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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner T. Scott Beck
Commissioner Susan S. Barden
Commissioner Avery B. Wilkerson, Jr.

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SC Court of Appeals

Appellate Case No.: 2015-002092
SCWCC File No. 1200479

Dallas Paul Bessinger, ... Claimant

v.

R-N-M Builders & Associates, LLC, Employer; and
FirstComp a division of Markel, Inc., ... Carrier

of whom the South Carolina Uninsured Employers'
Fund is the Appellant/Respondent

And FirstComp, a division of Markel, Inc., is the Respondent/Appellant

**RECORD ON APPEAL
VOLUME I**

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DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1200479

Dallas Paul Bessinger,
Claimant,

vs.

R-N-M Builders & Associates, LLC,
Employer,

and

FirstComp Insurance,
Carrier.

Defendants.

DECISION & ORDER

HEARING: Held in Saint Matthews, South Carolina
July 18, 2012

APPEARANCES: Claimant represented by:
Steven D. Haymond
Harris & Graves, P.A.
P.O. Box 11566
Columbia, South Carolina 29211

Defendant FirstComp Insurance represented by:
R. Daniel Addison
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, South Carolina 29211

South Carolina Uninsured Employers' Fund represented by:
Timothy B. Killen
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210

Also present:
RNM Builders & Associates, LLC, represented by:
Jerry L. Finney
The Finney Law Firm
2117 Park Street

Columbia, South Carolina 29201

J&L Construction by:
Emery Wilkie, Pro se
John Loughery, Pro se

PURPOSE OF HEARING: To determine the issues as set forth on Forms 50 and 51.

DECISION & ORDER: By: Andrea C. Roche, Commissioner.

FILED: December 18, 2012

STIPULATIONS

1. That the purpose of the hearing was to determine all issues in dispute as set forth in the Forms 50 and 51.
2. That Claimant and Defendants were subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
3. That notice of the hearing was timely and properly served upon all parties of interest.
4. All parties agreed upon venue as set in Calhoun County, South Carolina.
5. The Workers' Compensation Commission's file, with the exception of unstipulated medical reports and self-serving declarations, was made part of the record.
6. That the purpose of the hearing was to determine whether Claimant sustained a compensable injury; identification of the proper Employer; and determination of the proper Carrier for this claim.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following medical and expert witness reports submitted into evidence:

Claimant's Exhibits

No.	Name of Physician	Date of Report	Page #'s
1	Dr. Thomas Jones/Palmetto Health Richland	1/4/12-4/4/12	1-9

Defendants' Exhibits (FirstComp)

No.	Name of Physician	Date of Report	Page #'s
2	Regional Medical Center of Orangeburg	1/4/2012	10-39
No.	Exhibits		Page #'s
3	Coverage report with exhibits by Garry Smith, SCWCC		40-51
4	Application for workers' compensation insurance.		52-53
5	Premium refund check		54
6	April 9, 2012 letter from Garry Smith, SCWCC		55-76
7	Deposition of John Loughery		
8	Deposition of Emory Wilkie		
9	Deposition of Talisa Miller		

Defendants' Exhibits (SCUEF)

No.	Name of Physician/Other	Date of Report	Page #'s
1	FirstComp Insurance policy with endorsements	1/4/2012	1-19
2	Workers' Compensation insurance application	1/4/2012	24-25
3	Messages between FirstComp Underwriter and Agent	1/4/12-1/9/12	26
4	SCWCC Coverage Inquiry screenshots with notation	Accessed 3/6/12	27-28
5	FirstComp check made payable to Emory Wilkie	2/13/2012	29
6	S.C. Code Ann. § 38-75-730	N/A	30-31
7	Oxendine v. TWL, Inc., 184 N.C.App. 162, 645 S.E.2d 864 (N.C. App. 2007)	N/A	32-35

STATEMENT OF THE CASE

This case was heard before the undersigned Commissioner on July 18, 2012, in St. Matthews, South Carolina. Notices were timely and properly served on all parties in interest, at which time the parties and/or their representatives appeared and evidence was submitted. The South Carolina Workers' Compensation Commission has jurisdiction over the parties and the subject matter in this case. All of the evidence delineated above was admitted without objection.

It is the position of Claimant that he sustained an injury by accident arising out of the course and scope of his employment when he fell off a roof on January 4, 2012. Claimant's direct employer at the time of the accident was J&L Construction ("J&L"). Claimant alleges

injuries to his left hip, right arm, ribs and back. Claimant's position is that he is not at maximum medical improvement ("MMI") and he is seeking reimbursement for past causally-related medical treatment and ongoing medical treatment in accordance with S.C. Code §42-15-60. Claimant is also seeking temporary total disability benefits from the date of the accident until he was released to work on April 4, 2012. Claimant alleges an average weekly wage of \$520.00 with a corresponding comp rate of \$346.68.

Defendant FirstComp Insurance Company ("FirstComp") alleges that it is not the proper Carrier in this claim on the basis that the owners of J&L Construction, Claimant's Employer, fraudulently obtained workers' compensation coverage. Specifically, FirstComp alleges that J&L made fraudulent representations to its insurance agent to obtain coverage retroactive to before the accident with knowledge that the accident had already happened and the company did not have workers' compensation coverage. FirstComp contends that the coverage, procured based on fraud and misrepresentations, is *void ab initio* and, therefore, there is no policy to cover this accident.

The Uninsured Employers Fund ("UEF") appeared in this matter and took the position that FirstComp's policy is effective and provides coverage for the accident in question. Specifically, the UEF argues that S.C. Code Ann. §38-75-730 governs this issue and requires a Carrier to follow certain procedures in order to cancel a policy based on misrepresentations, which were not taken in this case.

J&L argued through Emery Wilkie ("Wilkie") and John Loughery ("Loughery") that the FirstComp policy is valid and should provide coverage for this claim. Mr. Wilkie and Mr. Loughery deny fraud related to the policy.

EVIDENCE OF THE CASE

At the hearing, Claimant testified on his own behalf. Claimant stated that he was thirty-five (35) years old, unmarried, with three children. Claimant attended school through the eleventh (11th) grade and has been employed since that time in roofing, framing, and general labor. Claimant testified has never been involved in any prior accidents involving personal injury. Claimant testified he had been employed to do framing by RNM twice and that he was paid \$13.00 an hour. Claimant testified he worked between 30 and 40 hours a week.

On January 4, 2012, the date of the accident, Claimant testified that he was working on a house in Orangeburg, South Carolina. He testified that his work entailed framing walls, windows, and putting on the roof of a three story house. According to Claimant, he was working on the third floor of the house rolling up felt on the roof when he slipped and fell to the ground. Claimant testified that he lost consciousness but did not know for how long. Claimant testified that Loughery and Matthew Bessinger were present when he fell. He also testified that Wilkes was there that day but had to leave. Claimant testified that he recalled the ambulance arriving and he was transported to Orangeburg. A few hours later he was transported to Richland Memorial Hospital. Claimant testified that he had arrived at the job site that morning around 10:30 am and the accident occurred approximately 30 minutes to an hour later. Claimant then clarified that the accident occurred at 10:30 am and the crew had arrived about 7:00 or 7:30 am.

Following his hospitalization, Claimant was treated by Dr. Thomas Jones of Premier Orthopaedic Specialists for injuries to his wrist, ribs, back and forearm. According to Claimant, his arm stopped bothering him in early July, that his back was better, and that his ribs were doing fine. However, Claimant testified that he continues to feel pain in his left hip and is able to walk

but not for a far distance. Claimant testified that early on in his treatment, he was taking prescription pain medication but at he currently was not taking anything.

Claimant testified that he is no longer able to perform the work he had been doing prior to his injury. Claimant testified that he had been released by his doctor and that he was probably as good as he is going to get.

On cross examination by FirstComp's attorney, Claimant testified that he had had a prior worker's comp claim for a right leg injury that occurred seven or eight years ago when he fell off a roof. Claimant testified that he was treated by Dr. Lee for that injury and that he received related workers' comp benefits. This conflicted with his prior testimony that he did not have any other workers' compensation claims.

Claimant also testified that Wilkie had driven Claimant and other workers to the job site that day. Claimant testified he does not have a drivers license and has never had one. Claimant testified that he was working for Wilkie and Rob Bessinger on this job. Claimant testified that he had worked for them on one prior occasion but he did not have any knowledge regarding the name of the companies or who owned them. According to Claimant he was paid by Wilkie every week and that they had been working on this house for about a month and a half. Claimant testified that prior to taking on this project, he had been doing odd jobs for \$150 - \$200. Claimant testified he never received a 1099 form from either Wilkie or Loughery or any other written documentation of what he was earning.

On cross examination by counsel for UEF, Claimant testified that Rob Bessinger and Wilkie were his bosses but denied that Loughery was a boss. Claimant testified that he only received instructions from Rob Bessinger and Wilkie and that both would also give instruction to

Loughery. Claimant testified he believed the general contractor for the job was Ronnie Stokes ("Stokes") but Claimant was unsure of his company's name.

Among the records submitted by FirstComp in its APA is a coverage report issued on March 8, 2012, by Garry Smith, Compliance Division, Director (former) for the South Carolina Workers' Compensation Commission. As set forth in this report, RNM was not covered by any workers' compensation insurance on the date of Claimant's accident. Correspondence provided to the Compliance Division shows that the owner of RNM, Stokes, stated that Claimant had never been an employee of RNM and that, at the time of the accident, RNM did not have any employees. Stokes also stated that Claimant was an employee of a subcontractor, J&L.

FirstComp also submitted an application for workers' comp insurance dated January 4, 2012. The application, made out in the name of "E&L Construction, LLC", identified Wilkie as the Manager with 100% ownership in the applicant company. The application was signed by Loughery. The application indicates "No" for a response to the question of whether "Any work performed underground or above 15 feet?" In the section for providing information of any prior loss history, the application was left blank.

Deposition of TaLisa Miller

TaLisa Miller ("Miller") was the agent from Midlands Insurance Center who bound the policy for J&L. Miller testified that two gentlemen came into her office on January 4, 2012, around 3PM, saying they needed a workers' compensation insurance policy so they could obtain a certificate of insurance to present to RNM Builders. Miller testified that Wilkie did all of the talking and indicated that his company does interior work. She said that Loughery was present and appeared nervous during the exchange. Miller testified that they paid in cash for the downpayment of the policy. Miller denied previously doing business with Wilkie or Loughery.

She further indicated that Wilkie denied having any prior workers' compensation injuries with their company so that portion of the application was left blank. There was no mention of Claimant or Claimant's accident that morning.

Based upon the evidence in the record, including the testimony at the hearing, are the following:

FINDINGS OF FACT

1. Under §42-3-180, this Commissioner has jurisdiction over the parties to hear the issues in dispute.
2. That Claimant sustained a compensable accident on January 4, 2012, while an employee of J&L.
3. That RNM Builders was the upstream contractor.
4. That RNM Builders did not have workers' compensation coverage in place on January 4, 2012.
5. That Claimant injured his left hip, right arm, and back in the January 4, 2012 accident.
6. That Claimant is entitled to TTD from January 4, 2012 until April 4, 2012.
7. That 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. That based on the evidence before me, Claimant has not yet reached MMI and is in need of additional medical treatment.
9. That Claimant is entitled to reimbursement and/or payment of past causally-related medical expenses for his compensable body parts;

10. That Claimant is entitled to ongoing medical treatment at least until he reaches MMI in accordance with S.C. Code §42-15-60;

11. That 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 or RNM had workers' compensation coverage, UEF is responsible for this claim but maintains any rights to seek reimbursement granted to it by virtue of South Carolina law.

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, it is the determination of this Commissioner that:

1. Under §42-3-180, this 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 upon 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. Stated more fully:

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement.

Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). With respect to insurance contracts specifically:

It has long been the law of this state that in order to void a policy of insurance on the ground that fraudulent representations were made in the procuring of such policy, the burden of proof rests upon the insurer to show, by clear and convincing evidence, not only that the statements complained of were untrue, but in addition thereto that their falsity was known to the applicant, that they were material to the risk, were relied on by the insurer, and that they were made with intent to deceive and defraud the company.

Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331

(2002). In order to void an insurance policy, our courts have required the following elements:

- (1) the statement was false;
- (2) the falsity was known to the applicant;
- (3) the statement was material to the risk;
- (4) the statement was made with the intent to defraud the insurer; and
- (5) the insurer relied on the statement when issuing the policy.

Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005)

(citing Strickland v. Prudential Ins. Co. of Am., 278 S.C. 82, 86-87, 292 S.E.2d 301, 304 (1982))

In this case, I find that each of these elements has been established. The application for insurance contained numerous false statements, including the omission of any prior losses, the nature of the work performed by the applicants, and the ownership of the company. The substantial evidence in the record shows that, at the time the application was prepared, Wilkie and Loughery knew of Claimant's injury and had knowledge of the falsity of the information in the application. The materiality of the false representations is self-evident. Disclosure of prior claims and the nature of the work to be performed are matters at the very heart of a contract for workers' compensation coverage. The intent to defraud is likewise self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application. See Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177 (D.S.C. 1988) ("Under South Carolina law, an intent to deceive may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation."). Finally, there can be no doubt that FirstComp relied on these statements in issuing the policy based on the material misrepresentations and omission. Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513, 176 S.E.2d 131, 133-134 (1970) ("Where a fact is specifically inquired about, or a

question so framed as to elicit a desired fact, a full disclosure must be made, and the insurer has the right to rely upon the answer.”).

This result is supported by law from other states. In Matlock v. Hollis, 109 P.2d 119 (Kan. 1941) the question was posed “whether an employee can recover compensation from an insurance company, for serious injury received prior to the application or issuance of an antedated compensation insurance policy, but within the term therein fixed, the fact of such injury having been fraudulently concealed by the employers when the application was made.” In Matlock, the claimant was injured on the morning of October 22, 1937. The record showed that some four hours later, a partner in the business contacted their insurance agent and applied for compensation insurance without disclosing the prior loss. After payment was received, the policy was issued and was dated effective 12:01 a.m. on October 22, 1937. In affirming the trial court’s finding that the policy was *void ab initio* based on the fraudulent concealment of the injury, the Kansas Supreme Court held that “[t]he conclusion is inescapable that the concealment of the injury went to the very heart of the contract, made it void at its inception, and no one can predicate any rights upon it.” Matlock, 109 P.2d at 126.

Similarly, in Hunt v. Aetna Casualty and Surety Co., 387 P.2d 405 (Colo. 1963), the Supreme Court of Colorado found that a workmen’s comp policy did not cover an injury where the employer ordered the policy after the accident had occurred. In that case, the record showed that the employee was injured on June 20, 1961, at about 9:45 am. Sometime between 10 and 11 am, the claimant’s employer contacted an insurance agent and ordered a workmen’s compensation policy be issued effective 12:01 am., June 20, 1961. The evidence was undisputed that the employer knew about the accident but did not disclose it to the agent.

Other states are in accord with these principles. See e.g., Maise v. Delaney, 134 N.W.2d 770 (S.D. 1965)(upholding an order finding a workmen's compensation policy void based on the fraudulent concealment of an accident that occurred the day before application was made); Century Indemnity Co. v. Jameson, 131 N.E.2d 767 (Mass. 1956) (holding that ordinary principles of nondisclosure apply in voiding workmen's comp policy ordered by owner after accident without disclosure); Lima v. Industrial Acc. Com., 1 Cal. App. 2d 43 (Cal. App. 1934) (affirming industrial commission's finding that policy that was antedated by fraud to cover accident was not binding on carrier). As set forth in Larson's treatise,

The only situation in which the insurance would be defeated for all purposes by act of the employer is that in which the insurance is absolutely *void ab initio*, rather than voidable; this would occur if the employer attempted to insure against an accident that had already occurred, by pre-dating the insurance and fraudulently concealing the known existence of an accident within the period so covered.

9 Larson's Workers' Compensation Law, § 150.02[4] (Rev. 2007).

UEF contends that S.C. Code § 38-75-730 precludes a finding that an insurance contract issued under fraudulent circumstances is *void ab initio*. UEF argues that, S.C. Code § 38-75-730 "governs the cancellation of insurance policies" and Claimant can't be denied benefits due to the fraudulent actions of the employers. This section, however, does not alter the long standing right of a party to a contract to rescission of a contract that was induced by fraud, deceit, concealment, or imposition. Rescission is defined as a party's "unilateral unmaking of a contract for a legally sufficient reason . . ." Black's Law Dictionary, 1308 (7th Ed. 1999). Rescission is distinguished from the cancellation of a contract. To "cancel" is to "terminate a promise, obligation, or right." Id. at 197. While § 38-75-730 limits the rights of an insurer to "cancel" a contract under certain circumstances, it is clearly the law and the policy of this state to allow an insurer to rescind a

contract obtained through fraud. See Lanham, 349 S.C. 356, 563 S.E.2d 331. This distinction has been expressly noted by our Supreme Court:

In the case of U.S. Fidelity & Guaranty Co. v. Security Fire & Indemnity Co., 248 S.C. 307, 149 S.E.2d 647, we held that cancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. *Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed.* Brannock v. Fletcher, 271 N.C. 65, 155 S.E.2d 532. The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy *Ab initio*. In the case of Ray v. Beneficial Finance Co., 92 N.J.Super. 519, 224 A.2d 143, it was held that 'rescission' contemplates return to Status quo ante. The action here is one for rescission and a declaration that the insurance contract was *void ab initio*.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added).

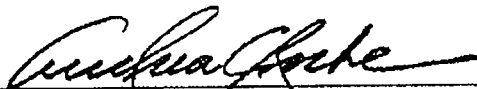
The North Carolina authority cited by UEF, Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App.) is distinguishable from the case at hand. While the insurer in Oxendine attempted to cancel the policy due to material representations or nondisclosure of material fact by the employer in obtaining the contract of insurance, it was not specifically alleged that the misrepresentation made or fact concealed related to the accident that occurred prior to the employer seeking coverage. In Oxendine, the policy was issued in March, 2002 and was to run until March, 2003. *Id.* At 865. The accident giving rise to the claim did not occur until January 31, 2003. *Id.* The North Carolina Court of Appeals was not faced with the question of whether they should permit recovery under a policy antedated to include an accident that had already occurred at the time the policy was issued, and its existence was known to, and concealed by, the employer.

ORDER

IT IS THEREFORE ORDERED that 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 causally-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.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Andrea C. Roche

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.
December 18, 2012

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

**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 15th, 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.

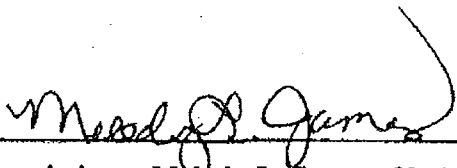
RULINGS OF LAW OF THE FULL COMMISSION

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.

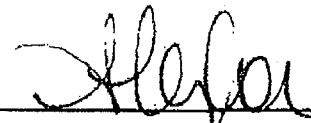
ORDER

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.

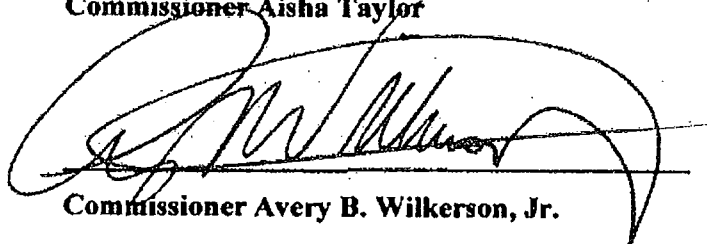
AND SO IT IS ORDERED!



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

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1200479

Dallas Paul Bessinger,
Claimant,

vs.

R-N-M Builders & Associates, LLC,
Employer,

and

FirstComp Insurance,
Carrier.

Defendants.

DECISION & ORDER

HEARING: Held in Richland County, South Carolina
August 21, 2014

APPEARANCES: Claimant represented by:
Steven D. Haymond
Harris & Graves, P.A.
P.O. Box 11566
Columbia, South Carolina 29211

Defendant FirstComp Insurance represented by:
R. Daniel Addison
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, South Carolina 29211

South Carolina Uninsured Employers' Fund represented by:
Amy V. Cofield
100 Executive Center Drive, Suite 101
Columbia, South Carolina 29210

PURPOSE OF HEARING: To determine the issues as set forth on Forms 50 and 51.

DECISION & ORDER: Gene McCaskill, Commissioner.

FILED: March 31, 2015

STIPULATIONS

1. That the purpose of the hearing was to determine all issues in dispute as set forth in the Forms 50 and 51.
2. That Claimant and Defendants were subject to and bound by the provisions of the South Carolina Workers' Compensation Act.
3. That notice of the hearing was timely and properly served upon all parties of interest.
4. All parties agreed upon venue as set in Richland County, South Carolina.
5. The Workers' Compensation Commission's file, with the exception of unstipulated medical reports and self-serving declarations, was made part of the record.
6. That the purpose of the hearing was to determine whether Claimant sustained a compensable injury; identification of the proper Employer; and determination of the proper Carrier for this claim.

APA SUBMISSIONS

Pursuant to the Administrative Procedures Act, the following medical and expert witness reports were submitted into evidence:

Claimant's Exhibits

No.	Name of Physician	Date of Report	Page #'s
1	Dr. Thomas Jones/Palmetto Health Richland	1/4/12-4/4/12	1-9

Defendants' Exhibits (SCUEF)

No.	Name of Physician/Other	Date of Report	Page #'s
1	FirstComp Insurance policy with endorsements	1/4/2012	1-23
2	Workers' Compensation Insurance Application	1/4/2012	24-25
3	SCWCC Coverage Inquiry Screenshots with notation	Accessed 3/6/12	26-27
4	FirstComp check made payable to Emory Wilkie	2/13/2012	28
5	S.C. Code Ann. § 38-75-730	N/A	29-30
6	<u>Oxendine v. TWL, Inc.</u> , 184 N.C.App. 162, 645 S.E.2d 864 (N.C. App. 2007)	N/A	31-34
7	Secretary of State Records for J&L Construction, LLC	4/9/12	35

Defendants' Exhibits (FirstComp)

No.	Name of Physician	Date of Report	Page #'s
8	The Regional Medical Center of Orangeburg	1/4/2012	36-65
No.	Exhibits		
A	Coverage report with exhibits by Garry Smith, SCWCC		66-77
B	April 9, 2012 letter from Garry Smith, SCWCC		78-99
C	Deposition of John Loughery		100-112
D	Deposition of Emory Wilkie		113-120
E	Deposition of Talisa Miller		121-142

STATEMENT OF THE CASE

This case was heard before the undersigned Commissioner on August 21, 2014, in Columbia, South Carolina. The case had previously been the subject of a hearing before a single Commissioner on January 26, 2012. Following an appeal to the Appellate Panel of the Commission, the prior order of the single Commissioner was vacated and the case was remanded for a hearing *de novo* by an order dated April 17, 2014. Notices were timely and properly served on all parties in interest, at which time the parties and/or their representatives appeared and evidence was submitted.

This claim involves an injury to Claimant that occurred on January 4, 2012. Claimant's employer did not appear at the hearing and was not represented. Defendant FirstComp Insurance

Company ("FirstComp") appeared to contest coverage over the claim by virtue of alleged fraud in the inducement. The South Carolina Uninsured Employers Fund ("UEF"), also appeared to contest whether it should have coverage for the claim.

It is the position of Claimant that he sustained an injury by accident arising out of the course and scope of his employment when he fell off a roof on January 4, 2012. Claimant's direct employer at the time of the accident was J&L Construction ("J&L"). Claimant alleges injuries to his left hip, right arm, ribs and back. Claimant's position is that he is not at maximum medical improvement ("MMI") and he is seeking reimbursement for past causally-related medical treatment and ongoing medical treatment in accordance with S.C. Code §42-15-60. Claimant is also seeking temporary total disability benefits from the date of the accident until he was released to work on April 4, 2012. Claimant alleges an average weekly wage of \$520.00 with a corresponding comp rate of \$346.68.

FirstComp alleges that it is not the proper Carrier for this claim on the basis that the owners/representatives of J&L fraudulently obtained workers' compensation coverage. Specifically, FirstComp alleges that John Loughery and Emory Wilkie applied for and made fraudulent representations to an insurance agent, TaLisa Miller, in order to obtain workers' comp coverage after Claimant's injury had already occurred. When issued, the policy obtained after the accident was made retroactive to 12:01 a.m. the day of issuance. The fact that the accident had already occurred was not disclosed on the application even though Loughery and Wilkie had actual knowledge that the accident had already happened and that the company did not have workers' compensation coverage at the time. FirstComp contends that this policy, procured by fraud, is void *ab initio* and, therefore, FirstComp is not the proper carrier for this claim. In

support of its position, FirstComp submitted a memorandum of law providing citation to relevant statutory and case law.

UEF appeared and contends that FirstComp's policy is effective as issued and provides coverage for the accident in question. Specifically, the UEF argues that S.C. Code Ann. §38-75-730 governs this issue and requires a Carrier to follow certain procedures in order to cancel a policy based on misrepresentations, which were not taken in this case.

Prior to the hearing, UEF filed a Motion to Strike seeking to have FirstComp's Form 58, *Prehearing Brief*, stricken from the record as well as testimony presented by deposition designated therein. UEF contends that FirstComp's Form 58 contains references to the prior proceeding in this matter that should not be considered in light of the remand for a *de novo* hearing. UEF further contends that the deposition of TaLisa Miller, taken on April 12, 2012, should not be admitted because Claimant's Employers were not notified of and did not attend that deposition. Finally, UEF contends that the depositions of John Loughery and Emory Wilkie, taken on April 11, 2012, should not be admitted because UEF was not provided proper notice of and did not attend those depositions.

FirstComp's response to UEF's motion argues that the information in the Form 58 is not objectionable as it was merely duplicative of the contents of the Decision and Order of the Appellate Panel remanding the case for a *de novo* hearing that is already in the Commission file for this case. FirstComp further argues that the deposition of TaLisa Miller should not be stricken because Claimant's employers were in fact given oral notice of the deposition and they chose not to appear and have never contested the issue of notice or the admissibility of the deposition. FirstComp argues also that UEF has no standing to assert any defect as to notice of another party. FirstComp also notes that counsel for UEF actively participated in the deposition

of TaLisa Miller and failed to state any objection to it at that time or in the over two years since it was taken. Finally, FirstComp contends that the depositions of Loughery and Wilkie should not be stricken because UEF failed to assert any timely objection as to notice, did not seek to recall those witnesses for deposition, and did not object to the admissibility of these depositions at the prior hearing in this matter. Consequently, FirstComp contends that they are a part of the Commission record, are properly admissible as evidence, and may be considered in the *de novo* hearing.

Prior to the start of the hearing, FirstComp objected on the record to the adequacy and sufficiency of the Appellate Panel's remand order on the basis that it did not make any findings supporting a remand for a *de novo* hearing, did identify any error in the prior proceeding, and is outside the Appellate Panel's authority. As such, FirstComp disputes the jurisdiction of the Commission to hold a *de novo* hearing absent a proper legal basis and specific supporting findings in the Appellate Panel's remand order.

The parties were permitted time to exhaustively argue these issues on the record at the hearing.

EVIDENCE OF THE CASE

At the hearing, Claimant testified on his own behalf. Claimant stated that he was thirty-seven (37) years old. Claimant attended school through the eleventh (11th) grade and has been employed since that time in roofing and framing. Claimant testified he had never had any prior problems with his left hip. Claimant testified he was hired by J&L to do framing and he worked with five or six other employees on the job. He had been working for J&L about two months prior to his injury.

On January 4, 2012, the date of the accident, Claimant testified that he was working on a roof nailing felt paper when it slipped from underneath him and lost control and fell three stories. He felt immediate pain in his hips, ribs, lungs and wrist. Claimant testified that Wilkie and Loughery were there at the time and they took him for medical treatment after about an hour. Claimant testified he was taken to Orangeburg and later transported to Richland Memorial Hospital.

Following his hospitalization, Claimant was treated by Dr. Jones. According to Claimant, his hip continues to hurt him when he has been sitting for a long time. He is not sure if it has gotten as good as it going to get. He testified that it effects him when lifting materials at work, and when he sits or stands a long time. He is not currently taking any medication for pain.

On cross examination by counsel for UEF, Claimant testified that he was hired by Wilkie and Loughery. He testified that he was paid \$13 per hour and worked forty hours a week. Claimant admitted he would not be paid on days when he did not work because of rain and there were weeks where he did not make forty hours. Claimant testified that his work involved more than just general labor; that he was up cutting and hanging rafters, wrapping houses with plywood, and getting on scaffolds.

Claimant testified that he last sought treatment in April 2012, and that he is not taking any medication. He testified he gets real sore while working and he is sometimes unable to lay on his left hip. He sometimes has pain in his lungs when he breathes or smokes.

FirstComp called Claimant's father, Phillip Bessinger, to testify. Mr. Bessinger testified that he went to the hospital after his son was injured and, while he was there, he tried to figure out who was going to pay for Claimant's treatment. Mr. Bessinger testified that the owner of RNM said he could not cover the treatment because he did not have workers' comp coverage.

Mr. Bessinger then talked with Wilkie and "John Lorick or whatever his name is." Mr. Bessinger testified that they indicated they had coverage but would not tell Mr. Bessinger the name of the company.

Among the records submitted is a coverage report issued on March 8, 2012, by Garry Smith, Compliance Division, Director (former) for the South Carolina Workers' Compensation Commission. (FirstComp's APA, p. 66-76) As set forth in this report, RNM was not covered by any workers' compensation insurance on the date of Claimant's accident. (FirstComp's APA, p. 73) Correspondence provided to the Compliance Division shows that the owner of RNM, Stokes, stated that Claimant had never been an employee of RNM and that, at the time of the accident, RNM did not have any employees. (FirstComp's APA, p. 72) Stokes also stated that Claimant was an employee of a subcontractor, J&L. (*Id.*)

Also in evidence is an application for workers' comp insurance dated January 4, 2012. (UEF's APA, p. 24-25) The application, made out in the name of "E&L Construction, LLC", identified Emory Wilkie as the Manager with 100% ownership in the applicant company. (*Id.*) The application was signed by Loughery. (*Id.* at 25) The application indicates "No" for a response to the question of whether "Any work performed underground or above 15 feet?" (*Id.*) In the section for providing information of any prior loss history, the application was left blank. (*Id.*) The FirstComp policy that was issued pursuant to this application shows it was issued with an effective date of January 4, 2012, 12.01 AM Standard Time. (UEF's APA, p. 1).

Medical Evidence

Claimant's medical evidence consisted of records from Dr. Thomas Jones of Premier Orthopaedic Specialists. On January 4, 2012, Dr. Jones performed an open reduction and internal fixation of a left intertrochanteric femur fracture. Claimant was seen again by Dr. Jones

on January 25, 2012. Dr. Jones notes that Claimant did not have any complaints and he could continue weight bearing as tolerated. On February 23, 2012, Dr. Jones noted that Claimant also had a radial styloid fracture that was treated nonoperatively. Claimant reported no returning to work yet but overall no complaints. X-rays were taken of the hip and the radial styloid fracture with both showing good healing. On April 4, 2012, Claimant was cleared to return to work and given a final prescription for Lortab.

Deposition of TaLisa Miller

TaLisa Miller ("Miller") was the agent from Midlands Insurance Center who bound the policy for J&L. Miller testified that two gentlemen came into her office on January 4, 2012, around 3PM, saying they needed a workers' compensation insurance policy so they could obtain a certificate of insurance to present to RNM Builders. Miller testified that Wilkie did all of the talking and indicated that his company does interior work. She said that Loughery was present and appeared nervous during the exchange. Miller testified that they paid in cash for the downpayment of the policy. Miller denied previously doing business with Wilkie or Loughery. She further indicated that Wilkie denied having any prior workers' compensation injuries with their company so that portion of the application was left blank. There was no mention of Claimant or Claimant's accident that morning and Miller denied having any telephone conversation with either Wilkie or Loughery earlier that day.

Deposition of John Loughery

John Loughery ("Loughery") testified that he was the sole owner of J&L Construction. Loughery testified that the company has never been incorporated with the South Carolina Secretary of State and operates as a d/b/a. Loughery testified that the company does whatever work they can get, including build decks, frame houses. He testified that he done subcontractor

work for R-N-M Builders and he usually employs 3-4 people. Loughery denied doing any cabinetry.

Loughery testified that he was present on the date that Claimant was injured. Claimant had been installing tar paper on the roof of a two-story home under constructions and apparently fell. Loughery did not see Claimant fall but heard some else yell out. Loughery testified that they called the ambulance. Emory Wilkie arrived on the scene as the ambulance was preparing to leave with Claimant and they, along with the workers on the crew, went to the hospital. Loughery testified that they stayed there for about an hour. Loughery testified that they called the insurance agent at Midlands and told her what happened. According to Loughery, the agent told them to come right away because there was a payment due. They went to the insurance office after leaving the hospital. Loughery testified that he filled out and signed the application. He testified that he thought he was renewing a prior policy. He testified that the they had told the agent on the phone that they needed to file a claim because someone had fallen and the agent said they needed to come in and renew their policy. Loughery denied ever receiving any notice of cancellation of any prior policies.

Loughery testified that he paid Claimant \$13.00 per hour for about 40 hours a week, or about \$100.00 per day.

Deposition of Emory Wilkie

Emory Wilkie ("Wilkie") testified that J&L Construction was Mr. Loughery's company that he works for every now and then over the past couple of years. Wilkie testified that he had worked for R-N-M Builders and got J&L this job through that contact. Wilkie testified that J&L would do just about any job they could get but were mostly day laborers for various other people.

Wilkie testified he was not on the job site at the time when Claimant fell. Wilkie testified that he nothing to do with Claimant on that day. He testified that he drove the crew to the job site that day because he was the only one with a drivers license but he was away picking up a prescription when the fall occurred. Wilkie was not aware of the specific work Claimant was doing when he fell. After Claimant was taken by ambulance, Wilkie drove the crew to the hospital. Wilkie testified that he then took Loughery to the insurance company because when Loughery had called her about the fall, she said that the "renewal or something had come up or that he didn't have insurance..." Wilkie believed they were going to renew a policy. Wilkie testified that the agent was aware that a fall had occurred and a worker was in the hospital. Wilkie denied filling out any paperwork. Wilkie denied paying the initial premium and testified he did not have a checkbook. Wilkie did not know why refund check was issued in his name but he did endorse the check and cash it for Loughery.

Based upon the evidence in the record, including the testimony at the hearing, are the following:

FINDINGS OF FACT

1. The Claimant alleges that he sustained an injury by accident arising out of and within the course and scope of his employment on January 4, 2012.
2. The Claimant alleges injuries to his left hip, right arm, ribs and back.
3. This hearing arises out of a remand from the Full Commission on April 17, 2014.
4. The Order of the appellate panel reads, "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." (Appellate Panel Order, p. 6)

5. All parties were properly noticed on June 27, 2014, those parties were Counsel for the Claimant, Counsel for the WC Uninsured Employers Fund, Counsel for J&L Construction and First Comp Insurance Company, Counsel for R-N-M Builders and Associates, Emery Wilkie and John Loughery.

6. As to jurisdiction, Mr. Addison, representing FirstComp Insurance, takes the position that, while he did not object to going forward with this hearing, he states on the record, "I'm objecting to the jurisdiction in terms of us not having a clear understanding from the Full Commission as to exactly what this Commissioner is supposed to be doing today ..." (Hearing Transcript, p. 6) "They have not indicated what was deficient with Commissioner Roche's Order in any way, shape or form. There's not anything saying she screwed up and, therefore, we're sending the hearing back for a *de novo* hearing. There's none of that. It was just essentially a wiping of the – it's like taking a dry erase board and wiping it off and saying do this again. And I don't know that the Full Commission can necessarily do that. I'm not saying that they don't have the jurisdictional power to make a decision, but I don't know that it's a proper decision." (Hearing Transcript, pp. 6 -7)

7. Ms. Cofield's position as to jurisdiction, "... we know exactly what the Full Commission directed. A trial *de novo*. A new hearing. A start from beginning as if nothing has ever happened before." (Hearing Transcript, pp. 7 -8)

8. Mr. Haymond did not speak to jurisdiction.

9. As to jurisdiction, the Full Commission was clear in its Order. They vacated the Order of the single commissioner and remanded to the Jurisdictional Commissioner for a hearing *de novo*. They instructed me to reconsider the evidence, receive further evidence, and rehear the parties or their representatives.

10. A plain reading of their Order provides very specific direction. The evidence in this case is the evidence. Their instruction for a *de novo* hearing arrives out their decision to vacate the Decision and Order of the single Commissioner. It does not invalidate or exclude any evidence that is part of the record.

11. This is a new hearing based on the evidence in the record prior to this hearing and any evidence that the parties wished to offer at this hearing.

12. Therefore, evidence that is now part of the record exists is that – part of the record. Any objection to its becoming part of the record would have to have been addressed at the time it was first offered. It would be improper for me to go back and exclude testimony, APAs or exhibits that are already contained in the record.

13. If it were the intention of the Full Commission for me to do that, there would have been specific instruction as to what would be excluded from my consideration. They did not so instruct. Quite the contrary; my instructions are to reconsider the evidence. A plain reading of that instruction is to reconsider all the evidence as it exists in the record.

14. Given the instructions of the Full Commission, the only parts of the file I am not to consider are the Order of the single Commissioner which has been vacated and the Findings of Fact and Conclusions of Law of the Full Commission which would necessarily recite the findings of the single hearing Commissioner.

15. I have not read and thus cannot consider the order of the single hearing Commissioner nor have I read the Findings of Fact and Conclusions of Law of the single hearing Commissioner.

16. Additionally, beyond the compensability of the alleged work-related accident, there is the question at bar as to who is the responsible party.

