

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

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S.C. Supreme Court

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

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.

APPENDIX

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INDEX

Record on Appeal.....	1
Final Brief of Appellant (Petitioner).....	177
Final Brief of Respondent (SCUEF).....	192
September 18, 2014 Order of Court of Appeals.....	207
Respondents' Motion to Dismiss.....	209
Return to Motion to Dismiss.....	212
Respondent's Memorandum of Law.....	215
Appellant's (Petitioner's) Memorandum of Law.....	219
Opinion No. 5291 (S.C. Ct. App. January 28, 2015).....	224
Petition for Rehearing.....	228
February 27, 2015 Order of Court of Appeals.....	233

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.

RECORD ON APPEAL

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INDEX

I. Orders

1. Decision and Order of Commissioner McCaskill (8/23/12).....1
2. Decision and Order of the Appellate Panel (5/15/13).....12

II. Forms and Pleadings

1. Claimant's Form 50 (12/6/11).....23
2. Appellants' Form 51 (12/15/11) 24
3. SCUEF Form 51 (1/4/12).....25
4. Petition to Transfer Liability to the SCUEF (with exhibits)
(1/24/12).....27
5. Pre-hearing Brief and APA Submissions (none) on behalf of the
SC Uninsured Employers' Fund (4/16/12) 56
6. Amended Return to Carrier's Petition to Transfer Liability
(5/3/12) 63
7. Appellants' Form 30 (9/5/12) 72

III. Transcript of Proceedings

1. Transcript of Hearing before Commissioner McCaskill (5/15/12).....85
 - i. Direct-examination of Samuel Rose by Mr. Fisher 89
 - ii. Cross-examination of Samuel Rose by Ms. Barr 92
 - iii. Cross-examination of Samuel Rose by Mr. Smalls.....94
 - iv. Cross-examination of Samuel Rose by Ms. Cofield 95
 - v. Redirect examination of Samuel Rose by Mr. Fisher 95
 - vi. Recross-examination of Samuel Rose by Ms. Barr.....96
 - vii. Direct examination of Christopher Thompson by Ms. Barr 96
 - viii. Cross-examination of Christopher Thompson by Mr.
Smalls 98
 - ix. Cross-examination of Christopher Thompson by Ms.
Cofield.....99
 - x. Redirect examination of Christopher Thompson by Ms.
Barr 100

xi. Recross-examination of Christopher Thompson by Ms. Cofield.....	101
xii. Recross-examination of Christopher Thompson by Mr. Warder.....	101
xiii. Recross-examination of Christopher Thompson by Mr. Smalls	101

IV. APA Submissions and Exhibits

1. Appellants' APA Submissions No. 1 through No. 6 from Hearing before Commissioner McCaskill (pages 1-39)	103
i. SLED Report.....	103
ii. Petition to Transfer Liability.....	112
iii. SCWCC Form 18, dated April 10, 2012	117
iv. Deposition of Samuel Rose, dated November 14, 2011	118
v. Deposition of Sedrick Smalls, dated November 14, 2011.....	129
vi. IN Trucking Certificate of Insurance	141
2. APA Submissions of Travelers Insurance No. 19 through No. 23 from Hearing before Commissioner McCaskill (pages —)	142
i. Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr., dated March 30, 2012	142
ii. Premium Finance Agreement for JJS Trucking, LLC, dated October 13, 2010	156
iii. Travelers Invoice to JJS Trucking, LLC, dated November 8, 2010	157
iv. Notice of Cancellation, dated January 4, 2011	159
v. SC Department of Employment and Workforce.....	161

V. Certificate of Counsel	176

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1112328

SAMUEL ROSE, EMPLOYEE/CLAIMANT

vs.

JJS TRUCKING, LLC, AND CHRIS THOMPSON SERVICES, LLC, EMPLOYERS,

and

BRIDGEFIELD CASUALTY INSURANCE COMPANY AND TRAVELERS
INSURANCE COMPANY, CARRIERS,

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing: Held in Summerville, South Carolina on May 15, 2012

Appearances: Employee/Claimant represented by Joseph B. Fisher, George Sink
Law Firm, N. Charleston, South Carolina

Employer, Chris Thompson Services and Bridgefield Casualty
Company represented by Kirsten L. Barr, Trask & Howell, LLC,
Mt. Pleasant, South Carolina

Employer, JJS Trucking, LLC appeared pro se.

Carrier, Travelers Insurance Company represented by F. Reid
Warder, Jr., Esquire, Wood & Warder, LLC, Charleston, SC

South Carolina Uninsured Employers' Fund, Defendant was
represented by Amy V. Cofield, Cofield Law Firm, Lexington,
South Carolina

Purpose of Hearing: To determine issues as set forth on Form 50 and Form 51

Decision and Order: By Commissioner Gene McCaskill

Date: August 23, 2012

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Form 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$650.00 and compensation rate is \$433.34 respectively.
4. Venue, set in Dorchester County, is proper.
5. The Employee/Claimant was injured while working for Chris Thompson Services, LLC and workers' compensation was filed, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS:

ON BEHALF OF THE EMPLOYER:

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	SLED Report	04/30/12-04/26/12	1-9
2	Petition to Transfer Liability	04/30/12-01/24/12	10-14
3	SCWCC Form 18	04/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/10	39

ON BEHALF OF THE CLAIMANT

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Stuart M. Leon, MD MUSC Medical Center	08/10/11	1-2
2	Andrew B. Conrad, MD MUSC Medical Center	08/10/11	3-5
3	Christopher J. Erikson, MD		

4	MUSC Medical Center Peter H. White, MD MUSC Medical Center	08/10/11 08/11/11	6-7 8-9
5	Alan N. Abel, MD	08/16/11-01/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	08/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	09/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	09/06/11-10/11/11	27-40
9	Troy Marlow, MD TriCounty Radiology Associates	11/09/11	41-42
10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report		
	SC Highway Patrol	08/10/11	47-50
EX B	Pay Records of the Claimant	07/12/11-08/09/11	51-55

ON BEHALF OF TRAVELERS INDEMNITY COMPANY

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr.	03/30/12	14
2	Premium Finance Agreement for JJS Trucking, LLC	10/13/10	1
3	Travelers Invoice to JJS Trucking, LLC	11/08/10	2
4	Notice of Cancellation	01/04/11	2
5	SC Department of Employment And Workforce	02/21/12	15

ON BEHALF OF SC UNINSURED EMPLOYERS' FUND

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>

NONE

STATEMENT OF THE CASE

This claim is before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant on November 18, 2011, and Form 51 filed by Defendant, Chris Thompson Services on December 15, 2011, and Form 51 filed by Defendant, SC Uninsured Employers' Fund on January 4, 2012. The Claimant alleged that on August 10, 2011 he sustained an alleged injury to his right knee, back, neck and head. Defendants denied the claim.

It was the Claimant's position that he was injured on August 10, 2011 while employed by JJS Trucking. Claimant asserted that JJS Trucking was a subcontractor to Chris Thompson Services. JJS Trucking is uninsured and Chris Thompson is insured by Bridgefield Casualty Insurance Company. The Claimant seeks a finding of compensability that includes medical treatment, payment of temporary total benefits less any amounts paid by the carrier of Chris Thompson Services.

It was the position of Chris Thompson Services that the Claimant sustained an admitted injury by accident as alleged on August 10, 2011. However, the severity of permanency of injuries and need for future treatment was specifically denied. Chris Thompson Services also made a Motion to Transfer Liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415 because Mr. Cedric Smalls, a principal of JJS Trucking, had represented to Chris Thompson Services that it had workers' compensation coverage. Chris Thompson Services had obtained an ACORD Form 25 Certificate of Insurance indicating coverage. Chris Thompson Services also stated to the Commissioner that it had, through its insurance carrier, Bridgefield, paid temporary total disability payments since the date of the accident in the amount of \$75.00 per week and requested that the South Carolina Uninsured Employers' Fund reimburse Bridgefield for those benefits paid. Chris Thompson Services argued that JJS Trucking never provided notice that his coverage had changed or lapsed. Chris Thompson Services argued that a

certificate of insurance presented distinguished this case from the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009).)

Because the case at had a description of the policy terms. The distinction was also offered that the Hopper case dealt with an out of state employer or multi-state employers and regulations and that this case did not.

It was further argued that the signature of David Hayes as the authorized agent for the insurance company satisfactory the face of the certificate of insurance rose no red flags regarding the authority of the signature. It was also argued that a copy of the certificate of insurance was filed with the South Carolina Workers' Compensation Commission on November 4, 2011, which was believed to be a timely filing.

The SC Uninsured Employers' Fund argued that liability could not be transferred to the UEF. It was argued that the certificate of insurance presented was sufficient pursuant to the law set forth in the Barton v. Higgs case (Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009)) as well as the Hopper v. Terry Hunt Construction case. The SC Uninsured Employers' Fund argued that the description of operations box was blank and that the cases of Barton and Hopper stood for the proposition that incomplete certificates were not sufficient to transfer liability. It was also argued that the certificate of insurance only stated it was a "binder" and never conveyed any information that there was ever a policy written.

The Uninsured Employers' Fund argued that the timing of the presentation of the certificate was contrary to §42-1-415. That statute provides that documentation must be turned over to the Commission "at the time a claim is filed". This certificate was not turned over for several months. The UEF argued that §42-1-415(A) stated that the upstream contractor must first pay all benefits due before requesting liability to be transferred and at the time of the

hearing. However, only a few benefits had been paid, certainly not all. Therefore, the UEF argued that the case was premature as far as the motion to transfer liability.

EVIDENCE OF THE CASE

The Claimant testified that he was working on August 10, 2011 for JJS Trucking in Summerville, SC at the Keystone Lumber Mill. He stated that JJS Trucking was owned by Cedric Smalls and that he had been working there for about 4 ½ to 5 months prior to his accident. Claimant testified that during his time at JJS Trucking, his job was to haul loads from Summerville, SC to North Charleston, SC, specifically from Keystone Lumber Mill to Westvaco. He explained that he was injured when he was rear-ended by a truck that was following him causing his truck to jackknife and hit the median wall. Following the accident, Claimant testified that he suffered a fractured knee, low back and neck injury as well as dizziness and problems with his left hand. He testified that following the accident, he went to MUSC where he was to receive further treatment from a neurologist and orthopedist but never got those because of having no insurance. Instead he went to a general practitioner by the name of Dr. Abel and from there, he was referred to Tri County Spinal Care for pain management and then to Dr. Wildstein, an orthopaedic surgeon.

Claimant testified that he has been unable to work since August 10, 2011, because of the nerve damage he sustained in his neck and back. He further testified that he still has headaches, numbness in his left arm and fingers and his back. He is currently on several medications such as Flexeril, Neurontin, Elavil and Viracept as well as Ibuprofen. He testified that it is his understanding that he needs to see a neurologist and needs to have surgery.

On cross-examination, the Claimant stated that he had to reschedule his last hearing because he had been incarcerated, accused of stealing a 32" television, some barstools and a laptop. Claimant stated, "the police said a witness observed me running across the parking lot

running from an apartment across the street to my mom's car and putting it in the car". Claimant testified that he was using a cane recommended by Dr. Avery because he had fallen down the stairs once. He said he had fallen down the stairs in January when at his mother's house but after that fall, his pain became worse.

On cross-examination by Mr. Smalls, the Claimant testified that he was hired by JJS Trucking as a contractor. He testified that he worked his own schedule but that Cedric Smalls told him to work 12 hours from the time he started. On further cross-examination by Mrs. Cofield, the Claimant clarified that he was a sub-contractor for Chris Thompson Services, but was an employee of JJS. He also stated that when he was arrested last month, he was not using his cane, but he was on Oxycodone and other medications.

On cross-examination by Mrs. Barr, it was stated that it was his responsibility to keep his truck clean and would be responsible for any fines due to his own negligence. He also stated that he is responsible for any state and federal taxes and any workers' compensation insurance.

Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Chris Thompson Services. He indicated he had been using JJS Trucking since approximately 2008. He explained that when he first hired JJS Trucking he was given a certificate of insurance showing that they had workers' compensation coverage. He said that he requested updated documentation once a year.

Mr. Thompson was shown a certificate of insurance that he identified to be dated October 18, 2011, and issued by Swamp Fox Agency. He stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Insurance Agency. He stated that his view of the certificate of insurance gave him no reason to question whether or not JJS Trucking had insurance. He conveyed that it was not

until about September or beginning of October before he was positively told that he did not have insurance. After that information was received, he severed his relationship with JJS Trucking.

On cross-examination by Mrs. Cofield, Mr. Thompson acknowledged that there was no description in the Description of Operations box on the certificate of insurance. Mr. Thompson also acknowledged that it did not have a policy number, but in fact, stated that it was a "binder". Mr. Thompson testified that he did not believe that Mr. Smalls purposely defrauded him or purposely gave a false certificate of insurance.

FINDINGS OF FACT

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.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
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 §42-1-415.

10. Chris 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).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995):

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.

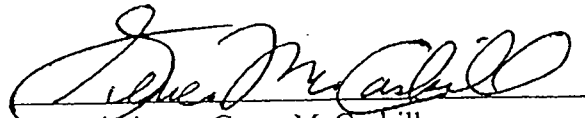
5. Claimant is entitled to medical treatment causally related to his injury pursuant to §42-15-60. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.
6. Claimant was an employee of JJS Trucking which, at 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. § 42-1-415 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.
9. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.


Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 23, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

SAMUEL A. ROSE,) W.C.C. FILE NO. 1112328
Claimant/Respondent,)
)
v.) DECISION & ORDER
)
JJS TRUCKING, LLC)
Uninsured Employer/Respondent,)
and)
CHRIS THOMPSON SERVICES, LLC,)
Upstream Contractor, and)
BRIDGEFIELD CASUALTY INS. CO.,)
Carrier, Appellants,)
and)
S.C. UNINSURED EMPLOYERS' FUND,)
Respondent.)

This matter is before the Commission's Appellate Panel pursuant to the Form 30 filed by Chris Thompson Services and Bridgefield Casualty, seeking review and reversal of the August 23, 2012 Decision and Order of Hearing Commissioner McCaskill. The Appellants respectfully contend that Commissioner McCaskill erred as a matter of law in failing to transfer liability to the UEF pursuant to S.C. Code Ann. § 42-1-415, erred as a matter of law in ordering the Appellants to reimburse "all out of pocket medical expenses," and erred as a matter of law in awarding the Claimant future medical treatment pursuant to S.C. Code Ann. § 42-1-415.

12

FINDINGS OF FACT

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.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
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. Chris 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).*
2. *At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).*
3. *The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).*
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. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.*
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.

5. *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.*
6. *Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.*
7. *Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.*

Furthermore, the Form 30 filed by the Appellants alleges the followings errors and exceptions:

1. *The Hearing Commissioner erred in finding that Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act, as this "finding" is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and the applicable law.*

2. *The Hearing Commissioner erred in finding that the Claimant sustained an injury to his head, knee, leg, back, and neck, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
3. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to temporary total disability benefits from August 10, 2011 and continuing until, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
4. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to an evaluation to determine the extent of his injuries, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
5. *The Hearing Commissioner erred in "finding" that the Claimant is entitled to ongoing medical treatment, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.*
6. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence and the applicable law.*

7. *The Hearing Commissioner erred as a matter of law in concluding that the Claimant has not received all benefits due under the Act, as this "conclusion" is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*
8. *The Hearing Commissioner erred as a matter of law in concluding that the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.*

Evidence Summary

The Claimant testified that he was employed as a driver for JJS Trucking on August 10, 2011 when he was injured in a motor vehicle accident. Since the accident, the Claimant has received medical treatment from MUSC, Dr. Abel, and Dr. Wildstein for alleged injuries to his back, knee, and left hand. Although the Claimant testified that he has been unable to work since the accident, the originally hearing in this case had to be rescheduled due to the Claimant's incarceration. According to the Claimant, he was accused of stealing a 32" television, some barstools, and a computer. The Claimant testified that, "the police said a witness observed me running across the parking lot running from an apartment across the street to my mom's car and putting it in the car." In addition, the Claimant testified that he fell down the stairs in January 2012 at his mother's house, which increased his pain and resulted in him using a cane.

Chris Thompson testified that JJS Trucking was operating as a subcontractor Chris Thompson Services, LLC, at the time in question. Mr. Thompson testified that he obtained a

Certificate of Insurance from JJS Trucking at the time his relationship with the company began in 2008 and that he has requested and obtained updated Certificates of Insurance from JJS Trucking on a yearly basis since that time. Mr. Thompson identified the October 18, 2010 Certificate of Insurance contained in the Record (Appellants' APA #6, p.39). This Certificate shows that JJS Trucking had workers' compensation coverage through Travelers Insurance for the period from October 8, 2010 through October 8, 2011. This Certificate shows Chris Thompson Services as the Certificate Holder and is signed b David W. Hayes, whom Mr. Thompson identified as the owner of the Producer, the Swamp Fox Agency. Mr. Thompson testified that after receiving this Certificate of Insurance, he had no reason to believe that JJS Trucking did not have workers' compensation insurance until after the Claimant's accident.

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. 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.

At the time of the hearing, the Claimant was receiving weekly temporary total disability compensation from the Chris Thompson's carrier, as reflected on the Form 18.

Conclusion

After reviewing the record and considering the briefs and oral arguments, we AFFIRM with AMEND in part, as follows:

FINDINGS OF FACT

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.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
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.
9. Chris 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).
2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Warr, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).
3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).
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. Claimant's past causally-related medical treatment should be paid directly to the providers pursuant to the Fee Schedule. Carrier shall select an authorized treating physician for any future medical treatment.

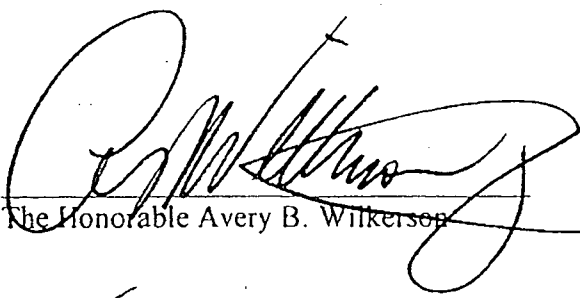
5. Claimant was an employee of JJS Trucking which, at the time of his accident, was an uninsured subcontractor. Pursuant to § 42-1-415(A) Chris Thompson Services, LLC, as the higher tier contractor, shall pay all benefits due the Claimant under the Workers' Compensation Act.
6. Chris Thompson Services, 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.
7. Chris Thompson Services, LLC is entitled to credit for any compensation paid to the Claimant prior to the date of this Order.
8. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

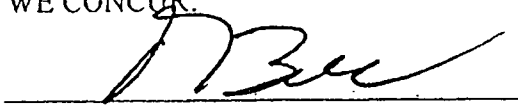
IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

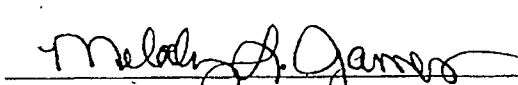
All other issues are held in abeyance.

IT IS SO ORDERED!


The Honorable Avery B. Wilkerson

WE CONCUR:


The Honorable T. Scott Beck


The Honorable Melody James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties.

This 15 day of May, 2013
By Valerie D. Deller

Administrative Assistant to the Commissioner

Amy V. Cofield
Kirsten L. Barr
Joseph B. Fisher
Chris Thompson Services (Reg & cert)
JTS Trucking LLC (Reg & cert)

South Carolina Workers' Compensation Commission

1612 Marion Street • Post Office Box 1715

Columbia, South Carolina 29202-1715

(803) 737-5723

www.wcc.sc.gov

WCC File #: **1112328**Carrier File #: **EQS3181**Carrier Code #: **0269**Employer FEIN #: **710986219**Claimant's Name: Samuel Rose SSN: _____

Address: _____

City: Charleston State: SC Zip: 29403Home Phone: _____ Work Phone: ()Employer's Name: JJS Trucking, LLC
Chris Thompson Services, LLC (upstream employer)Address: 137-A Gordon StreetCity: Charleston State: SC Zip: 29403Insurance Carrier: Travelers Indemnity Company
SQUEF
Bridgefield Casualty Insurance Company (Chris Thompson)Preparer's Name: Joseph Fisher, EsquireLaw Firm: George Sink, P.A.Preparer's Phone #: (843) 569-1700

Complete each information blank. To request a hearing, check Box 13b, indicate the kinds of benefits claimed by checking the box(es) at Lines 6, 7, 8, and 9, and file this form in duplicate.

A claim for workers' compensation benefits is made based on the following grounds:

Date of Injury or Illness: on or about 8/10/2011

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to right knee, back, neck, and head on or about 08/10/2011 in Charleston County, State of South Carolina.
1b. Body part(s) affected are: right knee, back, neck, and head.

Briefly describe how the accident occurred: Claimant was involved in a traffic collision during course and scope of employment

2. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
3. The relationship of employer and employee existed at the time of injury.
4. At the time of the injury the claimant was performing services arising out of and in the course of employment.
5. Notice of the accidental injury was given to the Employer on or about 08/10/2011 in the following manner:

Verbally to owner of company.

☒ 6. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: all above-referenced injuries

☐ (b) additional medical examination and treatment for:

☒ 7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
from date of injury to MMI.

☒ 8. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ..

☐ Total

☐ (2) Specific Disability:

☐ Total

☐ (3) Wage Loss

☐ Partial

☐ Partial

☐ 9. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$To Be Determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
N/A

11a. Further grounds or unusual aspects of claim:

- Any and all allowable; claimant reserves the right to amend.

11b. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:

MUSC, 171 Ashley Avenue, Charleston, SC 29403; Dr. Alan Abel, 7741-C Dorchester Road, N. Charleston, SC 29418; Tri-County Spinal Care Center, 8626 Dorchester Road, Suite 101, N. Charleston, SC 29420.

11c. To the best of your knowledge, did you have any prior permanent disability? No.
If yes, describe: N/A

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

☒ 13b. I am requesting a hearing. A \$25 fee is required.

14. Estimated time needed for hearing: 60 minutes

I verify the contents of this form are accurate and true to the best of my knowledge.

Joseph B. Fisher, Esq.

Preparer's Signature

Attorney for Claimant

Title

jfisher@sinklaw.com

Email

12/6/2011

Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Claims Department.

WCC Form # 50

Revised 9/07

AMENDED

**Employee's Notice of Claim and/or
Request for Hearing**



Samuel A. Rose
Claimant's Name

SSN

Charleston, SC 29403

Address City State Zip

Home Phone Work Phone

Date of Injury: August 10, 2011

JJS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company

Employer's Name

106 New Hope Dr.

Summerville, SC 29483

Address City State Zip

Bridgefield Casualty Insurance Co.

Insurance Carrier:

Preparer's Name: Kirsten L. Barr

Law Firm: Trask & Howell, LLC

Preparer's Phone #: (843) 881-4228

Date of Injury or Illness: August 10, 2011

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer / carrier in answer to the claim, respectfully shows:

1. It is denied the employee sustained an injury or illness on or about the date set forth in the application. The reasons for denial are:

2. It is denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are: Claimant was never an employee of Chris Thompson Services.

3. It is denied the relationship of employer and employee existed at the time in question. The reasons for denial are: Claimant was not an Employee of Chris Thompson Services at any time.

4. It is denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are: Claimant never performed any services for Chris Thompson Services and it is further denied that he sustained any injury by accident as alleged.

5. It is denied notice of injury was given the employer. The reasons for denial are: Claimant did not give notice of any accident to Chris Thompson Services and it is denied that he gave notice to his actual employer; pending investigation.

6. It is denied the employee needs medical care as a result of injury. The reason for denial are: See #1 through #5, above.

7. It is denied the employee is entitled to temporary total disability for the period(s) of: See #1 through #5, above.

8. It is denied that the employee is permanently disabled. The reasons for denial are: See #1 through #5, above.

9. It is denied that the employee has a serious disfigurement.

10. It is contended that an average weekly wage of \$ TBD applies, according to attached Form 20 as provided by law. Claimant earned no wage from Chris Thompson Services at any time.

11. Further contentions, grounds of defense, or unusual aspects are: Reserve the right to amend. Chris Thompson Services and Bridgefield Casualty Insurance Co. assert S.C. Code Ann. § 42-1-415 as a defense.

12. Estimated time needed for hearing: One hour

I certify that I have served this document pursuant to R.67-212 by delivering a copy to: Ms. Virginia Crocker, SCWCC, P. O. Box 1715, Columbia, SC 29202-1715; Joseph B. Fisher, Esq., PO Box 63506, North Charleston, SC 29419; Timothy Killen, Esq., S.C. Uninsured Employers Fund, 100 Executive Center Drive, Suite 101, Columbia, SC 29210; and Cedric Smalls, JJS Trucking, LLC, 137-A Gordon Street, Charleston, SC 29403

on the 15th day of December, 2011 by ☒ first class mail; ☐ personal service; ☒ certified mail.
I verify the contents of this form are accurate and true to the best of my knowledge.

Kirsten L. Barr
Preparer's Signature

Attorney for Defendants.
Title

kbarr@trask-howell.com
Email

December 15, 2011
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



WCC File #: 1112328
Carrier File #: 007236
Carrier Code #:
Employer FEIN #:

Claimant's Name: Samuel Rose SSN: Employer's Name: Jjs Trucking, Llc
Address: Address: C/o Cedric Smalls, R.a. 137-a Gordon St.
City: Charleston State: SC Zip: 29403 City: Charleston State: SC Zip: 29403
Home Phone: Work Phone:
Date of Injury: 08/10/2011 Insurance Carrier:
Preparers Name: Timothy B Killen Law Firm: SCWCUEF Preparers Phone #: (803) 798-2722

Date of Injury or Illness: 08/10/2011

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
General: there has been no proof.
2. It is denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is denied notice of injury was given the employer. The reasons for denial are:
6. It is denied the employee Needs / Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
7. It is denied the employee is entitled to temporary total disability for the period(s) of :
8. It is denied the employee is permanently disabled. The reasons for denial are:
9. It is denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ (unknown) applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
See Attachment.
12. Estimated time needed for hearing: 1 hour.

I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: SEE CERTIFICATE OF SERVICE

Address:

on the 5th day of January, 2012 by ☒ first class mail ☐ personal service ☐ certified mail.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Staff Attorney
Title

tkillen@sif.sc.gov
Email

01/04/2012
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Questions about the use of this form may be directed to the Commission's Judicial Department. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Sections 42-9-60, 42-15-20, 42-15-40, 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requesting a Hearing / Filing a Claim , dated 12/6/11.

Fund files this Answer in response to Claimant's Amended Form 50, Requesting a Hearing Filing a Claim , dated .

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Samuel A. Rose,	)	W.C.C. FILE NO. 1112328
	)	
Employee/Claimant,	)	
	)	
-vs-	)	PETITION TO TRANSFER LIABILITY
	)	TO S.C. UNINSURED EMPLOYERS' FUND
JJS Trucking, LLC and Chris Thompson	)	PURSUANT TO S.C. CODE ANN. § 42-1-415
Services, LLC,	)	
	)	
Employers,	)	
	)	
and	)	
	)	
Bridgefield Casualty Insurance Co. and	)	
The S.C. Uninsured Employers' Fund,	)	
	)	
Carriers,	)	
	)	
Defendants.	)	

TO: The South Carolina Workers' Compensation Commission; Joseph B. Fisher, Esq., attorney for the Claimant; JJS Trucking, LLC; Timothy B. Killen, Esq., attorney for The South Carolina Uninsured Employers' Fund; and F. Reid Warder, Esq., attorney for Travelers Insurance Company.

PLEASE TAKE NOTICE that Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 to transfer liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. In his December 6, 2011 Form 50, the Claimant named JJS Trucking, LLC and Chris Thompson Services, LLC (upstream contractor) as employers at the time of

his August 10, 2011 work-related accident. The Claimant alleges injuries to the right knee, back, neck, and head as a result of an August 10, 2011 motor vehicle accident.

2. JJS Trucking, LLC was the Claimant's direct employer at the time of the August 10, 2011 accident. (See attached depositions of Samuel Rose and Sedrick Smalls).
3. JJS Trucking, LLC was a subcontractor for Chris Thompson Services, LLC at the time of the Claimant's alleged injuries.
4. JJS Trucking, LLC provided Chris Thompson Services, LLC with a Certificate of Liability Insurance, with effective date of October 8, 2010 and expiration date of October 8, 2011 for its workers' compensation policy, at the time it commenced work for Chris Thompson Services, LLC. (Exhibit A).
5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking, LLC to Chris Thompson Services, LLC.
6. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to or the knowledge of Chris Thompson Services, LLC, prior to the August 10, 2011 accident.
7. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this

title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. 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 Employer's Fund."

8. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."
9. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.
10. JJS Trucking, LLC represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).
11. Furthermore, S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

12. JJS Trucking, LLC never provided Chris Thompson Services, LLC with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed, as required by S.C. Code Ann. § 42-1-415(C).
13. Based on all of the above, Chris Thompson Services, LLC is informed and believes it must be relieved of any and all liability under this title.

WHEREFORE, Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order relieving Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company from any liability under the Act for WCC Claim Number 1112328 in accordance with S.C. Code Ann. § 42-1-415 and transfer liability, if any, to the S.C. Uninsured Employers' Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.

P. O. Box 2167

Mt. Pleasant, SC 29465

By

Kirsten L. Barr

Kirsten L. Barr

Attorney for Chris Thompson Services, LLC
and Bridgefield Casualty Insurance Company

January 24, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2012 I have caused a true and correct copy of the Petition to Transfer Liability to be mailed postage prepaid to the Claimant's attorney and parties to be added addressed as follows:

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

Sedrick Smalls
JJS Trucking, LLC
137-A Gordon St.
Charleston, SC 29403

Timothy Killen, Esq.
S.C. Uninsured Employers Fund
100 Executive Center Dr., Ste 101
Columbia, SC 29210

F. Reid Warder, Esq.
P.O. Box 20550
Charleston, SC 29413

Kirsten L Barr
Kirsten L. Barr

118/133\petition to transfer liability



CERTIFICATE OF LIABILITY INSURANCE

 OPID PT
JJSTRUC

DATE (MM/DD/YYYY)

10/18/10

PRODUCER

Swamp Fox Agency, Inc.
P.O. Box 522
Pinopolis SC 29469
Phone: 843-761-3999 Fax: 843-761-6186

INSURED

JJS TRUCKING, LLC
137-A Gordon St.
Charleston SC 29403

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

NAIC

INSURER A: Tower Ins. Co. of New York

INSURER B: Travelers Indem. & Affiliates

INSURER C:

INSURER D:

INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADDL LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GENTL AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJ ☐ LOC				EACH OCCURRENCE DAMAGE TO RENTED PREMISES (EA occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMPROP AGG \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☒ UM/UTM 75,000	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (EA accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	EXCESS / UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED (Mandatory in WA) If yes, describe under SPECIAL PROVISIONS below ☒ VIM ☐ OTHER	BINDER	10/08/10	10/08/11	WC/STATUTORY LIMITS ☒ OTHER EL EACH ACCIDENT \$500,000 EL DISEASE - EA EMPLOYEE \$500,000 EL DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CHRISTH

CHRIS THOMPSON SERVICES, LLC
FAX: 688-5084
P.O. BOX 3377
SUMMERVILLE SC 29484

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

 AUTHORIZED REPRESENTATIVE
 DAVID W. HAYES

ACORD 25 (2008/01)

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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Casualty Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SAMUEL ROSE

November 14, 2011
9:45 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris
Thompson Services, LLC/Bridgefield
Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Samuel Rose,
taken before Laci Bearden, Court Reporter and Notary
Public, at the George Sink, P.A., 7011 Rivers
Avenue, N. Charleston, South Carolina on November
14th, 2011, commencing at 9:45 a.m.

APPEARANCES

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I N D E X

EXAMINATION BY MS. BARR

4

EXAMINATION BY MR. KILLEN

28

E X H I B I T S

(No exhibits produced.)

1. SAMUEL ROSE

2. was sworn (affirmed) and testified as follows:

3. EXAMINATION BY MS. BARR:

4. Q Mr. Rose, my name is Kirsten Barr and I represent a
5. company called Bridgefield Casualty Insurance Company, and
6. Chris Thompson Services regarding your worker's compensation
7. claim. And I'm sure Mr. Fisher's explained to you what
8. we're doing here today, but again, it's called a discovery
9. deposition, and it really is just what it sounds. It's my
10. chance to discover a little bit more about you as a person
11. and about the accident and your injuries and how you've been
12. doing since then. My questions are intended to be straight
13. forward, so if I ask something that is unclear or doesn't
14. make sense, please ask me to rephrase or repeat my question.
15. I'm happy to do that. Because otherwise, if you answer my
16. questions, number one, I'm going to assume you're answering
17. truthfully, and number two that you understood the question
18. before you answered it; fair enough?

19. A Okay.

20. Q The other thing is the court reporter is going to take
21. down everything we say here today. This is the microphone,
22. so we just need to speak up and speak clearly. I'll
23. understand you if you nod your head here today, but she
24. can't take that down on paper very well, so we just need to
25. remember to say yes or no and just again, answer it to the



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1 best of your ability.

2 If you would state your full name for the record?

3 A Samuel Archiedell Rose.

4 Q Could you spell your middle name for me?

5 A A-R-C-H-I-E-D-E-L-L.

6 Q And Mr. Rose, what is your date of birth?

7 A 1970.

8 Q And your social security number?

9 A

10 Q And are you married, single, divorced?

11 A Single.

12 Q Have you ever been married?

13 A No.

14 Q Do you have any children?

15 A No.

16 Q And what is your current you address?

17 A , Charleston, South Carolina.

18 Q And who do you live with at Street?

19 A My cousin.

20 Q And how long have you lived there?

21 A I grew up there.

22 Q And it's just the two of you living there?

23 A Yes.

24 Q Anybody depending on you for support?

25 A No.



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1 Q Tell me, it's my understanding you were working for a
2 company called JJS Trucking at the time of this accident; is
3 that right?

4 A Yes.

5 Q And who did you work for at JJS Trucking?

6 A Sedrick Smalls.

7 Q And when did you start working for Sedrick Smalls at
8 JJS Trucking?

9 A Back in February or March.

10 Q Of 2011?

11 A Yes.

12 Q And what were you hired to do for JJS Trucking?

13 A To haul woodchips from Summerville to North Charleston.

14 Q And that was to North Charleston to the Capstone plant?

15 A Yes.

16 Q Did you have a set work schedule that you did?

17 A From 12:00 o'clock until 12 noon. Either 12 noon or
18 2:00 o'clock, and I worked a 10 to 12 hour shift.

19 Q And during your ten to 12 hour shift, I guess it would
20 be a ten hour shift if you started at 2:00 o'clock in the
21 afternoon?

22 A Yes -- well, no. From the time I started, I worked
23 either 10 to 12 hours, and I worked until the plant closed.

24 Q And to your knowledge, what time did the plant close?

25 A It's suppose to close at 3:30, but sometimes it closes

1 early.

2 Q And would you work until the North Charleston plant
3 closed or the saw mill up in Summerville closed?

4 A Summerville. North Charleston is open 24/7.

5 Q So you would begin and start your day at Summerville?

6 A Yes.

7 Q Did you keep the truck you used at your home or JJS
8 Trucking, how did your day start?

9 A It was parked in Summerville at the saw mill.

10 Q So would you drive your personal vehicle to the saw
11 mill then?

12 A Yes.

13 Q Did you have to punch a time card or anything like
14 that, or how did you keep track -- how would JJS keep track
15 of your time?

16 A Our daily logs.

17 Q What would you keep track of in your daily log?

18 A The time that I start work, the inspection of the
19 truck, and number of runs I made.

20 Q And would you also get receipts from either the saw
21 mill or from the mill in Charleston as far as what you
22 loaded or unloaded?

23 A Each load that we pick up we received a receipt. When
24 we got to Capstone we received another receipt.

25 Q And what would you do with these receipts?



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1 A We turned them in at the end of the week.

2 Q And who did you turn the receipts in to?

3 A They went to Chris Thompson. He has a mailbox placed
4 at the saw mill in Summerville, and we fill out our work
5 sheet, and we put everything in the envelope for him.

6 Q And then how would you get paid?

7 A By check. Sedrick Smalls is the one that paid me.

8 Q And what was the basis of your pay? How did he
9 calculate how much you would earn per week?

10 A \$25 dollars per load.

11 Q So someone would add up all those receipts and there
12 would be \$25 even for each load that you would get paid?

13 A Yes.

14 Q And how many loads would you average per shift?

15 A Anywhere from six, seven loads per shift.

16 Q And how many days per week did you do this?

17 A Five.

18 Q Was it Monday through Friday?

19 A Yes. We worked on weekends as needed?

20 Q How frequently would you work weekends.

21 A Not often?

22 Q And how did it work? Would Mr. Smalls pay you in
23 check, or would he give that to you personally? Was it
24 mailed to you?

25 A It was given personally.



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1 Q By Mr. Smalls?

2 A Yes.

3 Q And what day of the week would he give you your check?

4 A Friday.

5 Q So every Friday you would get a check?

6 A Yes.

7 Q And how much was your average check that you were paid
8 on Fridays by Mr. Smalls?

9 A It ranged from 650 to 750 depending on how many loads I
10 ran for the week.

11 Q And so you would get the whole 650 to 750?

12 A Yes.

13 Q He didn't take out any taxes?

14 A He took out a hundred dollars for damages to the truck
15 for an escrow account.

16 Q He took that out each week or just the beginning?

17 A Each week.

18 Q What is your job status with Mr. Smalls? Are you still
19 employed by him?

20 A Yes, to my understanding.

21 Q Do you still have funds in that escrow account?

22 A I have no idea.

23 Q When was the last time you got a paycheck from
24 Mr. Smalls?

25 A The week prior to the accident.



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1 Q Have you spoken to Mr. Smalls since the accident?

2 A Once or twice.

3 Q Did he come see you in the hospital?

4 A Yes.

5 Q Has he done anything to help you with your lost wages
6 or your medical bills?

7 A Nothing.

8 Q Have y'all discussed that?

9 A When I asked him about it, he told me about the
10 insurance. When I contacted the insurance, nothing.

11 Q And what did he tell you about insurance?

12 A That he had insurance.

13 Q Did he tell you, like, auto insurance or worker's comp,
14 or did he tell you what kind?

15 A He said he had workers' comp insurance for us.

16 Q And he gave you the name of a company to call?

17 A Yeah. I gave that to the lawyer. I don't remember the
18 name. He also said that he spoke with Chris Thompson, and
19 Chris Thompson told him that he would cover the medical
20 bills.

21 Q Did you ever speak with anybody at Mr. Smalls insurance
22 company, or did you just pass that on to your attorney?

23 A They contacted me at first, after the accident. They
24 sent me a card and then after that, nothing. I passed all
25 that information on to my attorney.

1 Q As I understand it, you had legal representation pretty
2 quickly after the accident; is that fair to say?

3 A Yes, I called him.

4 Q I mean, that was within like a day or two after the
5 accident you had somebody working on your behalf?

6 A In two days.

7 Q Where did you work prior to JJS Trucking?

8 A Leopard, Incorporated.

9 Q Leopard?

10 A Yes.

11 Q What does Leopard, Incorporated do?

12 A It's a tire company. We distribute tractor trailer
13 tires.

14 Q How long did you work for Leopard?

15 A About seven years.

16 Q And where's Leopard located?

17 A It's headquartered out of New Jersey. It's local
18 office is here in North Charleston.

19 Q You said that they distribute tractor trailer tires.
20 Were you doing long distance hauling, trucking?

21 A Both. My job required mostly local driving.

22 Q So local within South Carolina?

23 A No. South Carolina, North Carolina, Florida, Georgia.

24 Q And why did you leave Leopard, Incorporated?

25 A The work slowed down, and I needed money.



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1 Q When did you last work for them?

2 A February, the latter part of February.

3 Q Of this year?

4 A Yes.

5 Q How much were you earning on average at Leopard?

6 A About 500 a week.

7 Q And is that the same you would earn from them say in
8 2010 or 2009?

9 A Yeah.

10 Q One of the things we have to do in worker's comp is try
11 to get an idea of how much money you were making in the past
12 year. So was there any other income from any sources other
13 that Leopard, Incorporated or from Sedrick Smalls in this
14 past year, 2011?

15 A Allstate Logistics.

16 Q What did you do for Allstate Logistics?

17 A Local runs. That's just to supplement my income.

18 Q When was the last time you worked for Allstate
19 Logistics?

20 A Back in January. The company went out of business.

21 Q So around the time of this accident, say July or August
22 of 2011, any other supplemental sources of income?

23 A No.

24 Q The checks that you would get from Sedrick Smalls,
25 would it be on a JJS checking account?



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1 A Yes.

2 Q Would it always be the same looking check, or did you
3 ever get a check personally from Sedrick?

4 A Always from JJS Trucking.

5 Q And if we needed to try to track down how much those
6 checks were, would you have a habit of cashing them
7 somewhere or depositing them into a checking or saving
8 account?

9 A I always cashed it at First Citizens Bank.

10 Q Did you have an account there or was that where
11 Mr. Smalls did?

12 A That's where Mr. Smalls had his account.

13 Q Was there a particular branch that you used?

14 A Summerville, Main Road.

15 Q Tell me, on the day of this accident, I believe it was
16 August 10, 2011, what were you doing before the accident
17 occurred or what were you in the process of doing when the
18 accident, occurred?

19 A That was my last run for the night, and I was on my way
20 to Capstone to drop the load.

21 Q Did you ever turn in the receipts from that day to
22 Sedrick Smalls?

23 A No. The receipts were left inside the truck. My log
24 book and everything was left in the truck.

25 Q And tell me, as a result of the accident, what



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1 happened. Did you stay inside the cab of truck, were you
2 thrown from the cab of the truck, what happened to you
3 specifically?

4 A After the accident, I was pulled out of the truck.
5 Some people stopped, and they pulled me out of the truck and
6 tossed me over the wall, the median of the highway.

7 Q Are there air bags in the truck or any other restraint
8 devises?

9 A Seatbelt.

10 Q Do you recall hitting in particular on the inside of
11 the cab, or did the seatbelt restrain you?

12 A My knee shattered the steering column. My head bounced
13 off the rear glass and steering wheel.

14 Q You said the rear glass?

15 A Yes, it was a day cab.

16 Q Anything else that you can really recall hitting?

17 A Just my right knee when it shattered the steering
18 column and just hitting -- I blacked out when I hit the
19 glass, but I do remember getting pulled from the cab, and
20 then they threw me over the wall before the truck blew up.

21 Q When you blacked out were you totally out cold, or did
22 things just kind of go hazy for you a little bit?

23 A I was told I was out cold.

24 Q It's my understanding you were taken to MUSC; is that
25 right?



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1 A Yes.

2 Q How long did you stay at MUSC?

3 A A day and a half.

4 Q And when they released you from MUSC were you referred
5 to any particular doctors or what was your plan of care
6 after your release from MUSC?

7 A They scheduled me an appointment with the neurologist.
8 They gave me a physical therapist and told me I needed to
9 see an orthopaedist as well.

10 Q Do you have a family physician?

11 A No, not at the time, no.

12 Q In the past, have you had a personal family doctor?

13 A No, I just use military doctors.

14 Q Did you serve in the military?

15 A No, my parents.

16 Q So when you were younger, you would just see VA
17 doctors?

18 A Yeah.

19 Q But you haven't seen anybody at the VA since this
20 accident?

21 A No.

22 Q And if you need to take a break, just let me know.

23 A I took pills before.

24 Q What sort of pills might have you taken today?

25 A Flexeril, Fioricet, Ellevill, Ibuprofen.



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1 Q Do those medications have any effects on you, side
2 effects? Do they make you drowsy or --

3 A Drowsy, dizzy but they are suppose to help me cope with
4 pain.

5 Q Now, after MUSC, did you -- you said that they
6 scheduled a appointment with a neurologist; is that right?

7 A Yes.

8 Q Did you see the neurologist?

9 A No, they kept canceling my appointment.

10 Q Have you seen a neurologist at all since the accident?

11 A I'm scheduled to see one next week.

12 Q Who are you scheduled to see next week?

13 A Dr. Weinstein(sic).

14 Q Doctor who?

15 A Weinstein.

16 Q Weinstein? Is this somebody that you're --

17 MR. FISHER: Wildsteen.

18 MS. BARR: Wildsteen.

19 Q And you're to see Dr. Wildsteen about your neck?

20 A My neck, my back, and my knee.

21 Q Now, I know MUSC had talked to you about seeing an
22 orthopedist about your knee. Did you see any of the
23 orthopedists at MUSC for your knee?

24 A No. They canceled the appointments as well.

25 Q There was talk about you seeing Dr. Hartsock(ph). Did



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1 you ever see him? He's an orthopedist at MUSC?

2 A He's the one that canceled the appointment. There was
3 a problem with the insurance.

4 Q You've seen Dr. Wildsteen already; is that right?

5 A I've spoken with him, but I haven't went to his office
6 yet.

7 Q Have you seen any doctor since you were released from
8 MUSC?

9 A Yes.

10 Q And who has treated you?

11 A Dr. Able, Dr. Keller, Dr. Willis.

12 Q Dr. Able, what kind of doctor is Dr. Abel; do you know?

13 A General practitioner.

14 Q And how did you find Dr. Able?

15 A Through my lawyer's office.

16 Q And what has Dr. Able been doing for you?

17 A He's the initial one that treated me for my neck, my
18 back, and my knee. He's been --

19 Q Giving you the medications?

20 A Some of it. I'm just monitoring my treatment.

21 Dr. Kellet(ph) is the pain specialist. He's the one -- he's
22 been trying to help me cope with my pain. He's given me
23 Oxycodone, Lortab, just things to help with the pain. I've
24 token two epidurals, cortisone shots.

25 Q And were your epidurals for your neck or for your lower



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1 back?

2 A My lower back. The cortisone shots were for my neck.
3 And he referred me to Dr. Wildsteen.

4 Q Have you seen anybody in Dr. Wildsteen's office.

5 A No. I took an MRI already, and I'm waiting for my
6 appointment.

7 Q Where did you have the MRI done?

8 A Trident County Radiology.

9 Q And was that for your neck or for you or lower back?

10 A My neck. I've had an MRI of my knee done at MUSC.

11 Q All right. Do you have any appointments with any
12 doctors that deal specifically with the knee problem or the
13 main problem, your neck and your back at this point?

14 A My neck and my back at this point.

15 Q And you mentioned Dr. Willis; is that right?

16 A Yes.

17 Q What has Dr. Willis done for you?

18 A Mostly it's just therapy, physical therapy and just to
19 help me deal with the pain.

20 Q Any doctors other than Dr. Able, Dr. Kellet,
21 Dr. Willis?

22 A No.

23 Q And then of course you saw a number of doctors while
24 you were a patient at MUSC.

25 A Yes.



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1 Q After -- I know you spent the night there but after
2 your release did you ever go back to see any doctors at
3 MUSC?

4 A No. I went to my appointments but they kept getting
5 canceled. And the also assigned me a physical therapist.
6 And I forgot who that was.

7 Q Did you get any therapy done there?

8 A Three times.

9 Q And I know you said you scheduled Dr. Wildsteen. Any
10 other doctors appointment?

11 A No. Doctor Ables, yes.

12 Q What sort of schedule to you have with Dr. Able? Do
13 you see him like once a week or once a month?

14 A Every two weeks.

15 Q And the pain medicines you have now you said you get
16 some from Dr. Able and then some from Dr. Kellet?

17 A Yeah.

18 Q Tell me a little bit about the pain you're feeling now,
19 where you're feeling it, and help me understand how you
20 describe it.

21 A Dizziness.

22 Q And how frequently are you dizzy?

23 A Daily.

24 Q Is it something that comes and goes?

25 A If I move too fast then my head starts spinning. If I

1 get up, when I first stand up I have to orient myself.

2 There's a throbbing in the back of my head that hurts. My
3 neck, if I hold it up too long it starts hurting. My lower
4 back is still in pain. And my knee, if I go for walks in
5 the neighborhood to exercise, walking less than a block I
6 just need help or need some rest just to get back on.

7 Q And that's your right knee?

8 A Yeah.

9 Q Does it lock up or it just hurts?

10 A It locks up and it hurts.

11 Q Do you feel the pain anywhere else?

12 A My whole back. My entire back.

13 Q Is there anything that helps with the pain or improves
14 it even a little bit as far as your back pain goes. A
15 position or activity that helps?

16 A Showers, warm Showers, Bengay.

17 Q But you have been doing some exercises with the
18 physical therapist?

19 A Yes.

20 Q Do they have you doing anything at home as far as
21 exercising or stretching to help with your back?

22 A Stretching helps my back and my neck.

23 Q Are you good? Some people are better than others about
24 actually doing the stretches and exercises. Do you do them?

25 A I do some of them, but it hurts.



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1 Q You mentioned that the medication that you've taken
2 before you came here today, do you take any other
3 medications say like at bedtime?

4 A Yeah.

5 Q What other medications do you take?

6 A Flexeril.

7 Q Your handing me a list and it look likes --

8 A Those are all the medication that I take.

9 Q So it's Flexeril, Amitriptyline, Fioricet, Ellevill,
10 Ibuprofen, Lortab, the Ibuprofen, and you also have
11 Neurontin and Oxycodone?

