

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

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COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2013-001322
WCC File No. 1112328

173742

Samuel A. Rose, Claimant,.....Claimant,

v.

JJS Trucking, LLC, Uninsured Employer,
Chris Thompson Services, LLC, Upstream Contractor,
Bridgefield Casualty Insurance Company, Carrier,
And South Carolina Workers' Compensation
Uninsured Employers' FundDefendants,

Chris Thompson Services, LLC, Upstream Contractor,
and Bridgefield Casualty Insurance Co., Carrier, are the Appellants,

The South Carolina Workers' Compensation Uninsured
Employers' Fund is..... Respondent.

**RESPONDENT'S MOTION TO DISMISS
FOR LACK OF APPEALABILITY**

The Respondent, S.C. Worker's Compensation Uninsured Employers' Fund ("Fund"), hereby moves this Court for an Order dismissing the pending Workers' Compensation appeal insofar as the appeal does not follow a final order of the commissioner as required by South Carolina Statutory and Case Law.

The basis for this Motion is as follows:

1. Appellant filed an initial Petition to transfer liability from the carrier to the Fund pursuant to S.C. Code Ann. §42-1-415 on January 24, 2012 and on April 30, 2012. The Fund filed a Return to the initial Petition on January 31, 2012 and an amended Return on May 3, 2012. A hearing was held on May 15, 2012 whereby the Single Commissioner Ordered on May 23, 2012 that the claim was compensable and ordered payment by the Appellant of temporary total benefits due and ordered that the Carrier provide medical treatment.

2. The Single Commissioner further found that that the Petition to Transfer Liability was not ripe for adjudication because the higher tier contractor had not “paid all benefits due to the Claimant under the Act” as set forth in S.C. Code Ann. §42-1-415.

3. The Carrier appealed this Order to the Full Commission. The finding that the Petition was not ripe for adjudication was affirmed as S.C. Code Ann. §42-1-415 requires “higher tier contractor to petition the Commission to transfer responsibility for benefits to the UEF after it has paid all benefits due the Claimant under the Act.” The Petitioner appealed this Order to the Court of Appeals.

4. Appellant continued to pay to the Claimant temporary total benefits and provide medical treatment as ordered.

5. S.C. Code Ann. §1-23-390 provides that an aggrieved party may obtain a review of any final judgment of the court. The appealed Order in this matter issued on May 15, 2013 was not a final order of the case.

6. The Administrative Procedures Act (APA) governs the review of administrative agency matters. S.C. Code Ann. §1-23-610(A)(1) allows judicial review from “final decisions” and the order herein was not a “final decision”.

WHEREFORE, the Fund respectively requests this Court to dismiss the claim as the issue currently pending on appeal are not derived from a final order of the Commission.

COFIELD LAW FIRM



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Lexington, South Carolina
October 1, 2014

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IN THE COURT OF APPEALS**

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2013-001322
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v.

JJS Trucking, LLC, Uninsured Employer,
Chris Thompson Services, LLC, Upstream Contractor,
Bridgefield Casualty Insurance Company, Carrier,
And South Carolina Workers' Compensation
Uninsured Employers' FundDefendants,

Chris Thompson Services, LLC, Upstream Contractor,
and Bridgefield Casualty Insurance Co., Carrier, are the Appellants,

The South Carolina Workers' Compensation Uninsured
Employers' Fund is..... Respondent.

PROOF OF DELIVERY

I, Ami M. Meetze, an employee of Cofield Law Firm, do hereby state that I have on this 2nd day of October, 2014 served a copy of the within and foregoing **RESPONDENT'S MEMORANDUM APPEALABILITY and RESPONDENT'S MOTION TO DISMISS FOR LACK OF APPEALABILITY**, by depositing same in United States Mail, First Class Postage Prepaid and addressed as follows:

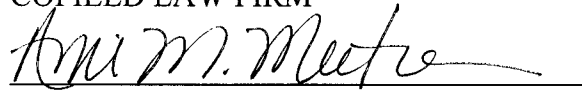
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Lexington, South Carolina
October 2, 2014



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Attorneys At Law

October 2, 2014

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~~SC Court of Appeals~~

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C. Thomas Cofield III (1933 - 1994)

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

**Re: Samuel A. Rose v. JJS Trucking, LLC, SCUEF and Chris Thompson
Services, LLC and Bridgefield Casualty Insurance Company
WCC File No.: 1112328
Appellate Case No.: 2013-001322
Our File No.: 42.04**

Dear Ms. Kitchings:

Please find enclosed herewith the original and six (6) copies of the following documents for filing in the above-referenced matter:

1. Respondents Memorandum of Appealability;
2. Respondent's Motion to Dismiss for Lack of Appealability; and
3. Certificate of Service of same.

Please also find enclosed herewith our firms check in the amount of \$25.00 for the filing fee associated in filing the Motion to Dismiss.

By carbon copy of this letter I am hereby serving all parties with a copy of the above-referenced documents.

Thank you in advance for your attention to this matter. If you have any questions or concerns regarding the enclosure, please do not hesitate contacting me at the number below.

Very truly yours,

Ami M. Meetze,
Paralegal to Amy V. Cofield

AVC/amm
Enclosure

- cc: Kirsten L. Barr, Esq. (with copy of enclosures)
Joseph Brooks Fisher, Esq. (with copy of enclosures)
Benjamin William Akery, Esq. (with copy of enclosures)
John Eric Kaufmann, Esq. (with copy of enclosures)

PERSONAL INJURY • WORKERS' COMPENSATION • FAMILY LAW
REAL ESTATE • WILLS/TRUSTS/PROBATE • SOCIAL SECURITY

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