17. It is the position of Mr. Addison on behalf of his client that the Claimant, who is an employee of J&L, allegedly fell off the building where he was working. John Loughery and Emory Wilkie then go to Midlands Insurance Center, Inc. to obtain a workers' compensation policy after the alleged accident. The application identifies Mr. Wilkie as the Manager with 100% ownership of the insured. The signatory to the application was John Loughery. Claimant's accident earlier that day was never disclosed. The policy was bound around 2:30 PM on January 4, 2012. At the applicants' insistence, the policy was issued with an effective date of 12:01 AM, January 4, 2012.

18. Given this scenario, it is the position of Mr. Addison on behalf of his client that when FirstComp learned of the timeline and the fact the issuance of the policy was after the alleged work-related accident, the carrier declared the policy to be void pursuant to fraud.

19. As such, FirstComp is not and cannot be the carrier in this case.

20. It is Ms. Cofield's position on behalf of her client, the UEF, that there is nothing in the Workers' Compensation Act that permits that policy from being void *ab initio*. The statute section that controls is S.C. Code §38-75-720. Under this section no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for non-payment of premium or material misrepresentation of fact which if it had been known to the company would have caused the company not to issue the policy.

21. I find Mr. Addison's argument more persuasive.

22. Insurance fraud has clearly been perpetrated here. As such, a contract binding the two parties could not exist. A binding contract, which an insurance policy is, cannot be created when the facts are perverted by criminal fraud.

23. The issuance of an insurance policy is a contract by which the insurer assumes risk. That is not what happened here. In this case, Mr. Wilkie and Mr. Loughery attempted to obtain a policy which would obligate the issuer to assume liability for an accident that had already happened.

24. The action of FirstComp is not cancelation of the policy, it is a recession of the policy.

25. Ms. Cofield's position is predicated on the cancelation of a lawful contract. That is not the case here. We need not get to the question of cancelation. Given its fraudulent foundation, the policy could not exist to be canceled. This fraudulent foundation far exceeds the aforementioned "misrepresentation of fact" and, as such, permits the rescission of the policy.

26. The General Assembly never intended nor did it provide a way for employers to circumvent the Workers' Compensation Act by allowing employers, after an injury has already occurred, to then secure workers' compensation insurance to pay for work related accidents. To do so, would undermine the very foundation of the workers' compensation system.

27. When the evidence is viewed as a whole, the Claimant sustained injuries to his left hip, right arm, ribs and back in a work-related accident on January 4, 2012.

28. When the evidence is viewed as a whole, the Claimant's injuries are compensable in that they were arising out of and within the course and scope of his employment.

29. The Claimant has an average weekly wage of \$520.00 with a corresponding compensation rate of \$346.68.

30. The Claimant is entitled to TTD from 01/04/12 – 04/04/12.

31. The Claimant is entitled to payment for all medical care and treatment incurred to date.

32. The Claimant is also entitled to a return visit to the authorized treating physician to assess his condition relative to this accident.

33. Should the authorized treating physician determine additional medical care and treatment is necessary, the Claimant would be entitled to treatment the authorized treating physician would provide or direct.

34. If the Claimant is at MMI, the authorized treating physician is to provide the date of MMI and a final impairment rating(s) which will allow for final resolution of this claim.

35. When the evidence is viewed as a whole, the employers in this case are John Loughery and Emory Wilkie operating as J&L Construction, LLC.

36. Based on the facts in evidence and by applying the applicable law to those facts, FirstComp is not the carrier in this case. Mr. Wilkie and Mr. Loughery attempted to obtain workers' compensation coverage through FirstComp. That attempt was fraudulent in that the injury had already occurred and the policy was rescinded by FirstComp.

37. FirstComp is dismissed from this claim.

38. As such, the claim is assigned to the Workers' Compensation Uninsured Employers' Fund. Nothing in this order deprives the UEF of its right to seek indemnification from the Employer and/or other wrongdoers found to be liable.

39. As to Ms. Cofield's Motion of August 15, 2014, the issues raised by that motion are addressed above and the motion is denied.

40. Until the Claimant returns to the authorized treating physician, the Claimant is not at MMI and all other issues are to be held in abeyance. All other issues are to be held in abeyance.

CONCLUSIONS OF LAW

Based on the foregoing findings of fact, as well as the evidence in the record as a whole and the arguments of the parties at the hearing, it is the determination of this Commissioner, as provided in the South Carolina Code of Laws, 1976, as amended, §42-17-40, that:

1. Under §42-3-180, this 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 Richland 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 upon 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 by Claimant's Employer and is, therefore, void *ab initio* and provides no coverage over the injury in this case.

11. Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. See Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). An insurance contract may be voided under similar circumstances. See Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). In order to void an insurance contract based on fraud, our courts have required the insurer to show: (1) the statement was false; (2) the falsity was known to the applicant; (3) the statement was material to the risk; (4) the statement was made with the intent to defraud the insurer; and (5) the insurer relied on the statement when issuing the policy. Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005). Intent to defraud "may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation." Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177, 1190 (D.S.C. 1988). In addition, an insurer has the right to rely on an applicant's answer when "a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure must be made." Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513, 176 S.E.2d 131, 134 (1970).

12. In this case, each of these elements has been satisfied. The application for insurance contained numerous false statements, including the omission of Claimant's injury, the nature of the work performed by the applicants, and the ownership of the company. The evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery knew of Claimant's injury and had knowledge of the falsity of the information in the

application. The materiality of the false representations is self-evident. Disclosure of prior claims and the nature of the work to be performed are matters at the very heart of a contract for workers' compensation coverage. The intent to defraud is likewise self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application.

13. By its plain language, S.C. Code Ann. § 38-75-730 "governs the cancellation of insurance policies" and lays out the steps necessary to do so, such as providing ten days of written notice to the insured and the agent of record. See S.C. Code Ann. § 38-75-730(b). By referencing only an insurer's right to cancel, it is evident that the § 38-75-720 was not intended to alter or eliminate an insurer's right to rescind a contract obtained through fraud. The difference, which is key to this issue, has been explained by our Supreme Court as follows:

[C]ancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed....The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy as void ab initio.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added).

14. The purpose of S.C. Code Ann. §38-75-730 is to prevent arbitrary cancellations of insurance contracts. By its terms, the statute authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer's reinsurance and material misrepresentations. S.C. Code Ann. § 38-75-730 addresses situations far different than the intentional concealment of an existing claim to fraudulently procure a policy of insurance to cover that claim.

15. FirstComp is dismissed from this claim.

16. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to a return visit to the authorized treating physician to assess his condition relative to this accident and to receive additional medical care and treatment as recommended unless and until the physician determines Claimant to be at maximum medical treatment.

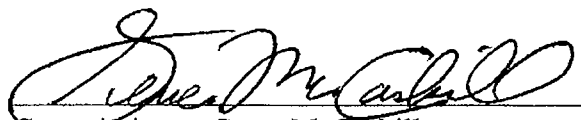
ORDER

IT IS THEREFORE ORDERED that 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 causally-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 and FirstComp is dismissed from this case. **ACCORDINGLY, IT IS ORDERED THAT** UEF provide Claimant's benefits under the Act in accordance with this Order.

AND IT IS SO ORDERED.

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.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION


Commissioner Gene McCaskill

**CC: Steven D. Haymond, Esquire
R. Daniel Addison, Esquire
Amy V. Cofield, Esquire
Emery Wilkie
John Loughery
R-N-M Builders & Associates, LLC**

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).

March 31, 2015

By: Kellie Lindler, Administrative Assistant to Commissioner McCaskill

DECISION AND ORDER
OF THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1200479

Dallas Paul Bessinger,

Claimant,

vs.

R-N-M Builders & Associates, LLC,

Employer,

and

FirstComp a division of Markel, Inc.,

Carrier.

Defendants.

Appellant Panel Review held in Columbia, South Carolina on June 15, 2015 per notices timely
and properly served on all parties of interest

Appellate Panel Decision and Order filed August __, 2015

APPEARANCES:

Claimant represented by:

Steven D. Haymond

Harris & Graves, P.A.

P.O. Box 11566

Columbia, South Carolina 29211

Defendant FirstComp Insurance represented by:

R. Daniel Addison

Hedrick Gardner Kincheloe & Garofalo, LLP

P.O. Box 11267

Columbia, South Carolina 29211

South Carolina Uninsured Employers' Fund represented by:

Amy V. Cofield

100 Executive Center Drive, Suite 101

Columbia, South Carolina 29210

PANEL:

Commissioner T. Scott Beck, Chairperson; Commissioner Susan S. Barden; Commissioner Avery B. Wilkerson, Jr.

STATEMENT OF THE CASE

This matter is before the Appellate Panel of the South Carolina Workers' Compensation Commission ("Appellate Panel") upon the petitions for review by the South Carolina Uninsured Employers' Fund ("UEF") and the defendant carrier, FirstComp Insurance ("First Comp"), from a Decision and Order of Commissioner Gene McCaskill ("Single Commissioner") entered on March 31, 2015 ("Order") following an August 21, 2014, hearing in Columbia, South Carolina. The case had previously been the subject of a hearing before a single Commissioner on January 26, 2012. Following an appeal to the Appellate Panel, the prior order of the single Commissioner was vacated and the case was remanded for a hearing *de novo* by an order dated April 17, 2014. The instant review arises out of the *de novo* hearing.

This claim involves an injury to Claimant that occurred on January 4, 2012. At the hearing before the Single Commissioner, Claimant's employer did not appear and was not represented. Defendant FirstComp Insurance Company ("FirstComp") appeared to contest coverage over the claim by virtue of alleged fraud in the inducement. The South Carolina Uninsured Employers Fund ("UEF"), also appeared to contest whether it should have coverage for the claim. In his Order, the Single Commissioner found that FirstComp was not the responsible carrier as the policy it had issued to the employer was obtained by fraud. UEF sought review of the Single Commissioner's order alleging errors of law and fact. FirstComp contends that the order of the Appellate Panel remanding for a *de novo* hearing was improper and the hearing should not have proceeded.

It is the position of Claimant that he sustained an injury by accident arising out of the course and scope of his employment when he fell off a roof on January 4, 2012. Claimant's

direct employer at the time of the accident was J&L Construction ("J&L"). Claimant alleges injuries to his left hip, right arm, ribs and back. Claimant's position is that he is not at maximum medical improvement ("MMI") and he is seeking reimbursement for past causally-related medical treatment and ongoing medical treatment in accordance with S.C. Code §42-15-60. Claimant is also seeking temporary total disability benefits from the date of the accident until he was released to work on April 4, 2012. Claimant alleges an average weekly wage of \$520.00 with a corresponding comp rate of \$346.68.

FirstComp alleges that it is not the proper Carrier for this claim on the basis that the owners/representatives of J&L fraudulently obtained workers' compensation coverage. Specifically, FirstComp alleges that John Loughery and Emory Wilkie applied for and made fraudulent representations to an insurance agent, TaLisa Miller, in order to obtain workers' comp coverage after Claimant's injury had already occurred. When issued, the policy obtained after the accident was made retroactive to 12:01 a.m. the day of issuance. The fact that the accident had already occurred was not disclosed on the application even though Loughery and Wilkie had actual knowledge that the accident had already happened and that the company did not have workers' compensation coverage at the time. FirstComp contends that this policy, procured by fraud, is void *ab initio* and, therefore, FirstComp is not the proper carrier for this claim.

UEF contends that FirstComp's policy is effective as issued and provides coverage for the accident in question. Specifically, the UEF argues that S.C. Code Ann. §38-75-730 governs this issue and requires a Carrier to follow certain procedures in order to cancel a policy based on misrepresentations, which were not taken in this case.

Based on the record and evidence and testimony presented at the hearing, the Single Commissioner made the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Claimant alleges that he sustained an injury by accident arising out of and within the course and scope of his employment on January 4, 2012.

2. The Claimant alleges injuries to his left hip, right arm, ribs and back.

3. This hearing arises out of a remand from the Full Commission on April 17, 2014.

4. The Order of the appellate panel reads, "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." (Appellate Panel Order, p. 6)

5. As to jurisdiction, Mr. Addison, representing FirstComp Insurance, takes the position that, while he did not object to going forward with this hearing, he states on the record, "I'm objecting to the jurisdiction in terms of us not having a clear understanding from the Full Commission as to exactly what this Commissioner is supposed to be doing today ..." (Hearing Transcript, p. 6) "They have not indicated what was deficient with Commissioner Roche's Order in any way, shape or form. There's not anything saying she screwed up and, therefore, we're sending the hearing back for a *de novo* hearing. There's none of that. It was just essentially a wiping of the – it's like taking a dry erase board and wiping it off and saying do this again. And I don't know that the Full Commission can necessarily do that. I'm not saying that they don't have the jurisdictional power to make a decision, but I don't know that it's a proper decision." (Hearing Transcript, pp. 6 -7)

6. Ms. Cofield's position as to jurisdiction, "... we know exactly what the Full Commission directed. A trial *de novo*. A new hearing. A start from beginning as if nothing has ever happened before." (Hearing Transcript, pp. 7 -8)

7. Mr. Haymond did not speak to jurisdiction.

8. As to jurisdiction, the Full Commission was clear in its Order. They vacated the Order of the single commissioner and remanded to the Jurisdictional Commissioner for a hearing *de novo*. They instructed me to reconsider the evidence, receive further evidence, and rehear the parties or their representatives.

9. A plain reading of their Order provides very specific direction. The evidence in this case is the evidence. Their instruction for a *de novo* hearing arrives out their decision to vacate the Decision and Order of the single Commissioner. It does not invalidate or exclude any evidence that is part of the record.

10. This is a new hearing based on the evidence in the record prior to this hearing and any evidence that the parties wished to offer at this hearing.

11. Therefore, evidence that is now part of the record exists is that – part of the record. Any objection to its becoming part of the record would have to have been addressed at the time it was first offered. It would be improper for me to go back and exclude testimony, APAs or exhibits that are already contained in the record.

12. If it were the intention of the Full Commission for me to do that, there would have been specific instruction as to what would be excluded from my consideration. They did not so instruct. Quite the contrary, my instructions are to reconsider the evidence. A plain reading of that instruction is to reconsider all the evidence as it exists in the record.

13. Given the instructions of the Full Commission, the only parts of the file I am not to consider are the Order of the single Commissioner which has been vacated and the Findings of Fact and Conclusions of Law of the Full Commission which would necessarily recite the findings of the single hearing Commissioner.

14. I have not read and thus cannot consider the order of the single hearing Commissioner nor have I read the Findings of Fact and Conclusions of Law of the single hearing Commissioner.

15. Additionally, beyond the compensability of the alleged work-related accident, there is the question at bar as to who is the responsible party.

16. It is the position of Mr. Addison on behalf of his client that the Claimant, who is an employee of J&L, allegedly fell off the building where he was working. John Loughery and Emory Wilkie then go to Midlands Insurance Center, Inc. to obtain a workers' compensation policy after the alleged accident. The application identifies Mr. Wilkie as the Manager with 100% ownership of the insured. The signatory to the application was John Loughery. Claimant's accident earlier that day was never disclosed. The policy was bound around 2:30 PM on January 4, 2012. At the applicants' insistence, the policy was issued with an effective date of 12:01 AM, January 4, 2012.

17. Given this scenario, it is the position of Mr. Addison on behalf of his client that when FirstComp learned of the timeline and the fact the issuance of the policy was after the alleged work-related accident, the carrier declared the policy to be void pursuant to fraud.

18. As such, FirstComp is not and cannot be the carrier in this case.

19. It is Ms. Cofield's position on behalf of her client, the UEF, that there is nothing in the Workers' Compensation Act that permits that policy from being void *ab initio*. The statute section that controls is S.C. Code §38-75-720. Under this section no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for non-payment of premium or material misrepresentation of fact which if it had been known to the company would have caused the company not to issue the policy.

20. I find Mr. Addison's argument more persuasive.

21. Insurance fraud has clearly been perpetrated here. As such, a contract binding the two parties could not exist. A binding contract, which an insurance policy is, cannot be created when the facts are perverted by criminal fraud.

22. The issuance of an insurance policy is a contract by which the insurer assumes risk. That is not what happened here. In this case, Mr. Wilkie and Mr. Loughery attempted to obtain a policy which would obligate the issuer to assume liability for an accident that had already happened.

23. The action of FirstComp is not cancelation of the policy, it is a recession of the policy.

24. Ms. Cosfield's position is predicated on the cancelation of a lawful contract. That is not the case here. We need not get to the question of cancelation. Given its fraudulent foundation, the policy could not exist to be canceled. This fraudulent foundation far exceeds the aforementioned "misrepresentation of fact" and, as such, permits the rescission of the policy.

25. The General Assembly never intended nor did it provide a way for employers to circumvent the Workers' Compensation Act by allowing employers, after an injury has already occurred, to then secure workers' compensation insurance to pay for work related accidents. To do so, would undermine the very foundation of the workers' compensation system.

26. When the evidence is viewed as a whole, the Claimant sustained injuries to his left hip, right arm, ribs and back in a work-related accident on January 4, 2012.

27. When the evidence is viewed as a whole, the Claimant's injuries are compensable in that they were arising out of and within the course and scope of his employment.

28. The Claimant has an average weekly wage of \$520.00 with a corresponding compensation rate of \$346.68.

29. The Claimant is entitled to TTD from 01/04/12 - 04/04/12.

30. The Claimant is entitled to payment for all medical care and treatment incurred to date.

31. The Claimant is also entitled to a return visit to the authorized treating physician to assess his condition relative to this accident.

32. Should the authorized treating physician determine additional medical care and treatment is necessary, the Claimant would be entitled to treatment the authorized treating physician would provide or direct.

33. If the Claimant is at MMI, the authorized treating physician is to provide the date of MMI and a final impairment rating(s) which will allow for final resolution of this claim.

34. When the evidence is viewed as a whole, the employers in this case are John Loughery and Emory Wilkie operating as J&L Construction, LLC.

35. Based on the facts in evidence and by applying the applicable law to those facts, FirstComp is not the carrier in this case. Mr. Wilkie and Mr. Loughery attempted to obtain workers' compensation coverage through FirstComp. That attempt was fraudulent in that the injury had already occurred and the policy was rescinded by FirstComp.

36. FirstComp is dismissed from this claim.

37. As such, the claim is assigned to the Workers Compensation Uninsured Employers' Fund. Nothing in this order deprives the UEF of its right to seek indemnification from the Employer and/or other wrongdoers found to be liable.

38. As to Ms. Cofield's Motion of August 15, 2014, the issues raised by that motion are addressed above and the motion is denied.

39. Until the Claimant returns to the authorized treating physician, the Claimant is not at MMI and all other issues are to be held in abeyance. All other issues are to be held in abeyance.

CONCLUSIONS OF LAW

1. Under §42-3-180, this 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 Richland 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 upon 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 by Claimant's Employer and is, therefore, void *ab initio* and provides no coverage over the injury in this case.

11. Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. See Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). An insurance contract may be voided under similar circumstances. See Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). In order to void an insurance contract based on fraud, our courts have required the insurer to show: (1) the statement was false; (2) the falsity was known to the applicant; (3) the statement was material to the risk; (4) the statement was made with the intent to defraud the insurer; and (5) the insurer relied on the statement when issuing the policy. Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005). Intent to defraud "may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation." Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177, 1190 (D.S.C. 1988). In addition, an insurer has the right to rely on an applicant's answer when "a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure must be made." Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513, 176 S.E.2d 131, 134 (1970).

12. In this case, each of these elements has been satisfied. The application for insurance contained numerous false statements, including the omission of Claimant's injury, the nature of the work performed by the applicants, and the ownership of the company. The evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery knew of Claimant's injury and had knowledge of the falsity of the information in the application. The materiality of the false representations is self-evident. Disclosure of prior claims and the nature of the work to be performed are matters at the very heart of a contract for workers' compensation coverage. The intent to defraud is likewise self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application.

13. By its plain language, S.C. Code Ann. § 38-75-730 "governs the cancellation of insurance policies" and lays out the steps necessary to do so, such as providing ten days of written notice to the insured and the agent of record. See S.C. Code Ann. § 38-75-730(b). By referencing only an insurer's right to cancel, it is evident that the § 38-75-720 was not intended to alter or eliminate an insurer's right to rescind a contract obtained through fraud. The difference, which is key to this issue, has been explained by our Supreme Court as follows:

[C]ancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed....The cancellation of a liability

insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy as void ab initio.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added).

14. The purpose of S.C. Code Ann. §38-75-730 is to prevent arbitrary cancellations of insurance contracts. By its terms, the statute authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer's reinsurance and material misrepresentations. S.C. Code Ann. § 38-75-730 addresses situations far different than the intentional concealment of an existing claim to fraudulently procure a policy of insurance to cover that claim.

15. FirstComp is dismissed from this claim.

16. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to a return visit to the authorized treating physician to assess his condition relative to this accident and to receive additional medical care and treatment as recommended unless and until the physician determines Claimant to be at maximum medical treatment.

Request for Review

Within the statutory period, UEF filed a Form 30, *Request for Commission Review*, putting forth the following questions presented:

1. Did the Single Commissioner err in his interpretation of a Remand by the Full Commission for a "Hearing de novo" as demonstrated in Findings of fact (FOF #3, 4, 6, 7, 9, 10, 11, 12, 13, and 14) when such findings are clearly erroneous and contrary to the laws of South Carolina.
2. Did the Single Commissioner err in Finding of Fact #19 that "First Comp is not and cannot be the carrier in this case", when such finding is clearly erroneous in view of the reliable, probative and substantial evidence and by the laws of South Carolina.
3. Did the Single Commissioner err in Finding of Fact #17, 18, 21 and 22 that Mr. Addison's arguments regarding the existence of an insurance contract procured by fraud can be "void ad ibnitio" [sic] or "rescinded" when such finding is clearly erroneous in view of the reliable, probative and substantial evidence of the case and contrary to the laws of South Carolina.
4. Did the Single Commissioner err in Findings of Fact 1 - 40 and Conclusions of Law 2 - 5 and 6 - 16 when such findings are based on "evidence" submitted at a previous hearing, some of which were objected to, and were not gleaned from a hearing de novo as demanded by the Order of the Full Commission?

5. Did the Single Commissioner err in Finding of Fact #22 that "a contract binding two parties could not exist. A binding contract, which an insurance policy is, cannot be created when the facts are perverted by criminal fraud" which is contrary to any evidence submitted at this de novo hearing and contrary to the laws of South Carolina.
6. Did the Single Commissioner err in Finding of Fact #23 that "In this case, Mr. Wilkie and Mr. Loughery attempted to obtain a policy which would obligate the issuer to assume liability for an accident that had already happened" when such finding of fact was not based on any evidence presented in the de novo hearing, but instead, from a previous hearing which is contrary to the laws of South Carolina.
7. Did the single Commissioner err in Finding of Fact #17, 18, 19, 21, 22, 23, 24, 25, 26, 36, 38, 39 and Conclusions of Law 10, 11, 12, 13 and 14 that all indicate that a workers' compensation policy can be "void ab initio" or "rescinded" when such finding is against the law of South Carolina.

FirstComp, in its Form 30, *Request for Commission Review*, set forth the following issues for review:

1. The Commission erred in proceeding with the hearing as the order of the Appellate Panel remanding the case for a new hearing was invalid and contrary to the APA and Commission Regulations as the Appellate Panel's order lacked specific and definite findings to support remanding the matter for new hearing, failed to articulate any basis for the remand, and remanded the case in a manner not prescribed under the controlling statutory authority.
2. The Single Commissioner erred in Findings of Fact No. 9 and 10 by finding that the Full Commission was clear in its order when the order of the Full Commission contained to findings whatsoever in support of its order to vacate the prior order and remand the case for a de novo hearing.

Decision and Order

All proffered testimony and documentary evidence has been taken and delivered to the individual members of the Appellate Panel for their study and consideration. In addition, the parties have briefed and orally argued their positions before the Panel.

In an Appellate Panel review under S.C. Code Ann. § 42-17-50, the Commission's Appellate Panel shall review the award, weigh the evidence presented at the initial hearing, and,

if good ground be shown therefore, make its own findings and conclusions consistent with or inconsistent with those of the Hearing Commissioner.

After careful review of the record in this case, the Commission, by unanimous vote, has determined that all of the Single Commissioner's Findings of Fact and Rulings of Law are correct as stated. The Hearing Commissioner's Order is affirmed in its entirety, and the Commissioner's Findings of Fact and Rulings of Law, as adopted below, are hereby the law of this case.

Based upon the evidence in the record, including the testimony at the hearing, and the Commission's file, the Appellate Panel makes the following:

FINDINGS OF FACT

1. The Claimant alleges that he sustained an injury by accident arising out of and within the course and scope of his employment on January 4, 2012.
2. The Claimant alleges injuries to his left hip, right arm, ribs and back.
3. This hearing arises out of a remand from the Full Commission on April 17, 2014.
4. The Order of the appellate panel reads, "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." (Appellate Panel Order, p. 6)
5. As to jurisdiction, Mr. Addison, representing FirstComp Insurance, takes the position that, while he did not object to going forward with this hearing, he states on the record, "I'm objecting to the jurisdiction in terms of us not having a clear understanding from the Full Commission as to exactly what this Commissioner is supposed to be doing today ..." (Hearing Transcript, p. 6) "They have not indicated what was deficient with Commissioner Roche's Order

in any way, shape or form. There's not anything saying she screwed up and, therefore, we're sending the hearing back for a *de novo* hearing. There's none of that. It was just essentially a wiping of the -- it's like taking a dry erase board and wiping it off and saying do this again. And I don't know that the Full Commission can necessarily do that. I'm not saying that they don't have the jurisdictional power to make a decision, but I don't know that it's a proper decision."

(Hearing Transcript, pp. 6 -7)

6. Ms. Cofield's position as to jurisdiction, "... we know exactly what the Full Commission directed. A trial *de novo*. A new hearing. A start from beginning as if nothing has ever happened before." (Hearing Transcript, pp. 7 -8)

7. Mr. Haymond did not speak to jurisdiction.

8. As to jurisdiction, the Full Commission was clear in its Order. They vacated the Order of the single commissioner and remanded to the Jurisdictional Commissioner for a hearing *de novo*. They instructed the Single Commissioner to reconsider the evidence, receive further evidence, and rehear the parties or their representatives.

9. A plain reading of the Full Commission's order provides very specific direction. The evidence in this case is the evidence. Their instruction for a *de novo* hearing arrives out their decision to vacate the Decision and Order of the single Commissioner. It does not invalidate or exclude any evidence that is part of the record.

10. This is a new hearing based on the evidence in the record prior to this hearing and any evidence that the parties wished to offer at this hearing.

11. Therefore, evidence that is now part of the record exists is that -- part of the record. Any objection to its becoming part of the record would have to have been addressed at

the time it was first offered. It would be improper for the Single Commissioner to go back and exclude testimony, APAs or exhibits that are already contained in the record.

12. If it were the intention of the Full Commission for the Single Commissioner to do that, there would have been specific instruction as to what would be excluded from my consideration. They did not so instruct. Quite the contrary, the Single Commissioner's instructions were to reconsider the evidence. A plain reading of that instruction is to reconsider all the evidence as it exists in the record.

13. Given the instructions of the Full Commission, the only parts of the file the Single Commissioner was not to consider were the order of the single Commissioner which had been vacated and the Findings of Fact and Conclusions of Law of the Full Commission which would necessarily recite the findings of the single hearing Commissioner.

14. The Single Commissioner states in his Order that he did not read and thus could not consider the order of the single hearing Commissioner nor had he read the Findings of Fact and Conclusions of Law of the prior single hearing Commissioner.

15. Additionally, beyond the compensability of the alleged work-related accident, there is the question at bar as to who is the responsible party.

16. It is the position of Mr. Addison on behalf of his client that the Claimant, who is an employee of J&L, allegedly fell off the building where he was working. John Loughery and Emory Wilkie then go to Midlands Insurance Center, Inc. to obtain a workers' compensation policy after the alleged accident. The application identifies Mr. Wilkie as the Manager with 100% ownership of the insured. The signatory to the application was John Loughery. Claimant's accident earlier that day was never disclosed. The policy was bound around 2:30 PM

on January 4, 2012. At the applicants' insistence, the policy was issued with an effective date of 12:01 AM, January 4, 2012.

17. Given this scenario, it is the position of Mr. Addison on behalf of his client that when FirstComp learned of the timeline and the fact the issuance of the policy was after the alleged work-related accident, the carrier declared the policy to be void pursuant to fraud.

18. As such, FirstComp is not and cannot be the carrier in this case.

19. It is Ms. Cofield's position on behalf of her client, the UEF, that there is nothing in the Workers' Compensation Act that permits that policy from being void *ab initio*. The statute section that controls is S.C. Code §38-75-720. Under this section no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for non-payment of premium or material misrepresentation of fact which if it had been known to the company would have caused the company not to issue the policy.

20. The Appellate Panel finds Mr. Addison's argument more persuasive.

21. Insurance fraud has clearly been perpetrated here. As such, a contract binding the two parties could not exist. A binding contract, which an insurance policy is, cannot be created when the facts are perverted by criminal fraud.

22. The issuance of an insurance policy is a contract by which the insurer assumes risk. That is not what happened here. In this case, Mr. Wilkie and Mr. Loughery attempted to obtain a policy which would obligate the issuer to assume liability for an accident that had already happened.

23. The action of FirstComp is not cancelation of the policy, it is a recession of the policy.

24. Ms. Cofield's position is predicated on the cancelation of a lawful contract. That is not the case here. We need not get to the question of cancelation. Given its fraudulent foundation, the policy could not exist to be canceled. This fraudulent foundation far exceeds the aforementioned "misrepresentation of fact" and, as such, permits the rescission of the policy.

25. The General Assembly never intended nor did it provide a way for employers to circumvent the Workers' Compensation Act by allowing employers, after an injury has already occurred, to then secure workers' compensation insurance to pay for work related accidents. To do so, would undermine the very foundation of the workers' compensation system.

26. When the evidence is viewed as a whole, the Claimant sustained injuries to his left hip, right arm, ribs and back in a work-related accident on January 4, 2012.

27. When the evidence is viewed as a whole, the Claimant's injuries are compensable in that they were arising out of and within the course and scope of his employment.

28. The Claimant has an average weekly wage of \$520.00 with a corresponding compensation rate of \$346.68.

29. The Claimant is entitled to TTD from 01/04/12 – 04/04/12.

30. The Claimant is entitled to payment for all medical care and treatment incurred to date.

31. The Claimant is also entitled to a return visit to the authorized treating physician to assess his condition relative to this accident.

32. Should the authorized treating physician determine additional medical care and treatment is necessary, the Claimant would be entitled to treatment the authorized treating physician would provide or direct.

33. If the Claimant is at MMI, the authorized treating physician is to provide the date of MMI and a final impairment rating(s) which will allow for final resolution of this claim.

34. When the evidence is viewed as a whole, the employers in this case are John Loughery and Emory Wilkie operating as J&L Construction, LLC.

35. Based on the facts in evidence and by applying the applicable law to those facts, FirstComp is not the carrier in this case. Mr. Wilkie and Mr. Loughery attempted to obtain workers' compensation coverage through FirstComp. That attempt was fraudulent in that the injury had already occurred and the policy was rescinded by FirstComp.

36. FirstComp is dismissed from this claim.

37. As such, the claim is assigned to the Workerss Compensation Uninsured Employers' Fund. Nothing in this order deprives the UEF of its right to seek indemnification from the Employer and/or other wrongdoers found to be liable.

38. As to Ms. Cofield's Motion of August 15, 2014, the issues raised by that motion are addressed above and the motion is denied.

39. Until the Claimant returns to the authorized treating physician, the Claimant is not at MMI and all other issues are to be held in abeyance. All other issues are to be held in abeyance.

Based upon the evidence in the record, including the testimony at the hearing, and the Commission's file, the Appellate Panel makes the following:

CONCLUSIONS OF LAW

1. Under §42-3-180, the Commission 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 Richland 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 upon 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 by Claimant's Employer and is, therefore, void *ab initio* and provides no coverage over the injury in this case.
11. Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. See Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). An insurance contract may be voided under similar circumstances. See Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). In order to void an insurance contract based on fraud, our courts have required the insurer to show: (1) the statement was false; (2) the falsity was known to the applicant; (3) the statement was material to the risk; (4) the statement was made with the intent

to defraud the insurer; and (5) the insurer relied on the statement when issuing the policy. Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Cl. App. 2005). Intent to defraud “may be inferred when there is no other reasonable or plausible explanation for the applicant’s false representation.” Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177, 1190 (D.S.C. 1988) In addition, an insurer has the right to rely on an applicant’s answer when “a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure must be made.” Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513. 176 S.E.2d 131, 134 (1970).

12. In this case, each of these elements has been satisfied. The application for insurance contained numerous false statements, including the omission of Claimant’s injury, the nature of the work performed by the applicants, and the ownership of the company. The evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery knew of Claimant’s injury and had knowledge of the falsity of the information in the application. The materiality of the false representations is self-evident. Disclosure of prior claims and the nature of the work to be performed are matters at the very heart of a contract for workers’ compensation coverage. The intent to defraud is likewise self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application.

13. By its plain language, S.C. Code Ann. § 38-75-730 “governs the cancellation of insurance policies” and lays out the steps necessary to do so, such as providing ten days of written notice to the insured and the agent of record. See S.C. Code Ann. § 38-75-730(b). By referencing only an insurer’s right to cancel, it is evident that the § 38-75-720 was not intended

to alter or eliminate an insurer's right to rescind a contract obtained through fraud. The difference, which is key to this issue, has been explained by our Supreme Court as follows:

[C]ancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed....The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy as void ab initio.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added).

14. The purpose of S.C. Code Ann. §38-75-730 is to prevent arbitrary cancellations of insurance contracts. By its terms, the statute authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer's reinsurance and material misrepresentations. S.C. Code Ann. § 38-75-730 addresses situations far different than the intentional concealment of an existing claim to fraudulently procure a policy of insurance to cover that claim.

15. FirstComp is dismissed from this claim.

16. Pursuant to S.C. Code Ann. §42-15-60, Claimant is entitled to a return visit to the authorized treating physician to assess his condition relative to this accident and to receive additional medical care and treatment as recommended unless and until the physician determines Claimant to be at maximum medical treatment.

ORDER OF THE APPELLATE PANEL

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that, based on review of the record as a whole and the oral arguments of the parties made before the Appellate Panel, the Appellate Panel adopts the findings, conclusions and orders of the Single Commissioner

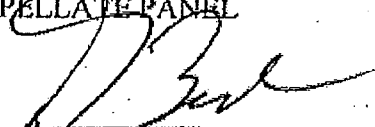
verbatim, and in their entirety. The Appellate Panel hereby affirms the following orders of the Single Commissioner:

ORDER

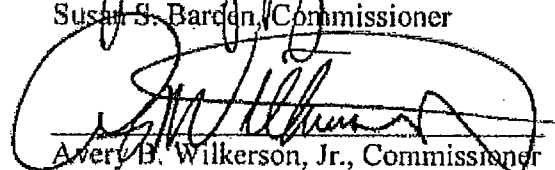
IT IS THEREFORE ORDERED that Claimant sustained a compensable injury to his left hip, right arm, and back on January 4, 2012, for which he is entitled to reimbursement and/or payment of past causally-related medical expenses; ongoing medical treatment pursuant to S.C. Code §42-15-60 at least until Claimant 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 and FirstComp is dismissed from this case. **ACCORDINGLY, IT IS ORDERED THAT** UEF provide Claimant's benefits under the Act in accordance with this Order.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
APPELLATE PANEL


T. Scott Beck, Chairman


Susan S. Barden, Commissioner


Avery B. Wilkerson, Jr., Commissioner

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 Eugenia Hollmon on September 3, 2015

South Carolina Workers' Compensation Commission
P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5723
wcc.sc.gov



WCC File # 1200479
Carrier File # FSC900085974
Carrier Code #
Employer FEIN

Dallas P. Bessinger
Claimant's Name

250-47-3402
SSN

P. O. Box 234
Address

Pelion, SC 29123
City State Zip

(803) 894-4466
Home Phone #

Work Phone #

J & L Construction, LLC and R-N-M Builders & Associates, LLC

Employer's Name
*** see attached for two add'l
defendants

246 Fox Trot Trail
Pelion, SC 29123
Address

107 L Avenue
West Columbia, SC 29172
City State Zip

FirstComp Insurance and SC Uninsured Employers' Fund
Insurance Carrier

STEVEN D. HAYMOND

Harris and Graves, P.A.

(803) 799-2911

Preparer's Name

Law Firm

Phone #

Complete each information blank. To request a hearing, check box 13 b., 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: 1/4/2012

☒ Injury ☐ Illness ☐ Repetitive Trauma

1a. The claimant sustained an accidental injury to left hip, right arm, ribs and back on 1/4/2012 in Orangeburg County, State of South Carolina.

Body part(s) affected are: left hip, right arm, ribs and back.

1b. Describe briefly how the accident occurred: Claimant fell off roof

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 1/4/12 in the following manner: by informing his supervisor

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

☐ (a) medical examination and treatment for

☒ (b) additional medical examination and treatment for continuing hip, arm and back problems

☒ 7. Due to injury, the claimant requests temporary total benefits because of lost compensable time from work and wages for the period of: 1/4/12 to the present and continuing

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

☐ (1) General Disability: ☐ Total ☐ Partial

☐ (3) Wage Loss ☐ Partial

☐ (2) Specific Disability: ☐ Total ☐ Partial

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

10a. At the time of injury, the claimant was paid weekly wages of \$520.00 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:

NONE

11a. Further grounds or unusual aspects of claim: As may be developed pursuant to applicable law. Claimant reserves right to amend Form 50.

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: Regional Medical Center - Orangeburg; Palmetto Health Richland, Premier Orthopaedists - Columbia

11c. To the best of your knowledge, did you have any prior permanent disability? ☐ Yes ☒ No

If yes, describe:

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 \$25.00 fee is required.