12 A Right?

13 Q And the Oxycodone, is that something that you take when
14 the pain gets really bad?

15 A Yes.

16 Q And the Neurontin you take everyday?

17 A Yes.

18 Q Have you ever had surgery before?

19 A No.

20 Q Have you ever been hospitalized for any reason prior to
21 this accident?

22 A No.

23 Q Have you ever had a workmen's compensation claim or a
24 personal injury claim?

25 A Never.

1 Q Have you ever been in an automobile accident prior to
2 this?

3 A Yes.

4 Q And when was that?

5 A I think it was '07.

6 Q In 2007?

7 A Yes.

8 Q And where did that accident occurred?

9 A Here in Charleston.

10 Q Were you injured in that accident?

11 A No.

12 Q Was there any sort of settlement with the insurance
13 company over that accident?

14 A Yes.

15 Q Do you recall about how much you received in that
16 settlement?

17 A No.

18 Q Was it a couple hundred dollars, a couple thousand
19 dollars?

20 A It was a few hundred. And the owner of the car is the
21 one that got his car repaired. I borrowed the car.

22 Q Did they take you hospital or anything after the
23 accident?

24 A No.

25 Q Do you have any chronic medical conditions like high



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1 blood pressure, diabetes anything like that.

2 A High blood pressure. Asthma.

3 Q Do you take prescription medications for either of
4 those conditions?

5 A For high blood pressure Lotensin.

6 Q And who prescribes Lotensin for you?

7 A Dr. Able.

8 Q And before Dr. Able, who --

9 A I was not on any medication for high blood pressure.

10 Q Were you aware you had high blood pressure before the
11 accident?

12 A Yes, but it wasn't dangerously high.

13 Q Do you monitor your blood pressure now?

14 A Now, I do, yes.

15 Q Do you have it under control now?

16 A Yes.

17 Q And just so I'm clear, you may have already told me
18 this, but Dr. Able -- you never saw Dr. Able until after
19 this accident in August?

20 A Right. The blood pressure medicine, they first assumed
21 the headaches I was having was because of the blood
22 pressure. Then the blood pressure came under control and
23 then I still had the headaches.

24 Q Does the pain medication that you're taking, does that
25 help with the headaches?



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1 A No, not really.

2 Q How would you describe the type of headaches you have.
3 Where do you feel it and what does it feel like?

4 A The back of my head. It's like a buildup of pressure,
5 throbbing.

6 Q Does that change through the course of the day, the
7 intensity?

8 A Sometimes it gets worse and sometimes it's milder, but
9 it's there.

10 Q I noticed your wearing a soft collar around your neck.
11 Where did you get that?

12 A Dr. Able.

13 Q When do you wear that?

14 A Whenever I have to keep my head up.

15 Q So like you don't wear that around the house or that
16 sort of thing?

17 A No. Right now just keeping my head up it hurts, and my
18 collar is just to help me keep it up.

19 Q So you kind of rest your chin on it a little bit?

20 A Yeah.

21 Q And the cane, I notice that your off carrying the cane?

22 A Dizziness and balance.

23 Q Have you talked to Dr. Able about maybe your
24 medications effecting you making you a little dizzy?

25 A He said that the whiplash effect, I'm going to be dizzy.



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1 for another year. I'll still have side effects from it.

2 Q But you have not gone to a neurologist to have that
3 checked out.

4 A Not yet.

5 Q And you don't think any appointments are scheduled
6 right now with the specialist?

7 A No. They've taken X-rays, and Dr. Kellet is the last
8 to take X-rays of my neck, and he referred me to the
9 neurologist.

10 Q And that's in his same practice together, Dr. Wildsteen
11 and Dr. Kellet; is that right?

12 A Dr. Willis and Dr. Kellet is in the same practice.
13 Dr. Able is in a different practice.

14 Q Have you had any sources of income since the accident?

15 A Just family and money that I've borrowed.

16 Q You don't have like a AFLAC policy or any kind of
17 insurance policy?

18 A No.

19 Q And your medical bills, have you started getting bills
20 from MUSC or any of the other providers?

21 A Yes.

22 Q Have you paid any of your medical bills?

23 A No.

24 Q When was the last time you spoke to Sedrick Smalls?

25 A It's been over a month ago.



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1 Q And you said that he told you that you were covered by
2 workmen's? He had a worker's comp policy that covered you?

3 A That was in the hospital after the accident he told me
4 that and that was back in August.

5 Q Did you subsequently find out that he didn't have a
6 policy in effect?

7 A Yes.

8 Q Did you talk to him about that?

9 A I spoke with my lawyer.

10 Q But you never confronted Mr. Smalls, and said hey, your
11 policy was no good?

12 A Yeah. I asked him about it, and he still showed me
13 that it was good.

14 Q Do you have a gut feeling, do you believe him, do you
15 think he had a workmen's compensation policy?

16 A At the time of the accident, I did believe him.

17 Q What about now, do you know what to think?

18 A Right now I was told they didn't that the policy
19 lapsed.

20 Q Do you think, you know, if Mr. Smalls said he had it,
21 do you think he knew it had lapsed, or do you think he was
22 telling you the truth --

23 A At the time, I assumed he was telling me the truth.

24 Q If we needed you to help us figure out how much you had
25 earned while working for JJS Trucking, do you have any sort



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1 of record like a check stub or anything like that that you
2 could --

3 A I didn't save any.

4 Q You didn't save any.

5 A We probably can go to the bank and ask for copies of
6 the check.

7 Q But you said they were always on a JJS Trucking
8 checking account?

9 A Yes.

10 Q And then there would have also been somebody would have
11 kept a log --

12 A Sedrick Smalls.

13 Q Did your log survive the accident; do you know?

14 A I have no idea.

15 Q With the log that you would have had with you on the
16 night of the accident, been your only log you ever had
17 working for JJS Trucking, or would there have been other
18 log?

19 A Copies of the logs are kept by Chris Thompson when we
20 turned in the logs at the end of the week.

21 Q Did you ever see him personally and like hand him the
22 log, or was there just left in the place?

23 A We left it in a place.

24 Q Was that left at Capstone?

25 A No, it was left in Summerville.



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1 Q At the saw mill in Summerville?

2 A Yes.

3 Q Would it have been at that front office where you drop
4 in?

5 A No, back at the scales.

6 Q Would you talk to anybody when you dropped that off?

7 A No. We put it in a envelope in the mailbox. The
8 mailbox was for CTS Trucking, and we just put it in an
9 envelop for CTS Trucking.

10 Q There was just some kind of lobby with the mailbox in
11 it?

12 A It's outside.

13 Q Outside. And it's over there by the scales?

14 A Yes. And if there was any problems CTS would contact
15 me or Sedrick Smalls would contact me.

16 Q As far as problems with the logs?

17 A Yes.

18 Q Mr. Rose, I think that's all the questions I have for
19 you. Mr. Killen may have some questions for you and your
20 lawyer might have some, too.

21 EXAMINATION BY MR. KILLEN:

22 Q I'm Tim Killen. I represent the state agency involved
23 in this case. This is Workmen's Compensation Uninsured
24 Employer Fund. When you went to work for JJS Trucking, did
25 your route ever vary?



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1 A We took the interstate or we went the back way through
2 Hanahan and Goose Creek.

3 Q But you were always going to the same place from the
4 same place; is that correct?

5 A Yes.

6 Q How did you know you were hauling these loads for Chris
7 Thompson?

8 A Chris Thompson was the contractor and everything coming
9 out of Summerville saw mill is either hauled for Don Sweet
10 or Chris Thompson. Everybody else were just subcontractors
11 under those two.

12 Q How did you know you were you working under Chris
13 Thompson?

14 A I was told.

15 Q Who told you that?

16 A Sedrick Smalls.

17 Q Did you ever work for anybody else other than Chris
18 Thompson?

19 A At the saw mill, no.

20 Q You said that Chris Thompson would contact you?

21 A No, his secretary.

22 Q His secretary would contact you?

23 A If there's a problem with the logs or paperwork that I
24 turn in, they left either notes in the box for us, or when
25 we picked up our checks, we received the note from them, or



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1 they would call us on the phone, or our boss would tell us,
2 relay the message to us.

3 Q Did somebody from Chris Thompson call you more often,
4 or did your boss Sedrick Smalls?

5 A Mostly Sedrick Smalls. Once I was contacted by someone
6 from Chris Thompson's office?

7 Q Just once?

8 A Twice.

9 Q Are you sure?

10 A Yes.

11 Q I don't want you to guess. I just want you to tell us
12 what you know. And when you were contacted by someone from
13 Chris Thompson what did they want?

14 A First time, was my hours of service. I went over 12
15 hours, and they told me not to do that, and the second time
16 it was for truck inspections.

17 Q What in regards to truck inspections?

18 A I needed to take the truck over to his shop to have
19 them inspect it.

20 Q You needed to take your JJS Trucking truck over to
21 Chris Thompson's shop; is that correct?

22 A Yes.

23 Q So that someone from Chris Thompson's outfit could
24 inspect your truck?

25 A The trailer. The trailers that we hauled belonged to

1 Chris Thompson. The trucks belong to JJS Trucking, and they
2 were responsible for the maintenance on the trailer. JJS
3 Trucking was responsible for maintenance on the truck.

4 Q Every time you hauled a load the trailer was Chris
5 Thompson's?

6 A Yes.

7 Q When you were hurt the trailer on your out truck was
8 Chris Thompson's?

9 A Yes.

10 Q Did JJS Trucking own any of the trailers?

11 A No, just the truck.

12 Q Could you have done the job without the trailer?

13 A No. The trailer is used to haul the chips.

14 Q And so in order to get the job done you needed Chris
15 Thompson's trailer?

16 A Right.

17 Q Did you ever have any direct interaction with Chris
18 Thompson himself?

19 A His mechanics.

20 Q What would they do?

21 A They were the ones that inspected the trucks, took care
22 of the maintenance on the trucks, fix the tires, just the
23 regular maintenance on the trailer.

24 Q You said the trucks, you mean the trucks or the trailer
25 or both?



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1 A The trailer. The day before the accident they
2 inspected the trucks, the truck itself.

3 Q And that JJS Trucking's truck?

4 A Yes. Chris Thompson mechanic inspected the truck
5 itself. The tractor, the day before the accident and prior
6 to that they were only inspecting the trailer and just done
7 any maintenance or anything that we found wrong with the
8 trailer, they would fix it.

9 Q Do you know why they would inspect your truck the day
10 before the accident?

11 A One of trucks that belonged to JJS Trucking had a tire
12 problem. The treads on the tires was worn. The mechanics
13 inspected it when it was parked at Summerville saw mill. He
14 left a note saying it needed to get repaired, and then he
15 wanted to see all the trucks and inspect the tires.

16 Q He being who?

17 A The head mechanic. A guy named Tim.

18 Q Tim working for?

19 A Chris Thompson. And to my knowledge he wanted every
20 truck that JJS drove inspected by him.

21 Q Did you talk to Sedrick Smalls about that?

22 A Yes.

23 Q What did Sedrick Smalls tell you?

24 A The truck that I was driving I had to take it to the
25 mechanic to get some tires replaced, and after I had the



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1 tires replaced, I took it to have Tim, Chris Thompson's
2 mechanic to have it inspected.

3 Q What did Sedrick Smalls tell you about the inspections?

4 A That we passed the inspection.

5 Q Did he tell you anything else?

6 A No. He just you told me to go get the trailer from
7 Chris Thompson, so I could continue my work for the day.

8 Q Did you ever hand in your logs to Sedrick Smalls or JJS
9 Trucking?

10 A Yes.

11 Q How frequently would you do that?

12 A When I first started, I gave him my logs personally.
13 But after approximately two weeks I started putting it in
14 the box.

15 Q And giving it directly to Chris Thompson's company?

16 A Yes.

17 Q Beside the truck and the trailer, was there anything
18 else you needed to do your job?

19 A Fuel.

20 Q And you needed the logs; right.

21 A Yep.

22 Q How was fuel paid for?

23 A Tonya Smalls, Sedrick's wife, we met her at the gas
24 station on Monroe Gray Avenue. She would fill up the truck.
25 She did it twice a week.



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1 Q Did you ever --

2 A Plus she would pay for it after we filled it up.

3 Q Did you fill up your truck any other way than that?

4 A No.

5 Q And when you got those new tires on the truck how was
6 that paid for?

7 A He paid for it himself. Sedrick Smalls paid for it.

8 Q Did anybody working for JJS Trucking ever get fired
9 while you worked there?

10 A Nobody got fired.

11 Q Did anybody ever get reprimanded while you were there?

12 A Not to my knowledge.

13 Q Did you ever get reprimanded in any way?

14 A Once for my hours of service.

15 Q You got reprimanded by Chris Thompson's secretary.

16 A Both. Chris Thompson secretary and Sedrick Smalls.

17 Q And you got paid \$25 a load?

18 A Yes.

19 Q And all the load you were hauling were --

20 A Woodchips.

21 Q In Chris Thompson's trailers.

22 A Yes.

23 Q Do you know whether or not Chris Thompson had a right
24 to fire you?

25 A He would recommend that we be fired.



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1 Q What do you think would you happen if he made that
2 recommendation?

3 A We would be fired.

4 Q Is it your understanding that Chris Thompson said he
5 would pay for your medical bills?

6 A That's what I was told.

7 Q You were told that by Sedrick Smalls?

8 A Yes.

9 Q And none of your medical bills have been paid?

10 A Nothing.

11 Q And you have not received any form of weekly
12 compensation while you have been out?

13 A No.

14 Q Did Chris Thompson subcontract this work out to any
15 other companies other than JJS Trucking?

16 A I wouldn't know that.

17 Q Were you aware of any drivers from other companies
18 hauling loads using Chris Thompson's trailers?

19 A I wouldn't know that.

20 Q Capstone ever have any drivers?

21 A None that came in contact with it. Everybody that
22 drove there just came from all over the state.

23 Q You never saw any Capstone employers driving your truck
24 doing the same things that you were you doing?

25 A I wouldn't know if they were Capstone employees.

- 1 Q So you don't know; is that the right?
- 2 A Right.
- 3 Q How often do you take the Oxycodone?
- 4 A I take the oxycodone when the pain is unbearable.
- 5 Q When's the last time you took it.
- 6 A Last night.
- 7 Q Before that, when's the last time you took it?
- 8 A When I took my MRI.
- 9 Q How long ago was that?
- 10 A Last week, Monday.
- 11 Q Do you ever take it more than a couple times a week?
- 12 A No.
- 13 Q And you said you were tossed over the median when you
- 14 got out of the truck?
- 15 A The people that pulled me out of the truck. They tried
- 16 to pull me away from it. I remember one guy saying get him
- 17 on the other side against the wall, and then I felt them
- 18 throw me over the wall, and when I came, to the police and
- 19 firemen was dragging me further away from the truck while it
- 20 was burning.
- 21 Q What was burning?
- 22 A The truck blew up. The tractor that hit me blew up,
- 23 and my truck was burning. It caught on fire.
- 24 Q You didn't get any burns yourself?
- 25 A Smoke Inhalation, no.



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1 Q Who pulled you out of the truck?

2 A I have no idea.

3 Q Do you know who hit you?

4 A I was told it was the driver by the name of Robbie.

5 Q Do you know Robbie?

6 A No.

7 Q Have you ever met him prior to that night?

8 A Just speaking saying hi and bye.

9 Q Where would you see him?

10 A When I'm leaving or coming to work. When I'm leaving
11 the saw mill or coming to work to the truck.

12 Q Saw mill. That's where you would start your work every
13 day?

14 A Yes.

15 Q What business is there?

16 A Summerville saw mill. That's where we picked up the
17 woodchips to take to Capstone.

18 Q Where did you keep your --

19 A All the trucks were parked across the street from the
20 saw mill property. All of Chris Thompson's trucks and JJS
21 trucks, they were parked there.

22 Q Where there any other trucks from any other companies
23 parked in the same lot?

24 A There used to be, but back in June or you July Don
25 Sweet, he had his drivers bring his trucks to him, and his



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1 sub contactors parked their trucks somewhere else. The only
2 people that parked there was Chris Thompson and JJS trucks.

3 Q Do you know anything about who paid who to park there?

4 A No.

5 Q Do you know anything about the agreement between JJS
6 Trucking and Chris Thompson?

7 A No.

8 Q Do you know how much -- and I know I just asked you
9 this question. Do you know what percentage Chris Thompson
10 took from each of your loads.

11 A No.

12 Q Did you have an understanding what would have happened
13 had your truck not passed that inspection by Chris
14 Thompson's personnel that day?

15 A I would have either had to drive a different truck or
16 not work.

17 Q Do you know whether or not Sedrick Smalls had any
18 discussions with Chris Thompson when you were hired?

19 A I don't know.

20 Q That's all I have.

21 MS. BARR: Thank you, sir. That's all we have for
22 you if Mr. Fisher doesn't have any questions.

23 (The deposition was concluded at
24 10:40 a.m. November, 14th,
25 2011.)



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1 STATE OF SOUTH CAROLINA)

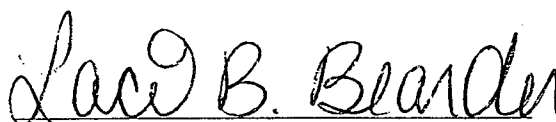
2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Laci B. Bearden, Court Reporter and Notary Public,
5 certify that I did have Samuel Rose to appear before me at
6 9:45 a.m. on Monday, November 14th, 2011, at the law offices
7 of George Sink, P.A., 7011 Rivers Avenue, n. Charleston,
8 South Carolina; that the witness was sworn and cautioned to
9 tell the truth, the pages constitute a true and accurate
10 transcript of the testimony given at that time and place.

11 I further certify that I am not of counsel or kin to
12 any of the parties to this cause of action, nor am I
13 interested in any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 seal this the 14th day of November, 2011.

16
17 
18

19 Laci B. Bearden

20 Notary Public for South Carolina

21 My Commission Expires: September 29, 2021
22
23
24
25

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF
SEDRICK SMALLS

November 14, 2011
11:00 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris
Thompson Services, LLC/Bridgefield
Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Sedrick Smalls,
taken before Laci Bearden, Court Reporter and Notary
Public, at the George Sink, P.A., 7011 Rivers
Avenue, N. Charleston, South Carolina on November
14th, 2011, commencing at 11:00 a.m.



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APPEARANCES

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I N D E X

EXAMINATION BY MR. FISHER	4
EXAMINATION BY MS. BARR	19
EXAMINATION BY MR. KILLEN	22
EXAMINATION BY MR. FISHER	38
EXAMINATION BY MR. KILLEN	39

E X H I B I T S

Plaintiff's Exhibit Number One	8



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1 SEDRICK SMALLS

2 was sworn (affirmed) and testified as follows:

3 EXAMINATION BY MR. FISHER:

4 Q My name is Joe Fisher. I represent Samuel Rose with
5 the worker's compensation claim that we filed arising out of
6 an accident that occurred on August 10, 2011. I want to ask
7 you some questions about your relationship with my client, a
8 work relationship and your work relationship, business
9 relationship with a gentleman named Chris Thompson and his
10 company Chris Thompson Services, LLC; okay?

11 A Yes, sir.

12 Q Will you please state your name for the record?

13 A Sedrick Smalls.

14 Q Mr. Smalls, where do you live at?

15 A 137A Gordon Street, Charleston, South Carolina, 29403.

16 Q And are you familiar with the company called JJS
17 Trucking?

18 A Yes.

19 Q And how are you familiar with that company?

20 A I am the owner, president. I think that's it, the
21 president.

22 Q Are there any other owners, any other shareholders,
23 anything like that in JJS Trucking?

24 A No.

25 Q Your a sole proprietor?



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45c

- 1 A Yes.
- 2 Q Sole owner?
- 3 A Yes. President, yes.
- 4 Q And do you know a gentlemen named Samuel Rose?
- 5 A Yes.
- 6 Q How do you know Mr. Rose?
- 7 A I employed him at JJS Trucking.
- 8 Q Do you remember when he went to work for you?
- 9 A I believe it was the fourth month.
- 10 Q I think he testified earlier he went to work for you in
- 11 April of 2011. Would that be about right?
- 12 A Correct, correct.
- 13 Q Was he working for you in August of 2011?
- 14 A Yes.
- 15 Q And JJS Trucking, you guys subcontract work for Chris
- 16 Thompson Services; is that correct?
- 17 A Correct.
- 18 Q And how long have you had a relationship to work with
- 19 Chris Thompson Services?
- 20 A For over three plus years.
- 21 Q And what is that relationship?
- 22 A I'm a subcontractor. He -- I pull loads for him. He
- 23 provides a trailer, and I provide my insurance coverage to
- 24 him, and he pays me by the ton to carry each load.
- 25 Q And where do these loads go to, and where do the loads



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1 come from?

2 A They come from a lumber mill in Summerville, and then
3 they go to a paper mill in Charleston, and the lumber mill
4 is off of Highway 78 and they go to Virginia Avenue.

5 Q And that's your exclusive contract with him?

6 A Yes.

7 Q You don't haul anything else anywhere other than this
8 route from Summerville to the paper mill; is that right?

9 A Correct.

10 Q And let me see, my client had started working for you
11 in April of 2011. Did you pay my client?

12 A Yes, I paid him. Yes.

13 Q And how did you pay him?

14 A I paid him as a subcontractor by the per load. For
15 every load that he received, he got paid for each load.

16 Q And how much did he get paid per load?

17 A Twenty-five dollars per load.

18 Q And how many loads would you say he could make on
19 average in a day?

20 A Focus -- he would on average per day it was normally
21 around five loads. Sometimes a little bit more, sometimes a
22 little bit less, but on average for Mr. Samuel every week,
23 he typically got 25 to 30 loads every week. I do have some
24 documentation for that.

25 Q You do. Could I see what you have?



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1 A Yes.

2 Q Take your time.

3 A Here we go. If you want to make a copy of that.

4 Q That would be great.

5 A That's the same thing I provided to the insurance
6 company.

7 (Where upon an off the record
8 discussion took place.)

9 Q Sir, you provided us with what looks like a payroll
10 log, is that what that is? What is that? And I'll show you
11 a copy of it.

12 A Exactly. This is what we call a load sheet and for
13 each ticket number you see represents a load. For each load
14 that's turned in, that's how he gets paid his \$25. It just
15 verifies what he done that particular week.

16 Q And for example on 7/12/2011, if you'll take a look at
17 that.

18 A Correct.

19 Q Which is one, two, three, four, five, six, seven
20 numbers; is that correct? One, two, three, four, five, six,
21 seven numbers.

22 A Correct.

23 Q Does that mean he made seven loads that day?

24 A Correct.

25 Q And then on the 13th it shows one, two, three, four,



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46 b

1 five numbers, so he made five loads that day; correct?

2 A Correct.

3 Q And I would assume it varies on traffic and other
4 things; is that correct?

5 A Correct.

6 Q As to how many loads you could get a day. And what
7 you've given us is from July 12, 2011, through August 9,
8 2011; is that correct?

9 A Correct. But I do have all of his since he was
10 employed. I just thought it might be handy here today
11 because that's for the insurance company. They just wanted
12 "X" amount for representation so, but that's what you're
13 looking at right there.

14 Q I would like to mark this is as Plaintiff's Exhibit
15 One, please.

16 (Plaintiff's Exhibit No. 1 was
17 marked for identification.)

18 Q Now, what was your arrangement with Chris Thompson
19 Services, your business arrangement?

20 A My arrangement was to -- and we only had a verbal
21 agreement, but my arrangement was to haul loads, and I was
22 to receive compensation for each load that I carried, and I
23 would turn in my sheets at the end of the week, and then the
24 following week he would relinquish me a check for what I did
25 the previous week.



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46c

1 Q Were you paid by the ton?

2 A Correct.

3 Q And then he was also paid by the ton. "He" being Chris
4 Thompson, did he get paid so much per ton as well?

5 A I believe so, yes.

6 Q Who paid Chris Thompson?

7 A I would believe he got paid from Capstone because
8 that's the -- maybe -- matter of fact, he might have got
9 paid from the lumber mill. Actually, I really don't know,
10 but I know that's where we delivered it to, Capstone.

11 Q And Chris Thompson would cut a check JJS Trucking --

12 A Correct.

13 Q -- every week and then you would cut a check to your
14 employees --

15 A Yes.

16 Q -- or is it the fellows who drove a truck for you --

17 A Correct.

18 Q -- and that's how that worked?

19 A Correct.

20 Q And how many trucks did you have working for you at the
21 time of this accident?

22 A Three.

23 Q Three. And how many trucks do you own?

24 A Four.

25 Q Four trucks. Who all drove a truck for you?



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1 A At that time of the incident, it was me, Samuel Rose,
2 Shaun Thompson -- Shaun Thomas, and Reggie Washington.
3 Reggie was really part time. He didn't run every day.

4 Q Did you have a truck driver named Terri?

5 A Yes, I did, but he was not employed with me at that
6 time. He was a subcontractor for me at that time.

7 Q Did you have a truck driver named Max?

8 A Yes. I did at that time, but he was not working for me
9 at that time.

10 Q The deal with Chris Thompson was in order for you to
11 work for him you had to provide him with copies of your
12 certificates of insurance --

13 A Correct.

14 Q -- to cover your drivers and yourself for worker's
15 compensations purposes; is that right?

16 A Correct.

17 Q And what would happen if you didn't provide those
18 certificates of insurance to Chris Thompson?

19 A I would be terminated.

20 Q And who paid for the gas for the trucks that you drove?

21 A I did.

22 Q What about the tires?

23 A I did. All maintenance to the vehicles, I was
24 responsible for?

25 Q But the trailers were owned by Chris Thompson?



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47a

1 A Exactly. But excluding the trailer. Everything on the
2 trailer would be Chris Thompson's.

3 Q How long have you had JJS Trucking?

4 A If I'm not mistaken -- I know I got a date for when it
5 was established, but I would say somewhere around seven
6 years.

7 Q Have you ever had any trouble with insurance like
8 what's going on now?

9 A No, sir.

10 Q Now, you've provided and I believe your insurance
11 agency provided some insurance certificates to us, and the
12 state has concluded that your insurance had lapsed from
13 February 5, 2011. Until September 23, 2011. Did you ever
14 receive a letter from the state?

15 MR. KILLEN: Let me just object to the form of
16 that question.

17 Q Well, if you could just answer that. Have you ever
18 received a letter from the South Carolina Workmen's
19 Compensation Commission by a gentlemen named Gary Smith?

20 A Please repeat that question.

21 Q Have you ever received a copy of this letter right
22 here, I want to show you?

23 A No, sir.

24 Q It says it was mailed to 137A Gordon Street?

25 A Let's see, this is on October -- okay, October the



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47b

1 28th. Okay. Okay.

2 Q Is this your address here, 137A Gordon Street?

3 A Yes. Well, what I want to say is I haven't actually
4 seen it myself, but they have sent quite a bit of letters to
5 me.

6 Q And has any insurance company or anyone told you that
7 your insurance had lapsed starting February 5, 2011, through
8 September 23, 2011?

9 A I had not received anything from my actual insurance
10 carrier.

11 Q But have you talked with anyone at the State of South
12 Carolina Workmen's Compensation Commission about that?

13 A No, sir.

14 Q And no one's discussed any sort of fine with you for
15 not having it --

16 A I did receive a letter saying that if I do not show
17 that I had insurance over "X" amount of years that I would
18 receive a fine.

19 Q Now, are you aware that the insurance company -- your
20 worker's compensation carriers has said that you didn't have
21 insurance at the time of this accident?

22 A I am aware that they said that.

23 Q Have you talked to them about that since then?

24 A Have I talked with them?

25 Q Your insurance company?



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47c

1 A I have, and they still stand by the fact that I do not
2 have worker's compensation.

3 Q And which company said that, is it Travelers, Zurich,
4 do you remember?

5 A Towers.

6 Q After Mr. Rose was in the accident, when did you find
7 out this accident happened?

8 A I found out immediately. I mean, within an hour.

9 Q Did you go to the hospital and see him?

10 A Yes, I did.

11 Q Did you ever talk to Chris Thompson about this
12 accident?

13 A Yes, I did.

14 Q What did Chris Thompson and you discuss?

15 A I informed him that at this scene his driver hit my
16 driver in the rear, that at the scene DOT and South Carolina
17 State Troopers had faulted his driver at fault and that my
18 driver was in no way -- they called it not contributing. So
19 I informed him of all of this.

20 Q After this accident, did you and Chris Thompson ever
21 discuss worker's compensation coverage?

22 A We did later on once I found out that I was not being
23 covered.

24 Q What did Mr. Thompson tell you?

25 A That when he informed me that --



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1 MS. BARR: Object to the hearsay.

2 Q Go ahead and answer the question.

3 A He informed me that I can no longer work for him based
4 on the fact that my insurance had lapsed at that time.
5 That's what he said.

6 Q Did he ever say anything about his insurance taking
7 care of this claim with regard to Mr. Rose?

8 A What he stated is that --

9 MS. BARR: Same objection to hearsay.

10 Q Go ahead.

11 A What he stated was that Sedrick -- that I was
12 responsible for keeping my worker's comp coverage current.
13 He stated that he was not informed that my insurance had
14 lapsed. Actually, I was looking for it here, but I don't
15 have it. But I was going to ask you -- remember I faxed you
16 two copies of -- he in turn said to me, Sedrick -- so the
17 bottom line I was terminated. Later on, a week or so later
18 he informed me that he did an investigation or he had come
19 across the fact that my insurance had not lapsed, and he
20 provided me with documents. I in turn called my insurance
21 agent that happened to look into this because ever since I
22 worked for Mr. Thompson, if my insurance was ever in
23 jeopardy of lapsing, my insurance carrier always would
24 inform him because he's listed down there, but all I can say
25 is, he said, Sedrick, you know you can't be employed here,



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1 but I don't know what's going on because if you look at
2 those documents, it would state that you would have it, but
3 again, if I don't I don't, but I was not aware that I did
4 not.

5 Q Is this the documents you were just asking me about?

6 A Yes, sir.

7 Q And one of them is dated 10/18/2010. Can you take a
8 look at that? Number one it has Tower Insurance Company.
9 Below it it has Travelers Insurance; is that correct?

10 A Correct.

11 Q And it shows the date covered 10/8/10 to 10/8/11?

12 A I know on this policy, if I'm not mistaken, I had just
13 renewed it after the incident because after I found out, I
14 went to go get reinstated, you know, and so that's what
15 we're looking at right here.

16 Q And this was generated after the accident; is what
17 you're saying?

18 A That's right, that's right.

19 Q And where it says binder down there, what does that
20 mean?

21 A That means that I'm covered.

22 Q That's your understanding that it means you're covered.

23 Then I have this other one from Swap Fox Agency? Is this
24 your agency?

25 A No. No. No. We're looking at the wrong thing. I'm



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1 sorry. This is not what I'm looking at because this here
2 says 10/2/2010 --

3 Q Yes, sir.

4 A -- through 10/2/2011.

5 Q Yes, sir.

6 A So therefore when I look at this I would have been
7 covered through -- because I received a couple of them now,
8 so let me retrack what I stated.

9 Q This is another one that you -- no, this one's dated
10 9/29/11.

11 A Okay. There we go. This is the one probably I was
12 referring to.

13 Q And this one, the 10/8/10, that says -- does that say
14 Travelers Insurance?

15 A Yeah, that says Travelers Insurance; correct.

16 Q And this 9/29/11, now whose insurance company picks up
17 coverage at that point.

18 A Zurich America Insurance Company.

19 Q And that's good from August 24, 2010, it says, to
20 August 24, 2011; is that correct.

21 A Correct.

22 Q But you didn't purchase it until 9/29/11; is that
23 correct?

24 A Actually -- the best thing I can say to you is --
25 purchase -- I was under the impression that I didn't -- if



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48c

1 this is 9/29/11 -- I wasn't the person -- that was not a
2 purchase actual date because if that's a purchase date, why
3 would it be 9/29/11 where it actually says here, you know,
4 coverage 8/24/10 through 8/24/11. I --

5 Q That's a good question.

6 A I was under the impression that that's when probably
7 someone actually sent it out verifying the date it was sent
8 out but not the actual date of coverage. These -- from my
9 interpretation -- these are the actual dates of coverage.

10 Q Why would there have been one from August 24, 2010 for
11 Zurich and one from October 8, 2010 from Travelers? I don't
12 have any idea.

13 A The only idea that I could have is maybe the insurance
14 had lapsed and somebody else picked it up. I don't know.
15 What I do is I make my payments to Swap Fox and -- but I
16 don't know.

17 Q Have you ever went and showed these and discussed these
18 with anyone at Swap Fox?

19 A We talked -- I sent it back to Swap Fox. I have not
20 gotten a response back from Swap Fox, and that would be
21 attention Gregg Hudson, I believe, operations manager via
22 Swap Fox.

23 Q When you hired Samuel Rose, his job was to haul
24 woodchips from Summerville to the Capstone Plant; is that
25 correct?



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1 A Correct.

2 Q And you furnished the truck; is that correct?

3 A Correct.

4 Q You paid for the gas; is that correct?

5 A Correct.

6 Q You paid for the maintenance on the truck; is that
7 correct?

8 A Correct.

9 Q And really all he did was he was suppose to get in the
10 truck and drive it safely to and from Summerville, dumped in
11 Capstone, come back. His job was just to drive the truck?

12 A His job was just to drive the truck; yes.

13 Q And you told him where to go?

14 A No, I did not.

15 Q You didn't tell him where to go?

16 A No, sir. At Summerville, we have a loader box and each
17 driver has a shift, but you can start your shift earlier or
18 later. I did not make that determination.

19 Q Not when, but where? I mean, he had your truck. His
20 job was to drive your truck from Summerville saw mill, to
21 Capstone. He couldn't just take that truck if he wanted to
22 haul chips to Savannah or something like that?

23 A No, sir.

24 Q Well, thank you, sir. I don't have any other
25 questions. Appreciate it.



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1 EXAMINATION BY MS. BARR:

2 Q Mr. Smalls, my name is Kirsten Barr. We met briefly
3 before we went on. I represent Chris Thompson and the
4 insurance carrier. Do you recall making payments to Swap
5 Fox or to anybody else for worker's comp insurance in 2011?

6 A No, ma'am.

7 Q Would you have written one check. I mean, do you
8 recall making any payments toward the purchase of a worker's
9 comp insurance policy in the year prior to the accident?

10 A Yes, ma'am.

11 Q Now, do you have business records showing -- would you
12 write the check to Swap Fox then?

13 A Sometimes I made them to Swap Fox and sometimes I --
14 like, if I was close to being terminated, they would say,
15 hey, just make it out to us and make sure it stays current.

16 Q At any time in the months prior to this accident that
17 happened in August of 2011, did you stop making your regular
18 payment?

19 A Focus. I'm not going to say that I didn't -- I might
20 not have had some times when I might have been late. But
21 what would happen is that my insurance agent would say,
22 Smalls, well this is where you are and this is what you need
23 to do. But, yes, ma'am -- and -- focus -- if my insurance
24 had lapsed, I would have to go in and sign something saying
25 that I didn't for that particular period that might have



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1 just lapsed that I was not covered, so again, the best way I
2 can put it is that I'm not going to say that I didn't have
3 any issues, but at the time of this incident, I was under
4 the impression that I was covered.

5 Q Would you be able to put your hand on like the canceled
6 checks or check stubs that you would have written to pay for
7 your worker's compensation insurance in the months prior to
8 Mr. Rose's accident?

9 A I'm pretty sure I could go back and find documentations
10 of payments.

11 Q Do you recall ever getting a notice from Swap Fox or
12 from the worker's comp insurance company saying that your
13 policy had lapsed --

14 A No.

15 Q -- or that they were going to cancel it?

16 A No, ma'am.

17 Q You still get your insurance with Swap Fox?

18 A As of now, I'm out of business pretty much. I'm
19 exhausted.

20 Q Were you running trucks for anybody other than --

21 A No. No, ma'am.

22 Q -- what you did for Chris Thompson?

23 A Exactly. That was everything for me.

24 Q And you have four trucks?

25 A Yes.



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49c

1 Q Do you still have the four trucks?

2 A I still have -- yes, I still have them.

3 Q And where do you keep your trucks?

4 A I keep one of them at the shop that broke, but I have
5 three in a yard, what they call Red Top.

6 Q Is that something that you own or --

7 A It's a friend's property.

8 Q And where in Red Top is that?

9 A That's off of Charleston -- I think that's Old
10 Charleston Road.

11 Q And who owns the property where they're located?

12 A Rodney Doctor.

13 Q Doctor?

14 A Yes, ma'am.

15 Q And do you pay him rent to keep those trucks there, or
16 is he just a friend, or what's the arrangement?

17 A Oh, no, he's a friend.

18 Q And you say that you have not worked or done any kind
19 of work with JJS Trucking since you talked to Mr. Thompson
20 about the lapse in your worker's comp insurance?

21 A Yes, ma'am.

22 Q Just a quick question. We've marked this as Claimants
23 One, but I think you said this was a load sheet; is that
24 what you called it?

25 A Yeah. By definition, we call them load sheets, but



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1 that's how we determine compensation.

2 Q And would this be something that an employee like Mr.
3 Rose would turn in to you each week?

4 A Yes. But technically he turned it in to the office.
5 He didn't really turn them in to me, but I look at it as
6 being turned in to me. Every week he would fill it out just
7 like I did and put it in a box, and then when the checks
8 came from Chris Thompson then it would come back to me.

9 Q So when you say he leaves it in a box, this was a box
10 at Capstone?

11 A Correct.

12 Q But Chris Thompson didn't write a check to Samuel Rose.
13 He wrote you a check?

14 A Exactly. He wrote me a check. Yes, ma'am.

15 Q I think Mr. Killen probably has some questions for you.
16 That's all I have for you right now.

17 EXAMINATION BY MR. KILLEN:

18 Q Mr. Smalls, I'm Tim Killen. I represent South Carolina
19 Worker's Compensation Uninsured Employers Fund, and this
20 load sheet, this is filled out by Samuel Rose; is that
21 correct?

22 A Correct.

23 Q And did Mr. Rose do the calculations on this document?

24 A No. No. Chris Thompson did the calculations on the
25 sheet.



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1 Q So Mr. Rose would leave this in a box for Chris
2 Thompson; is that correct?

3 A Correct.

4 Q And Chris Thompson or someone in his company would do
5 these calculations?

6 A Correct.

7 Q And then Mr. Thompson's company would pay you --

8 A Correct.

9 Q -- and send these sheets back?

10 A Correct.

11 Q And then you would have them for your records; is that
12 right?

13 A Correct.

14 Q So would you just then write a check to Samuel Rose for
15 the amount shown on the bottom of this load sheet?

16 A No. I would write a check to him for each load -- his
17 compensation was \$25.

18 Q That's right.

19 A I would count each load that was turned in to verify,
20 and I would cut him a check for those amount of loads.

21 Q Did Mr. Rose ever tell you how many trips he took in a
22 certain week?

23 A Sometimes we would discuss -- you know, he would say,
24 well, yes Smalls, I got 25 loads, or I got 30 loads and
25 then, so we would discuss it and then what would happen is



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1 when this came back this was like double checking what the
2 verbal communication was.

3 Q The verbal communication was just informative; right?

4 A Correct.

5 Q This document, this load sheet, I mean, that's the holy
6 grail.

7 A Yes.

8 Q That's the document where everything is based off of;
9 right?

10 A Correct.

11 Q Let me ask you a few background questions. What's your
12 date of birth?

13 A 5/22/70.

14 Q And your social security number?

15 A 4002.

16 Q And your driver's license number?

17 A 008680380.

18 Q And that's South Carolina?

19 A Correct, sir.

20 Q I know your home address, is that your business address
21 as well?

22 A Correct, sir.

23 Q Have you ever operated any other locations other than
24 the Gordon Street location?

25 A No, sir.



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- 1 Q Where do you house your trucks?
- 2 A Red Top or if I was --
- 3 Q I'm sorry. Let me ask that a better way. When you
- 4 were in business, where did you house your trucks?
- 5 A In Summerville at the mill.
- 6 Q And who owns that mill?
- 7 A Well, owns the mill would be Capstone.
- 8 Q And so you would park your trucks there, did you pay
- 9 anyone for the space?
- 10 A No, sir.
- 11 Q Who did you negotiate that with?
- 12 A Well, you use the word, "negotiate." I was just
- 13 authorized by Mr. Chris Thompson to be able to park there.
- 14 Q And you went into business with Chris Thompson about
- 15 three and a half years ago; right?
- 16 A Yes, sir.
- 17 Q You never had a written contract with him?
- 18 A No, sir.
- 19 Q But you had a written contract with all your drivers?
- 20 A Yes, sir, most of them.
- 21 Q You're the only member of your LLC?
- 22 A Yes, sir.
- 23 Q How are you taxed?
- 24 A When you say, how am I taxed?
- 25 Q Are you taxed like a sole proprietor? Do you know?



1 It's okay if you don't know.

2 A I mean, I got some tax documents, but I know there's
3 different ways you can be taxed.

4 Q Do you pay corporate taxes for your income through your
5 LLC? If you don't know, it's okay?

6 A Well, I know on my taxes my corporation is listed so.

7 Q Okay. Your LLC?

8 A Yes, sir.

9 Q You pay personal income tax?

10 A Can I make a call? Because my accountant might answer
11 the phone.

12 Q It's all right. Who's your accountant?

13 A Liberty Tax. Warren -- Warren Frazier.

14 Q Where is he located?

15 A Goose Creek.

16 Q Do you own the property at Gordon Street?

17 A Yes, I do.

18 Q Personally?

19 A Yes.

20 Q Does your LLC own any property?

21 A No, sir.

22 Q Who owns those trucks?

23 A My corporation.

24 Q Their titled in the name of JJS Trucking, LLC; is that
25 correct?



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- 1 A Correct.
- 2 Q Where do you bank?
- 3 A First Citizens.
- 4 Q Do you have personal accounts there?
- 5 A I don't have a personal account.
- 6 Q All your bank accounts there -- if their -- is there
- 7 more than one?
- 8 A No. It's just one, JJS Trucking.
- 9 Q And it's just a checking account?
- 10 A Yes.
- 11 Q Do you have a mortgage on your house at Gordon Street?
- 12 A I do.
- 13 Q Is that in your name alone?
- 14 A It is.
- 15 Q How do you pay the mortgage?
- 16 A By check.
- 17 Q Out of your JJS Trucking, LLC account?
- 18 A Most of time I would assume so, yes.
- 19 Q You would assume so or yes or no?
- 20 A I would say yes.
- 21 Q So you use that JJS Trucking account for your personal
- 22 needs?
- 23 A I guess you can say it like that.
- 24 Q Do you separate your money from your corporation with
- 25 your personal money?



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51b

1 A Oh, no, I see what you're saying. No, I do pull it
2 out.

3 Q How do you pull it out?

4 A I write a check to myself.

5 Q And then you cash it?

6 A Correct.

7 Q At First Citizens?

8 A Correct.

9 Q How do you pay your electric bill?

10 A I would pay it off of my account.

11 Q From your corporate account?

12 A Correct.

13 Q What about when you go get groceries?

14 A I pay cash.

15 Q Do you ever write a check for groceries?

16 A No, sir.

17 Q Do you own any automobiles personally?

18 A Yes, sir.

19 Q How do you get gas?

20 A I pay for it with the cash.

21 Q You pay cash for your gas at all times?

22 A Correct.

23 Q You never use your corporate account to pay for your
24 personal vehicle's gas.

25 A No, sir.



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1 Q What kind of cars do you own personally?

2 A I got a Kia Sorento and a F250 true cab truck and a
3 F150 that's an older truck.

4 Q Any other automobiles or trucks?

5 A No, sir.

6 Q Does your wife own those vehicles as well?

7 A No.

8 Q Did you ever take money out of any of your drivers
9 checks to pay for worker's comp insurance?

10 A No.

11 Q Did Chris Thompson ever take money out of what he paid
12 you to pay for worker's compensation insurance?

13 A No.

14 Q Did the terms of your agreement with Chris Thompson
15 ever change at any time during the course of your
16 relationship?

17 A No.

18 Q So he took the same percentage out when you started as
19 he did from your last load?

20 A Same percentage out -- same percentage out. I would
21 say -- you say take the same percentage out. I would word
22 it as I was paid by the ton, but that would change based off
23 of fuel cost or what he was being compensated with because
24 it did go up and down. But I don't see it as -- you say
25 take something out.



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1 Q So when it changed, how did you find out that it
2 changed?

3 A I saw it on the -- I mean, I got the load sheet -- the
4 statement.

5 Q When you got paid, that's when you learned?

6 A Correct.

7 Q There was no negotiating those factors?

8 A No, sir.

9 Q What Chris Thompson paid you, you got; is that correct?

10 A Correct.

11 Q And you didn't have any say so in that?

12 A No, sir.

13 Q And you said earlier your job was to provide insurance
14 coverage, and his job was to provide the trailer?

15 A Well, I mean, no. My job was to provide a truck and a
16 driver.

17 Q Okay.

18 A But under the terms, I was supposed to make sure I keep
19 my insurance, you know, current.

20 Q And that's your liability insurance and your worker's
21 comp insurance?

22 A Correct.

23 Q I believe Mr. Fisher showed you a certificate of
24 insurance earlier. I don't think we made it an exhibit.
25 There's one dated 10/18/2010.



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1 (Where upon an off the record
2 discussion took place.)

3 Q Do you have a copy of that certificate dated 10/18/2010
4 or do you need --

5 A I got it.

6 Q Now, in October of 2010, did you get a new policy
7 through the Swap Fox Agency for worker's comp insurance?

8 A I'm sorry. Which one am I looking at?

9 Q Your looking at the one dated 10/18/2010.

10 A Okay.

11 Q That's the one that we're dealing with here. That's
12 the most important one, in my opinion.

13 Did you get a new policy of insurance that year in
14 October of 2010 for worker's comp; do you remember that?

15 A A new?

16 Q Yes.

17 A 10th, the 18th, 10/18/10, did I get a new?

18 Q Let me go through this certificate with you. This
19 purports to show that the document was created on
20 October 18, 2010 by someone at Swap Fox Agency, and it has
21 insure B Travelers Insurance or Indemnity and Affiliates. I
22 can't read, it and that's where your worker's comp policy
23 would be in effect. That insure B up there at the top is
24 referencing this right here where it says binder and then
25 these dates of effective coverage down here, 10/8/10 through



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1 10/8/11. Did you go get a new insurance policy around that
2 time?

3 A If that's the 10/18/10 -- I would -- are you saying
4 this is the time when I was renewing it?

5 Q I'm asking you. Did you renew a policy, or did you get
6 a new one or what?

7 A I renew it every year, so if I'm renewing it every year
8 and it starts on the 10th, the 8th, the 10, 10th the 2nd and
9 then this date up here is -- I would have believed that this
10 is the beginning of a new policy.

11 Q It shows binder down there. Did you ever have an
12 actual policy issued to you from Travelers?

13 A I'm pretty sure I would have had to. I mean --

14 Q When did you make your payments to Swap Fox?

15 A Oh, wow, I mean, normally there would have been a
16 deposit made, and I would be making monthly payments.

17 Q So around the time, you either renewed or get a new
18 policy you make a deposit; is that correct?

19 A Correct.

20 Q And then from the rest of the year you make --

21 A Correct.

22 Q -- equal monthly installments; is that correct?

23 A Pretty much.

24 Q And there were times in the past where you would fall
25 behind?



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52c

1 A Correct.

2 Q But someone from Swap Fox would contact you and let you
3 know and then you would catch up; correct?

4 A Correct.

5 Q Now, the worker's comp commission is showing a -- that
6 this policy was canceled sometime in February of 2011. Now,
7 between October of 2010 and February of 2011, were you
8 missing payments to Swap Fox or Travelers?

9 A Okay. Say that one more time, please.

10 Q Between October of 2010 and February of 2011, that's
11 about what, four months?

12 A Okay. Between October -- go ahead now.

13 Q Did you miss any of your payments?

14 A For my worker's comp, I'm going to say I really don't
15 recall missing any payments, but if worker's comp says --
16 well, not worker's comp but if they say my insurance lapsed
17 in January, I would have to say obviously I didn't make a
18 payment.

19 Q Are you telling me you know that you didn't make a
20 payment or just because this paperwork, which is not
21 binding, says it.

22 A Exactly.

23 Q Are you relying on these documents?

24 A Yeah, pretty much.

25 Q Solely for your recollection?



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1 A Pretty much.

2 Q Are you telling me that it's possible you missed a
3 payment or two?

4 A I'm saying it is possible.

5 Q Is it probable?

6 A Probable? If that the same meaning as saying possible,
7 I'm going to say it's possible.

8 Q Did you ever get a call from anyone at Swap Fox during
9 that time?

10 A No, sir.

11 Q Did you ever get a letter from anyone at Swap Fox
12 during that time telling you your policy was getting ready
13 to lapse?

14 A No, sir.

15 Q Did you ever get a letter from Travelers during that
16 period of time telling you your policy was getting ready to
17 lapse and what you could do to cure that?

18 A I don't recall it, no, sir.

19 Q Did you ever get any of your premiums refunded to you?

20 A No, sir.

21 Q Neither Travelers nor Swap Fox ever wrote you a check
22 for any worker's compensation insurance you paid for, but
23 they weren't providing coverage for you?

24 A No, sir.

25 Q How frequently would you send certificates over to



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1 Chris Thompson?

