY:

21 I INTEND TO.

22 BY THE COMMISSIONER:

23 BECAUSE I THINK THE MAIN FIGHT WOULD BE ON
24 COVERAGE, BUT CERTAINLY GO OVER THE PERMANENCY
25 ISSUES AS WELL WITH HIM.

1 BY MR. KELLY:

2 SURE, SURE.

3 DIRECT EXAMINATION BY MR. KELLY:

4 Q. STATE YOUR FULL NAME FOR THE RECORD.

5 A. GUSTAVO PALMA MORALES.

6 Q. HOW OLD ARE YOU, MR. PALMA?

7 A. TWENTY-SIX.

8 Q. HOW LONG HAVE YOU BEEN IN THE UNITED STATES OF
9 AMERICA?

10 A. ABOUT SIX YEARS.

11 Q. WHAT SORT OF WORK HAVE YOU DONE IN THE UNITED
12 STATES?

13 A. IN THE FIELD AND IN CONSTRUCTION.

14 Q. DOES HE REMEMBER APRIL 30TH, 2009, ON THE MARION
15 PROJECT?

16 A. YES.

17 Q. HOW DID YOU GET INVOLVED IN THAT JOB?

18 A. THAT DAY OR JUST THE JOB?

19 Q. THE JOB.

20 A. I WENT TO REQUEST WORK FROM LUIS CARDONA, AND THAT'S
21 WHEN HE TOLD ME THAT HE HAD SOME HOUSES TO WORK ON,
22 AND THAT'S WHEN WE WENT TO THOSE HOUSES.

23 Q. AND THOSE HOUSES WERE LOCATED IN THE STATE OF SOUTH
24 CAROLINA?

25 A. YES.

1 Q. SPECIFICALLY MARION, SOUTH CAROLINA?

2 A. YES.

3 Q. WHO BESIDES YOURSELF WAS WORKING ON THAT PROJECT?

4 A. YOU MEAN MY COWORKERS ---

5 Q. YES.

6 A. --- OR WHO ELSE?

7 Q. YES.

8 A. WELL, LUIS CARDONA WAS THERE, A GUY WHO WE CALLED
9 DAVEY, DAVID. I THINK HIS LAST NAME IS SCOTT; I'M
10 NOT SURE. BUT I THINK HE IS THE LADY'S SON. THERE
11 WAS ALSO LUIS' NEPHEW.

12 Q. MS. HART'S SON?

13 A. I BELIEVE SO. LUIS' NEPHEW, A GUY WHO WE CALL YABO,
14 AND TWO OTHER GUYS THAT I DON'T REMEMBER THEIR
15 NAMES.

16 Q. SO THERE WERE FOUR EMPLOYEES OR MORE?

17 A. YES.

18 Q. WHAT WERE YOU PAID? HOW WERE YOU PAID?

19 A. I WAS PAID TEN AN HOUR.

20 Q. HOW MANY HOURS A WEEK?

21 A. SOMETIMES IT WOULD BE 40, SOMETIMES MORE.

22 Q. ALL RIGHT.

23 **BY THE COMMISSIONER:**

24 LET ME STATE FOR THE RECORD, I DID NOT READ AN
25 AVERAGE WEEKLY WAGE AND COMP RATE, AND THAT IS

1 ANOTHER ISSUE ---

2 BY MR. KELLY:

3 CORRECT.

4 BY THE COMMISSIONER:

5 --- I HAVE TO DECIDE. AND I BELIEVE HE JUST
6 TESTIFIED HE MADE \$10 AN HOUR FOR 40 HOURS PER WEEK,
7 AT LEAST 40?

8 BY THE WITNESS:

9 UH-HUH.

10 BY THE COMMISSIONER:

11 IS THAT A YES?

12 BY THE WITNESS:

13 YES.

14 BY THE COMMISSIONER:

15 ALL RIGHT. GO AHEAD, MR. KELLY.

16 DIRECT EXAMINATION RESUMED BY MR. KELLY:

17 Q. DID YOU GET HURT ON THAT JOB?

18 A. YES.

19 Q. HOW DID YOU GET HURT?

20 BY THE INTERPRETER:

21 INTERPRETER WOULD REQUEST CLARIFICATION FROM
22 THE DEPONENT AS TO A WORD USED IN THE ROOFING
23 BUSINESS.

24 WITNESS ANSWERS:

25 A. WE WERE PUTTING DOWN A CHALK LINE TO PUT DOWN THE

1 PLYWOOD WHEN SOME OF THE WOOD SLIPPED. NO. NO, IT
2 WASN'T THE CHALK LINE. WE WERE PUTTING A 2X4 THAT
3 GOES AROUND THE TRUSSES SO THAT THEN WE COULD STACK
4 THE PLYWOOD ON TOP.

5 DIRECT EXAMINATION RESUMED BY MR. KELLY:

6 Q. SO WHAT HAPPENED?

7 A. I WAS HAMMERING IT DOWN, NAILING IT DOWN, AND I
8 GUESS IT WAS TOO HEAVY, AND SO IT FELL, AND IT TOOK
9 ME WITH IT.

10 Q. HOW FAR DID YOU FALL?

11 A. IT WAS ABOUT 14 TO 16 FEET.

12 Q. WHAT DID YOU INJURE?

13 A. MY LEFT ANKLE ON MY LEFT LEG. I'M SORRY; RIGHT LEG.

14 Q. YES. DID YOU GO TO THE HOSPITAL?

15 A. THEY TOOK ME TO THE HOSPITAL.

16 Q. WHO?

17 A. DAVID IN LUIS' TRUCK.

18 Q. WHAT WAS THE STORY ON GIVING A FALSE HISTORY OF
19 ACCIDENT?

20 A. SINCE I FELL STANDING, LUIS TOLD ME THAT I HAD JUST
21 SPRAINED MY LEG AND THAT HE WANTED TO GO AHEAD AND
22 JUST RELOCATE IT. BUT I TOLD HIM NO, THAT I WANTED
23 TO GO TO THE HOSPITAL, AND SO HE SAID, "WELL, SINCE
24 IT'S DISLOCATED, IT'LL HEAL BACK IN A SHORT PERIOD
25 OF TIME." IN ANY CASE, DAVID THEN TOOK ME TO THE

1 HOSPITAL BUT SAID THAT I SHOULD TELL THEM THAT I HAD
2 INJURED MYSELF AT HOME SO I WOULDN'T HAVE TO PAY ALL
3 THE MEDICAL INVOICES.

4 BY MR. DANLEY:

5 OBJECT TO THE HEARSAY.

6 BY THE COMMISSIONER:

7 SUSTAINED.

8 WITNESS RESUMES:

9 A. THEY TOOK ME TO THE DILLON HOSPITAL. THEY LEFT ME
10 THERE, AND THEN I HAD TO CALL A FRIEND TO PICK ME
11 UP.

12 DIRECT EXAMINATION RESUMED BY MR. KELLY:

13 Q. IS THE DAVID YOU'RE REFERRING TO A DAVID SCOTT, THE
14 SON OF MS. HART?

15 A. YES.

16 Q. ACCORDING TO THE MEDICAL RECORDS, YOU HAD SURGERY ON
17 YOUR LEG AND YOU EVENTUALLY WERE RELEASED BY THE
18 DOCTOR ON MAY 19TH OF THIS YEAR; IS THAT CORRECT?

19 A. YES.

20 Q. DO YOU HAVE ANY, WHAT WE CALL, HARDWARE OR ANY PINS
21 OR ANYTHING IN YOUR LEG AT THIS TIME?

22 A. I HAVE FOUR SCREWS IN MY LEG.

23 Q. CAN WE SEE THOSE?

24 BY THE COMMISSIONER:

25 FOR THE RECORD, I'M LOOKING AT THE CLAIMANT'S

1 RIGHT FOOT. HE'S WEARING A BRACE THAT WOULD RUN
2 FROM HIS FOOT AND ALMOST ALL THE WAY UP HIS SHIN.
3 DO YOU ALWAYS WEAR THIS BRACE?

4 **BY THE WITNESS:**

5 TO WALK OUTSIDE I DO, BECAUSE I CAN'T STAND ON
6 MY OWN ON THIS LEG.

7 **BY THE COMMISSIONER:**

8 ALL RIGHT. THE BRACE HE HAS IS A PLASTIC HARD-
9 TYPE BRACE; IT'S NOT A SOFTER-TYPE BRACE. ALL
10 RIGHT; GO AHEAD. I'M ALSO LOOKING AT HIS RIGHT LEG
11 AND HIS RIGHT FOOT. I SEE WHERE THE SURGICAL SCARS
12 ARE. HE HAS SEVERAL DIFFERENT SURGICAL SCARS ON THE
13 ANTERIOR PORTION OF HIS ANKLE. HE HAS A SURGICAL
14 SCAR ABOUT FIVE INCHES IN LENGTH. ON THE POSTERIOR
15 PORTION THERE, TWO SURGICAL SCARS. IN THE ACTUAL
16 PART THERE'S ANOTHER SCAR ABOUT FOUR TO FIVE INCHES
17 IN LENGTH. AND ON THE TOP PORTION OF HIS LEG
18 THERE'S ANOTHER SURGICAL SCAR ABOUT FOUR TO FIVE
19 INCHES IN LENGTH. HIS FOOT, THE ACTUAL FOOT AREA
20 DOES LOOK A LITTLE BIT SWOLLEN. DOES YOUR FOOT STAY
21 THIS SIZE ALL THE TIME? DOES IT SWELL AND THEN ---

22 **BY THE WITNESS:**

23 IT DOES SWELL QUITE OFTEN, SO THAT'S WHY I
24 CAN'T TAKE THIS OFF SO OFTEN.

25 **BY THE COMMISSIONER:**

1 DOES THE ANKLE AREA SWELL AS WELL?

2 BY THE WITNESS:

3 YES.

4 BY THE COMMISSIONER:

5 VERY GOOD.

6 DIRECT EXAMINATION RESUMED BY MR. KELLY:

7 Q. ALL RIGHT. LET ME GO AHEAD AND FINISH UP WITH YOU.
8 I'M ALMOST FINISHED NOW. HAVE YOU BEEN BACK TO THE
9 DOCTOR SINCE MAY 19TH WHEN HE TURNED YOU LOOSE?

10 A. I DON'T REMEMBER. I DON'T THINK SO.

11 Q. HOW MUCH WORK HAVE YOU DONE SINCE MAY 19TH OF 2011
12 WHEN THE DOCTOR TURNED YOU LOOSE?

13 A. I'VE ONLY WORKED IN THE FIELD. I THINK IT WAS FROM
14 THE END OF MAY 'TIL ABOUT THE END OF JULY.

15 Q. WHEN HE SAYS, "IN THE FIELD," DEFINE WHAT THAT MEANS
16 FOR ME.

17 A. WORKING IN TOBACCO FIELDS.

18 Q. HAS NOT DONE ANY CONSTRUCTION?

19 A. NO, I HAVEN'T DONE THAT.

20 Q. DOES HE KNOW IF HE'LL BE ABLE TO DO THE SAME TYPE OF
21 WORK THAT HE WAS DOING WHEN HE GOT HURT?

22 A. NOT A LOT BECAUSE THE DOCTOR TOLD ME THAT I COULDN'T
23 HOLD MUCH WEIGHT BECAUSE OF THIS.

24 BY MR. BRUNSON:

25 OBJECTION, COMMISSIONER.

1 BY THE COMMISSIONER:

2 OKAY. SUSTAINED. TRY NOT TO TELL US WHAT ANY
3 DOCTORS TOLD YOU.

4 DIRECT EXAMINATION RESUMED BY MR. KELLY:

5 Q. WHAT DOES HE THINK; NOT WHAT THE DOCTOR THINKS?

6 BY MR. DANLEY:

7 OBJECTION TO THAT. IF I UNDERSTOOD THE
8 QUESTION, IT WAS WHAT DOES HE THINK THE DOCTOR
9 THINKS.

10 BY MR. KELLY:

11 NO, NO, NO. WHAT DOES HE THINK HE CAN DO AND
12 NOT DO, IS WHAT I MEANT TO SAY.

13 BY THE COMMISSIONER:

14 FAIR ENOUGH. ALL RIGHT. GO AHEAD, MR. KELLY.

15 DIRECT EXAMINATION RESUMED BY MR. KELLY:

16 Q. WHAT DOES HE THINK HE'S CAPABLE OF DOING NOW?

17 A. IN CONSTRUCTION I DON'T THINK SO BECAUSE YOU MAKE
18 MORE THE HIGHER YOU GO, AND I CAN'T GO UP LADDERS
19 ANYMORE OR ON ROOFS. I WORK IN THE FIELD BECAUSE
20 YOU CAN ONLY WORK SO MANY HOURS. I WORK A FEW HOURS
21 THERE INSTEAD OF THE WHOLE DAY. IN CONSTRUCTION YOU
22 HAVE TO WORK THE WHOLE DAY AND CARRY A LOT OF HEAVY
23 THINGS.