14. Estimated time needed for hearing: 30 minutes.

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

SD Haymond
Preparer's Signature

Attorney
Title

sdh@harrisgraves.com
Email

April 19, 2012
Date

For 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 File No. 1200479

Claim of Dallas Bessinger

ADDITIONAL DEFENDANTS:

John Loughery
246 Fox Trot Trail
Pelion, SC 29123

Emory Wilkie
104 Merion Drive
Lexington, SC 29073



File #: 1200479
Carrier File #: 007337
Carrier Code #:
Employer FEIN #:

Claimant's Name: Dallas P. Bessinger SSN: 250-47-3402

Address: Po Box 234

City: Pelion State: SC Zip: 29123

Home Phone: (803) 894-4466 Work Phone:

Date of Injury: 01/04/2012

Employer's Name: R-n-m Builders & Assoc. Llc, ET AL.

Address: C/o Ronald W. Stokes, R.a. 107 "I" Ave.

City: West Columbia State: SC Zip: 29172

Insurance Carrier:

Preparers Name: Timothy B Killen

Law Firm: SCWCUEF

Preparers Phone #: (803) 798-2722

Date of Injury or Illness: 01/04/2012

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. Claimant's direct employer is insured for DOA.
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:
- 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: 1.5 hours.

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 21st day of May 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

05/18/2012

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 ✓ 4-20-11.
SERVED BY MAIL

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.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5700
www.wcc.sc.gov



WCC File #: 1200479
Carrier File #: FSC900085974
Carrier Code #: 978-001
Employer FEIN #:

Employee's Name:	Dallas Paul Bessinger	SSN: 250-47-3402	Employer's Name:	R-N-M Builders & Associates, LLC
Address:	362 Terry Road		Address:	107 L Avenue
City:	Pelion	State: SC Zip: 29123-9796	City:	West Columbia State SC ZIP 29172
Home Phone:		Work Phone	Insurance Carrier:	FirstComp Insurance
Date of Injury:	January 4, 2012			
Preparer's Name:	R. Daniel Addison	Law Firm: Hedrick Gardner Kincheloe & Garofalo, LLP	Preparer's Phone #: (803) 727-1200	

Date of Injury or Illness: January 4, 2012

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:
No coverage for FirstComp Insurance. Facts of employment AND injury are in dispute and, therefore, denied.
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:
See #1.
3. It is **Denied** the relationship of employer and employee existed at the time in question. The reasons for denial are:
See #1.
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:
See #1.
5. It is **Denied** notice of injury was given the employer. The reasons for denial are:
See #1.
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:
#1.
7. It is **Denied** the employee is entitled to temporary total disability for the period(s) of :
See #1.
8. It is **Denied** the employee is permanently disabled. The reasons for denial are:
See #1.
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: FirstComp contends that it has no coverage with ANY alleged employer in this matter, and, as such, is not a proper party defendant. The defendant, FirstComp, is not aware of any additional affirmative defenses. However, if further discovery reveals the basis for any affirmative defenses, the defendant will amend this answer to assert those defenses.

12. Estimated time needed for hearing:

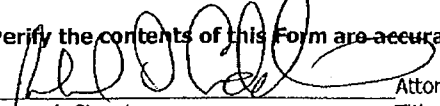
I certify I have served this document pursuant to R.67-212 by delivering a copy to:

Name: Steven D. Haymond, Harris & Graves, P.A.

Address: P.O. Box 11566, Columbia, SC, 29211

On the 21st day of May, 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:  Attorney
Title

daddison@hedrickgardner.com

May 21, 2012

Email

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 FORM # 51

Page 69

Revised: 9/07

51

Employer's Answer to Request for Hearing

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

WCC File # 1200479
Carrier File # 007337
Carrier Code #
Employer FEIN

DALLAS P. BESSINGER 250-47-3402
Claimant's Name
PO BOX 234, PELION, SC 29123
Address City State Zip
803 894 4466
Home Phone # Work Phone #
TIMOTHY B KILLEN
Preparer's Name Address

R-N-M BUILDERS & ASSOC. LLC
Employer's Name
C/O RONALD W. STOKES, R.A. 107 "L" AVE., WEST COLU
Address City State Zip
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: 01/04/2012 2. AWW: \$ unknown Comp. Rate: \$ unknown

3. Type of injury and body part(s) Alleged left hip, right wrist, and ribs following a fall.

4. Facts in controversy: Please see attached addendum.

5. Legal issues involved: Please see attached addendum.

6. Unusual problems: Please see attached addendum.

7. Witnesses (designate if expert)* Claimant; Emory Wilkie; Rob Bessinger; John Loughery; and any
and all witnesses named or called by any party.

8. Exhibits: Please see attached Notice of Evidence.

9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance)
None.

10. Name, address, and specialty, if any, of the treating physician: None.

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

DATE OF HEARING: 7/18/2012

TIME OF HEARING: 1:30 p.m.

SIGNATURE

DATE 7-9-12

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

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. (a) **Form 58/APA Submissions Not Served on All Parties.**

The Claimant's Form 58 and APA Submissions were served only upon FirstComp Ins., the Fund, and R-N-M Builders & Associates, LLC. John Loughery and Emory Wilkie were not served with Claimant's Pre-Hearing Brief.

(b) **Confusion as to Defendants' Names.**

The evidence shows that J&L Construction, LLC is actually an improperly named defendant. J&L Construction, LLC is not an entity registered with the Secretary of State (there was an unrelated LLC with that same name that was dissolved prior to the date of accident in this case). J&L Construction, LLC (or E&W Construction, LLC) is actually an informal partnership between John Loughery and Emory Wilkie. This is the business venture that sought, and obtained, a policy from FirstComp Insurance.

The Fund asserts that the caption should be amended to show the correct entity name: John Loughery, Individually, and Emory Wilkie, Individually, doing business as J&L Construction, LLC a/k/a E&W Construction, LLC.

(c) **Whether the legislative scheme allows a Workers' Compensation Policy to be declared void ab initio.**

The Claimant's date of accident is January 4, 2012. Form 50. FirstComp Insurance Company issued a workers' compensation insurance policy to the direct Employer herein, and that policy was effective beginning January 4, 2012, at 12:01 A.M. UEF APA Submissions, p. 1. In its March 21, 2012, Form 50, FirstComp alleged that its policy should be declared void ab initio. In its May 21, 2012, FirstComp simply alleged it had no coverage for any alleged employer, presumably due to the confusion in regards to the insured's name, among other things.

(1) **§38-75-730 v. Void Ab Initio.**

S.C. Code Ann. § 38-75-730 governs the cancellation of insurance policies. UEF APA Submissions, p. 30. Under § 38-75-730, cancellation for a "material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy" is "not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the

proposed effective date of cancellation." S.C. Code Ann. § 38-75-730; UEF APA Submissions, p. 30.

According to the NCCI and the Coverage and Compliance Division, received Notice of Cancellation on January 24, 2012. UEF APA Submissions, p. 2. Accordingly, the FirstComp policy wasn't cancelled until February 24, 2012, or well after the Claimant's date of accident. UEF APA Submissions, pp. 27 – 28. Terms of cancellation also appear in the policy itself, and these also require a notice period prior to cancellation. UEF APA Submissions, p. 10.

Though this appears to be a novel issue in South Carolina, the Courts in North Carolina have already addressed this issue. Oxendine v. TWL, Inc., 184 N.C.App. 162, 645 S.E.2d 864 (N.C.App. 2007); UEF APA Submissions, p. 32. According to the North Carolina Court of Appeals, "a workers' compensation insurance contract will therefore never be void ab initio, but must be cancelled in the manner prescribed by N.C. Gen.Stat. § 58-36-105 [the insurance policy cancellation section]." Oxendine v. TWL, Inc., 184 N.C.App. 162, 165, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions, p. 33. Further, the N.C. Court of Appeals pointed out that the N.C. code section, like S.C. Code Ann. § 38-75-730, "contemplates the very sort of 'material misrepresentation or nondisclosure of a material fact in obtaining the policy' . . . [and] it clearly governs our review of this matter." Oxendine v. TWL, Inc., 184 N.C.App. 162, 166, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions, p. 33.

Also see J. Bend v. Shamrock Services, 59 So.3d 153, 36 Fla.L.Weekly D430 (Fla.App.1 Dist. 2011) and Cruz v. New Millennium Construction & Restoration Corp., 793 N.Y.S.2d 548, 17 A.D.3d 19 (N.Y. Sup. Ct. App. Div 3rd Dept. 2005).

(2) FirstComp's allegation it covers no employer in this action.

In its Form 51 of May 21, 2012, FirstComp simply asserts "it has no coverage with ANY alleged employer in this matter, and, as such, is not a proper party defendant" (emphasis in original). If this argument is based on an assertion that it issued a policy to a trade name rather than to a registered business entity, such an argument is without merit. Simply because an insurer issues a policy to a trade name rather than to the underlying owners of the business in no way abdicates the contracted rights and responsibilities the insurer has to employees furthering the business operating under that trade name.

It has been repeatedly established by South Carolina Courts that "the law strictly construes insurance policies against the drafter and in favor of coverage for the insured." General Acc. Ins. Co. v. Safeco Ins.

Companies, 314 S.C. 63, 72, 443 S.E.2d 813, 818 (Ct. App. 1994) (citing South Carolina State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991)). The Policy at issue was drafted and signed by FirstComp Insurance Co., and therefore, terms and language of the policy are to be construed in favor of the insured, the business entity formed by Emory Wilkie and John Loughery. Further, when an insurance policy is susceptible to more than one reasonable interpretation, one of which would provide coverage, this Court must hold as a matter of law in favor of coverage. Gaskins v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101, 108, 245 S.E.2d 598, 602 (S.C. 1978) (citing Parker v. Jefferson Standard Life Ins. Co., 158 S.C. 394, 155 S.E. 617 (1930); Harwell v. Mutual Benefits H. & A. Assoc., 207 S.C. 150, 35 S.E.2d 160 (1945); Brown v. State Farm Mutual Automobile Liability 17 Ins. Co., 233 S.C. 376, 104 S.E.2d 673 (1958); Walker v. Commercial Casualty Ins. Co., 191 S.C. 187, 4 S.E.2d 248 (1939)).

Further, as noted by the South Carolina Supreme Court, a workers' compensation insurance policy is a contract or agreement between the insurer and the person or persons entitled to compensation benefits. Carter v. Boyd Const. Co., 255 S.C. 274, 280, 178 S.E.2d 536, 539 (1971). Therefore, a ministerial mistake made by both parties should not be held against the Claimant, should he be entitled to benefits.

5. See Number Four (4), above.
6. See Number Four (4), above. All necessary parties have not been served and/or named correctly.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

S.C.W.C.C. FILE NO: 1200479

DALLAS P. BESSINGER,	)	
	)	
Employee/Claimant,	)	NOTICE OF WITNESSES AND
	)	WRITTEN MEDICAL REPORTS
vs.	)	TO BE INTRODUCED AS
	)	DIRECT EVIDENCE ON
R-N-M BUILDERS & ASSOC. LLC,	)	BEHALF OF SOUTH CAROLINA
	)	UNINSURED EMPLOYERS' FUND
	)	
Employer/Defendant.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
STEVEN D. HAYMOND, ESQ., ATTORNEY FOR EMPLOYEE/CLAIMANT
R-N-M BUILDERS & ASSOC. LLC, EMPLOYER/DEFENDANT
J & L CONSTRUCTION, LLC, EMPLOYER/DEFENDANT
R. DANIEL ADDISON, ESQ., ATTORNEY FOR EMPLOYER/DEFENDANT
JOHN LOUGHERY, EMPLOYER/DEFENDANT
EMORY WILKIE, 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)

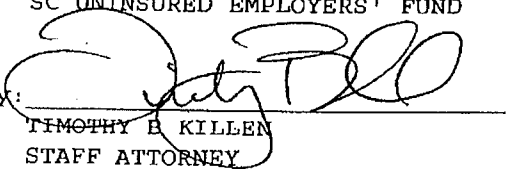
YOU ARE FURTHER HEREBY NOTIFIED that you have the right of cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purpose of cross-examination.

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; Emory Wilkie; Rob Bessinger; John Loughery; 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

July 9, 2012

SCWCC NO.: 1200479

SCUEF NO.: 7337

July 9, 2012

ATTACHMENT TO NOTICE OF WITNESSES AND WRITTEN MEDICAL REPORTS

SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND

NO.	NAME OF PHYSICIAN/OTHER	DATES	PAGES
1.	FirstComp Insurance policy with endorsements	1/4/12	1 – 19
2.	Workers' Compensation insurance application	1/4/12	24 – 25
3.	Messages between FirstComp Underwriter and Agent	1/4/12 – 1/9/12	26
4.	SCWCC Coverage Inquiry screenshots with notations	Accessed 3/6/12	27 – 28
5.	FirstComp check made payable to Emory Wilkie	2/13/12	29
6.	S.C. Code Ann. § 38-75-730	N/A	30 – 31
7.	<u>Oxendine v. TWL, Inc.</u> , 184 N.C.App. 162, 645 S.E.2d 864 (N.C. App. 2007)	N/A	32 – 35

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE

Original Printing

Issued January 4, 2012

Standard

Type : Stock
FirstComp Insurance Company
CENTRAL PARK PLAZA 222 SOUTH
15TH ST. STE 1500N
Omaha, NE 681021680
888-500-3344

NCCI Carrier Code: 35513

Policy Number:

WC0131654-01

Renewal of Policy:

Rewrite of Policy:

Feln # / Risk ID #:

148546211 /

1. The Insured's Name and Mailing address:

J&L Construction, LLC
246 Fox Trot Trl
Pelion, SC 29123-9742
Phone: 803-240-4162

DBA Name:

SIC CODE: 1751

Type of entity:

Limited Liability Company

Other work place not shown above: See Attached Location Schedule

2. The policy period is from 01/04/2012 to 01/04/2013 [12.01 AM Standard Time] at the insured's mailing address.

3. A. Workers Compensation Insurance: Part One of this policy applies to the Workers

Compensation Law of the states listed here: SOUTH CAROLINA

B. Employers liability Insurance: Part Two of this policy applies to work in each state listed in Item 3A.

The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$ 100,000	each accident
Bodily Injury by Disease:	\$ 500,000	policy limit
Bodily Injury by Disease:	\$ 100,000	each employee

C. Other States Insurance: Part Three of this policy applies to the states, if any, listed here:

NO COVERAGE AFFORDED FOR OTHER STATES.

D. California Endorsements and Schedules

Other State Endorsements and Schedules:

SC-NOTICE-1, WCPYMSCH, WC000000B, WC000308, WC000404, WC000406, WC000414, WC000419, WC000421C, WC000422A

4. The premium for this policy will be determined by our Manual of Rules, Classifications, Rates and Rating Plans. All information required is subject to verification and change by audit.

Minimum Premium: \$530.00 Deposit Premium: \$803.00

Total Estimated Annual Premium: \$1,339.00

Pay plan: 2-Pay - 60 %

Producer: Midlands Insurance Center, Inc
308 Columbia Ave., 803-957-3311
Lexington, SC 29072
Servicing office:

Countersigned By:

Date: 01/04/2012

FirstComp Underwriters Group, (888) 500-3344
Central Park Plaza, 222 South 15th Street, Suite 1500N
Omaha, NE 68102-1680

(See extension of information page for class code, rate and premium detail)

THIS INFORMATION PAGE WITH THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY AND ENDORSEMENTS, IF ANY ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED POLICY.

EXTENSION OF INFORMATION PAGE

Worker's Compensation and

Employer's Liability Policy

Schedule Of Premium Information

Policy Number : WC0131654-01

Issued to : J&L Construction, LLC

Effective Date : 01/04/2012 - 01/04/2013

Coverage Provided By : FirstComp Insurance Company

Carrier Code : 35513

Period of Operation : 01/04/2012 - 01/04/2013

State of Operation : SC

Code	Classification	Premium Basis Total Estimated Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Annual Premium
5437	Carpentry - Installation Of Cabinet Work Or Interior Trim	\$10,000.00	10.930	\$1,093.00
	Manual Premium			\$1,093.00
	Subject Premium			\$1,093.00
	Total Subject Premium			\$1,093.00
	Modified Premium			\$1,093.00
9889	Schedule Rating		0.020	\$22.00
	Standard Premium			\$1,115.00
900	Expense Constant			\$220.00
9740	Terrorism Charge		0.020	\$2.00
9741	Catastrophe (other than Certified Acts of Terrorism)		0.020	\$2.00
	Estimated Annual Premium			\$1,339.00
	Total Amount Due			\$1,339.00

EXTENSION OF INFORMATION PAGE

Worker's Compensation and
Employer's Liability Policy

LOCATION SCHEDULE

Policy Number: WC0131654-01
Issued to: J&L Construction, LLC
Effective Date: 01/04/2012 to 01/04/2013
Coverage Provided By: FirstComp Insurance Company
Carrier Code 35513

Other workplaces not shown above:

Location	FEIN	PHONE	SIC CODE	ENTITY TYPE
1 246 Fox Trot Trl. PELION, SC 29123-9742	148546211	803-240-4162	1751	Limited Liability Company

Worker's Compensation and Employer's Liability Policy Payment Schedule

Policy Number : WC0131654-01

Issued to: J&L Construction, LLC

Effective Date:01/04/2012

Month	Payment
01/04/2012	\$803.00
06/04/2012	\$536.00

If you elect a payment plan, then you will be subject to installment fees for each payment ranging from \$3-\$10 depending on the state.
If you elect electronic funds transfer, these fees will not apply.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE
WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other

(Ed. 7-11)

insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default of the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
- b. special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO EMPLOYERS LIABILITY POLICY

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed

against such third party as a result of injury to your employee;

2. For care and loss of services; and
3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356a), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Safety and Health

Act (30 USC Sections 801-945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

(Ed. 7-11)

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident-each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and

2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE - PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

(Ed. 7-11)

PART SIX-CONDITIONS**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

Schedule**Partners****Officers****Others**

Emory Wilkie

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC000308

Ed. 4-84

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PENDING RATE CHANGE ENDORSEMENT

A rate change filing is being considered by the proper regulatory authority. The filing may result in rates different from the rates shown on the policy. If it does, we will issue an endorsement to show the new rates and their effective date.

If only one state is shown in Item 3.A. of the Information Page, this endorsement applies to that state. If more than one state is shown there, this endorsement applies only in the state shown in the Schedule.

Schedule**State**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC000404

Ed. 4-84

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PREMIUM DISCOUNT ENDORSEMENT

The premium for this policy and the policies, if any, listed in Item 3 of the Schedule may be eligible for a discount. This endorsement shows your estimated discount in Items 1 or 2 of the Schedule. The final calculation of premium discount will be determined by our manuals and your premium basis as determined by audit. Premium subject to retrospective rating is not subject to premium discount.

Schedule**1. State****Estimated Eligible Premium**

	First \$ 5,000	Next \$ 95,000	Next \$ 400,000	Balance
SC	10.9		12.6	14.4

2. Average percentage discount: %**3. Other policies:****4. If there are no entries in Items 1, 2 and 3 of the Schedule, see the Premium Discount Endorsement attached to your policy number.**

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC000406

(Ed.8-84)

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NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC000414

Ed. 7-90

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PREMIUM DUE DATE ENDORSEMENT

This endorsement is used to amend:

Section D. of Part Five of the policy is replaced by this provision.

PART FIVE PREMIUM**D. Premium is amended to read:**

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. The due date for audit and retrospective premiums is the date of the billing.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC000419

Ed. 1-01

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CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM) PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of a Catastrophe (other than Certified Acts of Terrorism) as that term is defined below. Your policy provides coverage for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism). This premium charge does not provide funding for Certified Acts of Terrorism contemplated under the Terrorism Risk Insurance Program Reauthorization Act Disclosure Endorsement (WC 00 04 22 A), attached to this policy.

For purposes of this endorsement, the following definitions apply:

- **Catastrophe (other than Certified Acts of Terrorism):** Any single event, resulting from an Earthquake, Noncertified Act of Terrorism, or Catastrophic Industrial Accident, which results in aggregate workers compensation losses in excess of \$50 million.
- **Earthquake:** The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity.
- **Noncertified Act of Terrorism:** An event that is not certified as an Act of Terrorism by the Secretary of Treasury pursuant to the Terrorism Risk Insurance Act of 2002 (as amended) but that meets all of the following criteria:
 - a. It is an act that is violent or dangerous to human life, property, or infrastructure;
 - b. The act results in damage within the United States, or outside of the United States in the case of the premises of United States missions or air carriers or vessels as those terms are defined in the Terrorism Risk Insurance Act of 2002 (as amended); and
 - c. It is an act that has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- **Catastrophic Industrial Accident:** A chemical release, large explosion, or small blast that is localized in nature and affects workers in a small perimeter the size of a building.

The premium charge for the coverage your policy provides for workers compensation losses caused by a Catastrophe (other than Certified Acts of Terrorism) is shown in Item 4 of the Information Page or in the Schedule below.

Schedule

State	Rate	Premium
SC	0.02	\$2.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.
(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012 Policy No. WC0131654-01 Endorsement No.
Insured J&L Construction, LLC Premium \$(See Attached)
Insurance Company FirstComp Insurance Company Countersigned by _____
WC000421C

TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT DISCLOSURE ENDORSEMENT

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007. It serves to notify you of certain limitations under the Act, and that your insurance carrier is charging premium for losses that may occur in the event of an Act of Terrorism.

Your policy provides coverage for workers compensation losses caused by Acts of Terrorism, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy, and any applicable federal and/or state laws, rules, or regulations.

Definitions

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments thereto resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

"Act of Terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured Loss" means any loss resulting from an act of terrorism (and, except for Pennsylvania, including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

"Insurer Deductible" means, for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

"Program Year" refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

Limitation of Liability

The Act limits our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a Program Year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds \$100,000,000,000; and for aggregate Insured Losses up to \$100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate Industry Insured Losses exceed \$100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.
2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceed \$100,000,000,000.
3. The premium charge for the coverage your policy provides for Insured Losses is included in the amount shown in Item 4 of the Information Page or in the Schedule below.

(Ed. 9-08)

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WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 22 A
(Ed. 9-08)

Schedule

State	Rate	Premium
SC	0.02	\$2.00

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012 Policy No. WC0131654-01 Endorsement No.
Insured J&L Construction, LLC Premium \$(See Attached)
Insurance Company FirstComp Insurance Company Countersigned by _____
WC000422A

POLICY INFORMATION PAGE ENDORSEMENT

The following item(s)

Insured's Name (WC 89 06 01)	Item 3.B. Limits (WC 89 06 12)
Policy Number (WC 89 06 02)	Item 3.C. States (WC 89 06 13)
Effective Date (WC 89 06 03)	Item 3.D. Endorsement Numbers (WC 89 06 14)
Expiration Date (WC 89 06 04)	X Item 4. Class, Rate, Other (WC 89 04 15)
Insured's Mailing Address (WC 89 06 05)	Interim Adjustment of Premium (WC 89 04 16)
Experience Modification (WC 89 04 06)	Carrier Servicing Office (WC 89 06 17)
Producer's Name (WC 89 06 07)	Interstate/Intrastate Risk ID Number (WC 89 06 18)
Change in Workplace of Insured (WC 89 06 08)	Carrier Number (WC 89 06 19)
Insured's Legal Status (WC 89 06 10)	Issuing Agency/Producer Office Address (WC 89 06 25)
Item 3.A. States (WC 89 06 11)	

is changed as follows:

Action	Type	Previous Value	New Value
Change	Payment Plan	2-Pay	4-Pay

Total Estimated Annual Premium \$1,339.00

Premium Adjustment \$0.00

Minimum Premium \$ 530.00

Deposit Premium \$803.00

All other terms and conditions of this policy remain unchanged.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective 01/04/2012

Policy No. WC0131654-01

Endorsement No.

Insured: J&L Construction, LLC

Premium (See Attached)

Insurance Company: FirstComp Insurance Company

Countersigned by _____

WC890600B

Ed. 7-01

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002276-000845-27098156-01052012



WC0131654-01

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE**

Original Printing

Issued January 4, 2012

Standard

Type : Stock
FirstComp Insurance Company
CENTRAL PARK PLAZA 222 SOUTH
15TH ST. STE 1500N
Omaha, NE 681021680
888-500-3344

NCCI Carrier Code: 35513

Policy Number:

WC0131654-01

Renewal of Policy:

Rewrite of Policy:

Fein # / Risk ID #:

148546211 /

1. The Insured's Name and Mailing address:

J&L Construction, LLC
246 Fox Trot Trl
Pelion, SC 29123-9742
Phone: 803-240-4162

DBA Name:**SIC CODE:** 1751**Type of entity:**

Limited Liability Company

Other work place not shown above: See Attached Location Schedule

2. The policy period is from 01/04/2012 to 01/04/2013 [12.01 AM Standard Time] at the insured's mailing address.**3. A. Workers Compensation Insurance: Part One of this policy applies to the Workers**Compensation Law of the states listed here: **SOUTH CAROLINA****B. Employers Liability Insurance: Part Two of this policy applies to work in each state listed in Item 3A .**

The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$ 100,000	each accident
Bodily Injury by Disease:	\$ 500,000	policy limit
Bodily Injury by Disease:	\$ 100,000	each employee

C. Other States Insurance: Part Three of this policy applies to the states, if any, listed here:**NO COVERAGE AFFORDED FOR OTHER STATES.****D. California Endorsements and Schedules**

Other State Endorsements and Schedules:

SC-NOTICE-1, WC000000B, WC000308, WC000404, WC000406, WC000414, WC000419, WC000421C, WC000422A, WC890600B, WCPYMSCH

4. The premium for this policy will be determined by our Manual of Rules, Classifications, Rates and Rating Plans. All information required is subject to verification and change by audit.

Minimum Premium: \$530.00 Deposit Premium: \$535.00

Total Estimated Annual Premium: \$1,339.00

Pay plan: 4-Pay - 40 %

Producer: Midlands Insurance Center, Inc

308 Columbia Ave., 803-957-3311

Lexington, SC 29072

Servicing office:

Countersigned By:

Date: 01/05/2012

FirstComp Underwriters Group., (888) 500-3344

Central Park Plaza, 222 South 15th Street, Suite 1500N

Omaha, NE 68102-1680

(See extension of information page for class code, rate and premium detail)

THIS INFORMATION PAGE WITH THE WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY AND ENDORSEMENTS, IF ANY ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED POLICY

EXTENSION OF INFORMATION PAGE

Worker's Compensation and

Employer's Liability Policy

Schedule Of Premium Information

Policy Number : WC0131654-01
 Issued to : J&L Construction, LLC
 Effective Date : 01/04/2012 - 01/04/2013
 Coverage Provided By : FirstComp Insurance Company
 Carrier Code : 35513
 Period of Operation : 01/04/2012 - 01/04/2013
 State of Operation : SC

Code	Classification	Premium Basis Total Estimated Annual Remuneration	Rate Per \$100 of Remuneration	Estimated Annual Premium
5437	Carpentry - Installation Of Cabinet Work Or Interior Trim	\$10,000.00	10.930	\$1,093.00
	Manual Premium			\$1,093.00
	Subject Premium			\$1,093.00
	Total Subject Premium			\$1,093.00
	Modified Premium			\$1,093.00
9889	Schedule Rating		0.020	\$22.00
	Standard Premium			\$1,115.00
900	Expense Constant			\$220.00
9740	Terrorism Charge		0.020	\$2.00
9741	Catastrophe (other than Certified Acts of Terrorism)		0.020	\$2.00
	Estimated Annual Premium			\$1,339.00
	Total Amount Due			\$1,339.00

EXTENSION OF INFORMATION PAGE

Worker's Compensation and

Employer's Liability Policy

LOCATION SCHEDULE

Policy Number: WC0131654-01
Issued to: J&L Construction, LLC
Effective Date: 01/04/2012 to 01/04/2013
Coverage Provided By: FirstComp Insurance Company
Carrier Code: 35513

Other workplaces not shown above:

Location	FEIN	PHONE	SIC CODE	ENTITY TYPE
1 *246 Fox Trot Trl PELION, SC 29123-9742	148546211	803-240-4162	1751	Limited Liability Company

Worker's Compensation and Employer's Liability Policy Payment Schedule

Policy Number : WC0131654-01

Issued to: J&L Construction, LLC

Effective Date: 01/04/2012

Month	Payment
01/04/2012	\$535.00
03/04/2012	\$268.00
05/04/2012	\$268.00
07/04/2012	\$268.00

If you elect a payment plan, then you will be subject to installment fees for each payment ranging from \$3-\$10 depending on the state.
If you elect electronic funds transfer, these fees will not apply.

ACORD WORKERS COMPENSATION APPLICATION

DATE (MM/DD/YYYY)
01/04/2012

AGENCY PHONE (AGC No. Ext): 803-867-3311 FAX (AGC No.): 803-851-1908 Midlands Insurance Center, Inc 308 Columbia Ave. Lexington SC, 29072	COMPANY FirstComp APPLICANT NAME E&L Construction, LLC MAILING ADDRESS (including ZIP code) 246 Fox Trot Trl Pelion SC 29123-9742 YRS IN BUS ☐ INDIVIDUAL ☐ CORPORATION ☒ LLC 0 ☐ PARTNERSHIP ☐ SUBCHAPTER "S" CORP ☐ OTHER:	UNDERWRITER Karlge Van Der Kooy INTERNET ADDRESS
CODE: AGENCY CUSTOMER ID:	CREDIT BUREAU NAME FEDERAL EMPLOYER ID NUMBER: 148548211 NCCI ID NUMBER:	ID NUMBER: OTHER RATING BUREAU ID OR STATE EMPLOYER REGISTRATION NUMBER:

STATUS OF SUBMISSION ☐ QUOTE ☒ ISSUE POLICY ☐ RENEW (Give date when policy copy) ☐ ASSIGNED RISK (attach ACORD 174)		BILLING/AUDIT INFORMATION BILLING PLAN ☐ AGENCY BILL ☐ DIRECT BILL PAYMENT PLAN ☐ ANNUAL ☒ SEMI-ANNUAL ☐ QUARTERLY ☐ % DOWN:		AUDIT ☐ AT EXPIRATION ☐ MONTHLY ☐ SEMI-ANNUAL ☐ OTHER:

LOCATIONS # STREET, CITY, COUNTY, STATE, ZIP CODE 1 246 Fox Trot Trl Pelion, SC 29123-9742	

POLICY INFORMATION PROPOSED EFF DATE: 01/04/2012 PROPOSED EXP DATE: 01/04/2013 NORMAL ANNIVERSARY RATING DATE:	☐ PARTICIPATING ☒ NON-PARTICIPATING	☐ RETRO PLAN
PART 1 - WORKERS COMPENSATION (States) \$ 100,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 100,000 DISEASE-EACH EMPLOYEE	PART 2 - EMPLOYER'S LIABILITY \$ 100,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 100,000 DISEASE-EACH EMPLOYEE	PART 3 - OTHER STATES INFO DEDUCTIBLES MEDICAL INCAPACITY AMOUNT:
DIVIDEND PLAN/SAFETY GROUP:		OTHER COVERAGES ☐ U.S.L. & H. VOLUNTARY COMP ☐ FOREIGN COV ☐ MANAGED CARE OPTION
ADDITIONAL COMPANY INFORMATION:		

RATING INFORMATION					# EMPLOYEES		ESTIMATED ANNUAL REMUNERATION	RATE	ESTIMATED ANNUAL PREMIUM
STATE	LOC	CLASS CODE	DESCR CODE	CATEGORIES, DUTIES, CLASSIFICATIONS	FULL TIME	PART TIME			
SC	1	5437		Carpentry - Installation Of Ca	1	0	10,000	11.15	1,115
SPECIFY ADDITIONAL COVERAGES/ENDORSEMENTS								FACTOR	FACTORED PREMIUM
								TOTAL	\$ 1,115
								INCREASED LIMITS	\$ 0
								DEDUCTIBLE	\$ 0
									\$
								EXPERIENCE MODIFICATION	1.000
								LOSS CONSTANT	N/A
								ASSIGNED RISK SURCHARGE	\$
								ATAP	\$
								CONSENT TO RATE	\$
								PREMIUM DISCOUNT	\$ 0
								EXPENSE CONSTANT	N/A
									\$ 220
									\$
MINIMUM PREMIUM \$					DEPOSIT PREMIUM \$ 803		TOTAL EST ANNUAL PREMIUM N/A		\$ 1,939

INDIVIDUALS INCLUDED/EXCLUDED

PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED, (If owner is to be included must be part of rating information section)								
#	NAME	DATE OF BIRTH	TITLE/RELATIONSHIP	OWNER-SHIP %	DUTIES	INC/EXC	CLASS CODE	REMUNERATION
1	Emory Wilda		Manager	100		Exc	5437	

PRIOR CARRIER INFORMATION/LOSS HISTORY

PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS							LOSS RUN ATTACHED
YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE	
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						
	CO: POL #:						

NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS

GIVE COMMENTS AND DESCRIPTIONS OF BUSINESS OPERATIONS AND PRODUCTS: MANUFACTURING - RAW MATERIALS, PROCESSES, PRODUCT, EQUIPMENT, CONTRACTOR - TYPE OF WORK, SUB-CONTRACTS, MERCHANTILE - MERCHANDISE, CUSTOMERS, DELIVERIES, SERVICE - TYPE, LOCATION, FARM - ACREAGE, ANIMALS, MACHINERY, SUB-CONTRACTS.

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES	YES	NO	EXPLAIN ALL "YES" RESPONSES	YES	NO
1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT/WATERCRAFT?		☒	15. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?		☒
2. DO HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g., lead, oil, waste, fuel tanks, etc.)		☒	17. ANY OTHER INSURANCE WITH THIS INSURER?		☒
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 10 FEET?		☒	18. ANY PRIOR COVERAGE DECLINED OR CANCELLED WITHIN 3 YEARS?		☒
4. ANY WORK PERFORMED ON BAIGES, VESSELS, DOCKS, BRIDGE OVER WATER?		☒	19. ARE EMPLOYEE HEALTH PLANS PROVIDED?		☒
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?		☒	20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY?		☒
6. ARE SUB-CONTRACTORS USED? (IF YES, GIVE % OF WORK SUBCONTRACTED)		☒	21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?		☒
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INS.?		☒	22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME?		☒
8. IS A WRITTEN SAFETY PROGRAM IN OPERATION?		☒	23. ANY TAX LIENS OR BANKRUPTCY WITHIN THE LAST 5 YEARS?		☒
9. ANY GROUP TRANSPORTATION PROVIDED?		☒	24. ANY UNREPORTED AND UNPAID WORKER'S COMPENSATION/PREMIUM DUE FROM YOU OR ANY COMMONLY OWNED OR OWNED ENTERPRISE? IF YES, EXPLAIN INCLUDING ENTITY NAME(S) AND POLICY NUMBER(S).		☒
10. ANY EMPLOYEES UNDER 18 OR OVER 65 YEARS OF AGE?		☒	CONTACT INFORMATION		
11. ANY SEASONAL EMPLOYEES?		☒	PHONE: 803-240-1162		
12. IS THERE ANY VOLUNTEER OR DONATED LABOR?		☒	NAME: Emory Wilda		
13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?		☒	ACCTG RECORD		
14. DO EMPLOYEES TRAVEL OUT OF STATE?		☒	PHONE:		
15. ARE ATHLETIC TEAMS SPONSORED?		☒	NAME:		
APPLICABLE IN TENNESSEE: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO ANY PARTY TO A WORKERS COMPENSATION TRANSACTION FOR THE PURPOSE OF COMMITTING FRAUD. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS. ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND CIVIL PENALTIES. (Not applicable in CO, HI, NE, OH, OK, OR, TN or VT. In CO, LA, ME and VA, Insurance benefits may also be denied).					
REMARKS					
Is travel radius greater than 200 miles?					
Any issues of coverage?					
Does the insured make the ratings?					
Interior View					
APPLICANT'S SIGNATURE		DATE	PRODUCER'S SIGNATURE		NATIONAL PRODUCER NUMBER
<i>Emory Wilda</i>			<i>John J. Miller</i>		185943

ACORD 130 (2002/03)

[View App](#) | [View Quote](#) | [View Binder](#) | [View Policy](#) | [Messages](#) | [ACORD](#)**Agency Information**

Name: Midlands Insurance Center, Inc
Address: 308 Columbia Ave.
City, State: Lexington, SC
Postal Code: 29072
Phone: 803-957-3311
Fax: 803-951-3908
Licensed Agent: TaLisa Miller
Servicing Agent: TaLisa Miller

Client Information

Company: J&L Construction, LLC
FEIN: 148546211
Eff. Date: January 4, 2012
Ann. Rating Date: N/A
Underwriter: Karlee Van Der Kooy
Date: April 11, 2012 08:24 AM

Comments:

1/9/12 TaLisa Miller

2:37:26 PM Subject: application

Message:

Attachments: emory wilkie WC app.pdf

1/9/12 Karlee Van Der Kooy

Reply

2:30:40 PM Subject: FirstComp Online - J&L Construction, LLC - Additional Info: #1915585

Message: Talisa, do you have a copy of the signed application that you can upload?

1/9/12 TaLisa Miller

7:52:02 AM Subject: URGENT!

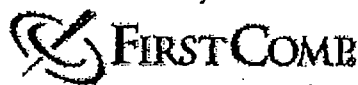
Message: I need to speak with someone ASAP on this account. I been advised of an accident that happened on the 4th before writing this account. I had no prior knowledge and this was not disclosed whent hey camein to write this policy. How can we cancel this policy flat? Need some advise ASAP

1/4/12 Dan Roman

Reply

2:58:14 PM Subject: Notice of Issued Policy

Message:



Congratulations!

