

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM THE SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
The Honorable Avery B. Wilkerson, Commissioner

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Opinion No. 5291 (S.C. Ct. App. filed Jan. 28, 2015)

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

v.

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

*of whom* Chris Thompson Services, LLC, and Bridgefield Casualty Ins. Co.,  
are.....Petitioners,

and

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

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**PETITION FOR WRIT OF CERTIORARI**

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APR 28 2015

**S.C. Supreme Court**

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**INDEX**

Certificate of Counsel.....	1
Questions Presented.....	1
Statement of the Case.....	1
Arguments.....	6
The Court of Appeals erred as a matter of law in dismissing the Petitioner's appeal.....	6
The refusal by the Court of Appeals to hear the Petitioners' appeal deprives the Petitioners of an adequate remedy.....	8
Conclusion.....	9

## **Certificate of Counsel**

Counsel for the Petitioners hereby certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on February 27, 2015.

## **Questions Presented**

- I. Did the Court of Appeals err as a matter of law in dismissing the Petitioner's appeal?
- II. Does the refusal by the Court of Appeals to hear the Petitioners' appeal deprive the Petitioners of an adequate remedy?

## **Statement of the Case**

On December 6, 2011, the Claimant filed a Form 50 alleging various injuries by accident on August 20, 2011. (R. p. 23). The Form 50 named the Claimant's direct employer, JJS Trucking, LLC, and its upstream contractor, Chris Thompson Services, LLC, as Defendants in the claim. The Petitioners, Chris Thompson Services and Bridgefield Casualty, denied the claim by Form 51 and also filed a Petition to Transfer Liability to the South Carolina Uninsured Employers Fund (UEF) on January 24, 2012. (A. p. 25, p. 27-55).

Chris Thompson testified that JJS Trucking was operating as a subcontractor of Chris Thompson Services, LLC, at the time in question. (A. p. 96). Chris Thompson Services engaged JJS Trucking to haul wood chips from a sawmill in Summerville to a paper mill in North Charleston

on a regular basis, beginning in 2008. (A. pp. 96-97). Mr. Thompson testified that he obtained a Certificate of Insurance from JJS Trucking at the time his relationship with the JJS Trucking began in 2008 and that he has requested and obtained updated Certificates of Insurance from JJS Trucking on a yearly basis since that time to insure that JJS Trucking had continuous workers' compensation coverage. (A. p. 97).

Mr. Thompson identified the October 18, 2010 Certificate of Insurance contained in the Record as the one presented to him in October 2010 to verify that JJS Trucking's workers' compensation coverage was current. (A. p. 97, p. 141). This Certificate shows that JJS Trucking had workers' compensation coverage through Travelers Insurance for the period from October 8, 2010 through October 8, 2011. (A. p. 141). The Certificate of Insurance shows Chris Thompson Services as the Certificate Holder and the Certificate is signed by David W. Hayes, whom Mr. Thompson identified as the owner of the Producer, the Swamp Fox Agency. (A. p. 97, p. 141). Mr. Thompson testified that after receiving this Certificate of Insurance, he was never given any reason to believe that JJS Trucking did not have workers' compensation coverage until after the Claimant's accident. (A. p. 98).

The record reveals that Travelers Insurance did, in fact, insure JJS Trucking for a period after the Certificate of Insurance was issued, but the policy lapsed without notice to Chris Thompson Services by any person or entity. (A. p. 159). Cedric Smalls, the owner of JJS Trucking, confirmed that he did not ever inform Chris Thompson Services that his workers'

compensation insurance had lapsed and further testified that Chris Thompson would not allow him to work as a subcontractor if his workers' compensation insurance ever lapsed. (A. p. 132, p. 139).

At the time of the hearing before Commissioner McCaskill, the Petitioners were voluntarily paying weekly temporary total disability compensation to the Claimant, as reflected on the Form 18. (A. p. 117). However, prior to the hearing before Commissioner McCaskill, the Claimant had not yet proven the extent of his alleged injuries or his entitlement to any medical or compensation benefits. In fact, all parties, including the UEF, denied the claim in its entirety.

A hearing was held in Summerville, South Carolina on May 15, 2012 before Commissioner Gene McCaskill. Following that hearing, Commissioner McCaskill issued a Decision and Order dated August 23, 2012 (A. pp. 1-11), where he found and concluded, *inter alia*,

1. *Samuel Rose was an employee of JJS Trucking on August 10, 2011.*
2. *On August 10, 2011, Samuel Rose sustained an injury by accident to his head, knee, leg back and neck arising out of and in the course of his employment with JJS Trucking.*

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5. *As a result of his accident, Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 and continuing until such time as he reaches maximum medical improvement.*
6. *As a result of his accident, Claimant is entitled to an evaluation to determine the extent of his injuries and is entitled to ongoing medical treatment as prescribed by an authorized treating physician to be selected by the carrier.*

7. *On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance.*
8. *On August 10, 2011, JJS Trucking was operating without proper insurance as required by the Workers' Compensation Act.*
9. *On August 10, 2011, JJS Trucking was operating as a subcontractor for Chris Thompson Services, LLC. Chris Thompson Services, LLC, is an "upstream employer" pursuant to §42-1415.*
10. *Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act.*