24 BY MR. KELLY:

25 ONE FINAL QUESTION TO THE CLAIMANT, WILMER, AND

1 THAT IS HOW DID HE GET PAID? CASH, CHECK?

2 WITNESS ANSWERS:

3 A. CASH.

4 DIRECT EXAMINATION RESUMED BY MR. KELLY:

5 Q. WAS THAT ON A FRIDAY?

6 A. YES.

7 BY MR. KELLY:

8 THAT'S ALL I HAVE.

9 BY THE COMMISSIONER:

10 MS. SCOTT, DO YOU HAVE ANY QUESTIONS? YOU HAVE
11 A RIGHT TO ASK QUESTIONS.

12 BY MS. SCOTT:

13 NO, SIR.

14 BY THE COMMISSIONER:

15 WE'LL START THIS WAY AROUND. MR. BRUNSON, ANY
16 QUESTIONS FOR THE CLAIMANT?

17 CROSS EXAMINATION BY MR. BRUNSON:

18 Q. SIR, HOW FAR DID YOU GO IN SCHOOL IN MEXICO?

19 A. I WENT TO MIDDLE SCHOOL, WHAT WOULD BE HERE ABOUT
20 NINTH GRADE.

21 Q. OKAY. DO YOU SPEAK ENGLISH?

22 A. SOME.

23 Q. SIR, I HAD SENT A SUBPOENA TO YOUR LAWYER WHEN THIS
24 CASE WAS FIRST HELD ASKING FOR TAX RETURNS, AND I
25 BELIEVE THE RESPONSE WAS YOU HAVE NO TAX RETURNS.

1 IS THAT TRUE?

2 A. YES.

3 Q. DO YOU HAVE ANY RECORDS TO SUBSTANTIATE THE WAGES
4 YOU EARNED WHILE WORKING OVER IN MARION?

5 A. NO, BECAUSE I NEVER RECEIVED ANY TYPE OF RECEIPTS OR
6 PAY STUBS.

7 Q. AND, SIR, ISN'T IT TRUE THAT YOU HAD WORKED FOR
8 ANOTHER CONTRACTOR ON THIS SAME JOB?

9 A. YES, BEFORE.

10 Q. AND WHO WAS THAT?

11 A. I THINK HIS NAME IS MENDOZA CONSTRUCTION.

12 Q. AND WHAT WERE YOU DOING FOR MR. MENDOZA?

13 **BY THE INTERPRETER:**

14 COULD YOU REQUEST THE CLAIMANT REPEAT HIS
15 ANSWER? I DID NOT UNDERSTAND IT.

16 **CROSS EXAMINATION RESUMED BY MR. BRUNSON:**

17 Q. COULD YOU REPEAT THAT?

18 A. PUTTING DOWN THE FOOTERS ON THE FLOOR.

19 Q. WOULD THAT BE THE FOOTINGS?

20 A. I THINK SO.

21 Q. AND WHEN DID YOU DO THAT WORK; DO YOU REMEMBER?

22 A. A LONG TIME BEFORE I WORKED FOR LUIS.

23 Q. AND HOW LONG DID YOU WORK AS A FRAMER ON THE MARION
24 JOB BEFORE YOU GOT HURT?

25 A. I THINK IT WAS ABOUT TWO MONTHS, SOMEWHERE AROUND

1 THERE.

2 BY MR. BRUNSON:

3 THANK YOU, SIR. THAT'S ALL I HAVE.

4 BY THE COMMISSIONER:

5 MR. HOWELL, ANY QUESTIONS?

6 BY MR. HOWELL:

7 YES, SIR.

8 CROSS EXAMINATION BY MR. HOWELL:

9 Q. MR. PALMA, YOU WERE LIVING IN HAMER, SOUTH CAROLINA,
10 AT THE TIME YOU WERE HIRED BY MR. CARDONA; IS THAT
11 CORRECT?

12 A. YES.

13 Q. AND IT IS MR. CARDONA WHO HIRED YOU TO WORK ON THIS
14 JOB; IS THAT CORRECT?

15 A. YES.

16 Q. AND MR. CARDONA HIRED YOU IN SOUTH CAROLINA TO DO
17 THE WORK IN SOUTH CAROLINA; IS THAT CORRECT?

18 A. YES.

19 Q. AND IT'S MR. CARDONA WHO TOLD YOU HOW MUCH HE WAS
20 GOING TO PAY YOU PER HOUR; IS THAT CORRECT?

21 A. YES.

22 Q. AND IT IS MR. CARDONA WHO TOLD YOU WHAT TIME TO BE
23 AT WORK AND WHAT TIME TO LEAVE; IS THAT CORRECT?

24 A. YES.

25 Q. AND IT IS MR. CARDONA WHO SUPERVISED YOUR WORK ON A

1 DAILY BASIS; IS THAT CORRECT?

2 A. YES.

3 Q. AND IT IS MR. CARDONA WHO PROVIDED YOU ALL THE TOOLS
4 AND EQUIPMENT THAT YOU USED ON THE JOB EVERY DAY; IS
5 THAT CORRECT?

6 A. YES.

7 Q. AND IT IS MR. CARDONA WHO PAID YOU EVERY WEEK IN
8 CASH; IS THAT CORRECT?

9 A. YES.

10 Q. THIS LADY HERE, MS. SCOTT, DID NOT HIRE YOU TO DO
11 ANY WORK IN SOUTH CAROLINA, DID SHE?

12 A. NO. I HAVE NEVER SEEN HER BEFORE.

13 Q. OKAY. THE FIRST TIME YOU SAW MS. SCOTT WAS WHEN WE
14 HAD A HEARING SET IN MYRTLE BEACH ABOUT FOUR OR FIVE
15 MONTHS AGO; IS THAT CORRECT?

16 A. YES. BUT I THOUGHT THAT THE LADY WHO'S BACK HERE
17 WAS THE OWNER BECAUSE LUIS HAD TOLD ME THAT SHE WAS
18 THE OWNER OF THE INSURANCE COMPANY AND WHATNOT.

19 Q. THE LADY BACK HERE, YOU'RE TALKING ABOUT THE LADY
20 SITTING BACK AWAY FROM THE TABLE; IS THAT CORRECT?

21 A. YES.

22 Q. NOT FELICIA SCOTT?

23 A. NO. I THOUGHT THAT FELICIA SCOTT IS THE LADY WHO IS
24 IN THE BACK.

25 Q. OKAY. AS FAR AS YOU KNOW, THIS LADY SITTING AT THE

1 TABLE HAD NOTHING TO DO WITH THIS JOB, DID SHE?

2 A. UH-HUH. YES.

3 Q. NOW, EARLIER, IN YOUR DIRECT TESTIMONY, YOU
4 INDICATED THAT WHEN YOU GOT READY TO GO TO THE
5 HOSPITAL THAT SOMEBODY TOLD YOU TO GIVE A FALSE NAME
6 WHEN YOU WENT TO THE HOSPITAL. WAS THAT LUIS
7 CARDONA WHO TOLD YOU THAT?

8 A. YES.

9 Q. AND AFTER YOU WERE INJURED, ISN'T IT TRUE THAT MR.
10 CARDONA CONTINUED TO PAY YOU WHILE YOU WERE OUT OF
11 WORK FOR SEVERAL WEEKS?

12 A. IN TOTAL HE GAVE ME 100 OR 120. I DON'T REMEMBER
13 VERY WELL. IN TOTAL IT WAS \$300. BUT HE TOLD ME
14 THAT HE COULD NOT PAY ME ANYMORE BECAUSE IT HAD BEEN
15 MY FAULT THAT I HAD INJURED MYSELF AT WORK, AND THAT
16 HE COULD NOT PAY ME ANYTHING ELSE. I TOLD HIM THAT
17 ALL I WANTED WAS HIS HELP UNTIL I COULD GET BACK TO
18 WORK.

19 Q. BUT, AGAIN, IT WAS MR. CARDONA WHO PAID YOU THAT
20 MONEY; IS THAT CORRECT?

21 A. YES.

22 Q. BECAUSE HE WAS YOUR EMPLOYER; ISN'T THAT RIGHT?

23 **BY MR. BRUNSON:**

24 OBJECTION, COMMISSIONER. HE'S ASKING FOR A
25 LEGAL CONCLUSION.

1 BY THE COMMISSIONER:

2 I'LL LET HIM ANSWER THAT.

3 WITNESS ANSWERS:

4 A. WELL, HE TOLD US THAT WE WERE WORKING FOR FELICIA
5 SCOTT BUT THAT, YOU KNOW, I WOULD TALK WITH HIM
6 ABOUT EVERYTHING.

7 CROSS EXAMINATION RESUMED BY MR. HOWELL:

8 Q. IN YOUR DEPOSITION DIDN'T YOU TELL US THAT AS FAR AS
9 YOU WERE CONCERNED MR. CARDONA WAS YOUR EMPLOYER?

10 A. UH-HUH. YES.

11 Q. AND, AGAIN, YOU NEVER SAW THIS LADY EVER ON ANY JOB,
12 DID YOU; MS. SCOTT?

13 A. CORRECT. NO, I NEVER SAW HER. WHO I DID SEE ONCE
14 OR TWICE WAS THE LADY SITTING BEHIND HER.

15 BY MR. HOWELL:

16 THANK YOU, SIR. THOSE ARE ALL THE QUESTIONS I
17 HAVE.

18 BY THE COMMISSIONER:

19 MR. DANLEY?

20 CROSS EXAMINATION BY MR. DANLEY:

21 Q. MR. PALMA, YOU WERE NOT PRESENT WHEN MR. CARDONA
22 HIRED DAVID SCOTT; IS THAT CORRECT?

23 A. CORRECT; I WAS NOT PRESENT.

24 Q. SO YOU WOULD NOT KNOW OF THE WORKING RELATIONSHIP
25 BETWEEN DAVID SCOTT AND MR. CARDONA ON THAT MARION

1 PROJECT; IS THAT CORRECT?

2 A. YES.

3 Q. AND YOU TESTIFIED ON DIRECT EXAMINATION THAT THERE
4 WERE TWO EMPLOYEES WHOSE NAMES YOU COULD NOT
5 REMEMBER; IS THAT CORRECT?

6 A. YES.

7 Q. DO YOU REMEMBER IF THOSE EMPLOYEES, THE NATIONALITY,
8 IF THEY WERE WHITE, BLACK, HISPANIC?

9 A. I THINK THEY WERE HISPANIC, BUT I'M NOT SURE.

10 Q. AND YOU WERE NOT PRESENT WHEN MR. CARDONA HIRED
11 THOSE TWO OTHER EMPLOYEES; IS THAT CORRECT?

12 A. CORRECT.

13 Q. AND SO YOU WOULD NOT KNOW OF THE WORKING
14 RELATIONSHIP BETWEEN MR. CARDONA AND THOSE OTHER TWO
15 EMPLOYEES; IS THAT CORRECT?

16 A. CORRECT.

17 Q. WHEN MR. CARDONA HIRED YOU, WAS THAT CONVERSATION BY
18 TELEPHONE OR WAS IT IN PERSON?

19 A. IT WAS IN PERSON.

20 Q. AND WHERE DID THAT CONVERSATION TAKE PLACE IN
21 PERSON?

22 A. I THINK IT WAS AT HOME. HE CAME OVER TO MY HOME.

23 Q. WHICH IS IN HAMER, SOUTH CAROLINA?

24 A. YES.

25 Q. WHEN HE CAME OVER TO YOUR HOME, DID HE ACTUALLY HIRE

1 YOU AT THAT POINT IN TIME?

2 A. NO. HE ASKED IF I WANTED TO GO WORK FOR HIM.

3 Q. ALL RIGHT. SO, HE DID NOT ACTUALLY HIRE YOU AT THAT
4 POINT IN TIME; IS THAT CORRECT?

5 A. YES, HE DID HIRE ME AT THAT POINT.

6 Q. ALL RIGHT. AND YOU TESTIFIED EARLIER THAT DAVID
7 SCOTT TOOK YOU TO THE HOSPITAL IN MR. CARDONA'S
8 TRUCK; IS THAT CORRECT?

9 A. CORRECT.

10 Q. AND ON EACH FRIDAY ON WHICH YOU WERE PAID, WERE YOU
11 PAID BY MR. CARDONA OR MS. SCOTT?

12 A. MR. CARDONA.

13 Q. NOW, BEFORE YOU SAY THAT YOU WERE HIRED BY MR.
14 CARDONA, DID YOU HAVE ANY CONVERSATION WITH MR.
15 BETHEA ABOUT WORKING ON THIS MARION PROJECT?

16 A. WE HAD CONVERSED TWO OR THREE TIMES. WE SPOKE TWO
17 OR THREE TIMES BECAUSE I WOULD SEE HIM AT THE JOB
18 SITE.

19 Q. AND DID YOU ASK MR. BETHEA TO BE ALLOWED TO WORK ON
20 THAT MARION PROJECT BEFORE YOU WERE HIRED BY MR.
21 CARDONA?

22 A. I THINK SO.

23 Q. AND AT SOME POINT IN TIME DID YOU AND MR. CARDONA GO
24 AND HAVE SOME CONVERSATION WITH MR. BETHEA ABOUT
25 WORKING ON THIS PROJECT TOGETHER?

1 A. I DON'T UNDERSTAND THE QUESTION.

2 Q. BEFORE MR. CARDONA MET YOU AT YOUR HOME IN HAMER,
3 SOUTH CAROLINA, DID YOU AND MR. CARDONA GO AND MEET
4 WITH MR. BETHEA ABOUT WORKING ON THE MARION PROJECT?

5 A. I PRESENTED HIM TO LUIS AND SPOKE ABOUT THE JOB, BUT
6 FROM THERE ON OUT THEY DIDN'T TALK ABOUT IT.

7 Q. WHEN YOU SAY YOU PRESENTED HIM TO LUIS, ARE YOU
8 REFERRING TO MR. BETHEA?

9 A. YES.

10 Q. AND AFTER YOU PRESENTED MR. BETHEA TO MR. CARDONA,
11 WERE YOU LATER HIRED BY MR. CARDONA TO WORK ON THE
12 MARION PROJECT?