The Company **J&L Construction, LLC** has been reviewed by an underwriter and a policy has been issued with FirstComp Insurance Company.

Your Policy Number is: **WC0131654-01**

Make a payment now! Pay online by credit card or electronic check. Go to www.firstcomp.com to complete your payment today!

If you would like to pay by check, please print the attachment, which is a statement required for mailed payment remittance.

Best Regards,

FirstComp Underwriters



POC Online Inquiry

Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Renew/Non-Renew	Transaction History
Policy Nbr: WC013165401 Primary Insured Name: J&L CONSTRUCTION LLC	Cov Prvdr ID: 35513 Pol Exp Dt: 01/04/2012 Pol Exp Dt: 01/04/2013 Primary Insured FEIN: 148640211	Orig Pol Nbr: Orig Cov Prvdr ID: Orig Pol Exp Dt:	Primary Insured Information Primary Insured Name: J&L CONSTRUCTION LLC Street: 245 FOX TROT TRL City: PELION State: SC Zip Code: 291239742	Coverage Provider Information Cov Prvdr ID-Cov Prvdr Name: 35513 - FIRSTCOMP INSURANCE CO Street: CENTRAL PARK PLAZA 122 SOUTH 15TH ST. STE 1500N City: OMAHA State: NE Zip Code: 681021680 Group ID: 22616 Branch: 001	
Orig Pol Row Dt: 01/01/2012 Prior Pol Nbr:	Orig POC Row Dt:	Last Row Dt: 01/24/2012	Last Activity Dt: 01/24/2012		
State Cov Prvdr: State Exp Dt: 01/04/2012 Gov Class: F43Y 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 - VOLUNTARY POLICY Pol Type Cvg: 01 - STANDARD WORKERS' COMPENSATION POLICY	State Exp Dt:				

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My Preferences | Disclaimer

Coverage Cancelled
Effectively on
2/24/2012





POC Online Inquiry

Policy Provider Reports

Cancellations / Reinstatements / Non-Renewals

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Cancel/Reinst/Non-Renew	Transaction History
Policy Nbr Primary Insured Name	WC013166401 J&L CONSTRUCTION LLC	Pol Eff Dt: 01/04/2012	Pol Exp Dt: 01/04/2013 Cov Prvd ID: 35613		
C/R/N Received Date	CR/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/24/2012	01/04/2012	01/20/2012	01 - CANCELLATION	01 - CANCELLED FLAT	19 - UNDERWRITING REASONS

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Coverage Cancelled 30 days after receipt by receipt of the cancellation notice, making the effective date of cancellation 2/24/2012

LICKING

[Handwritten signature]

THE LICKING COMPANY
LICKING, OHIO 44029

MADE IN U.S.A.

SECTION 38-75-730. Restrictions on cancellation of policies and renewals; notice of cancellation; exceptions.

(a) No insurance policy or renewal thereof may be canceled by the insurer prior to the expiration of the term stated in the policy, except for one of the following reasons:

- (1) nonpayment of premium;
- (2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy;
- (3) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the policy;
- (4) substantial breaches of contractual duties, conditions, or warranties;
- (5) loss of the insurer's reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil the insurer's solvency or place that insurer in violation of the insurance laws of this State. Prior to cancellation for reasons permitted in this item (5), the insurer shall notify the director or his designee, in writing, at least sixty days prior to such cancellation and the director or his designee shall, within thirty days of such notification, approve or disapprove such action.

(b) Cancellation under item (1) of subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under items (2) through (5) of subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice.

(c) Subsections (a) and (b) of this section do not apply to any insurance policy which has been in effect for less than one hundred twenty days and is not a renewal of a previously existing policy. The policy may be canceled for any reason by furnishing to the insured at least thirty days' written notice of cancellation, except where the reason for cancellation is nonpayment of premium, in which case not less than ten days' written notice must be furnished.

(d) For purposes of item (3) of subsection (a), substantial change in the risk assumed, if based upon changes in climatic conditions, must be based on statistical data relative to South Carolina that has been approved by the director or his designee as a basis for substantial change in the risk assumed.

HISTORY: Former 1976 Code Section 38-9-830 [1986 Act No. 338] recodified as Section 38-75-730 by

1987 Act No. 155, Section 1; 1993 Act No. 181, Section 794; 2007 Act No. 78, Section 14, eff June 11, 2007, applicable to taxable years beginning after December 31, 2006.

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184 N.C.App. 162 (N.C.App. 2007)

645 S.E.2d 864

Phillip OXENDINE, Plaintiff-Appellee,

v.

TWL, INC., Defendant-Appellee,

and Canal Insurance Company, Defendant-Appellant.

No. COA06-1397.

Court of Appeals of North Carolina.

June 19, 2007

Appeal by defendant Canal Insurance Company from opinion and award entered 27

[645 S.E.2d 865] June 2006 by Chairman Buck Lattimore of the Full North Carolina Industrial Commission. Heard in the Court of Appeals 9 May 2007.

Van Camp, Meacham & Newman, PLLC, by Thomas M. Van Camp, Pinchurst, for plaintiff-appellee.

Hester, Grady, and Hester, P.L.L.C., by H. Clifton Hester, Elizabethtown, for defendant-appellee.

McAngus, Goudelock & Courie, PLLC, by Trula R. Mitchell, Charlotte, for defendant-appellant.

ELMORE, Judge.

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The present appeal stems from the workers' compensation insurance contract between TWL, Inc. (TWL) and Canal Insurance Company (Canal). Canal and TWL entered into an insurance contract in March, 2002; the policy's effective dates were 20 March 2002 through 20 March 2003. On 18 September 2002, Canal prepared a "Notice of Cancellation of Insurance." The notice stated that TWL's policy would be cancelled, effective 7 December 2002, for "underwriting reasons." On 25 November 2002, Patty Watts, who worked for Canal's managing agent, Golden Isle Underwriting, Inc. (Golden), sent TWL a letter thanking TWL for its recent payment and stating that TWL's policy would be cancelled 7 December 2002 due to "underwriting reasons." TWL had paid its premiums through 7 December 2002. All parties agree that the notice of cancellation was sent via regular mail, and that the reason given for the purported cancellation was "underwriting

reasons."

On 31 January 2003, Phillip Oxendine (plaintiff) was involved in a car accident. At that time, plaintiff worked for TWL; the accident arose out of his employment with the company. Plaintiff suffered serious injuries and incurred medical expenses in excess of \$200,000.00. All parties agree that plaintiff's injury was compensable. However, as a result of the dispute as to insurance coverage, plaintiff's payments were significantly delayed. Accordingly, plaintiff filed a motion to join

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Canal as a party on 20 April 2004, which Chief Deputy Commissioner Stephen T. Gheen granted in an order filed 28 April 2004.

On 27 June 2006, Chairman Buck Lattimore, on behalf of the Full Commission, filed an opinion and award affirming Deputy Commissioner George R. Hall, III's 22 August 2005 opinion and award.[1] Canal appealed.

On appeal, Canal argues that TWL made material misrepresentations in its application to Canal for insurance, and that those material misrepresentations prevent recovery under the insurance contract under N.C. Gen.Stat. § 58-3-10 and related case law. *See, e.g., Bell v. Nationwide Ins. Co.*, 146 N.C.App. 725, 726, 554 S.E.2d 399, 401 (2001) (noting, "It is a basic principle of insurance law that the insurer may avoid his obligation under the insurance contract by a showing that the insured made representations in his application that were material and false.") (quotations and citations omitted). Accordingly, argues Canal, the Full Commission erred in holding that cancellation of the policy was required pursuant to N.C. Gen.Stat. § 58-36-105. Canal's argument is without merit.

Our standard of review for cases originating in the Industrial Commission is well established:

Our review of the Commission's opinion and award is limited to determining whether competent evidence of record supports the findings of fact and whether the findings of fact, in turn, support the conclusions of law. If there is any competent evidence supporting the Commission's findings of fact, those findings will not be disturbed on appeal despite evidence to the contrary. However, the Commission's conclusions of law are reviewed *de novo*.

Rose v. City of Rocky Mount, 180 N.C.App. 392, ___, 637 S.E.2d 251, 254 (2006) (internal quotations, alterations, and citations omitted). "A question of statutory interpretation is ultimately a question of law for the

courts." *Brown v. Flowe*, 349 N.C. 520, 523, 507 S.E.2d 894, 896 (1998) (citation omitted). We therefore review this issue, which is controlled by statute, *de novo*.

The crux of Canal's argument is that the insurance contract at issue was void *ab initio* due to alleged misrepresentations [645 S.E.2d 866] TWL made in its application for insurance. Because the contract was never valid

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to begin with, argues Canal, the requirements for cancellation found in N.C. Gen.Stat. § 58-36-105 do not apply. Instead, Canal would have this Court apply N.C. Gen.Stat. § 58-3-10 and hold that no contract was ever formed. We hold that N.C. Gen.Stat. § 58-36-105 does apply; a workers' compensation insurance contract will therefore never be void *ab initio*, but must be cancelled in the manner prescribed by N.C. Gen.Stat. § 58-36-105.

N.C. Gen.Stat. § 58-3-10 reads: "All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy." N.C. Gen.Stat. § 58-3-10 (2005).

N.C. Gen.Stat. § 58-36-105 is titled "Certain workers' compensation insurance policy cancellations prohibited." N.C. Gen.Stat. § 58-36-105 (2005). It reads, in pertinent part:

(a) No policy of workers' compensation insurance ... shall be cancelled by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons:

(2) An act or omission by the insured or the insured's representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy, continuing the policy, or presenting a claim under the policy.

N.C. Gen.Stat. § 58-36-105 (2005).

It is a general rule of statutory construction that

[w]here one of two statutes might apply to the same situation, the statute which deals more directly and specifically with the situation controls over the statute of more general applicability. When two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature ... unless it clearly appears that the legislature intended the general statute to control.

Fowler v. Valencourt, 334 N.C. 345, 349, 435 S.E.2d

530, 532-33 (1993) (quoting

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Trustees of Rowan Technical College v. J. Hyatt Hammond Associates, Inc., 313 N.C. 230, 238, 328 S.E.2d 274, 279 (1985)) (internal quotations and citations omitted).

In this case, § 58-3-10 is the more general statute, applying to "any application for a policy of insurance." N.C. Gen.Stat. § 58-3-10 (2005). In contrast, § 58-36-105 applies specifically to workers' compensation insurance. As § 58-36-105 contemplates the very sort of "material misrepresentation or nondisclosure of a material fact in obtaining the policy" that Canal alleges in this case, it clearly governs our review of the matter. N.C. Gen.Stat. § 58-36-105(a)(2) (2005).

Having established that N.C. Gen.Stat. § 58-36-105 applies, we must consider whether Canal's attempted cancellation of the policy was effective. N.C. Gen.Stat. § 58-36-105 provides in pertinent part:

(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given by registered or certified mail, return receipt requested, to the insured not less than 15 days before the proposed effective date of cancellation....The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is required to be given by registered or certified mail, no cancellation by the insurer shall be effective unless and until such method is employed and completed.

N.C. Gen.Stat. § 58-36-105(b) (2005) (emphasis added).

It is uncontested that Canal failed to send its purported notice of cancellation via registered or certified mail. Despite this, Canal argues that "[t]he legislative intent of N.C. Gen.Stat. § 58-36-105 was fulfilled" by TWL's actual receipt of the notice more than fifteen days prior to cancellation.

As plaintiff points out in his brief, "If the North Carolina Legislature intended to forego the requirement of service by registered or certified mail, it would not have provided language in the statute which specifically states that a cancellation is not effective until service by certified or registered [645 S.E.2d 867] mail is 'employed and completed.' " "[A] statute must be considered as a whole and construed, if possible, so that none of its provisions shall be rendered useless or redundant. It is presumed that the legislature intended each portion to be given full effect and did not intend any provision to be mere surplusage." *R.J. Reynolds Tobacco Co. v. N.C. Dep't of Env't & Natural Res.*, 148 N.C.App. 610, 616, 560 S.E.2d 163, 168 (2002) (quoting

Porsh Builders, Inc. v. City of Winston-Salem, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981)) (internal quotations and citations omitted) (alteration in original). Canal's argument regarding substantial compliance therefore must fail.

Moreover, even if this Court were to agree on that issue, we could not hold that the bald assertion of "underwriting reasons" constitutes a "precise reason for cancellation." [2] No court has interpreted the meaning of "precise reason." As our Supreme Court recently stated, however, "When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and judicial construction of legislative intent is not required." *Patronelli v. Patronelli*, 360 N.C. 628, 631, 636 S.E.2d 559, 561 (2006) (quoting *Diaz v. Div. of Soc. Servs.*, 360 N.C. 384, 387, 628 S.E.2d 1, 3 (2006)). The term "precise" is defined as "[c]learly expressed or delineated; definite," or "[e]xact, as in performance or amount; accurate or correct...." *The Am. Heritage Coll. Dictionary* 1076 (3rd ed. 1997). We think it clear that a vague assertion of "underwriting reasons" fails to meet that standard. Furthermore, we observe that our legislature demands, "[i]n the event of an adverse underwriting decision," that an insurance company "provide [] the applicant, policyholder, or individual proposed for coverage with the *specific reason or reasons* for the adverse underwriting decision" N.C. Gen.Stat. § 58-39-55 (2005) (emphasis added). As noted, we "presume[] that the legislature intended each portion [of a statute] to be given full effect and did not intend any provision to be mere surplusage." *R.J. Reynolds Tobacco Co.*, 148 N.C.App. at 616, 560 S.E.2d at 168. If the legislature believed that the phrase "underwriting reasons" was precise, it is unlikely that it would have included a requirement that insurance companies provide "specific reason or reasons" for adverse underwriting decisions. Accordingly, Canal's purported notice of cancellation stumbles over another statutory hurdle.

Canal concedes that it failed to follow the procedure outlined by N.C. Gen.Stat. § 58-36-105. Accordingly, the insurance contract was in effect at the time of the compensable injury as a matter of law. Canal's remaining arguments on appeal are therefore irrelevant, and the Full Commission's opinion and award are affirmed.

Affirmed.

Judges HUNTER and GEER concur.

Notes:

[1] The earlier opinion and award does not appear to be a part of the record on appeal.

[2] We note that Canal's only treatment of this issue in its brief is a statement that "[t]he reason for cancellation was noted." We will not consider unsupported contentions in the absence of legal argument or authority. *See, e.g., Animal Legal Def. Fund v. Woodley*, 181, N.C.App. 594, ___, 640 S.E.2d 777, 779 (2007) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.") (quotations and citations omitted).

Citing References :

645 S.E.2d 835 (N.C.App. 2007), COA06-1274, State v. Legins

Court of Appeals of North Carolina 06/19/2007 645 S.E.2d 835 184 N.C.App. 156

653 S.E.2d 900 (N.C.App. 2007), COA07-217, In re Williamson Village Condominiums

Court of Appeals of North Carolina 12/18/2007 653 S.E.2d 900

661 S.E.2d 754 (N.C.App. 2008), COA07-1276, McGuire v. Riedle

Court of Appeals of North Carolina 06/03/2008 661 S.E.2d 754

665 S.E.2d 781 (N.C.App. 2008), COA07-1437, Scarboro v. Emery Worldwide Freight Corp.

Court of Appeals of North Carolina 09/02/2008 665 S.E.2d 781

709 S.E.2d 424 (N.C.App. 2011), COA10-694, Diaz v. Smith

Court of Appeals of North Carolina 04/05/2011 709 S.E.2d 424



Claimant's Name:	Dallas Paul Bessinger	Employer's Name:	J&L Construction
Address:	362 Terry Road	Address:	246 Fox Trot Trail
City:	Pelion State: SC Zip: 29123-9796	City:	Pelion State SC ZIP 29123-9742
Home Phone:	Work Phone	Carrier:	FirstComp Insurance
Preparer's Name:	R. Daniel Addison	Preparer's Phone #:	(803) 727-1200

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ To be determined 2. AWW: \$ To be determined Date of Injury: January 4, 2012
3. Type of injury and body part(s) Alleged injuries to left hip, right arm, ribs and back.
4. Facts in controversy: Hedrick Gardner represents FirstComp Insurance ONLY. Whether FirstComp had coverage for J&L Construction where the evidence suggests that J&L Construction attempted to have coverage bound after claimant's accident to apply retroactively and cover the accident?
5. Legal issues involved Fraud in the inducement; coverage; statutory employer doctrine.
6. Unusual aspects: Upon information and belief, the employer went to Midlands Insurance and had coverage bound after the claimant's accident. The employer was insistent that the coverage be retroactive to include the date of the application. After FirstComp learned of these facts, FirstComp cancelled coverage flat and returned the premium deposit. FirstComp contends that the employer was uninsured at the time of claimant's accident and its contract of insurance was void ab initio due to fraud in the inducement. When seeking coverage, the employer misrepresented the nature of the business and also knowingly misrepresented that it did not have any work-related injuries. Garry Smith's retirement - does this cause unavailability?
7. Witnesses (designate if expert)* Claimant; anyone named by claimant; Emory Wilkie; John Loughery; Talisa Miller (via deposition); Ronald Stokes; Garry Smith.
8. Exhibits: Coverage report with exhibits by Garry Smith, SCWCC; application for workers' compensation insurance; premium refund check; April 9, 2012 letter from Garry Smith, South Carolina Workers' Compensation Commission; deposition of John Loughery; deposition of Emory Wilkie; deposition of Talisa Miller.
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance pursuant to the APA and R 67-612")
The medical records of The Regional Medical Center of Orangeburg. FirstComp also relies on medical evidence submitted by the other parties.
10. Name, address, and specialty, if any, of the treating physician: Premier Orthopaedic Specialists, 3 Richland Medical Park, Suite 330, Columbia, SC 29203.
11. Impairment rating(s); body part(s); physician and date of opinion: Unknown.
12. I am amending my Form 50/51 in the following manner N/A.

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

Signature:

Email: daddison@hedrickgardner.com

Date of Hearing July 18, 2012

Time needed for hearing: 1 hour

On behalf of

☐

Claimant

☒

Employer

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.

WCC FORM # 58

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58

Rev. 9/07

PRE-HEARING BRIEF

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC NO. 1200479

DALLAS PAUL BESSINGER,

Claimant,

vs.

J&L CONSTRUCTION,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier.

**NOTICE OF WITNESSES AND
WRITTEN REPORT(S) PHYSICIAN OR
OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF THE
EMPLOYER/CARRIER**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND STEVEN
D. HAYMOND, ATTORNEY FOR CLAIMANT:**

YOU ARE HEREBY NOTIFIED THAT THE Carrier, FirstComp Insurance, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code §1-23-330 (1976, as amended), herewith submits the following reports/physicians or other evidence on behalf of the Carrier, FirstComp Insurance to wit:

TAB	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
2	The Regional Medical Center of Orangeburg	1/4/2012	10 – 39

TAB	EXHIBIT	NO.
3	Coverage report with exhibits by Garry Smith, SCWCC	40 – 51
4	Application for workers' compensation insurance	52 – 53
5	Premium refund check	54
6	April 9, 2012 letter from Garry Smith, SCWCC	55 – 76
7	Deposition of John Loughery	
8	Deposition of Emory Wilkie	
9	Deposition of Talisa Miller	

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the

YOU ARE FURTHER HEREBY NOTIFIED that the originals of the documents referred 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 Carrier, FirstComp Insurance only.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Carrier, FirstComp Insurance:

Claimant

Anyone named by Claimant

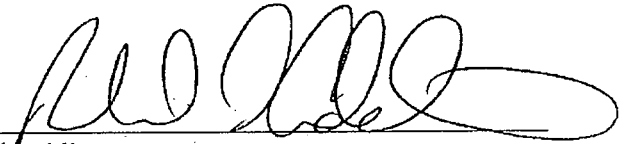
Emory Wilkie (via deposition)

John Loughery (via deposition)

Talisa Miller (via deposition)

Ronald Stokes

Garry Smith



R. Daniel Addison
HEDRICK, GARDNER, KINCHELOE &
GAROFALO, L.L.P.
P.O. Box 11267
Columbia, SC 29211
(803) 727-1200
Attorneys for Defendant, FirstComp Insurance.

July 9, 2012

**DALLAS PAUL BESSINGER v. R-N-M BUILDERS & ASSOCIATES,
LLC**

WCC No. : 1200479

DOI: January 4, 2012

APA COVERSHEET

TAB	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
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7	Deposition of John Loughery	
8	Deposition of Emory Wilkie	
9	Deposition of Talisa Miller	

The Regional Medical Center
3000 Saint Matthews Road
Orangeburg, SC 29118
(803) 395-2200

Patient:	Bessinger, Dallas Paul	Admit/Disch:	01/04/2012 01/04/2012
MRN:	0000045819	Admitting:	Dellinger MD, Bonnie B
Account Number:	1000414102	Attending:	Dellinger MD, Bonnie B
DOB/Age/Sex:	10/01/1976 35 years Male	Copy to:	N/A
Location:	ED B 9		

Emergency Documentation

Document Name: Pre-Arrival Note (Auth (Verified))
Performed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

Pre-Arrival Note

Pre-Arrival Summary

Name: FALL, **Current Date:** 01/04/2012 11:50:09 EST
Gender:
Date of Birth:
Age:
Pre-Arrival Type: EMS
ETA: 01/04/2012 12:17:00 EST
Primary Care Physician:
Presenting Problem:
Pre-Arrival User: Hutto RN, Krysty S
Referring Source:
Location: 9

Regional Medical Center

Pre-Arrival Information

Does the referring doctor want a call back after evaluation?:

* If yes, then what number should we call?:

Does the referring physician have a disposition preference? If so do they want the patient Admitted or Discharged?:

Vital Signs:

Chart Request ID: 1996334

Page 1 of 30

Print Date/Time: 3/26/2012 11:20

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Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: Pre-Arrival Note (Auth (Verified))
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Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

BP:

Pulse:

Respiration:

Pulse Ox:

Misc. Information:

Document Name: Triage Note (Auth (Verified))
Performed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

ED Triage Adult Entered On: 01/04/2012 11:55 EST
Performed On: 01/04/2012 11:50 EST by Holcombe RN, Chelsea D

Triage

Ability to Self Report: No

Chief Complaint: pt with fall from approx 20 feet from ladder. landed on back, hit head, + LOC. c/a/o x 3, answering slowly

Pain Symptoms Self Report: Yes

Vital Signs Assessed: Yes

Chart Request ID: 1996334

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Location: ED B 9

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Emergency Documentation

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Performed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Diagnoses(Active)

Fall

Date: 01/04/2012 ; Diagnosis Type: Reason For Visit ;
Confirmation: Confirmed ; Clinical Dx: Fall ; Classification:
Medical ; Clinical Service: Emergency medicine ; Code:
PNED ; Probability: 0 ; Diagnosis Code: 972DCDB6-6058-
47E5-9321-44B9DBFE0EC6

Rapid Pain Assessment

When assessing the patient's pain, select and consistently use a tool based on patient's preference and cognitive/functional abilities. : Numeric rating

Numeric Pain Scale : 10 = Worst possible pain

Numeric Pain Score : 10

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Vitals/Ht/Wt

Peripheral Pulse Rate : 68bpm

Respiratory Rate : 20br/min

Systolic/

Diastolic BP : 140mmHg

Systolic/

Diastolic BP : 20mmHg (LOW)

SpO2 : 99%

O2 Therapy : Room air

Height/Length Dosing : 168cm(Converted to: 5ft 6inch, 5.51ft, 66.14inch)

Weight Dosing : 60kg(Converted to: 132lb 4oz)

Body Mass Index Dosing : 21kg/m2

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Allergies

ED Allergy Review : Yes

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Allergies (Active)

codeine

Estimated Onset Date: Unspecified ; Created By: Holcombe
RN, Chelsea D ; Reaction Status: Active ; Category: Drug ;
Substance: codeine ; Type: Allergy ; Updated By: Holcombe
RN, Chelsea D ; Reviewed Date: 01/04/2012 11:52 EST

ESI

Is This

Patient Dying? : No

Is This a Patient Who Shouldn't Wait? : Yes

Chart Request ID: 1996334

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Patient: Bessinger, Dallas Paul
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Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
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Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

DOP GENERIC CODE

Tracking Acuity: 2 - Emergent
Tracking Group: RMC ED Tracking Group

Recommended ESI Level: 2

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

General

Last Tetanus: Unknown
Suicidal Ideation: None
Pregnancy Status: N/A
ED Wait Time: Patient Taken to Treatment Area

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

ED Past Medical History

Past Medical History

Surgical History

Procedure History

Social History

Smoking History: Current every day smoker

Holcombe RN, Chelsea D - 01/04/2012 11:50 EST

Social History

Alcohol: Denies Alcohol Use
(Last Updated: 01/04/2012 11:53:51 by Holcombe RN, Chelsea D)

Tobacco:

Current every day smoker, Cigarettes (Last Updated: 01/04/2012 11:54:03 by Holcombe RN, Chelsea D)

Substance Abuse:

Denies Substance Abuse
(Last Updated: 01/04/2012 11:54:06 by Holcombe RN, Chelsea D)

ED Medication Review

Medication List

No Known Home Medications

Holcombe RN, Chelsea D - 01/04/2012 11:54:43

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9
Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: Triage Note (Auth (Verified))
Performed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Signed By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST
Authenticated By: Holcombe RN, Chelsea D 01/04/2012 11:50 EST

Document Name: ED Note-Nursing (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 12:26 EST
Signed By: Seaton RN, Matthew B 01/04/2012 12:26 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 12:26 EST

ED Assessment Adult Entered On: 01/04/2012 12:29 EST
Performed On: 01/04/2012 12:26 EST by Seaton RN, Matthew B

Additional Comments

Additional Comments : pt c/o diffuse back pain, left upper leg, and left side pelvic pain since mvc; pedal pulses present bilaterally; skin cool but dry; no apparent sign of head trauma; pt has artificial left eye; right side lung sounds slightly diminished but clear;
(Comment: pt breathing shallow due to "back pain"; bowel sounds present in all quadrants [Seaton RN, Matthew B - 01/04/2012 12:26 EST])

Seaton RN, Matthew B - 01/04/2012 12:26 EST

Document Name: ED Note-Physician (Auth (Verified))
Performed By: Dellinger MD, Bonnie B 01/04/2012 14:52 EST
Signed By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST
Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

Fall

Patient: Bessinger, Dallas Paul MRN: 0000045819 FIN: 1000414102
Age: 35 years Sex: Male DOB: 10/01/1976
Associated Diagnoses: None
Author: Dellinger MD, Bonnie B

Basic Information

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Note-Physician (Auth (Verified))
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Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

Time seen: Immediately upon arrival.
History source: Patient, family, EMS.
Arrival mode: Ambulance.
History limitation: None.

Additional information: Chief Complaint from Nursing Triage Note: Chief Complaint.

01/04/2012 11:50 EST Chief Complaint pt with fall from approx 20 feet from ladder. landed on back, hit head, + LOC. c/a/o x 3, answering slowly

History of Present Illness

The patient presents following fall and PT BIB EMS S/P FALL FROM 20 FT LADDER AT 3 STORY HOUSE WHERE HE WAS WORKING AS A ROOFER. LANDED DIRECTLY ONTO HIS BACK. + SHORT LOC PER ONLOOKERS, PT DENIES LOC. NO BLEEDING, PT C/O PAIN TO L HIP AND ALL ALONG BACK. SOME SOB. The onset was just prior to arrival. The occurrence was single episode. The fall was described as slipped. The location where the incident occurred was at work. Location: Back lower extremity. The character of symptoms is pain and loss of mobility. The degree at present is severe. The exacerbating factor is changing position. The relieving factor is none. Risk factors consist of none. Therapy today: none. Preceding symptoms none. Associated symptoms: none. Additional history: none.

Review of Systems

Additional review of systems information: All other systems reviewed and otherwise negative.

Health Status

Allergies:

Allergic Reactions (Selected)

Severity not Documented

Codeine- No reactions were documented.

Past Medical/ Family/ Social History

Medical history:

No active or resolved past medical history items have been selected or recorded.

Surgical history:

No active procedure history items have been selected or recorded.

Family history:

No family history items have been selected or recorded.

Social history:

Social & Psychosocial Habits

Alcohol

01/04/2012 Risk Assessment: Denies Alcohol Use

Substance Abuse

01/04/2012 Risk Assessment: Denies Substance Abuse

Tobacco

01/04/2012 Type: Cigarettes

Use: Current every day smoker

Problem list:

No problem items selected or recorded.

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
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CAVEAT: Chart reviewed for social history, past surgical history, past medical history, family history, medicines/allergies, and prior records. I agree with nursing documentation except as otherwise specified.

Physical Examination

Vital Signs Vital Signs.

01/04/2012 14:26 EST	Peripheral Pulse Rate	64 bpm
	Respiratory Rate	18 br/min
	Systolic Blood Pressure	142 mmHg HI
	Diastolic Blood Pressure	85 mmHg
01/04/2012 13:11 BST	Peripheral Pulse Rate	70 bpm
	Respiratory Rate	18 br/min
	Systolic Blood Pressure	145 mmHg HI
	Diastolic Blood Pressure	94 mmHg HI
01/04/2012 11:50 EST	Peripheral Pulse Rate	68 bpm
	Respiratory Rate	20 br/min
	Systolic Blood Pressure	140 mmHg
	Diastolic Blood Pressure	20 mmHg LOW

Measurements.

01/04/2012 11:50 EST	Height/Length Dosing	168 cm
	Weight Dosing	60 kg
	Body Mass Index Dosing	21 kg/m2

Basic Oxygen Information.

01/04/2012 14:26 EST	Oxygen Therapy	Room air
	SpO2	95 %
01/04/2012 13:11 EST	Oxygen Therapy	Nasal cannula
	SpO2	100 %
01/04/2012 11:50 EST	Oxygen Flow Rate	2 L/min
	Oxygen Therapy	Room air
	SpO2	99 %

General: Alert, moderate distress.

Skin: Warm, dry.

Head: Normocephalic, atraumatic.

Neck: Supple, trachea midline.

Eye: L EYE WITH MILD PROPTOSIS AND NOT RESPONSIVE - AT BASELINE PER FAIRLY AS THIS IS A GLASS EYE FROM PRIOR INJURY.

Ears, nose, mouth and throat: Oral mucosa moist.

Cardiovascular: Regular rate and rhythm, Normal peripheral perfusion.

Respiratory: Respirations are non-labored, breath sounds are equal, DIMINISHED B/L WITH SOME SPLINTING 2/2 PAIN.

Gastrointestinal: Non distended.

Back: Normal range of motion.

Musculoskeletal: L LEG SHORTENED AND EXTERNALLY ROTATED WITH PAIN TO ALL ROM.

Neurological: Alert and oriented to person, place, time, and situation, No focal neurological deficit observed.

Psychiatric: Cooperative, appropriate mood & affect.

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: I000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

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Document Name: ED Note-Physician (Auth (Verified))
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Medical Decision Making

Differential Diagnosis: Fall, sprain, strain, closed fracture, spinal cord injury, head injury.

Documents reviewed: Emergency department nurses' notes.

Orders: Launch Order Profile (Selected).

Inpatient Orders

Ordered

CXR Single View:
 Cardiac Monitoring:
 Chest Tube Setup:
 Drug Screen Urine:
 EKG:
 Foley Cath Insertion:
 Saline Lock Insert:
 Urinalysis Comprehensive:

Completed

*INT FLUSH: 3 mL, IV Push, Once
 Alcohol Level:
 Automated Diff:
 BMP:
 CBC w/ Auto Diff:
 CT Abdomen w/ + Pelvis w/ Contrast:
 CT Chest w/ Contrast:
 CXR Single View:
 Cervical Spine w/o Contrast CT:
 DILAUDID INJECTION: 1 mg, 0.5 mL, IV Push, Once
 DILAUDID INJECTION: 2 mg, 1 mL, IV Push, Once
 Head w/o Contrast CT:
 Lumbar Spine w/o Contrast CT:
 PT:
 PTT:
 Thoracic Spine w/o Contrast CT:
 XR Pelvis AP Only:
 ZOFRAN INJECTION: 8 mg, 4 mL, IV Push, Once, PRN: Nausea
 fentanyl injection: 200 mcg, 4 mL, IV Push, Once
 hydromorphone: PYXIS, Once
 morphine injection: 10 mg, 1 mL, IV Push, Once

Electrocardiogram: Rate 61, normal sinus rhythm, No ST-T changes, no ectopy, normal PR & QRS intervals, EP Interp.

Results review: Lab results : Lab View.

01/04/2012 11:55 EST

White Blood Cell Count	25.2 x10 (3) /mcL	HI
Red Blood Cell Count	6.01 x10 (6) /mcL	
Hemoglobin	13.4 gm/dL	LOW
Hematocrit	38.9 %	LOW
MCV	64.7 fL	LOW
MCH	22.3 pg	LOW
MCHC	34.4 gm/dL	
RDW	15.9 %	HI

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Platelet Count	324 x10(3)/mcL	
MPV	9.9 fL	
Neutrophil Automated	67.2 %	
Lymphocyte Automated	25.7 %	
Monocyte Automated	5.8 %	
Eosinophil Automated	1.1 %	
Basophil Automated	0.2 %	
Neutrophil Absolute	16.90 x10(3)/mcL	NA
Lymphocyte Absolute	6.47 x10(3)/mcL	NA
Monocyte Absolute	1.46 x10(3)/mcL	NA
Eosinophil Absolute	0.27 x10(3)/mcL	NA
Basophil Absolute	0.05 x10(3)/mcL	NA
Prothrombin Time	12.1 second	NA
International Normalization Ratio		1.14 INR
Partial Thromboplastin Time		26.5 second
Glucose Level	211 mg/dL	HI
Blood Urea Nitrogen	9 mg/dL	
Sodium Level	138 mmol/L	
Potassium Level	3.5 mmol/L	
Chloride	104 mmol/L	
Carbon Dioxide Level	25 mmol/L	
Anion Gap	12.5 mmol/L	
Creatinine	1.1 mg/dL	
BUN/Creatinine Ratio	8.2 ratio	
Estimated Glomerular Filtration Rate		>60
mL/min/1.73 m2	NA	
Est Glom Filtration Rate, African Americ		>60
mL/min/1.73 m2	NA	
GFR Comment	See comment	
Calcium Level Total	8.4 mg/dL	LOW
Ethanol Level	<10 mg/dL	

Chest X-Ray: FINAL REPORT

HISTORY: Trauma, no specific site of injury

Exam: AP supine chest on immobilization board

A single film of the chest reveals no definite displaced fractures are. The lungs appear basically normally expanded. However, there some limitation due to the immobilization board. There is a faint vertical linear lucency along the inner lower chest wall the right which may represent a small pneumothorax. Followup imaging with other modalities would be helpful. The heart appears of normal size and configuration.

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Location: ED B 9

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Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

IMPRESSION: Essentially negative limited portable chest. Possible small right pneumothorax. See above..

Head Computed Tomography: **FINAL REPORT**

HISTORY: Head, neck and back pain, patient fell from ladder

PROCEDURE: CT head without contrast.

Technique: Serial axial images were acquired from the skull vertex to the skull base in 5 mm increments without intravenous contrast.

FINDINGS:

No definite evidence of acute intracranial abnormality is noted. There is evidence of apparent old trauma with a replacement globe in the left orbit. There is fluid involving the left maxillary sinus. This should be correlated with clinical findings as to more recent injury. There is some overall asymmetry of the head due to positioning in the gantry.

IMPRESSION: No definite acute intracranial abnormality. Findings which may represent old trauma involving the left orbital area with a replacement radiopaque I. Left maxillary sinus findings as described..

Radiology results: Computed tomography, **FINAL REPORT**

HISTORY: Patient fell, pain in neck

PROCEDURE: CT cervical spine without contrast

Technique: Serial helical axial images were acquired through the cervical spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

Vertebral body height and alignment are preserved apart from cervical straightening. No vertebral body fracture or listhesis are seen. Intervertebral disc height is preserved. The posterior elements align normally and appear intact. No significant arthritic changes are present. The craniocervical junction appears intact. The study was somewhat limited due to difficulty in positioning of the patient. There is some air in the tissue planes of the neck attributed to the known chest trauma with pneumothorax.

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B-9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
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IMPRESSION: No evidence of cervical spine fracture. Other findings as described..

Radiology results: X-ray, FINAL REPORT

HISTORY: Patient fell, pain left hip area

Exam: AP supine pelvis

A single film of the pelvis was obtained on immobilization board. The pelvis appears basically intact. There is a fracture which appears to be in the subtrochanteric area with some displacement with the shaft being lateral cephalad to its expected position. No other definite fractures are noted. There are multiple artifacts secondary to clothing and immobilization Borden material.

IMPRESSION: Left subtrochanteric fracture. Other findings as described..

Radiology results: Computed tomography, FINAL REPORT

HISTORY: Patient fell, pain in back and neck

PROCEDURE: CT chest, abdomen, and pelvis with contrast.

Technique: Serial helical axial images were acquired from the thoracic inlet through the pelvis in 5 mm increments following the intravenous administration of Isovue-370. Oral contrast was administered. Coronal reconstructions were obtained.

The CT chest images reveal evidence of a moderate right pneumothorax of approximately 30 to 40%. There is minimal pleural fluid. There is evidence of some air in the subcutaneous tissues of the neck as well as at the site of some rib fractures.

There are partially defined fractures which appear to involve the base of the ribs at their attachment with the transverse process on the right. The ribs involved appear to be the second through the eighth ribs posteriorly and the eighth rib more laterally as well.

The left lung appears essentially clear and there is no pneumothorax identified. The partially defined heart and mediastinal structures appear normal.

IMPRESSION: Multiple right rib fractures primarily posteriorly with

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Note-Physician (Auth (Verified))
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Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

soft tissue change and some air in the subcutaneous tissues. Right pneumothorax. Left lung essentially clear..