2 A I myself don't send certificates over to Chris
3 Thompson. My agent would send it over to Chris Thompson.

4 Q Did you ever ask your agent to do that?

5 A In the past I think one time I did. It wasn't in the
6 last year. I think one time before my -- he questioned me
7 on my insurance renewal date, and I called my agent and say
8 could you send over Chris Thompson a current, you know,
9 certificate of insurance, but that was -- that had probably
10 happened two years plus ago.

11 Q How long was your agreement with Chris Thompson
12 supposed to last?

13 A He never -- we never discussed a time frame for how
14 long it was supposed to last.

15 Q How long did it actually last?

16 A I'm going to say about three and a half years.

17 Q So for three and a half years, you two companies never
18 had a written agreement?

19 A No, sir.

20 Q Three and a half years you two companies, both of your
21 LLCs, never put anything on paper to show that you two had a
22 contract with each other?

23 A No, sir.

24 Q And nothing changed since three and a half years before
25 the contract terminated, as far as the terms of contract are



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1 concerned; is that correct?

2 A Yes, sir, that's what I am saying.

3 Q After Chris Thompson terminated the contract with your
4 company, did your company receive full payment for the work
5 it had already performed?

6 A If you are saying if anything was owed to me from him,
7 did I receive it, then I would say, yes.

8 Q Was it effective immediately, or did you get a 30 day
9 grace period?

10 A Immediately.

11 Q And you would make your insurance payments to Swap Fox
12 Agency?

13 A Yes, sir, sometimes, yes.

14 Q Sometimes?

15 A Yes, sometimes.

16 Q Where would you make them if you weren't making them
17 directly to Swap Fox?

18 A If I'm not mistaken it would have been to like a
19 finances company maybe. I don't know if it was actually to
20 Towers or Zurich, but sometimes it would be like a finance
21 company that would be established, and I would pay them.

22 Q When is the last time you remember making payments to a
23 finance company?

24 A I would have to go and look at my records. Right this
25 second I --



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1 Q Just to the best of your recollection?

2 A I would -- I would believe in this -- in the early
3 portion of this year because like I said, I know I was
4 making payments.

5 Q So you were making payments in 2011?

6 A 2011.

7 Q It's 2011.

8 A Yes.

9 Q It is your testimony that you never received notice of
10 a cancellation?

11 A No, sir.

12 Q By notice of cancellation, I mean a letter from the
13 insurance company or the agent saying that they were getting
14 ready to cancel your policy unless you followed up with the
15 payment?

16 A It's a possibility they might have sent me something.
17 Also when I was aware of a possible lapse then, I would
18 bring it current. In this particular case here, I was not
19 aware that my insurance had lapsed, and any other time if my
20 insurance was about to lapse, Chris Thompson would have been
21 all over me because he did not want my insurance to lapse,
22 so I can't say I didn't make a mistake. What I can say is
23 that ever since I dealing with Swap Fox and ever since I've
24 been running for Chris, I never had this problem, and when
25 he brought it to my attention, I didn't have nothing to say.



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1 Q "He" being who?

2 A Chris Thompson.

3 Q And he didn't know about this problem until after the
4 accident; is that correct?

5 A Correct.

6 Q That's all the questions I have.

7 EXAMINATION BY MR. FISHER:

8 Q Let me ask you one, Mr. Smalls: The finance company,
9 whenever you say sometimes you made insurance payments
10 through a finance company and not directly to Swap Fox, what
11 finance company would that be, and how did that work?

12 A The best way I can put it is Swap Fox was my insurance
13 agent. Normally, when I would go and establish a insurance
14 binder, I would have to put "X" amount of dollars down, and
15 then it would say, okay, well, to the balance on this -- if
16 the policy was \$5,000, I might put down \$2,000. They might
17 finance 3,000. I would give Swap Fox a check and then what
18 would happen would be I would either make payments to a --
19 normally, I don't think it was the actual insurance, I think
20 it was to like a finance company. And then if I got in
21 trouble, you know, they would say, Hey, you know your
22 insurance is about to cancel. I would talk to my insurance
23 agent and say, Hey, what's the deal, well, you got "X"
24 amount of time. Sometimes I would just cut them a direct
25 check, you know, and they would deal with it however they



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1 deal with my policy. They might have had a more faster,
2 efficient way of dealing with the situation.

3 Q Well, there's this note here -- cancellations,
4 reinstatements, non renewals and it shows on 1/6/11 that
5 your policy was canceled, and it says by the request of the
6 finance company?

7 MR. KILLEN: Can you tell him where that is, Joe?

8 MR. FISHER: Yeah.

9 Q It says TOC inquiry on line with South Carolina. This
10 is something to show whether or not you had insurance. But
11 anyway, the finance company, if you don't make a payment to
12 the finance company, does your coverage lapse?

13 A I would say I'm sure it would lapse. I guess, that's
14 an answer.

15 Q Do you know what finance agency it was that you were
16 dealing with at this time?

17 A I would have to really go back and talk to my agent. I
18 can find that out.

19 Q It would be worth it for you to do that. Thank you,
20 sir. I don't have any other questions.

21 EXAMINATION BY MR. KILLEN:

22 Q Quick follow up. Did you ever sign a contract with the
23 finance agency?

24 A You know something, I have to go back and look at my
25 documents because like I said, normally when I start the



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1 policy I would sign "X" amount of papers, and I'd have to go
2 back and try to start looking at all those things to verify
3 that.

4 MR. FISHER: Okay. Thank you. That's all.

5 (The deposition was concluded at
6 12:10 p.m. November, 14th,
7 2011.)
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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Laci B. Bearden, Court Reporter and Notary Public,
5 certify that I did have Sedrick Smallsto appear before me at
6 11:00 a.m. on Monday, November 14th, 2011, at the law
7 offices of George Sink, P.A., 7011 Rivers Avenue, N.
8 Charleston, South Carolina; that the witness was sworn and
9 cautioned to tell the truth, the pages constitute a true and
10 accurate transcript of the testimony given at that time and
11 place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 14th day of November, 2011.

17
18
19 Laci B. Bearden

20 Laci B. Bearden

21 Notary Public for South Carolina

22 My Commission Expires: September 29, 2021
23
24
25

South Carolina Workers' Compensation Commission
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803)737-5700

WCC File # 1112328

Carrier File # 007236

Carrier Code #

Employer FEIN

SAMUEL ROSE

Claimant's Name

Address City State Zip

Home Phone #

Work Phone #

TIMOTHY B KILLEN

Preparer's Name

Address

JJS TRUCKING, LLC, ET AL.

Employer's Name

C/O CEDRIC SMALLS, R.A.

Address City State Zip

BRIDGEFIELD CAS.

Insurance Carrier

100 Executive Center Dr.

803 798-2722 EXT. 134

Suite 101, Columbia, SC 29210

Phone #

Provide the information requested in the space provided. Use an additional sheet, if necessary. Type or print all information.

☒ Injury by Accident ☐ Occupational Disease ☒ Both Injury by Accident and Disease ☐ Other

1. Date of accident: 08/10/2011 2. AWW: \$ unknown Comp. Rate: \$ unknown

3. Type of injury and body part(s) Alleged right knee, neck, back and head following MVA.

4. Facts in controversy: See attached Addendum.

5. Legal issues involved: See attached Addendum.

6. Unusual problems: See attached Addendum.

7. Witnesses (designate if expert)* See attached Addendum.

8. Exhibits: Fund reserves the right to supplement upon receipt of documents
subject to subpoena to Employer/Carrier.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)
N/A

10. Name, address, and specialty, if any, of the treating physician: N/A

11. Impairment rating(s); body part(s); physician and date of opinion: None or unknown.

DATE OF HEARING: 04/25/2012

TIME OF HEARING: 11:30 a.m.

SIGNATURE

On behalf of ☐ Claimant ☐ Employer ☒ SC Uninsured Employers' Fund

DATE 4-16-12

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

UNINSURED EMPLOYERS' FUND'S ADDENDUM TO FORM 58
SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

4. Whether Statutory Employer/Carrier's petition to transfer liability to the Fund should be denied, where:

(a) Statutory Employer/Carrier has failed to comply with the Fund's subpoena for information regarding payment of benefits to or on behalf of Claimant;

(b) Under Tillotson v. Keith Smith Builders,

" . . . the statute [§ 42-1-415] itself makes clear its purpose is to ensure that statutory employees are protected, although their immediate employer may have misrepresented to a contractor that it had workers' compensation insurance.

" . . . Importantly, in keeping with the statutory employee doctrine, § 42-1-415(a) requires the upstream contractor initially pay all benefits due to the subcontractor's injured employee. The contractor may then petition to transfer responsibility of future payments to the Uninsured Employers' Fund. In addition, the contractor may be reimbursed by the Fund.

"The section may be viewed as enforcing the statutory employee doctrine even when a subcontractor commits fraud by stating it has workers' compensation coverage. The purpose of the section is further clarified when read in context of surrounding statutes. Each section, from § 42-1-410 to 450, deals with certain aspects of the statutory employee doctrine. Section 42-1-415 is principally concerned with protecting a subcontractor's injured employees." 357 S.C. 554 (2004), 593 S.E.2d 621, 624 (Ct. App. 2004) (emphasis added).

The Statutory Employer/Carrier herein, rather than "pay[ing] all benefits due¹" to the Claimant "in the first instance²", as required by S.C. Code Ann. § 42-1-415, has only recently begun paying Claimant the minimum amount of Seventy-Five Dollars (\$75.00) a week. Additionally, the Statutory Employer/Carrier and has paid a small amount of medical bills (per its APA Submissions).

¹ Due is defined as " 1. Just, proper, regular and reasonable . . . 2. Immediately enforceable . . . 3. Owing or payable" Black's Law Dictionary 515 (7th ed. 1999).

² Instance is defined, in relevant part, as "2. The act of instituting legal proceedings <court of first instance>. 3. Urgent solicitation or insistence <she applied for the job at the instance of her friend>." Black's Law Dictionary 800 (7th ed. 1999).

Importantly, to date, the Statutory Employer/Carrier has failed to pay for the majority of Claimant's medical costs and expenses. To date, the Statutory Employer/Carrier has failed to pay Claimant a reasonable compensation rate. To date, the Statutory Employer/Carrier has failed to make the medical referrals that Claimant is due. Because the Statutory Employer/Carrier failed to pay these in the first instance – i.e., within a reasonable time after the claim was filed by the Claimant – the petition must fail.

Further, it is clear that the Claimant has not been protected where the Statutory Employer/Carrier have failed to provide him proper medical and indemnity benefits. In fact, the Claimant testified at his most recent deposition that his condition has deteriorated due to his lack of care and treatment. As the Court of Appeals has written, the purpose of this statute is to protect the Claimant. Should Statutory Employer/Carrier's petition be granted here, that purpose would not be served.

- (c) The Claimant filed his claim on or about September 8, 2011. The Statutory Employer/Carrier filed its Form 51 on or about October 7, 2011. In that Form 51, the Statutory Employer/Carrier "assert[ed] S.C. Code Ann. § 42-1-415 as a defense." However, Statutory Employer/Carrier failed to submit the Certificate of Insurance upon which it intended to use as grounds for this defense at that time, as required by § 42-1-415(b) ("The documentation must be . . . turned over to the commission at the time a claim is filed by the injured employee.").

The Statutory Employer/Carrier failed to submit the documentation to the Commission until the following year, on or about January 24, 2012, when it filed its Petition to Transfer Liability despite having paid no benefits at that time.

- (d) Assuming *arguendo* that the matter is ripe to be heard by this Commission or the Commission disagrees with the Fund's positions above, whether the Statutory Employer/Carrier can transfer liability to the Fund where:
 - (i) The Certificate of Insurance fails to show that the alleged insured had insurance at the time the certificate was collected, in that it purports to show only a binder of insurance.
 - (ii) The Certificate of Insurance is dated some ten (10) months prior to the Claimant's date of injury, where no binder could remain effective for that period of time and Statutory Employer took no steps to ensure that a policy was subsequently issued to the Direct Employer.
 - (iii) The Certificate of Insurance was collected some ten (10) months prior to the Claimant's date of injury, but the "contract" between the

Statutory Employer and Direct Employer involved an at will³ relationship between the parties where amount of work and rate of payment to the Direct Employer fluctuated without Direct Employer's consent, giving rise to a new agreement each time the Direct Employer and/or his employee(s) picked up a shipment for Statutory Employer.

- (iv) The Statutory Employer/Carrier has made no showing that David W. Hayes is an authorized representative of Travelers Indemnity.
 - (v) The Certificate of Insurance is blank in the "Description of Operations" box, contrary to the requirements as set forth by the Court of Appeals.
5. See Number Four (4), above; Statutory Employment Doctrine (Voss v. Ramco, Inc., 325 S.C. 560, 566, 482 S.E.2d 582, 585 (Ct.App.1997; S.C. Code Ann. § 42-1-415 (Hopper v. Terry Hunt Const., 383 S.C. 310, 680 S.E.2d 1 (2009), Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (S.C. 2009), Hardee v. McDowell, 372 S.C. 413, 642 S.E.2d 632 (Ct.App. 2007)); S.C. Code Reg. 67-415.
 6. Statutory Employer/Carrier has failed to respond to the Fund's subpoena of February 22, 2012, demanding "copies of any and all Forms or other documents or reports showing any and all compensation payments to Claimant and/or medical benefits paid on behalf of Claimant." The Fund reserves the right to file a Motion to Compel these materials should Statutory Employer/Carrier continue to fail to comply.
 7. Claimant; Chris Thompson (by deposition or live); Sedrick Smalls (by deposition or live); and any and all witnesses named or called by any party. Statutory Employer/Carrier has submitted the depositions of Mr. Thompson and Mr. Smalls, and Fund will rely on those submissions. However, this is to advise that Fund reserves the right to submit these materials should Statutory Employer/Carrier withdraw its submissions prior to the hearing date.

³ "An individual working for an employer under a contract of employment for an indefinite period can be terminated at will." Williams v. Riedman, 339 S.C. 251, 529 S.E.2d 28, 32 (Ct. App. 2000) (citing Shealy v. Fowler, 182 S.C. 81, 188 S.E. 499 (1936)). Statutory Employer/Carrier assert that the alleged contract was entered into some three (3) years prior to the Claimant's injuries. However, the alleged contract lacked essential terms, was indefinite, and was for an indefinite duration. The alleged contract was also terminated at will by the Statutory Employer. "Historically, perpetual contracts have not been favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract". Carolina Cable Network v. Alert Cable TV, Inc., 316 S.C. 98, 447 S.E.2d 199 (1994) (citing Childs v. City of Columbia, 87 S.C. 566, 70 S.E. 296 (1911)).

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. FILE NO: 1112328

SAMUEL ROSE,	)	
	)	NOTICE OF WITNESSES AND
Employee/Claimant,	)	WRITTEN MEDICAL REPORTS
	)	TO BE INTRODUCED AS
vs.	)	DIRECT EVIDENCE ON
	)	BEHALF OF SOUTH CAROLINA
JJS TRUCKING, LLC,	)	UNINSURED EMPLOYERS' FUND
	)	
	)	
Employer/Defendant.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
JOSEPH B. FISHER, ESQ., ATTORNEY FOR EMPLOYEE/CLAIMANT
JJS TRUCKING, LLC, EMPLOYER/DEFENDANT
KIRSTEN L BARR, ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT
F. REID WARDER, JR., ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT

YOU ARE HEREBY NOTIFIED that the South Carolina Uninsured Employers' Fund, pursuant to the provisions of the South Carolina Workers' Compensation Act and the South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the South Carolina Uninsured Employers' Fund, to wit:

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	NUMBER OF PAGES

(SEE ATTACHMENT)

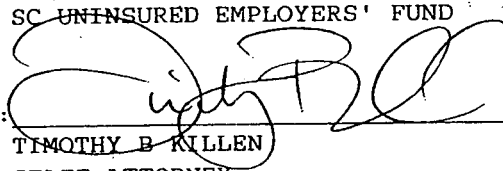
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into evidence on behalf of the Defendant South Carolina Uninsured Employers' Fund.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendant Uninsured Employers' Fund:

Claimant; Chris Thompson; Sedrick Smalls; and any and all witnesses named or called by any party.

SC UNINSURED EMPLOYERS' FUND

By: 

TIMOTHY B. KILLEN

STAFF ATTORNEY

Suite 101

100 Executive Center Drive

Columbia, South Carolina 29210

Telephone No.: (803) 798-2722 Ext. 124

April 16, 2012

ATTACHMENT - NOTICE OF WITNESSES AND MEDICAL REPORTS

NAME OF PHYSICIAN/OTHER	DATE OF REPORT	NUMBER OF PAGES
-----	-----	-----

FUNDS WILL RELY ON CLAIMANT'S ATTORNEY TO FILE/SERVE ALL CAUSALLY-RELATED MEDICAL RECORDS/REPORTS AND RESERVES ITS RIGHT TO SUPPLEMENT AS REQUIRED.

Fund reserves the right to supplement should Statutory Employer/Carrier comply with Fund's subpoena.

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Samuel A. Rose,	)	WCC File No: 1112328
	)	
Claimant,	)	
	)	
vs.	)	
	)	
JJS Trucking, LLC and Chris Thompson	)	
Services, LLC,	)	
	)	Fund's Amended Return to Carrier's
Employers,	)	Petition to Transfer Liability
	)	
and	)	
	)	
Bridgefield Casualty Ins. Co. and Travelers	)	
Insurance Co.,	)	
	)	
Carriers,	)	
	)	
and	)	
	)	
Uninsured Employers' Fund,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, JOSEPH B. FISHER, ESQUIRE, ATTORNEY FOR THE CLAIMANT, JJS TRUCKING, LLC, KIRSTEN L. BARR, ESQUIRE, ATTORNEY FOR CHRIS THOMPSON SERVICES, LLC/BRIDGEFIELD CASUALTY INSURANCE CO. AND F. REID WARDER, JR., ESQUIRE, ATTORNEY FOR TRANVELERS INSURANCE CO.:

YOU WILL PLEASE TAKE NOTICE that the SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND (Fund) hereby files this Amended Return to the Petition to Transfer Liability to S. C. Uninsured Employers' Fund pursuant to S.C. Code Ann. § 42-1-415, pursuant to Regulation 67-215 on the following grounds:

1. The Fund denies the relief sought in the petition in that the Employer/Carrier have

no proven by a preponderance of the evidence that they are entitled to relief sought, and the Employer/Carrier has the burden of proof in this matter;

2. The Fund denies the relief sought in the Petition in that the Employer/Carrier cannot meet its burden of proof under the statute relative case law; and

3. The Fund further affirmatively asserts all defenses allowed under the Act, including but not all affirmative and specific defenses (see Regulation 67-603), including but not to §42-9-60, §42-15-20, §42-15-40, §42-17-90, fraud, election of remedies, intervening trauma, no compensable injury by accident under §42-1-160, degree of disability, if any, attributable to this injury is speculative, Claimant's problems are personal in nature and are not work-related, and res judicata.

ARGUMENT

The carrier in this instance has petitioned this Court to transfer liability over to the South Carolina Workers' Compensation Uninsured Employers' Fund pursuant to §42-1-415. For the reasons set forth herein, the Petition for Transfer of Liability must be denied.

To warrant the granting of a Petition to Transfer Liability, the Carrier must meet all statutory requirements. §42-1-415 provides:

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. 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...

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and willful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud as provided by law. Knowing and willful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subject the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud by law. Additionally, a contractor or subcontractor who knowingly and willfully falsely documents workers' compensation insurance or knowing and willfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and willfully falsely documents workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

The Commission, by its own Regulation (R. 67-415 (A)) established that:

(A) For the purposes of §42-1-415, the ACORD Form

25-S, Certificate of Insurance, as published by the ACORD Corporation, and as issued by the carrier for the insured, shall serve as documentation of insurance. The Certificate of Insurance must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.

It was long-established and well-settled that a statutory employer bore absolute liability to the injured workers of a subcontractor and could not shift that liability to the Uninsured Employers' Fund, even if the subcontractor was uninsured. See, generally, Miller v. Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998); S.C. Code Ann. Section 42-1-400, Annotations 1 –6; and Section 42-1-410, Annotations 1 – 3. By enacting Section 42-1-415, the legislature carved out a narrow exception to a statutory employer's absolute liability. This exception, ostensibly, provides remedy and relief to statutory employers misled or defrauded into believing a subcontractor is insured. The language of Section 42-1-415 clearly sounds in fraud ----- “. . . subcontractor has represented himself . . . as having insurance . . . knowing and willful falsifying . . . ,” and subsection (c) provides for criminal and administrative penalties. This exception creates a new liability on the State, and should be carefully applied. Unisys Corp. v. S.C. Budget and Control Brd., 346 S.C. 158, 551 S.E.2d 263 (2001). It should be given a strict, narrow application, based on the wrong it attempts to relieve.

Our legislature created a new right or remedy where none previously existed. It could properly impose such reasonable terms and conditions upon the exercise of such right as it deemed appropriate. The right of a statutory employer, such as Chris Thompson Services, LLC, to avoid liability under the statute, depends upon compliance with the specific terms and conditions imposed for transferring liability. Herein, Chris Thompson has failed to comply with statutory requirements and is not entitled to transfer liability to the Uninsured Employers' Fund. Cincinnati Ins. Co. v. South Carolina Second Injury Fund, 297 S.C. 372, 377 S.E.2d 130 (Ct.

App. 1989) (Failure to comply with the statutory requirement results in loss of right to reimbursement.)(The right of a claimant to secure reimbursement under the statute, therefore, depends upon compliance with the terms and conditions imposed for recovery . . .)(internal citations omitted).

Recent case law has further defined the necessary steps to be taken by the upstream employer before liability can be transferred to the South Carolina Uninsured Employers' Fund. For example, in the recent case of Barton v. Higgs, 674 SE 2d 145 - SC: Supreme Court 2009, the upstream employer failed to recognize that the certificate of insurance presented to it lacked a signature from an authorized agent of the insurance company. The Court held "liability may be transferred from the higher tier contractor to defend only after the higher tier contractor has properly documented the subcontractor's claim that it retains workers' compensation insurance. This statutory scheme provides an ultimate safety for general contractors against the subcontractors act of fraud." This case further explains that the upstream contractor "could have easily investigated the absence of the signature and determined that the immediate employer did not have a valid policy. In our view, public funds should not be expended where Respondent could have discovered the mistake by acting in accordance with the Regulation."

In another recent case, Hopper v. Terry Hunt Construction, 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007) aff'd, 383 S.C. 310, 680 S.E.2d 1 (2009), the Court declared that in order to transfer liability the certificate of insurance presented to the upstream contractor must be fully completed. In this case, the ACCORD Form was not fully filled out, the Court held that the Employer "submitted an incomplete document purporting to show that it had workers' compensation policy... In our view, accepting an incomplete ACCORD Form does not constitute

proper documentation.” The Court specifically stated that one of the omissions on the certificate of insurance in the Hopper case was the section for “Description of Operations.”

The third recent certificate case, Hardee v. McDowell, 381 S.C. 445 (2009) 673 S.E.2d 813, addressed the issue as to what point in time a contractor must obtain proof of insurance for a subcontractor. §42-1-415 provides such proof must be obtained when the subcontractor is “engage to perform work”.

The Court ruled the phrase “engaged to perform work” means each time a subcontractor is actually hired to perform work. Thus, if a contractor enters into a contract to hire, subcontractor for one job in January and then enters a job in February, the contractor should verify that the subcontractor still has insurance coverage at the time of the February hiring.

The upstream employer, Chris Thompson Services, LLC, has failed to meet the requirements as set forth in §42-1-415 in the following ways:

Thus, the Legislature created a new right or remedy which must be strictly complied with. See, Simpson v. Sanders, 314 S.C. 413, 445 S.E.2d 93 (1994). A statute creating a liability against the State¹ must be applied carefully. Unisys Corp. v. S.C. Budget and Control Bd., 346 S.C. 158, 551 S.E. 263 (2001). The statute should be construed in the context of purpose of the remedy, should support the statute and should not lead to an absurd result. Miller, *supra* (internal citations omitted).

South Carolina Law in interpreting §42-1-415 that it was not the intent of the Legislature to create a liability for the state without requiring a defrauded statutory employer to exercise the minimally-reasonable steps of reading the certificate and reacting accordingly. Our Legislature

¹ The Uninsured Employers' Fund is a creature of statute established by the legislature to provide compensation to the injured employees of an employer that was subject to the Workers' Compensation Act, but uninsured. §42-7-200.

encourage employers to remain intentionally ignorant and thereby escape responsibility cast upon it by our statutory scheme. The State is the party least able to protect itself in this transaction. (Finding that a contractor can be an employer is the bedrock of the statutory employer doctrine and serves the Legislative purpose of casting upon the industry in which industrial workers) are employed a share of the burden resulting from industrial accidents). (emphasis added) (citation omitted). If House stands for such absurdity, it should be reversed.¹

1. A cursory review of the certificate of insurance presented by the Statutory Employer shows that the certificate only indicates a “Binder” of insurance, not a policy. An insurance binder is only a temporary issuance of proof of insurance that will “bind” or cover you temporarily until a formal policy is issued. The certificate of insurance is dated 10 months prior to the Claimant’s date of injury and no binder could remain in effect for that period of time. Obviously, the Statutory Employer took no steps to ensure any policy was ever subsequently issued to the Employer, which contradicts the findings in the Barton case.

2. The certificate of insurance is blank in the “description of operations” box, contrary to the requirements as set forth in the Hopper case as set forth above.

3. Although the certificate of insurance is signed by “David W. Hayes” as a purported authorized representative of Travelers Indemnity, the Statutory Employer/Carrier has provided no showing that David W. Hayes was an authorized representative. This is required pursuant to R. 67-415(A) as set forth above.

4. §42-1-415 provides “documentation must be . . . turned over to the Commission at the time a claim is filed by the injured employee”. The Claimant filed his claim on or about September 8, 2011. However, the Statutory Employer/Carrier, filed a Form 51 on October 7,

¹ Appellant relies upon Rule 217, SCACR to argue against precedence in its brief without the Court’s permission.

2011 wherein Chris Thompson raised §42-1-415 as a defense. However, documentation was not provided to the Commission until the following year on January 24, 2012, when it filed a Petition to Transfer Liability.

5. §42-1-415(A) requires the upstream contractors to initially pay all benefits due to the subcontractor's injured employee. Then, the contractor may petition to transfer the responsibility of future payments to the Fund. The Statutory Employer/Carrier herein, rather than "paying all benefits due¹" to the Claimant "in the first instance²" as required by §42-1-415, has only recently begun paying the Claimant the minimum amount of Seventy-Five Dollars (\$75.00) a week. Additionally, the Statutory Employer/Carrier has paid only a small amount of medical bills. The Statutory Employer has failed and refused to pay for the majority of the Claimant's medical costs and expenses or to pay the Claimant a reasonable compensation rate. The Statutory Employer/Carrier has failed and refused to make medical referrals that the Claimant is due. Because the purpose of this section is principally concerned with protecting a subcontractor's injured employee, the Statutory Employer's failure to take care of the Claimant has caused the Claimant's condition to deteriorate by resulting in further costs than necessary. The purpose of the statute has not been served.

6. The contract between the Statutory Employer and the Direct Employer involved an at will relationship between the parties wherein the amount of work and the rate of payment to the Direct Employer fluctuated on a job by job basis. This gives rise to a new agreement each time the Direct Employer or his employees picked up a shipment for his Statutory Employer and therefore, pursuant to the Hardee case, a new certificate of insurance should be presented each

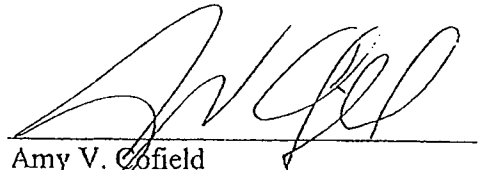
¹ Due is defined as "1. Just, proper and reasonable . . . 2. Immediately enforceable . . . 3. Owing or payable . . ." Black's Law Dictionary 515 (7th ed. 1999).

² Instance is defined, in relevant part, as "2. The act of instituting legal proceedings <court of first instance>. 3. Urgent solicitation or insistence <she applied for the job at the instance of her friend>." Black's Law Dictionary 800 (7th ed. 1999).

time a new job was started. If this had been properly requested then the contractor would have had notice that the immediate employer had no insurance.

WHEREFORE, for the foregoing reasons and those that may be set forth in the hearing of this matter, the SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND respectfully requests that the Petition to Transfer Liability be denied.

South Carolina Workers' Compensation
Uninsured Employers' Fund

BY: 

Amy V. Cofield
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072
Ph: (803) 951-0389
Email: amy@cofieldlaw.com

May 3, 2012
Lexington, South Carolina

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328

Carrier File # 943450

Carrier Code #

Employer FEIN

Samuel A. Rose
Claimant's Name

SSN

JJS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company
Employer's Name

Address

City

State

Zip

Address

Summerville, SC 29483

City

State

Zip

Home Phone

Work Phone

Bridgefield Casualty Insurance Co.
Insurance Carrier

Kirsten L. Barr
Preparer's Name

(843) 881-4228
Phone #

Request for Commission Review by ☐ claimant ☒ employer (check one)

Date of injury: August 10, 2011

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Ms. Virginia Crocker, S.C. Workers'
Name

Compensation Commission, P.O. Box 1715, Columbia, SC 29202-1715; Joseph B. Fisher, Esq., PO Box 63506, North Charleston,
SC 29419; Amy V. Cofield, Esq., The Cofield Law Firm, 809 South Lake Drive, Lexington, SC 29072; Sedrick Smalls, JJS Trucking,
LLC 137-A Gordon St., Charleston, SC 29403; and F. Reid Warder, Esq., Wood & Warder, LLC, P.O. Box 20550, Charleston, SC
29413

Address

on the 5th day of September, 2012 by ☒ first class mail; ☐ personal service; ☒ certified mail.

Kirsten L. Barr
Preparer's Signature

Attorney for Defendants
Title

September 5, 2012
Date

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Samuel A. Rose v. JJS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company

W.C.C. File No: 1112328

Carrier File No: 943450

Date of Accident: August 10, 2011

Attachment to Form 30

1. The Hearing Commissioner erred in finding that Chris Thompson Services, LLC is liable to pay Claimant all benefits to which he is entitled under the Act, as this "finding" is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and the applicable law.
2. The Hearing Commissioner erred in finding that the Claimant sustained an injury to his head, knee, leg, back, and neck, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.
3. The Hearing Commissioner erred in "finding" that the Claimant is entitled to temporary total disability benefits from August 10, 2011 and continuing until, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.
4. The Hearing Commissioner erred in "finding" that the Claimant is entitled to an evaluation to determine the extent of his injuries, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.
5. The Hearing Commissioner erred in "finding" that the Claimant is entitled to ongoing medical treatment, as this finding is arbitrary, capricious, impermissibly vague, and otherwise contrary to the greater weight of the evidence and the applicable law.
6. The Hearing Commissioner erred as a matter of law in concluding that the Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence and the applicable law.
7. The Hearing Commissioner erred as a matter of law in concluding that the Claimant has not received all benefits due under the Act, as this "conclusion" is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.
8. The Hearing Commissioner erred as a matter of law in concluding that the issue of transfer of responsibility to the UEF is not ripe for adjudication at this time, as this conclusion is arbitrary, capricious, and otherwise contrary to the greater weight of the evidence in the record and the applicable law.

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 1112328

SAMUEL ROSE, EMPLOYEE/CLAIMANT

vs.

JJS TRUCKING, LLC, AND CHRIS THOMPSON SERVICES, LLC, EMPLOYERS,

and

BRIDGEFIELD CASUALTY INSURANCE COMPANY AND TRAVELERS
INSURANCE COMPANY, CARRIERS,

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing: Held in Summerville, South Carolina on May 15, 2012

Appearances: Employee/Claimant represented by Joseph B. Fisher, George Sink
Law Firm, N. Charleston, South Carolina

Employer, Chris Thompson Services and Bridgefield Casualty
Company represented by Kirsten L. Barr, Trask & Howell, LLC,
Mt. Pleasant, South Carolina

Employer, JJS Trucking, LLC appeared pro se.

Carrier, Travelers Insurance Company represented by F. Reid
Warder, Jr., Esquire, Wood & Warder, LLC, Charleston, SC

South Carolina Uninsured Employers' Fund, Defendant was
represented by Amy V. Cofield, Cofield Law Firm, Lexington,
South Carolina

Purpose of Hearing: To determine issues as set forth on Form 50 and Form 51

Decision and Order: By Commissioner Gene McCaskill

Date: August 23, 2012

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Form 50 and 51.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. The Claimant's average weekly wage is \$650.00 and compensation rate is \$433.34 respectively.
4. Venue, set in Dorchester County, is proper.
5. The Employee/Claimant was injured while working for Chris Thompson Services, LLC and workers' compensation was filed, therefore, the South Carolina Workers' Compensation Commission has jurisdiction of the case.

APA SUBMISSIONS:

ON BEHALF OF THE EMPLOYER:

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	SLED Report	04/30/12-04/26/12	1-9
2	Petition to Transfer Liability	04/30/12-01/24/12	10-14
3	SCWCC Form 18	04/10/12	15
4	Deposition of Samuel Rose	11/14/11	16-26
5	Deposition of Sedrick Smalls	11/14/11	27-38
6	JJS Trucking Certificate of Insurance	10/08/11-10/08/10	39

ON BEHALF OF THE CLAIMANT

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Stuart M. Leon, MD MUSC Medical Center	08/10/11	1-2
2	Andrew B. Conrad, MD MUSC Medical Center	08/10/11	3-5
3	Christopher J. Erikson, MD		

4	MUSC Medical Center Peter H. White, MD MUSC Medical Center	08/10/11 08/11/11	6-7 8-9
5	Alan N. Abel, MD	08/16/11-01/25/12	10-22
6	Michael S. Rissing, MD MUSC Medical Center	08/23/11	23-24
7	Cameron Wills, DC Tri-County Spinal Care	09/02/11	25-26
8	Richard Kellett, MD Tri-County Spinal Care	09/06/11-10/11/11	27-40
9	Troy Marlow, MD TriCounty Radiology Associates	11/09/11	41-42
10	Michael Wildstein, MD Wildstein Spine Center, PA	11/23/11	43-44
11	Donald E. Olofsson, DO TriCounty Radiology Associates	11/30/11	45-46
EX A	Traffic Collision Report SC Highway Patrol	08/10/11	47-50
EX B	Pay Records of the Claimant	07/12/11-08/09/11	51-55

ON BEHALF OF TRAVELERS INDEMNITY COMPANY

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Correspondence from Garry Smith, Compliance Division, to F. Reid Warder, Jr.	03/30/12	14
2	Premium Finance Agreement for JJS Trucking, LLC	10/13/10	1
3	Travelers Invoice to JJS Trucking, LLC	11/08/10	2
4	Notice of Cancellation	01/04/11	2
5	SC Department of Employment And Workforce	02/21/12	15

ON BEHALF OF SC UNINSURED EMPLOYERS' FUND

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
NONE			

STATEMENT OF THE CASE

This claim is before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed by the Claimant on November 18, 2011, and Form 51 filed by Defendant, Chris Thompson Services on December 15, 2011, and Form 51 filed by Defendant, SC Uninsured Employers' Fund on January 4, 2012. The Claimant alleged that on August 10, 2011 he sustained an alleged injury to his right knee, back, neck and head. Defendants denied the claim.

It was the Claimant's position that he was injured on August 10, 2011 while employed by JJS Trucking. Claimant asserted that JJS Trucking was a subcontractor to Chris Thompson Services. JJS Trucking is uninsured and Chris Thompson is insured by Bridgefield Casualty Insurance Company. The Claimant seeks a finding of compensability that includes medical treatment, payment of temporary total benefits less any amounts paid by the carrier of Chris Thompson Services.

It was the position of Chris Thompson Services that the Claimant sustained an admitted injury by accident as alleged on August 10, 2011. However, the severity of permanency of injuries and need for future treatment was specifically denied. Chris Thompson Services also made a Motion to Transfer Liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415 because Mr. Cedric Smalls, a principal of JJS Trucking, had represented to Chris Thompson Services that it had workers' compensation coverage. Chris Thompson Services had obtained an ACORD Form 25 Certificate of Insurance indicating coverage. Chris Thompson Services also stated to the Commissioner that it had, through its insurance carrier, Bridgefield, paid temporary total disability payments since the date of the accident in the amount of \$75.00 per week and requested that the South Carolina Uninsured Employers' Fund reimburse Bridgefield for those benefits paid. Chris Thompson Services argued that JJS Trucking never provided notice that his coverage had changed or lapsed. Chris Thompson Services argued that a

certificate of insurance presented distinguished this case from the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009).)

Because the case at had a description of the policy terms. The distinction was also offered that the Hopper case dealt with an out of state employer or multi-state employers and regulations and that this case did not.

It was further argued that the signature of David Hayes as the authorized agent for the insurance company satisfactory the face of the certificate of insurance rose no red flags regarding the authority of the signature. It was also argued that a copy of the certificate of insurance was filed with the South Carolina Workers' Compensation Commission on November 4, 2011, which was believed to be a timely filing.

The SC Uninsured Employers' Fund argued that liability could not be transferred to the UEF. It was argued that the certificate of insurance presented was sufficient pursuant to the law set forth in the Barton v. Higgs case (Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009)) as well as the Hopper v. Terry Hunt Construction case. The SC Uninsured Employers' Fund argued that the description of operations box was blank and that the cases of Barton and Hopper stood for the proposition that incomplete certificates were not sufficient to transfer liability. It was also argued that the certificate of insurance only stated it was a "binder" and never conveyed any information that there was ever a policy written.

The Uninsured Employers' Fund argued that the timing of the presentation of the certificate was contrary to §42-1-415. That statute provides that documentation must be turned over to the Commission "at the time a claim is filed". This certificate was not turned over for several months. The UEF argued that §42-1-415(A) stated that the upstream contractor must first pay all benefits due before requesting liability to be transferred and at the time of the

hearing. However, only a few benefits had been paid, certainly not all. Therefore, the UEF argued that the case was premature as far as the motion to transfer liability.

EVIDENCE OF THE CASE

The Claimant testified that he was working on August 10, 2011 for JJS Trucking in Summerville, SC at the Keystone Lumber Mill. He stated that JJS Trucking was owned by Cedric Smalls and that he had been working there for about 4 ½ to 5 months prior to his accident. Claimant testified that during his time at JJS Trucking, his job was to haul loads from Summerville, SC to North Charleston, SC, specifically from Keystone Lumber Mill to Westvaco. He explained that he was injured when he was rear-ended by a truck that was following him causing his truck to jackknife and hit the median wall. Following the accident, Claimant testified that he suffered a fractured knee, low back and neck injury as well as dizziness and problems with his left hand. He testified that following the accident, he went to MUSC where he was to receive further treatment from a neurologist and orthopedist but never got those because of having no insurance. Instead he went to a general practitioner by the name of Dr. Abel and from there, he was referred to Tri County Spinal Care for pain management and then to Dr. Wildstein, an orthopaedic surgeon.

Claimant testified that he has been unable to work since August 10, 2011, because of the nerve damage he sustained in his neck and back. He further testified that he still has headaches, numbness in his left arm and fingers and his back. He is currently on several medications such as Flexeril, Neurontin, Elavil and Viracept as well as Ibuprofen. He testified that it is his understanding that he needs to see a neurologist and needs to have surgery.

On cross-examination, the Claimant stated that he had to reschedule his last hearing because he had been incarcerated, accused of stealing a 32" television, some barstools and a laptop. Claimant stated, "the police said a witness observed me running across the parking lot

running from an apartment across the street to my mom's car and putting it in the car". Claimant testified that he was using a cane recommended by Dr. Avery because he had fallen down the stairs once. He said he had fallen down the stairs in January when at his mother's house but after that fall, his pain became worse.

On cross-examination by Mr. Smalls, the Claimant testified that he was hired by JJS Trucking as a contractor. He testified that he worked his own schedule but that Cedric Smalls told him to work 12 hours from the time he started. On further cross-examination by Mrs. Cofield, the Claimant clarified that he was a sub-contractor for Chris Thompson Services, but was an employee of JJS. He also stated that when he was arrested last month, he was not using his cane, but he was on Oxycodone and other medications.

On cross-examination by Mrs. Barr, it was stated that it was his responsibility to keep his truck clean and would be responsible for any fines due to his own negligence. He also stated that he is responsible for any state and federal taxes and any workers' compensation insurance.

Christopher Thompson testified that his business was Chris Thompson Services, LLC, and in August of 2011 JJS Trucking was a subcontractor for Chris Thompson Services. He indicated he had been using JJS Trucking since approximately 2008. He explained that when he first hired JJS Trucking he was given a certificate of insurance showing that they had workers' compensation coverage. He said that he requested updated documentation once a year.

Mr. Thompson was shown a certificate of insurance that he identified to be dated October 18, 2011, and issued by Swamp Fox Agency. He stated that he was familiar with Swamp Fox Agency and knew David Hayes who signed the certificate of insurance as being the owner of Swamp Fox Insurance Agency. He stated that his view of the certificate of insurance gave him no reason to question whether or not JJS Trucking had insurance. He conveyed that it was not

until about September or beginning of October before he was positively told that he did not have insurance. After that information was received, he severed his relationship with JJS Trucking.

On cross-examination by Mrs. Cofield, Mr. Thompson acknowledged that there was no description in the Description of Operations box on the certificate of insurance. Mr. Thompson also acknowledged that it did not have a policy number, but in fact, stated that it was a "binder". Mr. Thompson testified that he did not believe that Mr. Smalls purposely defrauded him or purposely gave a false certificate of insurance.

FINDINGS OF FACT

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.
3. Claimant has an average weekly wage of \$650.00 and a compensation rate of \$433.34.
4. Claimant is not at maximum medical improvement.
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 §42-1-415.

10. Chris 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).

2. At the time of the Claimant's accident, JJS Trucking possessed over the Claimant the actual right and authority to control and direct his particular work or undertaking and the manner or means of its accomplishment, consistent with the definition of an employee provided in Young v. Watt, 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969).

3. The testimony of the Claimant, his immediate employer, Cedric Smalls, and the upstream contractor, Chris Thompson, combined with the evidence available in the record, when evaluated using the factors outlined in Nelson v. Yellow Cab Co., 564 SE 2d 110 (S.C. 2002), weigh towards finding Claimant is an employee and not an independent contractor. This finding is consistent with South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. See South Carolina Workers' Compensation Comm'r v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995).

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. Claimant is entitled to reimbursement for all out of pocket medical expenses incurred to date. Carrier shall select an authorized treating physician.

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. § 42-1-415 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.

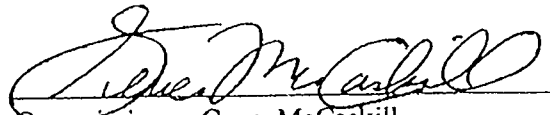
9. Traveler's Indemnity was not the carrier for JJS Trucking, LLC on the date of Claimant's injury and therefore is dismissed as a party to this claim.

ORDER

IT IS THEREFORE ORDERED that the statutory employer, Chris Thompson Services, LLC, through its carrier, Bridgefield Casualty Insurance Company, is liable for this claim and shall pay Claimant's medical treatment and temporary total disability benefits beginning August 10, 2011 and continuing through such time Claimant is able to return to work.

All other issues are held in abeyance.

Any party wishing to appeal this Decision and Order may, within fourteen (14) days of the date this Decision and Order is received, file an application for review by the Full Commission, along with the appropriate filing fee.



Commissioner Gene McCaskill

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.
August 23, 2012

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1112328

Samuel Rose,

Claimant,

vs.

Chris Thompson Services, LLC,
and JJS Trucking, LLC,
Employer,

and

Bridgefield Casualty Insurance
Company, UEF, Travelers
Indemnity, Carrier,

Defendants.

TRANSCRIPT OF PROCEEDINGS

May 15, 2012

This hearing was held before Commissioner Gene McCaskill, reported by Kimberly T. Power, Court Reporter and Notary Public in and for the State of South Carolina; said proceedings were held at the South Carolina Workers' Compensation Commission, 500 North Main Street, County Council Conference Room, Summerville, South Carolina, on Tuesday, May 15, 2012.

Kimberly T. Power, Court Reporter
kimberlytpower@aol.com

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CONTENTS

PAGE

WITNESS: SAMUEL ARCHIE DELL ROSE

Direct Examination by Mr. Fisher	20
Cross-Examination by Ms. Barr	32
Cross-Examination by Mr. Smalls	39
Cross-Examination by Ms. Cofield	41
Redirect Examination by Mr. Fisher	44
Recross-Examination by Ms. Barr	45

Statement on the Record of CEDRIC SMALLS	22

WITNESS: CHRISTOPHER A. THOMPSON

Direct Examination by Ms. Barr	48
Cross-Examination by Mr. Smalls	55
Cross-Examination by Ms. Cofield	57
Redirect Examination by Ms. Barr	63
Recross-Examination by Ms. Cofield	66
Recross-Examination by Mr. Warder	66
Recross-Examination by Mr. Smalls	68

Certificate of Reporter	70

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EXHIBITS

PAGE

Exhibit No. 1	Owner Driver Contract	47
Exhibit No. 2	Certificate of Insurance	60

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85b

1 THE COURT: Today's date is May 15, 2012.
2 This is the case of Samuel Rose vs. Chris Thompson
3 Services, LLC and JJS Trucking, LLC. The Workers'
4 Compensation Commission File Number is 1112328. The
5 claimant is represented by Joseph B. Fisher. The
6 defendants are -- Amy V. Cofield is here on behalf of the
7 UEF, Reid Warder is on behalf of Travelers Indemnity
8 Company, and Kirsten Barr is representing Chris Thompson
9 Services, LLC and Bridgefield Casualty Insurance Company.

10 The date of the accident is August 10, 2011.
11 We have an average weekly wage of \$650 and a comp rate of
12 \$433. This is an admitted case. Are there any
13 objections to jurisdiction, venue, or any APA
14 submissions?

15 MR. FISHER: The only objection that I would
16 raise, sir, my client has got some criminal history that
17 was attached to Ms. Barr's brief and there's some
18 misdemeanor charges on there and I would ask that the
19 misdemeanor charges be struck from the record. I don't
20 believe that they meet the standards to which they should
21 be taken into consideration. I don't think they affect
22 his credibility in any way, and I don't believe the
23 misdemeanor charges were punishable by over a year in
24 jail or a fine of \$1500.

25 THE COURT: Ms. Barr, do you want to speak to

1 that?

2 MS. BARR: Yes, Your Honor. We did include
3 the SLED report, it's APA No. 1, in part due to the fact
4 that the delay in this matter was due in part to
5 Mr. Rose's recent incarceration, but there's also
6 contained in that arrest record crimes of moral turpitude
7 which we believe would affect claimant's credibility. I
8 don't have a problem redacting some of the minor
9 offenses, but I believe it's within the discretion of
10 you, Your Honor, to weigh and accord it the way you feel
11 it is appropriate.

12 THE COURT: Okay. And that is -- that's what
13 I'm going to do. I'm going to weigh it and give it
14 whatever weight it's due.

15 MR. FISHER: Yes.

16 THE COURT: Any other objections?

17 MS. BARR: Yes, Your Honor. There is one late
18 APA submission from the claimant. It is a medical report
19 from Dr. Wildstein dated 12/14/11. I'm not sure how he's
20 included it in his APA submission or what page number
21 he's given it, but this was only served on the parties --
22 I received it on Friday. So we don't believe it meets
23 the statutory -- the regulatory requirement of 67-6-12
24 because we weren't afforded the 15 day's notice of that
25 report.

1 THE COURT: Mr. Fisher?

2 MR. FISHER: We didn't receive that report
3 until late. We submitted it when we received it. I
4 don't think it prejudiced any one in any way because
5 Dr. Wildstein has other records that are part of this
6 case. But all we're asking for, again, is a finding of
7 compensability and, you know, treatment. But I don't
8 think it prejudice any one in any way because they're
9 aware that Dr. Wildstein has treated Mr. Rose in the past
10 and I don't think it affects them in any way adversely.

11 MS. BARR: Your Honor, prior to Friday, the
12 most recent record from Dr. Wildstein that had been
13 submitted by the claimant is APA Page 44 and said, "I
14 don't think he's currently a reasonable surgical
15 candidate as most of his complaints are rather
16 non-specific and out of proportion with his physical exam
17 findings." The late APA submission says something quite
18 different and recommends potentially surgical treatment.
19 It does drastically change the nature of his opinions and
20 would have been something we would have responded to if
21 afforded the opportunity under the regulation.

22 THE COURT: Okay. Anything else from
23 Ms. Cofield?

24 MS. COFIELD: Not on the APAs. No, sir.

25 THE COURT: Mr. Warder, anything else?

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1 MR. WARDER: No, sir.

2 THE COURT: Where is that medical report?

3 MR. FISHER: Just one second, sir.

4 MS. BARR: Is it Page 56?

5 MR. FISHER: It's 56 and 57.

6 THE COURT: Mr. Fisher, do you disagree with
7 Ms. Barr's assessment that it suggests something
8 different than the earlier medical report?