13 A. YES.

14 Q. WHERE DID YOU PRESENT MR. BETHEA TO MR. CARDONA?

15 A. I DON'T REMEMBER VERY WELL THE LOCATION.

16 Q. WAS IT IN MARION, SOUTH CAROLINA, OR HAMER, SOUTH
17 CAROLINA?

18 A. I THINK IT WAS IN MARION.

19 Q. WHEN YOU PRESENTED MR. BETHEA TO MR. CARDONA, WERE
20 YOU PRESENT WHEN ANY CONVERSATION TOOK PLACE BETWEEN
21 THE TWO OF THEM?

22 A. NO.

23 **BY MR. DANLEY:**

24 THANK YOU, COMMISSIONER. THAT'S ALL I HAVE.

25 **BY THE COMMISSIONER:**

1 ANY REDIRECT?

2 **BY MR. KELLY:**

3 NOTHING.

4 **BY THE COMMISSIONER:**

5 ALL RIGHT. MR. BRUNSON, ANY OTHER QUESTIONS
6 FOR THE CLAIMANT?

7 **RE CROSS EXAMINATION BY MR. BRUNSON:**

8 Q. SIR, HAD YOU WORKED FOR MR. CARDONA BEFORE THE JOBS
9 IN MARION?

10 A. YES.

11 Q. OKAY. AND DID YOU HAVE HIS PHONE NUMBER?

12 A. I HAD THEM. RIGHT NOW I DON'T HAVE ANY. I DON'T
13 KNOW THEM BECAUSE HE'S CHANGED THEM. IT'S BEEN A
14 VERY LONG WHILE SINCE I'VE SPOKEN WITH HIM.

15 Q. ALL RIGHT. AND, SIR, YOU WERE WORKING FOR ANOTHER
16 CONTRACTOR NAMED MENDOZA ON THE FOOTINGS; IS THAT
17 CORRECT?

18 A. I ONLY WORKED A FEW WEEKS WITH HIM.

19 Q. AND WHEN THAT WORK ENDED, YOU CONTACTED MR. CARDONA
20 ABOUT DOING THE FRAMING; ISN'T THAT CORRECT?

21 A. NO. HE HAD CONTACTED ME BECAUSE I PRESENTED HIM TO
22 TONY.

23 Q. WHAT DO YOU MEAN BY YOU PRESENTED HIM TO TONY?

24 A. BECAUSE HE CALLED ME ON THE PHONE AND I TOLD HIM
25 THAT I WAS WORKING IN MARION, SOUTH CAROLINA, AND HE

1 WENT TO WHERE I WAS WORKING. I THINK THAT'S HOW IT
2 HAPPENED. AND I TOLD HIM THAT TONY WAS THE ONE IN
3 CHARGE OF THE HOME SITE WE WERE WORKING ON.

4 Q. SIR, YOU MENTIONED THAT MS. HART WAS PRESENT AT THE
5 JOB SITE FROM TIME TO TIME? AND THAT'S THE LADY
6 BACK HERE.

7 A. I THINK I SAW HER TWO OR THREE TIMES THERE.

8 Q. ALL RIGHT. AND ACCORDING TO YOUR TESTIMONY, MR.
9 CARDONA TOLD YOU THAT YOU WERE WORKING FOR FELICIA
10 SCOTT, AND YOU THOUGHT THAT THAT WAS FELICIA SCOTT?

11 A. YES, BECAUSE HE TOLD ME THAT SHE WAS MS. SCOTT.

12 BY MR. BRUNSON:

13 OKAY. THANK YOU, SIR. THAT'S ALL I HAVE.

14 BY THE COMMISSIONER:

15 MR. HOWELL, ANY OTHER QUESTIONS?

16 RECROSS EXAMINATION BY MR. HOWELL:

17 Q. ACTUALLY, WHAT HE TOLD YOU WAS THAT THE INSURANCE
18 WAS IN MS. SCOTT'S NAME; ISN'T THAT RIGHT?

19 A. YES, HE DID SAY THAT, BUT HE ALSO SAID THAT WE WERE
20 WORKING FOR HER. THAT'S ALL HE SAID.

21 Q. IT TURNS OUT THAT MS. SCOTT, THIS LADY WHO IS
22 SITTING AT THE TABLE, WAS NEVER OUT THERE ON THE JOB
23 SITE, THOUGH, WAS SHE?

24 A. I NEVER SAW HER. THE ONE WHO I SAW IS THE ONE IN
25 THE BACK OF THE ROOM.

1 Q. SO, AGAIN, LUIS HIRED YOU; IS THAT CORRECT?

2 A. YES.

3 Q. AT YOUR HOUSE IN HAMER, SOUTH CAROLINA; IS THAT
4 CORRECT?

5 A. YES.

6 Q. AND HE'S THE PERSON THAT SUPERVISED YOU, PAID YOU,
7 TOLD YOU WHAT TO DO EACH AND EVERY DAY THAT YOU WERE
8 OUT ON THE JOB; IS THAT CORRECT?

9 A. YES.

10 BY MR. HOWELL:

11 THANK YOU.

12 BY THE COMMISSIONER:

13 MR. DANLEY, ANY OTHER QUESTIONS?

14 BY MR. DANLEY:

15 NONE.

16 BY MR. BRUNSON:

17 CAN I ASK ONE MORE QUESTION IN RESPONSE TO ---

18 BY THE COMMISSIONER:

19 ALL RIGHT.

20 RECROSS EXAMINATION BY MR. BRUNSON:

21 Q. SIR, ISN'T IT, IN FACT, TRUE THAT YOU WERE PAID AT A
22 BANK, OUTSIDE OF A BANK IN NORTH CAROLINA?

23 A. NO.

24 Q. YOU WERE PAID ON THE JOB SITE?

25 A. YES.

1 BY THE COMMISSIONER:

2 ANY OTHER WITNESSES FOR THE CLAIMANT?

3 BY MR. KELLY:

4 NONE.

5 BY THE COMMISSIONER:

6 MR. BRUNSON?

7 BY MR. BRUNSON:

8 YES, SIR. I'D CALL TONY BETHEA.

9 (OFF-THE RECORD DISCUSSION)

10 BY THE COMMISSIONER:

11 ALL RIGHT. SWEAR HIM IN, PLEASE.

12 * * * * *

13 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
14 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
15 MATTER HEREIN:

16 TONY ORLANDO BETHEA,

17 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS
18 FOLLOWS:

19 BY THE COMMISSIONER:

20 ALL RIGHT. MR. BRUNSON?

21 DIRECT EXAMINATION BY MR. BRUNSON:

22 Q. SIR, CAN YOU STATE YOUR FULL NAME FOR THE RECORD.

23 A. TONY ORLANDO BETHEA.

24 (OFF THE RECORD)

25 DIRECT EXAMINATION RESUMED BY MR. BRUNSON:

1 Q. TONY, WHERE ARE YOU FROM?

2 A. DILLON, SOUTH CAROLINA.

3 Q. OKAY. WERE YOU BORN THERE?

4 A. I WAS.

5 Q. AND WHERE DID YOU GO TO SCHOOL?

6 A. DILLON HIGH SCHOOL.

7 Q. WHEN DID YOU FINISH?

8 A. 1977.

9 Q. ALL RIGHT. AND WHAT DID YOU DO AFTER HIGH SCHOOL?

10 A. I WENT TO THE MARINE CORPS.

11 Q. AND HOW LONG WERE YOU IN THE MARINE CORPS?

12 A. FIFTEEN YEARS.

13 Q. AND HOW DID YOU END YOUR SERVICE WITH THE MARINE
14 CORPS?

15 A. I INJURED MY KNEES, AND I COULDN'T QUALIFY TO DO
16 CERTAIN THINGS.

17 Q. YOU WERE MEDICALLY DISCHARGED?

18 A. THAT'S CORRECT.

19 Q. AND WHAT WAS YOUR RANK?

20 A. I WAS AN E-7 GENERAL SERGEANT.

21 Q. AND AFTER YOU RETURNED TO DILLON, DID YOU GO INTO
22 THE CONSTRUCTION BUSINESS?

23 A. I DID.

24 Q. AND WHAT WAS THE NAME OF YOUR CONSTRUCTION BUSINESS?

25 A. QUALITY AND AFFORDABLE CONSTRUCTION.

1 Q. AND DID YOU BUILD HOUSES?

2 A. I DID.

3 Q. IT'S NO SECRET, BUT IN 2008 THE HOUSING MARKET WENT
4 KIND OF BAD; IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. ALL RIGHT. WHEN DID YOU GO TO WORK FOR PEE DEE
7 COMMUNITY ACTION PARTNERSHIP?

8 A. 2008.

9 Q. WAS IT TOWARD THE END OF THE YEAR?

10 A. I THINK IT WAS IN JUNE OF THAT YEAR.

11 Q. ALL RIGHT. AND PEE DEE COMMUNITY ACTION
12 PARTNERSHIP, DO YOU KNOW WHAT THEY DO?

13 A. THEY ARE A NONPROFIT ORGANIZATION THAT PROVIDES
14 COMMUNITY SERVICE TO ECONOMICALLY CHALLENGED PEOPLE,
15 LOW AND VERY LOW INCOME.

16 Q. OKAY. AND THE PORTION OF PEE DEE COMMUNITY ACTION
17 PARTNERSHIP THAT YOU WORKED FOR WAS KNOWN AS WHAT?

18 A. SELF-HELP HOUSING.

19 Q. NOW, WHAT WAS YOUR JOB TITLE?

20 A. I'M A CONSTRUCTION SUPERVISOR.

21 Q. WHO FUNDED THIS PROJECT; DO YOU KNOW?

22 A. DEPARTMENT OF AGRICULTURE.

23 Q. ALL RIGHT. AND IF YOU COULD SORT OF TELL ME HOW IT
24 WORKS.

25 A. THE SELF-HELP PROGRAM IS A PROGRAM FOR PEOPLE OF LOW

1 AND VERY LOW INCOME TO OBTAIN QUALITY HOUSING, AND
2 THE WAY IN WHICH THEY DO THAT IS THEY ACT AS THEIR
3 OWN CONTRACTORS, AND THE GOVERNMENT HIRES -- NOT
4 HIRES, BUT THEY GIVE THE GRANT TO PEE DEE COMMUNITY
5 ACTION AGENCY TO SUPERVISE AND GUIDE THOSE PEOPLE IN
6 THEIR CONSTRUCTION PROJECT.

7 Q. I'VE BEEN TO THE PROJECT, AND IT'S MY UNDERSTANDING
8 THAT YOU ALL HAVE WHAT I CALL A CONSTRUCTION TRAILER
9 OUT THERE?

10 A. THAT'S CORRECT.

11 Q. OKAY. AND WHEN THE U.S. DEPARTMENT OF AGRICULTURE
12 GIVES THESE LOANS, WHOSE NAME ARE THEY GIVEN IN?

13 A. THEY GIVE A GRANT TO THE NONPROFIT ORGANIZATION TO
14 ASSIST THE HOMEOWNERS. THE HOMEOWNERS GET A LOAN
15 FOR CONSTRUCTION DIRECTLY FROM THE DEPARTMENT OF
16 AGRICULTURE.

17 Q. ALL RIGHT. AND IT'S MY UNDERSTANDING THAT THE FIRST
18 PORTION OF THIS PROJECT DEALT WITH SIX HOUSES, IS
19 THAT RIGHT?

20 A. THAT'S CORRECT.

21 Q. AND WERE THESE HOUSES BEING BUILT FOR SIX
22 INDIVIDUALS?

23 A. SIX INDIVIDUALS, YES.

24 Q. AND I KEEP YOU CALLING YOU A CONSTRUCTION MANAGER.
25 IS THAT YOUR TITLE?

1 A. IT'S -- I GUESS THEY KIND OF GO TOGETHER, BUT IT'S
2 CONSTRUCTION SUPERVISOR.

3 Q. CONSTRUCTION SUPERVISOR?

4 A. YES.

5 Q. ALL RIGHT. AND YOU WERE PAID A SALARY?

6 A. YES.

7 Q. AND THAT WAS BY PEE DEE COMMUNITY ACTION
8 PARTNERSHIP?

9 A. THAT'S CORRECT.

10 Q. WHEN DID YOU ALL BEGIN CONSTRUCTION ON THESE HOUSES;
11 DO YOU REMEMBER?

12 A. I THINK IT WAS ACTUALLY JUNE OF 2008.

13 Q. AND WAS THAT ON THE HOUSES, OR WAS THAT ON THE
14 NEIGHBORHOOD?

15 A. OH, I'M SORRY. THE DEVELOPMENT WAS SOONER THAN
16 THAT. I CAN'T -- MAYBE A YEAR PRIOR TO THAT WE
17 ACTUALLY STARTED, WITH THE ASSISTANCE OF THE CITY
18 AND THE COUNTY AND OTHER DONORS, DEVELOPING THE
19 SITE.

