

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

The Honorable Avery B. Wilkerson, Commissioner

Appellate Case No. 2013-001322
W.C.C. 1112328

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

v.

JJS Trucking, LLC, Unisured Employer, and
Chris Thompson Services, LLC, Upstream Contractor, and
Bridgefield Casualty Ins. Co., Carrier, and South Carolina
Uninsured Employers' Fund,.....Defendants,

of whom JJS Trucking, LLC, Uninsured Employer, and
the South Carolina Uninsured Employers' Fund are.....Respondents,
and

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

RETURN TO MOTION TO DISMISS APPEAL

The Appellants respectfully request that the Motion to Dismiss filed by the South Carolina Uninsured Employers' Fund based upon the following:

1. The Appellants seek review and reversal of the South Carolina Workers' Compensation Commission's May 15, 2013 Decision and Order, by which the Commission refused to "transfer responsibility for continuing compensation

RECEIVED

OCT 16 2014

SC Court of Appeals

and benefits to the Uninsured Employers' Fund” in accordance with S.C. Code Ann. § 42-1-415.

2. The Uninsured Employers' Fund (hereinafter “UEF”) now argues that the Commission’s May 15, 2013 Decision and Order is not a “final order” and that it should be dismissed pursuant to S.C. Code Ann. § 1-23-390 and S.C. Code Ann. § 1-23-610. The Appellants respectfully contend that this argument is without merit.
3. S.C. Code Ann. § 1-23-610 is wholly inapplicable to the case *sub judice*. That section governs appeals from the Administrative Law Court.
4. S.C. Code Ann. § 1-23-390 is also wholly inapplicable to the case *sub judice*. That section governs appeals to the South Carolina Supreme Court from the Circuit Court or Court of Appeals.
5. This is an appeal from the South Carolina Workers’ Compensation Commission to the South Carolina Court of Appeals, which is properly governed by S.C. Code Ann. § 1-23-380.
6. According to the plain and unambiguous language of S.C. Code Ann. § 1-23-380(A), a “preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.” Therefore, it matters not whether the Commission’s May 15, 2013 Decision and Order is a “final order,” because the governing statute does not require finality.
7. Instead, the seminal issue is whether the review of some future Commission Order would adequately remedy the Commission’s failure to “transfer responsibility for continuing compensation and benefits to the Uninsured

Employers' Fund” in accordance with S.C. Code Ann. § 42-1-415. (emphasis added). The Appellants respectfully contend that such a “remedy” would hardly even be considered a “remedy” and certainly would not be adequate. The Appellants are required under the May 15, 2015 Order to make ongoing payments to the Claimant, in addition to adjusting the claim and providing medical benefits, all despite the fact that the Appellants properly petitioned the Commission to transfer continuing liability the UEF and should have been absolved of liability as a matter of law. According to the UEF, the Appellants would never be entitled to transfer responsibility for “continuing compensation and benefits,” but instead must pay all compensation and benefits to the Claimant, obtain a final adjudication of the claim from the Commission, and after there is nothing left to be paid to or on behalf of the Claimant, the Appellants could then seek reimbursement. This can hardly be the “transfer of continuing liability” envisioned by the General Assembly when S.C. Code Ann. § 42-1-415 was enacted. Therefore, failure to address the appeal at this time would deprive the Appellants of any meaningful remedy.

Therefore, based upon the foregoing, the Appellants respectfully request that the UEF’s Motion, which is based upon a misapprehension of the governing law, be denied in accordance with S.C. Code Ann. § 1-23-380.

October 13, 2014



Kirsten L. Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

The Honorable Avery B. Wilkerson, Commissioner

Appellate Case No. 2013-001322
W.C.C. 1112328

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

v.

JJS Trucking, LLC, Uninsured Employer, and
Chris Thompson Services, LLC, Upstream Contractor, and
Bridgefield Casualty Ins. Co., Carrier, and South Carolina
Uninsured Employers' Fund,.....Defendants,

of whom JJS Trucking, LLC, Uninsured Employer, and
the South Carolina Uninsured Employers' Fund are.....Respondents,
and

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

PROOF OF SERVICE

The undersigned hereby certifies that Samuel A. Rose, the South Carolina Uninsured Employers' Fund, and JJS Trucking, LLC were served with a copy of the Appellants' Return to Motion to Dismiss Appeal this 13th day of October 2014, by depositing the same in the United States Mail, first class postage prepaid, addressed to their attorneys of record, as follows:

RECEIVED

OCT 16 2014

SC Court of Appeals

Joseph B. Fisher, Esq.
PO Box 63506
North Charleston, SC 29419

Benjamin W. Akery, Esq.
P.O. Box 1028
Goose Creek, SC 29445

Amy V. Cofield, Esq.
The Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072

J. Eric Kaufmann, Esq.
P.O. Box 6461
Columbia, SC 29260

October 13, 2014



Kirsten L. Barr
Trask & Howell, L.L.C.
P.O. Box 2167
Mt. Pleasant, SC 29465
(843) 881-4228
Attorneys for Appellants



Harold E. Trask
Roy A. Howell, III
Kirsten L. Barr
Jamie C. Guerrero
William H. Lyon

TRASK & HOWELL, L.L.C.
Workers' Compensation Defense

Phone
(843) 881-4228
Fax
(843) 881-8784

Jill W. King
D. Alan Westerlund, Jr.
Geoffrey L. Wendt

763 Johnnie Dodds Boulevard
P. O. Box 2167
Mt. Pleasant, SC 29465

E-mail
kbarr@trask-howell.com
Direct Dial: (843) 881-1027

October 13, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

Re: Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance Company
W.C.C. File No.: 1112328
Appellate Case No.: 2013-001322
Carrier File No.: 943450
Date of Accident: August 10, 2011

Dear Ms. Kitchings:

Enclosed herewith for filing, please find the original and six (6) copies of our Return to Motion to Dismiss Appeal, along with our original Proof of Service of the same in the above-referenced matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Return.

Thank you for your time and attention to this matter. Should you have any questions, please do not hesitate to contact me.

Yours very truly,

Kirsten L. Barr

KLB/lrb/les
Enc.

cc: Kiema Lewis, Summit Holdings (w/enc.)
Chris Thompson, Chris Thompson Services, LLC (w/enc.)
Benjamin W. Akery, Esq. (w/enc.)
Joseph B. Fisher, Esq. (w/enc.)
Amy V. Cofield, Esq. (w/enc.)
J. Eric Kaufmann, Esq. (w/enc.)

118/133\I-COA-return to motion to dismiss appeal

RECEIVED

OCT 16 2014

SC Court of Appeals



HOWELL LLC
Box 2167
CANT, SC 29465



RECEIVED

OCT 16 2014

SC Court of Appeals

118.133

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

