

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

The Honorable Avery B. Wilkerson, Commissioner

75019

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.

PETITION FOR REHEARING

The Appellants, Chris Thompson Services, LLC, and Bridgefield Casualty Insurance Company respectfully petition the South Carolina Court of Appeals for a rehearing, based on the arguments set forth herein below.

- I. **The Court's dismissal of this appeal is based on a misapprehension the legal issues presented.**

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SC Court of Appeals

The Appellants seek judicial review of the Workers' Compensation Commission's refusal to transfer liability to the Uninsured Employers' Fund("UEF"). According to the Commission, the Appellant's Petition to Transfer Liability is not "ripe" because the "Claimant has not received all benefits he is due under the Act." However, even UEF concedes that the Appellants have been paying temporary total disability compensation to the Claimant and the record reveals that no other benefits were due to the Claimant at the time of the hearing. Therefore, the Appellants argue that the Commission's conclusion regarding the Claimant's receipt of benefits currently due is not supported by substantial evidence and should be reversed. Furthermore, and perhaps more importantly, the Commission's refusal to grant the Appellant's Petition was based on an error of law, specifically the illogical interpretation of S.C. Code Ann. Sec. 42-1-415 so as to require payment of all benefits that may become due to the Claimant *in the future* as a condition precedent to the transfer of "responsibility for continuing compensation."

According to the Court of Appeals, dismissing these arguments does not deprive the Appellants of an adequate remedy because the Appellants can simply abide by the Commission's order, pay all benefits that could ever be due to the Claimant, and then file a new Petition to Transfer Liability. Respectfully, this is no *adequate* remedy, it is not even a remedy at all. If the Appellants are forced to comply with the Commission's erroneous legal conclusions, pay the Claimant all of the medical and compensation benefits he could possibly be due under the Workers' Compensation Act, and then file a new Petition to Transfer Liability at some time in the future, then the factual and legal arguments raised in the

present appeal will be rendered moot and will never be addressed by a reviewing court.

In addition, the legislative intent of S.C. Code Sec. 42-1-415, which specifically requires the “transfer of responsibility for continuing compensation and benefits,” will be wholly thwarted if the appeal is not heard at this time. Obviously, the Appellants would have no “continuing” responsibility to transfer if a “final decision” on the merits of Rose’s claim has already been issued as the Court suggests. Essentially, the Court’s refusal to hear the present appeal transforms the Legislature’s procedure for a transfer of liability into nothing more than a reimbursement scheme. Respectfully, if Sec. 42-1-415 was intended to be a mere reimbursement scheme, the legislature would not have employed language such as the higher tier contractor “must be relieved of any and all liability” and may “petition the commission to transfer responsibility for continuing compensation.” Accordingly, the Appellants respectfully contend that the Court of Appeals misapprehended these issues and request that the appeal be reinstated.

II. The Appellants have no adequate remedy for the Court’s refusal to hear the present appeal.

The Court of Appeals suggests that the Appellants are not entitled to judicial review of the issues raised on appeal because they can file a new Petition in the future seeking reimbursement from the UEF and can appeal any adverse decisions after the merits of Rose’s claim have been finally decided. However, S.C.

Code Ann. Sec. 42-1-415 only requires the UEF reimburse medical and compensation benefits paid to or on behalf of Rose. The Appellants will never be reimbursed for the costs or expenses of adjusting the claim, nor will they ever be reimbursement for the costs and expenses of litigation with Rose or the UEF, expenses which are necessitated solely by the Commission's present failure to properly apply S.C. Code Ann. Sec. 42-1-415.

For example, because the Commission refused to transfer liability to the UEF when Petitioned in January 2012, the Appellants were required to continue paying compensation benefits to the Claimant and medical expenses on his behalf. As a result, the Appellants were necessarily required to employ a professional to adjust his claim, schedule his appointments, process his bills, manage his medical treatment, and pay mileage and other expenses to the Claimant. In addition, the Appellants were required to defend Rose's entitlement to ongoing medical and compensation benefits at a second hearing, necessitating additional legal costs and expenses that would never had been incurred had the Commission properly applied S.C. Code Ann. Sec 42-1-415. Even after obtaining a Commission Order regarding Rose's entitlement to benefits, Rose appealed, necessitating further legal expenses by the Appellants to which they never should have been exposed.

None of these expenses would have ever been incurred by the Appellants had the Commission properly applied the law and transferred liability to the UEF under Sec. 42-1-415. Furthermore, none of these expenses, which are substantial and which continue to accrue, will ever be reimbursed by the UEF or any other party. Therefore, the Court of Appeals misapprehended the adequacy of the

“remedy” available to the Appellants following the dismissal of the present appeal. As such, the Appellants respectfully request that the appeal be reinstated, as appeal of some future order will not provide an adequate remedy or resolution of the issues presently before the Court of Appeals.

Respectfully submitted,

February 11, 2015



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

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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' Petition for Rehearing this 11th day of February 2015, 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

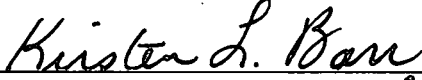
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February 11, 2015



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February 11, 2015

Via Fedex Delivery

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

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 Petition for Rehearing and original Proof of Service of the same in the above-named matter. By a copy of this correspondence, I am serving the other counsel of record with a copy of our Petition. Also enclosed, please find our check in the amount of \$25.00 for the filing of this Petition.

Yours very truly,

Kirsten L. Barr *es*

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.)
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118/133\l-COA Petition for Rehearing

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SC Court of Appeals
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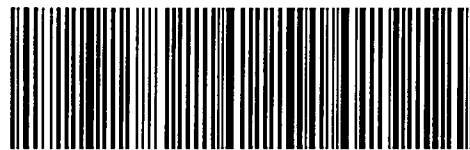
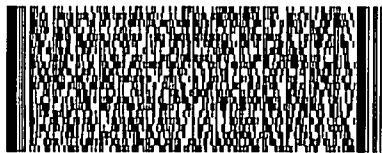
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