20 Q. OKAY. DO YOU KNOW WHEN YOU ACTUALLY BROKE GROUND ON
21 THE FIRST HOUSE?

22 A. I'M GONNA HAVE TO THINK. IT WAS MAYBE AUGUST OF
23 2008.

24 Q. AND DO YOU KNOW THIS GENTLEMAN HERE?

25 A. YES, I DO.

1 Q. WAS HE ON THE JOB PRIOR TO THE FRAMING BEING DONE?

2 A. YES, HE WAS.

3 Q. DID HE APPROACH YOU ABOUT DOING FRAMING?

4 A. HE ASKED IF HE COULD DO WORK ON THE PROJECT OTHER
5 THAN ASSISTING THAT FIRST CONTRACTOR, BUT I INFORMED
6 HIM WE CAN'T HIRE -- WE ONLY HIRE CONTRACTORS; WE
7 DON'T HIRE INDIVIDUALS.

8 Q. DID HE EVER BRING A GENTLEMAN NAMED LUIS CARDONA TO
9 YOU?

10 A. I THINK HE MAY HAVE INTRODUCED HIM TO ME. I'M NOT
11 CERTAIN HOW I ACTUALLY MET MR. CARDONA, BUT IT MAY
12 HAVE BEEN THROUGH HIM.

13 Q. AND WERE YOU ABLE TO HIRE MR. CARDONA TO DO THE
14 FRAME WORK ORIGINALLY?

15 A. NO, I WAS NOT.

16 Q. AND WHY WAS THAT?

17 A. 'CAUSE HE WASN'T A -- HE DIDN'T HAVE THE PROPER
18 CREDENTIALS AND INSURANCE.

19 Q. YOU'VE BEEN IN THE CONSTRUCTION BUSINESS SINCE WHEN?

20 A. SOME DEGREE IN THE MILITARY. SO, 1977.

21 Q. AND, SIR, IF A SUBCONTRACTOR HAS FOUR OR MORE
22 EMPLOYEES, DO YOU GET A CERTIFICATE OF INSURANCE
23 FROM THEM?

24 A. THAT'S CORRECT.

25 Q. DID YOU DO THAT WHEN YOU WERE IN YOUR OWN BUSINESS?

1 A. YES, I DID.

2 Q. OKAY. AND YOU DO THAT FOR PEE DEE COMMUNITY ACTION
3 PARTNERSHIP, IS THAT RIGHT?

4 A. THAT'S CORRECT. WELL, NOT FOR THEM, FOR THE
5 INDIVIDUAL HOMEOWNERS.

6 Q. RIGHT, OKAY. DID YOU EVENTUALLY MEET THIS YOUNG
7 LADY?

8 A. I DID.

9 Q. WAS THIS OTHER LADY PRESENT WITH HER WHEN YOU MET
10 HER?

11 A. I MET THE LADY IN BACK FIRST.

12 Q. ALL RIGHT. AND DID MS. SCOTT COME AS WELL?

13 A. EVENTUALLY, BECAUSE SHE WAS REQUIRED TO COME. I
14 REQUIRED TO MEET HER.

15 Q. AND WHAT WAS YOUR UNDERSTANDING OF THEIR
16 RELATIONSHIP?

17 A. AT THAT TIME I THOUGHT THAT WAS HER GRANDMOTHER, AND
18 HER GRANDMOTHER WAS UNDERGOING SOME KIND OF MEDICAL
19 CHALLENGES. THEY WERE SWITCHING THE BUSINESS OVER
20 TO HER. IN FACT, THEY HAD SWITCHED THE BUSINESS
21 OVER TO HER.

22 Q. DID YOU ENTER INTO A CONTRACT WITH ONE OF THESE
23 LADIES?

24 A. MS. DAVIS, MS. FELICIA.

25 Q. MS. SCOTT?

1 A. MS. SCOTT; I'M SORRY.

2 Q. ALL RIGHT. AND WAS THAT TO DO THE FRAMING WORK?

3 A. THAT'S CORRECT.

4 Q. DID SHE COME BACK OUT TO THE PROJECT AFTER THAT?

5 A. YES. I REQUIRED SHE COME BACK AND GO TO THE CITY OF
6 MARION AND OBTAIN HER CITY LICENSE. I REQUIRED THAT
7 SHE BRING ME COPIES OF THE WORKMAN COMP. AND THEY
8 DID THAT.

9 Q. AFTER YOU GOT A COPY OF HER WORKERS' COMP, DID YOU
10 DO ANYTHING ELSE REGARDING THAT POLICY OF INSURANCE?

11 A. YES, I CALLED THE ACTUAL COMPANY THAT ISSUED THAT
12 POLICY, AND THEY SAID THAT THE POLICY ---

13 **BY MR. DANLEY:**

14 OBJECTION.

15 **BY MR. HOWELL:**

16 OBJECTION.

17 **DIRECT EXAMINATION RESUMED BY MR. BRUNSON:**

18 Q. AS A RESULT OF THAT, WERE YOU FAXED ANOTHER COPY OF
19 THAT POLICY?

20 A. I WAS.

21 Q. SIR, WHEN DID YOU FIRST FIND OUT ABOUT THIS
22 ACCIDENT?

23 A. WE FINISHED THE HOUSE -- APPROXIMATELY TWO MONTHS
24 AFTER WE COMPLETED THE CONSTRUCTION OF THE FIRST
25 PHASE.

1 Q. AND DID ATTORNEY McMILLAN CONTACT YOU AT THAT TIME?

2 A. THAT'S CORRECT.

3 Q. AND WHAT DID YOU DO THEN?

4 A. I FAXED HER A COPY OF THE WORKMAN COMP.

5 BY MR. BRUNSON:

6 THANK YOU, SIR. THAT'S ALL I HAVE.

7 BY THE COMMISSIONER:

8 ALL RIGHT. MR. KELLY?

9 BY MR. KELLY:

10 NO QUESTIONS.

11 BY THE COMMISSIONER:

12 I FIGURED YOU DIDN'T HAVE ANY QUESTIONS. MR.

13 HOWELL?

14 CROSS EXAMINATION BY MR. HOWELL:

15 Q. LET ME JUST MAKE SURE I UNDERSTAND THIS. YOU ARE AN

16 EMPLOYEE OF THE PEE DEE ACTION -- OR, WERE THEN ---

17 A. YES, SIR.

18 Q. --- AN EMPLOYEE OF THE PEE DEE COMMUNITY ACTION

19 PARTNERSHIP; IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND DOES THE PEE DEE COMMUNITY ACTION PARTNERSHIP

22 SORT OF ACT AS THE GENERAL CONTRACTOR ON THESE JOBS?

23 A. NO, SIR.

24 Q. OKAY. WELL, THE PEE DEE COMMUNITY ACTION

25 PARTNERSHIP THROUGH YOU HIRES THE SUBS; IS THAT

1 CORRECT?

2 A. NO, SIR; THE HOMEOWNERS HIRE THE SUBCONTRACTORS.

3 Q. OKAY. WHO GIVES THE -- YOU SAID YOU MET WITH MS.
4 HART AND MS. SCOTT AND MR. CARDONA; IS THAT CORRECT?

5 A. THAT'S CORRECT.

6 Q. WAS THE HOMEOWNER PRESENT?

7 A. NO. AS THE CONSTRUCTION SUPERVISOR WITHIN THIS
8 PROGRAM, I CAN INTERVIEW PEOPLE; I CAN PURCHASE
9 MATERIALS; I CAN -- ON THEIR BEHALF. THEY ARE
10 OWNER-BUILT HOMES.

11 Q. ALL RIGHT. BUT, AGAIN, NONE OF THE HOMEOWNERS WERE
12 PRESENT DURING ANY OF THE CONVERSATIONS YOU HAD WITH
13 LUIS CARDONA OR MS. HART ABOUT DOING THE FRAMING
14 WORK ON THIS JOB; IS THAT CORRECT?

15 A. NO, SIR.

16 Q. DO YOU HAVE A COPY OF A CONTRACT WITH THE
17 HOMEOWNER'S NAME ON IT?

18 A. I DO. I DON'T HAVE IT WITH ME.

19 Q. WELL, WHO WAS THE HOMEOWNER ON THE JOB WHERE MR.
20 PALMA WAS INJURED?

21 A. I'M NOT SURE WHICH HOUSE THAT HE SAYS HE GOT INJURED
22 ON, SO I WOULDN'T KNOW.

23 Q. DO YOU REQUIRE THE HOMEOWNER TO HAVE WORKERS'
24 COMPENSATION INSURANCE?

25 A. NOT THE HOMEOWNER. WE REQUIRE CONTRACTORS TO HAVE

1 IT.

2 Q. NOW, YOU SAID THAT THE FIRST PERSON YOU MET AFTER
3 YOU HAD THE DISCUSSION WITH -- MR. CARDONA WANTED TO
4 DO THE FRAMING WORK HIMSELF, CORRECT?

5 A. HE -- MY UNDERSTANDING, HE WAS ACTING ON BEHALF OF
6 THE CONTRACTOR.

7 Q. YOU SAID EARLIER THAT YOU TALKED TO MR. CARDONA
8 FIRST, IS THAT RIGHT?

9 A. YES.

10 Q. OKAY. AND THEN BASICALLY TOLD MR. CARDONA THAT
11 YOU'VE GOT TO HAVE WORKERS' COMP INSURANCE TO DO THE
12 WORK, CORRECT?

13 A. YES.

14 Q. AND HE TOLD YOU HE DIDN'T HAVE WORKERS' COMPENSATION
15 INSURANCE?

16 A. HE TOLD ME THAT THE COMPANY THAT HE WORKED FOR HAD
17 IT.

18 Q. ALL RIGHT. AND THEN AFTER THAT CONVERSATION, THE
19 FIRST PERSON YOU MET WITH HIM WAS MS. HART, THE
20 GRANDMOTHER, CORRECT?

21 A. YES.

22 Q. IT WASN'T MS. SCOTT, CORRECT?

23 A. THAT'S CORRECT.

24 Q. NOW, AT THAT TIME ARE YOU AWARE THAT MS. SCOTT WAS
25 ONLY 20 YEARS OLD?

1 A. NO, I HAD NO IDEA HER AGE.

2 Q. ARE YOU AWARE THAT SHE HAD A FULL-TIME JOB IN A
3 LOCAL DINER IN LUMBERTON?

4 A. NO, I WAS UNAWARE OF THAT.

5 Q. ARE YOU AWARE THAT AT THAT TIME SHE DID NOT THEN AND
6 NEVER HAS BEEN IN THE CONSTRUCTION BUSINESS?

7 A. NO. I WASN'T AWARE OF THAT. HER MOTHER -- EXCUSE
8 ME; HER GRANDMOTHER -- AT THAT TIME I ASSUMED IT WAS
9 HER MOTHER -- THAT SHE WAS GETTING OUT OF THE
10 BUSINESS AND MS. FELICIA SCOTT WAS TAKING THE
11 BUSINESS -- HAD TAKEN THE BUSINESS OVER. AND WE
12 DON'T DISCRIMINATE BECAUSE OF AGE, COLOR, RACE, SEX,
13 AND THINGS LIKE THAT. SO, I DIDN'T QUESTION HER
14 AGE. IN FACT, I THINK I HAD ANOTHER FEMALE TO DO
15 SOME WORK. WELL, NOT HAD HER, BUT CONTRACTED HER.
16 SHE WAS HISPANIC, AND SHE WAS A FEMALE, AND SHE
17 MIGHT HAVE BEEN 25 YEARS OLD.

18 Q. NOW, YOU SAID EARLIER THAT YOU HAD REQUIRED THAT MR.
19 CARDONA PROVIDE YOU WITH A COPY OF THE WORKERS'
20 COMPENSATION POLICY; IS THAT CORRECT?

21 A. YES, SIR.

22 Q. SO THEY PROVIDED YOU WITH A COPY OF THE POLICY, THE
23 ACTUAL POLICY?

24 A. MS. SCOTT PROVIDED ME WITH A COPY OF IT.

25 Q. AND SO, HAVE YOU SEEN THIS DOCUMENT, WHICH IS PAGE

1 SEVEN OF OUR APAs?

2 BY MR. HOWELL:

3 I THINK IT'S OUR APAs. IT MAY BE SOMEBODY
4 ELSE'S. ACTUALLY, IT'S UNDER THE CLAIMANT'S APAs.
5 IT'S PAGE SEVEN.

6 CROSS EXAMINATION RESUMED BY MR. HOWELL:

7 Q. AND UNDER THIS POLICY IT INDICATES THAT COVERAGE IS
8 IN NORTH CAROLINA, CORRECT?

9 BY MR. DANLEY:

10 MAY I SEE THAT?

11 BY MR. HOWELL:

12 SURE.

13 CROSS EXAMINATION RESUMED BY MR. HOWELL:

14 Q. WELL, LET ME ASK YOU THIS: WERE YOU PROVIDED WITH A
15 COPY OF THIS, THE ENTIRE WORKERS' COMPENSATION
16 INSURANCE POLICY?

17 A. NOT THE ENTIRE COPY. I GOT A CERTIFICATE.

18 Q. THE ONLY THING YOU GOT WAS THE CERTIFICATE?

19 A. YES, SIR.

20 Q. AND DID YOU EVER ASK FOR OR ASK TO SEE THE ENTIRE
21 POLICY TO SEE WHETHER IT COVERED THE WORK THAT WAS
22 BEING DONE IN SOUTH CAROLINA?