9 MR. FISHER: Oh, yes, sir, I do. I do agree
10 with her assessment, that it -- that it does. My client
11 has been denied medical treatment by both of these
12 parties ever since we started. We did the best we could
13 with regard to getting him the treatment that we could
14 get him. He hasn't had any money since we started this
15 proceeding back in August. And I admit that that -- that
16 it's late and it does change. But if the claim is found
17 to be compensable, that's all we're asking for. We're
18 not asking for a determination with regard to you
19 ordering the surgery today. We're not asking for a
20 determination with regard to anything other than, you
21 know, a compensable claim right now. So if you want to
22 remove that, I don't think -- I don't think that would
23 prejudice us in any way.

24 THE COURT: Okay. Well, it's not timely, so
25 it's out. All right. Anything else?

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1 (No response.)

2 THE COURT: All right. The Commission file
3 becomes part of the record with the exception of
4 self-serving declarations and unstipulated medical
5 reports.

6 Mr. Fisher, would you please state your
7 client's position for the record?

8 MR. FISHER: Yes, sir. Samuel Rose was
9 injured on August 10, 2011. He was an employee of JJS
10 Trucking. JJS Trucking was a subcontractor to Chris
11 Thompson Services. On August 10, 2011, he picked up a
12 load of woodchips. He was taking the woodchips from a
13 sawmill in Summerville to a paper mill in North
14 Charleston. On his way there, another Chris Thompson
15 truck that was behind him hit him, knocked him into a
16 wall. Both vehicles burned up. They were totaled.

17 My client was injured. He was taken to MUSC.
18 He was hospitalized for a period of time following the
19 accident. He filed a workers' compensation claim
20 alleging injuries to his head, knee, leg, back, the neck.
21 We filed that with JJS Service -- JJS Trucking. Excuse
22 me. We found out JJS Trucking didn't have any insurance,
23 so we went upstream to Chris Thompson asking for them to
24 pay his benefits. Benefits were denied.

25 My client started -- he's received \$75 a week

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1 benefits since going back to the day he was hurt. His
2 comp rate is \$433.34 or \$433. His medical bills from
3 MUSC haven't been paid. None of his medical bills have
4 been paid.

5 We're just set -- we're here today asking for
6 you to find this to be a compensable claim award. His
7 entitlement to medical treatment, payment of any medical
8 bills that he's incurred as a result of this accident.
9 We're asking for him to be compensated \$433 a week back
10 to the day that he got hurt because he hasn't worked
11 since this accident occurred. And, of course, they would
12 be entitled to a \$75 a week credit for what they've paid.
13 We're just looking for, again, you to find this
14 compensable and award him the benefits that he deserves
15 in accordance with the Act. Thank you, sir.

16 THE COURT: Thank you. Ms. Barr.

17 MS. BARR: Thank you, Your Honor, and thank
18 you for your patience in allowing to get our positions on
19 the record. It is true the claimant was a direct
20 employee of JJS Trucking which is Chris Thompson
21 Services, my client's subcontractor. We don't dispute
22 that there was an accident as alleged on August 10 of
23 2011, although we do dispute the severity or permanency
24 of those injuries and the need for future treatment.

25 But most importantly our position here today

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1 is that we believe we would be entitled to transfer
2 liability to the South Carolina Uninsured Employers Fund
3 under Statute 42-1-415 because JJS Trucking and its
4 principal, Mr. Cedric Smalls, represented -- represented
5 himself to Chris Thompson as having workers' comp
6 insurance at the time he was initially engaged to perform
7 work for and Chris Thompson Services and, thereafter,
8 updated the Certificate of Insurance and that
9 representation of coverage on an annual basis. On
10 October 18, 2010, Chris Thompson Services obtained an
11 ACORD Form 25 Certificate of Insurance showing that JJS
12 Trucking was covered by a contract with workers'
13 compensation issued by Travelers Insurance for the period
14 from October 8, 2010 to October 8, 2011. And that's Page
15 39 of our APA submissions.

16 At no time prior to Mr. Rose's accident did
17 JJS Trucking, Cedric Smalls, the Swamp Fox Insurance
18 Agency which was the producer of this policy, Travelers
19 or any other person or entity notify Chris Thompson
20 Services that his coverage had changed or lapsed. And as
21 required by Section 42-1-415, Chris Thompson Services and
22 his insurance carrier, Bridgefield, have paid temporary
23 total disability benefits since the date of accident and
24 request as a part of their petition to transfer liability
25 that the UEF reimburse these benefits to us. We believe

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1 that UEF has unreasonably denied the request and has
2 submitted a return to the petition.

3 Now, the petition was originally filed back in
4 January and the issues raised back as early as our Form
5 50 and again on a pre-hearing brief in November of 2010.
6 But on a more recent return to our petition, the UEF
7 claims that the statute places some obligation on Chris
8 Thompson to -- to -- to update a representation of
9 coverage because it does not contain a policy number, but
10 simply lists that there is a binding insurance contract.
11 We believe that the details of the coverage, including
12 the coverage period, the coverage limits, the name of the
13 insurer were all accurate representations of the coverage
14 that was in fact written by Travelers. I believe
15 Travelers -- and I'll ask Mr. Warder to speak to this,
16 but that Travelers would stipulate that it insured JJS as
17 of October 18, 2010, the date the Certificate of
18 Insurance, due to a contract that initially covered the
19 period from October 8, 2010 to October 8, 2011.
20 Therefore the representations contained in that
21 Certificate of Insurance at the time it was issued were
22 correct despite the fact the policy later lapsed.

23 Would Travelers be in a position to stipulate
24 to that fact?

25 MR. WARDER: The -- certainly Travelers gave

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1 the authority to Swamp Fox Agency to write insurance on
2 their behalf. And at the time that the policy was
3 created and inbound initially and a deposit was made, it
4 was fully in effect and it was a valid policy. And
5 therefore later on afterwards, due to non-payment, it was
6 cancelled later on. But, yes, otherwise we would have no
7 cancellation of anything or a policy in existence. They
8 certainly had the authority of Travelers to write
9 policies on their behalf because they're an insurance
10 agent.

11 MS. BARR: For these reasons we believe that
12 the certificate that we rely upon is a valid
13 representation of insurance as required by 42-1-415.

14 The second argument the UEF raises is that the
15 Certificate of Insurance is not proper documentation of
16 insurance because it doesn't contain a description of
17 operations. They cite the Hopper case and Regulation
18 67-4-15. Now, Hopper, which I believe you now have a
19 copy of, has an important distinction that makes it not
20 applicable to this case. And you will see that the court
21 noted that this certificate, the certificate at play in
22 Hopper, contained no information regarding the policy --
23 the coverage that the policy provided. And, in fact, the
24 Certificate of Insurance we rely upon does contain a
25 detailed description of the policy terms including the

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1 policy period and policy limits and, therefore, we
2 believe it is distinguishable.

3 Furthermore, Hopper dealt with an out-of-state
4 employer or multi-state employer and the regulations add
5 additional burdens for Certificate of Insurance for an
6 out-of-state employer under 67-415, and the description
7 of operations is required for an out-of-state employer.
8 That's not an issue here. Mr. Cedric Smalls, JJS
9 Trucking, is right here in North Charleston, South
10 Carolina and -- and -- and has no multi-state operations.
11 So we believe that that alleged deficiency does not
12 defeat our ability to transfer.

13 The third issue they raise is that the
14 Certificate of Insurance is invalid because they contest
15 the authority of David Hayes. But as you've heard from
16 Travelers's attorney, they don't dispute the authority of
17 Swamp Fox Agency, the principal of which is David Hayes,
18 to issue a Certificate of Insurance on their behalf.

19 Furthermore, there's no requirement under the
20 statute or the regulations that we investigate the
21 authority of the signator. We simply can rely on a
22 reasonable representation of insurance and that's what we
23 did. On the face of that Certificate of Insurance, it
24 raises no red flag about the authority of the signator.
25 We even took an extra step because my client didn't

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1 obtain the certificate directly from JJS Trucking. They
2 had it faxed to them directly from the producer of that
3 policy, the Swamp Fox Agency, and you'll see at the top
4 of the certificate the fax number there and that will be
5 borne out by the testimony of my client.

6 The UEF also argues that we are not entitled
7 to transfer of liability because they question the timing
8 of the presentation of our Certificate of Insurance.
9 42-415 says that the certificate is to be turned over at
10 the time a claim is filed. The claim was filed and we
11 filed a Form 50 raising 42-1-415 as a defense. We
12 served the certificate on November 4th of 2011, six and a
13 half months ago. It was served again when we initially
14 filed our petition to transfer liability in January and
15 again when we had to renew our motion due to some recent
16 scheduling difficulties.

17 The claim has yet to be adjudicated. The
18 claim filed by Cedric Smalls is still pending. We
19 haven't even determined that claim yet. So we believe
20 that the certificate that's turned over six and a half
21 months before the claim is even adjudicated for the first
22 time is timely under the statute. The UEF seems to
23 suggest that we need to show up at the Commission at the
24 time that Form 50 was delivered in order to meet our
25 burden, and I don't believe that's a justified

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1 interpretation.

2 The UEF, their sixth claim is that we should
3 have obtained a new Certificate of Insurance each time
4 JJS pulled a load on behalf of Chris Thompson Services.
5 This is certainly belied by the statutory interpretation
6 of this case -- of this statute. JJS only performed one
7 service for JJS, was engaged a single time to do a single
8 service, and that's to go back and forth between two
9 mills. The terms of this engagement never changed, and
10 for that reason we did not need to continually update the
11 certificate each time he pulled a load.

12 We believe that we have met all the
13 requirements and we appreciate your consideration.

14 THE COURT: All right. Ms. Cofield.

15 MS. COFIELD: Yes, Your Honor. It's been a
16 long established policy that a statutory employer bears
17 the absolute liability to injured workers. Section
18 42-1-415 was a narrow exception whereas the employer
19 could pass liability to the UEF. It must, therefore, be
20 construed strictly. Recent case law that -- that we have
21 discussed and that we've presented -- I have presented in
22 my return has described further what some of these
23 necessities to meet the statutory requirements are. One
24 of those cases is Barton vs. Hicks, 674 Southeastern 2nd
25 145. In this case the only thing wrong with the

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1 certificate was that it lacked a signature. One box was
2 empty. Supreme Court ruled that that was not an
3 acceptable form because there was no signature on it.
4 The Court has taken the position that an employer cannot
5 pass liability to the UEF by simply accepting a piece of
6 paper without reviewing it and checking to make sure it's
7 accurate thereby ignoring the information that appears on
8 the certificate.

9 That in this case has been ignored in several
10 ways. One, the description of operations box is blank.
11 The Hopper case stands for the proposition that you can't
12 have blanks on your certificate. Barton had a blank
13 signature. This one has a description of operations
14 that's blank. That case in nowhere stands for the
15 proposition that that only applies to out-of-state
16 employers. In that case there was an out-of-state
17 employer, but that was not what the court relied on to
18 rule that the certificate was invalid. They ruled upon
19 the fact that it had not been filled out and the fact
20 that the employer had failed to read it and see that it
21 had not been filled out and to take proper steps to
22 verify the information on the certificate.

23 Another problem with the certificate is it
24 doesn't say anywhere that they have procured a policy.
25 The only thing the certificate says is there's a binder.

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1 A binder is only a temporary piece of coverage until a
2 policy is issued. A binder cannot be expected to last
3 for ten months into the period stated on here. As far as
4 we know, the -- he never received another certificate
5 that ever indicated that there was a policy of insurance.

6 We did raise the question about David Hayes's
7 signature on this certificate. There has been no
8 evidence presented until today, and all we have today
9 really is that Swamp Fox Agency was authorized to issue
10 the certificate. Normally what is required is that some
11 evidence be given that David Hayes was a -- she called
12 him a principal of Swamp Fox. I don't know that. I
13 don't know who David Hayes is. There's nothing in the
14 record and nothing in evidence to show David Hayes was an
15 authorized agent to sign the certificate.

16 There is a problem with the timing of the
17 presentation of the certificate because 42-1-415
18 provides, "Documentation must be turned over to the
19 Commission at the time a claim is filed by the injured
20 employee." I would say that turning a certificate over
21 months later to the Commission is not at the same time.

22 Also raised is the question of whether or not
23 they have met the requirements of 42-1-415(A) which says
24 the upstream contractor must pay all the benefits due
25 before requesting that liability be transferred. There

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1 has not been an order. That is true. An order would
2 establish all benefits due, then they should pay all
3 benefits due, and then at that time they may petition to
4 transfer liability. That issue makes this case premature
5 as far as the transfer of liability.

6 Commissioner, I would rely further on the
7 return that I have sent to you that outlines specifically
8 further the arguments and case law that support my
9 position.

10 THE COURT: All right. Mr. Warder.

11 MR. WARDER: Thank you, Commissioner. I'm
12 here today on behalf of Travelers Indemnity Company, and
13 we take the position that since the policy that was
14 issued to JJS Trucking was effectively cancelled on
15 February 5th of 2011, that we certainly have no liability
16 whatsoever for the date of injury in this matter which is
17 August 10th of 2011, over six months later. I don't
18 think anyone here is contending that we had an effective
19 policy at that time. As I pointed out in our pre-hearing
20 on Page 73 of my APA submissions, Swamp Fox Agency had
21 received a notice of cancellation January 18th of 2011.
22 Therefore, we would ask that we be released from this
23 matter. Thank you.

24 THE COURT: Mr. Fisher, anything else?

25 MR. FISHER: No, sir.

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1 THE COURT: All right. Ms. Barr, anything
2 else?

3 MS. BARR: No, thank you, Your Honor.

4 THE COURT: Ms. Cofield?

5 MS. COFIELD: No, sir.

6 THE COURT: All right. Mr. Fisher, do you
7 want to call your witness?

8 MR. FISHER: Yes, sir.

9 THE COURT: Mr. Rose, I'm going to swear you
10 in here in just a second, and then I'm going to ask you
11 to state and spell your full name for the record. I have
12 two requests for you. One, please speak loudly enough so
13 that the court reporter who is making a record of this
14 hearing, all of the attorneys and I can hear you. And
15 the second thing is if you are asked a yes or no
16 question, please respond with yes or no. Don't say
17 uh-huh or unh-unh. That can get confused in the record.
18 And please don't shake or nod your head because
19 especially in this dynamic it would be very difficult for
20 her to take down. Okay.

21 THE WITNESS: Yes, sir.

22 (SAMUEL ARCHIE DELL ROSE, being duly sworn to
23 tell the whole truth and nothing but the truth, testified
24 as follows:)

25 THE COURT: Would you state and spell your

1 full name for the record, please?

2 THE WITNESS: Samuel Archie Dell Rose.

3 S-A-M-U-E-L, A-R-C-H-I-E, D-E-L-L, R-O-S-E.

4 THE COURT: All right. Mr. Fisher.

5 DIRECT EXAMINATION :

6 BY MR. FISHER:

7 Q. Mr. Rose, please try and speak as loud as you
8 can. Where were you working on -- were you working on
9 August 10, 2011?

10 A. Yes.

11 Q. And where were you working at?

12 A. For JJS Trucking out of Summerville at
13 Keystone Lumber Mill.

14 THE COURT: Why don't you turn just a little
15 bit so they can see you, at least a profile.

16 BY MR. FISHER:

17 Q. Where were you working at?

18 A. For JJS Trucking out of Summerville.

19 Q. Okay. And who owns JJS Trucking?

20 A. Cedric. Cedric Smalls.

21 Q. And how long had you worked there before
22 August 10, 2011?

23 A. Between four and a half to five months.

24 Q. And what did you do at JJS Trucking?

25 A. Haul loads from Summerville to North

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1 Charleston.

2 Q. And was that -- and when you say from
3 Summerville, where at -- where did you start your trip
4 at?

5 A. Keystone Lumber Mill to Westvaco in North
6 Charleston.

7 Q. Did you drive anywhere else?

8 A. No.

9 Q. That was the only route that you drove the
10 whole time you worked there?

11 A. Yes.

12 MS. BARR: Your Honor, I apologize for
13 interrupting. We haven't yet put Mr. Smalls on the
14 record.

15 THE COURT: This is true.

16 MS. BARR: I'm sorry, Mr. Rose.

17 MR. FISHER: We can go ahead and then we can
18 go back if you would like.

19 THE COURT: Let's do that. Mr. Smalls, do you
20 have a statement for the record?

21 MR. SMALLS: Yes, Your Honor. I wanted to
22 state that as far as being properly --

23 (CEDRIC SMALLS, being duly sworn to tell the
24 whole truth and nothing but the truth, testified as
25 follows:)

1 THE COURT: Please state and spell your full
2 name for the record.

3 THE WITNESS: Cedric Smalls. C-E-D-R-I-C.
4 Smalls, S-M-A-L-L-S.

5 THE COURT: Go ahead, Mr. Smalls.

6 STATEMENT ON THE RECORD

7 MR. SMALLS: In regards of the matter on being
8 properly notified of the lapse of insurance, I am stating
9 that I was not properly notified. I also give in support
10 of that that Mr. Chris Thompson is listed as additionally
11 insured. From my understanding he was never notified of
12 the lapse of insurance. There is a situation in my past
13 to where one time my insurance was about to lapse and
14 Swamp Fox had as Chris Thompson being -- knowing as
15 additionally insured, contacted Mr. Chris. Mr. Chris
16 contacted me immediately and the situation was rectified.

17 In this particular case, nothing of that sort
18 ever happened. Mr. -- Mr. Thompson would have never
19 allowed me to actually work that long of a period without
20 being notified. We both have the same -- the same agent,
21 which is Swamp Fox. I clearly believe that there was a
22 mistake made in the notification of lapse. And I just
23 wanted to go on record as stating that as far as JJS is
24 concerned, at -- at this point in time, I believe that we
25 were not properly notified.

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1 THE COURT: Any of y'all have questions for
2 Mr. Smalls?

3 MS. COFIELD: Not at this time. When we put
4 him up to testify, we will.

5 THE COURT: All right.

6 MS. BARR: And, Your Honor, I believe
7 Mr. Smalls, he previously gave a statement in his
8 deposition that he was prepared to -- to appear on his
9 own behalf without assistance of counsel.

10 THE COURT: Yes. You do know you are entitled
11 to a lawyer?

12 MR. SMALLS: Yes, sir. I have been working on
13 that matter. Yes, sir.

14 THE COURT: But you are appearing today
15 without counsel?

16 MR. SMALLS: Yes, sir.

17 THE COURT: All right.

18 MR. SMALLS: Thank you, Your Honor.

19 THE COURT: Anything else before we go back to
20 Mr. Rose?

21 (No response.)

22 THE COURT: All right. Mr. Fisher.

23 BY MR. FISHER:

24 Q. Okay. Mr. Rose, now, how long did you drive
25 for JJS Trucking before August 10, 2011?

1 A. About four and a half to five months.

2 Q. Okay. And your route was what?

3 A. From Summerville to North Charleston. From
4 Keystone Lumber Mill in Summerville to Westvaco in North
5 Charleston.

6 Q. And was that the only route that you ever
7 drove for Cedric Smalls --

8 A. Yes.

9 Q. -- JJS Trucking?

10 A. Yes.

11 Q. Okay. And let me see. And what did you haul?

12 A. Woodchips.

13 Q. Okay. And what happened on August 10, 2011?

14 A. As I was -- well, I was on my last run for the
15 night from Summerville to Westvaco. I got on the
16 interstate at Exit 199. I came up I-26. And as I
17 approached Ashley Phosphate, I was rear-ended. The truck
18 hit me -- well, I downshifted to go through the
19 construction. There was construction going on at the
20 time. I slowed up and I was rear-ended by a truck that
21 was following me. I jackknifed. I hit the median wall.
22 The trucks exploded and I passed out.

23 Q. Okay. And at the -- what happened after the
24 accident? Did you go to the doctor?

25 A. I went to MUSC.

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90c

1 Q. And what were the problems you were
2 experiencing physically whenever you went to MUSC?

3 A. My right knee was fractured, lower back pains,
4 my neck was injured, and dizziness and problems with my
5 left hand.

6 Q. Now, were you knocked unconscious as a result
7 of this accident?

8 A. Yes.

9 Q. And after the accident did you report your
10 accident and injuries to the supervisor?

11 A. Yes.

12 Q. And who is your supervisor?

13 A. Cedric Smalls.

14 Q. Okay. And after they sent you home from MUSC,
15 did they -- did the doctors at MUSC make any appointments
16 for you to continue treatment?

17 A. Yes.

18 Q. And where were those appointments made at?

19 A. On my discharge from MUSC, I was scheduled to
20 go see an orthopedic surgeon and there was another
21 doctor. I'm not sure. But I'm assuming that it was a
22 neurologist, but both appointments -- both appointments
23 was cancelled.

24 Q. Why were they cancelled?

25 A. No insurance.

1 Q. Okay. And did you tell them it was a
2 work-related accident?

3 A. Yes, I did.

4 Q. And there was no workers' comp insurance that
5 paid for that?

6 A. They said they needed the policy and without
7 the policy number or -- they couldn't do anything without
8 a policy number or approval.

9 Q. Okay. And nothing ever got approved?

10 A. Nothing was ever approved.

11 Q. After that, did you ever get any treatment
12 after you left MUSC?

13 A. Yes.

14 Q. Where did you treat?

15 A. I went to a general practitioner, Dr. Abel.
16 And from there I went to Tri-County Spinal Care for pain
17 management. And from there I went to Dr. Wildstein, an
18 orthopedic surgeon.

19 Q. Okay. And what did they treat you for,
20 Dr. Abel, Dr. Wildstein, and the folks at Tri-County
21 Spine?

22 A. My neck, my lower back, and my knee.

23 Q. And have you missed any time from work?

24 A. Yes.

25 Q. Have you worked since August 10, 2011?

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1 A. No.

2 Q. And why is that?

3 A. The nerve damage that I have in my -- from my
4 neck, back problems that I continue to have, dizziness,
5 and numbness in my arm.

6 Q. Are you able to drive now? You drove a truck
7 for a living. Are you able to drive now?

8 A. As long as I'm not on medication, I can drive,
9 but not a truck.

10 Q. Okay. Do you have any idea how far you can
11 drive now without having any physical problems?

12 A. Not far.

13 Q. Okay. Is there any way you could run the
14 circuit that you used to run for Cedric Smalls in the
15 condition you're in now?

16 A. No. The vibrations from the truck will -- I
17 was told that it's going to do a little bit more damage
18 to my neck.

19 Q. Okay. And what's the worst current problem
20 that you have right now?

21 A. Neck pain, numbness in my arm, and lower back
22 pain.

23 Q. Okay. How about your knee?

24 A. My knee is the only thing that I was told
25 that's healed -- that's healing fine.

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1 Q. Okay. And whenever your neck hurts, your back
2 hurts, is there anything that alleviates the pain?

3 A. Well, I'm on medication for pain, but that's
4 not really working. What I try to do is just about
5 anything that will get my mind off the pain whether it's
6 walking or just anything.

7 Q. Okay. And can you describe the pain that you
8 feel in your neck to the Commissioner?

9 A. The base of my skull is still swollen. It's a
10 throbbing headache. My left arm is numb. I have
11 numbness and I feel my fingers. My lower back. If I
12 stand too fast, I get dizzy. If I move too fast, it just
13 starts hurting. If I stay in one position and one place,
14 it's fine.

15 Q. Do you take any medication currently for your
16 neck and your back pain?

17 A. Yes.

18 Q. And what do you take?

19 A. I'm on Viracept, Flexeril, Neurontin, and
20 Elavil, as well as ibuprofen.

21 Q. And who is writing you these prescriptions for
22 these medications?

23 A. My latest prescriptions came from Dr. Abel.

24 Q. Is it your understanding you're going to
25 continue to take these medications into the near future?

1 A. Yes.

2 Q. What is your understanding about any future
3 medical needs you might have?

4 MS. BARR: Objection. Calls for hearsay.

5 MR. FISHER: I'm just asking his
6 understanding, not what anyone --

7 THE COURT: What is your understanding?

8 THE WITNESS: My understanding is that I
9 need -- I need surgery on my neck. The doctor called
10 it --

11 MS. BARR: Objection. Hearsay.

12 MR. FISHER: You can't say what the doctor
13 called. I just want what is your understanding.

14 THE COURT: What is your understanding.

15 THE WITNESS: My understanding is that I have
16 a herniated disc in my back and neck. That's my
17 understanding.

18 BY MR. FISHER:

19 Q. Okay. Do you have any understanding with
20 regard to any future medical treatment?

21 A. Yes. My understanding is I need to see a
22 neurologist, and I need the surgery on my neck to relieve
23 the pain. And afterwards, then I'll get my back checked
24 out.

25 Q. How were you paid whenever you were hauling

- 1 for Cedric Smalls?
- 2 A. Weekly.
- 3 Q. And were you paid by the hour?
- 4 A. I was paid by the load.
- 5 Q. And how much is a load?
- 6 A. \$25 per load.
- 7 Q. Okay. And who gave you the checks?
- 8 A. Cedric Smalls.
- 9 Q. Okay. Did Chris Thompson ever give you a
- 10 check?
- 11 A. No.
- 12 Q. And do you have any understanding with regard
- 13 to how Cedric Smalls was paid?
- 14 A. Yes. Chris Thompson --
- 15 Q. What is your understanding?
- 16 A. Chris Thompson would pay Cedric Smalls and he
- 17 would pay us.
- 18 Q. And who was in -- you worked for Cedric
- 19 Smalls, but who was in charge of the operation?
- 20 A. Chris Thompson.
- 21 Q. Okay. You said Chris Thompson?
- 22 A. Yes.
- 23 Q. And how do you know that?
- 24 A. I was told by Cedric Smalls that he is the
- 25 boss and we work for him.

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1 Q. Did he tell Cedric what to do and what not to
2 do?

3 A. To my knowledge, yes.

4 Q. Okay. Who serviced your truck?

5 A. The tractor was serviced by Cedric Smalls.
6 The trailer was serviced by Chris Thompson.

7 Q. Okay. As you're sitting here today, do you
8 think it would be in your best interest to have some more
9 medical treatment?

10 A. Yes.

11 Q. And have you been -- what payment have you
12 received since this accident?

13 A. I've received \$75 per week from Bridgefield
14 Casualty.

15 Q. And our records indicate that an average
16 weekly wage for you would be around \$650?

17 A. Yes.

18 Q. Does that sound about right?

19 A. Yes.

20 Q. Okay. And so your position you deserve TTD
21 back to the day you got hurt minus the \$75 a week you've
22 already --

23 A. Yes.

24 MR. FISHER: Thank you, sir. I don't have any
25 other questions.

1 THE COURT: Ms. Barr.

2 MS. BARR: Thank you.

3 CROSS-EXAMINATION

4 BY MS. BARR:

5 Q. Mr. Rose, we met before. But, again, my name
6 is Kirsten Barr and I represent Chris Thompson Services
7 and their insurance carrier. No doubt about it the night
8 you got hurt, you were working for JJS Trucking; is that
9 right?

10 A. Yes.

11 Q. And since that time, who have you worked for?

12 A. No one.

13 Q. Have you attempted to work for anybody?

14 A. No, ma'am.

15 Q. Have you driven a car or a truck anywhere?

16 A. I have driven a car. And because of the
17 medication I am taking, I have not driven a truck.

18 Q. You haven't tried to drive a truck?

19 A. I can't deal with the vibrations of a car, so
20 I know I can't deal with the vibrations of a truck.

21 Q. Have you surrendered your commercial driver's
22 license then?

23 A. No. I have my license, but my medical -- my
24 DOT card, the doctor took that from me.

25 Q. Which doctor?

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- 1 A. Dr. Abel.
- 2 Q. Tell me Dr. Wildstein, this doctor you've gone
3 to, how do you pay Dr. Wildstein?
- 4 A. To my knowledge, he hasn't been paid yet.
- 5 Q. So you've got an arrangement with
6 Dr. Wildstein that you'll just pay him from whatever you
7 can get out of this workers' comp claim?
- 8 A. It's my understanding, yes.
- 9 Q. And who sent you to Dr. Wildstein?
- 10 A. My lawyer.
- 11 Q. Do you recall that we had a hearing scheduled
12 in your case a few weeks ago?
- 13 A. Yes, ma'am.
- 14 Q. And you were incarcerated at the time of that
15 hearing?
- 16 A. Yes, ma'am.
- 17 Q. How long were you incarcerated?
- 18 A. Three weeks.
- 19 Q. And where were you incarcerated?
- 20 A. St. George.
- 21 Q. And why were you incarcerated in St. George
22 for three weeks last month?
- 23 A. I was accused of stealing a 32-inch
24 television, some bar stools, and a laptop. The police
25 said that a witness observed me running across a parking

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1 lot running from an apartment across the street to my
2 mom's car and putting it in the car. And the police said
3 based on what their witness said that I did, that I was
4 arrested.

5 Q. And then you stayed in jail for three weeks as
6 a result of those allegations?

7 A. Yes. I was told that I could only be released
8 by a circuit judge in St. George. I had to wait for the
9 circuit judge to come.

10 Q. Did you have any medical treatment while you
11 were incarcerated?

12 A. No.

13 Q. And you were cleared to be in the general
14 prison population?

15 A. No, I was not cleared to be in the population.
16 From the day that I got there, the nurse that I spoke
17 with and she spoke to the doctors, they kept me in the
18 front in the holding cell under 24 hour observation.

19 Q. But you didn't receive any treatment?

20 A. The only thing they gave me was pain
21 management and they just kept me under observation. And
22 they gave me a few of my medications, but they told me
23 that I was not allowed to have narcotics while there.

24 Q. You're wearing a neck brace here today. Back
25 when we took your deposition several months ago, you

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1 testified that you only wear a neck brace when you were
2 driving a car?

3 A. Yes, ma'am.

4 Q. Has your neck problem gotten worse since then?

5 A. It's hurting. It's continuous. And I still
6 wear my back brace. I still have it on now.

7 Q. A back brace?

8 A. Yes.

9 Q. Why aren't you doing exercises and therapy
10 instead of wearing a brace?

11 A. The doctor told me the only exercise he wanted
12 me to do was walking. Other than that, he told me to
13 stay off my feet as much as possible.

14 Q. The cane, did you just buy that at a drugstore
15 or something?

16 A. No.

17 Q. You paid for it, right?

18 A. Yes, I did. I was told by Dr. Abel to get it
19 because of dizziness. And I fell once down the stairs.
20 When I stood up, I use it for balance.

21 Q. When did you fall down the stairs?

22 A. Last year back in November and I fell again in
23 January.

24 Q. When you fell down the stairs in November,
25 where were you?

1 A. At my mother's house.

2 Q. And how many stairs did you fall down?

3 A. About five.

4 Q. Five stairs. How did you land when you fell
5 down the stairs in November?

6 A. I landed on the ground.

7 Q. I assume that hurt pretty bad?

8 A. Yes, it did.

9 Q. What did you injure when you fell down the
10 stairs in November?

11 A. My back and my neck was hurt. I went to
12 Dr. Kellett out of Tri-County Spinal Care. He gave me an
13 epidural injection and a cortisone injection in the base
14 of my skull.

15 Q. And he had to do that because you had fallen
16 down the stairs?

17 A. To help me manage the pain. Once he got it
18 back under control, I just kept doing what I was told.

19 Q. So the pain in your back and in your neck and
20 in your arms was worse after you fell the down stairs at
21 your mother's house in November of 2011?

22 A. Yes, it was worse.

23 Q. And you say you fell down a flight of stairs
24 in January 2012 as well?

25 A. Yes.

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1 Q. Where were you when you fell down the stairs
2 then?

3 A. At my mother's house.

4 Q. How many stairs did you fall down in January?

5 A. About five or six.

6 Q. And how did you land when you fell down the
7 stairs in January?

8 A. On the ground.

9 Q. I mean, what part of your body hit the ground?

10 A. My knee.

11 Q. Which knee?

12 A. Both my knees.

13 Q. What did you injure when you fell down the
14 stairs at your mother's house in January of this year?

15 A. I irritated my back.

16 Q. Your low back or your neck or both?

17 A. Yes, both.

18 Q. And did you have to get some medical treatment
19 or some medication to deal with the injuries you
20 sustained or the worsening of your symptoms as a result
21 of that fall in January?

22 A. I already had the medication. I told Dr. Abel
23 about it. I took -- at the time was on Lortab and
24 Oxycodone, and I took that at the time.

25 Q. Your symptoms were worse after you fell that

1 second time at your mother's house?

2 A. It hurt as well.

3 Q. Have you fallen down any other flights of
4 stairs or fallen anywhere else?

5 A. No, ma'am.

6 Q. Have you had any other accidents or injuries
7 since August of 2010?

8 A. No, ma'am.

9 Q. No. Just the two falls down the stairs at
10 your mother's house?

11 A. Yes.

12 Q. Were those carpeted stairs or hardwood stairs
13 or --

14 A. Carpeted.

15 Q. Were you wearing shoes when you fell either of
16 those times?

17 A. Slippers.

18 Q. And as we're here today, I don't believe --
19 you don't have a slip from any doctor excusing you from
20 work at this point in time, do you?

21 A. I have one from Dr. Abel. It said no work.

22 Q. You don't have one here with you today --

23 A. No.

24 Q. -- saying you can't work at this time?

25 A. I gave the slip to my lawyer.

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1 MS. BARR: Okay. That's all the questions I
2 have for you, Mr. Rose. I appreciate it.

3 THE COURT: Ms. Cofield.

4 MS. BARR: It appeared Mr. Smalls -- I don't
5 know if he had a question for Mr. Rose.

6 THE COURT: Sure. Mr. Smalls, you're pro se.

7 CROSS-EXAMINATION

8 BY MR. SMALLS:

9 Q. At the accident, how long were you passed out?

10 A. I was told by the EMTs that I was in and out.
11 I was awake long enough to notify you and I called my mom
12 and that was afterwards.

13 Q. I recall that at the scene, I gave the state
14 troopers all the insurance information at the scene. I
15 also came to the hospital to provide additional insurance
16 information at the time. I recall you stated they
17 wouldn't -- they wouldn't do any surgery on you at that
18 time because of lack of insurance information?

19 A. Right. They needed policy numbers.

20 Q. When you were released from the hospital, did
21 the hospital give you a time frame in which they felt
22 that you would be able to perform your work tasks?

23 A. They told me I needed to speak to -- well, I
24 needed to go to an orthopedic surgeon and they scheduled
25 the appointment to go to the orthopedic surgeon and that

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1 got cancelled twice. They gave me another appointment to
2 see a neurologist, and that was cancelled as well. And
3 then MUSC sent a physical therapist to the house, and
4 that was cancelled by Dr. Abel.

5 Q. Okay. So when you were released, they never
6 gave you a time frame in which they felt like you would
7 be able to go back to work?

8 A. They told me not until the doctor releases me.

9 Q. Were you hired from JJS Trucking as an
10 employee or a subcontractor yourself?

11 A. Contractor.

12 Q. When it came time for you to take your loads,
13 did Cedric Smalls tell you when to take your loads or did
14 you contact the actual loader spreader and you would come
15 into work based on work at the mill?

16 A. I came based on my schedule at the mill in the
17 afternoons, went to the loader spreader, got the loads,
18 took the loads to North Charleston.

19 Q. So -- so Cedric Smalls himself never told you
20 when to go or start work?

21 A. He only told -- well, Cedric Smalls only told
22 me to work 12 hours from the time that I start and --
23 just 12 hours from that time. No more.

24 Q. Did you ever sign a document stating that you
25 were a subcontractor, not an employee?

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94c

1 A. The only documents I've signed was an
2 application.

3 MR. SMALLS: I don't know -- I don't know
4 procedure, Your Honor, but Mr. Samuel Rose signed an
5 owner driver obligation. And in that owner -- owner
6 obligation contract it states that he was to obtain his
7 own workers' comp if it was deemed necessary because he
8 was actually signed on from JJS Tucking as a
9 subcontractor. That's why he picked his own loads.
10 He -- he decided actually when he went to work, and I
11 just wanted that to be a matter of record.

12 MR. FISHER: I would object unless you have a
13 copy of that.

14 THE COURT: Do you have a copy of that?

15 MR. SMALLS: I do. It has his signature on it
16 as well. And I also gave this document at a hearing
17 previously.

18 THE COURT: Any other questions, Mr. Smalls?

19 MR. SMALLS: No, Your Honor.

20 THE COURT: All right. Ms. Cofield.

21 CROSS-EXAMINATION

22 BY MS. COFIELD:

23 Q. Mr. Rose, you testified a minute ago that you
24 thought of yourself as a subcontractor, not an employee;
25 is that correct?

1 A. A subcontractor for Chris Thompson working for
2 JJS.

3 Q. What was your relationship with JJS? Were you
4 a subcontractor for JJS or an employee?

5 A. I believe I was an employee. I worked for JJS
6 Trucking.

7 Q. Okay. And you were paid per load?

8 A. Yes, ma'am.

9 Q. And your loads varied each week; is that
10 correct?

11 A. Yes, ma'am.

12 Q. And no taxes were taken out of your check?

13 A. No, ma'am.

14 Q. And, in fact, you were given a 1099 at the end
15 of the year, correct?

16 A. I have not received a 1099.

17 Q. Okay. Did Mr. Thompson know you were getting
18 medical treatment?

19 A. Not -- I have never spoke with Mr. Thompson
20 about my -- any treatment.

21 Q. Okay. When your deposition was taken in
22 November of 2011, did you not testify that you were
23 getting medical treatment?

24 A. Yes. I testified that I was being treated by
25 Dr. Abel, Dr. Kellett, and Dr. Wildstein.

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1 Q. Since that time has Bridgefield or
2 Mr. Thompson offered to pay any of your medical bills?

3 A. I have not spoken with Mr. Thompson.

4 Q. Have any of your medical bills been paid?

5 A. Nothing has been paid.

6 Q. Thank you.

7 MS. BARR: Your Honor, we would stipulate if
8 you found past medical bills casually-related to this
9 accident, Bridgefield would pay medical bills that you
10 believe are due and owing in an effort to expedite the
11 transfer of liability.

12 BY MS. COFIELD:

13 Q. Mr. Rose, when you were arrested last month on
14 April 12th, were you using your cane?

15 A. No, I didn't have my cane. No.

16 Q. Were you on your Oxycodone or other
17 medications?

18 A. Yes, ma'am.

19 Q. Did you get those medicines while you were in
20 jail?

21 A. They were brought to the jail, but I was told
22 that I couldn't have a Schedule III narcotic. They gave
23 me the Neurontin, the Viracept, the Flexeril, the
24 ibuprofen, and Tylenol.

25 Q. That's what you took in jail?

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1 A. Yes, ma'am.

2 MS. COFIELD: Okay. That's all I have for
3 you.

4 THE COURT: All right. Mr. Warder.

5 MR. WARDER: I have no questions of this
6 witness at this time, Your Honor.

7 THE COURT: All right. Anything further?

8 MR. FISHER: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. FISHER:

11 Q. Mr. Smalls stated that you had signed a
12 document and I just looked at it. Did he ever tell you
13 that you needed to buy your own workers' compensation
14 insurance?

15 A. No.

16 Q. Never told you that?

17 A. No.

18 MR. FISHER: Okay. Thank you.

19 THE COURT: Any other questions for this
20 witness, Mr. Smalls?

21 MR. SMALLS: No, Your Honor.

22 THE COURT: Ms. Barr?

23 MS. BARR: Your Honor, just briefly. The
24 document that was presented by Mr. Smalls, it's marked as
25 Exhibit No. 1?

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1 THE COURT: It will be.

2 MS. BARR: Or will be.

3 RECROSS-EXAMINATION

4 BY MS. BARR:

5 Q. Mr. Rose, this is your signature on Page 2 of
6 this owner driver contract?

7 A. Yes, ma'am.

8 Q. All right. And that's your signature dated
9 April 28, 2011?

10 A. Yes, ma'am.

11 Q. That was prior to this accident that you were
12 involved with. Right. And you agreed to the obligations
13 as outlined of the driver's obligations under this
14 contract?

15 A. Yes, ma'am. I never made over -- I never made
16 over a thousand. The minimum amount it says is 1,000 per
17 week and I never made that.

18 Q. Okay. And it says that you were responsible
19 for keeping your truck in a responsible and clean manner?

20 A. Yes, ma'am.

21 Q. All right. And you were also responsible for
22 any fines due to your own negligence?

23 A. Yes, ma'am.

24 Q. And you were responsible for all state and
25 federal taxes?

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1 A. Yes, ma'am.

2 Q. And you were also responsible for your
3 workers' comp insurance when applicable?

4 A. That's what it says. Yes, ma'am.

5 Q. And this was the agreement you signed on April
6 11th -- or April 28th of 2011?

7 A. That's what it says.

8 MS. BARR: Thank you.

9 THE COURT: Anything further, Ms. Barr?

10 MS. BARR: Nothing, Your Honor. Thank you.

11 THE COURT: Ms. Cofield?

12 MS. COFIELD: No, sir.

13 THE COURT: Mr. Warder?

14 MR. WARDER: No, Your Honor.

15 THE COURT: All right, sir. You may step
16 down. Before we go any further, several of you have
17 referred to depositions taken of Mr. Rose and Mr. Smalls.
18 I do not see either of those in the file. Should they be
19 here?

20 MS. BARR: Your Honor, I think both are
21 contained in my APA submissions.

22 MR. FISHER: This is the original of Cedric
23 Smalls.

24 MS. BARR: And here is Samuel Rose. That
25 lightens my load.

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1 THE COURT: All right. Other witnesses,
2 Mr. Fisher?

3 MR. FISHER: No more witnesses, sir.

4 THE COURT: All right. Ms. Barr?

5 MS. BARR: Your Honor, I have one witness,
6 Mr. Chris Thompson, and he's asked for a momentary
7 adjournment if you would allow.

8 THE COURT: Certainly.

9 (Exhibit No. 1, Owner Driver Contract, was
10 marked and entered into evidence.)

11 (Off the record.)

12 MS. BARR: Mr. Chris Thompson.

13 THE COURT: I'm going to swear you in, and
14 then please state and spell your full name for the
15 record. Speak loudly enough so everyone can hear you.

16 THE WITNESS: Christopher A. Thompson.

17 THE COURT: Hold on, hold on. You're getting
18 ahead of me. And then if you're asked a yes or no
19 question, answer yes or no and not uh-huh or unh-unh.
20 Don't shake or nod your head. Please say yes or no if
21 it's a yes or no question.

22 (CHRISTOPHER A. THOMPSON, being duly sworn to
23 tell the whole truth and nothing but the truth, testified
24 as follows:)

25 THE COURT: Would you state and spell your

1 full name for the record, please?

2 THE WITNESS: Christopher A. Thompson.

3 C-H-R-I-S-T-O-P-H-E-R, A, T-H-O-M-P-S-O-N.

4 THE COURT: All right. Thank you. Ms. Barr.

5 DIRECT EXAMINATION

6 BY MS. BARR:

7 Q. Thank you, Mr. Thompson. Tell us where you're
8 employed, where you do business?

9 A. My office is in Berkeley County, Summerville,
10 South Carolina. We do business for a trucking company.
11 We do business from Summerville to North Charleston.

12 Q. All right. And what's the name of your
13 business?

14 A. Chris Thompson Services, LLC.

15 Q. And what is your role at Chris Thompson
16 Services, LLC?

17 A. I reckon from CEO to janitor.

18 Q. Okay. And back in August of 2011, was JJS
19 Trucking a subcontractor for Chris Thompson Services?

20 A. Yes, ma'am.

21 Q. And what did you engage JJS Trucking to do for
22 you?

23 A. Aid in hauling the woodchips from Summerville
24 Sawmill at SC-78 to North Charleston paper mill.

25 Q. Did you ever engage JJS Trucking to perform

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1 any other subcontract work for you?

2 A. No, ma'am.

3 Q. Who owns JJS Trucking?

4 A. Cedric Smalls.

5 Q. Do you know how many employees or
6 subcontractors JJS Trucking may have had?

7 A. No, ma'am.

8 Q. Do you know if they had more than one office?

9 A. No, ma'am.

10 Q. Do you believe they did have more than one
11 office?

12 A. No, ma'am.

13 Q. And did, to your knowledge, JJS Trucking
14 operate anywhere other than the State of South Carolina?

15 A. No, ma'am, not to my knowledge.

16 Q. When did JJS Trucking start doing work for
17 Chris Thompson Services?

18 A. Approximately around 2008.

19 Q. Okay. And at the time you engaged JJS
20 Trucking, did you inquire as to whether or not they had
21 workers' compensation coverage for their employees?

22 A. For their employees, no, ma'am. JJS -- Cedric
23 Smalls provided Chris Thompson Services with a
24 certificate of workman's comp. Now, did I check the
25 depth of that policy or the parameters of that policy?

1 No, ma'am, that's not something I was privileged to.

2 Q. But at the time you first hired JJS Trucking,
3 you were presented by JJS Trucking with a Certificate of
4 Insurance showing that they had workers' compensation
5 coverage?

6 A. Yes, ma'am. JJS always provided workman's
7 compensation coverage -- workman's compensation policy
8 that JJS was covered.

9 Q. And why did you get that certificate? Why --
10 why did you have to get a Certificate of Insurance from
11 JJS? Was that a policy of yours?

12 A. Yes, ma'am. Because I also have workman's
13 comp coverage and I'm required to verify that everyone
14 else who works for me has workman's comp or I have to
15 pay -- or I have to pay additional premiums to my
16 workman's comp policy.

17 Q. Now, did you -- after you first hired JJS
18 Trucking or engaged them to work for you, did you ever
19 request any updated documentation of their workers'
20 compensation insurance coverage?

21 A. Once a year.

22 Q. And why did you do that once a year?

23 A. Policy -- the existing policy would expire and
24 we would have to issue a new policy.

25 Q. We have submitted a document that's page -- in

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1 the APA of our submissions. We have submitted this
2 document into evidence entitled, "Certificate of
3 Liability Insurance." Are you familiar with that
4 document? It's my 39.

5 A. Yes, ma'am, I am.

6 Q. And do you recall approximately when you
7 received that document?

8 A. Judging from the date on the document,
9 October the 18th.

10 Q. Of 2011?

11 A. 2010.

12 Q. 2010. And who is listed as the certificate
13 holder for that Certificate of Insurance?

14 A. JJS Trucking, LLC.

15 Q. That's the insured or the certificate holder?

16 A. Certificate holder is Chris Thompson Services,
17 LLC.

18 Q. Okay. And who -- from whom did you obtain
19 this Certificate of Insurance?

20 A. Come faxed from Swamp Fox Agency.

21 Q. Had you done business with Swamp Fox yourself
22 through Chris Thompson Services?

23 A. Yes, ma'am, since about 2002.

24 Q. So when you -- you knew that they were the
25 agent for JJS Trucking?

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1 A. Yes, ma'am. And had been for quite a while.

2 Q. Okay. And there's a signature at the bottom
3 of that Certificate of Insurance. Who signed that
4 Certificate of Insurance?

5 A. Appears to be David Hayes.

6 Q. And do you know who David Hayes is?

7 A. Yes, ma'am. He owns Swamp Fox Insurance
8 Agency.

9 Q. Now, after you received the Certificate of
10 Insurance from Swamp Fox Agency, did you take any further
11 actions to verify the insurance coverage that's indicated
12 on that form? Did you speak with anybody at Swamp Fox?

13 A. Yes, ma'am. I spoke with Greg Hudson. That
14 was my CSR. And I spoke with him and asked him just in
15 conversation, you know, got the certificate, everything
16 is good to go. He said everything is good to go, you're
17 covered.

18 Q. Did you have any reason after you had reviewed
19 that certificate and spoken with folks at Swamp Fox to
20 question whether or not JJS Trucking had workers'
21 compensation insurance at the time you received that
22 certificate? Did you have any reason to suspect that --

23 A. No, ma'am. No, ma'am. I got a certificate
24 which was good enough, and I verbally spoke with Greg
25 Hudson and he told me that Cedric was good to go. Those

1 were his exact words, good to go.

2 Q. So after you reviewed that Certificate of
3 Insurance, did you believe that JJS in fact had workers'
4 compensation coverage through Travelers Insurance as of
5 October 18, 2010?

6 A. Yes, ma'am.

7 Q. And what was the coverage period for that
8 insurance through Travelers?

9 A. October 8, 2010 until October 8, 2011.

10 Q. Now, could you tell from that Certificate of
11 Insurance what the policy limits were for that workers'
12 comp policy?

13 A. Yes, ma'am. \$500,000.

14 Q. And could you tell who the company was who
15 insured JJS Trucking for purposes of workers'
16 compensation?

17 A. Yes, ma'am. It would be Travelers Insurance.

18 Q. At any time prior to Samuel Rose's accident in
19 August of 2011, did anyone -- anyone with JJS or Swamp
20 Fox or Travelers or anyone else at all ever give you any
21 reason to believe that Mr. -- JJS Trucking did not have
22 insurance coverage as described on that Certificate of
23 Insurance?

24 A. No, ma'am.

25 Q. At any time prior to the accident in August of

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1 2011, did you -- were you given any reason to believe by
2 any person at all that JJS Trucking's workers' comp
3 insurance had lapsed?

4 A. No, ma'am.

5 Q. Now, it's my understanding that after the
6 accident, you were informed by your own insurance company
7 that there had been a lapse in JJS's policy; is that
8 correct?

9 A. Yes, ma'am. It took almost until middle of
10 September, that's the best I can recall at the time,
11 middle of September, maybe even beginning of October,
12 before I was actually positively told that he didn't have
13 insurance. The first hint of it I called Mr. Smalls and
14 Mr. Smalls verified, yes, I do have it. I had
15 documentation showing that he had it. We were both --
16 and I believe I was the one that actually informed
17 Mr. Smalls that -- that it was found that his policy had
18 expired. It was a shock to both of us.

