

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.

APPELLANTS MEMORANDUM OF LAW

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 and

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SC Court of Appeals

benefits to the Uninsured Employers' Fund” in accordance with S.C. Code Ann. § 42-1-415.¹ According to the South Carolina Supreme Court,

“Under section 42-1-415(A), a statutory employer is no longer directly liable for workers' compensation payments whenever documentation is presented to the commission that a contractor or subcontractor represented himself to the statutory employer as having workers' compensation insurance.”

Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 523 S.E.2d 766 (1999)(emphasis added). Here, the Commission conclusively found that JJS Trucking, the subcontractor, represented himself to the statutory employer, Chris Thompson Services, as having workers' compensation insurance and this finding is the law of the case. (R. p. 8).

Unfortunately, the Commission further concluded that the Appellant, Chris Thompson Services, remains liable for workers' compensation benefits. Therefore, because the evidence on the seminal elements of S.C. Code Ann. § 42-1-415 is undisputed, the Appellants respectfully contend that the Commission erred as a matter of law in failing to conclude that “responsibility for continuing compensation and benefits” should be transferred to the UEF in accordance with the mandatory language of § 42-1-415. (emphasis added).

¹ S.C. Code Ann. § 42-1-415 states that “[i]n the event that employer is uninsured ... The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund.”

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. First, S.C. Code Ann. § 1-23-610 is wholly inapplicable to the case *sub judice*, as that statute governs appeals from the Administrative Law Court. In addition, S.C. Code Ann. § 1-23-390 is also wholly inapplicable to the case *sub judice* because that section governs appeals to the South Carolina Supreme Court from the Circuit Court or Court of Appeals. Obviously, 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.

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. 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 and would vitiate the statutory scheme envisioned by the General Assembly with the enactment of S.C. Code Ann. § 42-1-415.

Therefore, based upon the foregoing, the Appellants respectfully contend that the South Carolina Workers’ Compensation Commission’s May 15, 2013 Decision and Order, by which the Commission refused to “transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund,” is immediately appealable in accordance with the governing authority of S.C. Code Ann. § 1-23-380.

October 20, 2014

Kirsten L. Barr

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

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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
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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' Memoranda Addressing the Issue of Appealability this 20th 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:

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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 20, 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 20, 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 Memoranda Addressing the Issue of Appealability, along with our original Proof of Service of the same in the above-referenced case. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Memoranda.

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.)

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TRASK & HOWELL LLC
P.O. Box 2167
MT. PLEASANT, SC 29465

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