23 A. NO. I CALLED THE COMPANY AND ASKED THEM.

24 Q. THAT WASN'T MY QUESTION. MY QUESTION WAS ---

25 A. NO, SIR.

1 Q. --- DID YOU EVER ASK FOR A COPY OF THE ACTUAL POLICY
2 THAT WOULD SHOW WHERE THE COVERAGE WAS?

3 A. NO, I NEVER ASKED FOR THAT.

4 Q. SO YOU JUST TOOK AT FACE VALUE THAT THIS CERTIFICATE
5 PROVIDED COVERAGE FOR FELICIA SCOTT IN SOUTH
6 CAROLINA?

7 A. I DIDN'T TAKE IT FOR FACE VALUE. I ACTUALLY CALLED
8 THE COMPANY TO VERIFY THAT.

9 Q. ALL RIGHT. YOU DON'T HAVE ANYTHING IN WRITING FROM
10 ANYBODY SHOWING THAT LIBERTY MUTUAL HAD COVERAGE FOR
11 FELICIA SCOTT IN SOUTH CAROLINA, DO YOU?

12 A. OTHER THAN THE CERTIFICATE.

13 Q. WELL, CAN YOU SHOW ME ON THE CERTIFICATE WHERE IT
14 SHOWS THAT THERE'S COVERAGE IN SOUTH CAROLINA?

15 A. WHAT I DID WITH THE CERTIFICATE, I EXPLAINED TO THE
16 -- I'M NOT SURE WHO I TALKED TO -- THAT THE JOB WAS
17 IN THE STATE OF SOUTH CAROLINA, THAT THIS WAS THE
18 PLACE IN WHICH THEY SHOULD MAIL AND FAX THE COPY OF,
19 WHICH THAT SHOWED THE ACTUAL LOCATION OF -- FIRST
20 THEY SAID, "WHERE THE PROJECT IS LOCATED?" I TOLD
21 THEM IN MARION, SOUTH CAROLINA, AND I TOLD THEM
22 THEY ASKED WHAT WAS THE CONSTRUCTION T
23 THEM FRAMING. AND I TOOK THAT
24 REPRESENTATIVE, THAT WAS COVERA

25 BY MR. DANLEY:

1 OBJECTION.

2 BY MR. BRUNSON:

3 YOUR HONOR, THEY'VE ASKED THE QUESTION NOW, AND
4 NOW THEY WANT TO OBJECT TO THE ANSWER. I THINK HE
5 CAN. ---

6 BY MR. HOWELL:

7 THE ONLY QUESTION I ASKED IS WHETHER OR NOT HE
8 EVER GOT A COPY OF THE POLICY.

9 BY MR. BRUNSON:

10 WELL, HE'S ANSWERING THE QUESTION THE WAY HE
11 KNOWS HOW TO ANSWER IT.

12 BY MR. HOWELL:

13 WELL, HE CAN'T DO IT THROUGH HEARSAY.

14 BY THE COMMISSIONER:

15 HE CAN TELL ME WHAT HE ASKED THEM, BUT HE CAN'T
16 TELL ME WHAT THEY TOLD HIM. WHAT EXACTLY DID YOU
17 ASK THEM?

18 BY THE WITNESS:

19 I ASKED THEM WAS THE -- I TOLD THEM WHERE THE
20 WORK WAS LOCATED, AND I ASKED THEM WAS THE POLICY
21 GOOD FOR THE STATE OF SOUTH CAROLINA, THE PROJECT
22 WAS IN THE STATE OF SOUTH CAROLINA.

23 CROSS EXAMINATION RESUMED BY MR. HOWELL:

24 Q. OKAY. BUT YOU NEVER ACTUALLY GOT A COPY OF THE
25 POLICY?

1 A. NO, SIR. WE DON'T REQUIRE COPIES OF THE POLICY,
2 JUST THE CERTIFICATE.

3 BY MR. HOWELL:

4 THANK YOU. THAT'S ALL I HAVE.

5 BY THE COMMISSIONER:

6 MR. DANLEY?

7 CROSS EXAMINATION BY MR. DANLEY:

8 Q. MR. BETHEA, I UNDERSTAND THAT PEE DEE COMMUNITY
9 ACTION PARTNERSHIP ACTUALLY APPLIES FOR A GRANT TO
10 THE FEDERAL GOVERNMENT?

11 A. YES, SIR.

12 Q. AND THE FEDERAL GOVERNMENT GIVES MONEY TO PEE DEE
13 COMMUNITY ACTION. WHAT DOES PEE DEE COMMUNITY
14 ACTION PARTNERSHIP DO WITH THE GRANT THAT IT GETS
15 FROM THE FEDERAL GOVERNMENT; DO YOU KNOW?

16 A. THEY PAY OUR SALARIES PREDOMINANTLY, OFFICE
17 SUPPLIES, SALARIES.

18 Q. PAY YOUR SALARY AS A CONSTRUCTION SUPERVISOR ON
19 THOSE PROJECTS?

20 A. THAT'S CORRECT.

21 Q. AND, NOW, THE -- WHEN YOU FIRST MET WITH MR. CARDONA
22 ABOUT DOING THE FRAMING ON THIS MARION PROJECT,
23 AGAIN, THERE WAS NO HOMEOWNER PRESENT AT THAT
24 MEETING; IS THAT CORRECT?

25 A. THAT'S CORRECT.

1 Q. AND YOU TOLD MR. CARDONA THAT YOU COULD NOT HIRE HIM
2 BECAUSE HE DID NOT HAVE PROOF OF WORKERS'
3 COMPENSATION INSURANCE COVERAGE; IS THAT CORRECT?

4 A. WELL, I TOLD HIM THAT WE COULDN'T HIRE A CONTRACTOR
5 WITHOUT WORKMAN COMP INSURANCE. HE TOLD ME THAT THE
6 COMPANY THAT HE WORKED FOR HAD THOSE DOCUMENTS. I
7 REQUIRED THAT HE BRING THEM TO THE SITE, AND THAT'S
8 WHAT HE DID.

9 Q. NOW, WHEN YOU MET -- YOU FIRST MET WITH MS. HART
10 REGARDING THIS PROJECT; IS THAT CORRECT?

11 A. YES.

12 Q. AND WHEN YOU MET WITH HER, YOU DID NOT KNOW WHETHER
13 OR NOT SHE STILL OWNED THE BUSINESS OR WHETHER MS.
14 SCOTT OWNED THE BUSINESS AT THAT TIME; IS THAT
15 CORRECT?

16 A. THAT'S CORRECT.

17 Q. AND YOU REQUIRED, IN FACT, MS. SCOTT TO GO TO THE
18 CITY OF MARION TO GET A BUSINESS LICENSE?

19 A. THAT'S CORRECT.

20 Q. TO OPERATE AS A CONTRACTOR?

21 A. AS A FRAMING CONTRACTOR, YES.

22 Q. AND SO, WHEN YOU INITIALLY ENGAGED MS. SCOTT IN THIS
23 PROJECT, SHE WAS NOT EVEN LICENSED AS FAR AS YOU
24 KNEW TO DO WORK AS A CONTRACTOR; IS THAT CORRECT?

25 A. AT THAT TIME, YES.

1 Q. WERE YOU EVER PAID ANY MONEY BY MR. CARDONA?

2 A. NO.

3 Q. YOU NEVER RECEIVED ANY CASH MONEY FROM MR. CARDONA

4 ---

5 A. NO.

6 Q. --- IN RELATION TO THIS MARION PROJECT?

7 A. THAT'S CORRECT.

8 BY MR. DANLEY:

9 THANK YOU, SIR. THAT'S ALL I HAVE,
10 COMMISSIONER.

11 BY THE COMMISSIONER:

12 ALL RIGHT. ANY REDIRECT?

13 BY MR. BRUNSON:

14 NOTHING.

15 BY THE COMMISSIONER:

16 ALL RIGHT. MR. HOWELL, ANYTHING ELSE?

17 BY MR. HOWELL:

18 NO.

19 BY THE COMMISSIONER:

20 ALL RIGHT.

21 BY MS. SCOTT:

22 I HAVE A QUESTION.

23 BY THE COMMISSIONER:

24 GO AHEAD, MS. SCOTT. YOU DO HAVE THE RIGHT TO
25 ASK HIM A QUESTION.

1 BY MS. SCOTT:

2 CAN I SEE A COPY OF THE CONTRACT THAT I SIGNED
3 WITH HIM? DO Y'ALL HAVE THAT?

4 BY MR. BRUNSON:

5 IT MIGHT BE AN EXHIBIT TO THE DEPOSITION.

6 BY MS. SCOTT:

7 IT WAS.

8 BY MR. DANLEY:

9 I ATTACHED IT TO HER ORIGINAL DEPOSITION. IT
10 SHOULD BE THERE.

11 CROSS EXAMINATION BY MS. SCOTT:

12 Q. AND YOU SAID THAT YOU REQUIRED ME TO GO GET A
13 BUSINESS LICENSE. WAS IT ME OR WAS IT MY
14 GRANDMOTHER?

15 A. I DON'T KNOW WHO GOT IT. I MEAN, YOU PRESENTED IT
16 TO ME.

17 Q. OKAY. AND WHEN I SIGNED THIS PAPER RIGHT HERE,
18 THERE WAS ONLY TWO NAMES ON THERE, CORRECT?

19 A. NO. ALL THE HOMEOWNERS ARE ON THERE.

20 Q. NO, SIR.

21 BY MS. SCOTT:

22 OKAY. THAT'S ALL.

23 BY THE COMMISSIONER:

24 ANY OTHER QUESTIONS, MR. BRUNSON?

25 BY MR. BRUNSON:

1 NO, SIR.

2 BY THE COMMISSIONER:

3 MR. HOWELL?

4 BY MR. HOWELL:

5 NO MORE QUESTIONS.

6 BY THE COMMISSIONER:

7 ALL RIGHT. MR. DANLEY?

8 BY MR. DANLEY:

9 I DIDN'T HAVE ANY MORE QUESTIONS.

10 BY THE COMMISSIONER:

11 ALL RIGHT.

12 BY MS. SCOTT:

13 CAN -- IF I CALL HER AS A WITNESS, CAN SHE ASK
14 QUESTIONS?

15 BY THE COMMISSIONER:

16 NO, SHE CAN'T ASK ANY QUESTIONS.

17 BY MR. HOWELL:

18 SHE CAN'T ASK -- I THINK SHE WANTED TO KNOW IF
19 SHE COULD ASK QUESTIONS.

20 BY THE COMMISSIONER:

21 OH, IF YOU CAN ASK HER QUESTIONS?

22 BY MS. SCOTT:

23 NO. IF I CALLED HER AS A WITNESS, COULD SHE
24 ASK HIM QUESTIONS?

25 BY THE COMMISSIONER:

1 NO, MA'AM.

2 BY MS. SCOTT:

3 OKAY.

4 BY THE COMMISSIONER:

5 ANY OTHER WITNESSES, MR. BRUNSON?

6 BY MR. BRUNSON:

7 NO, SIR.

8 BY THE COMMISSIONER:

9 MR. HOWELL, DO YOU HAVE ANY WITNESSES YOU WANT

10 TO CALL?

11 BY MR. HOWELL:

12 NO.

13 BY THE COMMISSIONER:

14 MR. DANLEY?

15 BY MR. DANLEY:

16 I HAVE ONE MORE QUESTION OF MR. BETHEA.

17 BY THE COMMISSIONER:

18 OKAY.

19 RECROSS EXAMINATION BY MR. DANLEY:

20 Q. MR. BETHEA, ISN'T IT A FACT THAT YOU, IN FACT, TOOK
21 MS. HART TO THE CITY OF MARION TO SIGN THE PAPERWORK
22 TO GET THE BUSINESS LICENSE FOR MS. SCOTT?

23 A. THEY WAS UNAWARE OF WHERE THE PLACE WAS LOCATED. I
24 POINTED OUT -- IN FACT, SHE FOLLOWED ME. I SHOWED
25 HER WHERE THE BUILDING OFFICIAL'S OFFICE WAS, AND I

1 TOLD HER WHAT TO DO IS GO IN AND GET THE LICENSE.

2 Q. ALL RIGHT. AND WHEN YOU SHOWED HER THE LOCATION OF
3 THE -- TO GET A BUSINESS LICENSE, MS. SCOTT WAS NOT
4 WITH MS. HART; IS THAT CORRECT?

5 A. THEY DIDN'T GET IT AT THAT TIME. I DON'T KNOW HOW
6 THEY WENT UP THERE AND GOT IT. I JUST DIRECTED THEM
7 TO THE LOCATION.

8 Q. ALL RIGHT. HOW DO YOU KNOW THAT THEY DID NOT GET
9 THE BUSINESS LICENSE AT THAT TIME IF YOU ---

10 A. THEY CAME BACK TO THE CONSTRUCTION SITE, AND THEY
11 TOLD ME THEY WERE GONNA HAVE TO GET IT THE NEXT DAY
12 BECAUSE THEY DIDN'T HAVE THE FUNDS. AND SO AFTER
13 THAT MS. SCOTT DELIVERED ME THE DOCUMENTS, AND SHE
14 WAS AWARDED THE CONTRACT.

