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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 RodriguezRespondent,

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 theAppellant.

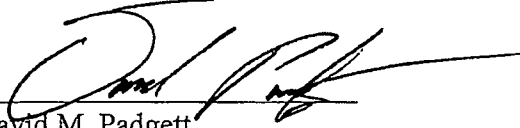
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SC Court of Appeals

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,



July 15, 2016

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

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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." hand-written 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. Peoplease 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. Peoplease 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. Peoplease 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. Peoplease 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.

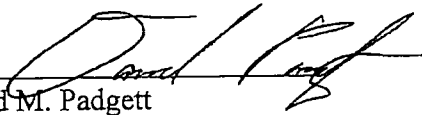
In regards to the failure to introduce such evidence at the trial level, Appellant's were only made aware of this fraudulent disclosure statement after it was entered into evidence. At the first possible time, Appellant's attempted to admit the original and unaltered version of the Owner Builder Disclosure 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



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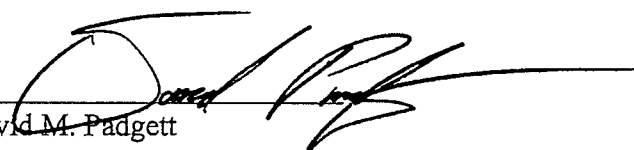
NOTICE OF APPEAL

Property and Casualty Insurance Co. of Hartford appeals the decision of the Full Commission dated June 20, 2016. Appellant received a copy of this decision on June 20, 2016. The issues on appeal are:

1. Whether the Commission erred in finding "all construction permits and all governmental documents" confirmed that ABC Care, Inc., was the "owner, operator, and builder" at 149 Lake Wood Lane, Sunset, South Carolina 29685.
2. Whether the Commission erred in finding Ignacio Rodriguez was an employee of ABC Care, Inc.
3. Whether the Commission erred in finding ABC Care, Inc., regularly employed four employees, in South Carolina, in the same business and occupation during the relevant period surrounding Ignacio Rodriguez's incident.

4. Whether the Commission erred in finding ABC Care, Inc., was subject to the South Carolina Workers' Compensation Act.
5. Whether the Commission erred in finding Property and Casualty Insurance Co. of Hartford insured ABC Care, Inc., in South Carolina.
6. Whether the Commission erred in finding Ignacio Rodriguez is entitled to medical benefits.
7. Whether the Commission erred in finding Ignacio Rodriguez is entitled to temporary total disability benefits.
8. Whether the Commission erred in finding Robert T. Pierson, d/b/a Pierson Construction, Co., and the South Carolina Workers' Compensation Uninsured Employers Fund are improper parties to this action.

July 14, 2016


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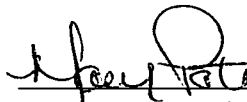
The undersigned hereby certifies that a true copy of the Notice of Appeal in the above referenced case has been served on all parties of record by mailing a copy of same in the United States mail, postage prepaid this 31 day of July, 2016, addressed as follows:

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