19 Q. So you believe that Mr. Smalls at least
20 sincerely believed that he had continuous workers'
21 compensation coverage through the date of the accident?

22 A. Yes, ma'am, I do.

23 Q. But you now know that that's not -- that was
24 not true, that the policy had in fact lapsed?

25 A. I've been told the policy had lapsed. I still

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1 believe that Mr. Smalls did not know.

2 Q. And after -- after you learned of the lapse in
3 JJS Trucking's workers' compensation insurance, you said
4 you spoke with him, but did you take any further action
5 with regard to your relationship with JJS Trucking?

6 A. Yes, ma'am. I stopped him immediately. I
7 stopped him within the hour. I called him and told him I
8 needed to meet with him immediately, not to haul -- not
9 to load his trucks anymore under my -- my company. And
10 he met with me and I explained to him what was going on.
11 I verified and I can only do -- CTS can only do business
12 with JJS Trucking until such time as he obtained proof of
13 workman's comp coverage.

14 MS. BARR: Thank you very much, Mr. Thompson.
15 I'm sure that the other attorneys may have questions for
16 you as may well the Commissioner.

17 THE COURT: Mr. Smalls has a question. Are
18 y'all comfortable with him asking him questions?

19 MR. FISHER: Certainly.

20 MS. COFIELD: That's fine.

21 THE COURT: All right. Mr. Smalls.

22 CROSS-EXAMINATION

23 BY MR. SMALLS:

24 Q. Mr. Chris Thompson, as being the certificate
25 holder, can you think of a time in the past when an

1 insurance company informed you of an -- let me make sure
2 I say this right. You being a certificate holder, in the
3 past was your company ever notified when a
4 subcontractor's insurance might have been about to lapse?

5 A. Yes, sir. I've been notified in the past at
6 times that I've had other subcontractors that insurance
7 had been cancelled and you've been notified immediately,
8 and there's been times in the past where CTS doing
9 business with JJS Trucking it got to a time where it was
10 extremely close. I do not know the reasons or the
11 circumstances behind it, but it was in danger of lapsing
12 in a couple of days. Swamp Fox notified me, gave me
13 ample notice. I in turn notified Cedric Smalls, and
14 Cedric Smalls brought his insurance back into compliance
15 before any lapse ever happened. So I felt very confident
16 with Cedric because in the past when we have gotten into
17 rocky cases, he has done the right thing.

18 Q. The question is, procedure and notification.
19 So you believe it is a procedure to be notified of a
20 possible lapse of an insured?

21 A. In the past how I've been notified -- I cannot
22 state the South Carolina laws of notifications. But in
23 the past the way I've been notified is an immediate fax
24 from the insurance agency followed up by a registered
25 letter coming certified mail.

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1 Q. Okay.

2 A. Neither one I received from JJS Trucking or
3 from Swamp Fox Agency nor from Travelers nor from anyone.
4 Had I received any notification, Mr. Smalls would not
5 have been pulling and he is fully aware of that. He
6 would not have been pulling for Chris Thompson Services
7 had any -- any hint of workman's comp been cancelled.

8 MR. SMALLS: Thank you.

9 THE COURT: That's it?

10 MR. SMALLS: Yes, Your Honor.

11 THE COURT: Okay. Ms. Cofield.

12 CROSS-EXAMINATION

13 BY MS. COFIELD:

14 Q. I'm going to show you again it's that same
15 thing you have in front of you. It's the certificate
16 dated October 18, 2010. I'm going to be referring to
17 that in just a second. Okay?

18 A. Yes, ma'am.

19 Q. How many subs do you use in your business?

20 A. Now or in the past?

21 Q. Both.

22 A. Now, none.

23 Q. In the past?

24 A. In the past, I've had up to approximately four
25 or five at one time. The aggregate total has been

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1 probably ten to 12, maybe 15.

2 Q. And I think it was your testimony that you
3 always require your subs to provide you a Certificate of
4 Insurance?

5 A. Yes, ma'am.

6 Q. And how long did JJS Trucking perform services
7 for you?

8 A. Best I can recall from 2008 until
9 approximately September/October of 2011.

10 Q. Okay. And it's your testimony I believe, too,
11 that he always provided you a Certificate of Insurance;
12 is that correct?

13 A. Yes, ma'am.

14 Q. Because if he hadn't, you wouldn't let him
15 work?

16 A. Yes, ma'am.

17 Q. Where do you keep your certificates?

18 A. In my file in my office at my house.

19 Q. Okay. So if I subpoenaed from you all the
20 certificates you have for JJS, would you have one for
21 each year he's performed services for you?

22 A. No, ma'am, probably not. We're not required
23 to keep them once the certificate gets outdated. It's no
24 longer a benefit. Generally it's purged.

25 Q. So when you get a new one, you purge the old

1 one?

2 A. Generally, yes, ma'am.

3 Q. Okay. Do you take an opportunity to look at
4 and read the certificates when you get one?

5 A. Yes, ma'am.

6 Q. Well, when you look at this certificate here
7 that you have there dated October 18th, is there any
8 description in the description of operations box?

9 A. No, ma'am, there's not.

10 Q. And when you look at the automobile liability
11 on here, it gives you a policy number, doesn't it?

12 A. Yes, ma'am, it sure does.

13 Q. When you look at the workers' comp section,
14 there is no policy number, is there?

15 A. No, ma'am. It says binder.

16 Q. It says binder.

17 MS. COFIELD: I have another certificate that
18 was also in her brief, Your Honor, dated September 29,
19 2011. It's in there too, I believe, but you can look at
20 mine. Is that in your brief?

21 MS. BARR: No, it's not.

22 MS. COFIELD: It's not?

23 MR. FISHER: What is it?

24 MS. COFIELD: I'm going to mark this one.

25 THE COURT: Show it to Mr. Fisher.

1 (Exhibit No. 2, Certificate of Insurance, was
2 marked and entered into evidence.)

3 BY MS. COFIELD:

4 Q. I'm going to show you what they've now marked
5 as Exhibit No. 2, a Certificate of Insurance whereas the
6 insured is JJS Tucking, LLC. Certificate holder is Chris
7 Thompson Services, LLC. Looks like it was faxed that
8 same day, September 29, 2011. You would agree with me
9 that September 29, 2011 is sometime after the claimant's
10 accident in this case?

11 A. Yes, ma'am.

12 Q. And you would agree that this certificate
13 shows an actual policy number?

14 A. Yes, ma'am.

15 Q. Okay. Why did you receive this -- this
16 certificate if you had already released JJS from your
17 services?

18 A. Personally I don't know exactly the date I
19 released him of his services. He might have still been
20 -- he might have still been at this time. I don't know.
21 I'd have to double check. I don't know the exact date of
22 the last time that he pulled a load for CTS. Down here
23 it says it's a revised certificate.

24 Q. Stop right there. Stop right there. You
25 testified as soon as you found out about the accident,

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1 you found out there was no insurance and you let him go?

2 MS. BARR: Objection.

3 THE WITNESS: No, ma'am, I did not. That's
4 incorrect.

5 BY MS. COFIELD:

6 Q. Well, tell me what you said.

7 A. I said that at the time of the accident,
8 everyone assumed -- everyone was under the belief -- or
9 the assumption -- was fully belief we had workman's comp
10 coverage. It took until sometime in -- sometime in
11 September or October, I'm a little fuzzy on the time
12 frame, for Bridgefield Casualty to tell me that Cedric
13 Smalls's insurance -- and that was the first person that
14 actually could positively tell me. I called Swamp Fox
15 and I asked them. Swamp Fox said as far as they knew, it
16 was in effect. Bridgefield Casualty is the first person
17 to actually tell me, no, JJS Trucking's policy was not in
18 effect.

19 Q. So which of them did you rely on before you
20 quit using JJS?

21 A. The only person that could tell me -- the
22 first time I was told by Bridgefield Casualty -- the
23 first time I was told pointblank without any doubt that
24 JJS workman's comp policy is not in effect. We have
25 researched it. He does not have a valid policy. At that

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1 point when I hung up the phone, I immediately called
2 Cedric Smalls's number and immediately stopped him from
3 hauling at that point right then. That was the first
4 time. Swamp Fox, everyone else I spoke to still said as
5 far as we know, he has workman's comp, we'll have to look
6 into it. And I -- and I -- as far my documentation
7 showed that he had it. So until I got positive evidence
8 that said that he didn't have it, everything I showed,
9 showed that he had it.

10 Q. So you kept using JJS for some weeks then
11 after the accident?

12 A. Yes, ma'am.

13 Q. Okay. Why did you get this -- this
14 certificate?

15 A. I don't really know.

16 Q. Okay. And you would agree with me that on the
17 workers' comp section here, it at least gives a policy
18 number this time, correct?

19 A. Yes, ma'am, it does.

20 Q. Okay. Do you know the difference between a
21 binder and a policy?

22 A. Yes, ma'am.

23 Q. Tell me the difference.

24 A. My understanding is the difference is when a
25 policy is issued for workman's comp, that the policy is

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1 bound. It's a legally binding policy that you have
2 workman's coverage is in effect and that it has not gone
3 to the agent, been processed through the actual
4 underwriter, and a policy number issued and sent back. I
5 also know there's -- and I don't really understand how
6 this works. Once again, I'm a truck driver, not an
7 insurance agent. My understanding is that there's also a
8 workman's comp pool that sometimes that have to get
9 signed and I have had binders that I've had for six to
10 eight weeks, nine, ten weeks before a policy has been
11 issued.

12 Q. Have you ever had one that lasted ten months?

13 A. Yes, ma'am. That one right there.

14 MS. COFIELD: Exactly. All right. Thank you.
15 I have no more questions.

16 THE COURT: All right. Mr. Warder?

17 MR. WARDER: Your Honor, I really don't have
18 any questions for this witness.

19 THE COURT: All right. Mr. Fisher?

20 MR. FISHER: No questions, sir.

21 THE COURT: Anything else, Ms. Barr?

22 MS. BARR: Just briefly.

23 REDIRECT EXAMINATION

24 BY MS. BARR:

25 Q. Mr. Thompson, when you initially reviewed the

1 Certificate of Insurance dated October 18, 2010, APA Page
2 39, did you notice that it said binder instead of
3 specifying a policy number?

4 A. Yes, ma'am. Every -- every single workman's
5 comp policy says binder when you first get it. There is
6 a time lapse.

7 Q. All right. You needed it quickly after this
8 policy started. And what was the date of the -- the
9 period of this coverage that's represented on the
10 certificate?

11 A. 10/08/2010.

12 Q. And what was the date of the certificate?

13 A. 10/18/2010.

14 Q. So ten days later would you have expected or
15 thought it unusual to not have an actual policy number?

16 A. I would have thought it more unusual to have a
17 policy number than to be binder. Binder is what should
18 be expected on all new policies for workman's comp.

19 Q. Simply because it says binder there instead of
20 listing a series of letters and numbers, did that cause
21 you to question whether or not Cedric -- JJS Trucking was
22 covered for the purposes of workers' compensation as
23 stated on this Certificate of Insurance?

24 A. No, ma'am.

25 Q. So you believed he was in fact covered?

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1 A. Absolutely.

2 Q. And based on what you've heard here today, is
3 it your understanding that Travelers actually did cover
4 him for the purposes and as indicated on the Certificate
5 of Insurance until the policy lapsed sometime in
6 January or February of 2012?

7 A. Yes, ma'am.

8 Q. And, again, after you received this, not only
9 did you review it, you actually called the Swamp Fox
10 Agency, the producer of this policy?

11 A. Yes, ma'am. Swamp Fox Agent Greg Hudson is my
12 agent and is also Cedric Smalls's agent and a lot of
13 things happened verbally, you know, conversations about
14 insurance that CTS had. We have several different lines
15 of insurance with them. I was on the phone with Greg
16 Hudson. Did I call -- have any reason to call Greg
17 Hudson and verify that certificate individually? No.
18 While I was on the phone with him, I brought up Cedric
19 Smalls, and he said Cedric Smalls is good to go. His
20 insurance is great. And I believe -- I fully believe
21 that if Swamp Fox had any knowledge, I certainly hope
22 they would have notified Cedric Smalls and myself with a
23 simple phone call.

24 Q. And based on your work history with Mr. Smalls
25 and his company, JJS Trucking, you've experienced him to

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1 be forthright in his representations to you in the past
2 regarding his workers' comp insurance coverage?

3 A. Yes, ma'am. And he's been put through the
4 test because there's been times that he's gotten very
5 close and he's been very honest with it.

6 MS. BARR: Thank you very much, Mr. Thompson.

7 THE COURT: Ms. Cofield?

8 RECROSS-EXAMINATION

9 BY MS. COFIELD:

10 Q. So it's your testimony that he did not
11 purposely defraud you?

12 A. I don't believe he defrauded me.

13 Q. Okay. He did not purposely give you a false
14 Certificate of Insurance, did he?

15 A. It's my belief that -- my understanding and my
16 belief is that Cedric Smalls fully believed until the
17 time I told him -- Bridgefield Casualty told me and I
18 immediately told him, I believe he thought he had -- was
19 fully -- fully believed he had workman's comp coverage in
20 effect.

21 MS. COFIELD: Okay. That's all I have.

22 THE COURT: Mr. Warder?

23 CROSS-EXAMINATION

24 BY MR. WARDER:

25 Q. Quick question, sir. This is my APA Page 73.

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1 This is a -- what appears to be -- it speaks for itself.
2 Do you have any -- let me ask it this way: Is it a
3 possibility that Swamp Fox Agency as indicated by this
4 record here was notified of the cancellation of JJS
5 Trucking's insurance and never informed you?

6 A. I can't say it's possible or impossible. I
7 don't know. There's certainly nothing on there from
8 Swamp Fox Agency showing that that they received it.

9 Q. There's not? What does it say here?

10 A. It says received from Swamp Fox Agency. But
11 I'm assuming --

12 Q. What date, sir?

13 A. Sir, I'm assuming it was sent by Travelers.
14 And if Travelers sent it, how could Swamp Fox get on it
15 and you get a copy back unless you got a signed copy sent
16 back to you?

17 Q. I am Travelers.

18 A. Sir, I'm telling you that's between you and
19 Swamp Fox and I'm not inclined to comment on it.

20 Q. Okay. Understood. But is it possible that
21 the notice of cancellation was mailed to both JJS
22 Trucking who I don't represent, I represent Travelers,
23 and it was also sent to Swamp Fox as indicated by their
24 received date stamp here on the cancellation -- notice of
25 cancellation?

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1 A. Sir, I -- I would -- I would not venture to
2 say that. I have no knowledge what transpired between
3 Travelers and JJS and Travelers and Swamp Fox and I would
4 decline to comment on any -- any business y'all had.

5 MR. WARDER: Understood.

6 THE COURT: Anything else, Mr. Fisher?

7 MR. FISHER: No, sir, I have nothing.

8 THE COURT: Mr. Smalls?

9 MR. SMALLS: Yes, Your Honor.

10 MS. BARR: And, Your Honor, we don't take an
11 issue with the cancellation at this point.

12 RE CROSS-EXAMINATION

13 BY MR. SMALLS:

14 Q. On the definition of defraud, has JJS Trucking
15 ever forwarded you a Certificate of Insurance dealing
16 with workers' comp or any type of insurance?

17 A. No, sir. And in his defense, I would not have
18 accepted anything directly from any -- any owner
19 operator, any subcontractor. It all has to come directly
20 from the insurance company or a fax with their --
21 something indicating that they sent it.

22 MR. SMALLS: Thank you.

23 THE COURT: Anything else, Ms. Barr?

24 MS. BARR: No, thank you, Your Honor. We
25 appreciate your time.

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1 THE COURT: Anything else from anyone?

2 MS. COFIELD: No, sir.

3 MR. WARDER: No, sir.

4 THE COURT: All right, sir. You may step
5 down. Other witnesses, Ms. Barr?

6 MS. BARR: No, Your Honor. Thank you.

7 THE COURT: Witnesses, Ms. Cofield?

8 MS. COFIELD: We're going to rely on the
9 deposition transcript of Mr. Smalls that's already been
10 submitted. So, therefore, we won't have to call him
11 today.

12 THE COURT: Okay. Any witnesses, Mr. Warder?

13 MR. WARDER: No, Your Honor.

14 THE COURT: All right. Anything else from
15 anyone?

16 (No response.)

17 THE COURT: All right. That concludes this
18 hearing.

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CERTIFICATE OF REPORTER

I, Kimberly T. Power, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the foregoing transcript of proceedings was taken before me on the date and at the time and location stated on page 1 of this transcript; that the witness was duly sworn to testify to the truth, the whole truth, and nothing but the truth; that the testimony of the witness and all objections made at the time of the proceeding were recorded stenographically by me and were thereafter transcribed; that the foregoing transcript of proceedings as typed is a true, accurate and complete record of the testimony and of all objections made at the time to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 6th day of June, 2012, at Richland County, South Carolina.


Kimberly T. Power, Court Reporter
Notary Public, State of South Carolina
My Commission Expires: 07/22/2015

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BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

AGE-01 DATE-04/30/2012 TIME-14:23:31

EQ ORI-SCLED0000 S C LAW ENF DIV

ID-1 T-

NAME-ROSE, SAMUEL ARCHIEDE SEX-M RACE-B

HEIGHT-601 WEIGHT-165 EYES-BRO HAIR-BLK SKIN- BORN-SC

PC- HENRY-

PHOTOGRAPH AVAILABLE AUTHORIZED USE ONLY

-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPIS

ATE RECORD ENTERED--02/23/2001 DATE OF LAST UPDATE--04/23/2012

ADDITIONAL IDENTIFIERS

NAME BIRTH DATES MARKS SOC SEC MISC NUM

OSE, SAMUEL ARCHIEDELL

OSE, SAMUEL

OSE, SAMUEL A

ISE, SAMUEL ARCHIEDELL

ARCHIEDELL, ROSE SAMUEL

OSE, SAMUEL ARCHIEDELL

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

OSE, SAMUEL ARCHIEDE

02/07/2001

70100800 NORTH CHARLESTON PD

SE-01-999999B

IN-

ARREST CH/ 01-INDECENT
EXPOSURE 103

PHOTOGRAPH AVAILABLE
ARREST CHARGE 02-TRESPASS
OFFENSE DATE-02/07/2001
COURT CHARGE 01-INDECENT

DOC-01G31003669 WARR-G536930

EXPOSURE
COURT DISP-CONVICTED:3 YRS
SUS PROB 5 YRS/CRED STARTE
D 2-7-01/SEX
COURT DATE-07/18/2001
ATN-

DOC-R84 WARR-G536915

COURT CHARGE 02-TRESPASSING
COURT DISP-NON-CONVICTION;
DISMISSED
COURT DATE-03/20/2001

IC040055C R & E CENTER COLA
CASE-276934
IT-16-15-130-MISDEMEANOR

07/24/2001 CUSTODY STATUS-RECEIVED
START DATE-07/24/2001

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:2YRS SS
2YRS WITH 5YRS PROBATION
ATN-

ROSE, SAMUEL
IC0100000 CHARLESTON CNTY SO
CASE-02999999X

10/03/2002

ATN-
IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION
VIOLATION
OFFENSE DATE-10/03/2002
PHOTOGRAPH AVAILABLE

ROSE, SAMUEL ARCHIEDE
C0100000 CHARLESTON CNTY SO

10/08/2002

CASE-02015011B

ATN-

ARR-H099911

IT-23-3-470(A)(B)(1)-MISDEMEAN

ARREST CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
OFFENSE DATE-10/08/2002
PHOTOGRAPH AVAILABLE

IT-23-3-470(A)(B)(1)-MISDEMEAN
XC-03G31000111 WARR-H099911

COURT CHARGE 01-SEX OFFENDER
REGISTRY VIOLATION 1ST
OFFENSE
COURT DJ CONVICTED:197
104

DAYS/CRED GIVEN FOR TIME
SERVED BY SC DOC
COURT DATE-06/24/2003

ATN-

SC040015C SC DEPT CORRECTIONS 12/30/2002 CUSTODY STATUS-RECEIVED://///
CASE-276934 SC01454479 CONSOLIDATED
START DATE-12/30/2002

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS

ATN-500300026890

ROSE, SAMUEL ARCHIEDE 02/12/2004
SC0100100 CHARLESTON POLICE DE
CASE-03-25363C
ATN-10X004043021
WARR-H407261
T-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 01-INDECENT
EXPOSURE
OFFENSE DATE-02/12/2004

PHOTOGRAPH AVAILABLE

WARR-H407262
T-N/A-MISDEMEANOR

ARREST CHARGE 02-SIMPLE ASSAULT
LT
OFFENSE DATE-02/12/2004

T-16-15-130-MISDEMEANOR
X-04G31003067 WARR-H407261

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATN-10X004043021

T-C/L-UNCLASSIFIED
X-04G31003068 WARR-H407262

COURT CHARGE 02-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED:10 YRS
SERVE 3 YRS BAL SUS 3 YRS
PROB/CRED FOR
COURT DATE-01/03/2006

SE, SAMUEL ARCHIEDE 10/25/2004

SC0100100 CHARLESTON POLICE DE
E-04023850C
X0004299044

ERY OF HIGH AND AGGRAVATED
NATURE
OFFENSE DATE-10/25/2004
PHOTOGRAPH AVAILABLE

CIT-C/ORDINANCE-UNCLASSIFIED

ARREST CHARGE 02-INDECENT
EXPOSURE
OFFENSE DATE-10/25/2004

CIT-16-15-130-MISDEMEANOR
DOC-05G310000518 WARR-H865013

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3YRS
SERVE 2YRS BAL SUS 3YRS
PROBATION CREDIT TIME
SERVED
ATN-10X004299044

ROSE, SAMUEL ARCHIEDELL

11/17/2004

SC0100100 CHARLESTON POLICE DE
ATN-
WARR-H749964
CIT-16-15-130-MISDEMEANOR

ARREST CHARGE 01-INDECENT
EXPOSURE
PHOTOGRAPH AVAILABLE

IT-16-15-130-MISDEMEANOR
OC-05G31000768 WARR-H749964

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED:3 YRS
SERVE 2 YRS BAL SUS 3 YRS
PROB/CRED FOR TIME
COURT DATE-01/03/2006
ATN-

OSE, SAMUEL
C0100100 CHARLESTON POLICE DE
ASE-165 738
FN-990000031005
WARR-H768017
IT-16-3-654-FELONY

02/28/2005

ARREST CHARGE 01-CRIMINAL

T-16-3-654-FELONY
C-00G310 WARR-H768017

SEXUAL CONDUCT - THIRD
DEGREE
OFFENSE DATE-02/28/2005

COURT CHARGE 01-CRIMINAL
SEXUAL CONDUCT - THIRD
DEGREE
COURT DISJ 106 CONVICTION:
DISM/HOL PROB/PROS ENDED

SC040015C SC DEPT CORRECTIONS 01/12/2006 CUSTODY STATUS-RECEIVED
CASE-200601 START DATE-01/12/2006
IT-16-15-130-MISDEMEANOR

COURT CHARGE 01-INDECENT
EXPOSURE
COURT DISP-CONVICTED;3 CT3 3
YRS 332YRS 3YRS3PROBEEA
COURT DATE-01/12/2006
ATN-500200045680

IT-C/L,-MISDEMEANOR

COURT CHARGE 02-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED
NATURE
COURT DISP-CONVICTED;1YRS33YR
33YRS3PROBCC
COURT DATE-01/12/2006

IT-C/L-UNCLASSIFIED

COURT CHARGE 03-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS
33 3 YRS 3 YRS PROB CC
COURT DATE-01/12/2006

SC040015G CENTRAL PPF 06/30/2006 CUSTODY STATUS-PROBATION
CASE-SC0100 START DATE-06/30/2006
IT-C/L-UNCLASSIFIED

COURT CHARGE 01-ASSAULT OF A
HIGH AND AGGRAVATED NATURE
COURT DISP-CONVICTED;10 YRS
SUSP 3YRS W/3YRS PROBATION
ATN-990000209935

END OF PAGE 01 - PAGE 02 TO FOLLOW

IN Mon Apr 30, 2012 14:23:31

000305513716/220

BT Mon Apr 30, 2012 14:23:32 REC21A MSG# 09985 SAN: OPHDRVBORPKM

TO: REC21A-09986 Mon Apr 30, 2012 14:23:32 OPHDRVBORPKM
FROM: SCCH-00562 Mon Apr 30, 2012 14:23:32

AGE-02 DATE-04/30/2012 TIME-14:23:31

EQ ORI-SCLED0000 S C LAW ENF DIV

ID- I-

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 02-INDECENT

EXPOSURE

COURT DISP-CONVICTED:3YRS

SUSP 2YRS W/3YRS PROBATION

CIT-C/L,-MISDEMEANOR

COURT CHARGE 03-ASSAULT/BATTE

RY OF HIGH AND AGGRAVATED

NATURE

COURT DISP-CONVICTED:10 YRS

SUSP 3YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 04-INDECENT

EXPOSURE

COURT DISP-CONVICTED:3YRS

2YRS W/3YRS PROBATION

CIT-16-15-130-MISDEMEANOR

COURT CHARGE 05-INDECENT

EXPOSURE

COURT DISP-CONVICTED:3YRS

SUSP 2YRS W/3YRS PROBATION

OSE, SAMUEL

02/26/2008

CO10015G CHARLESTON PPP

ASE-20080225

FN-10D100528242

ARR-W10081703 *

IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION

VIOLATION

OFFENSE DATE-02/26/2008

PALM PRINTS AVAILABLE

OSE, SAMUEL

07/14/2008

CO10015G CHARLESTON PPP

ASE-20080714

FN-10D100541133

ARR-W10081703 *

IT-N/A-MISDEMEANOR

ARREST CHARGE 01-PROBATION

VIOLATION

OFFENSE DATE-07/14/2008

PALM PRINTS AVAILABLE

U40015C SC DEPT CORRECTIONS

07/16/2008 CUSTODY STATUS-RECEIVED

SE-071620

START DATE-07/16/2008

T-C/L-UNCLASSIFIED

COURT CHARGE 01-ASSAULT OF A

HIGH AGGRAVATED NATURE

COURT DISP-CONVICTED:10 YRS

CIT-C/L,-MISDEMEANOR

COURT CHARGE 02-ASSAULT/BATTE
RY OF HIGH AND AGGRAVATED
NATURE

COURT DISP-CONVICTED:10 YRS
33 3 YRS 3 YRS PROB CC

CIT-16-15-130-MISDEMEANOR

COURT DATE-07/16/2008

COURT CHARGE 03-INDECENT
EXPOSURE

COURT DISP-CONVICTED:3 CTS 3
YRS 33 2 YRS 3 YRS PRO
COURT DATE-07/16/2008

ROSE, SAMUEL ARCHIEDELL
3C0180000 DORCHESTER CNTY 30
CASE-12004033
ATN-18D100513871
WARR-M473169
CIT-16-11-311-FELONY

04/14/2012

ARREST CHARGE 01-BURGLARY -
FIRST DEGREE
OFFENSE DATE-04/14/2012
PHOTOGRAPH AVAILABLE
PALM PRINTS AVAILABLE

WARR-M473168
CIT-16-13-180(B)(1)-MISDEMEANOR

ARREST CHARGE 02-RECEIVING
STOLEN GOODS <\$2,000

OFFENSE DATE-04/14/2012

- WARRANT OCCURS IN MORE THAN ONE ARREST CYCLE UNDER THIS SID NUMBER

BASED ON SEARCH OF SLED CJIS CCH FILE USING SID/SC01354050
THIS CRIMINAL HISTORY RECORD IS FOR SOUTH CAROLINA ARRESTS AND
CONVICTIONS ONLY AND IS BASED ON THE INFORMATION PROVIDED. SINCE
CHANGES MAY OCCUR DAILY A NEW INQUIRY SHOULD BE MADE AND NO SUBSEQUENT
USE OF THIS RECORD IS ALLOWED.

>>> *** NOTICE *** <<<

THE SUBJECT OF THIS RECORD IS A CONVICTED SEX OFFENDER. ADDITIONAL *
INFORMATION MAY BE OBTAINED FROM THE SOUTH CAROLINA SEX OFFENDER *
REGISTRY AT: > WWW.SLED.SC.GOV < *

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING HANDGUN IN
SOUTH CAROLINA

INFORMATION SUBMITTED TO SLED CCH PURSUANT TO 16-23-10 (C) AND 23-31-110
C) OF THE SOUTH CAROLINA CODE OF LAWS INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A CRIME OF VIOLENCE AND IS NOT PERMITTED TO POSSESS OR
ACQUIRE A HANDGUN.

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
HEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

* S C CJIS END OF RECORD **

N Mon Apr 30, 2012 14:23:32

000305515414/220

UT Mon Apr 30, 2012 14:23:33

REC21A MSG# 09986

SAN: OPHDRVBORPKM



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

TRASK & HOWELL, L.L.C.

Workers' Compensation Defense

Phone
(843) 881-4228

Fax
(843) 881-8784

Allison C. Nussbaum
Jill W. King
William H. Lyon
D. Alan Westerlund, Jr.

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

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

April 26, 2012

1354050

S. C. Law Enforcement Division
Attn: Records
P. O. Box 21398
Columbia, SC 29221

THE SUBJECT OF THIS RECORD IS
A CONVICTED SEX OFFENDER.
ADDITIONAL INFORMATION MAY
BE OBTAINED FROM THE NATIONAL
SEX OFFENDER PUBLIC WEBSITE AT
WWW.NSOPW.GOV

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

ARREST RECORD S.C. LAW ENFORCEMENT DIVISION

Dear Sir or Madam:

Enclosed, please find our firm's check for \$25.00 for a records check into the background criminal records of Samuel A. Rose, date of birth [redacted] Social Security No. [redacted]

Please forward any available information in the enclosed self-addressed stamped envelope. If this individual has no criminal records, please note that on this letter and return it to me in the enclosed envelope.

Thank you for your assistance in this matter.

Yours very truly,

Kirsten L. Barr

Kirsten L. Barr

Since neither fingerprints nor an identifying number which is indexed in our files accompanied your request, SLED cannot guarantee in any manner that this material concerns the individual in whom you are interested.

KLB/czw/les
Enc.

cc: Melissa Kerby, Summit Holdings
Chris Thompson, Chris Thompson, LLC
118/133V-sled#2

RECEIVED SLED/CJIC
2012 APR 30 AM 8:11
CRIMINAL RECORDS DEPT

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Samuel A. Rose,	)	W.C.C. FILE NO. 1112328
	)	
Employee/Claimant,	)	
	)	
-vs-	)	PETITION TO TRANSFER LIABILITY
	)	TO S.C. UNINSURED EMPLOYERS' FUND
JJS Trucking, LLC and Chris Thompson	)	PURSUANT TO S.C. CODE ANN. § 42-1-415
Services, LLC,	)	
	)	
Employers,	)	
	)	
and	)	
	)	
Bridgefield Casualty Insurance Co. and	)	
The S.C. Uninsured Employers' Fund,	)	
	)	
Carriers,	)	
	)	
Defendants.	)	
	)	

TO: The South Carolina Workers' Compensation Commission; Joseph B. Fisher, Esq., attorney for the Claimant; JJS Trucking, LLC; Timothy B. Killen, Esq., attorney for The South Carolina Uninsured Employers' Fund; and F. Reid Warder, Esq., attorney for Travelers Insurance Company:

PLEASE TAKE NOTICE that Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 to transfer liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. In his December 6, 2011 Form 50, the Claimant named JJS Trucking, LLC and Chris Thompson Services, LLC (upstream contractor) as employers at the time of

his August 10, 2011 work-related accident. The Claimant alleges injuries to the right knee, back, neck, and head as a result of an August 10, 2011 motor vehicle accident.

2. JJS Trucking, LLC was the Claimant's direct employer at the time of the August 10, 2011 accident. (See attached depositions of Samuel Rose and Sedrick Smalls).
3. JJS Trucking, LLC was a subcontractor for Chris Thompson Services, LLC at the time of the Claimant's alleged injuries.
4. JJS Trucking, LLC provided Chris Thompson Services, LLC with a Certificate of Liability Insurance, with effective date of October 8, 2010 and expiration date of October 8, 2011 for its workers' compensation policy, at the time it commenced work for Chris Thompson Services, LLC. (Exhibit A).
5. Travelers Insurance Company is listed as the workers' compensation insurer on the Certificate of Insurance provided by JJS Trucking, LLC to Chris Thompson Services, LLC.
6. JJS Trucking's workers' compensation policy with Travelers apparently lapsed, without notice to or the knowledge of Chris Thompson Services, LLC, prior to the August 10, 2011 accident.
7. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this

title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. 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 Employer's Fund."

8. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."
9. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title.
10. JJS Trucking, LLC represented itself to Chris Thompson Services as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).
11. Furthermore, S.C. Code Ann. § 42-1-415(C) requires that the lower tier subcontractor notify, by certified mail, the higher tier contractor, subcontractor, or project owner of a lapse in coverage within five days of such a lapse in coverage.

12. JIS Trucking, LLC never provided Chris Thompson Services, LLC with notice, by certified mail or otherwise, that its workers' compensation coverage had lapsed, as required by S.C. Code Ann. § 42-1-415(c).

13. Based on all of the above, Chris Thompson Services, LLC is informed and believes it must be relieved of any and all liability under this title.

WHEREFORE, Defendants Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order relieving Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company from any liability under the Act for WCC Claim Number 1112326 in accordance with S.C. Code Ann. § 42-1-415 and transfer liability, if any, to the S.C. Uninsured Employers' Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By Kirsten L. Barr
Kirsten L. Barr
Attorney for Chris Thompson Services, LLC
and Bridgefield Casualty Insurance Company

January 24, 2012
Retiled April 30, 2012

CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2012 I have caused a true and correct copy of the Petition to Transfer Liability to be mailed postage prepaid to the Claimant's attorney and parties to be added addressed as follows:

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

Sedrick Smalls
NS Trucking, LLC
137-A Gordon St
Charleston, SC 29403

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

P. Reid Wurder, Esq.
P.O. Box 20550
Charleston, SC 29413

Ms. Virginia Coker
Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1745
Columbia, SC 29202-1745


Kristen L. Bar

11/13/13 Petition to Transfer Liability

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1112328Carrier File # 943450

Carrier Code # _____

Employer FEIN _____

Samuel A. Rose

Claimant's Name

SSN _____

Address

Charleston, SC 29403

City State Zip

Home Phone _____

Work Phone _____

Kirsten L. Barr

Preparer's Name

JJS Trucking, LLC/SCUEF and Chris Thompson Services,
LLC/Bridgefield Casualty Insurance Company

Employer's Name

106 New Hope Dr.

Summerville, SC 29483

Address

City

State

Zip

Bridgefield Casualty Insurance Co.

Insurance Carrier

(843) 881-4228

Phone #

1. Date of injury: August 10, 2011

month day year

2. Total Weeks of Compensation Paid: 35 weeks

3. Type of Compensation Paid (TP or TT)/Periods of Payment:

Type: TTDFrom: 8/11/11To: 4/12/12

Type: _____

From: _____

To: _____

Type: _____

From: _____

To: _____

4. Date of First Payment:

8/11/11

month day year

5. Total Amount Paid

(a) Compensation: \$2,625.00(b) Medical (Include Nursing, Hospital Drugs, Etc.): \$1,055.85

6. Informal Conference is Requested:

☐ yes ☐ no
(check one)

7. Use these lines to send a memo to the Commission:

Kirsten L. Barr

Employer's Representative

(843) 881-4228

Phone

April 10, 2012

Date

Type or print all information. File this form 6 months after the alleged injury date and each 6 months until the Commission's File is closed. Form 18 must be filed whether or not compensation is ongoing. Check "yes" after number 6 to request an informal conference. Refer to R.67-413, R.67-507, and R.67-804 for further information.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SAMUEL ROSE

November 14, 2011
9:45 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



ESQUIRE
an Alexander Gallo Company

118

Toll Free: 888.486.4044
Telephone:

2700 Centennial Tower
101 Marietta Street
Atlanta GA 30303
www.esquiresolutions.com

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris
Thompson Services, LLC/Bridgefield
Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Samuel Rose,
taken before Laci Bearden, Court Reporter and Notary
Public, at the George Sink, P.A., 7011 Rivers
Avenue, N. Charleston, South Carolina on November
14th, 2011, commencing at 9:45 a.m.



ESQUIRE
an Alexander Gallo Company

119

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

APPEARANCES

For the Employer:

George Sink, P.A.
BY: Joseph B. Fisher
7011 Rivers Avenue
Suite 105
N. Charleston, SC 29406
jfisher@sinklaw.com

For the Carrier:

Trask & Howell, L.L.C.
BY: Kirsten L. Barr
763 Johnnie Dodds Blvd.
P.O. Box 2167
Mt. Pleasant, SC 29465
kbar@trash-howell.com

S.C. Uninsured
Employers Fund
BY: Timothy Killen, Esq
100 Executive Center
Drive, Suite 101
Columbia, SC 29210
Tkillen@sif.sc.gov



ESQUIRE
an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
101 Marietta Street
Atlanta, GA 30303
www.esquiresolutions.com

I N D E X

EXAMINATION BY MS. BARR

4

EXAMINATION BY MR. KILLEN

28

E X H I B I T S

(No exhibits produced.)

1 SAMUEL ROSE

2 was sworn (affirmed) and testified as follows:

3 EXAMINATION BY MS. BARR:

4 Q Mr. Rose, my name is Kirsten Barr and I represent a
5 company called Bridgefield Casualty Insurance Company, and
6 Chris Thompson Services regarding your worker's compensation
7 claim. And I'm sure Mr. Fisher's explained to you what
8 we're doing here today, but again, it's called a discovery
9 deposition, and it really is just what it sounds. It's my
10 chance to discover a little bit more about you as a person
11 and about the accident and your injuries and how you've been
12 doing since then. My questions are intended to be straight
13 forward, so if I ask something that is unclear or doesn't
14 make sense, please ask me to rephrase or repeat my question.
15 I'm happy to do that. Because otherwise, if you answer my
16 questions, number one, I'm going to assume you're answering
17 truthfully, and number two that you understood the question
18 before you answered it; fair enough?

19 A Okay.

20 Q The other thing is the court reporter is going to take
21 down everything we say here today. This is the microphone,
22 so we just need to speak up and speak clearly. I'll
23 understand you if you nod your head here today, but she
24 can't take that down on paper very well, so we just need to
25 remember to say yes or no and just again, answer it to the



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an Alexander Gallo Company

Toll Free: 888.486.4044

2700 Centennial Tower
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- 1 best of your ability.
- 2 If you would state your full name for the record?
- 3 A Samuel Archiedell Rose.
- 4 Q Could you spell your middle name for me?
- 5 A A-R-C-H-I-E-D-E-L-L.
- 6 Q And Mr. Rose, what is your date of birth?
- 7 A 1970.
- 8 Q And your social security number?
- 9 A
- 10 Q And are you married, single, divorced?
- 11 A Single.
- 12 Q Have you ever been married?
- 13 A No.
- 14 Q Do you have any children?
- 15 A No.
- 16 Q And what is your current you address?
- 17 A i Street, Charleston, South Carolina.
- 18 Q And who do you live with at n Street?
- 19 A My cousin.
- 20 Q And how long have you lived there?
- 21 A I grew up there.
- 22 Q And it's just the two of you living there?
- 23 A Yes.
- 24 Q Anybody depending on you for support?
- 25 A No.



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1 Q Tell me, it's my understanding you were working for a
2 company called JJS Trucking at the time of this accident; is
3 that right?

4 A Yes.

5 Q And who did you work for at JJS Trucking?

6 A Sedrick Smalls.

7 Q And when did you start working for Sedrick Smalls at
8 JJS Trucking?

9 A Back in February or March.

10 Q Of 2011?

11 A Yes.

12 Q And what were you hired to do for JJS Trucking?

13 A To haul woodchips from Summerville to North Charleston.

14 Q And that was to North Charleston to the Capstone plant?

15 A Yes.

16 Q Did you have a set work schedule that you did?

17 A From 12:00 o'clock until 12 noon. Either 12 noon or
18 2:00 o'clock, and I worked a 10 to 12 hour shift.

19 Q And during your ten to 12 hour shift, I guess it would
20 be a ten hour shift if you started at 2:00 o'clock in the
21 afternoon?

22 A Yes -- well, no. From the time I started, I worked
23 either 10 to 12 hours, and I worked until the plant closed.

24 Q And to your knowledge, what time did the plant close?

25 A It's suppose to close at 3:30, but sometimes it closes



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1 early.

2 Q And would you work until the North Charleston plant
3 closed or the saw mill up in Summerville closed?

4 A Summerville. North Charleston is open 24/7.

5 Q So you would begin and start your day at Summerville?

6 A Yes.

7 Q Did you keep the truck you used at your home or JJS
8 Trucking, how did your day start?

9 A It was parked in Summerville at the saw mill.

10 Q So would you drive your personal vehicle to the saw
11 mill then?

12 A Yes.

13 Q Did you have to punch a time card or anything like
14 that, or how did you keep track -- how would JJS keep track
15 of your time?

16 A Our daily logs.

17 Q What would you keep track of in your daily log?

18 A The time that I start work, the inspection of the
19 truck, and number of runs I made.

20 Q And would you also get receipts from either the saw
21 mill or from the mill in Charleston as far as what you
22 loaded or unloaded?

23 A Each load that we pick up we received a receipt. When
24 we got to Capstone we received another receipt.

25 Q And what would you do with these receipts?



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1 A We turned them in at the end of the week.

2 Q And who did you turn the receipts in to?

3 A They went to Chris Thompson. He has a mailbox placed
4 at the saw mill in Summerville, and we fill out our work
5 sheet, and we put everything in the envelope for him.

6 Q And then how would you get paid?

7 A By check. Sedrick Smalls is the one that paid me.

8 Q And what was the basis of your pay? How did he
9 calculate how much you would earn per week?

10 A \$25 dollars per load.

11 Q So someone would add up all those receipts and there
12 would be \$25 even for each load that you would get paid?

13 A Yes.

14 Q And how many loads would you average per shift?

15 A Anywhere from six, seven loads per shift.

16 Q And how many days per week did you do this?

17 A Five.

18 Q Was it Monday through Friday?

19 A Yes. We worked on weekends as needed?

20 Q How frequently would you work weekends.

21 A Not often?

22 Q And how did it work? Would Mr. Smalls pay you in
23 check, or would he give that to you personally? Was it
24 mailed to you?

25 A It was given personally.



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1 Q By Mr. Smalls?

2 A Yes.

3 Q And what day of the week would he give you your check?

4 A Friday.

5 Q So every Friday you would get a check?

6 A Yes.

7 Q And how much was your average check that you were paid
8 on Fridays by Mr. Smalls?

9 A It ranged from 650 to 750 depending on how many loads I
10 ran for the week.

11 Q And so you would get the whole 650 to 750?

12 A Yes.

13 Q He didn't take out any taxes?

14 A He took out a hundred dollars for damages to the truck
15 for an escrow account.

16 Q He took that out each week or just the beginning?

17 A Each week.

18 Q What is your job status with Mr. Smalls? Are you still
19 employed by him?

20 A Yes, to my understanding.

21 Q Do you still have funds in that escrow account?

22 A I have no idea.

23 Q When was the last time you got a paycheck from
24 Mr. Smalls?

25 A The week prior to the accident.



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1 Q Have you spoken to Mr. Smalls since the accident?

2 A Once or twice.

3 Q Did he come see you in the hospital?

4 A Yes.

5 Q Has he done anything to help you with your lost wages
6 or your medical bills?

7 A Nothing.

8 Q Have y'all discussed that?

9 A When I asked him about it, he told me about the
10 insurance. When I contacted the insurance, nothing.

11 Q And what did he tell you about insurance?

12 A That he had insurance.

13 Q Did he tell you, like, auto insurance or worker's comp,
14 or did he tell you what kind?

15 A He said he had workers' comp insurance for us.

16 Q And he gave you the name of a company to call?

17 A Yeah. I gave that to the lawyer. I don't remember the
18 name. He also said that he spoke with Chris Thompson, and
19 Chris Thompson told him that he would cover the medical
20 bills.

21 Q Did you ever speak with anybody at Mr. Smalls insurance
22 company, or did you just pass that on to your attorney?

23 A They contacted me at first, after the accident. They
24 sent me a card and then after that, nothing. I passed all
25 that information on to my attorney.



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1 Q As I understand it, you had legal representation pretty
2 quickly after the accident; is that fair to say?

3 A Yes, I called him.

4 Q I mean, that was within like a day or two after the
5 accident you had somebody working on your behalf?

6 A In two days.

7 Q Where did you work prior to JJS Trucking?

8 A Leopard, Incorporated.

9 Q Leopard?

10 A Yes.

11 Q What does Leopard, Incorporated do?

12 A It's a tire company. We distribute tractor trailer
13 tires.

14 Q How long did you work for Leopard?

15 A About seven years.

16 Q And where's Leopard located?

17 A It's headquartered out of New Jersey. It's local
18 office is here in North Charleston.

19 Q You said that they distribute tractor trailer tires.
20 Were you doing long distance hauling, trucking?

21 A Both. My job required mostly local driving.

22 Q So local within South Carolina?

23 A No. South Carolina, North Carolina, Florida, Georgia.

24 Q And why did you leave Leopard, Incorporated?

25 A The work slowed down, and I needed money.



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1 Q When did you last work for them?

2 A February, the latter part of February.

3 Q Of this year?

4 A Yes.

5 Q How much were you earning on average at Leopard?

6 A About 500 a week.

7 Q And is that the same you would earn from them say in
8 2010 or 2009?

9 A Yeah.

10 Q One of the things we have to do in worker's comp is try
11 to get an idea of how much money you were making in the past
12 year. So was there any other income from any sources other
13 that Leopard, Incorporated or from Sedrick Smalls in this
14 past year, 2011?

15 A Allstate Logistics.

16 Q What did you do for Allstate Logistics?

17 A Local runs. That's just to supplement my income.

18 Q When was the last time you worked for Allstate
19 Logistics?

20 A Back in January. The company went out of business.

21 Q So around the time of this accident, say July or August
22 of 2011, any other supplemental sources of income?

23 A No.

24 Q The checks that you would get from Sedrick Smalls,
25 would it be on a JJS checking account?



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1 A Yes.

2 Q Would it always be the same looking check, or did you
3 ever get a check personally from Sedrick?

4 A Always from JJS Trucking.

5 Q And if we needed to try to track down how much those
6 checks were, would you have a habit of cashing them
7 somewhere or depositing them into a checking or saving
8 account?

9 A I always cashed it at First Citizens Bank.

10 Q Did you have an account there or was that where
11 Mr. Smalls did?

12 A That's where Mr. Smalls had his account.

13 Q Was there a particular branch that you used?

14 A Summerville, Main Road.

15 Q Tell me, on the day of this accident, I believe it was
16 August 10, 2011, what were you doing before the accident
17 occurred or what were you in the process of doing when the
18 accident, occurred?

19 A That was my last run for the night, and I was on my way
20 to Capstone to drop the load.

21 Q Did you ever turn in the receipts from that day to
22 Sedrick Smalls?

23 A No. The receipts were left inside the truck. My log
24 book and everything was left in the truck.

25 Q And tell me, as a result of the accident, what

1 happened. Did you stay inside the cab of truck, were you
2 thrown from the cab of the truck, what happened to you
3 specifically?

4 A After the accident, I was pulled out of the truck.
5 Some people stopped, and they pulled me out of the truck and
6 tossed me over the wall, the median of the highway.

7 Q Are there air bags in the truck or any other restraint
8 devises?

9 A Seatbelt.

10 Q Do you recall hitting in particular on the inside of
11 the cab, or did the seatbelt restrain you?

12 A My knee shattered the steering column. My head bounced
13 off the rear glass and steering wheel.

14 Q You said the rear glass?

15 A Yes, it was a day cab.

16 Q Anything else that you can really recall hitting?

17 A Just my right knee when it shattered the steering
18 column and just hitting -- I blacked out when I hit the
19 glass, but I do remember getting pulled from the cab, and
20 then they threw me over the wall before the truck blew up.

21 Q When you blacked out were you totally out cold, or did
22 things just kind of go hazy for you a little bit?

23 A I was told I was out cold.

24 Q It's my understanding you were taken to MUSC; is that
25 right?



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1 A Yes.

2 Q How long did you stay at MUSC?

3 A A day and a half.

4 Q And when they released you from MUSC were you referred
5 to any particular doctors or what was your plan of care
6 after your release from MUSC?

7 A They scheduled me an appointment with the neurologist.
8 They gave me a physical therapist and told me I needed to
9 see an orthopaedist as well.