15 Q. SHE WAS AWARDED THE CONTRACT ---

16 A. FOR THE HOMEOWNERS, TO BUILD, THAT SHE MET THE
17 QUALIFICATIONS WHAT WE WERE LOOKING FOR, SHE HAD THE
18 BUSINESS LICENSE, SHE HAD THE WORKMAN COMP, AS I
19 UNDERSTOOD AT THAT TIME, AND THE PRICES WAS WHERE WE
20 NEEDED, AND WE WAS READY TO START CONSTRUCTION. SHE
21 WAS GRANTED THE THING. AND I JUST WANT TO ADD TO
22 THIS, I THINK I TOOK EXTRA PRECAUTION -- I TRIED TO
23 TAKE EXTRA PRECAUTION BECAUSE THERE WAS SO MANY
24 DIFFERENT INDIVIDUALS. SO I INSURED THAT SHE WAS
25 THE ONE THAT WE WERE HIRING. SHE AUTHORIZED HER

1 SUPERVISOR, AS I UNDERSTOOD IT, TO ACT ON HER
2 BEHALF. AND SO...

3 Q. BUT YOU ACTUALLY TALKED TO MS. HART INITIALLY ABOUT
4 THIS PROJECT; ISN'T THAT CORRECT?

5 A. YES. INITIALLY, YES.

6 Q. AND WHEN YOU TALKED TO HER, AGAIN, YOU DID NOT KNOW
7 THE STATUS OF HER CONSTRUCTION BUSINESS, WHETHER OR
8 NOT ---

9 A. NO, I DIDN'T.

10 **BY MR. DANLEY:**

11 THANK YOU.

12 **BY MS. SCOTT:**

13 CAN I ASK ANOTHER QUESTION?

14 **BY THE COMMISSIONER:**

15 ALL RIGHT.

16 **RE CROSS EXAMINATION BY MS. SCOTT:**

17 Q. HOW MANY TIMES PRIOR TO TODAY HAVE YOU SEEN ME?

18 A. MAYBE THREE, FOUR. AND THAT WAS ONE OF THE REASONS
19 -- BECAUSE YOU EXPLAINED TO ME THAT YOU WOULD NOT BE
20 ABLE TO COME BACK AND FORTH AND YOUR SUPERINTENDENT
21 COULD ACT ON YOUR BEHALF. SO AT THAT TIME I
22 REQUESTED THAT YOU GIVE WRITTEN PERMISSION FOR HIM
23 TO DO SO, AND YOU DID.

24 Q. AND THAT WAS THE DAY THAT I SIGNED THE CONTRACT,
25 RIGHT?

1 A. THAT'S CORRECT.

2 Q. AND THAT'S THE ONLY TIME YOU'VE SEEN ME PRIOR TO
3 TODAY, CORRECT?

4 A. NO.

5 Q. WHERE ELSE HAVE YOU SEEN ME AT?

6 A. THE CONSTRUCTION SITE.

7 Q. WHEN?

8 A. I CAN'T RECALL THE DATES.

9 Q. 'CAUSE THERE WAS NO DATES.

10 **BY MR. BRUNSON:**

11 OBJECTION TO THAT LAST STATEMENT, COMMISSIONER.

12 **BY THE COMMISSIONER:**

13 SUSTAINED.

14 **BY MR. BRUNSON:**

15 SHE CAN TESTIFY ALL SHE WANTS TO WHEN SHE'S
16 UNDER OATH.

17 **BY THE COMMISSIONER:**

18 MS. SCOTT, ANY OTHER QUESTIONS FOR MR. BETHEA?

19 **BY MS. SCOTT:**

20 THAT'S ALL.

21 **BY THE COMMISSIONER:**

22 MR. BRUNSON, ANY OTHER QUESTIONS FOR HIM?

23 **BY MR. BRUNSON:**

24 NO.

25 **BY THE COMMISSIONER:**

1 MR. HOWELL?

2 BY MR. HOWELL:

3 NO.

4 BY THE COMMISSIONER:

5 MR. DANLEY?

6 BY MR. DANLEY:

7 NO, SIR.

8 BY THE COMMISSIONER:

9 ALL RIGHT. MR. BETHEA, LET ME ASK YOU THIS.

10 ARE YOU STILL WORKING AT PEE DEE?

11 BY THE WITNESS:

12 YES, SIR. WE WERE LAID OFF FOR A WHILE. WE'RE
13 GETTING READY TO GO BACK NOW.

14 BY THE COMMISSIONER:

15 Q. ALL RIGHT. HOW MANY HOUSES HAVE YOU ALL DONE TOTAL
16 SINCE YOU STARTED IN '08? HOW MANY HAVE YOU DONE
17 SINCE YOU STARTED IN '08?

18 A. A TOTAL OF 11.

19 Q. ELEVEN TOTAL?

20 A. YES, SIR.

21 Q. OKAY. TYPICALLY WITH THESE PROJECTS, DO YOU GET
22 LOCAL CONTRACTORS, OR DO YOU GET OUT-OF-STATE
23 CONTRACTORS?

24 A. WE TRY TO FOCUS ON THE LOCAL AREA.

25 Q. SO YOU MAINLY GET LOCAL CONTRACTORS?

1 A. WELL, WHAT I DEFINE AS LOCAL IS SOMETHING PRETTY
2 MUCH WITHIN 50 MILES THAT I THINK CAN MAKE IT TO --
3 BACK TO THE JOB SITE.

4 Q. OKAY. I DIDN'T UNDERSTAND WHAT -- YOU NORMALLY GET
5 CONTRACTORS THAT ARE IN THE PEE DEE AREA, FLORENCE,
6 MARION, MULLINS, LORIS, CONWAY, IN THAT AREA, IN
7 STATE?

8 A. IF I HAD TO SAY TYPICAL, YES, SIR.

9 Q. OKAY. WAS IT A LITTLE ODD THAT THESE CONTRACTORS,
10 MS. SCOTT, MR. CARDONA, OR ANYONE ELSE, THAT THEY
11 WERE OUT OF STATE?

12 A. WELL, OUT OF STATE THAT THEY ACTUALLY -- IT'S LIKE A
13 BORDER TOWN. SO THEY'RE PROBABLY WITHIN ---

14 Q. I KNOW WHERE IT IS.

15 A. OKAY. OH, I'M SORRY.

16 Q. YES. I'M JUST ASKING DID YOU FIND IT A LITTLE ODD
17 THAT THEY WERE OUT OF STATE?

18 A. AGAIN, LIKE CERTAIN CONTRACTORS, I'M GONNA SAY, IF I
19 SAY DRYWALL CONTRACTORS, THEY'RE PREDOMINANTLY GONNA
20 COME FROM NORTH CAROLINA. WE DID SOLICIT THE LOCAL
21 AREA. NO ONE MET THOSE QUALIFICATIONS. AND THEY
22 SHOWED UP AT THE JOB SITE, AND THEY MET THE
23 QUALIFICATIONS, AND THAT'S KIND OF HOW WE DID IT.
24 THERE WAS NO REAL -- NORTH CAROLINA, WE DIDN'T
25 REALLY -- WE DIDN'T REALLY FOCUS ON THE FACT THAT

1 THEY WERE FROM NORTH CAROLINA.

2 Q. DID YOU KNOW HOW MANY EMPLOYEES MS. SCOTT HAD?

3 A. NOT -- I WOULD THINK IT WAS IN EXCESS OF FOUR.

4 Q. ALL RIGHT. WELL ---

5 BY MR. DANLEY:

6 YOUR HONOR, JUST FOR THE RECORD, I WOULD OBJECT
7 TO THAT RESPONSE.

8 BY THE COMMISSIONER:

9 Q. WHAT WERE THE NAMES OF THE EMPLOYEES MS. SCOTT HAD?

10 A. I DON'T KNOW ANY NAMES.

11 Q. FOR THE 11 OTHER HOUSES THAT YOU HANDLED, HAVE YOU
12 SEEN SEVERAL OF THE INSURANCE CERTIFICATES THAT ARE
13 SIMILAR TO THIS BEFORE?

14 A. YES, SIR.

15 Q. OKAY. DO THEY TYPICALLY LIST THE SCOPE OF THE WORK
16 AND THE ACTUAL COMPANY NAME ON IT?

17 A. YES, SIR.

18 Q. DID YOU FIND IT A LITTLE ODD THAT THERE WAS NO
19 COMPANY NAME? DID YOU ASK FOR ANY COMPANY FILING,
20 ANY OTHER DOCUMENTATION BESIDES A MARION BUSINESS
21 LICENSE?

22 A. THAT'S WHAT I TYPICALLY -- TYPICALLY FIND, THAT MOST
23 SMALLER CONTRACTORS UTILIZE THEIR PERSONAL NAMES.
24 AND THE REASON I THINK THAT THEY DO THAT IS SO THAT
25 THEY CAN EXPEDITE THE CASHING OF THEIR CHECKS. AND

1 SO FOR MOST FRAMERS OR SMALL CONTRACTORS, IT'S VERY
2 TYPICAL FOR THEM TO USE THEIR FIRST NAME AND THEIR
3 SURNAME.

4 Q. WHO ACTUALLY GAVE YOU THIS? DID MS. SCOTT ---

5 A. FELICIA GAVE ME ONE, AND I CALLED AFTER THAT.

6 BY THE COMMISSIONER:

7 ALL RIGHT. ANY OTHER QUESTIONS, MR. BRUNSON?

8 BY MR. BRUNSON:

9 NO, SIR.

10 BY THE COMMISSIONER:

11 MR. HOWELL?

12 BY MR. HOWELL:

13 NO, SIR.

14 BY THE COMMISSIONER:

15 MR. DANLEY?

16 BY MR. DANLEY:

17 NO, SIR.

18 BY THE COMMISSIONER:

19 MS. SCOTT?

20 BY MS. SCOTT:

21 UH-UH.

22 BY THE COMMISSIONER:

23 MR. KELLY?

24 BY MR. KELLY:

25 NO, SIR.

1 BY THE COMMISSIONER:

2 ALL RIGHT. MR. DANLEY, ANY WITNESSES?

3 BY MR. DANLEY:

4 YES, SIR. I WILL CALL MS. BRENDA HART.

5 BY THE COMMISSIONER:

6 MA'AM, YOU CAN SIT THERE AND YOU CAN SPEAK UP.

7 SWEAR MS. HART IN, PLEASE.

8 * * * * *

9 THE WITNESS WAS DULY SWORN TO TELL THE TRUTH, THE
10 WHOLE TRUTH, AND NOTHING BUT THE TRUTH CONCERNING THE
11 MATTER HEREIN:

12 BRENDA HART,

13 BEING FIRST DULY SWORN, TESTIFIED ON HER OATH AS
14 FOLLOWS:

15 BY THE COMMISSIONER:

16 MR. DANLEY?

17 DIRECT EXAMINATION BY MR. DANLEY:

18 Q. MS. HART, GIVE US YOUR FULL NAME.

19 A. BRENDA WILSON HART.

20 Q. AND WHERE DO YOU LIVE, MS. HART?

21 A. 3058 WEST CARTHAGE ROAD, LUMBERTON, NORTH CAROLINA.

22 Q. HOW LONG?

23 A. EIGHTEEN AND A HALF YEARS.

24 Q. AND WHAT IS YOUR RELATIONSHIP TO FELICIA SCOTT?

25 A. IT'S MY GRANDDAUGHTER.

1 Q. NOW, PRIOR TO APRIL 30TH OF 2009, DID YOU OWN ANY
2 KIND OF CONSTRUCTION BUSINESS?

3 A. YES, BEFORE THEN I DID.

4 Q. WHAT KIND OF CONSTRUCTION BUSINESS DID YOU OWN?

5 A. BOXING AND FRAMING.

6 Q. PRIOR TO APRIL 30TH OF 2009, WERE YOU APPROACHED BY
7 ANYONE REGARDING DOING SOME WORK IN MARION, SOUTH
8 CAROLINA?

9 A. NOT FOR ME TO DO WORK, BUT HE WANTED TO KNOW IF I
10 WOULD -- LUIS WANTED TO KNOW IF I'D LET HIM USE MY
11 WORKERS' COMP, AND I TOLD HIM IT WEREN'T IN MY NAME;
12 IT WAS IN MY GRANDDAUGHTER'S NAME. AND HE ASKED ME
13 COULD HE USE IT TO DO A COUPLE HOUSES AND THEN HE
14 WOULD GET HIS OWN INSURANCE.

15 Q. AND WHAT DID YOU DO -- WELL, AT SOME POINT IN TIME
16 WAS THE INSURANCE THAT WAS IN MS. SCOTT'S NAME
17 PROVIDED TO MR. CARDONA TO BE ABLE TO WORK ON THIS
18 PROJECT?

19 A. IT WEREN'T PROVIDED TO HIM. I GIVE IT TO TONY.

20 Q. ALL RIGHT. WHEN DID YOU -- DO YOU RECALL WHEN YOU
21 FIRST SPOKE WITH -- TONY, TALKING ABOUT MR. BETHEA?

22 A. YES.

23 Q. HOW DID YOU COME ABOUT DISCUSSING THIS MARION
24 PROJECT WITH MR. BETHEA?

25 A. THROUGH LUIS.

1 Q. AND WHAT DO YOU MEAN BY "THROUGH LUIS"? DID YOU ---

2 A. WELL, HE -- THAT'S -- HE CALLED ME AND SAID HE HAD
3 SOME WORK TO DO, THAT HE HAD ALREADY DID TWO HOUSES
4 AND HE NEEDED INSURANCE TO DO THE REST OF THEM.

5 Q. ALL RIGHT. DID HE INDICATE WHETHER OR NOT THE TWO
6 HOUSES HE HAD ALREADY DONE WORK ON WERE ON THE
7 MARION PROJECT?