Radiology results: Computed tomography, FINAL REPORT

HISTORY: Patient fell, back pain

PROCEDURE: CT abdomen and pelvis with contrast.

Multidetector scanning of the abdomen and pelvis with 1 millimeter collimation with axial images reconstructed at 7 millimeter intervals was performed. Coronal reconstructions were also reviewed. Oral and intravenous contrast was administered.

The liver and spleen appeared within normal limits, as did the partially delineated gallbladder. There was no evidence of ductal dilatation. The pancreas as well as the associated vascular structures also appeared normal. There was good delineation of both kidneys. There was no evidence of obstruction. The bowel as delineated appeared normal.

There was adequate filling of the bladder. The pelvic structures as identified appeared within normal limits. Partially defined is the previously described subtrochanteric fracture with displacement of the left hip.

IMPRESSION:

Essentially negative abdomen and pelvic CT scan. Left proximal femur fracture..

Radiology results: FINAL REPORT

HISTORY: Patient fell, back pain

PROCEDURE: CT thoracic spine without contrast

Technique: Serial helical axial images were acquired through the thoracic spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

The vertebral bodies appear of essentially normal height and configuration. No compression fractures are identified. Incidentally noted is the right pneumothorax along with the posterior rib fractures on the right and soft tissue changes as well as some air in the soft tissues including some minimal mediastinal air.

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9
Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Note-Physician (Auth (Verified))
Performed By: Dellinger MD, Bonnie B 01/04/2012 14:52 EST
Signed By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST
Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

IMPRESSION: CT thoracic spine with no definite acute spine abnormality. Other chest and mediastinal findings as described..

Radiology results: Computed tomography, FINAL REPORT

HISTORY: Patient fell, back pain

PROCEDURE: CT lumbar spine without contrast

Technique: Serial helical axial images were acquired through the lumbar spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

The images reveal the vertebral bodies appear of essentially normal height and configuration. The disc spaces appear essentially normally maintained. The adjacent areas of the lumbar spine appear within normal limits.

IMPRESSION: Essentially negative lumbar CT. No definite acute abnormality..

Radiology results: X-ray, FINAL REPORT

HISTORY: Patient fell, right pneumothorax, chest tube placement

Exam: Portable chest

A portable film of the chest reveals only a minimal residual of the right pneumothorax. A chest tube enters inferolaterally and extends superior medially with its tip superimposed in the right of the aortic arch. In the left lung appears clear.

IMPRESSION: Right chest tube in good position. Small residual pneumothorax..

Procedure

Critical care note

Total time: 30-74 minutes spent engaged in work directly related to patient care and/or available for direct patient care, separate from teaching time, exclusive of procedure time, which included chest tube.

Critical condition(s) addressed for impending deterioration include: airway, respiratory.

Associated risk factors: hypotension, hypoxia, bleeding, trauma, metabolic changes, acidosis.

Management: bedside assessment, supervision of care, Interpretation (chest x-ray, electrocardiogram), Case review (medical specialist, nursing, family), Alternate history family.

Performed by: self.

Chest Tube Insertion

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Note-Physician (Auth (Verified))
Performed By: Dellinger MD, Bonnie B 01/04/2012 14:52 EST
Signed By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST
Authenticated By: Dellinger MD, Bonnie B 01/04/2012 15:05 EST

Confirmed: Patient, procedure, side, and site correct.
Consent: Patient.
Indication: Pneumothorax.
Procedural sedation: See nurse's notes.

Technique

Location: right, mid axillary line.
Anesthesia: 8 ml, 1% lidocaine.
Preparation: sterile field established and landmarks identified, skin prepped with betadine.
For chest tube insertion: an incision was made using a # 11 blade, the fascia and muscle were penetrated, a 24 french chest tube, was directed inferiorly.
Return: air.
Secured: with 2 -0 suture, lubricated gauze, adhesive tape.
Post-procedure: Bilateral breath sounds equal, Chest x-ray confirms: Good tube placement, expanded lung fields, bilaterally.
Patient tolerated: Well.
Complications: None.
Performed by: Self.

Impression and Plan

Diagnosis

Closed rib fracture 807.00 (ICD9 807.00, Discharge, Emergency medicine, Medical)
Closed subtrochanteric fracture (ICD9 820.22, Discharge, Medical)
Acute pneumothorax (ICD9 512.8, Discharge, Medical)

Calls-Consults

- 01/04/2012 14:34:00, DISCUSSED WITH PALMETTO RICHLAND TRAUMA MD MARK JONES WHO ACCEPTS PT..

Plan

Condition: Improved.
Disposition: Patient care transitioned to: PALMETTO RICHLAND DR. MARK JONES.
Counseled: Patient, Regarding diagnosis, Regarding diagnostic results, Regarding treatment plan.

Document Name: ED Patient Education Note (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

ED Patient Education Note

Regional Medical Center Discharge Instructions

3000 St. Matthews Rd
Orangeburg, SC 29118
(803) 395-2568

Name: Dallas Bessinger
DOB: 10/01/76

Current Date: 01/04/12 15:40:48 America/New_York
MRN: 0000045819
FIN: 1000414102

Chart Request ID: 1996334

Page 14 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Patient Education Note (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

Chief Complaint: Fall

Patient Education Materials:
No instructions were provided.

Document Name: ED Patient Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

ED Patient Summary

Regional Medical Center

803-395-2200

Patient Summary

Name: Bessinger, Dallas Paul
DOB: 10/01/1976 12:00 AM

Current Date: 01/04/12 15:40:48
MRN: 0000045819 **FIN:**

Discharge Diagnosis: Closed rib fracture 807.00; Closed subtrochanteric fracture; Acute pneumothorax
Address: P O BOX 234 Pelion SC 29123
Phone: (803) 894-3433

Primary Care Provider:
Name: Physician Referral Service
Phone: (803) 395-2200

Regional Medical Center would like to thank you for allowing us to assist you with your healthcare needs. The following includes patient education materials and information regarding your injury/illness.

YOUR X-RAYS

If you had X-RAYS today they may have been read by your emergency physician. If so, they will be read again later by a radiologist(a specialist in reading x-rays). If he sees anything of significance that the emergency room physician did not see, you will receive a call back informing you of the difference and letting you know if there is anything else that you may need to do.

Follow-up Instructions

Bessinger, Dallas Paul has been given these follow-up instructions:

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Patient Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

Medication Information

Patient Education Materials Follows

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Patient Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

Bessinger, Dallas Paul has been given the following list of patient education materials, prescriptions, and follow-up instructions:

Medication Information

Follow-up Instructions:

Patient Education Materials

I, Bessinger, Dallas Paul, have received the above patient education materials/instructions and have verbalized understanding:

Patient Signature

Date

Provider Signature

Date

Document Name: ED Clinical Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

ED Clinical Summary

Regional Medical Center

803-395-2200

ED Clinical Discharge Summary

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Emergency Documentation

Document Name: ED Clinical Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

PERSON INFORMATION

Name Bessinger, Dallas Paul
Age 35 Years
DOB 10/01/1976 12:00 AM
Address: P O BOX 234 Pelion SC 29123

PCP Physician Referral Service
Phone (803) 894-3433

Discharge Diagnosis Closed rib fracture 807.00; Closed subtrochanteric Acuity 2 - Emergent fracture; Acute pneumothorax
Arrival 1/04/2012 11:49 AM
Discharge 1/04/2012 3:40 PM
Dispo Type Other HC Facility (70)

LOS 000 03:51

VITALS INFORMATION

Vital Sign	Triage	Latest
Temp Oral		
Temp Axillary		
Temp Artery		
Temp Rectal		
SpO2	99 %	96 %
Respiratory Rate	20 br/min	18 br/min
Peripheral Pulse Rate	68 bpm	64 bpm
Apical Heart Rate		
Blood Pressure	140 mmHg / 20 mmHg	142 mmHg / 83 mmHg

MEDICAL INFORMATION

Allergy Info:
codeine
Prescriptions Given

DISCHARGE INFORMATION

Discharge Disposition: Other HC Facility (70)
Discharge Location:

MEDS RECONCILIATION

Chart Request ID: 1996334

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Location: ED B 9

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Admitting: Dellinger MD, Bonnie B
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Copy to: N/A

Emergency Documentation

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Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

MEDS GIVEN

Medication	Dose	Route	Performed By
ondansetron	8 mg	IV Push	Seaton RN, Matthew B
morphine	10 mg	IV Push	Seaton RN, Matthew B
sodium chloride	3 mL	IV Push	Seaton RN, Matthew B
hydromorphone	1 mg	IV Push	Seaton RN, Matthew B
hydromorphone	2 mg	IV Push	Seaton RN, Matthew B
fentanyl	100 mcg	IV Push	Seaton RN, Matthew B

DISCHARGE INSTRUCTIONS

Instructions:

Follow up:

YOUR X-RAYS

If you had X-RAYS today they may have been read by your emergency physician. If so, they will be read again later by a radiologist(a specialist in reading x-rays). If he sees anything of significance that the emergency room physician did not

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul MRN: 0000045819 Account Number: 1000414102 DOB/Age/Sex: 10/01/1976 35 years Male Location: ED B 9	Admit/Disch: 01/04/2012 01/04/2012 Admitting: Dellinger MD, Bonnie B Attending: Dellinger MD, Bonnie B Copy to: N/A

Emergency Documentation

Document Name: ED Clinical Summary (Auth (Verified))
Performed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Signed By: Seaton RN, Matthew B 01/04/2012 15:40 EST
Authenticated By: Seaton RN, Matthew B 01/04/2012 15:40 EST

see, you will receive a call back informing you of the difference and letting you know if there is anything else that you may need to do.

DIAGNOSIS

Closed rib fracture 807.00; Closed subtrochanteric fracture; Acute pneumothorax

Comment:

Chemistry

Lab Legend: @=Abnormal C=Critical #=Interpretive Data *=Corrected L=Low H=High P=Performing Lab f=Footnotes

Routine Chemistry

Collected Date 01/04/2012
 Collected Time 11:55 EST

Procedure		Units	Ref Range
Glucose Level	211 H	mg/dL	[74-106]
Blood Urea Nitrogen	9	mg/dL	[9-20]
Sodium Level	138	mmol/L	[137-145]
Potassium Level	3.5	mmol/L	[3.5-5.1]
Chloride	104	mmol/L	[98-107]
Carbon Dioxide Level	25	mmol/L	[22-30]
Anion Gap	12.5	mmol/L	[9.0-18.3]
Creatinine	1.1	mg/dL	[0.8-1.5]
BUN/Creatinine Ratio	8.2	ratio	[7.0-25.0]
Estimated Glomerular Filtration Rate	>60	mL/min/1.73 m2	
Est Glom Filtration Rate, African Americ	>60	mL/min/1.73 m2	
GFR Comment	See comment f		
Calcium Level Total	8.4 L	mg/dL	[9.1-10.6]

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Chemistry

Lab Legend: @=Abnormal C=Critical #=Interpretive Data *=Corrected L=Low H=High P=Performing Lab f=Footnotes

Routine Chemistry

01/04/2012 11:55 EST GFR Comment:
Chronic Kidney Disease, GFR <=60

ESRD, GFR <=15

The equation has not been evaluated for use with the elderly (over 70 years of age), pregnant women, patients with acute renal failure or persons with extremes of body size, muscle mass or nutritional status. Note: Patients with GFR values >=60 ml/min/1.73 square meters may have CKD if evidence of persistent proteinuria or hematuria is present. Additional information may be found at www.kdoqi.org.

Therapeutic Drugs/Toxicology

Collected Date 01/04/2012
Collected Time 11:55 EST

Procedure	Units	Ref Range
Ethanol Level # <10	mg/dL	[0-10]

01/04/2012 11:55 EST Ethanol Level:
 Negative: <10 mg/dL
 Toxic: 50-100 mg/dL
 CNS Depression: >100 mg/dL
 Legal intoxication: >79 mg/dL

Hematology

Lab Legend: @=Abnormal C=Critical #=Interpretive Data *=Corrected L=Low H=High P=Performing Lab f=Footnotes

General Hematology

Collected Date 01/04/2012
Collected Time 11:55 EST

Procedure	Units	Ref Range
White Blood Cell Count 25.2 H	x10(3)/mcL	[4.8-10.8]
Red Blood Cell Count 6.01	x10(6)/mcL	[4.70-6.10]
Hemoglobin 13.4 L	gm/dL	[14.0-18.0]
Hematocrit 38.9 L	%	[42.0-52.0]
MCV 64.7 L	fL	[80.0-94.0]

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
 MRN: 0000045819
 Account Number: 1000414102
 DOB/Age/Sex: 10/01/1976 35 years Male
 Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
 Admitting: Dellinger MD, Bonnie B
 Attending: Dellinger MD, Bonnie B
 Copy to: N/A

Hematology

Lab Legend: @=Abnormal C=Critical #=Interpretive Data *=Corrected L=Low H=High P=Performing Lab f=Footnotes

General Hematology

Collected Date 01/04/2012
 Collected Time 11:55 EST

Procedure		Units	Ref Range
MCH	22.3 L	pg	[27.0-31.0]
MCHC	34.4	gm/dL	[32.0-36.0]
RDW	15.9 H	%	[11.5-14.5]
Platelet Count	324	x10(3)/mcL	[130-400]
MPV	9.9	fL	[7.4-10.4]

Differential

Collected Date 01/04/2012
 Collected Time 11:55 EST

Procedure		Units	Ref Range
Neutrophil Automated	67.2	%	[42.0-75.0]
Lymphocyte Automated	25.7	%	[21.0-51.0]
Monocyte Automated	5.8	%	[2.0-9.0]
Eosinophil Automated	1.1	%	[0.0-10.0]
Basophil Automated	0.2	%	[0.0-1.0]
Neutrophil Absolute	16.90	x10(3)/mcL	
Lymphocyte Absolute	6.47	x10(3)/mcL	
Monocyte Absolute	1.46	x10(3)/mcL	
Eosinophil Absolute	0.27	x10(3)/mcL	
Basophil Absolute	0.05	x10(3)/mcL	

Coagulation

Lab Legend: @=Abnormal C=Critical #=Interpretive Data *=Corrected L=Low H=High P=Performing Lab f=Footnotes

Collected Date 01/04/2012
 Collected Time 11:55 EST

Procedure		Units	Ref Range
Prothrombin Time	12.1	second	
International Normalization Ratio	1.14	INR	[0.80-1.40]
Partial Thromboplastin Time	26.5	second	[24.6-34.1]

Chart Request ID: 1996334

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00177	CT Head or Brain w/o Contrast	01/04/2012 13:02 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Head, neck and back pain, patient fell from ladder

PROCEDURE: CT head without contrast.

Technique: Serial axial images were acquired from the skull vertex to the skull base in 5 mm increments without intravenous contrast.

FINDINGS:

No definite evidence of acute intracranial abnormality is noted. There is evidence of apparent old trauma with a replacement globe in the left orbit. There is fluid involving the left maxillary sinus. This should be correlated with clinical findings as to more recent injury. There is some overall asymmetry of the head due to positioning in the gantry.

IMPRESSION: No definite acute intracranial abnormality. Findings which may represent old trauma involving the left orbital area with a replacement radiopaque I. Left maxillary sinus findings as described.

***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 1:17 pm

Signed by: Lovelace, Dallas W
01/04/2012 1:17 pm

Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00172	CT Spine Cervical w/o Contrast	01/04/2012 13:02 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admi/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00172	CT Spine Cervical w/o Contrast	01/04/2012 13:02 EST	Dellinger MD, Bonnie B

Report

HISTORY: Patient fell, pain in neck

PROCEDURE: CT cervical spine without contrast

Technique: Serial helical axial images were acquired through the cervical spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

Vertebral body height and alignment are preserved apart from cervical straightening. No vertebral body fracture or listhesis are seen. Intervertebral disc height is preserved. The posterior elements align normally and appear intact. No significant arthritic changes are present. The craniocervical junction appears intact. The study was somewhat limited due to difficulty in positioning of the patient. There is some air in the tissue planes of the neck attributed to the known chest trauma with pneumothorax.

IMPRESSION: No evidence of cervical spine fracture. Other findings as described.

***** Final Report *****

Dictated by: Lovelace, Dallas W
 01/04/2012 1:20 pm

Signed by: Lovelace, Dallas W
 01/04/2012 1:20 pm

Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00175	CT Spine Lumbar w/o Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00175	CT Spine Lumbar w/o Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Report

HISTORY: Patient fell, back pain

PROCEDURE: CT lumbar spine without contrast

Technique: Serial helical axial images were acquired through the lumbar spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

The images reveal the vertebral bodies appear of essentially normal height and configuration. The disc spaces appear essentially normally maintained. The adjacent areas of the lumbar spine appear within normal limits.

IMPRESSION: Essentially negative lumbar CT. No definite acute abnormality.

***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 1:33 pm
Signed by: Lovelace, Dallas W
01/04/2012 1:33 pm
Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00176	CT Spine Thoracic w/o Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Patient fell, back pain

PROCEDURE: CT thoracic spine without contrast

Chart Request ID: 1996334

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Print Date/Time: 3/26/2012 11:20

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The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00176	CT Spine Thoracic w/o Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Technique: Serial helical axial images were acquired through the thoracic spine in 3 mm increments and are submitted with sagittal and coronal reconstructions.

FINDINGS:

The vertebral bodies appear of essentially normal height and configuration. No compression fractures are identified. Incidentally noted is the right pneumothorax along with the posterior rib fractures on the right and soft tissue changes as well as some air in the soft tissues including some minimal mediastinal air.

IMPRESSION: CT thoracic spine with no definite acute spine abnormality. Other chest and mediastinal findings as described.
***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 1:31 pm

Signed by: Lovelace, Dallas W
01/04/2012 1:31 pm

Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00174	CT Thorax w/ Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Patient fell, pain in back and neck

PROCEDURE: CT chest, abdomen, and pelvis with contrast.

Technique: Serial helical axial images were acquired from the thoracic inlet through the pelvis in 5 mm increments following the intravenous administration of Isovue-370. Oral contrast was administered. Coronal reconstructions were obtained.

The CT chest images reveal evidence of a moderate right pneumothorax

Chart Request ID: 1996334

Page 26 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00174	CT Thorax w/ Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

of approximately 30 to 40%. There is minimal pleural fluid. There is evidence of some air in the subcutaneous tissues of the neck as well as at the site of some rib fractures.

There are partially defined fractures which appear to involve the base of the ribs at their attachment with the transverse process on the right. The ribs involved appear to be the second through the eighth ribs posteriorly and the eighth rib more laterally as well.

The left lung appears essentially clear and there is no pneumothorax identified. The partially defined heart and mediastinal structures appear normal.

IMPRESSION: Multiple right rib fractures primarily posteriorly with soft tissue change and some air in the subcutaneous tissues. Right pneumothorax. Left lung essentially clear.

***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 1:28 pm
Signed by: Lovelace, Dallas W
01/04/2012 1:28 pm
Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00173	CT Abdomen w/ + Pelvis w/ Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Patient fell, back pain

PROCEDURE: CT abdomen and pelvis with contrast.

Multidetector scanning of the abdomen and pelvis with 1 millimeter collimation with axial images reconstructed at 7 millimeter intervals was performed. Coronal reconstructions were also reviewed. Oral and intravenous contrast was administered.

Chart Request ID: 1996334

Page 27 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

Computed Tomography

Accession Number	Exam	Exam Date/Time	Ordering Physician
CT-12-00173	CT Abdomen w/ + Pelvis w/ Contrast	01/04/2012 13:09 EST	Dellinger MD, Bonnie B

The liver and spleen appeared within normal limits, as did the partially delineated gallbladder. There was no evidence of ductal dilatation. The pancreas as well as the associated vascular structures also appeared normal. There was good delineation of both kidneys. There was no evidence of obstruction. The bowel as delineated appeared normal.

There was adequate filling of the bladder. The pelvic structures as identified appeared within normal limits. Partially defined is the previously described subtrochanteric fracture with displacement of the left hip.

IMPRESSION:

Essentially negative abdomen and pelvic CT scan. Left proximal femur fracture.

***** Final Report *****

Dictated by: Lovelace, Dallas W

01/04/2012 1:40 pm

Signed by: Lovelace, Dallas W

01/04/2012 1:40 pm

Transcribed by: Lovelace, Dallas W

General Diagnostic

Accession Number	Exam	Exam Date/Time	Ordering Physician
XR-12-00447	XR Chest 1 View Frontal	01/04/2012 14:44 EST	Dellinger MD, Bonnie B

Reason for Exam

Chest tube check

Report

HISTORY: Patient fell, right pneumothorax, chest tube placement

Exam: Portable chest

Chart Request ID: 1996334

Page 28 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

General Diagnostic

Accession Number	Exam	Exam Date/Time	Ordering Physician
XR-12-00447	XR Chest 1 View Frontal	01/04/2012 14:44 EST	Dellinger MD, Bonnie B

A portable film of the chest reveals only a minimal residual of the right pneumothorax. A chest tube enters inferolaterally and extends superior medially with its tip superimposed in the right of the aortic arch. In the left lung appears clear.

IMPRESSION: Right chest tube in good position. Small residual pneumothorax.

***** Final Report *****

Dictated by: Lovelace, Dallas W

01/04/2012 2:54 pm

Signed by: Lovelace, Dallas W

01/04/2012 2:54 pm

Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
XR-12-00426	XR Chest 1 View Frontal	01/04/2012 12:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Trauma, no specific site of injury.

Exam: AP supine chest on immobilization board

A single film of the chest reveals no definite displaced fractures are. The lungs appear basically normally expanded. However, there some limitation due to the immobilization board. There is a faint vertical linear lucency along the inner lower chest wall the right which may represent a small pneumothorax. Followup imaging with other modalities would be helpful. The heart appears of normal size and configuration.

Chart Request ID: 1996334

Page 29 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

The Regional Medical Center

Patient: Bessinger, Dallas Paul
MRN: 0000045819
Account Number: 1000414102
DOB/Age/Sex: 10/01/1976 35 years Male
Location: ED B 9

Admit/Disch: 01/04/2012 01/04/2012
Admitting: Dellinger MD, Bonnie B
Attending: Dellinger MD, Bonnie B
Copy to: N/A

General Diagnostic

Accession Number	Exam	Exam Date/Time	Ordering Physician
XR-12-00426	XR Chest 1 View Frontal	01/04/2012 12:09 EST	Dellinger MD, Bonnie B

IMPRESSION: Essentially negative limited portable chest. Possible small right pneumothorax. See above.
***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 12:18 pm
Signed by: Lovelace, Dallas W
01/04/2012 12:18 pm
Transcribed by: Lovelace, Dallas W

Accession Number	Exam	Exam Date/Time	Ordering Physician
XR-12-00427	XR Pelvis AP Only	01/04/2012 12:09 EST	Dellinger MD, Bonnie B

Reason for Exam

Trauma

Report

HISTORY: Patient fell, pain left hip area

Exam: AP supine pelvis

A single film of the pelvis was obtained on immobilization board. The pelvis appears basically intact. There is a fracture which appears to be in the subtrochanteric area with some displacement with the shaft being lateral cephalad to its expected position. No other definite fractures are noted. There are multiple artifacts secondary to clothing an immobilization Borden material.

IMPRESSION: Left subtrochanteric fracture. Other findings as described.

***** Final Report *****

Dictated by: Lovelace, Dallas W
01/04/2012 12:21 pm
Signed by: Lovelace, Dallas W
01/04/2012 12:21 pm
Transcribed by: Lovelace, Dallas W

Chart Request ID: 1996334

Page 30 of 30

Print Date/Time: 3/26/2012 11:20

All tests performed at RMC Laboratory, 3000 St. Matthews Road, Orangeburg, SC, unless otherwise noted.
Additional clinical information may be available for this patient via Horizon Patient Folder. Please contact the Regional Medical Center Health Information Department at 803-395-2272 for additional information.

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-



RECEIVED
03/13/2012
Scanning/Attaching
Claims Team
Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

March 8, 2012

Dallas Bessinger
P.O.Box 234
PELION, SC 29123

Carrier Code No. 00000
Carrier File No. NRHR20120206

Re: Claim file:
WCC File No. 1200479
Dallas Bessinger v. R N M BUILDERS & ASSOC LLC et al
Date of Injury: 01/04/2012

WCC File No. X120082
SCWCC v. R-N-M Builders & Associates, LLC

Dear Mr. Bessinger:

This is in response to the claim you filed against R-N-M Builders and Associates, LLC and J&L Construction, LLC. Your Form 50 is shown as **Exhibit A**. Your claim has been forwarded to the Judicial Department to process for a hearing.

R-N-M Builders and Associates, LLC is a limited liability company, as evidenced by SC Secretary of State limited liability company and registered agent information shown as **Exhibit B**. Ronnie Stokes of R-N-M Builders and Associates, LLC indicated the company did not have workers' compensation insurance on the date of the accident. Correspondence Mr. Stokes sent the Commission is shown as **Exhibit C**. A proof of coverage document for R-N-M Builders & Associates, LLC is shown as **Exhibit D**. The document indicates the employer lapsed coverage as of 9/2/2010.

R-N-M Builders & Associates, LLC came under the Act by obtaining insurance, lapsed or did not renew his 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. Accordingly, the position of the Compliance Division is that R-N-M Builders and Associates, LLC is subject to the SC Workers' Compensation Act and uninsured from 9/2/2010 until he comes into compliance.

RECEIVED

03/13/2012

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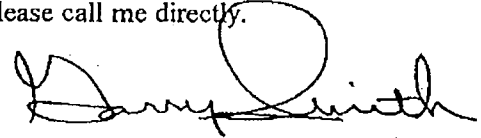
Claims Team

Ronnie Stokes of R-N-M Builders and Associates, LLC stated that he has no hourly wage employees; therefore, he is not subject to the SC Workers' Compensation Act. However, the employees of his subcontractors are his statutory employees and count in the total. You were the direct employee of J&L Construction, LLC and a statutory employee of R-N-M Builders and Associates, LLC.

J&L Construction LLC was insured on the date of your accident by Firstcomp Insurance Company. The proof of coverage document is shown as **Exhibit E**. Firstcomp filed a First Report of Injury (Form 12-A), which is shown as **Exhibit F**.

If you have questions or comments about the above, please call me directly.

Sincerely,



Garry Smith
Compliance Division, Director
803-737-5707

GS:s

Enclosures: **Exhibits A – F**

c:
WC Uninsured Employers Fund
100 Executive Center Drive, Suite 101
Santee Building
Columbia, SC 29210

Firstcomp Insurance Company
222 S. 15th Street
Suite 1500 North
OMAHA, NE 68102

Stephanie R. Fajardo
The Finney Law Firm, Inc.
2117 Park Street
Columbia, SC 29201

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723
www.wcc.sc.gov



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03/13/2012
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Claims Team
SC File #: _____
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: Dallas P. Bessinger SSN: 250-47-3402 Employer's Name: RAM Builders & Asso.
Address: P.O. Box 234 Address: 107 L Ave
City: Reliance State: SC Zip: 29123 City: Columbia State: SC Zip: 29214
Home Phone: 803 187 4466 Work Phone: () Insurance Carrier: 2
Preparer's Name: Dallas P. Bessinger Law Firm: _____ Preparer's Phone #: 803 187 4466

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: 1-4-12

☒ Injury ☐ Illness ☐ Repetitive Trauma

- 1a. The claimant sustained an injury to Left Hip, R. Wrist, Ribs (Part(s) of Body Injured) on 1-4-12 (Month/Day/Year) in Orangeburg county, state of SC.
- 1b. Body part(s) affected are: Right Wrist, Left Hip, Ribs 2-8
Briefly describe how the accident occurred: Fell off Roof while Putting on Felt Paper
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 1/4/12 (Month/Day/Year) in the following manner:
At Acc Site

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

- ☒ (a) medical examination and treatment for: H.P. Wrist, Ribs
☒ (b) additional medical examination and treatment for: SAME

7. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
1-4-12 - until ?

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 \$13⁰⁰ Per Hr 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:

11a. Further grounds or unusual aspects of claim: NONE

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:

(Regina Medical Center Orangeburg SC) (Claimant's Relative Hospital Columbia, SC)

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

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: _____

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

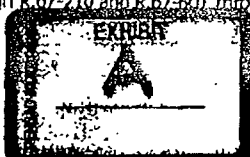
Dallas Paul Bessinger Claimant
Preparer's Signature Title

Email

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



50

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

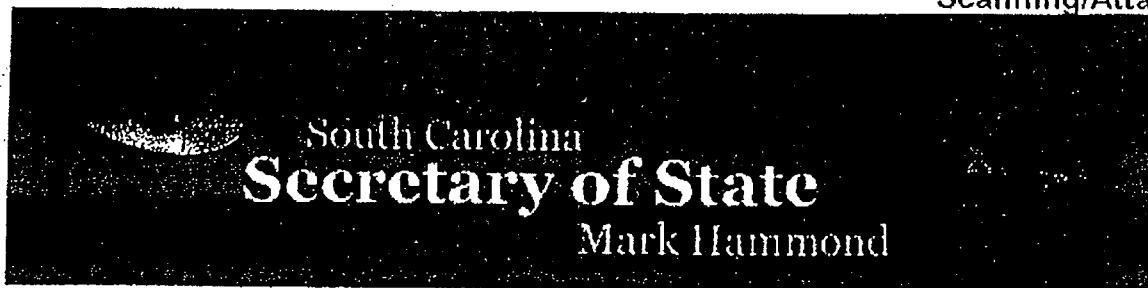
SCWCC

JAN 31 2012

INSURANCE & MEDICAL SERVICES - 26-12

03/13/2012

Scanning/Attaching

**R-N-M BUILDERS AND ASSOCIATES, LLC**

*Note: This online database was last updated on 3/6/2012 6:01:33 PM.
See our Disclaimer.*

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	RONALD W STOKES
ADDRESS:	107 L AVENUE
CITY:	W COLUMBIA
STATE:	SC
ZIP:	29172
SECOND ADDRESS:	

FILE DATE:	06/16/1999
EFFECTIVE DATE:	06/16/1999
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Domestic LLC	06/16/1999	DOMESTIC LIMITED LIABILITY (AT WILL)	Image

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 at his own risk.



www.sos.sc.gov/index.asp?n=18&p=4&s=18&corporateid=311054

3/7/2012

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Workers' Compensation Commission

February 1, 2012

R N M BUILDERS & ASSOC LLC
107 L. AVE.
COLUMBIA, SC 29210

Re: DALLAS BESSINGER v. R N M BUILDERS & ASSOC LLC
WCC File No. X120082
Date of Injury: 01/04/2012

Dear R N M BUILDERS & ASSOC 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 R N M BUILDERS & ASSOC LLC exists. Please furnish the following information within five (5) days from the date of this letter.

Name of insurance agent: NO WORKER COMP. INSURANCE
Agent's phone number: AT THIS TIME, R-N-M BUILDERS
Insurance carrier: DOES NOT WORK HOURLY EMPLOYEES
Policy number: _____
Name as it appears on policy: _____
Effective dates of policy: _____
Employer's FEIN: 57-1067919
Name of person completing form: RONALD W. STOKES
Telephone number: 803-755-1351

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
FEB 07 '12
INSURANCE &
MEDICAL SERVICES

RECEIVED

03/13/2012

Scanning/Attaching

Claims Team

Questionnaire for Uninsured Employer

Re: DALLAS BESSINGER v. R N M BUILDERS & ASSOC LLC

WCC File No. X120082

Date of Injury: 01/04/2012

1. Official business name: R-N-M BUILDERS & Assoc, LLC.
2. Official business address: 107 - L - AVENUE, W. COLA, SC 29172
3. Owner(s) of business: RONALD STOKES
4. Number of employees in SC at time of alleged accident: 0
5. Number of subcontractors in SC at time of alleged accident: 3
6. Business FEIN: 57-1067919
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 0 or weekly gross 0

Number of hours the claimant worked per week: 0

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:

No

9. Are there any extenuating circumstances or facts about this claim and accident that need to be made known? If so, please describe:

PAUL BESSINGER HAS NEVER BEEN AN
EMPLOYEE OF R-N-M BUILDERS & ASSOC.
HE WORKED FOR A SUB CONTRACTOR.

10. Name of person completing form: RONALD STOKES
11. Telephone #: 803-497-1035

SCWCC

FEB 07 '12

INSURANCE &
MEDICAL SERVICES



"FOR COMPLETE BUILDING SERVICE"

107 "L" Avenue,

West Columbia, SC 29172

RECEIVED

03/13/2012

Scanning/Attaching
Claims Team

(803) 755-1351

MR. FELTON,

R-N-M BUILDERS HAS NO HOURLY EMPLOYEES.
THEREFORE WE DO NOT HAVE INSURANCE COVERAGE.
PAUL BESSINGER WAS NOT AN EMPLOYEE OF
R-N-M BUILDERS. HE WAS EMPLOYED BY...
J & L CONSTRUCTION
100 OLD CHEROKEE RD.
LEXINGTON, SC 29072

... A SUB-CONTRACTOR FOR R-N-M BUILDERS
& ASSOCIATES, INC. PLEASE GIVE ME A CALL
WITH ANY QUESTIONS.

THANK YOU,

RONNIE STOKES
R-N-M BUILDERS & ASSO.



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: 6KUB910M02509	Cov Prvdr ID: 11347	Pol Eff Dt: 09/02/2009	Pol Exp Dt: 09/02/2010	Primary Insured FEIN: 871067819	
Primary Insured Name: R N M BUILDERS & ASSOC LLC					
Ong Pol Nbr:	Orig Cov Prvdr ID:		Ong Pol Eff Dt:		
Primary Insured Information:			Coverage Provider Information:		
Primary Insured Name: R N M BUILDERS & ASSOC LLC			Cov Prvdr ID-Cov Prvdr Name: 11347 - TRAVELERS INDEMNITY CO		
Street: 107 L AVE			Branch: POB 3568		
City: WEST COLUMBIA			City: ORLANDO		
State: SC			State: FL		
Zip Code: 29172286			Zip Code: 328023556		
			Group ID: 10804		
			Branch: 136		
Ong Pol Rcvd Dt: 09/23/2009	Orig POC Rcvd Dt:	Last Rcvd Dt: 03/06/2011	Last Activity Dt: 03/06/2011		
State Cov Prvdr: Prior Pol Nbr:	State Exp Dt:				
State Eff Dt: 09/02/2009	State Exp Dt:				
Gov Class: 6446					
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: 02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 08 AND 06					
Pol Type Cvr: 01 - STANDARD WORKERS' COMPENSATION POLICY					

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Cancelled as
of 9/2/2010



03/13/2012

Scanning/Attaching

Claims Team

Main Page | Log Out



POC Online Inquiry

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:	6KUB9900M02609	Pol Exp Dt: 09/02/2009	Pol Exp Dt: 09/02/2010
Primary Insured Name:	R N M BUILDERS & ASSOC LLC		Cov Prvd ID: 11347

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
06/09/2010	09/02/2010	06/05/2010	03 - NONRENEWAL	00	00

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Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Reins/Non-Renew	Transaction History
Policy Nbr: Primary Insured Name:	WC013185401 J&L CONSTRUCTION LLC	Cov Prvdr ID: 35513	Pol Eff Dt: 01/04/2012	Pol Exp Dt: Primary Insured FEIN	01/04/2013 148548211
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	
Primary Insured Information			Coverage Provider Information		
Primary Insured Name: J&L CONSTRUCTION LLC			Cov Prvdr ID-Cov Prvdr Name: 35513 - FIRSTCOMP INSURANCE CO		
Street:	246 FOX TROT TRL	Street:	1500N	CENTRAL PARK PLAZA 222 SOUTH 15TH ST. STE	
City:	PELION	City:	OMAHA		
State:	SC	State:	NE		
Zip Code:	291239742	Zip Code:	681021680		
		Group ID:	22818		
		Branch:	001		
Orig Pol Rcvd Dt:	01/02/2012	Orig POC Rcvd Dt:		Last Rcvd Dt:	01/24/2012
Prior Pol Nbr:				Last Activity Dt:	01/24/2012
State Cov Prvdr:		State Exp Dt:			
State Eff Dt:	01/04/2012				
Gov Class:	5437				
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 - VOLUNTARY POLICY				
Pol Type Cvr:	01 - STANDARD WORKERS' COMPENSATION POLICY				

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Coverage Cancelled
Effectively on
2/24/2012





POC Online Inquiry

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:

WC013166401

Pol Eff Dt: 01/04/2012

Pol Exp Dt: 01/04/2013

Primary Insured Name

J&L CONSTRUCTION LLC

Cov Prvd ID: 35513

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/24/2012	01/04/2012	01/20/2012	01 - CANCELLATION	01 - CANCELLED FLAT	19 - UNDERWRITING REASONS

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Coverage Cancelled 30 days after receipt by receipt of the cancellation notice, within the effective date of cancellation 2/24/2012

RECEIVED
03/13/2012
Scanning/Attaching
Claims Team

02/08/12
EDI001348

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION R08
EDI CREATED/UPDATED FIRST REPORT

CONTAINS ALL ITEMS REQUIRED BY OSHA FORM 101 (Enter all dates in MM/DD/YY format)

EMPLOYER: J&L CONSTRUCTION, LLC
246 FOX TROT TRL

CARRIER CLAIM#: FSC900085974

PELION, SC 291239742

SCWCC CLAIM#: 1200666 9999

SIC CODE: 238120

UNEMPLOY/FED. TAX I.D. NO.: 148546211

INSURANCE FIRSTCOMP INSURANCE COMPANY
CARRIER 222 S. 15th Street
Suite 1500 North
OMAHA, NE 68102

CARRIER FEIN: 431429637
CARRIER ID: 01099

EMPLOYEE NAME (Last, First, Middle)
BESSINGER, DALLAS P

SOCIAL-SECURITY-NUMBER
250-47-3402

PHONE NO.
(803)240-4162

ADDRESS: PO BOX 234

DATE OF BIRTH: 10/01/1976 MARITAL STATUS: U

PELION, SC 291230234

HALE/FEMALE: M # DEPENDENT CHILDREN: 2

DATE OF HIRE: 01/01/12
OCCUPATION: LABORER

WAGE INFORMATION

RATE: \$300.00

WAGE PERIOD: WEEKLY

DATE RETURNED TO WORK:

FULL DAY PAY FOR DAY OF INJURY: N

DID SALARY CONTINUE: N

OCCURRENCE

PLACE OF ACCIDENT OR OCCURRENCE: 29118-1967
ORANGEBURG

DATE OF INJ: 01/04/12

TIME OF INJ: 00:00 AM

EMPLOYER'S PREMISES: N

LAST WORKDATE: 01/05/12

DATE EMPLOYER NOTIFIED: 01/04/12

DESCRIBE NATURE OF INJURY OR ILLNESS IN DETAIL

CAUSE: 25 FROM DIFFERENT LEVEL(WALL, CATWALK, ETC)

NATURE: 28 FRACTURE

LOCATION: 51 HIP

DESCRIBE EMPLOYER'S ACTIVITIES WHEN INJURY OCCURRED WITH DETAILS OF HOW EVENT OCCURRED

INJURIES FRACTURED HIP, FRACTURED RIGHT WRIST, FRACTURED RIBS 2 THROUGH 8
AND INJURY TO HIS RIGHT LUNG

IF FATAL GIVE DATE OF DEATH:

** Created **

ELECTRONIC FILING

ORIGINAL DATE SENT: 02/07/12

DATE PROCESSED: 02/08/12

TRADING PARTNER: FirstComp Underwriters Group
Attn: Compliance
222 South 15th St. Suite 1200
Omaha, NE 68102-1600



State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-



Tel: (803) 737-5700
Fax: (803) 737-5768
www.wcc.sc.gov

Workers' Compensation Commission

April 9, 2012

R. Daniel Addison (1)
Hedrick Gardner Kincheloe & Garofalo
P.O. Box 11267
Columbia, SC 29211

Carrier Code No. 00000

Carrier File No.