#### *CONCLUSIONS OF LAW*

1. *On August 10, 2011 Samuel Rose was an "employee" of JJS Trucking as defined in S.C. Code Ann. § 42-1-130 (1976).*

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4. *Claimant is entitled to temporary total disability benefits beginning on August 10, 2011 pursuant to § 42-9-10 until such time as he is able to return to work.*
5. *Claimant is entitled to medical treatment causally related to his injury pursuant to §42- 15-60...*
6. *Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.*
7. *Chris Thompson Services, LLC, asserted in its pleadings and at the Hearing that liability for this claim should be transferred to the South Carolina Uninsured Employer's Fund. § 42-1415 only permits the 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 evidence in the record indicates that Claimant has not received all benefits he is due under the Act from Chris Thompson Services, LLC, or its carrier.*

*Therefore, the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time.*

8. *Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order...*

The Petitioners, Chris Thompson Services and Bridgefield Casualty filed a Form 30, seeking review and reversal of Commissioner McCaskill's Decision and Order by the Workers' Compensation Commission's Appellate Panel. (A. pp. 72-84). On May 15, 2013, the Appellate Panel issued an Order summarily affirming Commissioner McCaskill's conclusion that the Petition for Transfer of Liability was "not ripe for adjudication," without any discussion. (R. pp. 12-22).

The Petitioners appealed to the South Carolina Court of Appeals arguing, *inter alia*, that the Workers' Compensation Commission erred as a matter of law in concluding that the Petition to Transfer Liability to the UEF was "not ripe" and in failing to actually transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415 based upon the undisputed evidence in the record and the applicable law. The Court of Appeals refused to address the merits of the appeal and instead issued Opinion Number 5291 on January 28, 2015, by which the Court concluded that the issues raised by the Petitioners were not immediately appealable because the Commission had "not yet ruled on the merits of Samuel Roses's entire claim for benefits," despite the fact that the merits of Samuel Roses's "entire claim" was wholly unrelated to the matter *sub judice*. The

Petitioners respectfully request that the Supreme Court issue a Writ of Certiorari to review the decision of the Court of Appeals.

### Arguments

**I. The Court of Appeals erred as a matter of law in dismissing the Petitioner's appeal.**

The Petitioners seek judicial review of the Workers' Compensation Commission's refusal to transfer liability to the Uninsured Employers' Fund("UEF"). According to the Commission, the Petition to Transfer Liability was not "ripe" because the "Claimant has not received all benefits he is due under the Act." However, even UEF concedes that the Petitioners 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 Petitioners 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 Petition to Transfer Liability 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 Petitioners of an adequate remedy because the Petitioners 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 Petitioners 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 Petitioners 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 Petitioners respectfully request that the Supreme Court issue a Writ of Certiorari and reinstate the Petitioners' appeal.

**II. The refusal by the Court of Appeals to hear the Petitioners' appeal deprives the Petitioners of an adequate remedy.**

The Court of Appeals suggests that the Petitioners 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 final 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 Petitioners were required to continue paying compensation benefits to the Claimant and medical expenses on his behalf. As a result, the Petitioners 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 Petitioners 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 Petitioners to which they never should have been exposed.

None of these expenses would have ever been incurred by the Petitioners 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 Petitioners following the dismissal of the present appeal. As such, the Petitioners respectfully request that the Supreme Court issue a Writ of Certiorari and reinstate the Petitioners’ appeal because an appeal of some future order will not provide an adequate remedy or resolution of the issues presented to the Court of Appeals.

**Conclusion**

For the reasons stated herein, the Petitioners respectfully request that the Supreme Court of South Carolina issue a Writ of Certiorari to review the decision of the Court of Appeals and reinstate the Petitioners’s appeal.

Respectfully submitted,

April 27, 2015



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**PROOF OF SERVICE**

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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 Petition for Writ of Certiorari filed by the above Petitioner, this 27<sup>th</sup> day of April 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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April 27, 2015



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April 27, 2015

The Honorable Daniel E. Shearouse  
Clerk, South Carolina Supreme Court  
1231 Gervais Street  
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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 Mr. Shearouse:

Pursuant to your correspondence dated April 7, 2015, enclosed, please find an original and six (6) copies of our revised Petition for Writ of Certiorari and two (2) bound copies of our revised Appendix, as well as an unbound copy for the Court's convenience, along with the original Proof of Service in the above-referenced matter. By copy of this letter, I am serving the other counsel of record with a copy of our revised Petition and revised Appendix. Our Check No. 44869 in the amount of \$100.00 for filing fee as required by Rule 226 was previously forwarded to you on March 27<sup>th</sup>.

Yours very truly,

Kirsten L. Barr

KLB/cnd/les

Enc.

cc: Kiema Lewis, Summit Holdings (w/enc.)  
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The Honorable Jenny Abbott Kitchings, S.C. Court of Appeals (w/enc.)

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