10 Q Do you have a family physician?

11 A No, not at the time, no.

12 Q In the past, have you had a personal family doctor?

13 A No, I just use military doctors.

14 Q Did you serve in the military?

15 A No, my parents.

16 Q So when you were younger, you would just see VA
17 doctors?

18 A Yeah.

19 Q But you haven't seen anybody at the VA since this
20 accident?

21 A No.

22 Q And if you need to take a break, just let me know.

23 A I took pills before.

24 Q What sort of pills might have you taken today?

25 A Flexeril, Fioricet, Ellevill, Ibuprofen.



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1 Q Do those medications have any effects on you, side
2 effects? Do they make you drowsy or --

3 A Drowsy, dizzy but they are suppose to help me cope with
4 pain.

5 Q Now, after MUSC, did you -- you said that they
6 scheduled a appointment with a neurologist; is that right?

7 A Yes.

8 Q Did you see the neurologist?

9 A No, they kept canceling my appointment.

10 Q Have you seen a neurologist at all since the accident?

11 A I'm scheduled to see one next week.

12 Q Who are you scheduled to see next week?

13 A Dr. Weinstein(sic).

14 Q Doctor who?

15 A Weinstein.

16 Q Weinstein? Is this somebody that you're --

17 MR. FISHER: Wildsteen.

18 MS. BARR: Wildsteen.

19 Q And you're to see Dr. Wildsteen about your neck?

20 A My neck, my back, and my knee.

21 Q Now, I know MUSC had talked to you about seeing an
22 orthopedist about your knee. Did you see any of the
23 orthopedists at MUSC for your knee?

24 A No. They canceled the appointments as well.

25 Q There was talk about you seeing Dr. Hartsock(ph). Did



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1 you ever see him? He's an orthopedist at MUSC?

2 A He's the one that canceled the appointment. There was
3 a problem with the insurance.

4 Q You've seen Dr. Wildsteen already; is that right?

5 A I've spoken with him, but I haven't went to his office
6 yet.

7 Q Have you seen any doctor since you were released from
8 MUSC?

9 A Yes.

10 Q And who has treated you?

11 A Dr. Able, Dr. Keller, Dr. Willis.

12 Q Dr. Able, what kind of doctor is Dr. Abel; do you know?

13 A General practitioner.

14 Q And how did you find Dr. Able?

15 A Through my lawyer's office.

16 Q And what has Dr. Able been doing for you?

17 A He's the initial one that treated me for my neck, my
18 back, and my knee. He's been --

19 Q Giving you the medications?

20 A Some of it. I'm just monitoring my treatment.

21 Dr. Kellet(ph) is the pain specialist. He's the one -- he's
22 been trying to help me cope with my pain. He's given me
23 Oxycodone, Lortab, just things to help with the pain. I've
24 token two epidurals, cortisone shots.

25 Q And were your epidurals for your neck or for your lower



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1 back?

2 A My lower back. The cortisone shots were for my neck.
3 And he referred me to Dr. Wildsteen.

4 Q Have you seen anybody in Dr. Wildsteen's office.

5 A No. I took an MRI already, and I'm waiting for my
6 appointment.

7 Q Where did you have the MRI done?

8 A Trident County Radiology.

9 Q And was that for your neck or for you or lower back?

10 A My neck. I've had an MRI of my knee done at MUSC.

11 Q All right. Do you have any appointments with any
12 doctors that deal specifically with the knee problem or the
13 main problem, your neck and your back at this point?

14 A My neck and my back at this point.

15 Q And you mentioned Dr. Willis; is that right?

16 A Yes.

17 Q What has Dr. Willis done for you?

18 A Mostly it's just therapy, physical therapy and just to
19 help me deal with the pain.

20 Q Any doctors other than Dr. Able, Dr. Kellet,
21 Dr. Willis?

22 A No.

23 Q And then of course you saw a number of doctors while
24 you were a patient at MUSC.

25 A Yes.



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1 Q After -- I know you spent the night there but after
2 your release did you ever go back to see any doctors at
3 MUSC?

4 A No. I went to my appointments but they kept getting
5 canceled. And the also assigned me a physical therapist.
6 And I forgot who that was.

7 Q Did you get any therapy done there?

8 A Three times.

9 Q And I know you said you scheduled Dr. Wildsteen. Any
10 other doctors appointment?

11 A No. Doctor Ables, yes.

12 Q What sort of schedule to you have with Dr. Able? Do
13 you see him like once a week or once a month?

14 A Every two weeks.

15 Q And the pain medicines you have now you said you get
16 some from Dr. Able and then some from Dr. Kellet?

17 A Yeah.

18 Q Tell me a little bit about the pain you're feeling now,
19 where you're feeling it, and help me understand how you
20 describe it.

21 A Dizziness.

22 Q And how frequently are you dizzy?

23 A Daily.

24 Q Is it something that comes and goes?

25 A If I move too fast then my head starts spinning. If I

1 get up, when I first stand up I have to orient myself.

2 There's a throbbing in the back of my head that hurts. My
3 neck, if I hold it up too long it starts hurting. My lower
4 back is still in pain. And my knee, if I go for walks in
5 the neighborhood to exercise, walking less than a block I
6 just need help or need some rest just to get back on.

7 Q And that's your right knee?

8 A Yeah.

9 Q Does it lock up or it just hurts?

10 A It locks up and it hurts.

11 Q Do you feel the pain anywhere else?

12 A My whole back. My entire back.

13 Q Is there anything that helps with the pain or improves
14 it even a little bit as far as your back pain goes. A
15 position or activity that helps?

16 A Showers, warm Showers, Bengay.

17 Q But you have been doing some exercises with the
18 physical therapist?

19 A Yes.

20 Q Do they have you doing anything at home as far as
21 exercising or stretching to help with your back?

22 A Stretching helps my back and my neck.

23 Q Are you good? Some people are better than others about
24 actually doing the stretches and exercises. Do you do them?

25 A I do some of them, but it hurts.



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1 Q You mentioned that the medication that you've taken
2 before you came here today, do you take any other
3 medications say like at bedtime?

4 A Yeah.

5 Q What other medications do you take?

6 A Flexeril.

7 Q Your handing me a list and it look likes --

8 A Those are all the medication that I take.

9 Q So it's Flexeril, Amitriptyline, Fioricet, Ellevill,
10 Ibuprofen, Lortab, the Ibuprofen, and you also have
11 Neurontin and Oxycodone?

12 A Right?

13 Q And the Oxycodone, is that something that you take when
14 the pain gets really bad?

15 A Yes.

16 Q And the Neurontin you take everyday?

17 A Yes.

18 Q Have you ever had surgery before?

19 A No.

20 Q Have you ever been hospitalized for any reason prior to
21 this accident?

22 A No.

23 Q Have you ever had a workmen's compensation claim or a
24 personal injury claim?

25 A Never.

1 Q Have you ever been in an automobile accident prior to
2 this?

3 A Yes.

4 Q And when was that?

5 A I think it was '07.

6 Q In 2007?

7 A Yes.

8 Q And where did that accident occurred?

9 A Here in Charleston.

10 Q Were you injured in that accident?

11 A No.

12 Q Was there any sort of settlement with the insurance
13 company over that accident?

14 A Yes.

15 Q Do you recall about how much you received in that
16 settlement?

17 A No.

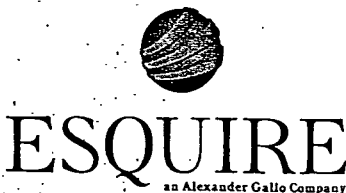
18 Q Was it a couple hundred dollars, a couple thousand
19 dollars?

20 A It was a few hundred. And the owner of the car is the
21 one that got his car repaired. I borrowed the car.

22 Q Did they take you hospital or anything after the
23 accident?

24 A No.

25 Q Do you have any chronic medical conditions like high



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1 blood pressure, diabetes anything like that.

2 A High blood pressure. Asthma.

3 Q Do you take prescription medications for either of
4 those conditions?

5 A For high blood pressure Lotensin.

6 Q And who prescribes Lotensin for you?

7 A Dr. Able.

8 Q And before Dr. Able, who --

9 A I was not on any medication for high blood pressure.

10 Q Were you aware you had high blood pressure before the
11 accident?

12 A Yes, but it wasn't dangerously high.

13 Q Do you monitor your blood pressure now?

14 A Now, I do, yes.

15 Q Do you have it under control now?

16 A Yes.

17 Q And just so I'm clear, you may have already told me
18 this, but Dr. Able -- you never saw Dr. Able until after
19 this accident in August?

20 A Right. The blood pressure medicine, they first assumed
21 the headaches I was having was because of the blood
22 pressure. Then the blood pressure came under control and
23 then I still had the headaches.

24 Q Does the pain medication that you're taking, does that
25 help with the headaches?



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1 A No, not really.

2 Q How would you describe the type of headaches you have.
3 Where do you feel it and what does it feel like?

4 A The back of my head. It's like a buildup of pressure,
5 throbbing.

6 Q Does that change through the course of the day, the
7 intensity?

8 A Sometimes it gets worse and sometimes it's milder, but
9 it's there.

10 Q I noticed your wearing a soft collar around your neck.
11 Where did you get that?

12 A Dr. Able.

13 Q When do you wear that?

14 A Whenever I have to keep my head up.

15 Q So like you don't wear that around the house or that
16 sort of thing?

17 A No. Right now just keeping my head up it hurts, and my
18 collar is just to help me keep it up.

19 Q So you kind of rest your chin on it a little bit?

20 A Yeah.

21 Q And the cane, I notice that your off carrying the cane?

22 A Dizziness and balance.

23 Q Have you talked to Dr. Able about maybe your
24 medications effecting you making you a little dizzy?

25 A He said that the whiplash effect, I'm going to be dizzy



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1 for another year. I'll still have side effects from it.

2 Q But you have not gone to a neurologist to have that
3 checked out.

4 A Not yet.

5 Q And you don't think any appointments are scheduled
6 right now with the specialist?

7 A No. They've taken X-rays, and Dr. Kellet is the last
8 to take X-rays of my neck, and he referred me to the
9 neurologist.

10 Q And that's in his same practice together, Dr. Wildsteen
11 and Dr. Kellet; is that right?

12 A Dr. Willis and Dr. Kellet is in the same practice.
13 Dr. Able is in a different practice.

14 Q Have you had any sources of income since the accident?

15 A Just family and money that I've borrowed.

16 Q You don't have like a AFLAC policy or any kind of
17 insurance policy?

18 A No.

19 Q And your medical bills, have you started getting bills
20 from MUSC or any of the other providers?

21 A Yes.

22 Q Have you paid any of your medical bills?

23 A No.

24 Q When was the last time you spoke to Sedrick Smalls?

25 A It's been over a month ago.



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1 Q And you said that he told you that you were covered by
2 workmen's? He had a worker's comp policy that covered you?

3 A That was in the hospital after the accident he told me
4 that and that was back in August.

5 Q Did you subsequently find out that he didn't have a
6 policy in effect?

7 A Yes.

8 Q Did you talk to him about that?

9 A I spoke with my lawyer.

10 Q But you never confronted Mr. Smalls, and said hey, your
11 policy was no good?

12 A Yeah. I asked him about it, and he still showed me
13 that it was good.

14 Q Do you have a gut feeling, do you believe him, do you
15 think he had a workmen's compensation policy?

16 A At the time of the accident, I did believe him.

17 Q What about now, do you know what to think?

18 A Right now I was told they didn't that the policy
19 lapsed.

20 Q Do you think, you know, if Mr. Smalls said he had it,
21 do you think he knew it had lapsed, or do you think he was
22 telling you the truth --

23 A At the time, I assumed he was telling me the truth.

24 Q If we needed you to help us figure out how much you had
25 earned while working for JJS Trucking, do you have any sort



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1 of record like a check stub or anything like that that you
2 could --

3 A I didn't save any.

4 Q You didn't save any.

5 A We probably can go to the bank and ask for copies of
6 the check.

7 Q But you said they were always on a JJS Trucking
8 checking account?

9 A Yes.

10 Q And then there would have also been somebody would have
11 kept a log --

12 A Sedrick Smalls.

13 Q Did your log survive the accident; do you know?

14 A I have no idea.

15 Q With the log that you would have had with you on the
16 night of the accident, been your only log you ever had
17 working for JJS Trucking, or would there have been other
18 log?

19 A Copies of the logs are kept by Chris Thompson when we
20 turned in the logs at the end of the week.

21 Q Did you ever see him personally and like hand him the
22 log, or was there just left in the place?

23 A We left it in a place.

24 Q Was that left at Capstone?

25 A No, it was left in Summerville.



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1 Q At the saw mill in Summerville?

2 A Yes.

3 Q Would it have been at that front office where you drop
4 in?

5 A No, back at the scales.

6 Q Would you talk to anybody when you dropped that off?

7 A No. We put it in a envelope in the mailbox. The
8 mailbox was for CTS Trucking, and we just put it in an
9 envelop for CTS Trucking.

10 Q There was just some kind of lobby with the mailbox in
11 it?

12 A It's outside.

13 Q Outside. And it's over there by the scales?

14 A Yes. And if there was any problems CTS would contact
15 me or Sedrick Smalls would contact me.

16 Q As far as problems with the logs?

17 A Yes.

18 Q Mr. Rose, I think that's all the questions I have for
19 you. Mr. Killen may have some questions for you and your
20 lawyer might have some, too.

21 EXAMINATION BY MR. KILLEN:

22 Q I'm Tim Killen. I represent the state agency involved
23 in this case. This is Workmen's Compensation Uninsured
24 Employer Fund. When you went to work for JJS Trucking, did
25 your route ever vary?



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1 A We took the interstate or we went the back way through
2 Hanahan and Goose Creek.

3 Q But you were always going to the same place from the
4 same place; is that correct?

5 A Yes.

6 Q How did you know you were hauling these loads for Chris
7 Thompson?

8 A Chris Thompson was the contractor and everything coming
9 out of Summerville saw mill is either hauled for Don Sweet
10 or Chris Thompson. Everybody else were just subcontractors
11 under those two.

12 Q How did you know you were you working under Chris
13 Thompson?

14 A I was told.

15 Q Who told you that?

16 A Sedrick Smalls.

17 Q Did you ever work for anybody else other than Chris
18 Thompson?

19 A At the saw mill, no.

20 Q You said that Chris Thompson would contact you?

21 A No, his secretary.

22 Q His secretary would contact you?

23 A If there's a problem with the logs or paperwork that I
24 turn in, they left either notes in the box for us, or when
25 we picked up our checks, we received the note from them, or



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1 they would call us on the phone, or our boss would tell us,
2 relay the message to us.

3 Q Did somebody from Chris Thompson call you more often,
4 or did your boss Sedrick Smalls?

5 A Mostly Sedrick Smalls. Once I was contacted by someone
6 from Chris Thompson's office?

7 Q Just once?

8 A Twice.

9 Q Are you sure?

10 A Yes.

11 Q I don't want you to guess. I just want you to tell us
12 what you know. And when you were contacted by someone from
13 Chris Thompson what did they want?

14 A First time, was my hours of service. I went over 12
15 hours, and they told me not to do that, and the second time
16 it was for truck inspections.

17 Q What in regards to truck inspections?

18 A I needed to take the truck over to his shop to have
19 them inspect it.

20 Q You needed to take your JJS Trucking truck over to
21 Chris Thompson's shop; is that correct?

22 A Yes.

23 Q So that someone from Chris Thompson's outfit could
24 inspect your truck?

25 A The trailer. The trailers that we hauled belonged to



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1 Chris Thompson. The trucks belong to JJS Trucking, and they
2 were responsible for the maintenance on the trailer. JJS
3 Trucking was responsible for maintenance on the truck.

4 Q Every time you hauled a load the trailer was Chris
5 Thompson's?

6 A Yes.

7 Q When you were hurt the trailer on your out truck was
8 Chris Thompson's?

9 A Yes.

10 Q Did JJS Trucking own any of the trailers?

11 A No, just the truck.

12 Q Could you have done the job without the trailer?

13 A No. The trailer is used to haul the chips.

14 Q And so in order to get the job done you needed Chris
15 Thompson's trailer?

16 A Right.

17 Q Did you ever have any direct interaction with Chris
18 Thompson himself?

19 A His mechanics.

20 Q What would they do?

21 A They were the ones that inspected the trucks, took care
22 of the maintenance on the trucks, fix the tires, just the
23 regular maintenance on the trailer.

24 Q You said the trucks, you mean the trucks or the trailer
25 or both?

1 A The trailer. The day before the accident they
2 inspected the trucks, the truck itself.

3 Q And that JJS Trucking's truck?

4 A Yes. Chris Thompson mechanic inspected the truck
5 itself. The tractor, the day before the accident and prior
6 to that they were only inspecting the trailer and just done
7 any maintenance or anything that we found wrong with the
8 trailer, they would fix it.

9 Q Do you know why they would inspect your truck the day
10 before the accident?

11 A One of trucks that belonged to JJS Trucking had a tire
12 problem. The treads on the tires was worn. The mechanics
13 inspected it when it was parked at Summerville saw mill. He
14 left a note saying it needed to get repaired, and then he
15 wanted to see all the trucks and inspect the tires.

16 Q He being who?

17 A The head mechanic. A guy named Tim.

18 Q Tim working for?

19 A Chris Thompson. And to my knowledge he wanted every
20 truck that JJS drove inspected by him.

21 Q Did you talk to Sedrick Smalls about that?

22 A Yes.

23 Q What did Sedrick Smalls tell you?

24 A The truck that I was driving I had to take it to the
25 mechanic to get some tires replaced, and after I had the



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1 tires replaced, I took it to have Tim, Chris Thompson's
2 mechanic to have it inspected.

3 Q What did Sedrick Smalls tell you about the inspections?

4 A That we passed the inspection.

5 Q Did he tell you anything else?

6 A No. He just you told me to go get the trailer from
7 Chris Thompson, so I could continue my work for the day.

8 Q Did you ever hand in your logs to Sedrick Smalls or JJS
9 Trucking?

10 A Yes.

11 Q How frequently would you do that?

12 A When I first started, I gave him my logs personally.
13 But after approximately two weeks I started putting it in
14 the box.

15 Q And giving it directly to Chris Thompson's company?

16 A Yes.

17 Q Beside the truck and the trailer, was there anything
18 else you needed to do your job?

19 A Fuel.

20 Q And you needed the logs; right.

21 A Yep.

22 Q How was fuel paid for?

23 A Tonya Smalls, Sedrick's wife, we met her at the gas
24 station on Monroe Gray Avenue. She would fill up the truck.
25 She did it twice a week.

1 Q Did you ever --

2 A Plus she would pay for it after we filled it up.

3 Q Did you fill up your truck any other way than that?

4 A No.

5 Q And when you got those new tires on the truck how was
6 that paid for?

7 A He paid for it himself. Sedrick Smalls paid for it.

8 Q Did anybody working for JJS Trucking ever get fired
9 while you worked there?

10 A Nobody got fired.

11 Q Did anybody ever get reprimanded while you were there?

12 A Not to my knowledge.

13 Q Did you ever get reprimanded in any way?

14 A Once for my hours of service.

15 Q You got reprimanded by Chris Thompson's secretary.

16 A Both. Chris Thompson secretary and Sedrick Smalls.

17 Q And you got paid \$25 a load?

18 A Yes.

19 Q And all the load you were hauling were --

20 A Woodchips.

21 Q In Chris Thompson's trailers.

22 A Yes.

23 Q Do you know whether or not Chris Thompson had a right
24 to fire you?

25 A He would recommend that we be fired.



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1 Q What do you think would you happen if he made that
2 recommendation?

3 A We would be fired.

4 Q Is it your understanding that Chris Thompson said he
5 would pay for your medical bills?

6 A That's what I was told.

7 Q You were told that by Sedrick Smalls?

8 A Yes.

9 Q And none of your medical bills have been paid?

10 A Nothing.

11 Q And you have not received any form of weekly
12 compensation while you have been out?

13 A No.

14 Q Did Chris Thompson subcontract this work out to any
15 other companies other than JJS Trucking?

16 A I wouldn't know that.

17 Q Were you aware of any drivers from other companies
18 hauling loads using Chris Thompson's trailers?

19 A I wouldn't know that.

20 Q Capstone ever have any drivers?

21 A None that came in contact with it. Everybody that
22 drove there just came from all over the state.

23 Q You never saw any Capstone employers driving your truck
24 doing the same things that you were you doing?

25 A I wouldn't know if they were Capstone employees.



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1 Q So you don't know; is that the right?

2 A Right.

3 Q How often do you take the Oxycodone?

4 A I take the oxycodone when the pain is unbearable.

5 Q When's the last time you took it.

6 A Last night.

7 Q Before that, when's the last time you took it?

8 A When I took my MRI.

9 Q How long ago was that?

10 A Last week, Monday.

11 Q Do you ever take it more than a couple times a week?

12 A No.

13 Q And you said you were tossed over the median when you
14 got out of the truck?

15 A The people that pulled me out of the truck. They tried
16 to pull me away from it. I remember one guy saying get him
17 on the other side against the wall, and then I felt them
18 throw me over the wall, and when I came, to the police and
19 firemen was dragging me further away from the truck while it
20 was burning.

21 Q What was burning?

22 A The truck blew up. The tractor that hit me blew up,
23 and my truck was burning. It caught on fire.

24 Q You didn't get any burns yourself?

25 A Smoke Inhalation, no.

- 1 Q Who pulled you out of the truck?
- 2 A I have no idea.
- 3 Q Do you know who hit you?
- 4 A I was told it was the driver by the name of Robbie.
- 5 Q Do you know Robbie?
- 6 A No.
- 7 Q Have you ever met him prior to that night?
- 8 A Just speaking saying hi and bye.
- 9 Q Where would you see him?
- 10 A When I'm leaving or coming to work. When I'm leaving
- 11 the saw mill or coming to work to the truck.
- 12 Q Saw mill. That's where you would start your work every
- 13 day?
- 14 A Yes.
- 15 Q What business is there?
- 16 A Summerville saw mill. That's where we picked up the
- 17 woodchips to take to Capstone.
- 18 Q Where did you keep your --
- 19 A All the trucks were parked across the street from the
- 20 saw mill property. All of Chris Thompson's trucks and JJS
- 21 trucks, they were parked there.
- 22 Q Where there any other trucks from any other companies
- 23 parked in the same lot?
- 24 A There used to be, but back in June or you July Don
- 25 Sweet, he had his drivers bring his trucks to him, and his

1 sub contactors parked their trucks somewhere else. The only
2 people that parked there was Chris Thompson and JJS trucks.

3 Q Do you know anything about who paid who to park there?

4 A No.

5 Q Do you know anything about the agreement between JJS
6 Trucking and Chris Thompson?

7 A No.

8 Q Do you know how much -- and I know I just asked you
9 this question. Do you know what percentage Chris Thompson
10 took from each of your loads.

11 A No.

12 Q Did you have an understanding what would have happened
13 had your truck not passed that inspection by Chris
14 Thompson's personnel that day?

15 A I would have either had to drive a different truck or
16 not work.

17 Q Do you know whether or not Sedrick Smalls had any
18 discussions with Chris Thompson when you were hired?

19 A I don't know.

20 Q That's all I have.

21 MS. BARR: Thank you, sir. That's all we have for
22 you if Mr. Fisher doesn't have any questions.

23 (The deposition was concluded at
24 10:40 a.m. November, 14th,
25 2011.)

1 STATE OF SOUTH CAROLINA)

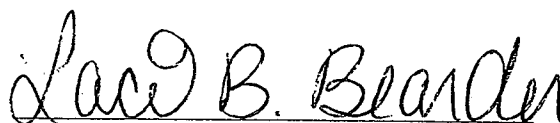
2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Laci B. Bearden, Court Reporter and Notary Public,
5 certify that I did have Samuel Rose to appear before me at
6 9:45 a.m. on Monday, November 14th, 2011, at the law offices
7 of George Sink, P.A., 7011 Rivers Avenue, n. Charleston,
8 South Carolina; that the witness was sworn and cautioned to
9 tell the truth, the pages constitute a true and accurate
10 transcript of the testimony given at that time and place.

11 I further certify that I am not of counsel or kin to
12 any of the parties to this cause of action, nor am I
13 interested in any manner in its outcome.

14 IN WITNESS WHEREOF, I have hereunto set my hand and
15 seal this the 14th day of November, 2011.

16
17 
18

19 Laci B. Bearden

20 Notary Public for South Carolina

21 My Commission Expires: September 29, 2021
22
23
24
25

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,
vs.
JJS Trucking, LLC/SCUEF and Chris Thompson
Services, LLC/Bridgefield Casualty Insurance
Company,
Employer,
and
Bridgefield Causality Insurance Co., Carrier,
Defendants.

DEPOSITION OF

SEDRICK SMALLS

November 14, 2011
11:00 a.m.

George Sink, P.A.
7011 Rivers Avenue
N. Charleston, South Carolina

Laci Bearden, Court Reporter and Notary Public



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BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1112328

Samuel A. Rose,
Employee, Claimant,

-vs-

JJS Trucking, LLC/SCUEF and Chris
Thompson Services, LLC/Bridgefield
Casualty Insurance Company,
Employer.

-and-

Bridgefield Causality Insurance Co.,
Carrier, Defendants.

The deposition of Sedrick Smalls,
taken before Laci Bearden, Court Reporter and Notary
Public, at the George Sink, P.A., 7011 Rivers
Avenue, N. Charleston, South Carolina on November
14th, 2011, commencing at 11:00 a.m.



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I N D E X

EXAMINATION BY MR. FISHER	4
EXAMINATION BY MS. BARR	19
EXAMINATION BY MR. KILLEN	22
EXAMINATION BY MR. FISHER	38
EXAMINATION BY MR. KILLEN	39

E X H I B I T S

Plaintiff's Exhibit Number One	8



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1 SEDRICK SMALLS

2 was sworn (affirmed) and testified as follows:

3 EXAMINATION BY MR. FISHER:

4 Q My name is Joe Fisher. I represent Samuel Rose with
5 the worker's compensation claim that we filed arising out of
6 an accident that occurred on August 10, 2011. I want to ask
7 you some questions about your relationship with my client, a
8 work relationship and your work relationship, business
9 relationship with a gentleman named Chris Thompson and his
10 company Chris Thompson Services, LLC; okay?

11 A Yes, sir.

12 Q Will you please state your name for the record?

13 A Sedrick Smalls.

14 Q Mr. Smalls, where do you live at?

15 A 137A Gordon Street, Charleston, South Carolina, 29403.

16 Q And are you familiar with the company called JJS
17 Trucking?

18 A Yes.

19 Q And how are you familiar with that company?

20 A I am the owner, president. I think that's it, the
21 president.

22 Q Are there any other owners, any other shareholders,
23 anything like that in JJS Trucking?

24 A No.

25 Q Your a sole proprietor?



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- 1 A Yes.
- 2 Q Sole owner?
- 3 A Yes. President, yes.
- 4 Q And do you know a gentlemen named Samuel Rose?
- 5 A Yes.
- 6 Q How do you know Mr. Rose?
- 7 A I employed him at JJS Trucking.
- 8 Q Do you remember when he went to work for you?
- 9 A I believe it was the fourth month.
- 10 Q I think he testified earlier he went to work for you in
- 11 April of 2011. Would that be about right?
- 12 A Correct, correct.
- 13 Q Was he working for you in August of 2011?
- 14 A Yes.
- 15 Q And JJS Trucking, you guys subcontract work for Chris
- 16 Thompson Services; is that correct?
- 17 A Correct.
- 18 Q And how long have you had a relationship to work with
- 19 Chris Thompson Services?
- 20 A For over three plus years.
- 21 Q And what is that relationship?
- 22 A I'm a subcontractor. He -- I pull loads for him. He
- 23 provides a trailer, and I provide my insurance coverage to
- 24 him, and he pays me by the ton to carry each load.
- 25 Q And where do these loads go to, and where do the loads

1 come from?

2 A They come from a lumber mill in Summerville, and then
3 they go to a paper mill in Charleston, and the lumber mill
4 is off of Highway 78 and they go to Virginia Avenue.

5 Q And that's your exclusive contract with him?

6 A Yes.

7 Q You don't haul anything else anywhere other than this
8 route from Summerville to the paper mill; is that right?

9 A Correct.

10 Q And let me see, my client had started working for you
11 in April of 2011. Did you pay my client?

12 A Yes, I paid him. Yes.

13 Q And how did you pay him?

14 A I paid him as a subcontractor by the per load. For
15 every load that he received, he got paid for each load.

16 Q And how much did he get paid per load?

17 A Twenty-five dollars per load.

18 Q And how many loads would you say he could make on
19 average in a day?

20 A Focus -- he would on average per day it was normally
21 around five loads. Sometimes a little bit more, sometimes a
22 little bit less, but on average for Mr. Samuel every week,
23 he typically got 25 to 30 loads every week. I do have some
24 documentation for that.

25 Q You do. Could I see what you have?



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1 A Yes.

2 Q Take your time.

3 A Here we go. If you want to make a copy of that.

4 Q That would be great.

5 A That's the same thing I provided to the insurance
6 company.

7 (Where upon an off the record
8 discussion took place.)

9 Q Sir, you provided us with what looks like a payroll
10 log, is that what that is? What is that? And I'll show you
11 a copy of it.

12 A Exactly. This is what we call a load sheet and for
13 each ticket number you see represents a load. For each load
14 that's turned in, that's how he gets paid his \$25. It just
15 verifies what he done that particular week.

16 Q And for example on 7/12/2011, if you'll take a look at
17 that.

18 A Correct.

19 Q Which is one, two, three, four, five, six, seven
20 numbers; is that correct? One, two, three, four, five, six,
21 seven numbers.

22 A Correct.

23 Q Does that mean he made seven loads that day?

24 A Correct.

25 Q And then on the 13th it shows one, two, three, four,



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1 five numbers, so he made five loads that day; correct?

2 A Correct.

3 Q And I would assume it varies on traffic and other
4 things; is that correct?

5 A Correct.

6 Q As to how many loads you could get a day. And what
7 you've given us is from July 12, 2011, through August 9,
8 2011; is that correct?

9 A Correct. But I do have all of his since he was
10 employed. I just thought it might be handy here today
11 because that's for the insurance company. They just wanted
12 "X" amount for representation so, but that's what you're
13 looking at right there.

14 Q I would like to mark this is as Plaintiff's Exhibit
15 One, please.

16 (Plaintiff's Exhibit No. 1 was
17 marked for identification.)

18 Q Now, what was your arrangement with Chris Thompson
19 Services, your business arrangement?

20 A My arrangement was to -- and we only had a verbal
21 agreement, but my arrangement was to haul loads, and I was
22 to receive compensation for each load that I carried, and I
23 would turn in my sheets at the end of the week, and then the
24 following week he would relinquish me a check for what I did
25 the previous week.



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1 Q Were you paid by the ton?

2 A Correct.

3 Q And then he was also paid by the ton. "He" being Chris
4 Thompson, did he get paid so much per ton as well?

5 A I believe so, yes.

6 Q Who paid Chris Thompson?

7 A I would believe he got paid from Capstone because
8 that's the -- maybe -- matter of fact, he might have got
9 paid from the lumber mill. Actually, I really don't know,
10 but I know that's where we delivered it to, Capstone.

11 Q And Chris Thompson would cut a check JJS Trucking --

12 A Correct..

13 Q -- every week and then you would cut a check to your
14 employees --

15 A Yes.

16 Q -- or is it the fellows who drove a truck for you --

17 A Correct.

18 Q -- and that's how that worked?

19 A Correct.

20 Q And how many trucks did you have working for you at the
21 time of this accident?

22 A Three.

23 Q Three. And how many trucks do you own?

24 A Four.

25 Q Four trucks.. Who all drove a truck for you?

1 A At that time of the incident; it was me, Samuel Rose,
2 Shaun Thompson -- Shaun Thomas, and Reggie Washington.
3 Reggie was really part time. He didn't run every day.

4 Q Did you have a truck driver named Terri?

5 A Yes, I did, but he was not employed with me at that
6 time. He was a subcontractor for me at that time.

7 Q Did you have a truck driver named Max?

8 A Yes. I did at that time, but he was not working for me
9 at that time.

10 Q The deal with Chris Thompson was in order for you to
11 work for him you had to provide him with copies of your
12 certificates of insurance --

13 A Correct.

14 Q -- to cover your drivers and yourself for worker's
15 compensations purposes; is that right?

16 A Correct.

17 Q And what would happen if you didn't provide those
18 certificates of insurance to Chris Thompson?

19 A I would be terminated.

20 Q And who paid for the gas for the trucks that you drove?

21 A I did.

22 Q What about the tires?

23 A I did. All maintenance to the vehicles, I was
24 responsible for?

25 Q But the trailers were owned by Chris Thompson?

1 A Exactly. But excluding the trailer. Everything on the
2 trailer would be Chris Thompson's.

3 Q How long have you had JJS Trucking?

4 A If I'm not mistaken -- I know I got a date for when it
5 was established, but I would say somewhere around seven
6 years.

7 Q Have you ever had any trouble with insurance like
8 what's going on now?

9 A No, sir.

10 Q Now, you've provided and I believe your insurance
11 agency provided some insurance certificates to us, and the
12 state has concluded that your insurance had lapsed from
13 February 5, 2011. Until September 23, 2011. Did you ever
14 receive a letter from the state?

15 MR. KILLEN: Let me just object to the form of
16 that question.

17 Q Well, if you could just answer that. Have you ever
18 received a letter from the South Carolina Workmen's
19 Compensation Commission by a gentlemen named Gary Smith?

20 A Please repeat that question.

21 Q Have you ever received a copy of this letter right
22 here, I want to show you?

23 A No, sir.

24 Q It says it was mailed to 137A Gordon Street?

25 A Let's see, this is on October -- okay, October the

1 28th. Okay. Okay.

2 Q Is this your address here, 137A Gordon Street?

3 A Yes. Well, what I want to say is I haven't actually
4 seen it myself, but they have sent quite a bit of letters to
5 me.

6 Q And has any insurance company or anyone told you that
7 your insurance had lapsed starting February 5, 2011, through
8 September 23, 2011?

9 A I had not received anything from my actual insurance
10 carrier.

11 Q But have you talked with anyone at the State of South
12 Carolina Workmen's Compensation Commission about that?

13 A No, sir.

14 Q And no one's discussed any sort of fine with you for
15 not having it. --

16 A I did receive a letter saying that if I do not show
17 that I had insurance over "X" amount of years that I would
18 receive a fine.

19 Q Now, are you aware that the insurance company -- your
20 worker's compensation carriers has said that you didn't have
21 insurance at the time of this accident?

22 A I am aware that they said that.

23 Q Have you talked to them about that since then?

24 A Have I talked with them?

25 Q Your insurance company?



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1 A I have, and they still stand by the fact that I do not
2 have worker's compensation.

3 Q And which company said that, is it Travelers, Zurich,
4 do you remember?

5 A Towers.

6 Q After Mr. Rose was in the accident, when did you find
7 out this accident happened?

8 A I found out immediately. I mean, within an hour.

9 Q Did you go to the hospital and see him?

10 A Yes, I did.

11 Q Did you ever talk to Chris Thompson about this
12 accident?

13 A Yes, I did.

14 Q What did Chris Thompson and you discuss?

15 A I informed him that at this scene his driver hit my
16 driver in the rear, that at the scene DOT and South Carolina
17 State Troopers had faulted his driver at fault and that my
18 driver was in no way -- they called it not contributing. So
19 I informed him of all of this.

20 Q After this accident, did you and Chris Thompson ever
21 discuss worker's compensation coverage?

22 A We did later on once I found out that I was not being
23 covered.

24 Q What did Mr. Thompson tell you?

25 A That when he informed me that --



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1 MS. BARR: Object to the hearsay.

2 Q Go ahead and answer the question.

3 A He informed me that I can no longer work for him based
4 on the fact that my insurance had lapsed at that time.
5 That's what he said.

6 Q Did he ever say anything about his insurance taking
7 care of this claim with regard to Mr. Rose?

8 A What he stated is that --

9 MS. BARR: Same objection to hearsay.

10 Q Go ahead.

11 A What he stated was that Sedrick -- that I was
12 responsible for keeping my worker's comp coverage current.
13 He stated that he was not informed that my insurance had
14 lapsed. Actually, I was looking for it here, but I don't
15 have it. But I was going to ask you -- remember I faxed you
16 two copies of -- he in turn said to me, Sedrick -- so the
17 bottom line I was terminated. Later on, a week or so later
18 he informed me that he did an investigation or he had come
19 across the fact that my insurance had not lapsed, and he
20 provided me with documents. I in turn called my insurance
21 agent that happened to look into this because ever since I
22 worked for Mr. Thompson, if my insurance was ever in
23 jeopardy of lapsing, my insurance carrier always would
24 inform him because he's listed down there, but all I can say
25 is, he said, Sedrick, you know you can't be employed here,



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1 but I don't know what's going on because if you look at
2 those documents, it would state that you would have it, but
3 again, if I don't I don't, but I was not aware that I did
4 not.

5 Q Is this the documents you were just asking me about?

6 A Yes, sir.

7 Q And one of them is dated 10/18/2010. Can you take a
8 look at that? Number one it has Tower Insurance Company.
9 Below it it has Travelers Insurance; is that correct?

10 A Correct.

11 Q And it shows the date covered 10/8/10 to 10/8/11?

12 A I know on this policy, if I'm not mistaken, I had just
13 renewed it after the incident because after I found out, I
14 went to go get reinstated, you know, and so that's what
15 we're looking at right here.

16 Q And this was generated after the accident; is what
17 you're saying?

18 A That's right, that's right.

19 Q And where it says binder down there, what does that
20 mean?

21 A That means that I'm covered.

22 Q That's your understanding that it means you're covered.
23 Then I have this other one from Swap Fox Agency? Is this
24 your agency?

25 A No. No. No. We're looking at the wrong thing. I'm

1 sorry. This is not what I'm looking at because this here
2 says 10/2/2010 --

3 Q Yes, sir.

4 A -- through 10/2/2011.

5 Q Yes, sir.

6 A So therefore when I look at this I would have been
7 covered through -- because I received a couple of them now,
8 so let me retrack what I stated.

9 Q This is another one that you -- no, this one's dated
10 9/29/11.

11 A Okay. There we go. This is the one probably I was
12 referring to..

13 Q And this one, the 10/8/10, that says -- does that say
14 Travelers Insurance?

15 A Yeah, that says Travelers Insurance; correct.

16 Q And this 9/29/11, now whose insurance company picks up
17 coverage at that point.

18 A Zurich America Insurance Company.

19 Q And that's good from August 24, 2010, it says, to
20 August 24, 2011; is that correct.

21 A Correct.

22 Q But you didn't purchase it until 9/29/11; is that
23 correct?

24 A Actually -- the best thing I can say to you is --
25 purchase -- I was under the impression that I didn't -- if



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1 this is 9/29/11 -- I wasn't the person -- that was not a
2 purchase actual date because if that's a purchase date, why
3 would it be 9/29/11 where it actually says here, you know,
4 coverage 8/24/10 through 8/24/11. I --

5 Q That's a good question.

6 A I was under the impression that that's when probably
7 someone actually sent it out verifying the date it was sent
8 out but not the actual date of coverage. These -- from my
9 interpretation -- these are the actual dates of coverage.

10 Q Why would there have been one from August 24, 2010 for
11 Zurich and one from October 8, 2010 from Travelers? I don't
12 have any idea.

13 A The only idea that I could have is maybe the insurance
14 had lapsed and somebody else picked it up. I don't know.
15 What I do is I make my payments to Swap Fox and -- but I
16 don't know.

17 Q Have you ever went and showed these and discussed these
18 with anyone at Swap Fox?

19 A We talked -- I sent it back to Swap Fox. I have not
20 gotten a response back from Swap Fox, and that would be
21 attention Gregg Hudson, I believe, operations manager via
22 Swap Fox.

23 Q When you hired Samuel Rose, his job was to haul
24 woodchips from Summerville to the Capstone Plant; is that
25 correct?



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1 A Correct.

2 Q And you furnished the truck; is that correct?

3 A Correct.

4 Q You paid for the gas; is that correct?

5 A Correct.

6 Q You paid for the maintenance on the truck; is that
7 correct?

8 A Correct.

9 Q And really all he did was he was suppose to get in the
10 truck and drive it safely to and from Summerville, dumped in
11 Capstone, come back. His job was just to drive the truck?

12 A His job was just to drive the truck; yes.

13 Q And you told him where to go?

14 A No, I did not.

15 Q You didn't tell him where to go?

16 A No, sir. At Summerville, we have a loader box and each
17 driver has a shift, but you can start your shift earlier or
18 later. I did not make that determination.

19 Q Not when, but where? I mean, he had your truck. His
20 job was to drive your truck from Summerville saw mill, to
21 Capstone. He couldn't just take that truck if he wanted to
22 haul chips to Savannah or something like that?

23 A No, sir.

24 Q Well, thank you, sir. I don't have any other
25 questions. Appreciate it.



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1 EXAMINATION BY MS. BARR:

2 Q Mr. Smalls, my name is Kirsten Barr. We met briefly
3 before we went on. I represent Chris Thompson and the
4 insurance carrier. Do you recall making payments to Swap
5 Fox or to anybody else for worker's comp insurance in 2011?

6 A No, ma'am.

7 Q Would you have written one check. I mean, do you
8 recall making any payments toward the purchase of a worker's
9 comp insurance policy in the year prior to the accident?

10 A Yes, ma'am.

11 Q Now, do you have business records showing -- would you
12 write the check to Swap Fox then?

13 A Sometimes I made them to Swap Fox and sometimes I --
14 like, if I was close to being terminated, they would say,
15 hey, just make it out to us and make sure it stays current.

16 Q At any time in the months prior to this accident that
17 happened in August of 2011, did you stop making your regular
18 payment?

19 A Focus. I'm not going to say that I didn't -- I might
20 not have had some times when I might have been late. But
21 what would happen is that my insurance agent would say,
22 Smalls, well this is where you are and this is what you need
23 to do. But, yes, ma'am -- and -- focus -- if my insurance
24 had lapsed, I would have to go in and sign something saying
25 that I didn't for that particular period that might have

1 just lapsed that I was not covered, so again, the best way I
2 can put it is that I'm not going to say that I didn't have
3 any issues, but at the time of this incident, I was under
4 the impression that I was covered.

5 Q Would you be able to put your hand on like the canceled
6 checks or check stubs that you would have written to pay for
7 your worker's compensation insurance in the months prior to
8 Mr. Rose's accident?

9 A I'm pretty sure I could go back and find documentations
10 of payments.

11 Q Do you recall ever getting a notice from Swap Fox or
12 from the worker's comp insurance company saying that your
13 policy had lapsed --

14 A No.

15 Q -- or that they were going to cancel it?

16 A No, ma'am.

17 Q You still get your insurance with Swap Fox?

18 A As of now, I'm out of business pretty much. I'm
19 exhausted.

20 Q Were you running trucks for anybody other than --

21 A No. No, ma'am.

22 Q -- what you did for Chris Thompson?

23 A Exactly. That was everything for me.

24 Q And you have four trucks?

25 A Yes...



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1 Q Do you still have the four trucks?

2 A I still have -- yes, I still have them.

3 Q And where do you keep your trucks?

4 A I keep one of them at the shop that broke, but I have
5 three in a yard, what they call Red Top.

6 Q Is that something that you own or --

7 A It's a friend's property.

8 Q And where in Red Top is that?

9 A That's off of Charleston -- I think that's Old
10 Charleston Road.

11 Q And who owns the property where they're located?

12 A Rodney Doctor.

13 Q Doctor?

14 A Yes, ma'am.

15 Q And do you pay him rent to keep those trucks there, or
16 is he just a friend, or what's the arrangement?

17 A Oh, no, he's a friend.

18 Q And you say that you have not worked or done any kind
19 of work with JJS Trucking since you talked to Mr. Thompson
20 about the lapse in your worker's comp insurance?

21 A Yes, ma'am.

22 Q Just a quick question. We've marked this as Claimants
23 One, but I think you said this was a load sheet; is that
24 what you called it?

25 A Yeah. By definition, we call them load sheets, but

1 that's how we determine compensation.

2 Q And would this be something that an employee like Mr.
3 Rose would turn in to you each week?

4 A Yes. But technically he turned it in to the office.
5 He didn't really turn them in to me, but I look at it as
6 being turned in to me. Every week he would fill it out just
7 like I did and put it in a box, and then when the checks
8 came from Chris Thompson then it would come back to me.

9 Q So when you say he leaves it in a box, this was a box
10 at Capstone?

11 A Correct.

12 Q But Chris Thompson didn't write a check to Samuel Rose.
13 He wrote you a check?

14 A Exactly. He wrote me a check. Yes, ma'am.

15 Q I think Mr. Killen probably has some questions for you.
16 That's all I have for you right now.

17 EXAMINATION BY MR. KILLEN:

18 Q Mr. Smalls, I'm Tim Killen. I represent South Carolina
19 Worker's Compensation Uninsured Employers Fund, and this
20 load sheet, this is filled out by Samuel Rose; is that
21 correct?

22 A Correct.

23 Q And did Mr. Rose do the calculations on this document?

24 A No. No. Chris Thompson did the calculations on the
25 sheet.



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1 Q So Mr. Rose would leave this in a box for Chris
2 Thompson; is that correct?

3 A Correct.

4 Q And Chris Thompson or someone in his company would do
5 these calculations?

6 A Correct.

7 Q And then Mr. Thompson's company would pay you --

8 A Correct.

9 Q -- and send these sheets back?

10 A Correct.

11 Q And then you would have them for your records; is that
12 right?

13 A Correct.

14 Q So would you just then write a check to Samuel Rose for
15 the amount shown on the bottom of this load sheet?

16 A No. I would write a check to him for each load -- his
17 compensation was \$25.

18 Q That's right.

19 A I would count each load that was turned in to verify,
20 and I would cut him a check for those amount of loads.

21 Q Did Mr. Rose ever tell you how many trips he took in a
22 certain week?

23 A Sometimes we would discuss -- you know, he would say,
24 well, yes Smalls, I got 25 loads, or I got 30 loads and
25 then, so we would discuss it and then what would happen is

1 when this came back this was like double checking what the
2 verbal communication was.

3 Q The verbal communication was just informative; right?

4 A Correct.

5 Q This document, this load sheet, I mean, that's the holy
6 grail.

7 A Yes.

8 Q That's the document where everything is based off of;
9 right?

10 A Correct.

11 Q Let me ask you a few background questions. What's your
12 date of birth?

13 A 5/22/70.

14 Q And your social security number?

15 A 4002.

16 Q And your driver's license number?

17 A 008680380.

18 Q And that's South Carolina?

19 A Correct, sir.

20 Q I know your home address, is that your business address
21 as well?

22 A Correct, sir.

23 Q Have you ever operated any other locations other than
24 the Gordon Street location?

25 A No, sir.

1 Q Where do you house your trucks?

2 A Red Top or if I was --

3 Q I'm sorry. Let me ask that a better way. When you
4 were in business, where did you house your trucks?

5 A In Summerville at the mill.

6 Q And who owns that mill?

7 A Well, owns the mill would be Capstone.

8 Q And so you would park your trucks there, did you pay
9 anyone for the space?

10 A No, sir.

11 Q Who did you negotiate that with?

12 A Well, you use the word, "negotiate." I was just
13 authorized by Mr. Chris Thompson to be able to park there.

14 Q And you went into business with Chris Thompson about
15 three and a half years ago, right?

16 A Yes, sir.

17 Q You never had a written contract with him?

18 A No, sir.

19 Q But you had a written contract with all your drivers?

20 A Yes, sir, most of them.

21 Q You're the only member of your LLC?

22 A Yes, sir.

23 Q How are you taxed?

24 A When you say, how am I taxed?

25 Q Are you taxed like a sole proprietor? Do you know?



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1 It's okay if you don't know.

2 A I mean, I got some tax documents, but I know there's
3 different ways you can be taxed.

4 Q Do you pay corporate taxes for your income through your
5 LLC? If you don't know, it's okay?

6 A Well, I know on my taxes my corporation is listed so.

7 Q Okay. Your LLC?

8 A Yes, sir.

9 Q You pay personal income tax?

10 A Can I make a call? Because my accountant might answer
11 the phone.

12 Q It's all right. Who's your accountant?

13 A Liberty Tax. Warren -- Warren Frazier.

14 Q Where is he located?

15 A Goose Creek.

16 Q Do you own the property at Gordon Street?

17 A Yes, I do.

18 Q Personally?

19 A Yes.

20 Q Does your LLC own any property?

21 A No, sir.

22 Q Who owns those trucks?

23 A My corporation.

24 Q Their titled in the name of JJS Trucking, LLC; is that
25 correct?

- 1 A Correct.
- 2 Q Where do you bank?
- 3 A First Citizens.
- 4 Q Do you have personal accounts there?
- 5 A I don't have a personal account.
- 6 Q All your bank accounts there -- if their -- is there
- 7 more than one?
- 8 A No. It's just one, JJS Trucking.
- 9 Q And it's just a checking account?
- 10 A Yes.
- 11 Q Do you have a mortgage on your house at Gordon Street?
- 12 A I do.
- 13 Q Is that in your name alone?
- 14 A It is.
- 15 Q How do you pay the mortgage?
- 16 A By check.
- 17 Q Out of your JJS Trucking, LLC account?
- 18 A Most of time I would assume so, yes.
- 19 Q You would assume so or yes or no?
- 20 A I would say yes.
- 21 Q So you use that JJS Trucking account for your personal
- 22 needs?
- 23 A I guess you can say it like that.
- 24 Q Do you separate your money from your corporation with
- 25 your personal money?



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1 A Oh, no, I see what you're saying. No, I do pull it
2 out.