Re: Claim file:

WCC File No. 1200479

Dallas Bessinger v. R N M BUILDERS & ASSOC LLC et al

Date of Injury: 01/04/2012

Compliance files:

WCC File No. X120082

SCWCC v. R-N-M Builders and Associates, LLC

WCC File No. X120290

SCWCC v. J&L Construction, LLC

Dear Mr. Addison:

This is in response to your subpoena for me to testify at the hearing on April 18, 2012, in St. Matthews.

The higher tier contractor in the claimant's work chain on the date of the accident was R-N-M Builders and Associates, LLC, which is a limited liability company, as evidenced by SC Secretary of State registered agent information shown as **Exhibit A**. The last coverage on record for this employer cancelled on 9/2/1010, as evidenced by the proof of coverage document shown as **Exhibit B**.

The position of the Compliance Division is that on the date of the accident, R-N-M Builders and Associates, LLC was subject to the SC Workers' Compensation Act and uninsured. The employer came under the Act by obtaining insurance, lapsed or did not renew his 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.

Ronald Stokes of R-N-M Builders & Associates, LLC executed a Compliance Agreement and paid a reduced fine. A copy of the agreement and the check that paid the fine are shown as **Exhibit C**. Accordingly, the Compliance Division has turned the claimant's claim over to the SC Uninsured Employers' Fund to pay or defend.

Ronald Stokes executed an Employer Questionnaire, shown as **Exhibit D**, in which he identified J&L Construction, 100 Old Cherokee Rd, Lexington, SC 29072, as the claimant's direct employer. Also, Mr. Stokes provided a certificate of insurance that he stated was provided to him by J&L Construction, which is shown as **Exhibit E**. The Compliance Division was unable to find insurance coverage that correlated to this certificate of insurance. Prior to the accident, the last coverage on record for "John Lowery" was cancelled on 6/10/2008, as evidenced by the proof of coverage document shown as **Exhibit F**.

I obtained three other certificates of insurance in another case that had the same policy number but with different dates than the certificate of insurance that was provided to Ronald Stokes. The three certificates are shown as **Exhibit G**. On November 14, 2011, I interviewed Talisa Miller, telephone number 803-957-3311, at Midlands Insurance Center, Inc., the insurance agency listed on the certificate of insurance provided to Ronald Stokes, and the three certificates of insurance from the other case I investigated. Ms. Miller, the employee responsible for issuing certificates of insurance on behalf of Midlands, denied issuing the three certificates of insurance.

The coverage for the direct employer, J&L Construction, LLC that covered the date of the accident, is shown as **Exhibit H**. It has been alleged that after the claimant's accident, John Loughery and Emory Wilkie took the claimant to the hospital and then went to Midlands Insurance and obtained a policy effective immediately. They are further alleged to have lied about the nature of the business and about not having any claims.

Please accept this as a request for the application that John Loughery completed in order to obtain insurance coverage with Firstcomp. I need this so I can complete my investigation.

Sincerely,



Garry Smith
Compliance Division, Director
803-737-5707

GS:s
Enclosures: **Exhibits A - H**
c:
Dallas Bessinger
P.O.Box 234
PELION, SC 29123

R N M BUILDERS & ASSOC LLC
107 L AVE.
WEST COLUMBIA, SC 29172

WC Uninsured Employers Fund
100 Executive Center Drive, Suite 101
Santee Building
Columbia, SC 29210

Dewana F. Looper (1), Esquire
Hedrick Gardner Kincheloe & Garofalo
P.O. Box 11267
Columbia, SC 29211

Stephanie R Fajardo
The Finney Law Firm, Inc.
2117 Park Street
Columbia, SC 29201

Side note to Ms. Fajardo: You indicated that you represented R-N-M Builders and Associates, LLC only for the compliance matter, but not the claim. I'm sending you a copy of my report of investigation because a portion of it deals with the compliance investigation of R-N-M Builders and Associates, LLC.



Policy Provider Reports

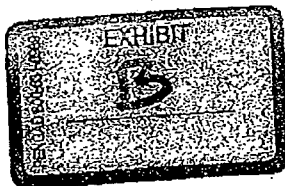
Policy and Coverage Provider

SOUTH CAROLINA

Policy and Cov Provider	Names and Addresses	Names	Addresses	Canc/Relnst/Non-Renew	Transaction History
Policy Nbr: 6KUB9900M02609 Primary Insured Name: R N M BUILDERS & ASSOC LLC	Cov Prvdr ID: 11347 Pol Eff Dt: 09/02/2009 Pol Exp Dt: 09/02/2010 Primary Insured FEIN: 571087918	Orig Pol Nbr: Orig Cov Prvdr ID:	Orig Pol Eff Dt:		
Primary Insured Information Primary Insured Name: R N M BUILDERS & ASSOC LLC Street: 107 L AVE City: WEST COLUMBIA State: SC Zip Code: 29172286			Coverage Provider Information Cov Prvdr ID-Cov Prvdr Name: 11347 - TRAVELERS INDEMNITY CO Street: POB 3556 City: ORLANDO State: FL Zip Code: 328023656 Group ID: 10804 Branch: 138		
Orig Pol Rcvd Dt: 09/23/2009 Prior Pol Nbr: Orig POC Rcvd Dt: Last Rcvd Dt: 03/08/2011 Last Actvty Dt: 03/08/2011					
State Cov Prvdr: State Eff Dt: 09/02/2009 Gov Class: 5645 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: 02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX EMPLOYERS REJECTED RISK FUND - EXCLUDING MA PLAN TYPE CODES 06 AND 08 Pol Type Cvg: 01 - STANDARD WORKERS' COMPENSATION POLICY					

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*Coverage Cancelled
 9/2/2010*





Policy Provider Reports

Active Linked Names and Addresses

SOUTH CAROLINA

Policy and Cov Provider Names and Addresses Names Addresses Canc/Reinst/Non-Renew Transaction History

Policy Nbr:	6KUB9900M02609	Pol Eff Dt:	09/02/2009	Pol Exp Dt:	09/02/2010																																	
Primary Insured Name:	R N M BUILDERS & ASSOC LLC	Cov Prvd ID:	11347																																			
☐ Show Filter																																						
K < 1 > X Page size: 50 2 Items in 1 pages <table border="1"> <thead> <tr> <th>Employer Name</th> <th>FEIN</th> <th>Street</th> <th>City</th> <th>Stat</th> <th>Zip Code</th> <th>Unemploy ID</th> <th>Name Eff Dt</th> <th>Address Eff Dt</th> <th>Rptd Industry Code</th> <th>NAICS Code</th> </tr> </thead> <tbody> <tr> <td>R N M BUILDERS & ASSOC LLC</td> <td>67106791</td> <td>107 L AVE</td> <td>WEST COLUMBIA</td> <td>SC</td> <td>29172228</td> <td></td> <td>09/02/200</td> <td>09/02/200</td> <td>1751SC</td> <td>238350</td> </tr> <tr> <td>R N M BUILDERS & ASSOC LLC</td> <td>57106791</td> <td>107 L AVE</td> <td>WEST COLUMBIA</td> <td>SC</td> <td>29172228</td> <td></td> <td>09/02/200</td> <td>09/02/200</td> <td>1751SC</td> <td>238350</td> </tr> </tbody> </table> K < 1 > X Page size: 50 2 Items in 1 pages						Employer Name	FEIN	Street	City	Stat	Zip Code	Unemploy ID	Name Eff Dt	Address Eff Dt	Rptd Industry Code	NAICS Code	R N M BUILDERS & ASSOC LLC	67106791	107 L AVE	WEST COLUMBIA	SC	29172228		09/02/200	09/02/200	1751SC	238350	R N M BUILDERS & ASSOC LLC	57106791	107 L AVE	WEST COLUMBIA	SC	29172228		09/02/200	09/02/200	1751SC	238350
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[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: 6KUB9900M02509 Pol Eff Dt: 09/02/2009 Pol Exp Dt: 09/02/2010
Primary Insured Name: R N M BUILDERS & ASSOC 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
06/06/2010	09/02/2010	06/05/2010	03 - NONRENEWAL	00	00

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE
SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION
Petitioner,

Compliance File No: X120082

-v-

AGREEMENT

R-N-M Builders & Associates, LLC
Respondant.

I, the undersigned, have full and binding authority to execute this Agreement on behalf of the Respondent. I acknowledge that from September 2, 2010 to March 8, 2012 when compliance with the South Carolina Workers' Compensation Act was established, the Respondent was operating without workers' compensation insurance and in violation of S.C. Code Ann. § 42-5-10 and § 42-5-20 (1985).

Before July 1, 2007, an employer required to carry workers' compensation coverage that refuses or neglects to do so shall be punished by a fine of \$.10 for each employee, but not less than \$1.00 nor more than \$50.00 for each day of refusal or neglect. After July 1, 2007, an employer required to carry workers' compensation coverage that refuses or neglects to do so shall be punished by a fine of \$1.00 for each employee, but not less than \$10.00 nor more than \$100.00 for each day of refusal or neglect. S.C. Code Ann. § 42-5-40 (1985).

The fine assessed in this case is ^{GS} ~~\$5,000.00~~ ^{\$750.00 SF}, if paid prior to the Order and Rule to Show Cause hearing.

By executing this Agreement, the Respondent is responsible for any claim found to be compensable and occurring during the period of violation. Further, the Respondent agrees to made prompt payment of any claim found to be compensable. Executing the agreement does not nullify any defenses the employer may have for any claim, to include a defense that an injury was not the result of an accident arising out of employment. Also, the Respondent does not waive any claims or causes of action the Respondent may have against any third party, insurance company, agent, or broker.

Respondent's Signature

Date

Respondent's Name (Print)

Respondent's Social Security #

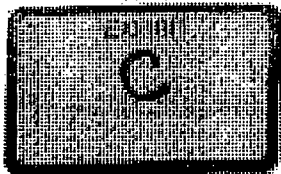
Witness's Signature

Date

Respondent's FEIN #

Respondent's Address:

West Columbia, SC 29172



State of South Carolina



1333 Main Street, Suite
500
P.O. Box 1715
Columbia, S.C. 29202-
1715

Workers' Compensation Commission

February 24, 2012

R N M Builders & Assoc. LLC
107 L. Ave.
West Columbia, SC 29172

RE: Notice of Violation and Compliance Agreement
WCC File No. X120082
Date of accident: 1/4/12

Dear Ronald Stokes:

The South Carolina Workers' Compensation Commission Builders & Assoc. LLC, the Employer, is in violation of Compensation Act by not having workers' compensation insurance specified in the enclosed Compliance Agreement. Pursuant to the Employer is hereby assessed a fine of \$1,107.00 and, if pre obtain workers' compensation insurance to avoid additional fine

To pay the assessed fine, the Employer must execute Agreement and remit it along with a check payable in the amount Workers' Compensation Commission.

The Employer must provide proof within 30 days of receipt it is in compliance with the South Carolina Workers' Compensation Act assessed fine and obtain workers' compensation insurance within 30 days. Show Cause hearing before the Jurisdictional Commissioner. Show Cause hearing may result in a fine of \$1.00 assessed for each day of insurance becoming due, for a minimum of not less than \$10.00 each day of violation.

If you have questions or comments about the above, please call or by email at mfelton@wcc.sc.gov.

Sincerely,

Michael Felton

Michael Felton, Compliance Officer
Compliance Division

Encl: Compliance Agreement

FOR: WCC File # X120082

TO: R N M Builders & Assoc.

ORDER OF: Notice of Violation and Compliance Agreement

DATE: 3/11/12

AMOUNT: \$ 750.00

DOLLARS: 750

4675

67-7182/2532

11

FOR: WCC File # X120082

TO: R N M Builders & Assoc.

ORDER OF: Notice of Violation and Compliance Agreement

DATE: 3/11/12

AMOUNT: \$ 750.00

DOLLARS: 750

4675

67-7182/2532

11

SCWCC

MAR 15 2012

INSURANCE &
MEDICAL SERVICES



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/09/2011

PRODUCER
MIDLANDS INSURANCE CENTER INC
308 COLUMBIA AVE
LEXINGTON, SC 29072
PH. 803.957.3311 FAX 803.951.3908

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
JOHN LOUGHERY
PO BOX 308
LEXINGTON, SC 29071

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: NATIONAL GRANGE MUTUAL INSURANCE CO

INSURER B: HARTFORD UNDERWRITERS INC CO

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 LTR	ADP INSRG	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	MPI1776F	02/17/2011	02/17/2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROP AGG \$ 2,000,000
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea 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 \$
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	39-80411-08025-769268	02/17/2011	02/17/2012	WC STATUTORY LIMITS ☐ OTHER ☐ E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
THE CERTIFICATE HOLDER IS USED AS ADDITIONAL INSURED WITH REGARDS TO GENERAL LIABILITY

SCWCC

MAR 13 2012

INSURANCE &
MEDICAL SERVICES

CERTIFICATE HOLDER

DOWNEAST BUILDERS & REALTY INC, SC PILLON
HOMES INC
1371 DOGWOOD DR SW
CONYERS, GA 30012

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL CL 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

ACORD 25 (2004/08)

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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: Primary Insured Name:	6560UB6896C49908 LOWERY JOHN	Cov Prvdr ID: 80411	Pol Eff Dt: 01/26/2008	Pol Exp Dt: Primary Insured FEIN:	01/26/2009 148545211
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	
Primary Insured Information			Coverage Provider Information		
Primary Insured Name: LOWERY JOHN			Cov Prvdr ID-Cov Prvdr Name: 80411 - HARTFORD UNDERWRITERS INS CO (TRAV P&C)		
Street: PO BOX 308			Street: ST PAUL TRAVELERS INS PO BOX 3666		
City: LEXINGTON			City: ORLANDO		
State: SC			State: FL		
Zip Code: 290710308			Zip Code: 328023650		
			Group ID: 80411		
			Branch: 000		
Orig Pol Rcvd Dt: 02/19/2008		Orig POC Rcvd Dt:		Last Rcvd Dt: 03/11/2008	
Prior Pol Nbr:				Last Activity Dt: 08/12/2008	
State Cov Prvdr:					
State Eff Dt: 01/26/2008		State Exp Dt:			
Cov Class: 6645					
Legal Nature of Insured: 01 - INDIVIDUAL					
Wrap Up Pol: 2 - NON-WRAP-UP POLICY					
Employee Leasing Code: 1 - NON-EMPLOYEE LEASING POLICY					
02 - NORMAL ASSIGNED RISK POLICY - INCLUDING TX					
Pol Type Plant: EMPLOYERS REJECTED RISK FUND - EXCLUDING MA					
PLAN TYPE CODES 06 AND 08					
Pol Type Cvg: 01 - STANDARD WORKERS' COMPENSATION POLICY					

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Coverage Cancelled
6/10/2008





Policy Provider Reports

Active Linked Names and Addresses

SOUTH CAROLINA

Policy and Cov Provider Names and Addresses Names Addresses Canc/Reinst/Non-Renew Transaction History

Policy Nbr:	6S60UB5898C49808	Pol Eff Dt:	01/26/2008	Pol Exp Dt:	01/26/2009					
Primary Insured Name:	LOWERY JOHN.	Cov Prvd ID:	80411							
☐ Show Filter										
K < 1 > X Page size: 50 2 items in 1 pages										
Employer Name	FEIN	Street	City	State	Zip Code	Unemploy ID	Name Eff Dt	Address Eff Dt	Rptd Industry Code	NAICS Code
LOWERY JOHN	14854521	100 OLD CHEROKEE RD	LEXINGTON	SC	290728311		01/26/2008	01/26/2008	1521SC	238119
LOWERY JOHN	14854521	PO BOX 308	LEXINGTON	SC	29071030		01/26/2008	01/26/2008	1521SC	238119
K < 1 > X Page size: 50 2 items in 1 pages										

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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:	6S60UB5886C49008	Pol Eff Dt: 01/28/2008	Pol Exp Dt: 01/26/2009
Primary Insured Name:	LOWERY JOHN		Cov Prvdr ID: 80411

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
05/06/2008	08/10/2008	05/07/2008	01 - CANCELLATION	02 - CANCELLED PRO-RATA	04 - CANCELLED BY UNDERWRITER OR PLAN ADMINISTRATOR

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ACORD®

Fax:

Aug 4 2009 05:05pm P001/001

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/04/2009

PRODUCER

MIDLANDS INSURANCE CENTER INC
308 COLUMBIA AVE
LEXINGTON, SC 29072
803.957.3311 FAX 803.951.3908

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

JOHN LOUGHERY
PO BOX 308
LEXINGTON, SC 29071

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: NATIONAL GRANGE MUTUAL INSURANCE CO

INSURER B: HARTFORD UNDERWRITERS INC CO

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 LTR	INSURED	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	652245	01/25/2009	01/26/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCUR) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY 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? If yes, describe under SPECIAL PROVISIONS below	39-80411-08025-769268	01/28/2009	01/26/2010	WORKERS COMPENSATION LIMITS E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		OTHER				SCWCC

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

OCT 12 '11

INSURANCE &
MEDICAL SERVICES

CERTIFICATE HOLDER

A TRIM BUILDERS
919 W RICHARDSON AVE
SUMMERVILLE, SC 29483
843-873-5015

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

© ACORD CORPORATION 1988

ACORD 25 (2001/08)





Fax:

Feb 3 2009 01:34pm P001/001

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

02/03/2009

PRODUCER

MIDLANDS INSURANCE CENTER INC
COLUMBIA AVE
LEXINGTON, SC 29072
PH. 803.957.3311 FAX 803.951.3908

INSURED

JOHN LOUGHERY
PO BOX 308
LEXINGTON, SC 29071

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: NATIONAL GRANGE MUTUAL INSURANCE CO

INSURER B: HARTFORD UNDERWRITERS INC CO

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 LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	552245	01/26/2009	01/25/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$ 500,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPIOP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ☐ ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY - AGG \$
	EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE ☐ DEDUCTIBLE ☐ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
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	OTHER				

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OCT 12 '11

INSURANCE & MEDICAL SERVICES

CERTIFICATE HOLDER

ATRIUM BUILDERS INC
819 WEST RICHARDSON AVE
SUMMERVILLE, SC 29483
FAX 843-873-5015

CANCELLATION

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AUTHORIZED REPRESENTATIVE

James J. Mills



Fax:

Dec 2 2008 11:23am P001/001

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

12/02/2008

PRODUCER

MIDLANDS INSURANCE CENTER INC
708 COLUMBIA AVE
LEXINGTON, SC 29072
PH. 803.957.3311 FAX 803.951.3908

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INSURED

JOHN LOUGHERY
PO BOX 308
LEXINGTON, SC 29071

INSURERS AFFORDING COVERAGE

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A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	552246	01/25/2008	01/26/2009	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (EA occurrence)</td><td>\$ 500,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 10,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/PROP AGG</td><td>\$ 2,000,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (EA occurrence)	\$ 500,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/PROP AGG	\$ 2,000,000
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B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe Under SPECIAL PROVISIONS below	38-80411-08025-769288	01/26/2008	01/26/2009	<table border="1"><tr><td>WC STATUTORY LIMITS</td><td>OTHER</td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 100,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 100,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 500,000</td></tr></table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACCIDENT	\$ 100,000	E.L. DISEASE - EA EMPLOYEE	\$ 100,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000				
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	OTHER				SCWCC												

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

OCT 12 '11

INSURANCE & MEDICAL SERVICES

CERTIFICATE HOLDER

ATRIUM BUILDER INC
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AUTHORIZED REPRESENTATIVE

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Policy Provider Reports

Policy and Coverage Provider

SOUTH CAROLINA

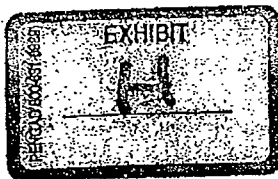
Policy and Cov Provider Names and Addresses Names Addresses Canc/Reinst/Non-Renew Transaction History

Policy Nbr:	WC013165401	Cov Prvdr ID: 35513	Pol Eff Dt: 01/04/2012	Pol Exp Dt:	01/04/2013
Primary Insured Name:	J&L CONSTRUCTION LLC			Primary Insured FEIN:	148846211
Orig Pol Nbr:		Orig Cov Prvdr ID:		Orig Pol Eff Dt:	
Primary Insured Information			Coverage Provider Information		
Primary Insured Name: J&L CONSTRUCTION LLC			Cov Prvdr ID-Cov Prvdr Name: 35513 - FIRSTCOMP INSURANCE CO		
Street:	246 FOX TROT TRL	Street:	CENTRAL PARK PLAZA 222 SOUTH 15TH ST. STE		
City:	PELION	City:	1500N		
State:	SC	State:	OMAHA		
Zip Code:	291238742	Zip Code:	NE		
		Group ID:	681021680		
		Branch:	22816		
			001		
Orig Pol Rcvd Dt: 01/06/2012		Orig POC Rcvd Dt:		Last Rcvd Dt: 01/24/2012	
Prior Pol Nbr:				Last Activity Dt: 01/24/2012	
State Cov Prvdr:	01/04/2012	State Exp Dt:			
Gov Class:	5437				
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 - VOLUNTARY POLICY				
Pol Type Cvg:	01 - STANDARD WORKERS' COMPENSATION POLICY				

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Coverage Cancelled
2/23/2012





Policy Provider Reports

Active Linked Names and Addresses

SOUTH CAROLINA

Policy and Cov Provider Names and Addresses Names Addresses Canc/Reinst/Non-Renew Transaction History

Policy No:	WC015165401	Pol Eff Dt:	01/04/2012	Pol Exp Dt:	01/04/2013																																	
Primary Insured Name:	J&L CONSTRUCTION LLC	Cov Prvdr ID:	35513																																			
☒ Show Filter																																						
K < 1 > X Page size: 50 2 Items in 1 pages <table border="1"> <thead> <tr> <th>Employer Name</th> <th>FEIN</th> <th>Street</th> <th>City</th> <th>Stat</th> <th>Zip Code</th> <th>Unemploy ID</th> <th>Name Eff Dt</th> <th>Address Eff Dt</th> <th>Rptd Industry Code</th> <th>NATC Code</th> </tr> </thead> <tbody> <tr> <td>J&L CONSTRUCTION LLC</td> <td>14854821</td> <td>246 FOX TROT TRL</td> <td>PELION</td> <td>SC</td> <td>29123974</td> <td>0000000001</td> <td>01/04/201</td> <td>01/04/201</td> <td>1751SC</td> <td>23835</td> </tr> <tr> <td>J&L CONSTRUCTION LLC</td> <td>14854821</td> <td>246 FOX TROT TRL</td> <td>PELION</td> <td>SC</td> <td>29123974</td> <td>0000000001</td> <td>01/04/201</td> <td>01/04/201</td> <td>1751SC</td> <td>23835</td> </tr> </tbody> </table> K < 1 > X Page size: 50 2 Items in 1 pages						Employer Name	FEIN	Street	City	Stat	Zip Code	Unemploy ID	Name Eff Dt	Address Eff Dt	Rptd Industry Code	NATC Code	J&L CONSTRUCTION LLC	14854821	246 FOX TROT TRL	PELION	SC	29123974	0000000001	01/04/201	01/04/201	1751SC	23835	J&L CONSTRUCTION LLC	14854821	246 FOX TROT TRL	PELION	SC	29123974	0000000001	01/04/201	01/04/201	1751SC	23835
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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: WC013165401 Pol Eff Dt: 01/04/2012 Pol Exp Dt: 01/04/2013
Primary Insured Name: J&L CONSTRUCTION LLC Cov Prvd ID: 35513

C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Transaction Code	Cancel Type	Cancel Reason
01/24/2012	01/04/2012	01/20/2012	01 - CANCELLATION	01 - CANCELLED FLAT	19 - UNDERWRITING REASONS

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Coverage Cancelled
30 days after receipt
by NCCI of the Cancellation
NOTICE, making the effective
date of Cancellation
2/23/2012.

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1200479

Carrier File #

Carrier Code #

Employer FEIN

Dallas P. Bessinger 250-47-3402
Claimant's Name SSN

PO Box 234, Pelion, SC 29123

Address City State Zip

() ()
Home Phone Work Phone

J&L Construction LLC; R-N-M Builders and Associates, LLC; John
Loughery; Emory Wilkie
Employer's Name

246 Fox Trot Trail, Pelion, SC 29123; 107 L Avenue, West Columbia, SC
29172; 104 Merion Drive, Lexington, SC 29073

Address City State Zip

FirstComp Insurance/unknown/SC Uninsured Employers' Fund
Insurance Carrier

Amy V. Cofield
Preparer's Name

(803)951-0389
Phone #

Request for Commission Review by ☐ claimant ☐ employer (check one)

Date of injury: 01/04/12

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 Grounds for Appeal

(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

Name

SEE ATTACHED CERTIFICATE OF SERVICE

Address

on the day of by ☒ first class mail; ☐ personal service; ☐ certified mail.

Amy V. Cofield
Preparer's Signature

Attorney for SC Uninsured Employers'
Fund
Title

December 28, 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

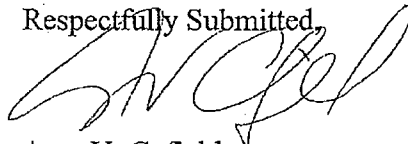
ATTACHMENT TO FORM 30 (GROUNDS FOR APPEAL)

DALLAS P. BESSINGER V. R-N-M BUILDERS & ASSOCIATES, LLC AND
FIRSTCOMP INSURANCE

WCC FILE NO. 1200479

1. The Single Commissioner erred in the Order's Caption and "Appearances". Emery Wilkie and John Loughery were both named Defendants and both appeared pro se, however, they were improperly omitted from the Caption.
2. The Single Commissioner erred by stating in her Order that the parties stipulated that, "Claimant and Defendants were subject to and bound by the provisions of the SC Workers' Compensation Act". No such stipulation was ever made on behalf of the SC Uninsured Employers' Fund.
3. The Single Commissioner erred in making no Finding of Fact as to the identity of the Claimant's direct employer. Such omission is clearly erroneous in light of the substantial, probative and reliable evidence in the matter. Further, no liability can be placed upon the SC Uninsured Employers' Fund except through the liability of a direct employer. This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.
4. The Single Commissioner erred in failing to find that both the direct and the upstream employers were liable initially for this claim. Further, no liability can be placed upon the SC Uninsured Employers' Fund except through that of the direct and upstream employers. This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.
5. The Single Commissioner erred in failing to find as a fact that both the direct and the upstream employers were liable for this claim and should they be unwilling or unable to properly pay any benefits due, then the SC Uninsured Employers' Fund would be liable for the claim with rights of subrogation against the liable parties. This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.
6. The Single Commissioner erred in failing to acknowledge or recite in the Order that Post-Hearing Briefs were submitted and arguments they contained.
7. The Single Commissioner erred in finding that a workers' compensation policy can be "void ab initio" which finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.

Respectfully Submitted,



Amy V. Cofield
Attorney for the SC Uninsured Employers' Fund
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No.: 1200479

Dallas P. Bessinger,
Claimant,
vs.
R-N-M Builders and Associates, LLC,
Employer,
and
FirstComp Insurance,
Carrier.
Defendants.

APPELLANT'S BRIEF ON
BEHALF OF THE SC
UNINSURED EMPLOYERS'
FUND

STATEMENT OF THE CASE

This matter was before the Commission on the issues set forth in the Forms 50 and 51 of the Claimant, South Carolina Workers' Compensation Uninsured Employers' Fund and FirstComp Insurance. A hearing was held in St. Matthews, South Carolina on July 18, 2012, before Commissioner Andrea C. Roche. An Order was issued on December 18, 2012 and it is from this order that this Defendant appeals.

This Claimant alleges injuries suffered on January 4, 2012. At the time of the Claimant's alleged injuries, he was allegedly directly employed by J & L Construction, LLC¹ and/or John

¹ J&L CONSTRUCTION, LLC was named as a defendant-employer by the Claimant in his first Form 50. On the date of accident, J&L CONSTRUCTION, LLC was not an actual limited liability company and was not registered to do business with the South Carolina Secretary of State (or any other state, as far as this business is concerned). In a subsequent Form 50, the Claimant named as defendant-employers JOHN LOUGHERY and EMORY WILKIE, the principals of an informal partnership or business venture that may have employed Claimant on January 4, 2012.

Loughery and/or Emory Wilkie and statutorily employed by R-N-M Builders and Associates, LLC.

On January 4, 2012, FirstComp Insurance Company issued a workers' compensation insurance policy to John Loughery and/or Emory Wilkie as representatives of E & W Construction, LLC². The workers' compensation insurance policy was effective at 12:01 a.m. on January 4, 2012 (UEF APA Submissions, p. 1). Because the Claimant was allegedly injured later that morning, the policy was effective at the same time of the alleged accident. According to NCCI and the Commission's Coverage and Compliance Division, NCCI received Notice of Cancellation from FirstComp Insurance on January 24, 2012 (UEF APA Submissions, pp. 27-28). Therefore, the cancellation of the policy was effective on February 24, 2012. Id.

Insofar as the coverage issue is concerned, FirstComp Insurance has asserted as an affirmative defense that the policy it issued to John Loughery and Emory Wilkie (d/b/a E&W Construction, LLC) is void ab initio. FirstComp Insurance alleges that John Loughery and Emory Wilkie fraudulently obtained the policy. As a result, FirstComp Insurance alleges that John Loughery and Emory Wilkie (d/b/a E&W Construction, LLC) were uninsured.

The Fund asserts that S.C. Code Ann. §38-75-730 and S. C. Code Regs. 67-405 governs the cancellation of workers' compensation insurance policies.

ISSUE 1

1. Did the Single Commissioner err in the Order's Caption and "Appearances"? Emory Wilkie and John Loughery were both named Defendants and both appeared pro se, however, they were improperly omitted from the Caption.

ARGUMENT

² E&W Construction, LLC is not an actual limited liability. It appears to be a trade name used by EMORY WILKIE and/or JOHN LOUGHERY.

Although there were several Form 50s filed in this matter, clearly the last Form 50 filed April 9, 2012 set forth the Defendants in this case to be J. & L Construction, LLC, R-N-M Builders and Associates, LLC, John Loughery and also Emory Wilkie. The drafter of the Order clearly erred not to include each and every Defendant involved in the case in the caption of the Order.

ISSUE 2

2. Did the Single Commissioner err by stating in her Order that the parties stipulated that, "Claimant and Defendants were subject to and bound by the provisions of the SC Workers' Compensation Act"? No such stipulation was ever made on behalf of the SC Uninsured Employers' Fund.

ARGUMENT

A review of the hearing transcript indicates that there was no stipulation by any party of any particular person or entity being subject to or bound by the provisions of SC Workers' Compensation Act. This is clearly a drafter's error and should be corrected.

ISSUE 3, 4, 5

3. Did the Single Commissioner err in making no Finding of Fact as to the identity of the Claimant's direct employer? Such omission is clearly erroneous in light of the substantial, probative and reliable evidence in the matter. Further, no liability can be placed upon the SC Uninsured Employers' Fund except through the liability of a direct employer. This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.

4. Did the Single Commissioner err in failing to find that both the direct and the upstream employers were liable initially for this claim? Further, no liability can be placed upon the SC

Uninsured Employers' Fund except through that of the direct and upstream employers. This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.

5. Did the Single Commissioner err in failing to find as a fact that both the direct and the upstream employers were liable for this claim and should they be unwilling or unable to properly pay any benefits due, then the SC Uninsured Employers' Fund would be liable for the claim with rights of subrogation against the liable parties? This finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law.

ARGUMENT

Section 42-7-200 established the SC Workers' Compensation Uninsured Employers' Fund was created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees.

Section 42-7-200(b) requires that:

"The State Workers' Compensation Commission determines that the employer is subject to Title 42 and is operating without insurance or as an unqualified self insurer..."

Therefore, the Commission must make a finding as to whom the direct or statutory employer is, and then, must also determine that the employer was improperly uninsured prior to a finding that the SC Uninsured Employers' Fund would ultimately pay the claim. The immediate and statutory employer remains liable to the SC Uninsured Employers' Fund for reimbursement for anything paid on the claim the claim after the Uninsured Employers' Fund has paid such claim.

In the Order, the Single Commissioner made a finding of fact that R-N-M Builders was an upstream contractor, but failed and neglected to make a finding as to the direct employer.

ISSUE 6

6. Did the Single Commissioner err in failing to acknowledge or recite in the Order that Post-Hearing Briefs were submitted and arguments they contained?

ARGUMENT

In the Decision and Order that was signed by the Single Commissioner, there is a summary that exists of the testimony presented as well as all APA Submissions. The Order should also contain information that post-hearing memorandums were submitted and they were considered by the Commissioner in issuing her Order.

ISSUE 7

7. Did the Single Commissioner err in finding that a workers' compensation policy can be "void ab initio" which finding is arbitrary, capricious, impermissibly vague, and contrary to the greater weight of the evidence and applicable law?

ARGUMENT

The undersigned attorney hereby incorporates herein verbatim the argument presented by Timothy B. Killen, Staff Attorney for the Fund in its Memorandum of Law submitted post hearing:

"The Fund asserts that an insurance company licensed to do business in South Carolina must adhere to the statutory scheme insofar as it relates to the cancellation or rescission of insurance policies.

FIRSTCOMP INS. alleges that it may declare a workers' compensation insurance policy void ab initio as part of a proceeding brought by a Claimant against its insured³. According to FIRSTCOMP INS., it is entitled to do so because the insurance agreement was induced by fraud on the part of JOHN LOUGHERY and EMORY WILKIE. This argument is flawed. In particular, S.C. Code Ann. §38-75-730 governs the cancellation of workers compensation insurance policies. Further, the Claimant, as a party to the agreement, can't be denied benefits due to the fraudulent actions of the employers, especially where a policy was in place at the time of the accident.

S.C. Code Ann. §38-75-730, in specifying its requirement for cancellation, contemplates the precise types of actions that FIRSTCOMP INS. complains of herein. Specifically, cancellation for a "material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy" is "not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation." S.C. Code Ann. §38-75-730; UEF APA Submissions, p. 30.

Terms of cancellation also appear in the policy itself, and these also require a notice period prior to cancellation. UEF APA Submissions, p. 10. The insurer did not reserve a right to rescission in its agreement.

As discussed in the Fund's Form 58, the Courts in North Carolina have already addressed this issue. Oxedine v. TWL, Inc., 184 N.C.App. 162, 645 S.E.2d 864 (N.C.App. 2007); UEF APA Submissions, p. 32. According to the North Carolina Court of Appeals, "a workers' compensation insurance contract will therefore never be void ab initio, but must be cancelled in

³ FIRSTCOMP INS. did not bring its own action to have the policy declared void ab initio, but has only asserted this as a defense.

the manner prescribed by N.C. Gen.Stat. §58-36-105 [the insurance policy cancellation section].” Oxedine v. TWL, Inc., 184 N.C.App. 162, 165, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions, p. 33. Further, the N.C. Court of Appeals pointed out that the N.C. code section, like S.C. Code Ann. §38-75-730, “contemplates the very sort of ‘material misrepresentation or non disclosure of a material fact in obtaining the policy’ . . . [and] it clearly governs our review of this matter.” Oxedine v. TWL, Inc., 184 N.C.App. 162, 166, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions, p. 33; also see J. Bend v. Shamrock Services, 59 So.3d 153, 36 Fla.L.Weekly D430 (Fla.App.1 Dist. 2011) and Cruz v. New Millenium Construction & Restoration Corp., 793 N.Y.S.2d 548, 17 A.D.3d 19 (N.Y. Sup. Ct. App. Div 3rd Dept. 2005).