8 A. YES, SIR.

9 Q. AND HE INDICATED THAT IN ORDER FOR HIM TO BE ABLE TO
10 CONTINUE DOING THAT WORK ---

11 **BY MR. BRUNSON:**

12 I'M GOING TO OBJECT TO THE FORM OF THE
13 QUESTION. HE'S LEADING HIS OWN WITNESS.

14 **BY THE COMMISSIONER:**

15 COULD YOU REPHRASE, MR. DANLEY?

16 **DIRECT EXAMINATION RESUMED BY MR. DANLEY:**

17 Q. WHAT DID HE INDICATE FROM YOU THAT HE NEEDED TO BE
18 ABLE TO CONTINUE WORKING ON THAT MARION PROJECT?

19 A. THAT HE NEEDED INSURANCE.

20 Q. AND DID HE INDICATE WHO TOLD HIM THAT HE NEEDED
21 INSURANCE?

22 A. TONY BETHEA.

23 Q. AND AFTER THAT CONVERSATION WHAT TOOK PLACE?

24 A. TONY CALLED ME, AND I MET HIM, AND I TALKED WITH
25 HIM, AND THEN I HAD TO MEET HIM -- BRING THE

1 CERTIFICATE DOWN THERE AND BRING FELICIA AND LET HER
2 SIGN A CONTRACT, WHICH ONLY HAD TWO NAMES ON IT.

3 Q. ALL RIGHT. LET ME STOP YOU THERE. YOU WERE THE
4 PERSON WHO ACTUALLY TOOK THE CERTIFICATE OF
5 INSURANCE TO MR. BETHEA AS FAR AS YOU KNOW?

6 A. YES, FELICIA AND I DID. WE WERE TOGETHER.

7 Q. WHO ACTUALLY PRESENTED IT TO MR. BETHEA?

8 A. I DID.

9 Q. ALL RIGHT. GO AHEAD AND TELL US WHAT ELSE HAPPENED.

10 A. WE HAD SIGNED THE -- SHE SIGNED THE PAPERS. HE TOLD
11 HER IT HAD TWO NAMES ON IT. HE TOLD HER THAT HE
12 WOULD GIVE HER A COPY. HE WENT IN THE HOUSE. HE
13 CAME BACK OUT AND HE SAID HIS COPY MACHINE WAS TORE
14 UP, THAT HE WOULD GIVE HER A COPY LATER ON, WHICH
15 SHE NEVER GOT. AND ON THAT PAPER, 'CAUSE I LOOKED
16 AT IT, WAS ONLY TWO NAMES. THERE WAS NO PRICING ON
17 THAT PAPER OR ANYTHING, NOTHING DISCUSSED WITH US
18 ABOUT ANY MONEY WHATSOEVER.

19 Q. ALL RIGHT. AS FAR AS YOU KNOW, WHO HAD ALREADY
20 NEGOTIATED THE PRICING?

21 A. LUIS.

22 **BY MR. BRUNSON:**

23 OBJECTION, COMMISSIONER. I MEAN, HE'S GOING TO
24 HAVE TO LAY SOME FOUNDATION FOR ALL OF THIS, NOW.

25 **BY MR. DANLEY:**

I'LL LAY THE FOUNDATION.

DIRECT EXAMINATION RESUMED BY MR. DANLEY:

Q. HAD YOU HAD ANY CONVERSATION WITH MR. CARDONA ABOUT THE PRICING ON THIS PROJECT?

A. NO, SIR.

Q. ALL RIGHT. DID YOU ALL HAVE ANY DISCUSSION WITH ANY OF THE HOMEOWNERS ABOUT BEING HIRED ONTO THIS PROJECT?

A. NO, SIR. I HAD TALKED WITH TONY ABOUT DOING THE VINYL SIDING, AND HE KEPT PUTTING ME OFF, AND THAT WAS ONE OF THE REASONS THAT I LET LUIS WORK UP UNDER FELICIA'S NAME, BECAUSE HE WAS SUPPOSED TO GIVE ME THE -- GET ME THE BOXING AND SIDING. HE SAID TONY SAID I COULD DO THE BOXING AND SIDING. I WENT TO THE JOB ABOUT THREE TIMES AND TALKED TO TONY.

Q. LET ME STOP YOU THERE. AGAIN, YOU'RE REFERRING TO TONY.

A. YES.

Q. YOU'RE REFERRING TO MR. BETHEA INDICATED TO YOU THAT YOU WOULD BE ABLE TO DO THE ---

A. BOXING AND SIDING, DOING THE VINYL SIDING. THEN WHEN IT COME DOWN TO -- HE KEPT TELLING ME, "WELL, WE'VE GOT TO GET SO MANY HOUSES DONE. WE'VE GOT TO GET SO MANY HOUSES DONE." THEN HE SAID THAT HE HAD TO LET THE HOMEOWNERS GET THEIR OWN PEOPLE, THAT

1 THEY HAD TO PUT SO MUCH WORK INTO IT.

2 Q. ALL RIGHT. DID YOU EVER MAKE ANY TRIPS OUT TO THE
3 WORK SITE?

4 A. THAT'S WHERE I TALKED TO TONY BETHEA AT, AT THE WORK
5 SITE. I WOULD MEET HIM. HE'D BE OUT AT THE
6 TRAILER, GONE TO GET MATERIALS WHEN I WOULD GO OUT
7 THERE TO MEET WITH HIM.

8 Q. NOW, WHO ACTUALLY WENT TO THE CITY OF MARION TO
9 APPLY FOR THIS BUSINESS LICENSE THAT'S IN FELICIA
10 SCOTT'S NAME?

11 A. THERE WAS ME, MY EX-HUSBAND, AND TONY.

12 Q. MS. SCOTT WAS NOT WITH YOU?

13 A. NO.

14 Q. DID MR. BETHEA ACTUALLY GO -- WHEN YOU SAID MR.
15 BETHEA AND YOUR EX-HUSBAND, DID BOTH OF THEM
16 ACTUALLY GO TO THE CITY OF MARION BUSINESS LICENSE
17 DIVISION WITH YOU?

18 A. YES, AND WENT INSIDE AND TOLD ME WHO TO TALK TO.

19 Q. WHO TOLD YOU WHO TO TALK TO?

20 A. TONY BETHEA.

21 Q. AFTER YOU GOT THE APPLICATION FOR A BUSINESS
22 LICENSE, WHAT DID YOU DO?

23 A. I PAID FOR IT, AND THEN I LEFT.

24 Q. ALL RIGHT. DID YOU HAVE ANY INVOLVEMENT IN PAYING
25 ANY OF THE PERSONS WHO WORKED ON THAT MARION

1 PROJECT?

2 A. NO, SIR. MATTER OF FACT, LUIS GAVE ME THE MONEY
3 BACK FOR THE LICENSE. I FORGOT EXACTLY HOW MUCH
4 THEY WERE, BUT THEY WEREN'T MUCH.

5 Q. WERE YOU PRESENT WHEN MS. SCOTT WAS PAID BY PEE DEE
6 COMMUNITY ACTION PROJECT?

7 A. SHE WAS NEVER PAID BY THEM. LUIS WOULD BRING THE
8 CHECK TO THE BANK, AND FELICIA WOULD GO IN AND CASH
9 IT AND BRING HIM THE MONEY BACK OUT IN AN ENVELOPE.

10 Q. AND YOU WERE PRESENT WHEN THOSE TRANSACTIONS TOOK
11 PLACE?

12 A. EVERY TIME.

13 Q. AND ARE YOU SAYING THAT MR. CARDONA WOULD ACTUALLY
14 BRING THE CHECK TO MS. SCOTT?

15 A. YES.

16 Q. AND SHE WOULD TAKE THE CHECK INSIDE THE BANK, CASH
17 IT, AND THEN GO BACK OUT AND PAY MR. CARDONA?

18 A. GIVE HIM THE ENVELOPES, WHAT THE CHECKS WERE.
19 SOMETIMES THERE WOULD BE ONE; SOMETIMES THERE WOULD
20 BE TWO DIFFERENT CHECKS.

21 Q. AND DID MR. CARDONA EVER GIVE ANY OF THAT MONEY TO
22 YOU?

23 A. HE WOULD TELL ME, YOU KNOW, "HERE. HERE'S YOU \$100.
24 HERE'S YOU 150," SOMETHING LIKE THAT. AND I'D TAKE
25 IT AND PAY IT 'CAUSE I WEREN'T WORKING AT THE TIME.

1 BUT I WAS STILL CARRYING THE INSURANCE IN CASE I DID
2 GET ANY WORK, AND I WOULD PAY ON THE INSURANCE OR
3 WHATEVER I NEEDED TO PAY ON.

4 Q. AND THE INSURANCE THAT YOU CARRIED, DO YOU KNOW WHO
5 THE NAME OF THE CARRIER WAS?

6 A. I TOOK IT OUT AT CITY INSURANCE. IT'S LIBERTY
7 MUTUAL OF OMAHA, I BELIEVE.

8 Q. DID YOU HAVE ANY OTHER DISCUSSION WITH MR. CARDONA
9 ABOUT PERSONS HE MIGHT HAVE PAID MONEY TO OUT OF
10 THAT MARION STREET PROJECT?

11 A. NO MORE THAN WHEN HE GOT HURT AND I FAXED SOME
12 PAPERS THAT HE HAD GIVE ME WHERE HE HAD WROTE DOWN
13 HOW MUCH HE HAD PAID HIM.

14 Q. ALL RIGHT. WHAT I'M ASKING YOU IS, WERE YOU EVER
15 TOLD BY MR. CARDONA WHETHER OR NOT HE PAID ANY MONEY
16 OTHER THAN TO YOURSELF AND MR. PALMA?

17 A. YES, HE TOLD ME HE HAD TO GIVE TONY \$900 A HOUSE TO
18 GET THE HOUSES, 'CAUSE I TOLD HIM HE WOULDN'T BE
19 MAKING ANY MONEY THAT WAY.

20 Q. DID YOU EVER GET ANY OF THE VINYL SIDING AND OTHER
21 WORK THAT YOU THOUGHT YOU WERE GOING TO GET ---

22 A. NO, SIR.

23 Q. --- OUT OF THAT PROJECT?

24 A. NO, SIR.

25 Q. HOW CLOSE IS YOUR RELATIONSHIP WITH MS. SCOTT?

1 A. SHE'S MY GRANDDAUGHTER.

2 Q. IF SHE HAD EVER DONE ANY FRAMING OR CONSTRUCTION
3 WORK, DO YOU THINK YOU WOULD HAVE KNOWN ABOUT IT?

4 A. YES, SIR, 'CAUSE SHE'S LIVED IN THE HOUSE WITH ME UP
5 UNTIL A FEW MONTHS AGO, UP UNTIL ABOUT A MONTH AGO.

6 **BY MR. DANLEY:**

7 THANK YOU, MA'AM. THAT'S ALL I HAVE,
8 COMMISSIONER.

9 **BY THE COMMISSIONER:**

10 MR. HOWELL, ANY QUESTIONS?

11 **CROSS EXAMINATION BY MR. HOWELL:**

12 Q. JUST TO FOLLOW UP ON THAT, YOUR GRANDDAUGHTER, MS.
13 SCOTT, IN 2009 WAS SHE IN THE FRAMING CONTRACTING
14 BUSINESS AT THAT TIME?

15 A. NO, SIR.

16 Q. HAS SHE EVER BEEN IN THE FRAMING CONTRACTING
17 BUSINESS?

18 A. NO, SIR.

19 Q. HAS SHE EVER HAD ANY EMPLOYEES IN THE STATE OF NORTH
20 CAROLINA?

21 A. NO, SIR.

22 Q. HAS SHE EVER HAD ANY EMPLOYEES IN THE STATE OF SOUTH
23 CAROLINA?

24 A. NO, SIR.

25 Q. WHERE WAS SHE WORKING BACK IN 2009?

1 A. JEFF'S CORNER CAFÉ.

2 Q. SHE WAS A WAITRESS THERE?

3 A. YES, SIR.

4 Q. AND THAT WAS HER ONLY SOURCE OF INCOME?

5 A. YES, SIR.

6 Q. HER ONLY INVOLVEMENT IN ANY OF THIS WAS BASICALLY AT
7 YOUR SUGGESTION, CORRECT?

8 A. YES, SIR.

9 Q. AND HER ONLY INVOLVEMENT WAS THAT THE INSURANCE
10 POLICY HAPPENED TO BE IN HER NAME?

11 A. YES, SIR, AND TONY KNEW THAT.

12 Q. DID TONY KNOW ---

13 **BY MR. BRUNSON:**

14 OBJECTION TO THAT ANSWER, COMMISSIONER.

15 **CROSS EXAMINATION RESUMED BY MR. HOWELL:**

16 Q. HOW DO YOU KNOW TONY KNEW?

17 A. 'CAUSE I TOLD HIM, YOU KNOW. I TOLD HIM HOW WE --
18 IT WAS WORKING. THAT INSURANCE WAS IN HER NAME, BUT
19 IF I GOT ANY WORK, YOU KNOW, THAT I WAS USING THE
20 INSURANCE.

