

**RECEIVED**  
OCT 13 2015  
SC Court of Appeals

**DECISION AND ORDER  
OF THE  
APPELLATE PANEL  
OF THE  
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

**COMMISSION PANEL: THE HONORABLE AISHA TAYLOR, CHAIR; THE  
HONORABLE AVERY B. WILKERSON, JR.; THE HONORABLE MELODY  
JAMES**

**SCWCC FILE NO.: 1200479**

Dallas Paul Bessinger,  
Claimant,

v.

RNM Builders 7 Associates, LLC, et. al and J&L Construction,  
Employer, and  
FirstComp Insurance,  
Carrier, Defendants.

Hearing held in Columbia,  
South Carolina on October 15<sup>th</sup>, 2013

Per notice timely and properly served upon all Parties of Interest.

Appearances: Steven D. Haymond, for Claimant/ Respondent  
  
Jerry L. Finney, for Defendant/ Respondent  
  
R. Daniel Addison, for Defendant/ Respondent  
  
Dewana R. Looper for Defendant/ respondent  
  
Amy V. Cofield, for Defendant/ Appellant

Filed:

---

## STATEMENT OF THE CASE

The instant proceeding was initiated by Claimant's Form 50 Request for Hearing dated January 26, 2012 to determine issues as set forth on the Form 50 and Form 51 Employer's Answer to Request for Hearing submitted separately by Defendant Employer and Defendant Carrier. And to determine which Employer or Carrier, if any, were liable for compensation, if any due.

Defendant/Carrier filed a timely response to the Form 50 alleging that it is not the proper Carrier in the claim on the basis that the owners of J&L Construction, Defendant/Employer, fraudulently obtained workers' compensation coverage. Defendant/Carrier contends that the coverage, procured based on fraud and misrepresentations, was *void ab initio* and, therefore, there was no policy to cover the accident.

The Uninsured Employers' Fund asserted that the Defendant/Carrier's policy was effective and provided coverage based on the Defendant/Carrier's failure to follow certain procedures to cancel a policy based on misrepresentations.

Defendant/Employer, *pro se*, conceded that the accident did occur but asserted that the Defendant/Carrier's policy was valid and should provide coverage for the claim. Defendant/Employer also denies fraud related to the policy.

On December 18, 2012, the single Commissioner issued her Decision and Order containing the following findings of fact and conclusions of law:

### ***FINDINGS OF FACT***

1. *Under §42-3-180, the single Commissioner has jurisdiction over the parties to hear the issues in dispute.*

2. *Claimant sustained a compensable accident on January 4, 2012, while an employee of J&L.*
3. *RNM Builders was the upstream contractor.*
4. *RNM Builders did not have workers' compensation coverage in place on January 4, 2012.*
5. *Claimant injured his left hip, right arm, and back in the January 4, 2012 accident.*
6. *Claimant is entitled to TTD from January 4, 2012 until April 4, 2012.*
7. *Claimant's average weekly wage is five hundred twenty and 00/100 dollars (\$520.00), yielding a compensation rate of three hundred forty six and 68/100 dollars (\$346.68).*
8. *Based on the evidence presented, Claimant has not yet reached MMI and is in need of additional medical treatment.*
9. *Claimant is entitled to reimbursement and/or payment of past casually-related medical expenses for his compensable body parts.*
10. *Claimant is entitled to ongoing medical treatment at least until he reaches MMI in accordance with S.C. Code §42-15-60.*
11. *Claimant's accident occurred at approximately 10:30 am on January 4, 2012.*
12. *That Wilkie and Loughery applied for the policy with FirstComp later that afternoon with knowledge that the accident had already occurred.*
13. *That Wilkie and Loughery failed to disclose Claimant's January 4, 2012 accident, when obtaining the policy of insurance from FirstComp later the same day.*
14. *That due to Wilkie's and Loughery's fraudulent activity, the policy issued by FirstComp was void ab initio.*
15. *That since neither J&L nor RNM had workers' compensation coverage, UEF is responsible for the claim but maintains any rights to seek reimbursement granted to it by virtue of South Carolina law.*

#### **CONCLUSIONS OF LAW**

1. *Under §42-3-180, the single Commissioner has jurisdiction over the parties to hear the issues in dispute.*
2. *Under §42-1-130, Claimant Dallas Paul Bessinger was a covered employee.*
3. *Under §42-1-140, J&L Construction was a covered employer.*