To support its position that a workers’ compensation insurance policy may be declared void ab initio, FIRSTCOMP INS. cites Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). However, that case is distinguishable from the instant matter because it concerned a first-person health insurance policy. That case centers on S.C.Code Ann. §3871-40, which states:

The falsity of any statement in the application for any policy covered by this chapter does not bar the right to recovery there under unless the false statement was made with actual intent to deceive or unless it materially affected either the acceptance of risk or the hazard assumed by the insurer.

(emphasis added). “This chapter”, as referenced in that section, is Chapter 71, or “Accident and Health Insurance.” Workers’ compensation insurance policies are specifically excluded from Chapter 71: “Nothing in this chapter applies to or affects . . . any policy of workers’ compensation insurance . . .” S.C. Code Ann. § 38-1-20 (1) (“ Accident and health insurance’ means insurance of human beings against death or personal injury by accident . . . but not

including coverages required by the Workers' Compensation Law of this State."); also S.C. Code Ann. § 38-1-20 (11) ("Casualty insurance' means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers' compensation insurance . . .").

This distinction is significant not only because it is statutorily based, but also because it affords protection to the injured employee, who is not at fault in this action and against whom there is not an allegation of fraud. As noted by the South Carolina Supreme Court, a workers' compensation insurance policy is a contract or agreement between the insurer and the person or persons entitled to compensation benefits. Carter v. Boyd Const. Co., 255 S.C. 274, 280, 178 S.E.2d 536, 539 (1971).

Even if a workers' compensation insurance policy could be declared void ab initio, then FIRSTCOMP INS. must show, by clear and convincing evidence, that the Claimant – the other party to the contract, per the Supreme Court – committed fraud in seeking to obtain benefits. Because the Claimant would be the party entitled to the benefits, actions by the employer(s), whether fraudulent or not, cannot affect his entitlement to benefits under the policy.

Further, it has been repeatedly established by South Carolina Courts that "the law strictly construes insurance policies against the drafter and in favor of coverage for the insured." General Acc. Ins. Co. v. Safeco Ins. Companies, 314 S.C. 63, 72, 443 S.E.2d 813, 818 (Ct. App. 1994) (citing South Carolina State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991)). The Policy at issue was drafted and signed by FIRSTCOMP INS., and therefore, terms and language of the policy are to be construed in favor of the insured, the business entity formed by EMORY WILKIE and JOHN LOUGHERY. The policy itself does not allow for the type of "relief" sought by FIRSTCOMP INS.

As its primary support for its position, FIRSTCOMP INS. cites the 1970 case of Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 176 S.E. 2d 131 (1970). Chavis does not involve a casualty or workers' compensation insurance policy. Chavis is a case involving the rescission of an automobile insurance policy. Chavis was decided under former law (S.C. Code Ann. 76-750.51 (1962)), and it also predates the effective statute herein.

FIRSTCOMP INS. asserts that requiring it to provide benefits to the injured Claimant, should he be entitled to any, would not "comport with the clear policy of South Carolina in refusing to sanction fraudulent conduct" FIRSTCOMP Memorandum of Law, p. 4. This argument overlooks a number of issues.

First, FIRSTCOMP INS. was reckless and negligent in the issuance of the policy. For reasons known only to FIRSTCOMP INS. and its agent, this policy was issued where EMORY WILKIE was the named applicant and listed as the sole owner of the business, but where JOHN LOUGHERY – not EMORY WILKIE – signed the application. Then, FIRSTCOMP INS. named the insured as "E&W Construction, LLC," which doesn't even exist. Then, after the accident and after proper cancellation of the policy, FIRSTCOMP INS. issues a refund check to EMORY WILKIE alone.

Even further evidence of negligence is obvious and the reason the parties are arguing this issue: FIRSTCOMP INS. backdated the policy. Clearly, backdating an insurance policy is a negligent business practice. It is axiomatic that insurance is a policy against contingencies, not against that which is already past. However, for whatever reason, this is what FIRSTCOMP's chose to do. The solution was simple: FIRSTCOMP INS. could have made the policy effective at the time of contracting or subsequent thereto. However, they did not.

If a workers' compensation insurance policy could be rescinded (which the Fund denies), FIRSTCOMP's negligence plays a role in whether they could be successful. That's because the party seeking rescission, especially a sophisticated party like FIRSTCOMP INS., cannot do so where it was negligent in the formation of the contract. In fact,

a court will not rescind a contract solely on the basis of unilateral mistake unless the party opposing rescission induced the mistake "by fraud, deceit, misrepresentation, concealment, or imposition . . . , without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement."

State Accident Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct.App. 2010) (quoting Truck South, Inc. v. Patel, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000)).

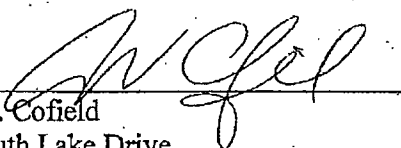
Next, no one has alleged that the Claimant committed fraudulent conduct. According to the Supreme Court, he is the party to this contract, and as the party, he would be entitled to benefits under the policy – not EMORY WILKIE or JOHN LOUGHERY. Further, if FIRSTCOMP INS. were defrauded by EMORY WILKIE and/or JOHN LOUGHERY, FIRSTCOMP INS. can find relief at law, where it can sue the parties for its damages."

CONCLUSION

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 should not be held liable for this claim.

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SC UNINSURED EMPLOYERS' FUND

March 14, 2013
Lexington, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier.

RECEIVED

MAR 26 2013

(FRONT DESK)
SC Workers' Comp Comm

BRIEF OF FIRSTCOMP

This matter comes before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed with respect to an alleged injury sustained by Claimant Dallas Paul Bessinger on January 4, 2012. FirstComp Insurance filed a Form 51 asserting as an affirmative defense that the insurance policy issued by FirstComp to Claimant's employer J&L Construction was procured by fraud in the inducement and is, therefore, void *ab initio*. A hearing was held on July 18, 2012 before Commissioner Andrea C. Roche ("Single Commissioner"). The Single Commissioner issued a Decision and Order dated December 18, 2012 ("Order") in which she found, *inter alia*, that the FirstComp workers' compensation policy at issue in this case was procured by fraud and misrepresentations and was, therefore, void *ab initio*. The Single Commissioner also found that the South Carolina Workers' Compensation Uninsured Employers' Fund ("UEF") was responsible for Mr. Bessinger's claim. UEF appeals the Order

STATEMENT OF THE CASE

On the morning of January 4, 2012, Claimant fell from a roof where he had been laying roofing tar paper. At the time, Claimant was an employee of J&L Construction, LLC ("J&L").

As of the date of Claimant's injury, J&L did not have an effective workers' comp insurance policy. After Claimant was transported to The Orangeburg Regional Medical Center for treatment, John Loughery and Emory Wilkie went to the Lexington, South Carolina location of Midlands Insurance Center, Inc. ("Midlands") to submit an application for insurance coverage and paid the initial premium payment in cash. (FirstComp APA p. 52; Deposition of Talisa Miller, p. 18, ll. 5-11). The application identified Mr. Wilkie as the Manager with 100% ownership of the insured. FirstComp APA p. 53. The signatory to the application was John Loughery. Id. The application indicates that the insured is a class "5437" business and is described as "Carpentry – Installation of Ca". Id. No prior loss history is identified and, among the specific questions asked, the response to the question "Any work performed underground or above 15 feet?" is "No". Id. On the basis of this application, FirstComp issued policy No. WC01331654-01 to J&L with an effective date of 12:01 a.m., January 4, 2012. (UEF APA p. 1).

The Single Commissioner found that Mr. Wilkie and Mr. Loughery applied for a workers' compensation policy with knowledge that Mr. Bessinger's accident had already occurred and they failed to disclose that fact to the agent. Based on the material misrepresentations and omissions by Mr. Wilkie and Mr. Loughery, the Single Commissioner found that the FirstComp policy had been obtain through fraud and was void *ab initio*. Consequently, the Single Commissioner ruled that the FirstComp policy provided no coverage over Mr. Bessinger's injury.

UEF contends that the Single Commissioner erred on the basis that S.C. Code Ann. §38-75-730 and S.C. Code Regs. 67-405 govern the cancellation of workers' compensation insurance policies. As discussed more fully below, the Single Commissioner properly considered these arguments and found that the cited statute and regulation do not govern where a policy of

insurance was obtained through fraud. Consequently, the findings and conclusions of the Single Commissioner were not in error and the Order should be affirmed.

ARGUMENT

In its Brief to the Full Commission, UEF raises seven (7) issues with respect to the Order. For the purposes of this brief, FirstComp will address UEF's Issue 7 first.

1. The Single Commissioner did not err in finding the workers' compensation policy issued by FirstComp to be *void ab initio*.

UEF contends that the Single Commissioner erred in finding the FirstComp policy void *ab initio* because (1) S.C. Code § 38-75-730 governs the cancellation of workers compensation insurance policies, and (2) because Claimant, as a party to the agreement, can't be denied benefits due to the fraudulent actions of his employers. UEF's contentions, however, are contrary to established law in South Carolina.

a. Under general principles of law, a contract procured by fraud is void.

Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. Stated more fully:

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement.

Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). With respect to insurance contracts specifically:

It has long been the law of this state that in order to void a policy of insurance on the ground that fraudulent representations were made in the procuring of such policy, the burden of proof rests upon the insurer to show, by clear and convincing evidence, not only that the statements complained of were untrue, but in addition thereto that their falsity was known to the applicant, that they were material to the risk, were relied on by the insurer, and that they were made with intent to deceive and defraud the company.

Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331

(2002). In order to void an insurance policy, our courts have required the following elements:

- (1) the statement was false;
- (2) the falsity was known to the applicant;
- (3) the statement was material to the risk;
- (4) the statement was made with the intent to defraud the insurer; and
- (5) the insurer relied on the statement when issuing the policy.

Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005)
(citing Strickland v. Prudential Ins. Co. of Am., 278 S.C. 82, 86-87, 292 S.E.2d 301, 304 (1982))

In this case, the Single Commissioner found that each of these elements has been established. See Order, p. 12. The Single Commissioner specifically found that the application omitted any disclosure of prior losses. The Single Commissioner found that the evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery both knew of Claimant's injury and had knowledge of the falsity of the information in the application. The Single Commissioner found that false representations were material and that the intent to defraud was self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application. See Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177 (D.S.C. 1988) ("Under South Carolina law, an intent to deceive may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation."). The Single Commissioner also found that FirstComp had relied on these statements in issuing the policy based on the material misrepresentations and omission. Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513, 176 S.E.2d 131, 133-134 (1970) ("Where a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure must be made, and the insurer has the right to rely upon the answer."). Based on these findings, the Single Commissioner properly found that the FirstComp policy was obtained through fraud and was void *ab initio*, consistent with the general law in South Carolina.

b. S.C. Code § 38-75-730 does not abrogate the general rule.

UEF contends that S.C. Code § 38-75-730 alters the general law of South Carolina and precludes a finding that an insurance contract issued under fraudulent circumstances is void *ab initio*. S.C. Code § 38-75-730 provides: “No insurance policy or renewal thereof *may be canceled by the insurer* prior to the expiration of the term stated in the policy, except for one of the following reasons:...(2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy.” S.C. Code § 38-75-730(a) (emphasis added). In order to cancel a contract for insurance under § 38-75-730(a), certain procedures must be followed, including providing ten days written notice to the insured and the agent of record. S.C. Code § 38-75-730(b).

While UEF is correct that § 38-75-730 “governs the cancellation of insurance policies,” it does not control or alter that the long standing right of a party to a contract to rescission of a contract that was induced by fraud, deceit, concealment, or imposition. As noted by the Single Commissioner, “rescission” is defined as a party’s “unilateral unmaking of a contract for a legally sufficient reason . . .” Black’s Law Dictionary, 1308 (7th Ed. 1999). The unmaking of a contract is distinguished from the cancellation of a contract. To “cancel” a contract is to “terminate a promise, obligation, or right.” *Id.* at 197; see also S.C. Code § 38-75-720(3) (defining “cancellation” as “termination of a policy at a date other than its expiration date.”). A cancellation works prospectively; a rescission is retrospective. By its terms, S.C. Code § 38-75-730 limits the rights of an insurer to unilaterally “cancel” a contract under certain circumstances. By referencing only an insurer’s right to cancel, it is evident that the law was not intended to abrogate an insurer’s right to rescind a contract obtained through fraud. As explained by our Supreme Court:

In the case of U.S. Fidelity & Guaranty Co. v. Security Fire & Indemnity Co., 248 S.C. 307, 149 S.E.2d 647, we held that cancellation refers to the termination of

the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed. Brannock v. Fletcher, 271 N.C. 65, 155 S.E.2d 532. The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy Ab initio.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added). A plain reading of § 38-75-730 illustrates that this section was intended to prevent arbitrary cancellations of insurance contracts. By its terms, it authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer's reinsurance and material misrepresentations. No court has defined "material misrepresentations" as used in § 38-75-730 but the language of the statute evidences an intent to cover circumstances where an insured conceals or misrepresents material facts that would cause an insurer to refrain from issuing a policy because of the affect those misrepresentations would have on the level of risk being assumed by the insurer; for example, the applicant has an unusual claims history, prior cancellations for non-payment, or the applicant employs a class of workers that carrier ordinarily does not cover. These are instances where the facts would be material to an insurer in choosing to issue a policy but would likely fall under the provisions of § 38-75-730. The situations covered by this section are far different from the intentional concealment of an existing claim in order to fraudulently procure a policy of insurance to cover that claim.

c. Claimant's cited authority is not applicable.

Contrary to the assertion of UEF, North Carolina has not addressed the issue of a carrier's right to rescind a policy procured by intentional fraud. As noted by the Single Commissioner, the case of Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App. 2007) is readily distinguishable from the case at hand. In Oxendine, the insurer attempted to cancel a policy that was effective from March 2002 through March 2003 due to "underwriting reasons." The opinion

does not specify what the particular “underwriting reason” was. The insurer sent a notice of cancellation to the insured on November 25, 2002 but failed to send the notice in the manner prescribed by statute. The claimant was injured in an accident that occurred on January 31, 2003. The North Carolina court found that the statutory procedure had not been followed and that “underwriting reasons” was not sufficient to constitute a “precise reason” as required by the N.C. statute. The court further concluded that the statutory cancellation provisions dealing with “material misrepresentations” contemplated the very sort of issues raised by the insured in that case. The North Carolina Court simply was not faced with the question of whether they would permit recovery under a policy fraudulently obtained to include an accident that had already occurred. Similarly, none of the other authorities cited by Claimant address the fraud at issue in this case; rather, they address situations where the misrepresentations went to concealment of the level of risk being assumed by the insurer and, therefore, are inapplicable.

UEF also argues that, even if a workers’ compensation policy could be declared void *ab initio*, it would require a showing by clear and convincing evidence that the Claimant committed fraud in seeking to obtain benefits. Brief of UEF, p. 8. Claimant’s only support for this novel assertion is Carter v. Boyd Const. Co., 255 S.C. 274, 178 S.E.2d 536 (1971) which states, in dicta, a “workers’ compensation insurance policy by virtue of Code Sec. 72-408¹ is, in effect, made a contract or agreement between the insurer and the persons entitled to compensation benefits.” Id., 255 S.C. at 280, 178 S.E.2d at 539. Carter, however, is a civil case brought by an injured worker alleging fraud *on the part of the insurer*. At issue was whether representations made by an insurer to the insured could be a basis for an action in fraud brought by an employee.

¹ The current version of this provision is found at S.C. Code §42-5-80 and provides that an insurance policy arising under the Act “must be construed to be a direct promise by the insurer to the person entitled to compensation enforceable in his name.” This provision addresses the obligations of a carrier pursuant to a valid workers’ compensation policy and does not create some additional requirement of fraud on the part of a claimant where the fraud occurred at the time the policy was written.

The court found that, because of the obligation owed to the employee by the carrier, the employee was entitled to rely on the representations made only to the employer and remanded for a new trial against the carrier. This case simply does not stand for the proposition that fraud on the part of a claimant is required to be proven in order to void a policy obtained through the fraud of the applicant. Indeed such a rule would make no sense in this context. It would be nearly impossible to imagine a situation where an employee would somehow have committed fraud in seeking to obtain benefits under a policy that was fraudulently obtained to cover his claim unless he was also directly involved in the procurement of the policy itself.

d. Legal precedent supports a finding that a policy of workers' compensation insurance is void if procured by fraud.

In arguing that the Single Commissioner erred, UEF has not produced any authority to demonstrate that South Carolina has abrogated an insurer's generally acknowledged right to repudiate a workers' compensation policy that was obtained through outright fraud with the intent of covering a claim that occurred prior to the issuance of the policy. The applicability of the general rule, as set forth above, in the workers' comp context is expressly recognized in Larson's treatise on Workers' Compensation:

The only situation in which the insurance would be defeated for all purposes by act of the employer is that in which the insurance is absolutely *void ab initio*, rather than voidable; this would occur if the employer attempted to insure against an accident that had already occurred, by pre-dating the insurance and fraudulently concealing the known existence of an accident within the period so covered.

9 Larson's Workers' Compensation Law, § 150.02[4] (Rev. 2007). Furthermore, this rule has been adopted by courts in other jurisdictions that have addressed this precise issue. See e.g., Star Insurance Co. v. Neighbors, 138 P.3d 507, 512 (Nev. 2006) (holding that a workers' compensation policy "procured by fraud for the purpose of creating the obligation to compensate a pre-existing loss is void from the beginning."). The wide recognition of this principal was

discussed in detail by the Single Commissioner in the Order. See Matlock v. Hollis, 109 P.2d 119 (Kan. 1941) (“[t]he conclusion is inescapable that the concealment of the injury went to the very heart of the contract, made it void at its inception, and no one can predicate any rights upon it.”); Hunt v. Aetna Casualty and Surety Co., 387 P.2d 405 (Colo. 1963) (holding no workers’ comp coverage for accident concealed by employer when ordering the policy); Century Indemnity Co. v. Jameson, 131 N.E.2d 767 (Mass. 1956) (holding that ordinary principles of nondisclosure apply in voiding workmen’s comp policy ordered by owner after accident without disclosure); Lima v. Industrial Acc. Com., 1 Cal. App. 2d 43 (Cal. App. 1934) (affirming industrial commission’s finding that policy that was antedated by fraud to cover accident was not binding on carrier). Based on these precedents, and the general law of this State, there is no basis for excluding workers’ compensation carriers from the principal that a policy procured by fraud is void and unenforceable.

e. UEF’s position is contrary to public policy.

The position argued by UEF would produce absurd results and is contrary to the public policy of this State. Adopting the rule as argued by UEF would have the perverse incentive of encouraging employers to engage in fraud, i.e., obtaining workers’ comp policies only after a claim arises, knowing that the carrier would be responsible for the claim regardless of the circumstances of the procurement of the policy. Indeed, under the position of UEF, a workers’ comp carrier could never be able to absolve itself of liability for a claim that occurred prior to the issuance of a policy. Under UEF’s interpretation of § 38-75-730, the only recourse for an insurer who found itself victim of fraud would be to initiate cancellation procedures. Those procedures, however, would only cancel the policy as to future claims. There is no doubt that there is a presumption under South Carolina law that leans in favor of coverage for the insured but, like all presumptions, it can be overcome. Absent clear legislative intent to abrogate the general rule on

fraudulently obtained policies, there is no justification for irrevocably imposing fraudulently concealed obligations on a workers' compensation insurer.

f. Conclusion.

For all the above reasons, the Single Commissioner did not err in finding that the FirstComp policy was procured through fraud and was thus void *ab initio*. The contentions of UEF are based on an improper reading of the import of § 38-75-730; are counter to the general rules of contract law; are contrary to the greater weight of legal authority; and are contrary to the public policy of South Carolina. Consequently, the Order of the Single Commissioner should be affirmed with respect to the validity of the FirstComp policy.

2. Issue 2 – Stipulation as to the Act

UEF argues that the Single Commissioner erred in including as a stipulation “That Claimant and Defendants were subject to and bound by the provisions of the South Carolina Workers’ Compensation Act.” UEF argues that it never made such a stipulation. In response, FirstComp would merely note that UEF failed to raise any objection to the Single Commissioner when the issues of jurisdiction and venue were raised. See Hearing Transcript, pp. 5 – 6. Moreover, both Mr. Wilkie and Mr. Loughery conceded they were subject to the Act and had four or more employees.

3. Issues 3, 4, and 5 – Identification of direct employer, liability on the part of the direct employer and upstream employer and the UEF.

UEF first contends that the Single Commissioner erred in failing to make a finding as to Claimant’s direct employer. Specifically, UEF argues that the Single Commissioner made a finding that R-N-M Builders was an upstream contractor, but failed and neglected to make a finding as to the direct employer. UEF’s assignment of error is entirely without merit. The Single Commissioner expressly found that “Claimant sustained a compensable accident on January 4, 2012, *while an employee of J&L.*” Order, Finding of Fact #2 (emphasis added)

Second, UEF contends that the Single Commissioner erred in failing to find that both the direct and the upstream employers were liable initially for this claim and that no liability can be placed upon the UEF except through that of the direct and upstream employers. In the Order, the Single Commissioner made a finding that neither J&L nor RNM had workers' compensation coverage and, therefore, UEF is responsible for the claim. Order, Finding of Fact 15. This finding, in conjunction with the other Findings of Fact and the matters in the record, is sufficient to constitute a determination that UEF is liable for this claim through the uninsured direct and upstream employers.

Finally, UEF contends that the Single Commissioner erred "in failing to find as a fact that both the direct and the upstream employers were liable for this claim and should they be unwilling or unable to properly pay any benefits due, then [UEF] would be liable for the claim with rights of subrogation against the liable parties." As noted above, the Single Commissioner made ample findings as to the liability of the direct and upstream employers and as to the liability of the UEF. There is no error with respect to this contention.

4. Issue 6 – Failure to acknowledge or recite in the Order that Post-Hearing Briefs were submitted and arguments they contained.

UEF argues that the Single Commissioner erred in not acknowledging or reciting in the Order that Post-Hearing Briefs were submitted and the arguments they contained. S.C. Code § 42-17-40 requires that an award, "together with a statement of the findings of fact, rulings of law, and other matters pertinent to the questions at issue, must be filed with the record of the proceedings." The Single Commissioner is not required to include a detailed recitation of every matter included in the record and considered by the Commissioner. At the hearing, the Single Commissioner expressly granted UEF two weeks to submit a response to a Memorandum of Law filed by FirstComp. That responsive memorandum was submitted and made part of the Commissions' record. In the Order, the Single Commissioner stated that the Findings of Fact

and Conclusions of Law were "[b]ased upon the evidence in the record, including the testimony at the hearing." No additional acknowledgement or recital was necessary or required.

Additionally, the Single Commissioner's Order included those matters that were deemed determinative of the issues before her. As discussed above, the Findings of Fact and Conclusions of Law included in the Order were supported by the substantial evidence in the record and were in accordance with applicable law. There is no error in failing to acknowledge the post-hearing memorandum or every argument raised therein.

CONCLUSION

For the foregoing reasons, the December 18, 2012 Order of the Single Commissioner should be affirmed.

Respectfully submitted, this, the 26th day of March, 2013.



R. DANIEL ADDISON
Hedrick Gardner Kincheloe & Garofalo, LLP
P.O. Box 11267
Columbia, SC 29211
Attorneys for FirstComp Insurance



Claimant's Name: DALLAS P. BESSINGER Employer's Name: R-N-M BUILDERS & ASSOC. LLC
Address: PO BOX 234 Address: C/O. RONALD W. STOKES
107 L AVENUE
City: PELION State: SC Zip: 29123 City: WEST COLUMBIA State: SC Zip: 29172
Home Phone: (803) 894-4466 Work Phone: () - Carrier: SC UNINSURED EMPLOYERS' FUND
Preparer's Name: Amy V. Cofield Preparer's Phone #: (803) 951-0389

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$273.47 2. AWW: \$410.00 Date of Injury: January 4, 2012
3. Type of injury and body part(s): Alleged left hip, right wrist and ribs
4. Facts in controversy: PLEASE SEE ATTACHED ADDENDUM; DETERMINATION OF PROPER EMPLOYER AND STATUTORY EMPLOYER.
5. Legal issues involved: PLEASE SEE ATTACHED ADDENDUM; §35-75-730; REG 67-405
6. Unusual aspects: PLEASE SEE ATTACHED ADDENDUM
7. Witnesses (designate if expert):* Claimant; Emory Wilkie; Rob Bessinger; John Loughery; and any and all witnesses named or called by any party
8. Exhibits: PLEASE SEE ATTACHED NOTICE OF EVIDENCE; UEF INCORPORATES WCC COVERAGE & COMPLIANCE FILE.
9. Medical evidence (Indicate report pursuant to R.67-612; deposition or appearance):
None
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: N/A
12. I am amending my Form 50/51 in the following manner: _____

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

Signature: Email: amy@cofieldlaw.com
Date of hearing: AUGUST 21, 2014 AT 9:30 AM Time needed for hearing: 30 Min.

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. 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.



ADDENDUM TO PRE-HEARING BRIEF
WCC File No: 1200479
Carrier File No: 007337
AUGUST 6, 2014

Claimant's Name: <u>DALLAS P. BESSINGER</u>	Employer's Name: <u>R-N-M BUILDERS & ASSOC. LLC</u>
Address: <u>PO BOX 234</u>	Address: <u>C/O. RONALD W. STOKES</u> <u>107 L AVENUE</u>
City: <u>PELION</u> State: <u>SC</u> Zip: <u>29123</u>	City: <u>WEST COLUMBIA</u> State: <u>SC</u> Zip: <u>29172</u>
Home Phone: <u>(803) 894-4466</u> Work Phone: <u>() -</u>	Carrier: <u>SC UNINSURED EMPLOYERS' FUND</u>
Preparer's Name: <u>Amy V. Cofield</u>	Preparer's Phone #: <u>(803) 951-0389</u>

UNINSURED EMPLOYERS' FUND'S ADDENDUM TO
FORM 58 - PRE-HEARING BRIEF

4. (a) **Confusion as to Defendants' Names.**

The evidence shows that J&L Construction, LLC is actually an improperly named defendant. J&L Construction, LLC is not an entity registered with the Secretary of State (there was an unrelated LLC with that same name that was dissolved prior to the date of accident in this case). J&L Construction, LLC (or E&W Construction, LLC) is actually an informal partnership between John Loughery and Emory Wilkie. This is the business venture that sought, and obtained, a policy from FirstComp Insurance.

The Fund asserts that the caption should be amended to show the correct entity name: John Loughery, Individually, and Emory Wilkie, Individually, doing business as J&L Construction, LLC a/k/a E&W Construction, LLC

(b) **Whether the Legislative Scheme allows a Workers' Compensation Policy to be declared void ab initio.**

The Claimant's date of accident is January 4, 2012. Form 50. FirstComp Insurance Company issued a workers' compensation insurance policy to the direct Employer herein, and that policy was effective beginning January 4, 2012 at 12:01 A.M. UEF APA Submissions, Page 1. In its March 21, 2012, Form 51, FirstComp alleged that its policy should be declared void ab initio. In its May 21, 2012, Form 51, FirstComp simply alleged it had no coverage for any alleged employer, presumably due to the confusion in regards to the insured's name, among other things.

(1) **§38-75-730 v. Void ab Initio.**

S.C. Code Ann. § 38-75-730 governs the cancellation of insurance policies. UEF APA Submissions, Page 30. Under § 38-75-730, cancellation for a "material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy"

is "not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation." S.C. Code Ann. § 38-75-730; UEF APA Submissions, Page 30.

According to the NCCI and the Coverage and Compliance Division, Employer received Notice of Cancellation effective January 24, 2012. UEF APA Submissions, Pages 27-28. Accordingly, the FirstComp policy wasn't cancelled until February 24, 2012, or well after the Claimant's date of accident. UEF APA Submissions Pages 27-28. Terms of cancellation also appear in the policy itself, and these also require a notice period prior to cancellation. UEF APA Submissions, Page 10.

Though this appears to be a novel issue in South Carolina, the Courts in North Carolina have already addressed this issue. Oxendine v. TWL, Inc., 184 N.C.App. 162, 645 S.E.2d 864 (N.C.App. 2007); UEF APA Submissions, Page 32. According to the North Carolina Court of Appeals, "a workers' compensation insurance contract will therefore never be void ab initio, but must be cancelled in the manner prescribed by N.C. Gen. Stat. §58-36-105 [the insurance policy cancellation section]." Oxendine v. TWL, Inc., 184 N.C.App. 162, 165, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions, Page 33; Further, the N.C. Court of Appeals pointed out that the N.C. Code Section, like S.C. Code Ann. §38-75-730, "contemplates the very sort of 'material misrepresentation or nondisclosure of a material fact in obtaining the policy' . . . [and] it clearly governs our review of this matter." Oxendine v. TWL, Inc., 184 N.C.App. 162, 166, 645 S.E.2d 864, 866 (N.C.App. 2007); UEF APA Submissions Page 33.

Also see J. Bend v. Shamrock Services, 59 So.3d 153, 36 Fla.L. Weekly D430 (Fla.App. 1 Dist. 2011) and Cruz v. New Millennium Construction & Restoration Corp., 793 N.Y.S.2d 548, 17 A.D.3d 19 (N.Y. Sup. Ct. App. Div 3rd Dept. 2005)

(2) **FirstComp's Allegation it Covers No Employer in this Action.**

In its Form 51 of May 21, 2012, FirstComp simply asserts "it has no coverage with ANY alleged employer in this matter, and, as such, is not a proper party defendant" (emphasis in original). If this argument is based on an assertion that it issued a policy to a trade name rather than to a registered business entity, such an argument is without merit. Simply because an insurer issues a policy to a trade name rather than to the underlying owners of the business in no way abdicates the contracted rights and responsibilities the insurer has to employees furthering the business operating under that trade name.

It has been repeatedly established by South Carolina Courts that "the law strictly construes insurance policies against the drafter and in favor of coverage for the insured." General Acc. Ins. Co v. Safeco Ins. Companies, 314 S.C. 63, 72, 443 S.E.2d 813, 818 (Ct. App. 1994)(citing South Carolina State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991)). The Policy at issue was drafted and signed by FirstComp Insurance Co., and therefore, terms and language of the policy are to be construed in favor of the insured, the business entity formed by Emory Wilkie and John Loughery. Further when an insurance policy is susceptible to more than one reasonable interpretation, one of which would provide coverage, this Court must hold as a matter of law in favor of coverage. Gaskins

v. Blue Cross-Blue Shield of South Carolina, 271 S.C. 101, 108, 245 S.E.2d 598, 602 (S.C. 1978) (citing Parker v. Jefferson Standard Life Ins. Co., 158 S.C. 394, 155 S.E. 617 (1930); Harwell v. Mutual Benefits H. & A. Assoc., 207 S.C. 150, 35 S.E.2d 160 (1945); Brown v. State Farm Mutual Automobile Liability Ins. Co., 233 S.C. 376, 104 S.E.2d 673 (1958); Walker v. Commercial Casualty Ins. Co., 191 S.C. 197, 4 S.E.2d 248 (1939)).

Further, as noted by the South Carolina Supreme Court, a workers' compensation insurance policy is a contract or agreement between the insurer and the person or persons entitled to compensation benefits. Carter v. Boyd Const. Co., 255 S.C. 274, 280, 178 S.E.2d 536, 539 (1971). Therefore, a ministerial mistake made by both parties should not be held against the Claimant, should he be entitled to benefits. Workers' Compensation Insurance differs from Health Insurance policies because they provide coverage for a 3rd person party (injured party) where a health insurance policy is a first-person policy. There's no allegation that the Claimant committed any fraud.

5. See Number Four (4) Above.

6. See Number Four (4) Above. All necessary parties have not been served and/or named correctly.

Handwritten marks and scribbles in the bottom right corner of the page.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1200479

DALLAS P. BESSINGER	)	
	)	
Employee/Claimant,	)	
	)	
vs.	)	
	)	NOTICE OF WITNESSES AND WRITTEN
R-N-M BUILDERS & ASSOC., LLC.	)	REPORT(S)/PHYSICIAN OR OTHER
	)	EVIDENCE TO BE INTRODUCED ON
Employer/Statutory Employer,	)	BEHALF OF THE SC UNINSURED
and	)	EMPLOYER'S FUND
	)	
SC UNINSURED EMPLOYERS' FUND,	)	
	)	
Defendants.	)	
	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
STEVEN D. HAYMOND, ESQ., ATTORNEY FOR EMPLOYEE/CLAIMANT
EMORY WILKIE, EMPLOYER/DEFENDANT
JOHN LOUGHERY, EMPLOYER/DEFENDANT
R. DANIEL ADDISON, ATTORNEY FOR EMPLOYER/DEFENDANT
DEWANA F. LOOPER, ATTORNEY FOR EMPLOYER/DEFENDANT
R-N-M BUILDERS & ASSOC, LLC, EMPLOYER/DEFENDANT
J & L CONSTRUCTION, LLC, 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 South Carolina
Code Section 1-23-330, (1976, as amended), herewith submits the following reports/physicians or
other evidence on behalf of the South Carolina Uninsured Employers' Fund, to-wit:

	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	NO. OF PAGES
1	FirstComp Insurance Policy with Endorsements	January 4, 2012	1-25
2	Workers' Compensation Insurance Application	January 4, 2012	24-25
3	SCWCC Coverage Inquiry Screenshots with Notations	Accessed March 6, 2012	26-27
4	FirstComp Check made Payable to Emory Wilkie	February 13, 2012	28
5	S.C. Code Ann. §38-75-730	N/A	29-30

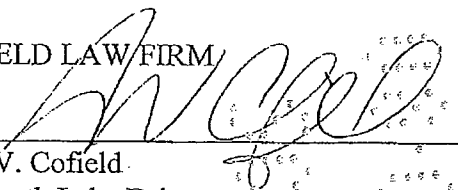
	NAME OF PHYSICIAN/OTHER	DATE OF REPORT	NO. OF PAGES
6	<u>Oxendine v. TWL, Inc.</u> , 184 N.C.App. 162, 645 S.E.2d 864 (N.C. App. 2007)	N/A	31-34
7	Secretary of State Records for J & L Construction, LLC	April 9, 2012	35

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 or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY 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, South Carolina Uninsured Employers' Fund:

Claimant; Emory Wilkie; Rob Bessinger; John Loughery; and Any other witness(es) named or called by any party.

By: 
 COFIELD LAW FIRM
 Amy V. Cofield
 809 South Lake Drive
 Lexington, South Carolina 29072
 Telephone: 803-951-0389
 Facsimile: 803-951-0398
 Attorney for the Defendant, SC Uninsured
 Employers' Fund

August 6, 2014
 Lexington, South Carolina



Claimant's Name:	Dallas Paul Bessinger	Employer's Name:	R-N-M Builders & Associates, LLC
Address:	362 Terry Road	Address:	107 L Avenue
City:	Pelion State: SC Zip: 29123-9796	City:	West Columbia State: SC ZIP 29172
Home Phone:	Work Phone	Carrier:	FirstComp a division of Markel, Inc.
Preparer's Name:	R. Daniel Addison	Preparer's Phone #:	(803) 727-1200

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$ TBD 2. AWW: \$ TBD Date of Injury: January 4, 2012
3. Type of injury and body part(s) Alleged injuries to left hip, right arm, ribs and back.
Hedrick Gardner represents FirstComp Insurance ONLY. Whether Firstcomp had coverage for J&L Construction where the evidence suggests that J&L construction attempted to have coverage bound after claimant's accident to apply retroactively and
4. Facts in controversy: cove the accident?
5. Legal issues involved Fraud in the inducement; coverage; statutory employer doctrine.

Upon information and belief, the employer went to Midlands Insurance and had coverage bound after the claimant's accident. The employer was insistent that the coverage be retroactive to include the date of the application. After FirstComp learned of these facts, FirstComp cancelled coverage flat and returned the premium deposit. FirstComp contends that the employer was uninsured at the time of the claimant's accident and its contract of insurance was void *ab initio* due to fraud in the inducement. When seeking coverage, the employer misrepresented the nature of the business and also knowingly misrepresented that it did not have any work-related injuries. This case was originally heard before Commissioner Andrea Roche on July 18, 2012. In an Order dated December 18, 2012, Commissioner Roche found that the FirstComp Insurance policy issued to J&L Construction was void *ab initio* since it was procured by non-disclosure of the accident involving the claimant that had occurred earlier that same day. Commissioner Roche went on to find that the claimant had sustained compensable injuries and that the South Carolina Uninsured Employers' Fund (SC UEF) was to provide benefits to the claimant. On December 28, 2012, SC UEF filed a Form 30, appealing Commissioner Roche's Order, arguing that she erred in finding the policy was void *ab initio* and that the SC UEF was not liable for the benefits due to the claimant. A hearing was held before the Appellate Panel on October 15, 2013. On April 17, 2014, the Appellate Panel issued an Order vacating Commissioner Roche's July 18, 2012, Order and remanded the case for a *de novo* hearing.

6. Unusual aspects: Appellate Panel issued an Order vacating Commissioner Roche's July 18, 2012, Order and remanded the case for a *de novo* hearing.
7. Witnesses (designate if expert)* Claimant; anyone named by Claimant; Emory Wilkie (via deposition); John Loughrey (via deposition);

Talisa Miller (via deposition); Ronald Stokes; Garry Smith.

8. Exhibits: Coverage report with exhibits by Garry Smith, SCWCC; April 9, 2012, letter from Garry Smith, SCWCC; depositions of Emory Wilkie, John Loughrey, Talisa Miller. FirstComp also relies on evidence submitted by other parties.

9. Medical evidence: (indicate report pursuant to R.67-612; deposition or appearance)
The Regional Medical Center of Orangeburg (1/4/2012); FirstComp also relies on medical evidence submitted by the other parties.