21 Q. AND THE REASON THAT YOU DID THAT IS BECAUSE YOU HAD
22 HAD A HEART ATTACK BACK IN MAY OF 2008?

23 A. YES, SIR.

24 Q. AND A STROKE SHORTLY THEREAFTER?

25 A. YES.

1 Q. AND YOU HAD APPLIED FOR SOCIAL SECURITY DISABILITY;
2 IS THAT CORRECT?

3 A. YES, SIR.

4 Q. AND YOU BELIEVE THAT IF YOU SHOWED ANY INCOME THAT
5 YOU WOULD BE DENIED SOCIAL SECURITY DISABILITY?

6 A. YES, SIR. YES, SIR.

7 **BY MR. HOWELL:**

8 THANK YOU. THAT'S ALL I HAVE.

9 **BY THE COMMISSIONER:**

10 MR. BRUNSON?

11 **CROSS EXAMINATION BY MR. BRUNSON:**

12 Q. MA'AM, HOW FAR DID YOU GO IN SCHOOL?

13 A. NINTH GRADE.

14 Q. OKAY. HOW DID YOU LEARN THE CONSTRUCTION BUSINESS?

15 A. THROUGH MY EX-HUSBAND.

16 Q. ON-THE-JOB TRAINING?

17 A. YES, SIR; I WAS A LABORER FOR A COUPLE YEARS.

18 Q. OKAY. BUT YOU HAD TO START SOMEWHERE; IS THAT
19 CORRECT?

20 A. YES, SIR.

21 Q. WAS IT YOUR INTENTION TO TURN YOUR CONSTRUCTION
22 BUSINESS OVER TO YOUR GRANDDAUGHTER?

23 A. I DIDN'T TURN IT OVER TO MY GRANDDAUGHTER.

24 Q. OKAY. SO WHAT YOU WERE DOING IS YOU WERE STILL
25 RUNNING A CONSTRUCTION BUSINESS?

1 A. YEAH, BUT NOT IN SOUTH CAROLINA.

2 Q. ALL RIGHT. BUT ---

3 A. WELL, NOT AT THAT TIME I WEREN'T WORKING.

4 Q. WELL, WHY DID YOU GO TO THE INSURANCE COMPANY AND
5 TAKE OUT INSURANCE IN SOMEBODY ELSE'S NAME?

6 A. 'CAUSE I WAS FILING FOR MY DISABILITY.

7 Q. OKAY. SO, YOU WERE TRYING TO DEFRAUD THE FEDERAL
8 GOVERNMENT?

9 A. NO, NOT REALLY, 'CAUSE I WOULD HAVE FILED THE TAXES
10 IF I HAD MADE ANYTHING.

11 Q. WELL, HOW WOULD YOU HAVE DONE THAT IF THE MONEY
12 WOULD HAVE GONE TO HER?

13 A. WELL, IT WAS -- THE TAXES WAS FILED. HER TAXES WERE
14 FILED.

15 Q. RIGHT. BUT YOU WERE RUNNING THIS CONSTRUCTION
16 BUSINESS AND APPLYING FOR DISABILITY AT THE SAME
17 TIME?

18 A. WELL, NO. I DIDN'T RUN -- I WEREN'T WORKING. I
19 TOOK OUT THE INSURANCE BECAUSE I WAS TOLD THAT I WAS
20 GONNA GET THE VINYL SIDING, AND HE NEEDED INSURANCE,
21 AND SO I TOOK OUT INSURANCE AND -- WELL, I HAD ONE
22 OTHER GUY HAD CALLED ME AND WANTED ME TO DO SOME
23 WORK, AND HE TOLD ME I HAD TO HAVE INSURANCE. SO, I
24 WENT AND TOOK OUT THE INSURANCE IN FELICIA'S NAME.
25 WELL, IT DIDN'T PAN OUT. SO, THEN LUIS CALLED ME

1 AND -- LUIS CALLED ME AND TOLD ME, YOU KNOW, THAT HE
2 NEEDED SOME WORKERS' COMP. SO, I WEREN'T WORKING,
3 SO I LET -- I MEAN, YOU KNOW, I JUST LET HIM USE IT
4 BY STUPIDITY.

5 Q. OKAY. AND LUIS IS A FORMER EMPLOYEE OF YOURS?

6 A. HE HADN'T WORKED FOR ME IN FIVE OR SIX YEARS BEFORE
7 THE ---

8 Q. BUT HE HAS WORKED FOR YOU BEFORE AS A FRAMER?

9 A. YES. BUT HE HASN'T WORKED FOR ME IN THE LAST SEVEN,
10 EIGHT YEARS.

11 Q. AND YOU APPEARED IN MARION WITH YOUR GRANDDAUGHTER,
12 AND SHE SIGNED THE CONTRACT, IS THAT RIGHT?

13 A. AT TONY'S HOUSE.

14 Q. AND ALL OF THE CHECKS THAT CAME OUT OF THIS WERE
15 MADE PAYABLE TO FELICIA SCOTT, IS THAT RIGHT?

16 A. RIGHT.

17 Q. AND THEY WERE CASHED AT A BANK WHERE?

18 A. IN LUMBERTON. WACHOVIA BANK IN LUMBERTON.

19 Q. AND WOULD THE CREW BE THERE WITH LUIS WHEN THE
20 CHECKS WERE CASHED?

21 A. ONLY A COUPLE OF THEM. HE NEVER WAS.

22 Q. AND AMONG THOSE WAS YOUR SON DAVID?

23 A. YES, ONE OF THEM WAS DAVID; ONE OF THEM WAS LARRY
24 CARTER, WHO THEY CALL JOBBER, AND LUIS' NEPHEW.

25 Q. NOW, MA'AM, YOU PAID A PREMIUM FOR THE INSURANCE,

1 CORRECT?

2 A. YES.

3 Q. AND I BELIEVE YOU APPLIED FOR THAT INSURANCE IN
4 EARLY NOVEMBER OF 2008?

5 A. I CAN'T REMEMBER EXACTLY WHEN IT WAS.

6 Q. ALL RIGHT. AND THIS WAS SIX MONTHS LATER WHEN THESE
7 FRAMING JOBS TOOK PLACE, IS THAT RIGHT?

8 A. I GUESS, 'CAUSE I CAN'T REMEMBER WHEN I TOOK IT OUT.

9 BY MR. BRUNSON:

10 I APPRECIATE IT, MA'AM. THAT'S ALL.

11 BY THE COMMISSIONER:

12 MR. KELLY?

13 BY MR. KELLY:

14 NONE.

15 BY THE COMMISSIONER:

16 ANY OTHER WITNESSES?

17 BY MR. DANLEY:

18 I JUST WANT TO FOLLOW UP.

19 REDIRECT EXAMINATION BY MR. DANLEY:

20 Q. DID YOU EVER MAKE KNOWN TO MR. BETHEA THAT FELICIA
21 REALLY WAS NOT THE EMPLOYER IN THAT MARION PROJECT?

22 A. YES, SIR.

23 Q. AND WHO WAS ACTUALLY THE EMPLOYER FOR ---

24 BY MR. BRUNSON:

25 I'M GOING TO PLACE AN OBJECTION TO THE

1 QUESTION. IT CALLS FOR A LEGAL CONCLUSION. THE
2 LAST QUESTION HE ASKED WAS LEADING, AND IF HE'S
3 GOING TO ASK QUESTIONS LIKE THIS HE NEEDS TO LAY
4 SOME FOUNDATION.

5 BY THE COMMISSIONER:

6 WHO DID YOU THINK WAS THE EMPLOYER?

7 BY THE WITNESS:

8 WHO DID HE THINK WAS THE EMPLOYER?

9 BY THE COMMISSIONER:

10 NO. WHO DID YOU THINK WAS THE EMPLOYER?

11 BY THE WITNESS:

12 I DIDN'T.

13 BY THE COMMISSIONER:

14 WHO DID YOU THINK WAS THE EMPLOYER FOR THE
15 CLAIMANT?

16 BY THE WITNESS:

17 I DIDN'T KNOW HIM. I MEAN, I'D NEVER MET HIM.

18 BY THE COMMISSIONER:

19 FAIR ENOUGH.

20 BY THE WITNESS:

21 I MEAN, I MIGHT HAVE SEEN HIM ON THE JOB, BUT
22 FAR AS KNOWING WHO HE WAS, I DIDN'T KNOW WHO HE WAS.

23 BY THE COMMISSIONER:

24 MR. DANLEY?

25 BY MR. DANLEY:

1 THAT'S ALL I HAVE, COMMISSIONER.

2 RECROSS EXAMINATION BY MR. HOWELL:

3 Q. DID YOU HIRE ANY OF THE WORKERS THAT WERE WORKING ON
4 THE JOB?

5 A. NO, SIR.

6 Q. DID YOU HIRE MR. PALMA?

7 A. NO, SIR.

8 Q. TO YOUR KNOWLEDGE DID FELICIA SCOTT HIRE MR. PALMA?

9 A. NO, SIR.

10 BY MR. HOWELL:

11 THAT'S ALL I HAVE.

12 BY THE COMMISSIONER:

13 MR. BRUNSON, ANY OTHER QUESTIONS?

14 BY MR. BRUNSON:

15 NO QUESTIONS.

16 BY THE COMMISSIONER:

17 ANY OTHER WITNESSES, MR. DANLEY?

18 BY MR. DANLEY:

19 NO, SIR.

20 BY THE COMMISSIONER:

21 ANYTHING ELSE FROM THE CLAIMANT?

22 BY MR. KELLY:

23 DEFINITELY NOT.

24 BY THE COMMISSIONER:

25 MR. BRUNSON, ANYTHING ELSE?

1 BY MR. BRUNSON:

2 NO, SIR.

3 BY THE COMMISSIONER:

4 MR. HOWELL?

5 BY MR. HOWELL:

6 NO, SIR.

7 BY THE COMMISSIONER:

8 MR. DANLEY?

9 BY MR. DANLEY:

10 NO, SIR.

11 BY THE COMMISSIONER:

12 MS. SCOTT?

13 BY MS. SCOTT:

14 NO, SIR.

15 BY THE COMMISSIONER:

16 THAT BEING THE CASE, THAT WILL CONCLUDE THIS
17 HEARING.

18 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING WAS
19 CONCLUDED AT THE HOUR OF 1:30 P.M.)

CERTIFICATE OF NOTARY PUBLIC
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 0909301

EMPLOYEE/CLAIMANT: GUSTAVO PALMA AKA CARLOS LOPEZ

EMPLOYER: FELICIA SCOTT/PEE DEE COMMUNITY ACTION

CARRIER: LIBERTY MUTUAL INSURANCE COMPANY/STATE ACCIDENT
FUND/SOUTH CAROLINA UNINSURED EMPLOYERS' FUND

I, TIMMI A. PARRISH, A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, DULY COMMISSIONED AND QUALIFIED AS SUCH, DO HEREBY CERTIFY THAT THE FOREGOING 77 PAGES REPRESENTS A TRUE AND ACCURATE TRANSCRIPT OF THE FOREGOING HEARING OF GUSTAVO PALMA AKA CARLOS LOPEZ, TAKEN ON THE 7TH DAY OF NOVEMBER, 2011.

THAT THE WITNESS WAS DULY PLACED UNDER OATH AND ADMONISHED TO SPEAK THE WHOLE TRUTH. THAT THE ORAL HEARING WAS DULY TAKEN AND TRANSCRIBED AS TO THE QUESTIONS PROPOUNDED AND THE ANSWERS GIVEN.

THAT ALL THE OFFERED EXHIBITS, STIPULATIONS AND OBJECTIONS, IF ANY, INVOLVED IN THIS CASE ARE DULY ATTACHED OR INCLUDED HEREIN.

IN WITNESS WHEREOF, I HAVE SET MY HAND AND OFFICIAL SEAL THIS 7TH DAY OF DECEMBER, 2011.

TIMMI A. PARRISH
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 11-20-2018

* THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 0909301

Gustavo Palma,

Respondent,

v.

Felicia Scott, Luis Cardona, and Pee Dee
Community Action Partnership, and Liberty Mutual
Insurance Company, Carrier for Felicia Scott, State
Accident Fund, Carrier for Pee Dee Community
Action Partnership, and SC Workers' Compensation
Uninsured Employers' Fund,

Defendants,

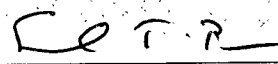
Of Whom,

Pee Dee Community Action Partnership, and
South Carolina State Accident Fund are,

Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed
to be included by any of the parties and not any other material.



Samuel T. Brunson, Esquire
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Pee Dee Community Action Partnership and State Accident Fund

November 25, 2013
Florence, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Trial Court Case No. 0909301

Gustavo Palma,

Respondent,

v.

Felicia Scott, Luis Cardona, and Pee Dee
Community Action Partnership, and Liberty Mutual
Insurance Company, Carrier for Felicia Scott, State
Accident Fund, Carrier for Pee Dee Community
Action Partnership, and SC Workers' Compensation
Uninsured Employers' Fund,

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Defendants,

Of Whom,

SC Court of Appeals

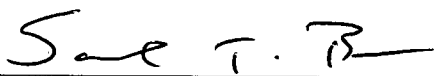
Pee Dee Community Action Partnership, and
South Carolina State Accident Fund are,

Appellants,

PROOF OF SERVICE
OF FINAL BRIEF AND RECORD ON APPEAL

I certify that I have served one (1) copy of the Record on Appeal and one (1) copy of my Final Brief on Respondent Gustavo Palma by depositing a copy of it in the United States Mail, postage prepaid, on November 27, 2013, addressed to his attorney of record, D. Michael Kelly, and that I have served one (1) copy of the Record on Appeal and one (1) copy of my Final Brief upon the Respondents, Felicia Scott, and Luis Cardona, who are unrepresented, and upon Respondent Uninsured Employers Fund through Attorney, Andrew Fajardo at the addresses listed below.

November 27, 2013


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