3 Q How do you pull it out?

4 A I write a check to myself.

5 Q And then you cash it?

6 A Correct.

7 Q At First Citizens?

8 A Correct.

9 Q How do you pay your electric bill?

10 A I would pay it off of my account.

11 Q From your corporate account?

12 A Correct.

13 Q What about when you go get groceries?

14 A I pay cash.

15 Q Do you ever write a check for groceries?

16 A No, sir.

17 Q Do you own any automobiles personally?

18 A Yes, sir.

19 Q How do you get gas?

20 A I pay for it with the cash.

21 Q You pay cash for your gas at all times?

22 A Correct.

23 Q You never use your corporate account to pay for your
24 personal vehicle's gas.

25 A No, sir.



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1 Q What kind of cars do you own personally?

2 A I got a Kia Sorento and a F250 true cab truck and a
3 F150 that's an older truck.

4 Q Any other automobiles or trucks?

5 A No, sir.

6 Q Does your wife own those vehicles as well?

7 A No.

8 Q Did you ever take money out of any of your drivers
9 checks to pay for worker's comp insurance?

10 A No.

11 Q Did Chris Thompson ever take money out of what he paid
12 you to pay for worker's compensation insurance?

13 A No.

14 Q Did the terms of your agreement with Chris Thompson
15 ever change at any time during the course of your
16 relationship?

17 A No.

18 Q So he took the same percentage out when you started as
19 he did from your last load?

20 A Same percentage out -- same percentage out. I would
21 say -- you say take the same percentage out. I would word
22 it as I was paid by the ton, but that would change based off
23 of fuel cost or what he was being compensated with because
24 it did go up and down. But I don't see it as -- you say
25 take something out.

1 Q So when it changed, how did you find out that it
2 changed?

3 A I saw it on the -- I mean, I got the load sheet -- the
4 statement.

5 Q When you got paid, that's when you learned?

6 A Correct.

7 Q There was no negotiating those factors?

8 A No, sir.

9 Q What Chris Thompson paid you, you got; is that correct?

10 A Correct.

11 Q And you didn't have any say so in that?

12 A No, sir.

13 Q And you said earlier your job was to provide insurance
14 coverage, and his job was to provide the trailer?

15 A Well, I mean, no. My job was to provide a truck and a
16 driver.

17 Q Okay.

18 A But under the terms, I was supposed to make sure I keep
19 my insurance, you know, current.

20 Q And that's your liability insurance and your worker's
21 comp insurance?

22 A Correct.

23 Q I believe Mr. Fisher showed you a certificate of
24 insurance earlier. I don't think we made it an exhibit.

25 There's one dated 10/18/2010.



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1 (Where upon an off the record
2 discussion took place.)

3 Q Do you have a copy of that certificate dated 10/18/2010
4 or do you need --

5 A I got it.

6 Q Now, in October of 2010, did you get a new policy
7 through the Swap Fox Agency for worker's comp insurance?

8 A I'm sorry. Which one am I looking at?

9 Q Your looking at the one dated 10/18/2010.

10 A Okay.

11 Q That's the one that we're dealing with here. That's
12 the most important one, in my opinion.

13 Did you get a new policy of insurance that year in
14 October of 2010 for worker's comp; do you remember that?

15 A A new?

16 Q Yes.

17 A 10th, the 18th, 10/18/10, did I get a new?

18 Q Let me go through this certificate with you. This
19 purports to show that the document was created on
20 October 18, 2010 by someone at Swap Fox Agency, and it has
21 insure B Travelers Insurance or Indemnity and Affiliates. I
22 can't read, it and that's where your worker's comp policy
23 would be in effect. That insure B up there at the top is
24 referencing this right here where it says binder and then
25 these dates of effective coverage down here, 10/8/10 through



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1 10/8/11. Did you go get a new insurance policy around that
2 time?

3 A If that's the 10/18/10 -- I would -- are you saying
4 this is the time when I was renewing it?

5 Q I'm asking you. Did you renew a policy, or did you get
6 a new one or what?

7 A I renew it every year, so if I'm renewing it every year
8 and it starts on the 10th, the 8th, the 10, 10th the 2nd and
9 then this date up here is -- I would have believed that this
10 is the beginning of a new policy.

11 Q It shows binder down there. Did you ever have an
12 actual policy issued to you from Travelers?

13 A I'm pretty sure I would have had to. I mean --

14 Q When did you make your payments to Swap Fox?

15 A Oh, wow, I mean, normally there would have been a
16 deposit made, and I would be making monthly payments.

17 Q So around the time, you either renewed or get a new
18 policy you make a deposit; is that correct?

19 A Correct.

20 Q And then from the rest of the year you make --

21 A Correct.

22 Q -- equal monthly installments; is that correct?

23 A Pretty much.

24 Q And there were times in the past where you would fall
25 behind?



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- 1 A Correct.
- 2 Q But someone from Swap Fox would contact you and let you
- 3 know and then you would catch up; correct?
- 4 A Correct.
- 5 Q Now, the worker's comp commission is showing a -- that
- 6 this policy was canceled sometime in February of 2011. Now,
- 7 between October of 2010 and February of 2011, were you
- 8 missing payments to Swap Fox or Travelers?
- 9 A Okay. Say that one more time, please.
- 10 Q Between October of 2010 and February of 2011, that's
- 11 about what, four months?
- 12 A Okay. Between October -- go ahead now.
- 13 Q Did you miss any of your payments?
- 14 A For my worker's comp, I'm going to say I really don't
- 15 recall missing any payments, but if worker's comp says --
- 16 well, not worker's comp but if they say my insurance lapsed
- 17 in January, I would have to say obviously I didn't make a
- 18 payment.
- 19 Q Are you telling me you know that you didn't make a
- 20 payment or just because this paperwork, which is not
- 21 binding, says it.
- 22 A Exactly.
- 23 Q Are you relying on these documents?
- 24 A Yeah, pretty much.
- 25 Q Solely for your recollection?



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1 A Pretty much.

2 Q Are you telling me that it's possible you missed a
3 payment or two?

4 A I'm saying it is possible.

5 Q Is it probable?

6 A Probable? If that the same meaning as saying possible,
7 I'm going to say it's possible.

8 Q Did you ever get a call from anyone at Swap Fox during
9 that time?

10 A No, sir.

11 Q Did you ever get a letter from anyone at Swap Fox
12 during that time telling you your policy was getting ready
13 to lapse?

14 A No, sir.

15 Q Did you ever get a letter from Travelers during that
16 period of time telling you your policy was getting ready to
17 lapse and what you could do to cure that?

18 A I don't recall it, no, sir.

19 Q Did you ever get any of your premiums refunded to you?

20 A No, sir.

21 Q Neither Travelers nor Swap Fox ever wrote you a check
22 for any worker's compensation insurance you paid for, but
23 they weren't providing coverage for you?

24 A No, sir.

25 Q How frequently would you send certificates over to



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1 Chris Thompson?

2 A I myself don't send certificates over to Chris
3 Thompson. My agent would send it over to Chris Thompson.

4 Q Did you ever ask your agent to do that?

5 A In the past I think one time I did. It wasn't in the
6 last year. I think one time before my -- he questioned me
7 on my insurance renewal date, and I called my agent and say
8 could you send over Chris Thompson a current, you know,
9 certificate of insurance, but that was -- that had probably
10 happened two years plus ago.

11 Q How long was your agreement with Chris Thompson
12 supposed to last?

13 A He never -- we never discussed a time frame for how
14 long it was supposed to last.

15 Q How long did it actually last?

16 A I'm going to say about three and a half years.

17 Q So for three and a half years, you two companies never
18 had a written agreement?

19 A No, sir.

20 Q Three and a half years you two companies, both of your
21 LLCs, never put anything on paper to show that you two had a
22 contract with each other?

23 A No, sir.

24 Q And nothing changed since three and a half years before
25 the contract terminated, as far as the terms of contract are



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1 concerned; is that correct?

2 A Yes, sir, that's what I am saying.

3 Q After Chris Thompson terminated the contract with your
4 company, did your company receive full payment for the work
5 it had already performed?

6 A If you are saying if anything was owed to me from him,
7 did I receive it, then I would say, yes.

8 Q Was it effective immediately, or did you get a 30 day
9 grace period?

10 A Immediately.

11 Q And you would make your insurance payments to Swap Fox
12 Agency?

13 A Yes, sir, sometimes, yes.

14 Q Sometimes?

15 A Yes, sometimes.

16 Q Where would you make them if you weren't making them
17 directly to Swap Fox?

18 A If I'm not mistaken it would have been to like a
19 finances company maybe. I don't know if it was actually to
20 Towers or Zurich, but sometimes it would be like a finance
21 company that would be established, and I would pay them.

22 Q When is the last time you remember making payments to a
23 finance company?

24 A I would have to go and look at my records. Right this
25 second I --



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1 Q Just to the best of your recollection?

2 A I would -- I would believe in this -- in the early
3 portion of this year because like I said, I know I was
4 making payments.

5 Q So you were making payments in 2011?

6 A 2011.

7 Q It's 2011.

8 A Yes.

9 Q It is your testimony that you never received notice of
10 a cancellation?

11 A No, sir.

12 Q By notice of cancellation, I mean a letter from the
13 insurance company or the agent saying that they were getting
14 ready to cancel your policy unless you followed up with the
15 payment?

16 A It's a possibility they might have sent me something.
17 Also when I was aware of a possible lapse then, I would
18 bring it current. In this particular case here, I was not
19 aware that my insurance had lapsed, and any other time if my
20 insurance was about to lapse, Chris Thompson would have been
21 all over me because he did not want my insurance to lapse,
22 so I can't say I didn't make a mistake. What I can say is
23 that ever since I dealing with Swap Fox and ever since I've
24 been running for Chris, I never had this problem, and when
25 he brought it to my attention, I didn't have nothing to say.

1 Q "He" being who?

2 A Chris Thompson.

3 Q And he didn't know about this problem until after the
4 accident; is that correct?

5 A Correct.

6 Q That's all the questions I have.

7 EXAMINATION BY MR. FISHER:

8 Q Let me ask you one, Mr. Smalls: The finance company,
9 whenever you say sometimes you made insurance payments
10 through a finance company and not directly to Swap Fox, what
11 finance company would that be, and how did that work?

12 A The best way I can put it is Swap Fox was my insurance
13 agent. Normally, when I would go and establish a insurance
14 binder, I would have to put "X" amount of dollars down, and
15 then it would say, okay, well, to the balance on this -- if
16 the policy was \$5,000, I might put down \$2,000. They might
17 finance 3,000. I would give Swap Fox a check and then what
18 would happen would be I would either make payments to a --
19 normally, I don't think it was the actual insurance, I think
20 it was to like a finance company. And then if I got in
21 trouble, you know, they would say, Hey, you know your
22 insurance is about to cancel. I would talk to my insurance
23 agent and say, Hey, what's the deal, well, you got "X"
24 amount of time. Sometimes I would just cut them a direct
25 check, you know, and they would deal with it however they



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1 deal with my policy. They might have had a more faster,
2 efficient way of dealing with the situation.

3 Q Well, there's this note here -- cancellations,
4 reinstatements, non renewals and it shows on 1/6/11 that
5 your policy was canceled, and it says by the request of the
6 finance company?

7 MR. KILLEN: Can you tell him where that is, Joe?

8 MR. FISHER: Yeah.

9 Q It says TOC inquiry on line with South Carolina. This
10 is something to show whether or not you had insurance. But
11 anyway, the finance company, if you don't make a payment to
12 the finance company, does your coverage lapse?

13 A I would say I'm sure it would lapse. I guess, that's
14 an answer.

15 Q Do you know what finance agency it was that you were
16 dealing with at this time?

17 A I would have to really go back and talk to my agent. I
18 can find that out.

19 Q It would be worth it for you to do that. Thank you,
20 sir. I don't have any other questions.

21 EXAMINATION BY MR. KILLEN:

22 Q Quick follow up. Did you ever sign a contract with the
23 finance agency?

24 A You know something, I have to go back and look at my
25 documents because like I said, normally when I start the

1 policy I would sign "X" amount of papers, and I'd have to go
2 back and try to start looking at all those things to verify
3 that.

4 MR. FISHER: Okay. Thank you. That's all.

5 (The deposition was concluded at

6 12:10 p.m. November, 14th,

7 2011.)
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139c

1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Laci B. Bearden, Court Reporter and Notary Public,
5 certify that I did have Sedrick Smallsto appear before me at
6 11:00 a.m. on Monday, November 14th, 2011, at the law
7 offices of George Sink, P.A., 7011 Rivers Avenue, N.
8 Charleston, South Carolina; that the witness was sworn and
9 cautioned to tell the truth, the pages constitute a true and
10 accurate transcript of the testimony given at that time and
11 place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 14th day of November, 2011.

17

18

19

Laci B. Bearden

20

Laci B. Bearden

21

Notary Public for South Carolina

22

My Commission Expires: September 29, 2021

23

24

25



CERTIFICATE OF LIABILITY INSURANCE

 OPID PT
JJSTRUC

 DATE (MM/DD/YYYY)
10/18/10

PRODUCER Swamp Fox Agency, Inc. P.O. Box 522 Pinopolis SC 29469 Phone: 843-761-3999 Fax: 843-761-6186		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED JJS TRUCKING, LLC 137-A Gordon St. Charleston SC 29403		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Tower Ins. Co. of New York	
		INSURER B: Travelers Indem. & Affiliates	
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

FORM NO. / LTR / INFO	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR CENTRAL AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC				EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/PROP AGG \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☒ UM/UDM 75,000	BAEDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (EA accident) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AUTO ONLY AGG \$
	EXCESS / UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ COINSURABLE RETENTION 1				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE/OFFICER/EMBER EXCLUDED (Mandatory in 18) If yes, describe under SPECIAL PROVISIONS below Y/N ☐	BINDER	10/08/10	10/08/11	☒ VICE PRESIDENTIAL ☒ OTHER EL EACH ACCIDENT \$500,000 EL DISEASE - EA EMPLOYEE \$500,000 EL DISEASE - POLICY LIMIT \$500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

CHRISTH CHRIS THOMPSON SERVICES, LLC FAX: 688-5084 P.O. BOX 3377 SUMMERVILLE SC 29484	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO DELIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE DAVID W. HAYES

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Workers' Compensation Commission

March 30, 2012

F. Reid Warder, Jr.
Wood & Warder LLC
P O Box 20550
Charleston, SC 29413

Carrier Code No. 00000

Carrier File No. NRHR20110920

Re: Claim file:
WCC File No. 1112328
SAMUEL ROSE v. CHRIS THOMPSON SERVICES, LLC et al
Date of Injury: 08/10/2011

Compliance file:
WCC File No. X110953
SCWCC v. JJS Trucking LLC

Dear Mr. Warder:

This is in response to your call to me yesterday in which you indicated my deposition that was scheduled for today in Columbia has been cancelled. You said in lieu of my deposition you would accept a letter from me that states the Compliance Division's position regarding whether or not Travelers Indemnity insured JJS Trucking, LLC on the date of the accident, which was 8/10/2011. The position of the Compliance Division is it did not. The documentation of this is presented below.

The Compliance Division's investigation determined that JJS Trucking, LLC is a limited liability company, as evidenced by SC Secretary of State registered agent information shown as **Exhibit A**.

Cedric Smalls, owner of JJS Trucking, LLC, responded to the Compliance Division's request for information by completing the Employer Questionnaire shown as **Exhibit B**. The questionnaire has attachments that include certificates of insurance indicating Travelers provided coverage to JJS Trucking, LLC from 10/8/2010 to 10/8/2011, and Zurich provided coverage to JJS Trucking, LLC from 8/24/2010 to 8/24/2011. However, both Travelers and Zurich denied they provided coverage to JJS Trucking, LLC on the date of the accident, as evidenced by the denial letters shown respectively as **Exhibit C** and **Exhibit D**.

The insurance records of the Commission indicate that Travelers Indemnity Company provided coverage to JJS Trucking, LLC from 10/8/2010 to 2/5/2011 and from 9/23/2011 to 11/10/2011, as evidenced by the proof of coverage documents shown respectively as Exhibit E and Exhibit F.

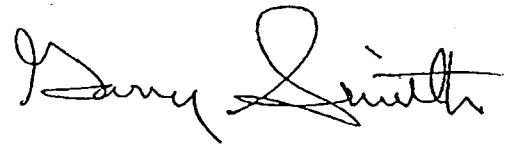
Accordingly, the position of the Compliance Division is that Travelers Indemnity did not provide coverage to JJS Trucking, LLC on the date of the accident, and my recommendation is Travelers Indemnity should be released as a carrier of record for the claim.

Further, the position of the Compliance Division is that JJS Trucking, LLC was subject to the SC Workers' Compensation Act and uninsured from 2/5/2011 until 9/23/2011, and from 11/10/2011 through the date of this letter. JJS Trucking, LLC came under the Act by obtaining insurance, lapsed or did not renew its policy, but continued under the Act. In order to come out from under the Act, an eligible employer -- one that does not now regularly have four employees -- must file a Form 38 to withdraw from the Act. That was not done. (See R67-403 and R67404.) The issue as to whether the employer was also subject to the Act by regularly having four or more employees has not been addressed in this compliance action, but that could be the case as well.

If you have questions or comments about the above, please call me directly,

Sincerely,

Garry Smith
Compliance Division, Director
803-737-5707



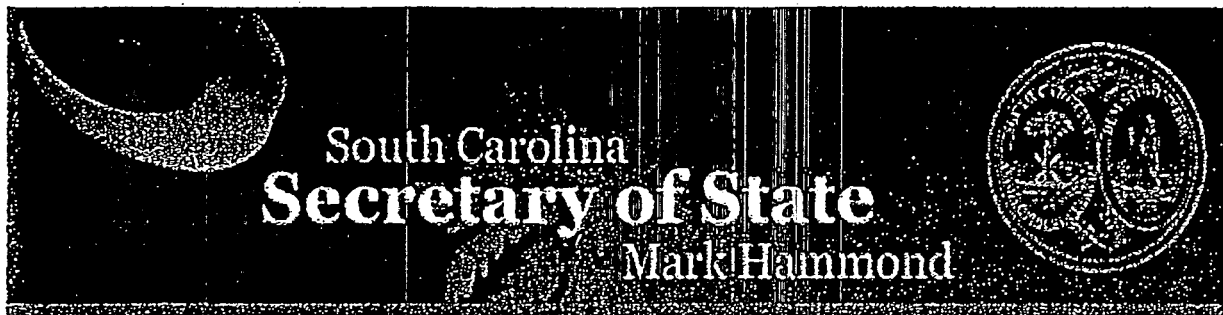
Enclosures: Exhibit A - F

c:
JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Kirsten L. Barr, Esquire
Trask & Howell, LLC
PO Box 2167
Mt. Pleasant, SC 29465

Joseph B. Fisher, Esquire
George Sink, PA
P O Box 63506
North Charleston, SC 29419-3506

Timothy B. Killen, Esquire
100 Executive Center Drive Suite 101
Santee Bldg
Columbia, SC 29210

**JJS TRUCKING, LLC**

*Note: This online database was last updated on 10/3/2011 6:01:29 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION / ORGANIZATION:	SOUTH CAROLINA Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	CEDRIC SMALLS
ADDRESS:	137 . . . STREET
CITY:	CHARLESTON
STATE:	SC
ZIP:	29403
SECOND ADDRESS:	

FILE DATE:	07/22/2005
EFFECTIVE DATE:	07/22/2005
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	07/22/2005	AT WILL	

Disclaimer: The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so



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Workers' Compensation Commission

September 20, 2011

JJS TRUCKING, LLC
137-A GORDON STREET
CHARLESTON, SC 29403

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

Dear JJS TRUCKING, LLC:

A workers' compensation claim has been filed on behalf of the above-named claimant. The defendant in the caption is stated to have been the employer. Additional information is required to determine if insurance coverage for JJS TRUCKING, LLC exists. Please furnish the following information within five (5) days from the date of this letter.

Name of insurance agent: Swamp Fox Agency
Agent's phone number: 843-761-3999
Insurance carrier: Travelers
Policy number: 026-CB-EQ53181-K
Name as it appears on policy: JJS Trucking, LLC
Effective dates of policy: OCTOBER 8, 2010 to JANUARY 4, 2011
Employer's FEIN: _____
Name of person completing form: Cedric Smalls
Telephone number: _____

If you have any questions you may contact me at 803-737-5711 or MFelton@wcc.sc.gov.

Sincerely,

Michael Felton

Michael Felton
Compliance Investigator

Enclosure: Questionnaire



SCWCC

SEP 29 11

INSURANCE &
ETHICAL SERVICES

Questionnaire for Uninsured Employer

Re: SAMUEL ROSE v. JJS TRUCKING, LLC
WCC File No. X110953
Date of Injury: 08/10/2011

1. Official business name: JJS Trucking, LLC
2. Official business address: 137- ... Street Chas. SC. 29403
3. Owner(s) of business: Cedric Smalls
4. Number of employees in SC at time of alleged accident: 4
5. Number of subcontractors in SC at time of alleged accident: 0
6. Business FEIN: _____
7. Was the above-named claimant the employee of the employer at the time of the alleged accident? ☒ Yes. ☐ No.

If applicable: How much was the claimant paid?

Hourly gross N/A or weekly gross N/A

Number of hours the claimant worked per week: driver is paid by loads

8. Was the business providing service or subcontracting for an "upstream" employer or general contractor when the alleged injury occurred? If so, please provide the business name and address:

Chris Thompson Services, LLC

Summerville, S.C. 29483

9. Are there any extenuating circumstances or facts about this claim and accident that need to be made known? If so, please describe:

JJS employee was found not at fault at time of accident. Enclosed is a copy of accident report.

10. Name of person completing form: Cedric Smalls
11. Telephone #: 843-270-4031

SCWCC

SEP 29 '11

INSURANCE &
MEDICAL SERVICE

Mod FR-10 to: Office of Financial Responsibility SC Department of Public Safety PO Box 1495, Columbia, SC 29214				SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY (R-10) (REV. 07)			
Date: 08-10-2011		Tax: 0340		Class: 10		License: 1. Secondary 2. L.S. Primary G-County 3. SC Primary G-PP	
To Vehicle Owner/Operator		Failure to comply could result in appropriate action under 56-1 of laws of S.C. as amended, if vehicle subject to registration in S.C. the Department must suspend your driving and/or registration privileges until you have been met under the above sections of law.					
E-079899				E-079900			
Unit # 01		Sex: M		Race: A		Name: SAMUEL	
Birth Date:		City, State, & Zip: SC 29403		Unit # 02		Name: CLARK	
State: SC		Driver's License #		Class: A		Insurance Company: TOWER INS CO	
Year: 1993		Body: TR		Vehicle Make: INTL		VIN #: 1HSHDALKJ556SH684	
State: SC		Year: 2011		License Plate #: P691257		Owner's D.L. #:	
Home Telephone: (843)		Owner's Full Name: JJS TRUCKING LLC		Home Telephone:		Owner's Full Name: CHAIRS THOMPSON SERVICES LLC	
Bus. Telephone:		City, State, & Zip: SC 29403		Bus. Telephone:		City, State, & Zip: SC 29483	
Contributed To Collision: Yes (No)		Contributed To Collision: No		Contributed To Collision: No		Contributed To Collision: No	
Driver/Operator's Full Name:				Driver/Operator's Full Name:			
Sex:		Race:		License Plate #:		Owner's D.L. #:	
Birth Date:		City, State, & Zip:		Home Telephone:		Owner's Full Name:	
State:		Driver's License #:		Class:		Insurance Company:	
Year:		Body:		Vehicle Make:		VIN #:	
State:		Year:		License Plate #:		Owner's D.L. #:	
Home Telephone:		Owner's Full Name:		Home Telephone:		Owner's Full Name:	
Bus. Telephone:		City, State, & Zip:		Bus. Telephone:		City, State, & Zip:	
Contributed To Collision:		Contributed To Collision:		Contributed To Collision:		Contributed To Collision:	
All Units Insurance Information (to be completed by Investigating Officer)				Accident Insurance Information for Unit # 02			
Lockport Insurance Information for Unit # 01		Company Name: TOWER INS CO		Agency Name:		Policy Number:	
Lockport Insurance Information for Unit # 01		Company Name: TOWER INS CO		Agency Name:		Policy Number:	
Insurance Information				Insurance Information			
Notice of Requirement Accepted				Signature:			
To Be Completed By Insurance Agency, Broker, Or Other Company Representative				Signature:			
Reference to Unit #				Signature:			
Beginning Date:				Ending Date:			
Policy #				Policy #			
Signature:				Signature:			
Title:				Title:			
Notice: Failure to have this form completed by your insurance broker, agent, or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.				Notice: Failure to have this form completed by your insurance broker, agent, or representative and returned to the South Carolina Department of Public Safety within 15 days may result in suspension of your driving and/or registration privileges.			
If any of the below are applicable, disregard the above portion.				Form FR-10 Not Issued: Section 58-10-270 58-10-520			
Check here if a Form FR-10, Fleet Policy # 25 or more applies to this vehicle and is being covered by the Department.				No FR-10 issued to Operator/Driver of Unit #			
Check here if a certificate of self-insurance has been issued by the Department covering the vehicle and state the certificate number:				Summons Issued to:			
Check here if liability insurance was not in effect to comply with South Carolina statutory requirements.				For operating or allowing the operation of an uninsured vehicle			
Signature:				Signature:			
Date:				Date:			
Investigating Officer's Name: OLSON - O A				Rank:			
Rank:				Rank:			

SCWCC

SEP 29 '11

INSURANCE & MEDICAL SERVICES



CERTIFICATE OF LIABILITY INSURANCE

 OPID PT
JJS TRUCK

DATE (MM/DD/YYYY)

10/18/10

PRODUCER Swamp Fox Agency, Inc. P.O. Box 522 Pinopolis SC 29469 Phone: 843-761-3999 Fax: 843-761-6186		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED JJS TRUCKING, LLC 137-A Gordon St Charleston SC 29403		INSURERS AFFORDING COVERAGE INSURER A: Tower Ins. Co. of New York INSURER B: Travelers Indem. & Affiliates INSURER C: INSURER D: INSURER E:	NACS

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY START DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR ☐ GEN. AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PER OCC ☐ LOC				EACH OCCURRENCE DAMAGE TO RENTED PROPERTIES (Per occurrence) MED EXP (Any one person) PERSONAL & ADV INJURY GENERAL AGGREGATE PRODUCTS-COMP/OP AGG
AUTOMOBILE LIABILITY ☐ ANY AUTO ☒ ALL OWNED AUTOS ☒ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS ☒ UM/UTM 75,000	BAPDF0280410	10/02/10	10/02/11	COMBINED SINGLE LIMIT (Per accident) BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT OTHER THAN AUTO ONLY EA ACC AGG
UMBRELLA / SELLER'S LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ COOPERATION ☐ RETENTION \$				EACH OCCURRENCE AGGREGATE
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUSION (Primary in US) If yes, describe under SPECIAL PROVISIONS below OTHER	BINDER	10/08/10	10/08/11	☒ PERMANENT TOTALITY LIMIT ☒ OTHER EL EACH ACCIDENT EL DISEASE - EA EMPLOYEE EL DISEASE - POLICY LIMIT

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

CERTIFICATE HOLDER

CANCELLATION

CHRIS THOMPSON SERVICES, LLC FAX: 688-5084 P.O. BOX 3377 SUMMERVILLE SC 29484	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL endeavor to MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE DAVID W. HAYES

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OCT 18 '11

INSURANCE &
MEDICAL SERVICES



CERTIFICATE OF LIABILITY INSURANCE

 OP ID JP
 JJSTRUC

DATE (MM/DD/YYYY)

09/29/11

PRODUCER Ramp Fox Agency, Inc. P.O. Box 522 Pinopolis SC 29469 Phone: 843-761-3999 Fax: 843-761-6186	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED JJS TRUCKING, LLC 137-A Garden St. Charleston SC 29403	<table border="1"> <tr> <th>INSURERS AFFORDING COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A Zurich American Ins. Co.</td> <td></td> </tr> <tr> <td>INSURER B</td> <td></td> </tr> <tr> <td>INSURER C</td> <td></td> </tr> <tr> <td>INSURER D</td> <td></td> </tr> <tr> <td>INSURER E</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A Zurich American Ins. Co.		INSURER B		INSURER C		INSURER D		INSURER E	
INSURERS AFFORDING COVERAGE	NAIC #												
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THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
GENERAL LIABILITY ☐ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☐ OCCUR GENTL AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC				EACH OCCURRENCE \$ LIMITED TO RENTED PREMISES (Per occurrence) \$ USD EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP ACC \$
AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ MIXED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (See endorsement) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC \$ AGO \$
EXCESS / UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in NY) If yes, describe under SPECIAL PROVISIONS below OTHER	6ZZ0B9907M95409	08/24/10	08/24/11	EL EACH ACCIDENT \$100,000 EL DISEASE - EA EMPLOYEE \$100,000 EL DISEASE - POLICY LIMIT \$500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

THIS IS A REVISED CERTIFICATE FOR 08/24/10-08/24/11 TO PROVIDE POLICY NUMBER.

CERTIFICATE HOLDER CHRIS THOMPSON SERVICES, LLC FAX: 843-688-5084 P.O. BOX 3377 SUMMERVILLE SC 29484	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE DAVID W. HAYES

ACORD 25 (2009/01)

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OCT 18 '11

INSURANCE & MEDICAL SERVICES

TRAVELERS

The Travelers Indemnity Company
P.O. Box 473502
Charlotte, NC 28247-3502

09/08/2011

Samuel A. Rose
17 Ashton St
Charleston, SC 29403

Employer: Jjs Trucking, LLC
Employee: Samuel A. Rose
Date of Loss: 08/10/2011
File Number: 026-CB-EQS3181-K
State Case Num:

Dear Samuel Rose

We have completed our investigation of your Workers' Compensation claim and have decided that we cannot accept it as being compensable. There is a possibility that other insurance coverage is available to pay part or all of your related expenses if you should decide to pursue this.

It appears this injury occurred outside of the Travelers policy period of 10/08/10 to 01/04/11.

We regret that our decision could not be more favorable for you, but we are obligated to accept only the claims that are compensable under South Carolina state laws.

If you disagree with our decision, you may ask the South Carolina Workers' Compensation Commission for a hearing.

Sincerely,

Florence Hudson, CI Rep
(704)544-3584 Fax: (877)389-4687
(800)759-6194 Ext.
FGHUDSON@travelers.com
Workers' Compensation Unit

cc: George Sink P A
Workers' Comp Commission
Jjs Trucking, LLC



C22948WSSC

SCWCC

OCT 18 '11

INSURANCE &
MEDICAL SERVICES



September 07, 2011

Attn: Joseph Fisher
George Sink, P.A.
PO BOX 63506
N. Charleston, SC 29419-3506

RE: Claim #: 2800076183
Employer: JJS Trucking LLC
Date of Loss: 08/10/2011
Claimant: Samuel Rose
SCWCC: Pending

Zurich North America

Claims

P.O. Box 968080
Schaumburg, IL 60196
Telephone (800) 808-6412
Fax (704) 551-3402
<http://www.zurichna.com>

Dear Mr. Fisher:

We recently received the enclosed Letter of Representation on the above mentioned case. However, we cannot locate any policy for of the above named employer. I have spoken with Cheri Hood of the Swamp Fox Agency who was the agency for the employer in the past. They indicated that they could not locate a WC Policy with Zurich either. They advised that JJS Trucking did have a WC Policy with Travelers Insurance until January 2011. Here is the policy information:

Travelers
Policy Number 7PKUB4408P09210
10/8/2010-10/8/2011
Cancelled 01/07/2011

At this time I request that your office amend any Form 50 that has been filed which indicates that Zurich is the correct carrier. Please also consider this letter our Notice of Denial on the above mentioned claim.

Very truly yours,
Zurich American Insurance

Brad Fauler

Brad Fauler
Claims Specialist
704-551-3481

Cc: South Carolina Workers Compensation Commission

CC: JJS Trucking Company
137-A Gordon Street
Charleston, SC 29403



SCWCC

OCT 18 2011

INSURANCE &
MEDICAL SERVICES



Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

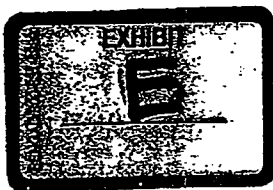
Policy and Cov Provider Names and Addresses Names Addresses Canc/Reinst/Non-Renew Transaction History

Policy Nbr:	7PKUB4408P09210	Cov Prvdr ID: 11347	Pol Eff Dt: 10/08/2010	Pol Exp Dt:	10/08/2011
Primary Insured Name:	JJS TRUCKING LLC			Primary Insured FEIN:	710986219
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	
Primary Insured Information			Coverage Provider Information		
Primary Insured Name:	JJS TRUCKING LLC	Cov Prvdr ID-Cov Prvdr Name:	11347 - TRAVELERS INDEMNITY CO		
Street:	137 GORDON ST APT A	Street:	POB 3556		
City:	CHARLESTON	City:	ORLANDO		
State:	SC	State:	FL		
Zip Code:	294033698	Zip Code:	328023558		
		Group ID:	10804		
		Branch:	138		
Orig Pol Rcvd Dt:	11/04/2010	Orig POC Rcvd Dt:		Last Rcvd Dt:	05/06/2011
Prior Pol Nbr:				Last Activity Dt:	05/06/2011
State Cov Prvdr:		State Exp Dt:			
State Eff Dt:	10/08/2010				
Gov Class:	7228				
Legal Nature of Insured:	10 - LIMITED LIABILITY COMPANY (LLC)				
Wrap Up Pot:	2 - NON-WRAP-UP POLICY				
Employee Leasing Code:	1 - NON-EMPLOYEE LEASING POLICY				
	02 - NORMAL ASSIGNED RISK POLICY - INCLUDING				
	TX EMPLOYERS REJECTED RISK FUND - EXCLUDING				
	MA PLAN TYPE CODES 06 AND 08				
Pol Type Plan:	01 - STANDARD WORKERS' COMPENSATION POLICY				
Pol Type Cvr:					

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Coverage Cancelled
2/5/2011





POC Online Inquiry

Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Reinst/Non-Renew	Transaction History
Policy Nbr:	7PKUB4406P09210	Pol Eff Dt:	10/08/2010	Pol Exp Dt:	10/08/2011
Primary Insured Name:	JJS TRUCKING LLC	Cov Prvdr ID:	11347		
C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/08/2011	01/04/2011	01/08/2011	01 - CANCELLATION	02 - CANCELLED PRO-RATA	20 - CANCELLED AT REQUEST OF THE FINANCE COMPANY
01/05/2011	01/12/2011	01/05/2011	02 - REINSTATEMENT	00	00
12/05/2010	01/12/2011	12/05/2010	01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM

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Coverage Cancelled
30 days after
receipt by NCCI
of the Cancellation
document, making
the effective
date of Cancellation
2/5/2011



Policy Provider Reports

Policy and Coverage Provider

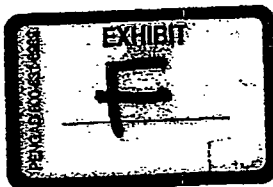
SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Can/Reinst/Non-Renew	Transaction History
Policy Nbr: 7PKUB486P01211 Primary Insured Name: JJS TRUCKING LLC	Cov Prvdr ID: 11347 Pol Eff Dt: 09/23/2011 Pol Exp Dt: 09/23/2012 Primary Insured FEIN: 710986219				
Orig Pol Nbr: Orig Cov Prvdr ID: Orig Pol Eff Dt:					
Primary Insured Information: Primary Insured Name: JJS TRUCKING LLC Street: 137 GORDON ST APT A City: CHARLESTON State: SC Zip Code: 294033598			Coverage Provider Information: Cov Prvdr ID-Cov Prvdr Name: 11347 - TRAVELERS INDEMNITY CO Street: POB 3666 City: ORLANDO State: FL Zip Code: 328023668 Group ID: 10604 Branch: 138		
Orig Pol Rcvd Dt: 10/10/2011 Prior Pol Nbr:	Orig POC Rcvd Dt:	Last Rcvd Dt: 10/11/2011	Last Activity Dt: 10/12/2011		
State Cov Prvdr: State Eff Dt: 09/23/2011 Gov Class: 7228 Legal Nature of Insured: 10 - LIMITED LIABILITY COMPANY (LLC) Wrap Up Pol: 2 - NON-WRAP-UP POLICY Employee Leasing Code: 1 - NON-EMPLOYEE LEASING POLICY Pol Type Plan: 01 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 05 AND 06 Pol Type Cvr: 01 - STANDARD WORKERS' COMPENSATION POLICY					

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The Employer Came
back into Compliance
on 9/23/2011 but
the Policy Cancelled
on 11/10/2011





POC Online Inquiry

Main Page | Log Out

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Reinst/Non-Renew	Transaction History
Policy Nbr: 7PKUB4856P01211 Primary Insured Name: JJS TRUCKING LLC				Pol Eff Dt: 09/23/2011 Pol Exp Dt: 09/23/2012 Cov Prvdr ID: 11347	
C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
10/11/2011	10/04/2011	10/12/2011	01 - CANCELLATION	03 - CANCELLED SHORT-RATE	03 - CANCELLED BY EMPLOYER

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Coverage Cancelled 30 days
after receipt by NCCI of
Cancellation Notice, making
the effective date of
Cancellation 11/10/2011

STANDARD PREMIUM FINANCE MANAGEMENT CORP. PO BOX 522941 MIAMI, FLORIDA 33152-2941

CONTRACT NO. PENDING PREMIUM FINANCE AGREEMENT

THIS AGREEMENT is made on the date indicated between the undersigned and STANDARD PREMIUM FINANCE MANAGEMENT CORPORATION, a Florida Corporation hereinafter called "SPFMC", for the financing of the balance of the premiums on the following insurance policies:

POLICY NUMBER	Full Name and Address of Insurance Company and Name & Address of General Agent to which policy premium is paid	FOR SPFMC USE ONLY	INCEPTION DATE	POLICY EXPIRES	TYPE OF COVERAGE	PREMIUM	
	N.C.C.U. ☐ Credit ☐ Auto ☐ Security Rating		10/02/2010	10/02/2011	NON-RESIDUAL	\$4,000.00 \$0.00 \$0.00 \$0.00 \$0.00	
(A) CASH PRICE (Total Premiums)	(B) YOUR CASH DOWN PAYMENT	(C) AMOUNT FINANCED The Amount of credit provided to you or on your behalf. Unpaid balance of cash price.	(D) FINANCE CHARGE The dollar amount the credit will cost you.	(E) DOCUMENTARY STAMPS State required documentary stamps	(F) Total of Payments (BALANCE DUE) The amount you will have paid after you have made all payments as scheduled.	(G) ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	(H) DEFERRED PAYMENT PRICE (B plus F)
4560.00	1140.00	3420.00	256.38	0.00	3679.38	17.85	\$4,819.38
State Documentary Stamp Tax Where Applicable by Law in the amount stated above will be paid directly to the Department of Revenue.		YOUR PAYMENT SCHEDULE WILL BE: Amount of Each Payment: <u>406.82</u> Number of Payments: <u>9</u> Payments are Due Monthly Beginning: <u>11/8/2010</u> Each of the monthly payments is due on the same day of each succeeding month and paid in full.					
SECURITY: You are giving a security interest in any and all intangible return premiums, dividends and loss payments which may become payable under the policies. LATE CHARGE: If a payment is 5 days late, you will be charged 5% of the late installment, but no less than \$1.00 for example. Florida, Alabama and Mississippi not less than \$1.00 for South Carolina, in Texas and Tennessee, if a payment is 10 days late, you will be charged 5% of the installment, but no less than \$2.00 for Tennessee or otherwise prescribed by the state jurisdiction that is to receive \$10.00 on personal lines in Florida. PREPAYMENT: If you pay off early, you may be entitled to a refund or part of the finance charge, although you may have to pay a prepayment penalty. See the reverse side page 2 of this document for additional information about prepayment, default, and prepayment penalties. FEDERAL TRUTH IN LENDING DISCLOSURES							

FOR VALUE RECEIVED: the undersigned insured premises and agrees to pay to the order of "SPFMC" the sum of (being the total of payments above) pursuant to all of the terms and conditions contained in the 5 chapters above and in the Terms and Conditions of this agreement, all of which are incorporated herein.

3679.38

NOTICE: SEE REVERSE SIDE/PAGE 2 FOR IMPORTANT INFORMATION

NOTICE: 1. DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT OR IF IT CONTAINS ANY BLANK SPACE. 2. YOU ARE ENTITLED TO A COMPLETELY FILLED IN COPY OF THIS AGREEMENT. 3. UNDER THE LAW, YOU HAVE THE RIGHT TO PAY OFF IN ADVANCE THE FULL AMOUNT DUE AND UNDER CERTAIN CONDITIONS OBTAIN A PARTIAL REFUND OF THE FINANCE CHARGE.

DO NOT SIGN THIS AGREEMENT UNTIL ALL REMAINING CONDITIONS ON REVERSE SIDE/PAGE 2 HAVE BEEN READ BY YOU.

THE UNDERSIGNED EXECUTED THIS LOAN AGREEMENT AND RECEIVED A COPY THEREOF THIS 8 DAY OF OCTOBER 2010
 (PRINT OR TYPE) JJS TRUCKING, LLC
 INSURED POLICE (as stated in policy) 137-A GORDON ST
 Address CHARLESTON, SC 29403
 City, State, Zip Code 8435773588 434429171 710986218
 Home phone Work phone S.S.# or Business I.D.# Driver's License

JJS TRUCKING, LLC
 INSURED POLICE (as stated in policy)

137-A GORDON ST
 Address
 CHARLESTON, SC 29403
 City, State, Zip Code

8435773588 434429171
 Home phone Work phone

710986218
 S.S.# or Business I.D.# Driver's License

AGENT'S NOTE: The undersigned agent hereby certifies that all policies listed above hereon have been issued and delivered and that the down payment as shown in the contract has been paid by or on behalf of the insured and that all policies listed therein were issued by this agency. The undersigned warrants that the above contract embodies a bona fide and legal transaction, that the insured is of legal age and has capacity to contract, that the signature is genuine and that the agent has delivered a copy of this contract to the insured. The agent further certifies that none of the policies listed hereon contain an exhibit or reporting form. Agent acknowledges that it is not entitled in any capacity or manner with SPFMC and agrees in the event of cancellation to remit the gross unearned commissions or unearned premiums to SPFMC upon request.

SWAMP FOX AGENCY, INC 40086

P. O. BOX 522

MIAMI, FL 33152

PRINT NAME AND ADDRESS OF AGENT OR BROKER OF THE INSURANCE POLICY USED

Melanie J. Jody 10-1310
 SIGNATURE OF BROKER OR AGENT

THIS CHATEL PAPER OR INSTRUMENT HAS BEEN COLLATERALLY ASSIGNED TO BRANCH BANK AND THAT ANY PARTY, AS SECURED PARTY, AND ANY FURTHER ASSIGNMENT WILL VIOLATE THE RIGHTS OF SUCH SECURED PARTY.

TRAVELERS
 2420 LAKEMONT AVENUE
 P.O. BOX 3556
 ORLANDO, FL 32802-3556

Account Bill

Account No. 5568D3149
 Date of This Bill 11/08/10

TOTAL BALANCE
\$1,655.00
MINIMUM DUE
\$1,655.00

JJS TRUCKING, LLC
 137-A GORDON ST
 CHARLESTON SC 29403

PAYMENT MUST BE RECEIVED BY:
NOVEMBER 23, 2010

ACCOUNT BILLING SUMMARY

POLICY	TYPE	POLICY PERIOD	MIN. DUE	BALANCE
4408P092 UB	Workers Comp	10/08/10 To 10/08/11	\$1,655.00	\$1,655.00
TOTAL BALANCE			\$1,655.00	\$1,655.00

TRANSACTIONS SINCE LAST STATEMENT

Payment Received - Thank You	-4,560.00
Total Transactions (See Transaction Detail Section)	+6,215.00
TOTAL BALANCE	\$1,655.00

TRANSACTION DETAIL

POLICY NUMBER 4408P092 UB	Workers Comp	
10/08/10	New Policy	6,215.00
TOTAL TRANSACTIONS		\$6,215.00

CONTINUED ON NEXT PAGE

TO ENSURE PAYMENT IS PROPERLY APPLIED, detach the return payment stub and mail to the return address below.
 ASSIGNED RISK WORKERS COMPENSATION INSURANCE

648842H 2010312 7235 701 075LMK

Payment Coupon Make checks payable to: Travelers

SWAMP FOX AGENCY INC
 JJS TRUCKING, LLC
 5568D3149

Include Account Number on the check.

Travelers
 One Tower Square
 Remittance Box 96359
 Hartford, CT 06183-9042



Change of Address?
 Place an "X" here.
 Print changes on reverse side.

PAYMENT MUST BE RECEIVED BY
NOVEMBER 23, 2010

TOTAL BALANCE
\$1,655.00
MINIMUM DUE
\$1,655.00
AMOUNT ENCLOSED

13343430381630393220101108201011230001655000000000000009635900000000060

SPECIAL MESSAGES

Your payment must be received by the "Due Date". Failure to pay the amount due may affect your insurability under the state Workers Compensation Insurance Plan.

You must pay at least the minimum due or up to the total balance due. If at any time you pay us more than the minimum due, and it covers your future installments you will not receive a bill.

If you dispute any of the amount due on this bill, you must do the following by the due date in order to avoid cancellation procedures from being initiated.

- 1) Provide to us written documentation outlining and explaining the specific areas of dispute as well as your estimate of the undisputed amount due and your method of calculation. You must pay the undisputed amount by the "due date".
- 2) Make a written request to the plan administrator for a hearing on the dispute. You may contact us in writing for the name of the plan administrator in your state.

All written correspondence should be mailed to the address found in the Customer Service Contacts section of this invoice.

To order Loss Control Services, please call the 1-800 number found in the Customer Service Contacts section of this invoice.

The account number shown above consists of your billing policy number and policy form. For the complete policy number refer to your policy paper.

This bill is rendered by THE TRAVELERS INDEMNITY COMPANY
company indicated on the policy shown on this notice.

affiliated

TRAVELERS
2420 LAKE MONT AVE
ORLANDO FL 32814

PRODUCER

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ACKNOWLEDGEMENT

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

****NOTICE OF CANCELLATION – NONPAYMENT OF PREMIUM FINANCED POLICY****

POLICY NUMBER: (7PKUB-4408P09-2-10)

THIS NOTICE IS TO:

EFFECTIVE DATE OF CANCELLATION: 01-04-11

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

INSURER:

THE TRAVELERS INDEMNITY COMPANY

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

This policy has been financed by a premium finance company. The Premium Finance Company has exercised its right to cancel this policy as provided in its agreement with the insured, due to the insured's delinquent payment status.

Inquires regarding the outstanding balance should be made directly to the Premium Finance Company.

PLEASE NOTE: The Insurance Company is under no obligation to reinstate this policy in the event the Premium Finance Company should rescind their cancellation request.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY.
FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR
PRODUCER.

RECEIVED

JAN 18 2011

Swamp Fox Agency Inc.

DATE OF ISSUE: 01-05-11

POL EFF. DATE: 10-08-10

POL EXP. DATE: 10-08-11

ST ASSIGN: SC

OFFICE: DIRECT ASSIGNMENT

PRODUCER: SWAMP FOX AGENCY INC

WUNN8K96

TRAVELERS

2420 LAKEMONT AVE STE 100
ORLANDO FL 32814

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

CANCELLATION

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

CANCEL NOTICE - NONPAYMENT OF PREMIUM FINANCED POLICY

THIS NOTICE IS TO:

EFFECTIVE DATE OF CANCELLATION: 01-04-11

JJS TRUCKING, LLC
137-A GORDON ST
CHARLESTON SC 29403

PREMIUM FINANCED BY: STANDARD PREMIUM FINANCE MGMT

AMOUNT DUE: \$

POLICY NUMBER: (7PKUB-4408P09-2-10)

We wish to inform you that your policy designated herein is cancelled in accordance with its terms as of the effective date of cancellation indicated herein, and at the hour on which the policy became effective. Any premium adjustment required by the policy will be made.

THIS DOCUMENT IS ISSUED ONLY BY THE COMPANY OR COMPANIES THAT ISSUED THIS POLICY. FOR ANY INFORMATION CONCERNING THIS CANCELLATION, PLEASE CONTACT YOUR PRODUCER.

