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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 1320141

Ignacio Rodriguez .....Respondent,

v.

Robert T. Pierson d/b/a Pierson Constr. Co.,  
and  
ABC Care, Inc.,  
and  
Property and Casualty Insurance Co. of Hartford,  
and  
The South Carolina Workers' Compensation Uninsured Employers Fund

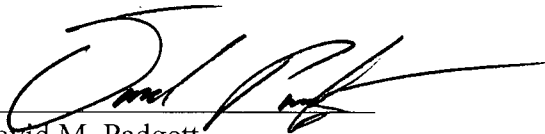
Of whom Property and Casualty Insurance Co. of Hartford., is the .....Appellant.

MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE

Appellant, Property and Casualty Insurance Co. of Hartford, by and through their undersigned attorney and pursuant to Section 1-23-380 of the South Carolina Code (Supp. 2012) moves this honorable Court for leave to present additional evidence to the Workers' Compensation Commission.

This Motion is further based upon the applicable South Carolina Appellate Court Rules and their related authority, and upon such supporting memorandum and affidavits as are submitted in connection herewith.

Respectfully Requested,



David M. Padgett

July 15, 2016

**HOLDER PADGETT LITTLEJOHN + PRICKETT**

1204 A. East Washington Street

Greenville, South Carolina 29601

(864) 335-8808

*Attorney for Appellant*

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Of whom Property and Casualty Insurance Co. of Hartford., is the .....Appellant.

MEMORANDUM OF APPELLANT IN SUPPORT OF APPELLANT'S  
MOTION FOR LEAVE TO PRESENT ADDITIONAL EVIDENCE

David M. Padgett

**HOLDER PADGETT LITTLEJOHN + PRICKETT**

1204 A. East Washington Street

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*Attorney for Appellant*

Other Counsel of Record:

William H. Ehlies, Esquire  
310 Mills Avenue., Suite. 201  
Greenville, South Carolina 29605  
*Attorney for Respondent*

Randall S. Hiller, Esquire  
850-B Wade Hampton Boulevard  
Greenville, South Carolina 29609  
*Attorney for Robert T. Pierson, d/b/a Pierson Construction and ABC Care, Inc.*

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Constangy, Brooks, Smith & Prophete, LLP  
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COME NOW, Appellant, Property and Casualty Insurance Co. of Hartford, by and through their undersigned attorney, and files this Memorandum in Support of its Motion for Leave to Present Additional Evidence.

### **I. STATEMENT OF FACTS**

Respondent sustained an accident on December 23, 2013, while working at the construction site of a residential home located at 149 Lake Wood Lane, Sunset, South Carolina 29685 (hereinafter “149 Lake Wood Lane”). This home was built on Lot 3A that was originally one of three adjacent lots owned by the Don S. Spalding Trust (Lots 3A, 3B, and 3C) and sits on Lake Keowee. On October 3, 2013, ABC Care, Inc., (hereinafter ABC Care) purchased Lot 3A from the Done S. Spalding Trust for \$100,000. Also on October 3, 2013, Lake Wood Lane Properties, LLC, purchased Lots 3B and 3C from the Son S. Spalding Trust via a quitclaim deed for \$1.00. Lake Wood Properties, LLC’s, sole member is Robert T. Pierson (hereinafter “Pierson”).

At the time of purchases of Lots 3A, 3B, and 3C, Pierson was not a licensed contractor in South Carolina. For this reason, on October 29, 2013, Pierson executed and filed an “Owner Builder Disclosure Statement,” as required by South Carolina Code § 40-59-260 (Supp. 2012). The purpose of this Code section is to allow property owners to build a residence for their private use without obtaining a builder’s license. On this form that was filed with the Pickens County RMC’s office, Pierson identified himself, only, as owner of 149 Lake Wood Lane. At the hearing, Pierson’s attorney submitted a copy of the same executed form filed with the Pickens County RMC’s office; however, the copy submitted to the Hearing Commissioner had “ABC, Inc.” handwritten next to Pierson’s signature and has “Director of Facilities” hand-written beside his printed

name. This altered/fraudulent version of the Disclosure Statement was submitted into evidence and considered by the Hearing Commissioner.

The undersigned attorney attempted to admit the unaltered version of the Owner Builder Disclosure Statement to the Full Commission; however, the Full Commission denied the undersigned attorney's efforts. In addition, the Full Commission's Order did not address the altered/fraudulent disclosure statement.

## II. STANDARD OF REVIEW

The South Carolina Administrative Procedures Act (APA) establishes the standard for judicial review of decisions by the Full Commission. Brown v. Peoplelease Corp., 402 S.C. 476, 480, 741 S.E.2d 761, 763 (S.C. Ct. App. 2013). Under the scope of review established in the APA, this court may not substitute its judgment for that of the Full Commission as to the weight of the evidence on questions of fact, but may reverse or modify the Full Commission's decision if the appellant's substantial rights have been prejudiced because the decision is affected by an error of law or is "clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Id. quoting, S.C. Code Ann. § 1-23-380(5)(e) (Supp. 2012). The South Carolina Supreme Court has defined substantial evidence as evidence that, in viewing the record as a whole, would allow reasonable minds to reach the same conclusion the Full Commission reached. Brown v. Peoplelease Corp., 402 S.C. 476, 481, 741 S.E.2d 761, 763 (S.C. Ct. App. 2013). "[T]he possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence." Id., quoting, Palmetto Alliance, Inc. v. S.C. Pub. Serv. Comm'n, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984). "Where there are no disputed facts, the question of whether an accident is compensable is a

question of law." Brown v. Peoplelease Corp., 402 S.C. 476, 481, 741 S.E.2d 761, 763 (S.C. Ct. App. 2013) quoting, Grant v. Grant Textiles, 372 S.C. 196, 201, 641 S.E.2d 869, 872 (2007).