4. *Under §42-3-150, there was an employer/employee relationship between Claimant and J&L Construction.*
5. *Under §42-17-20, venue in Calhoun County, South Carolina was proper and agreed to by the parties.*
6. *Under §1-23-320(b) and Regulation 67-607, notice of hearing was timely and properly served on all parties of interest.*
7. *Under §42-1-160, Claimant, Dallas Paul Bessinger, sustained a compensable injury by accident arising out of and in the course of his employment.*
8. *Under §42-1-40, Claimant's average weekly wage is \$520.00 yielding a compensation rate of \$346.68.*
9. *Under §42-9-30, Claimant is entitled to temporary total disability for the injury from the date of his accident, January 4, 2012 through April 4, 2012.*
10. *That the policy of insurance from FirstComp was procured by fraud and misrepresentations by Claimant's Employer and is, therefore, void ab initio and provides no coverage over the injury in this case. Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. (See Commission's file for single Commissioner's additional support for this finding).*

#### **ORDER AND AWARD**

*Claimant sustained a compensable injury to his left hip, right arm, and back on January 4, 2012, for which he is entitled to reimbursement and/or payment of past casually-related medical expenses; ongoing medical treatment pursuant to S.C. Code §42-15-60 at least until Claimant reaches MMI; and temporary total disability for the injury from the date of his accident, January 4, 2012 through April 4, 2012 at the compensation rate of \$346.68. It is further ordered that the policy issued by FirstComp to J&L was void ab initio and no coverage existed at the time of Claimant's January 4, 2012 injury. Accordingly, it is ordered that the UEF provide Claimant's benefits under the Act in accordance with this order.*

## ISSUES ON APPEAL

The South Carolina Uninsured Employers' Fund (UEF) filed a Form 30 Request for Commission Review on December 28, 2012. UEF requested the Commission review the single Commissioner's Decision and Order to address 7 questions of law or fact regarding the Commissioner's findings. The Form 30 with attachment is contained in the Commission's file.

### RULINGS OF LAW OF THE FULL COMMISSION

1. This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review pursuant to S.C. Code § 42-17-50.
2. The Commissioners reviewed the award of the single Commissioner and find that good grounds have been shown for the Commission to reconsider the evidence, receive further evidence, and rehear the parties or their representatives pursuant to S.C. Code § 42-17-50.
3. The Commission **Vacates** the Decision and Order of the single Commissioner and **Remands** the matter to the Jurisdictional Commissioner for a hearing de novo to reconsider the evidence, receive further evidence, and rehear the parties or their representatives.

**ORDER**

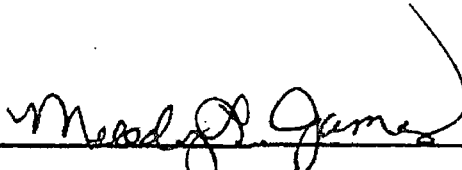
**IT IS THEREFORE ORDERED** that the Decision and Order of the single Commissioner is **Vacated** and this matter is **Remanded** to the Jurisdictional Commissioner for a hearing de novo to reconsider the evidence, receive further evidence, and rehear the parties or their representatives.

**AND SO IT IS ORDERED!**

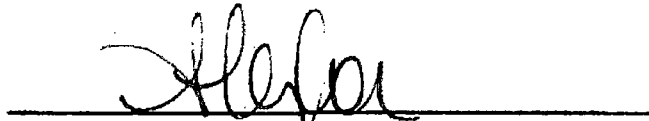
**RECEIVED**

OCT 13 2015

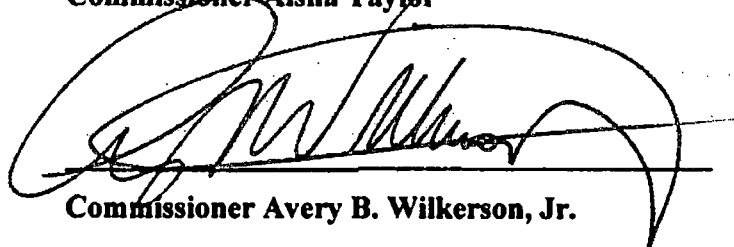
SC Court of Appeals



**Commissioner Melody L. James, Chair**



**Commissioner Aisha Taylor**



**Commissioner Avery B. Wilkerson, Jr.**

**Columbia, South Carolina**

**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

**By Kim Falls on April 17, 2014**