INSURER: THE TRAVELERS INDEMNITY COMPANY

DATE OF ISSUE: 01-05-11 SJ

POL. EFF. DATE: 10-08-10

POL. EXP. DATE: 10-08-11

ST ASSIGN: SC

OFFICE: DIRECT ASSIGNMENT 701

PRODUCER: SWAMP FOX AGENCY INC

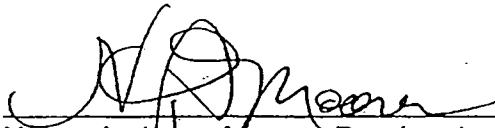
75LMK

WUNT2D00



**SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND WORKFORCE**
Post Office Box 995
Columbia, South Carolina 29202

**I certify that the attached is a true copy of the records pertaining to
Samuel A. Rose,**



Nancy Andrews Moorer, Paralegal
SC Department of Employment & Workforce

**Columbia, South Carolina
February 21, 2012**

SSN Wage Record Inquiry

SSN

Name	Acct #	Report Type	Year	Qtr - 1	Qtr - 2	Qtr - 3	Qtr - 4
SAMUEL ARCHIEDELL ROSE	[REDACTED]	Original	2008	\$4,113.68	\$2,987.09	\$688.88	
SAMUEL ARCHIEDELL ROSE	[REDACTED]	Original	2007	\$5,028.19	\$3,637.27	\$4,421.64	\$4,045.51
SAMUEL ARCHIEDELL ROSE	[REDACTED]	Original	2006			\$1,637.94	\$4,486.05
SAMUEL ARCHIEDELL ROSE	[REDACTED]	Original	2004				\$1,280.00

NAME: SAMUEL A ROSE		SSN: _____	BYE: 12/10/12
CLAIMSTAKER ID:	WFC #: 100	FILED: 12/16/11	EFF DATE: 12/11/11
MAILING ADDRESS:			
CITY: CHARLESTON		STATE: SC	ZIP: 29403
OTHER NAME: SAMUEL A ROSE			

☒ 1-UI	☐ 4-UI/UCPE/UCX	☐ 7-UCX	☒ NEW	☐ TRANSITIONAL
☐ 2-UI/UCPE	☐ 5-UCPE	☐ 8-CW	☐ ADDITIONAL	☐ R-ADD
☐ 3-UI/UCX	☐ 6-UCPE/UCX	☐ OTHER	☐ CONTINUED	

BONA FIDE EMPLOYER NAME & PAYROLL ADDRESS INFORMATION:		DATES OF EMPLOYMENT:	
NAME: JJS TRUCKING			
STREET: 137 GORDON ST APT A		FROM:	TO:
		05/02/11	12/13/11
CITY: CHARLESTON	ST: SC	ZIP: 29403	EMP. ACCT. # 000000

BONA FIDE EMPLOYER LOCAL ADDRESS INFORMATION:			
STREET:			
CITY: SUMMERVILLE	ST: SC	ZIP:	PHONE #: (843) 577-3988

SEPARATION REASON:	☐ LOW	☐ VQ	☐ DISCHARGE	☒ STILL WORKING

ISSUE CODES: 10

LIABLE EMPLOYER INFORMATION:		DATES OF EMPLOYMENT:	
NAME: JJS TRUCKING			
EMP. ACCT # 000000		FROM:	TO:
JOB LOCATION (CITY/STATE): CHARLESTON, SC		05/02/11	12/13/11

SEPARATION REASON:	☐ LOW	☐ VQ	☐ DISCHARGE	☐ STILL WORKING

NARRATIVE REASON FOR SEPARATION FROM LIABLE EMPLOYER:

02/21/12

CLAIMANT PROFILE DATA

SSN: _____ 0 CURRENT PROGRAM: 01 BYB: 12/11/11 BYE: 12/10/12
NAME: SAMUEL A ROSE CLAIM TAKER : 683
ADDRESS: _____ LOCAL OFFICE: 100
CITY: CHARLESTON ST: SC ZIP: 29403 I.C. PROG CDE: 01
TELE: 843 CO: 019 ENTRY DATE : 12/16/11
LIABLE STATE: 45 ADDR CHG DATE: FILE DATE : 12/16/11

SOC CODE : 53303200	UNCONVERTED:	ACTIVE ISSUES: 1
LAST OCCUPATION: TRUCK DRIVERS, H CHILD SUP PCT:		MONETARY COMP: Y
EDUCATION CODE: 12	CHILD SUP EFF:	OVERPAY BAL : .00
SEVERANCE IND : N	EB EFFECTIVE:	PRIOR BYE DTE: 01/03/10
SEVERANCE AMT : .00	DUA #: -DRSC	REQUAL IND : Y
PENSION IND : N	CLAIM TYPE: T	EUC EFFECTIVE:
SOC SEC AMT : .00	F/S WITHHOLDING: Y	EUC FILE DATE:
OTHER PENSION AMT: .00	PAYMENT OPTION: DC	EUC ELIG IND :
WBA : .00	METHOD OF FILING: T	EUC2 EFF DATE:
TOTAL POSSIBLE: .00	PAID TO DATE: .00	BALANCE: .00

CLAIM STATUS : MONETARILY INELIGIBLE

TRANSACTION OPTION: 01

02/21/12

B E N E F I T P A Y M E N T H I S T R Y

SSN: 0 NAME: SAMUEL A ROSE BYE: 12/10/12
BENEFITS WBA: .00 UI MBA : .00 BALANCE: .00

PO	CWE	ENTRY	CHECK	PAYMENT	CHK/SEQ	PAY	AMOUNT	UNR	DISQ	TOTAL
CDE	DOI	DATE	BY	DOI	OPTION	NUMBER	TYPE	PAID	FLG	REAS
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FOR MORE THAN 12 PAYMENTS DEPRESS PF2

TRANSACTION OPTION:

UI-5
UCB104-S 20WK
Rev. 7/11

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 1477
COLUMBIA, S. C. 29202
OFFICIAL BUSINESS
UCB-104S

FORWARDING SERVICE REQUESTED

SAMUEL A ROSE

CHARLESTON SC 29403

INFORMATION FOR CLAIMANT

This is a monetary determination of your claim for benefits based on wages paid during your Base Period. This determination shows your Base Period Employment Record. It lists your covered employer(s) that paid you wages, their account number, and the wages paid to you by quarter and year during the base period of your claim. The total amount of wages paid to you by quarter in the base period is shown beside Base Quarter Total. This determination covers only the monetary portion of your claim. Another determination will be issued that states if you are eligible to receive benefits. It will be based on the reason for separation from your most recent bona fide employer.

Under Potential Benefits Established, your Weekly Benefit Amount, Maximum Benefit Amount, and the date your Benefit Year Ends are shown.

BASE PERIOD: The first four of the last five completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, give the information to your claimstaker at the local workforce center.

If the monetary determination was invalid using base period wages, this determination may show wages and employment from an Alternate Base Period.

ALTERNATE BASE PERIOD: The first four most recently completed calendar quarters prior to the effective date of your initial claim. If you earned wages in covered employment not shown on the face of this form, give the information to your claimstaker at the workforce center.

HIGH QUARTER: The quarter in our Base Period during which wages paid to you for insured work were highest.

WEEKLY BENEFIT AMOUNT: The amount of benefits you may receive weekly, if unemployed and otherwise eligible, shall be one-half of the average weekly wage in the high quarter of your base period but shall not be less than \$42.00 nor greater than the maximum weekly benefit amount as determined by the Commission on or before June 30 of each year for benefit years on or after July 1 of such current calendar year, and prior to July 1 of the succeeding calendar year as provided in Section 41-35-40 of the Law.

MAXIMUM POTENTIAL BENEFITS: The greatest amount of compensation that you may receive during your benefit year.

BENEFIT YEAR: The one (1) year period following the effective date of your initial claim. To establish a Benefit Year in accordance with the provisions of the Law, you must meet the following wage requirements:

1. You were paid at least \$1,092.00 for insured work during the high quarter of your base period;
2. You were paid at least \$4,455.00 for insured work during your base period;
3. The total of your base period wages for insured work equaled or exceeded one and one-half times the total of your high quarter wages.

AVERAGE WEEKLY WAGE: Shall be determined by dividing the high quarter wages by 13 weeks.

REDETERMINATION RIGHTS: You have the right to request a correction if you do not agree that this determination is correct. Your request for redetermination may be made by letter or by personal visit to the office where your claim was filed and it should be made without delay. No change can be made on this determination after one year from the date of this notice.

BE SURE TO NOTIFY YOUR WORKFORCE CENTER ANYTIME YOUR MAILING ADDRESS CHANGES WHILE FILING A CLAIM FOR BENEFITS.

EXAMPLE OF COMPUTATION OF BENEFITS:

High Quarter Wages	\$1092.00
Base Period Wages	\$4455.00
Average Weekly Wage	\$1092.00 divided by 13 = \$ 84.00
Weekly Benefit Amount	84.00 divided by 2 = \$ 42.00

Maximum Potential Benefits:

Your maximum total benefit amount for this benefit year is the lesser of:

1. Twenty (20) times your Weekly Benefit Amount, or
2. One-third (1/3) of your total Base Period Wages as shown on this determination.
(1) $20 \times \$42.00 = \$840.00$ (2) $1/3$ of $\$4455.00 = \$1485.00$.

Maximum Benefits would be \$840.00 since that amount is less than \$1485.00.

SOUTH CAROLINA DEPARTMENT OF EMPLOYMENT AND WORKFORCE
INITIAL DETERMINATION OF STATUS AS AN INSURED WORKER

WORKFORCE CENTER 100

EFFECTIVE DATE 12/11/11

DATE FILED 12/16/11

DATE PREPARED 12/16/11

O

3390

SAMUEL A ROSE

CHARLESTON

SC 29403

*BENEFITS YOU MAY BE ELIGIBLE FOR:

MILITARY ASSIGNMENTS

WEEKLY BENEFIT AMOUNT .00

MAXIMUM TOTAL BENEFITS .00

BENEFIT YEAR ENDS 12/10/12

* This statement establishes that you have the necessary wages to qualify for unemployment insurance. However, to receive benefits your job separation must also be considered. If you qualify, this is the maximum you may be entitled to receive.

SEE BACK FOR CLAIMANT INFORMATION

EMPLOYMENT RECORD		STANDARD BASE PERIOD QUARTERLY EARNINGS							
EMPLOYER	ACCOUNT NO.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.	YEAR	*QTR.
JJS TRUCKING	989901	2010	03	2010	04	2011	01	2011	02
			.00		.00		.00		.00

STANDARD BASE QUARTER TOTAL

.00 .00 .00 .00

*QTR.

1.-JAN.,FEB.,MAR. 3.-JULY,AUG.,SEPT.

2.-APR.,MAY,JUNE 4.-OCT.,NOV.,DEC.



SC Department of Employment and Workforce Initial Claims Application

Filing location: Home
Office location: CHARLESTON
Claim creator: Claimant
Worked under a different name: No

Ethnicity

Claimant Hispanic or Latino: No

Claimant

Claimant's name: Samuel A. Rose
Date of birth:
Gender: Male
US citizen: Yes

Aliases

Alias type: SocialSecurityCard
Name: Samuel A. Rose
Alias type: Current
Name: Samuel A. Rose

Race(s)

* African American/Black

Addresses

Address type: physical
Address: CHARLESTON, SC 29403-5105
United States address: Yes

Address type: mailing
Address: CHARLESTON, SC 29403-5105
United States address: Yes

Telephone Number

Telephone number type: Home
Telephone number: 843 Ext:

Alien Information

Alien card number: None
Expiration date: No

Veteran Information

Service branch: None

Date entered:

Date released:

Character of service: None

Reason for separation:

Completed first full term of service: No

In the National Guard or a Reserve Unit and served on active No
duty during a period of war or in a campaign or expedition:

Served on active duty in the military for a period of more than 180 days: No

Separated from military in the last 48 months: No

Accrued days lost: No

Accrued leave: 0
(Item #16 on DD-214)

Pay grade:
(Item #4b on DD-214)

Retired from military service: No

Have a service related disability: No

Percent disabled: 0%

Awarded a campaign badge or ribbon for service during a conflict: No

Badges and ribbons: None

Will receive pension: No

Worked in the last 18 months: Yes

Employer Name: JJS TRUCKING

Employer delivery address: 137 GORDON ST APT A

Employer city: CHARLESTON

Employer state: SC

Employer zip code: 29403

Employer telephone number: (843) 577-3988 ext:

Worked for this employer: Yes

Worked part-time only: No

Hire date: 5/2/2011

Termination date: 12/13/2011

Type of work: Truck Drivers, Heavy and Tractor-Trailer

Earned at least \$2,608.00: Yes

Occupational license required: Yes

Job city: SUMMERVILLE

Job state: South Carolina

Job duties: Load trailer with wood chips and deliver wood chips

Discharge reason: Still Working

Discharge explanation: I was injured on the job

Federal employer: No

Received SF8 form: No

Payroll office address based on SF8: No

Job Registration

Spouse of a veteran: No

Spouse of a deceased veteran with a total disability rating: No

Spouse of a 100% total disabled veteran: No

Spouse of a veteran killed in the line of duty: No

Spouse of a MIA or POW: No

Worked on a farm: No

Worked in a food processing plant: No

Farm Worker Information

Earned at least half income performing farm work in the last 12 months: No

Employed all year in farm work: No

Traveled to perform farm work: No

Worked at least 25 days or parts of days during the last 12 months performing farm work: No

Food Processing Information

Earned at least half income performing food processing in the last 12 months: No

Employed all year in food processing: No

Traveled to perform food processing: No

Worked at least 25 days or parts of days during the last 12 months performing food processing: No

Do you have a valid driver's license: Yes

Driver License Classes

* A

Commercial Driver License Classes

* None

Commerical Driver License Restrictions

* Class A Except Bus

* Class A Except Tractor Trailor Double Triple

Additional Claim Information

Filed UI claim outside SC in the last 18 months: No

Worked in state outside SC in the last 18 months: No

Filed claim for Trade Readjustment Allowances(TRA): No

Filed claim for Disaster Unemployment Assistance(DUA): No

Receive or have received Federal-Funded assistance: No

Receive or have received retirement: No

Receive or have received federal civilian employee benefits: No

Receive or have received federal military employee benefits: No

Claimant wants taxes withheld from unemployment benefits: Yes

Extra Earned Income

Pension amount: \$0.00

Pension paid by:

Employer pension contribution percentage:

Pension effective date:

Retirement amount: \$0.00

Retirement paid by:

Employer retirement contribution percentage:

Retirement effective date:

Disability amount: \$0.00

Disability paid by:

Disability effective date:

Social security amount: \$0.00

Social security effective date:

Job Eligibility

Only available for part-time work: No

Part-time work explanation: None

Willing to relocate: No

Can begin work immediately: No

Earliest date you can begin work: 2/1/2012

Cannot begin work immediately explanation: I am injured from accident

Children or dependants in household who require care during working hours: Not Applicable

Children or dependent care explanation: None

Self-Employed: No

Self-Employed job title:

Child or spouse of employer: No

Owner or corporate officer of a business: No

Will be recalled to last job: No

Date of recall to last job:

Have a health condition that limits ability to accept full-time work now or in the future: No

Health status explanation: None

Willing to look for other types of work: Yes

Kind of Jobs Seeking

Truck Drivers, Heavy and Tractor-Trailer

Years of experience: 4

Years of training: 4

Truck Drivers, Heavy and Tractor-Trailer

Years of experience: 4

Years of training: 4

Last Job

Number of miles traveled to work on last job: Greater than 20

Rate of pay on last job: \$625.00

Unit of pay on last job: Weekly

Job Schedule Availability

Monday

Start time: 3:00 PM

End time: 3:00 AM

Tuesday

Start time: 3:00 PM

End time: 3:00 AM

Wednesday

Start time: 3:00 PM

End time: 3:00 AM

Thursday

Start time: 3:00 PM

End time: 3:00 AM

Friday

Start time: 3:00 PM

End time: 3:00 AM

New Job

Miles willing to travel to work: 10 - 20

Minimum wage you will accept on next job: \$625.00

Unit of pay on next job: Weekly

Job Schedule Availability

Sunday

Start time: 12:00 AM

End time: 12:00 AM

Monday

Start time: 12:00 AM

End time: 12:00 AM

Tuesday

Start time: 12:00 AM

End time: 12:00 AM

Wednesday

Start time: 12:00 AM

End time: 12:00 AM

Thursday

Start time: 12:00 AM

End time: 12:00 AM

Friday

Start time: 12:00 AM

End time: 12:00 AM

Saturday

Start time: 12:00 AM

End time: 12:00 AM

Work Counties

Charleston

County FIPS: 19

Dorchester

County FIPS: 35

Last grade completed: High School Diploma

Currently attending school: No

Planning to attend school: No

Current School Information

Name of school: None

School location:

When did you start school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Future School Information

Name of school: None

Location of school:

When are you planning to attend school:

School Schedule

Willing to change school/training schedule for a full-time job: No

Willing to quit school/training schedule for a full-time job: No

Transportation Methods

- Automobile
- Bicycle
- Public Transportation

Benefit Payment Method

Benefit payment type: Debit Card

Bank name:

Account type:

Account number:

Routing number:

Debit card agreement accepted: Yes

Direct deposit agreement accepted: No

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.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal complies with Rule
211(b), SCACR, and Supreme Court Order 2007-08-16-02, dated August 13,
2007, requiring redaction of personal data identifiers.

October 4, 2013

Kirsten L. Barr

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

FINAL BRIEF OF THE APPELLANTS

Kirsten L. Barr
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(843) 881-4228
Attorneys for Appellants

Table of Contents

Table of Authorities	ii
Statement of the Issues on Appeal	1
Statement of the Case	1
Facts	4
Arguments	6
I. The Workers' Compensation Commission erred as a matter of law in concluding that the request to transfer liability to the Uninsured Employers' Fund is not "ripe" for adjudication.....	6
II. The Workers' Compensation Commission erred as a matter of law in failing to transfer continuing liability to the Uninsured Employers Fund.....	9
Conclusion	11

Table of Authorities

Cases

<u>Barton v. Higgs</u> , 381 S.C. 367, 674 S.E.2d 145 (2009).....	10
<u>Colleton County Taxpayers Ass'n v. Sch. Dist. Of Colleton County</u> , 371 S.C. 224, 638 S.E.2d 685 ,(2006).....	8
<u>Gibson v. Spartanburg Sch. Dist. No. 3</u> , 338 S.C. 510, 526 S.E.2d 725, (Ct. App. 2000)	9
<u>Harrell v. Pineland Plantation, Ltd.</u> , 337 S.C. 313, 523 S.E.2d 766 (1999).....	9
<u>Hitter v. McLeod</u> , 274 S.C. 616, 619, 266 S.E.2d 418, 420 (1980)	8

Statutes

S.C. Code Ann. § 42-1-415.....	passim

Regulations

S.C. Code Reg. 67-415.....	9, 10

Statement of the Issues on Appeal

- I. Did the Workers' Compensation Commission err as a matter of law in concluding that the request to transfer liability to the Uninsured Employers' Fund is not "ripe" for adjudication?
- II. Did the Workers' Compensation Commission err as a matter of law in failing to transfer continuing liability to the Uninsured Employers Fund?

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 Appellants, 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. (R. p. 25, p. 27-55)

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 (R. 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.*

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

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

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 Appellants, 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. (R. 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 Appellants respectfully contend 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.

Facts

Chris Thompson testified that JJS Trucking was operating as a subcontractor of Chris Thompson Services, LLC, at the time in question. (R. p. 96). Chris Thompson Services engaged JJS Trucking to haul woodchips from a sawmill in Summerville to a paper mill in North Charleston on a regular basis, beginning in 2008. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. 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. (R. p. 132, p. 139).

At the time of the hearing before Commissioner McCaskill, the Appellants were voluntarily paying weekly temporary total disability compensation to the Claimant, as reflected on the Form 18. (R. 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.

Arguments

- I. The Workers' Compensation Commission erred as a matter of law in concluding that the request to transfer liability to the Uninsured Employers' Fund is not "ripe" for adjudication.

Chris Thompson Services and its carrier petitioned the Commission for a transfer of liability to the Uninsured Employers' Fund ("UEF") pursuant to S.C. Code Ann. § 42-1-415. (R. p. 27-55). According the terms of § 42-1-415,

"upon the submission of documentation to the commission that a ... subcontractor has represented himself to a higher contractor...as having workers' compensation insurance at the time the ...subcontractor was engaged to perform work, the higher tier...contractor...must be relieved of any and all liability under this title." (emphasis added).

The record is clear that JJS Trucking "represented himself" to Chris Thompson Services "as having workers' compensation insurance" at the time he was engaged to perform work and yearly thereafter, most recently on October 18, 2010. The Hearing Commissioner made a specific finding regarding this representation, which was not appealed or otherwise disturbed by the Appellate Panel and is now the law of the case: *"On or about October 8, 2010, JJS Trucking, LLC represented to Chris Thompson Services, LLC that it had workers' compensation insurance."* (Finding of Fact #7, R. p. 8).

Under the plain terms of the statute, having submitted proper documentation that JJS Trucking had represented itself as having workers'

compensation coverage, along with a Petition to Transfer Liability, the Appellants should been "relieved of any and all liability" without further delay. According to S.C. Code Ann. § 42-1-415,

"In the event that employer is uninsured ... the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. 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." (emphasis added).

Prior to the hearing before Commissioner McCaskill, the Appellants had paid and were continuing to pay the Claimant temporary total disability compensation benefits. (R. p. 117). However, the Claimant had not yet proven his entitlement to any other medical or compensation benefits. Following the May 15, 2012 Hearing, Commissioner McCaskill awarded the Claimant continuing compensation and medical benefits, which, of course, were not due before this award was made on August 23, 2012. Prior to the August 23, 2012 Decision and Order, the Appellants had paid all benefits "due" to the Claimant under the Act at that time.

Having awarded the Claimant additional benefits pursuant to the August 23, 2012 Decision and Order, the Commission went on to conclude in the same Order that the "Claimant has not received all benefits he is due under the Act" and; therefore, the Petition to Transfer Liability was not "ripe." Respectfully, the

Appellants' Petition was not contingent, hypothetical, or abstract and; therefore, to suggest that it was not "ripe" was an error of law. See Colleton County Taxpayers Ass'n v. Sch. Dist. Of Colleton County, 371 S.C. 224, 242, 638 S.E.2d 685 , 694 (2006) (stating that "an issue that is contingent, hypothetical, or abstract is not ripe for judicial review."); Hitter v. McLeod, 274 S.C. 616, 619, 266 S.E.2d 418, 420 (1980) (declining to rule on an issue that was not "ripe" for adjudication, noting it "presents [the court] with nothing more than a vehicle for rendering an advisory opinion").

Furthermore, it is wholly illogical to interpret S.C. Code Ann. § 42-1-415 as requiring anything other than payment of benefits presently due at the time the Petition is filed and the hearing is held. In fact, the language of S.C. Code Ann. § 42-1-415 clearly contradicts the Commission's interpretation (*e.g.*, requiring a petitioner to pay all benefits that may become due in the future as a condition precedent to the transfer of continuing), as the statute plainly states that the higher tier contractor may "petition the commission to transfer liability for continuing compensation and benefits to the Uninsured Employers' Fund." (emphasis added). By employing this language, "continuing compensation," the legislature clearly envisioned that additional benefits may be due in the future ("liability for continuing compensation"); however, if compensation is current as of the time of the Petition and hearing on that Petition, the Petition should be considered "ripe" for adjudication. Having paid all benefits that were "due" at the time the Petition was made in this case and at the time the hearing was held, the Appellants respectfully contend that the Commission should have transferred liability for "continuing compensation" to the UEF.

II. The Workers' Compensation Commission erred as a matter of law in failing to transfer continuing liability to the Uninsured Employers Fund.

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). 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).

The Appellants further contend that proper documentation of this representation was provided to the Workers' Compensation Commission in accordance with S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415. In fact, the evidence regarding this documentation is undisputed, rendering the issue one of law that can be decided by the Court of Appeals. See Gibson v. Spartanburg Sch. Dist. No. 3, 338 S.C. 510, 517, 526 S.E.2d 725, 729 (Ct. App. 2000) (holding that where the essential facts are undisputed, the question before the appellate court is one of law).

In particular, it is undisputed that the record contains an Acord Form 25-S, Certificate of Liability Insurance, which was collected by Chris Thompson Services, indicating that JJS Trucking had workers' compensation coverage from October 8, 2010 through October 8, 2011 through Travelers. (R. p. 141). Pursuant to S.C. Code Reg. 67-415, the

"Acord Form 25-S, Certificate of Insurance... is acceptable documentation of insurance provided the Certificate of Insurance indicates a valid South Carolina Address for the insured, is dated, signed and issued by an authorized representative of the insurance carrier for the insured."

See also Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009) (holding that if the Certificate of Insurance is dated, signed, and issued by an authorized representative of the carrier, it "shall serve as documentation of insurance" for purposes of S.C. Code Ann. § 42-1-415.).

Here, it is undisputed that the Certificate of Insurance submitted by the Appellants shows a valid South Carolina address for JJS Trucking: *137-A Gordon Street, Charleston, SC 29403*. (R. p. 141). It is undisputed that the Certificate of Insurance is dated: *October 18, 2010*. (R. p. 141). Finally, it is undisputed that the Certificate of Insurance is signed and issued by an authorized representative of Travelers Insurance: *David W. Hayes, owner of the Swamp Fox Agency, the producer of the policy*. (R. p. 141). In fact, Travelers Insurance stipulated that it covered JJS Trucking, as stated on the October 18, 2010 Certificate of Insurance at the time the Certificate was issued. (R. p. 141).

Chris Thompson Services reasonably relied on this Certificate of Insurance and it is undisputed that Chris Thompson Services was never given any notification of a lapse in coverage or other reason to believe that JJS Trucking did not have workers' compensation insurance. (R. p. 97). JJS Trucking admits that it did not notify Chris Thompson Services of this lapse prior to the Claimant's accident. (R. p. 139). Therefore, because the evidence on the seminal elements of S.C. Code Ann. § 42-1-415 is undisputed, the Appellants respectfully request that the Court of Appeals conclude that "responsibility for continuing compensation and benefits" should be transferred to the UEF in accordance with the mandatory language of § 42-1-415.

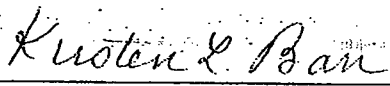
Conclusion

Based upon these arguments, the Appellants respectfully request that the Workers' Compensation Commission's Decision and Order be reversed and that the Court of Appeals conclude that the Appellants are entitled to transfer liability for continuing benefits to the Uninsured Employers' Fund in accordance with S.C. Code Ann. § 42-1-415.

Respectfully submitted,

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By


Kirsten Leslie Barr
Attorney for the Appellants

October 22, 2013
Mt. Pleasant, South Carolina

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,

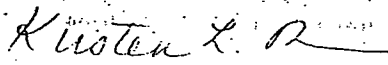
of whom JJS Trucking, LLC, Uninsured Employer, and
the South Carolina Uninsured Employers' Fund are.....Respondents,
and

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

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief of the Appellants complies
with Rule 211(b), SCACR, and Supreme Court Order 2007-08-16-02, dated
August 13, 2007, requiring redaction of personal data identifiers.

October 22, 2013



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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
WCC File No. 1112328

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

v.

JJS Trucking, LLC, Uninsured Employer, and
Chris Thompson Services, LLC, Upstream Contractor,
And Bridgefield Casualty Insurance Company, 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 Insurance Co., Carrier are the Appellants.

FINAL BRIEF OF RESPONDENT, SC UNINSURED EMPLOYERS' FUND

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Table of Contents

Table of Authorities	ii
Statement of the Issues on Appeal	1
Statement of the Case	2,3
Facts	4
Arguments	5-10
Conclusion	11

Table of Authorities

Cases

<u>Barton v. Higgs</u> , 381 S.C. 367, 674 S.E.2d 145(2009).....	8
<u>Cincinnati Ins. Co. v. South Carolina Second Injury Fund</u> , 297 S.C. 372, 377 S.E.2d 130 (Ct. App. 1989)	6
<u>Miller v. Robinson Trucking</u> , 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998).....	7
<u>Unisys Corp. v. S.C. Budget and Control Brd.</u> , 346 S.C. 158, 551 S.E.2d 263 (2001).....	8
<u>Hopper v. Terry Hunt Construction</u> , 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007) aff'd, 383 S.C. 310, 680 S.E.2d 1 (2009)	8

Statutes

S.C. Code Ann. Section 42-1-415	passim

Regulations

S.C. Code Regulation 67-415	6

STATEMENT OF ISSUES ON APPEAL

1. Whether or not the Commission correctly ordered that the issue of transferring liability to the SC Uninsured Employers' Fund was not ripe for adjudication.
2. Whether or not the Appellant met all requirements of SC Code Ann. §42-1-415 to transfer liability to the SC Uninsured Employers' Fund which is denied.

STATEMENT OF THE CASE

This matter was before the Single Commissioner pursuant to an amended Form 50 (ROA, p. 23) filed by the Claimant as a result of an alleged injury by accident on August 10, 2011. A Form 51 and an amended Form 51 (ROA, p. 24) was filed by Kirsten Barr on behalf of Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company. A Form 51 (ROA, p. 25) was also filed by the SC Uninsured Employers' Fund (hereinafter "UEF"). Both Defendants denied each and every allegation.

On January 24, 2012, Defendant Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company filed a Petition to Transfer Liability to the SC Uninsured Employers' Fund pursuant to SC Code Ann. §42-1-415. The UEF filed a Return to the Petition denying that Petition had met all requirements of SC Code Ann. §42-1-415.

A hearing was held in this matter on May 15, 2012 before Commissioner McCaskill and an Order was issued on August 23, 2012 (ROA, p. 1). The Order held, among other things, that the Claimant's accident was a compensable injury and awarded the Claimant temporary total benefits beginning August 10, 2011, and continuing until he reached maximum medical improvement and further ordered a medical evaluation. The Commissioner held that JJS Trucking (immediate employer) was operating as a subcontractor for Chris Thompson Services, LLC, and as such, Chris Thompson Services, LLC was an upstream employer pursuant to §42-1-415. The Commissioner found Chris Thompson Services, LLC liable to pay the Claimant benefits in which he was due under the Act as JJS Trucking was uninsured at the time of the accident. Finally, as to the Petition to Transfer Liability to the SC Uninsured Employer's Fund, the Commission ruled that it was not ripe for adjudication because the higher tier contractor had not "paid all benefits due to the Claimant under the Act". Chris Thompson Services, LLC and its

carrier, Bridgefield Casualty Insurance Company appealed this Order by Form 30 filed on September 5, 2012 (ROA, p. 72). A Full Commission hearing was held on January 23, 2013 and Order issued on May 15, 2013 (ROA, p. 12) affirming the Order of the Single Commissioner. This appeal followed.

FACTS

At the hearing, it was the Claimant's testimony that he was injured on August 10, 2011 while an employee at JJS Trucking, LLC who was subcontracting for Chris Thompson Services, LLC. When the Claimant discovered that JJS Trucking, LLC did not have any workers' compensation insurance, he attempted to go upstream to Chris Thompson, the statutory employer, but benefits were denied. The Claimant alleged his compensation rate to be \$433.34. Because none of his medical bills have been paid, the Claimant sought a finding of compensability, entitlement to medical treatment and payment of medical bills as well as temporary total benefits. The Claimant stipulated that he had recently been receiving \$75.00 per from Chris Thompson Services, LLC.

It was the position of Chris Thompson Services, LLC and Bridgefield Casualty Insurance Company, that the Claimant was a direct employee of JJS Trucking who was subcontracting for Chris Thompson Services. This Defendant disputed the severity or permanency of any injury or the need for future treatment. Appellant argued that they were entitled pursuant to §42-1-415 to transfer liability to the UEF. This argument was based on a certificate of insurance dated October 18, 2010 (ROA, p. 148).

The SC Uninsured Employers' Fund denied that the carrier was entitled to transfer liability to the UEF as all the statutory and legal requirements of SC Code Ann. §42-1-415 had not been met.

ARGUMENT

The carrier in this instance petitioned to transfer liability to the South Carolina Uninsured Employers' Fund pursuant to §42-1-415. For the reasons set forth herein, the Petition for Transfer of Liability was properly denied.

To warrant the granting of a Petition to Transfer Liability, the Carrier must meet all statutory and legal requirements. §42-1-415 provides:

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. 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...

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and willful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud as provided by law. Knowing and willful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and

subject the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud by law. Additionally, a contractor or subcontractor who knowingly and willfully falsely documents workers' compensation insurance or knowing and willfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and willfully falsely documents workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

The Commission, by its own Regulation (R. 67-415 (A)) established that:

(A) For the purposes of §42-1-415, the ACORD Form 25-S, Certificate of Insurance, as published by the ACORD Corporation, and as issued by the carrier for the insured, shall serve as documentation of insurance. The Certificate of Insurance must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.

The right of a statutory employer, such as Chris Thompson Services, LLC, to avoid liability under the statute, depends upon compliance with the specific terms and conditions imposed for transferring liability. Herein, Chris Thompson has failed to comply with statutory and legal requirements and is not entitled to transfer liability to the UEF. Cincinnati Ins. Co. v. South Carolina Second Injury Fund, 297 S.C. 372, 377 S.E.2d 130 (Ct. App. 1989).

Appellant argues that the Single Commissioner erred in finding that the carrier was not entitled to pass liability to the UEF as it had not paid "all benefits due" and therefore, the issue was not ripe for adjudication. The intrinsic problem with this argument is that being "ripe for adjudication" is not the only part of SC Code Ann. §42-1-415 that is crucial for the carrier to establish to pass liability to the Fund. It is only the first step.

First, Respondent would counter that the finding of the Single and Full Commission was proper and must be affirmed. Support of this is set forth below.

Second, even if this court disagrees with the finding by the Commission, the carrier has failed to prove, and the Commission has failed to find any findings of fact that all statutory and legal requirements of SC Code Ann. §42-1-415 have been met. If this Court were to reverse the Commissioner's Order, then the only remedy is to remand the case to the Commission for proper findings of fact as to all the statutory and legal requirements to transfer liability.

Prior to the enactment of §42-1-415, it was long-established and well-settled that a statutory employer bore absolute liability to the injured workers of a subcontractor and a statutory employer and could not shift that liability to the Uninsured Employers' Fund, even if the subcontractor was uninsured. See, generally, Miller v. Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998); S.C. Code Ann. Section 42-1-400, Annotations 1 –6; and Section 42-1-410, Annotations 1 – 3. By enacting Section 42-1-415, the legislature carved out a narrow exception to a statutory employer's absolute liability. This exception provides remedy and relief to statutory employers misled or defrauded into believing a subcontractor is insured. The language of Section 42-1-415 clearly sounds in fraud ----- "... subcontractor has

represented himself . . . as having insurance . . . knowing and willful falsifying . . .,” and subsection (c) provides for criminal and administrative penalties. This exception creates a new liability on the State, and should be carefully applied. Unisys Corp. v. S.C. Budget and Control Brd., 346 S.C. 158, 551 S.E.2d 263 (2001). It should be given a strict, narrow application, based on the wrong it attempts to relieve, but should not lead to an absurd result. Miller, *supra*.

South Carolina Law, in interpreting §42-1-415, has demonstrated that it was not the intent of the Legislature to create a liability for the state without requiring a defrauded statutory employer to exercise the minimally-reasonable steps of reading the certificate and reacting accordingly before liability can be transferred to the South Carolina Uninsured Employers' Fund.

For example, in the recent case of Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145(2009), the upstream employer failed to recognize that the certificate of insurance presented to it lacked a signature from an authorized agent of the insurance company. The Court held “liability may be transferred from the higher tier contractor to defend only after the higher tier contractor has properly documented the subcontractor’s claim that it retains workers’ compensation insurance. This statutory scheme provides an ultimate safety for general contractors against the subcontractors act of fraud.” The Barton Order explained that the upstream contractor “could have easily investigated the absence of the signature and determined that the immediate employer did not have a valid policy. In our view, public funds should not be expended where Respondent could have discovered the mistake by acting in accordance with the Regulation.”

In another case, Hopper v. Terry Hunt Construction, 373 S.C. 475, 646 S.E.2d 162 (Ct. App. 2007) *aff’d*, 383 S.C. 310, 680 S.E.2d 1 (2009), the Court declared that in order to transfer

liability the certificate of insurance presented to the upstream contractor must be fully completed. In this case, the ACCORD Form was incomplete, the Court held that the Employer "submitted an incomplete document purporting to show that it had workers' compensation policy... In our view, accepting an incomplete ACCORD Form does not constitute proper documentation." The Court specifically stated that one of the omissions on the certificate of insurance in the Hopper case was the section for "Description of Operations."

Chris Thompson Services, LLC, has failed to meet the requirements as set forth in §42-1-415 in the following ways:

1. §42-1-415(A) requires the upstream contractors to initially pay all benefits due to the subcontractor's injured employee. Then, the contractor may petition to transfer the responsibility of future payments to the Fund. The purpose of this section is principally concerned with protecting a subcontractor's injured employee in need of treatment and benefits pending a court determination of liability that could take months or years. The Statutory Employer's failure to take care of the Claimant herein may have caused the Claimant's condition to deteriorate and ultimately causing further costs than necessary. The purpose of the statute has not been served.

At the time of the hearing, the Carrier had only recently started paying some minimal temporary total benefits. It had not paid the correct amount due, and it had not provided medical treatment.

2. Once the Single Commissioner issued its order, then the carrier should have paid what was due and then it could petition the court to transfer liability. A cursory review of the certificate of insurance presented by the Statutory Employer shows that the certificate only

indicates a "Binder" of insurance, not a policy (ROA, p. 148). An insurance binder is only a temporary issuance of proof of insurance that will "bind" or cover you temporarily until a formal policy is issued. The certificate of insurance is dated 10 months prior to the Claimant's date of injury and no binder could remain in effect for that period of time. Obviously, the Statutory Employer took no steps to ensure any policy was ever subsequently issued to the Employer, which contradicts the findings in the Barton case.

3. The certificate of insurance is blank in the "description of operations" box, contrary to the requirements as set forth in the Hopper case as set forth above.

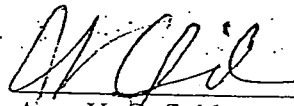
4. §42-1-415 provides "documentation must be ... turned over to the Commission at the time a claim is filed by the injured employee". The Claimant filed his claim on or about September 8, 2011. The Statutory Employer/Carrier, filed a Form 51 on October 7, 2011 wherein Chris Thompson raised §42-1-415 as a defense. However, documentation was not provided to the Commission until the following year on January 24, 2012, when it filed a Petition to Transfer Liability (ROA, pp. 112-115).

5. There is no evidence that the immediate employer participated in any fraud upon giving the statutory employer a "BINDER" of coverage. The intent of Section 42-1-415 is to prove a statutory employer relief when "documentation of insurance" has been given (through fraud). Here, the statutory employer never even received documentation of insurance, only a binder. The immediate employer never fraudulently represented to the upstream that he had "coverage".

CONCLUSION

Based on the arguments set forth herein, Respondent respectfully requests that the Decision and order of the SC Workers' Compensation Commission be affirmed. In the alternative, if this Court finds that this single requirement of §42-1-415 was met and that the issue was ripe for adjudication, then this matter must be remanded to the Commission for proper and full findings of fact as to the remaining requirements set forth in statute and law in order to determine whether or not the carrier can to pass liability to the UEF.

South Carolina Workers' Compensation
Uninsured Employers' Fund

BY: 

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October 11, 2013
Lexington, South Carolina

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
WCC File No. 1112328

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

v.

JJS Trucking, LLC, Uninsured Employer, and
Chris Thompson Services, LLC, Upstream Contractor,
And Bridgefield Casualty Insurance Company, Carrier,
And South Carolina Uninsured Employers' Fund Defendants,

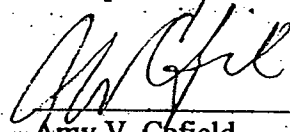
Of whom JJS Trucking, LLC, Uninsured Employer, and
The South Carolina Uninsured Employers' Fund are Respondents,

And

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

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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Attorney for the Respondent, SC Uninsured
Employers' Fund

October 22, 2013

The South Carolina Court of Appeals

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 S.C.
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.

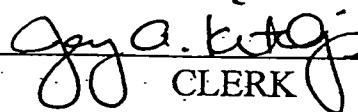
Appellate Case No. 2013-001322

ORDER

With the consent of the parties, the oral argument scheduled for October 9, 2014, is cancelled. The Court requests the parties serve and file memoranda addressing the issue of appealability within fifteen days of the date of this order.

FOR THE COURT

BY


CLERK

FILED

Sept. 18, 2014

Columbia, South Carolina

cc:

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Joseph Brooks Fisher, Esquire

Amy V. Cofield, Esquire

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

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' Fund Defendants,

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**

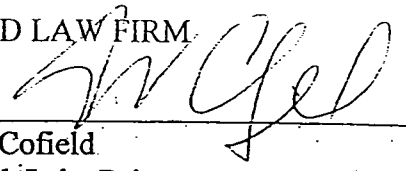
The Respondent, S.C. Worker's Compensation Uninsured Employers' Fund ("Fund"),
hereby moves this Court for an Order dismissing the pending Workers' Compensation appeal
insofar as the appeal does not follow a final order of the commissioner as required by South
Carolina Statutory and Case Law.

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.

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October 1, 2014

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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
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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

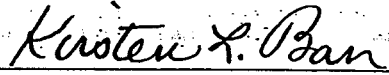
and benefits to the Uninsured Employers' Fund" in accordance with S.C. Code Ann. § 42-1-415.

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


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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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

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' Fund Defendants,

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 MEMORANDUM
APPEALABILITY

This Memorandum is prepared in response to Court request on the subject of
appealability and in support of a Motion to Dismiss for lack of appealability.

BACKGROUND

This matter is a workers' compensation case. Samuel Rose alleged that he sustained an injury by accident in the course and scope of employment with JJS Trucking, LLC, an uninsured employer. Chris Thompson Services, LLC was his upstream Contractor who was insured by Bridgefield Casualty Insurance Company ("Bridgefield"). Because the immediate employer had no workers' compensation insurance the South Carolina Workers' Compensation Uninsured Employers' Fund ("Fund") was added as a party to the action.

Pursuant to S.C. Code Ann. §42-1-415, "Bridgefield" petitioned the Commission to transfer liability to the "Fund".

A hearing was held before the Single Commissioner who found the matter to be compensable, ordered temporary benefits and continued medical treatment. The Single Commissioner further held that "Bridgefield's" Petition to Transfer Liability to the "Fund" was pre-mature as the carrier had not "paid all benefits due" as required by S.C. Code Ann. §42-1-415.

"Bridgefield" appealed this matter to the Full Commission who affirmed the findings of the Single Commissioner. It is from this order that "Bridgefield" appeals.

ARGUMENT

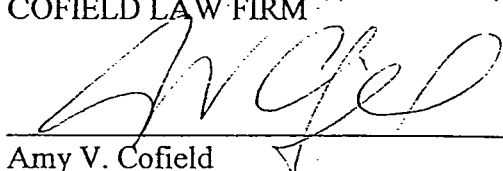
It is the "Fund's" position that this matter is not immediately appealable to this Court as there has been no final judgment. (S.C. Code Ann. §1-23-390) The order appealed from must finally determine an issue on the merits.

The Administrative Procedures Act (APA) governs the standard of review in a workers' compensation decision. (Lark v. Bi-Lo, Inc., 276 S.C. 130, 132, 276 S.E.2d 304, 305 (1981) Specifically, S.C. Code Ann. §1-23-610 limits review to final decisions. More specifically, "a

final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” *Charlotte-Mecklenburg Hospital Authority v. South Carolina Dept. of Health and Environmental Control* 387 S.C. 265,267, 698 S.E.2d 894, 895 (2010). In this matter, the ALC had decided some questions of law, but it had also remanded some issues. Therefore, no final determination had been made. Here, the Single Commissioner made some findings of fact and conclusions of law, but the case remained open to provide benefits until such time as the claimant had reached maximum medical improvement. Therefore, this order was not a “final” decision.

In the case at bar the limited issue on appeal is whether or not the carrier could transfer liability. Because the Commission held that the petition was pre-mature the issue as to whether or not the carrier could transfer liability was not decided with finality – only the timing of the request.

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October 1, 2014

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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

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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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 Appellants,

and

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

Appellate Case No. 2013-001322

Appeal From The Workers' Compensation Commission

Opinion No. 5291

Submitted November 1, 2014 – Filed January 28, 2015

APPEAL DISMISSED

Kirsten Leslie Barr, Trask & Howell, LLC, of Mt.
Pleasant, for Appellants.

Joseph Brooks Fisher, George Sink, PA Injury Lawyers,
of North Charleston, and Benjamin William Akery, The
Steinberg Law Firm, LLP, of Goose Creek,

for Respondent Samuel A. Rose; John Eric Kaufmann, of Columbia, for Respondent JJS Trucking, LLC; and Amy V. Cofield, Cofield Law Firm, of Lexington, for Respondent South Carolina Uninsured Employers' Fund.

FEW, C.J.: Chris Thompson Services, LLC and its carrier appeal the workers' compensation commission's refusal to order a transfer of responsibility pursuant to subsection 42-1-415(A) of the South Carolina Code (2015). Because the commission has not yet ruled on the merits of Samuel Rose's entire claim for benefits, however, the order is not a final decision, and thus not immediately appealable. We dismiss.

Rose filed this workers' compensation action alleging he sustained accidental injuries to his right knee, back, neck, and head while working for JJS Trucking, LLC. At the time of Rose's injury, JJS Trucking was a subcontractor for Chris Thompson Services and was uninsured. The commission ordered Chris Thompson Services to pay for Rose's medical treatment and temporary total disability benefits.

Chris Thompson Services petitioned the commission "to transfer responsibility for continuing compensation and benefits" to the South Carolina Uninsured Employers' Fund pursuant to subsection 42-1-415(A). The commission refused to order the transfer, finding the issue of transfer was "not ripe for adjudication at this time." The commission also determined Rose had not reached maximum medical improvement, and thus did not rule on his claim for permanent disability.

The Administrative Procedures Act governs judicial review of decisions of the commission. S.C. Code Ann. § 1-23-380 (Supp. 2014); *Bone v. U.S. Food Serv.*, 404 S.C. 67, 73, 744 S.E.2d 552, 556 (2013). Section 1-23-380 of the Act limits appeals to those from a "final decision" of the commission. An order of the commission is not a final decision unless it resolves the entire action. *See Price v. Peachtree Elec. Servs., Inc.*, 405 S.C. 455, 457, 748 S.E.2d 229, 230 (2013) ("An agency decision that does not decide the merits of a contested case is not a final agency decision subject to judicial review."); *Bone*, 404 S.C. at 73, 744 S.E.2d at 556 (same); *see also* 404 S.C. at 75, 744 S.E.2d at 557 ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (quoting *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health*

& *Env't'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010))). The commission's order leaves the merits of Rose's claim for permanent disability unresolved. Therefore, the order is not a final decision and not immediately appealable.

Appellants argue, however, the commission's refusal to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund under subsection 42-1-415(A) is immediately appealable under the following provision of section 1-23-380: "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." Appellants contend they "are required under the [commission's] order to make ongoing payments to [Rose], in addition to adjusting the claim and providing medical benefits, all despite the fact that . . . Appellants properly petitioned the commission to transfer continuing liability to the [Uninsured Employers' Fund]." Appellants further contend that reimbursement from the Fund after final judgment is not an adequate remedy and this court's "failure to address the appeal at this time would deprive . . . Appellants of any meaningful remedy and would vitiate the statutory scheme envisioned by the General Assembly with the enactment of [section] 42-1-415."

We do not agree that dismissing this appeal deprives Appellants of an adequate remedy. Appellants make no specific argument as to how the commission's refusal to address transfer at this time affects Appellants in any way other than to delay the payment of money. *See Bone*, 404 S.C. at 74, 744 S.E.2d at 556 (stating an employer and its insurance carrier "have an adequate remedy in that they may raise the issue of compensability" after a final award by the commission). The Uninsured Employers' Fund appears to acknowledge that it would be required to reimburse Appellants if the commission later orders a transfer. Therefore, if the commission eventually determines the transfer was adequately documented and thus should have been ordered, Appellants will recover their payments through reimbursement. If the commission does not later order a transfer, Appellants have an adequate remedy in an appeal after the commission's final decision in the case.

Because we dismiss the appeal on the ground that the order is not immediately appealable, we decline to address Appellants' argument that the denial of transfer to the Uninsured Employers' Fund before final judgment is contrary to the legislative intent of section 42-1-415.

APPEAL DISMISSED.¹

THOMAS and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

The Honorable Avery B. Wilkerson, Commissioner

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W.C.C. 1112328

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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.

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.

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.

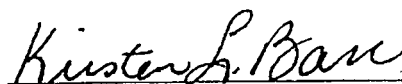
For example, because the Commission refused to transfer liability to the UEF when Petitioned in January 2012, the Appellants were required to continue paying compensation benefits to the Claimant and medical expenses on his behalf. As a result, the Appellants were necessarily required to employ a professional 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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The South Carolina Court of Appeals

Samuel A. Rose, Claimant, Respondent,

v.

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Uninsured Employers' Fund, Defendants,

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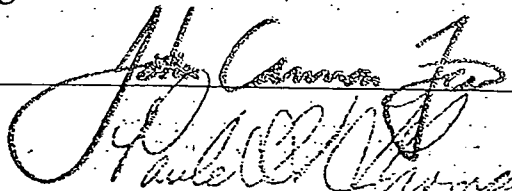
and

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

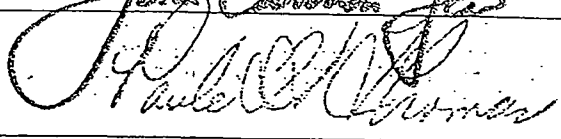
Appellate Case No. 2013-001322

ORDER

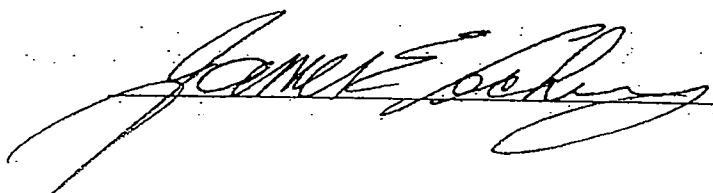
After careful consideration of the Appellants' petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



C.J.



J.



J.

Columbia, South Carolina

cc:

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FILED

SP 2/27/15