Section 1-23-30 of the APA explains that a "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review." S.C. Code Ann. § 1-23-380 (Supp. 2012). Further, the Administrative Procedure Act provides:

If timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its finding and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

Id.

### III. ARGUMENT

In ruling on an application to submit additional evidence, this court should consider two factors: (1) the materiality of the additional evidence; and (2) the existence of a good reason for the failure to introduce such evidence at the original hearing. Brown v. Peoplelease Corp., 402 S.C. 476, 487, 741 S.E.2d 761, 767 (S.C. Ct. App. 2013); citing S.C. Code Ann. § 1-23-380(3) (Supp. 2012).

In regards to materiality, the Hearing Commissioner found that "all construction permits and all governmental documents" confirmed that ABC Care was the "owner, operator, and builder" at 149 Lake Wood Lane. Clearly, the Hearing Commissioner relied on the altered/fraudulent Owner Builder Disclosure Statement in making this finding. The Owner Builder Disclosure Statement was altered to show ABC Care was the builder under S.C. Code Ann. § 40-59-260 and

that Pierson was merely acting in his capacity of “Director of Facilities.” There is no question that an original and unaltered version of the Owner Builder Disclosure Statement is material to the claim.

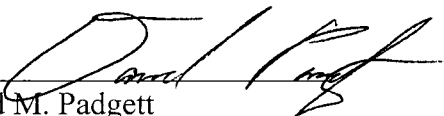
In regards to the failure to introduce such evidence at the trial level, Appellant’s were only made aware of this fraudulent disclosure statement after it was entered into evidence. At the first possible time, Appellant’s attempted to admit the original and unaltered version of the Owner Builder Disclosure Statement. However, the Full Commission declined to admit this evidence, and failed to address this issue in their Order.

#### IV. CONCLUSION

For the reasons stated above, Appellant’s Motion for Leave to Present Additional Evidence should be granted.

Respectfully Requested,

July 15, 2016

  
David M. Padgett  
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1204 A. East Washington Street  
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*Attorney for Appellant*

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and  
The South Carolina Workers' Compensation Uninsured Employers Fund

Of whom Property and Casualty Insurance Co. of Hartford., is the ..... Appellant.

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PROOF OF SERVICE


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The undersigned hereby certifies that a true copy of Appellant's Motion for Leave to Present Additional Evidence and Memorandum of Appellant in Support of Appellant's Motion for Leave to Present Additional Evidence in the above referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 15<sup>th</sup> day of July, 2016, addressed as follows:

William H. Ehlies, Esquire  
310 Mills Avenue., Suite. 201  
Greenville, South Carolina 29605  
*Attorney for Respondent*

Randall S. Hiller, Esquire  
850-B Wade Hampton Boulevard  
Greenville, South Carolina 29609  
*Attorney for Robert T. Pierson, d/b/a Pierson Construction and ABC Care, Inc.*

David H. Keller, Esquire  
Constangy, Brooks, Smith & Prophete, LLP  
Post Office Box 9037  
Greenville, South Carolina 29604  
*Attorney for South Carolina Workers' Compensation Uninsured Employers Fund*

A handwritten signature in cursive script, appearing to read "Laurie Warren", written over a horizontal line.

Laurie Warren, Paralegal  
Holder, Padgett, Littlejohn + Prickett, LLC

HOLDER  
PADGETT  
LITTLEJOHN+  
PRICKETT LLC  
ATTORNEYS AT LAW

David M. Padgett

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Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**RE: *Ignacio Rodriguez v. Robert T. Pierson d/b/a Pierson Constr. Co., and ABC Care, Inc., and Property and Casualty Insurance Co. of Hartford, and The South Carolina Workers' Compensation Uninsured Employers Fund***  
***Appeal from The South Carolina Workers' Compensation Commission***  
***Case No. 1320141***

Dear Clerk:

Enclosed for filing is Property and Casualty Insurance Co. of Hartford's Notice of Appeal with Proof of Service, as well as our firm's check in the amount of \$100 as and for the filing fee. A copy of the Decision and Order of the Full South Carolina workers' Compensation Commission has also been provided for your files. It is requested that you return a copy of the Notice of Appeal in the enclosed self-addressed stamped envelope with proof of filing.

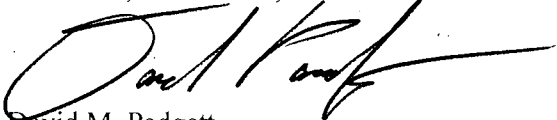
Also enclosed is an original and six (6) copies of Appellant's Motion for Leave to Present Additional Evidence and Memorandum in Support of its Motion for Leave to Present Additional Evidence, together with Proof of Service and our firm's check in the amount of \$25 as and for the motion fee.

By copy of this letter, we are serving one copy of each upon all counsel of record.

Thank you for your assistance in this matter and please do not hesitate to contact our office if you have any questions.

Very truly yours,

HOLDER, PADGETT, LITTLEJOHN + PRICKETT, LLC

  
David M. Padgett

DMP:lkw

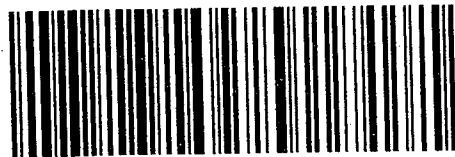
Enclosures



cc: William H. Ehlies Esq.  
Randall S. Hiller, Esq.  
David H. Keller, Esq.  
South Carolina Workers' Compensation Commission  
Client



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HPLP, LLC  
1204 A E Washington St  
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Honorable Jenny Abbott Kitchings  
Clerk of the Court of Appeals  
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