10. Name, address, and specialty, if any, of the treating physician:
Dr. Thomas Jones, Premier Orthopaedic Specialists, Columbia, SC—orthopaedist

11. Impairment rating(s); body part(s); physician and date of opinion: Unknown.

12. I am amending my Form 50/51 in the following manner N/A.

☐ **Mediation**

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to See Certificate of Service

Address _____ on the 11th day of August, 2014, by ☒ first class postage ☐ certified mail ☒ personal service

Signature: AMM PER EPM

Email: daddison@hedrickgardner.com

Date of Hearing August 21, 2014

Time needed for hearing: 30 minutes

On behalf of ☐ Claimant ☐ Employer

Questions about the use of this form should be directed to the Jurisdictional Commissioner. Refer to Regulations 57-204 through 67-211 and Regulations 67-601 through 67-615; as well as Regulation 67-1801. 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.

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC NO. 1200479**

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

**FIRSTCOMP A DIVISION OF MARKEL,
INC.,**

Carrier.

**NOTICE OF WITNESSES AND
WRITTEN REPORT(S) PHYSICIAN OR
OTHER EVIDENCE TO BE
INTRODUCED ON BEHALF OF THE
EMPLOYER/CARRIER**

**TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND AMY V.
COFIELD, ATTORNEY FOR CLAIMANT:**

YOU ARE HEREBY NOTIFIED THAT THE employer/carrier, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code §1-23-330 (1976, as amended), herewith submits the following reports/physicians or other evidence on behalf of the employer/carrier, to wit:

TAB	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
8	The Regional Medical Center of Orangeburg	1/4/2012	36-65

TAB	EXHIBIT	NO.
A	Coverage report with exhibits by Garry Smith, SCWCC	66-77
B	April 9, 2012 letter from Garry Smith, SCWCC	78-99
C	Deposition of John Loughery	100-112
D	Deposition of Emory Wilkie	113-120
E	Deposition of Talisa Miller	121-142

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the

deposition(s) of any of the physicians or other person(s), whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER HEREBY NOTIFIED that the originals of the documents referred 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 employer/carrier.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the employer/carrier:

Claimant

Anyone named by Claimant

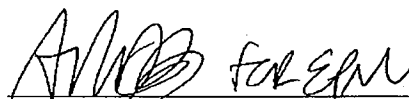
Emory Wilkie (via deposition)

John Loughrey (via deposition)

Talisa Miller (via deposition)

Ronald Stokes

Garry Smith



R. Daniel Addison
HEDRICK GARDNER KINCHELOE &
GAROFALO, LLP
P.O. Box 11267
Columbia, SC 29211
(803) 727-1200
Attorneys for Defendant(s)

August 11, 2014

**DALLAS PAUL BESSINGER v. R-N-M BUILDERS & ASSOCIATES,
LLC**

WCC No. : 1200479

DOI: January 4, 2012

APA COVERSHEET

TAB	NAME OF PHYSICIAN/OTHER	DATE OF REPORTS	NO.
8	The Regional Medical Center of Orangeburg	1/4/2012	36-65

TAB	EXHIBIT	NO.
A	Coverage report with exhibits by Garry Smith, SCWCC	66-77
B	April 9, 2012 letter from Garry Smith, SCWCC	78-99
C	Deposition of John Loughery	100-112
D	Deposition of Emory Wilkie	113-120
E	Deposition of Talisa Miller	121-142

COPY
AYLON COMMISSION

MOTION

SCWCC
AUG 22 2014
JUDICIAL

The form 58 submitted by Mr. Addison states clearly in Number 5 "Legal issues involved" a detailed accounting of the issues previously before the commission along with the findings of that previous hearing. That information is not to be considered in a hearing de novo and the undersigned moves that this information not be considered and stricken from the Form 58.

2. The Defendant/Carrier has submitted in its' Pre-hearing Brief three depositions that are not properly before this Commissioner. The first of these is the deposition of Talisa Miller. This deposition was taken on April 12, 2012. The alleged Employer's, were never notified or attended these depositions. Without proper notice there is no chance of cross examination by them and the deposition is not admissible.

The depositions of John Loughery and Emory Wilkie are also submitted in the Defendant/Carrier's Pre-hearing Brief. These depositions were taken on April 11, 2012. There was no notice to the SC Uninsured Employers' Fund and they were not present for this deposition. Again, without the right to cross-examine, the testimony is not admissible.

THEREFORE, the undersigned hereby moves for an Order denying these exhibits to be introduced at hearing and requiring them to be struck from the Form 58.

Respectfully Submitted,

COFIELD LAW FIRM

By:


Amy V. Cofield
809 South Lake Drive
Lexington, SC 29072
Telephone: (803) 951-0389
Facsimile: (803) 951-0398
*Attorney for the Defendant, SC Uninsured
Employers' Fund*

August 15, 2014
Lexington, South Carolina

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479**

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier,

Defendants.

**FIRSTCOMP RESPONSE TO
MOTION TO STRIKE**

This matter comes before the South Carolina Workers' Compensation Commission pursuant to the motion of the South Carolina Uninsured Employers' Fund ("SCUEF") to strike defendant First Comp's Form 58, *Pre-Hearing Brief*, and certain evidence identified in the Form 58. For the reasons stated below, SCUEF's Motion should be denied.

Factual Background

On the morning of January 4, 2012, Claimant, an employee of J&L Construction, LLC ("J&L"), fell approximately twenty (20) feet from a roof where he had been laying roofing tar paper. As of the date of Claimant's injury, J&L did not have an effective workers' comp insurance policy. After Claimant was transported to The Regional Medical Center for treatment, John Loughery and Emory Wilkie went to Midlands Insurance Center, Inc. ("Midlands"). The agent that met with them to take their application for insurance was TaLisa Miller. The application identified Mr. Wilkie as the Manager with 100% ownership of the insured. The signatory to the application was John Loughery. The application indicates that the insured is a

class "5437" business and is described as "Carpentry – Installation of Ca". No prior loss history is identified and, among the specific questions asked, the response to the question "Any work performed underground or above 15 feet?" is "No". Claimant's accident earlier that morning was never disclosed. On the basis of this application, FirstComp issued policy No. WC01331654-01 to J&L. The policy was bound around 2:30 p.m. on January 4, 2012 and, at the applicants' insistence, was issued with an effective date of 12:01 a.m., January 4, 2012. The initial payment was made at that time in cash.

Procedural History

On March 8, 2012, Claimant filed a Form 50, *Request for Hearing*. On March 21, 2012, FirstComp filed a Form 51, *Answer*, asserting that the policy issued by it was obtained through fraud and, therefore, void. Also on March 21, 2012, SCUEF filed a Form 51 seeking dismissal from the action. A hearing was originally set for April 18, 2012 but was withdrawn at the request of Claimant. Claimant refiled his Form 50 on April 19, 2012. FirstComp and SCUEF filed their Form 51s on May 21, 2012. Form 58, Pre-Hearing Briefs, were filed by all parties on July 9, 2012 and a hearing was held on July 18, 2012. A request for Commission review of the decision of the Single Commission was made and, by order of the Appellate Panel dated October 15, 2013, this matter was remanded for a *de novo* hearing.

Legal Issues

In its Motion, SCUEF argues that FirstComp improperly included in its Form 58 information regarding issues previously before the Commission, including the findings of that previous hearing. SCUEF also objects to the submission of three deposition transcripts that it contends are not properly before the Commission.

1. Form 58

SCUEF has moved to have information included in FirstComp's Form 58 stricken and not to be considered by the Commission as part of the *de novo* hearing. Specifically, SCUEF refers to Item No. 5 as containing "a detailed accounting of the issues previously before the commission along with the findings of that previous hearing." SCUEF Motion, p. 2. Contrary to the assertions of SCUEF, however, these matters are part of the Commission record, relate to the procedural history of the case and are properly before the Single Commissioner. Consequently, there is no basis for striking any of the information provided in FirstComp's Form 58.

In the Hearing Notice issued in this case, the subject is identified as: "Remand on issues *as set forth by Full Commission Order.*" (emphasis added). The fact that this hearing has been remanded for a *de novo* hearing by the Full Commission and the terms of the Full Commission Order are therefore already matters directly incorporated into the record in this matter. The Full Commission Order by its terms recites the Findings of Fact and Conclusions of Law of the Single Commissioner in the prior hearing. FirstComp will agree that the Commission on remand is not bound by those findings and conclusions but their existence is already a matter of record. The information in FirstComp's Form 58 that SCUEF finds objectionable is merely duplicative of information already in the record and, therefore, there is no basis for SCUEF's request that it be stricken.

FirstComp respectfully requests that SCUEF's Motion to Strike the statements in FirstComp's Form 58 be denied.

2. Depositions

In its Motion, SCUEF seeks to have excluded from this matter the deposition testimony of representatives of Claimant's employer, John Loughery and Emory Wilkie, and a third-party witness, Talisa Miller. The basis for this motion is alleged deficiencies with regard to the notice

provided in setting those depositions. For the reasons discussed below, SCUEF's motion is without merit and should be denied.

a. Depositions of Claimant's Employers

As noted in the Motion, the depositions of John Loughery and Emory Wilkie were taken on April 11, 2012. SCUEF states, and FirstComp concedes, that SCUEF was not provided proper written notice of the depositions and that it was not present for these depositions. Counsel for SCUEF, however, was informed of the depositions at or around the time they were taken but Counsel was unable to attend. On the record during a deposition taken the following day, Counsel for SCUEF stated:

I'm Tim Killen, and I represent the South Carolina Workers' Compensation Uninsured Employers' Fund, and I'm here voluntarily. My client did not receive actual – well, legal notice this -- . . . So I'm here voluntarily. I just found out about it yesterday. We did not receive – The fund did not receive notice of yesterday's two depositions until after they were underway or were just about be underway, and I had a hearing out of town and I could not attend yesterday.

Deposition of Talissa Miller, pp. 8-9. Other than noting this for the record, Counsel for SCUEF did not state any objection to those depositions having/gone forward/or to their use in this matter. In its Form 58, *Pre-Hearing Brief*, filed with the Commission on July 9, 2012, Defendant listed the depositions of Mr. Loughery and Mr. Wilkie as exhibits in this matter. At the July 18, 2012 hearing, the Single Commissioner asked: "Are there any objections to APAs, jurisdiction, venue, or any other items?" Counsel for SCUEF responded, "None for the Fund, Your Honor." Moreover, Mr. Loughery and Mr. Wilkie were both present at that hearing and Counsel for SCUEF did not seek to cross-examine them about any of the matters testified to in their depositions. For these reason, SCUEF has explicitly and judicially waived any objection it has to the admissibility of this otherwise clearly relevant testimony.

The manner in which depositions are to be conducted is set forth in the South Carolina Workers' Compensation Act ("Act"). Under the Act,

Such depositions shall be taken in accordance with and subject to the same provisions, conditions and restrictions as apply to the taking of like depositions in civil actions at law in the courts of common pleas and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony and the transmission and certification thereof and matters of practice relating thereto shall apply.

S.C. Code Ann. §1-23-320(C). As such, the South Carolina Rules of Civil Procedure establish the requirements for depositions in this State and the proper procedure for asserting objections. Under these rules, “[a]ll errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the party giving the notice.” Rule 32(d), SCRPC. The reporters comments to Rule 32 further state: “In essence these provisions provide that errors or irregularities in the procedure for taking the deposition . . . are waived if not made at the time the error could have been corrected.”

In this case, SCUEF had knowledge, if not proper notice, of the depositions at or very near the time they were taken on April 11, 2012. Since that time, SCUEF has not properly or timely raised any objection as to the irregularities in the notice or conduct of the depositions. Moreover, SCUEF has already once stated, on the record, that it has no objection to the admissibility of these depositions in this matter. If SCUEF had any real interest in a right to cross-examine these witnesses, it could simply have re-noticed their depositions by agreement of the parties, sought an order of the Commission allowing a subsequent deposition pursuant to Rule 32(a)(2), or actually cross-examined them under oath at the prior hearing. To assert an objection not previously raised and expressly waived on the eve of the hearing is manifestly without merit and unfairly prejudices FirstComp in presenting its case to the Commission.

For these reasons, SCUEF’s Motion to exclude the depositions of Mr. Loughery and Mr. Wilkie should be denied.

b. Deposition of Talisa Miller

In its Motion, SCUEF also contends that the deposition testimony of Talisa Miller should be excluded. SCUEF's contention regarding this deposition is also based on an alleged deficiency in the deposition notice. This time, however, SCUEF does not assert that it was not provided an opportunity to cross-examine the witness, rather it seeks to assert the right of Claimant's employers to cross-examine this witness. As discussed above, Counsel for SCUEF was in fact present and did participate in the deposition of Ms. Miller and, as such, it has no right to claim any prejudice or objection to its admissibility. See Rule 32(d), SCRCP. Moreover, SCUEF asserts that the testimony should not be admitted on the basis that Mr. Loughery and Mr. Wilkie were not provided notice of the deposition and did not attend the deposition on April 12, 2012. Contrary to this assertion, Mr. Loughery and Mr. Wilkie were personally notified by Counsel for FirstComp at their deposition of the scheduling of Ms. Miller's deposition and their right to attend. This fact was stated on the record at Ms. Miller's deposition. While neither chose to attend, they both did appear at the original hearing in this matter and did not object to the admissibility of Ms. Miller's deposition.

To the extent that Mr. Loughery and Mr. Wilkie were not present at the deposition, SCUEF has no standing to assert any objection to its admissibility on that basis. Counsel for SCUEF was an active participant in the deposition and went so far as to place a request on the record that the deposition be held open to allow it to reconvene the deposition if necessary to address any issues related to its lack of notice of the deposition. To date, SCUEF has never sought to reconvene this deposition.

Defects in the notice of a deposition do not make that deposition inadmissible. Rather, objections to such defects must be timely made by the proper party or are deemed to be waived. In this case, SCUEF is simply not the proper party to assert an objection by Mr. Loughery or Mr.

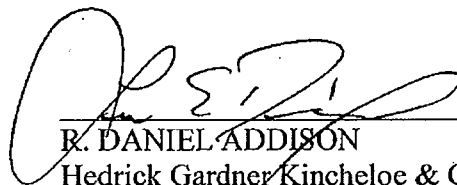
Wilkie. Counsel for SCUEF voluntarily appeared and participated in this deposition and did not raise any objection regarding the notice to the employers at that time. If such an objection had been timely made, the deposition could easily have been cancelled, re-noticed, and conducted at a later date, thus correcting the alleged defect.

For these reasons, SCUEF's Motion to exclude the deposition transcript of Ms. Miller should be denied.

CONCLUSION

For the reasons stated above, there is simply no basis for excluding the otherwise relevant, probative and sworn testimony of properly identified witnesses in this case and Claimant's Motion to exclude this testimony should be denied. To the extent the Commission finds that the defects in the noticing of these depositions have not been waived and that such defects render the testimony inadmissible, FirstComp respectfully requests pursuant to S.C. Code Regs. § 67-613 a postponement of this hearing to allow additional discovery in order to rectify the alleged defects.

Respectfully submitted, this, the 21st day of August, 2014.



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier,

Defendants.

FIRSTCOMP INSURANCE'S
MEMORANDUM OF LAW

This matter comes before the South Carolina Workers' Compensation Commission pursuant to a Form 50 filed with respect to an alleged injury sustained by Claimant Dallas Paul Bessinger on January 4, 2012. FirstComp Insurance filed a Form 51 asserting as an affirmative defense that the insurance policy issued by FirstComp to Claimant's employer J&L Construction was procured by fraud in the inducement and is, therefore, void *ab initio*.

STATEMENT OF THE CASE

On the morning of January 4, 2012, Claimant, an employee of J&L Construction, LLC ("J&L"), fell approximately twenty (20) feet from a roof where he had been laying roofing tar paper. As of the date of Claimant's injury, J&L did not have an effective workers' comp insurance policy. After Claimant was transported to The Regional Medical Center for treatment, John Loughery and Emory Wilkie went to Midlands Insurance Center, Inc. ("Midlands"). The agent that met with them to take their application for insurance was TaLisa Miller. The application identified Mr. Wilkie as the Manager with 100% ownership of the insured. The

signatory to the application was John Loughery. The application indicates that the insured is a class "5437" business and is described as "Carpentry – Installation of Ca". No prior loss history is identified and, among the specific questions asked, the response to the question "Any work performed underground or above 15 feet?" is "No". Claimant's accident earlier that morning was never disclosed. On the basis of this application, FirstComp issued policy No. WC01331654-01 to J&L. The policy was bound around 2:30 p.m. on January 4, 2012 and, at the applicants' insistence, was issued with an effective date of 12:01 a.m., January 4, 2012. The initial payment was made at that time in cash.

ARGUMENT

1. Under general principles of law, a contract procured by fraud is void.

Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. See Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). An insurance contract may be voided under similar circumstances. See Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). In order to void an insurance contract based on fraud, our courts have required the insurer to show: (1) the statement was false; (2) the falsity was known to the applicant; (3) the statement was material to the risk; (4) the statement was made with the intent to defraud the insurer; and (5) the insurer relied on the statement when issuing the policy. Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005). Intent to defraud "may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation." Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177, 1190 (D.S.C. 1988) In addition, an insurer has the right to rely on an applicant's answer when "a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure

must be made.” Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513. 176 S.E.2d 131, 134 (1970).

In this case, each of these elements has been satisfied. The application for insurance contained numerous false statements, including the omission of any prior losses, the nature of the work performed by the applicants, and the ownership of the company. The evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery knew of Claimant’s injury and had knowledge of the falsity of the information in the application. The materiality of the false representations is self-evident. Disclosure of prior claims and the nature of the work to be performed are matters at the very heart of a contract for workers’ compensation coverage. The intent to defraud is likewise self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application.

2. S.C. Code Ann. § 38-75-730 does not change the general rule regarding fraud.

Contrary to the assertions of the South Carolina Uninsured Employers’ Fund (“SCUEF”), nothing in the S.C. Code alters the long standing right of a party to a contract to rescission of a contract that was induced by fraud, deceit, concealment, or imposition. By its plain language, S.C. Code Ann. § 38-75-730 “governs the cancellation of insurance policies” and lays out the steps necessary to do so, such as providing ten days of written notice to the insured and the agent of record. See S.C. Code Ann. § 38-75-730(b). By referencing only an insurer’s right to cancel, it is evident that the § 38-75-720 was not intended to alter or eliminate an insurer’s right to rescind a contract obtained through fraud. The difference, which is key to this issue, has been explained by our Supreme Court as follows:

[C]ancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed....The cancellation of a liability

insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy as void *ab initio*.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added).

The purpose of S.C. Code Ann. §38-75-730 is to prevent arbitrary cancellations of insurance contracts. By its terms, the statute authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer's reinsurance and material misrepresentations. S.C. Code Ann. § 38-75-730 addresses situations far different than the intentional concealment of an existing claim to fraudulently procure a policy of insurance to cover that claim.

Contrary to the assertion of SCUEF, the North Carolina case of Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App. 2007) does not at all address the issue involved in this case. In Oxendine, the insurer attempted to cancel a policy due to unexplained "underwriting reasons." The insurer sent a notice of cancellation to the insured, but failed to do so in the manner prescribed by statute. The claimant was injured in an accident that occurred several months later but within the effective dates of the policy. The North Carolina court held that "underwriting reasons" was not sufficient to explain why the statutory procedure for an effective cancellation was not followed. The North Carolina Court simply was not faced with the question of whether they would permit recovery under a policy fraudulently obtained to include an accident that had already occurred.

In this case, Mr. Wilkie and Mr. Loughery did not disclose Claimant's accident even though both men knew of his injury. The application was prepared with deliberate falsehoods and omissions and was done so for the sole purpose of obtaining an insurance policy to cover that existing loss. Therefore, the FirstComp policy was obtained through fraud and was void *ab initio*, consistent with the general law in South Carolina.

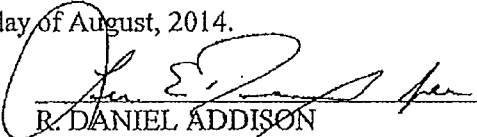
3. Other jurisdictions follow the rule.

Not only is this the rule in South Carolina, this rule has been adopted in other jurisdictions that have faced this precise issue. A workers' compensation policy "procured by fraud for the purpose of creating the obligation to compensate a pre-existing loss is void from the beginning." Star Insurance Co. v. Neighbors, 138 P.3d 507, 512 (Nev. 2006). Based on such fraud, one must assume that "the concealment of the injury went to the very heart of the contract, made it void at its inception, and no one can predicate any rights upon it." Matlock v. Hollis, 109 P.2d 119 (Kan. 1941); see also Hunt v. Aetna Casualty and Surety Co., 387 P.2d 405 (Colo. 1963) (holding no workers' comp coverage for accident concealed by employer when ordering the policy); Century Indemnity Co. v. Jameson, 131 N.E.2d 767 (Mass. 1956) (holding that ordinary principles of nondisclosure apply in voiding workmen's comp policy ordered by owner after accident without disclosure); Lima v. Industrial Acc. Com., 1 Cal. App. 2d 43 (Cal. App. 1934) (affirming industrial commission's finding that policy that was antedated by fraud to cover accident was not binding on carrier). Based on these precedents, and the general law of this State, there is no basis for excluding workers' compensation carriers from the principal that a policy procured by fraud is void and unenforceable.

CONCLUSION

For the foregoing reasons, FirstComp requests that Commissioner find that the policy at issue in this case was issued pursuant to fraud in the inducement and, therefore, is void *ab initio*.

Respectfully submitted, this, the 21st day of August, 2014.


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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

Dallas Paul Bessinger,)
)
Employee/Claimant,)
)
vs.)
)
R-N-M Builders & Assoc., LLC,)
)
Employer,)
)
and)
)
First Comp, a Division of Markel, Inc.,)
)
Carrier/Defendants,)
)
and)
)
SC Uninsured Employers' Fund,)
)
Defendant.)
_____)

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND MEMORANDUM
OF LAW

HEARING DE NOVO

This matter was originally before the Workers' Compensation Commission pursuant to Form 50 and Form 51. A Hearing was held in St. Matthews, South Carolina on July 18, 2012. An Order from that hearing was issued on December 18, 2012 and was appealed by the South Carolina Uninsured Employers' Fund. The Full Commission issued its Order dated April 17, 2014 remanding the case for a "Hearing De Novo."

A Hearing De Novo is one defined by West Law Dictionary as, "meaning "from the new". When a court hears a case de novo, it is deciding the issues without reference to the legal conclusions or assumptions made by the previous court to hear the case".

SCWCC
SEP 04 2014
JUDICIAL

“A trial de novo is one in which “the whole case is tried as if no trial whatsoever had been had in the first instance.” *Blizzard v. Miller*, 306 S.C. 373, 412 S.E.2d 406 (1991).

FIRSTCOMP makes an argument that information contained in the first hearing can be used and admissible in a new hearing “de novo.” The SCUEF makes objections and argues that the Attorneys for FIRSTCOMP have failed and neglected to present any evidence in this de novo hearing and is attempting to place evidence in the record that is not admissible.

First, a hearing de novo, “as if no trial whatsoever has been held in the first instance” requires the Defendant to present admissible evidence at the time of the hearing. SCUEF made objections to FIRSTCOMP’s Form 58 that has been submitted into evidence as it contains information as to the findings of the Single Hearing Commission in 2012. FIRSTCOMP also argues that evidence that it seeks to submit at this hearing was automatically admissible because objections to it were not made at the initial hearing. This is false. This is a Hearing De Novo. All evidence must be admissible when presented for introduction into evidence at the present hearing.

DEPOSITION TESTIMONY

The SCUEF has objected to three (3) deposition transcripts that the Defendant, FIRSTCOMP INS. has attempted to submit into evidence. A review of the South Carolina Rules of Civil Procedure clearly state under Rule 30(b) that “A party desiring to take deposition of any person upon oral examination shall give ten (10) days notice in writing to every other party to the action. . .” South Carolina Rules of Civil Procedure Rule 32(a) states that “**Use of Depositions.** At the trial or upon the hearing of a motion of an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or

represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the rules of evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used."

The first deposition transcript that FIRSTCOMP seeks to admit into evidence is that of a witness by the name of Talisa Miller. Talisa Miller is alleged to be a thirty party witness. FIRSTCOMP has presented absolutely no information regarding proper notice to all of the parties of the deposition of Talisa Miller. In fact, it is clear from the transcript that the parties at attendance of the deposition were Claimant's Attorney, Steven D. Haymond, FIRSTCOMP's Attorney, R. Daniel Addison, and Attorney for the SCUEF, Timothy B. Killen. There has been no evidence submitted by FIRSTCOMP that proper notice of this deposition was served on the

Employer/Defendants, J&L Construction, LLC or R-N-M Builders & Associates, LLC or their respective attorneys. Depositions cannot be used against a defendant without the opportunity to cross-examine. If Talisa Miller had been subpoenaed to the Hearing then the alleged Employers/Defendants would have been noticed and an opportunity to cross examine whether or not the Employers/Defendants chose to attend the hearing. Without proof of notice to the Employers/Defendants of Talisa Miller's deposition, that deposition may not be used in a Hearing against the Employer/Defendants. It is hearsay and the Employers/Defendants have not had the opportunity to cross-examine.

FIRSTCOMP also seeks to introduce the depositions of John Loughery and Emory Wilkie. Despite objections by the SCUEF to the admission of these depositions, proof of service of Notice of Depositions was not given pursuant to the South Carolina Rules of Civil Procedure. Appearances at that Deposition were Claimant's Attorney, Steven D. Haymond and FIRSTCOMP's Attorney, R. Daniel Addison. Not only was proper notice not provide to the SCUEF or to the Employers/Defendants, but it is clear that no one from the SCUEF was even present. FIRSTCOMP argued that this deposition testimony is admissible into a Hearing De Novo because no one objected to it at the first hearing. The depositions taken of the two alleged Employees, John Loughery and Emory Wilkie may have been admissible in the first hearing only because the Defendants were in attendance and were able to be cross-examined. However, just because they were admissible then, does not make them currently admissible. The evidence must be admissible at the time they are introduced into evidence. It is very interesting that FIRSTCOMP would cite Rule 32(d)(1) South Carolina Rules of Civil Procedure which states that "All errors and irregularities in the notice for taking a deposition are waived unless written

objection is promptly served upon the parties giving the notice." The initial problem being that there was **NO NOTICE GIVEN**, therefore, no objection could be made.

ALLEGATIONS OF FRAUD

FIRSTCOMP makes the argument that the workers' compensation policy it issued was void ab initio as it was procured through fraud. The SCUEF makes the argument that even if the workers' compensation policy was procured through fraud, S.C. Code Ann. §38-75-730 makes it clear that even policies procured by fraud must be properly cancelled and are never void ab initio. (S.C. Code Regs. 67-405)

Interestingly at our hearing de novo, when FIRSTCOMP should be presenting any evidence it has regarding the allegations of fraud, there is absolutely no witness to testify regarding how or when a policy was procured. There were absolutely no witnesses present for this hearing to testify for FIRSTCOMP whatsoever. Therefore, without further argument FIRSTCOMP has failed to make a case regarding any fraud much less of how its policy should be void ab initio.

CANCELLATION OF WORKERS' COMPENSATION POLICIES

The Fund asserts that an insurance company licensed to do business in South Carolina must adhere to the statutory scheme insofar as it relates to the cancellation or rescission of insurance policies.

FIRSTCOMP INS. alleges that it may declare a workers' compensation insurance policy void ab initio as part of a proceeding brought by a Claimant against its insured¹. According to FIRSTCOMP Ins., it is entitled to do so because the insurance agreement was induced by fraud on the part of John Loughery and Emory Wilkie. This argument is flawed. In particular, S.C.

¹ FIRSTCOMP INS. did not bring its own action to have the policy declared void ab initio, but has only asserted this as a defense.

Code Ann. §38-75-730 governs the cancellation of workers' compensation insurance policies. Further, the Claimant, as a party to the agreement, can't be denied benefits due to the fraudulent actions of the Employers, especially where a policy was in place at the time of the accident.

FIRSTCOMP argues that S.C. Code Ann. §38-75-730 does not apply to workers' compensation policies. However, S.C. Code Ann. §38-1-20 (11) clearly states "'Casualty insurance' means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers' compensation insurance . . ."

S.C. Code Ann. §38-75-730, in specifying its requirement for cancellation, contemplates the precise types of actions that FIRSTCOMP INS. complains of herein. Specifically, cancellation for a "material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy" is "not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation." S.C. Code Ann. §38-75-730; SCUEF APA Submissions, page 29.

Terms of cancellation also appear in the policy itself, and these also require a notice period prior to cancellation. SCUEF APA Submissions, page 10. The insurer did not reserve a right to rescission or right to void its contract.

As discussed in the Fund's Form 58, the Courts in North Carolina have already addressed this issue. Oxendine v. TWL, Inc., 184 N.C. App. 162, 645 S.E.2d 864 (N.C. App 2007); SCUEF APA Submissions, page 31. According to the North Carolina Court of Appeals, "a workers' compensation insurance contract will therefore never be void ab initio, but must be cancelled in the manner prescribed by N.C. Gen. Stat. §58-36-105 [the insurance policy cancellation section]." Oxendine v. TWL, Inc., 184 N.C. App. 162, 165, 645 S.E.2d 864, 866 (N.C.App.

2007); SCUEF APA Submissions, page 31. Further, the N.C. Court of Appeals pointed out that the N.C. Code Section, like S.C. Code Ann §38-75-730, “contemplates the very sort of ‘material misrepresentation or non disclosure of a material fact in obtaining the policy’ . . . [and] it clearly governs our review of this matter.” Oxendine v. TWL, Inc., 184 N.C. App. 162, 166, 645 S.E.2d 864, 866 (N.C.App. 2007); SCUEF APA Submissions, page 31; also see J. Bend v. Shamrock Services, 59 So.3d 153, 36 Fla.L.Weekly D430 (Fla.App.1 Dist. 2011) and Cruz v. New Millenium Construction & Restoration Corp., 793 N.Y.S.2d 548, 17 A.D.3d 19 (N.Y. Sup. Ct. App. Div 3rd Dept. 2005).

To support its position that a workers’ compensation insurance policy may be declared void ab inito, FIRSTCOMP INS. cites Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). However, that case is distinguishable from the instant matter because it concerned a first-person health insurance policy. That case centers on S.C. Code Ann. §38-71-40, which states:

The falsity of any statement in the application for any policy covered by this chapter does not bar the right to recovery there under unless the false statement was made with actual intent to deceive or unless it materially affected either the acceptance of risk or hazard assumed by the insurer.

(emphasis added). “This chapter,” as referenced in that section, is Chapter 71, or “Accident and Health Insurance.” Workers’ compensation insurance policies are specifically excluded from Chapter 71: “Nothing in this chapter applies to or affects . . . any policy of workers’ compensation insurance . . .” S.C. Code Ann. §38-1-20(1) (“Accident and health insurance’ means insurance of human beings against death or personal injury by accident . . . but not including coverages required by the Workers’ Compensation Law of this State.”) S.C. Code Ann. §38-1-20 (11) (“Casualty insurance’ means each insurance against legal liability of the

insured for bodily injury to or death of another person, including workers' compensation insurance . . .").

This distinction is significant not only because it is statutorily based, but also because it affords protection to the injured employee, who is not at fault in this action and against whom there is not allegation of fraud. As noted by the South Carolina Supreme Court, a workers' compensation insurance policy is a contract or agreement between the insurer and the person or persons entitled to compensation benefits. Carter v. Boyd Const. Co., 255 S.C. 274, 280, 178 S.E.2d 536, 539 (1971).

Even if a workers' compensation insurance policy could be declared void ab inito, then FIRSTCOMP INS. must show, by clear and convincing evidence, that the Claimant – the other party to the contract, per the Supreme Court – committed fraud in seeking to obtain benefits. Because the Claimant would be the party entitled to the benefits, actions by the employer(s), whether fraudulent or not, cannot affect his entitlement to benefits under the policy.

Further, it has been repeatedly established by the South Carolina Courts that "the law strictly construes insurance policies against the drafter and in favor of coverage for the insured." General Acc. Ins. Co. v. Safeco Ins. Companies, 314 S.C. 63, 72 443 S.E.2d 813, 818 (Ct. App. 1994) (citing South Carolina State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991)). The Policy at issue was drafted and signed by FIRSTCOMP INS., and therefore, terms and language of the policy are to be construed in favor of the insured, the business entity formed by Emory Wilkie and John Loughery. The policy itself does not allow for the type of "relief" sought by FIRSTCOMP INS.

As its primary support for its position, FIRSTCOMP INS. cites the 1970 case of Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 176 S.E.2d 131 (1970). Chavis

does not involve a casualty or workers' compensation insurance policy. Chavis is a case involving the rescission of an automobile insurance policy. Chavis was decided under former law (S.C. Code Ann. §76-750-51 (1962)), and it also predates the effective statute herein.

FIRSTCOMP INS. asserts that requiring it to provide benefits to the injured Claimant, should he be entitled to any, would not "comport with the clear policy of South Carolina in refusing to sanction fraudulent conduct . . ." This argument overlooks a number of issues.

First, FIRSTCOMP INS. was reckless and negligent in the issuance of the policy. For reasons known only to FIRSTCOMP INS. and its agent, this policy was issued where Emory Wilkie was the named applicant and listed as the sole owner of the business, but where John Loughery – not Emory Wilkie – signed the application. Then FIRSTCOMP INS. named the insured as "E&W Construction, LLC," which doesn't even exist. Then, after the accident and after proper cancellation of the policy, FIRSTCOMP INS. issued a refund check to Emory Wilkie alone. SCUEF APA Submissions page 28.

Even further evidence of negligence is obvious and the reason the parties are arguing this issue: FIRSTCOMP INS. backdated the policy. Clearly, backdating an insurance policy is a negligent business practice. It is axiomatic that insurance is a policy against contingencies, not against that which is already past. However, for whatever reason, this is what FIRSTCOMP's chose to do. The solution was simple: FIRSTCOMP INS. could have made the policy effective at the time of contracting or subsequent thereto. However, they did not.

If a workers' compensation insurance could be void ab initio (which the Fund denies), FIRSTCOMP's negligence plays a role in whether they could be successful. That's because the party seeking rescission, especially a sophisticated party like FIRSTCOMP INS., cannot do so where it was negligent in the formation of the contract. In fact,

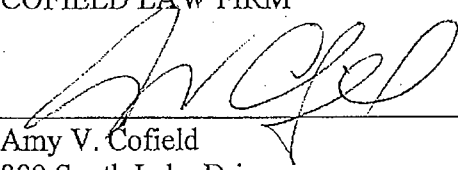
a court will not rescind a contract solely on the basis of unilateral mistake unless the party opposing rescission induced the mistake "by fraud, deceit, misrepresentation, concealment, or imposition . . . , without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement."

State Accident Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct.App. 2010) (quoting Truck South, Inc. v. Patel, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000)).

Next, no one has alleged that the Claimant committed fraudulent conduct. According to the Supreme Court, he is the party to this contract, and as the party, he would be entitled to benefits under the policy – not Emory Wilkie or John Loughery. Further, if FIRSTCOMP INS. were defrauded by Emory Wilkie and/or John Loughery, FIRSTCOMP INS. can find relief at law, where it can sue the parties for its damages.

Respectfully Submitted,

COFIELD LAW FIRM

By: 

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Employers' Fund*

September 2, 2014
Lexington, South Carolina

**SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479**

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier,

Defendants.

**FIRSTCOMP'S REPLY TO UEF'S
MEMORANDUM OF LAW**

Defendant FirstComp Insurance ("FirstComp") hereby responds to the Memorandum of Law ("Memo") filed by South Carolina Uninsured Employers' Fund ("UEF") following the August 21, 2014 hearing in the above-captioned matter. In responding to the Memo, FirstComp reiterates and incorporates by reference the positions and arguments set forth in its prior Memorandum of Law and Response to Motion to Strike that were handed up at the hearing. FirstComp, however, takes this opportunity to respond to the arguments of UEF raised in the Memo and correct certain misrepresentations contained therein.

Procedural History

In its Memo, UEF argues against the introduction of evidence based on the fact that this hearing is a *de novo* hearing by order of the Full Commission. While UEF correctly points out that a *de novo* hearing is one "as if no trial whatsoever has been held in the first instance," the import of this is that the Single Commissioner is not bound by any findings or conclusions from that prior hearing. In essence, the Single Commissioner is free to make any decision based on

the evidence as he sees fit. The convening of a *de novo* hearing, however, does not allow a party to take new positions on matters that have been previously waived.

The Court of Appeals addressed this issue in Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005). In that case, the employer admitted the compensability of the alleged injury but denied permanent disability. The single commissioner ordered the employer to pay temporary disability and causally-related medical care. On appeal, the Full Commission vacated the single commissioner's order and remanded for a *de novo* hearing. The claimant appealed. In affirming the dismissal of the appeal as interlocutory, the Court of Appeals held that a *de novo* hearing on remand "extends only to those issues within the application of review" and did not include issues that were not litigated previously. In short, a *de novo* hearing only involves issues that were previously litigated and preserved.

In this case, UEF's Form 30, *Request for Commission Review*, makes no reference whatsoever to any objection as to the admissibility of any deposition testimony and, therefore, that issue is not properly contested now, even at a *de novo* hearing. Brunson, 367 S.C. at 167, 623 S.E.2d at 873 ("Since the remand to the single commissioner is limited to those matters included in Employer's appeal to the Commission, the compensability of Brunson's contact dermatitis claim will not be relitigated."). Consequently, UEF cannot simply take the opportunity to challenge the admissibility of evidence that was entered, without objection, during the first proceeding. Allowing UEF to argue against the admissibility of evidence that had been entered without objection at a prior hearing and to which no objection was made until the eve of the *de novo* hearing, unfairly prejudices FirstComp who relied on UEF's waiver and acquiescence as to this evidence. Certainly the Single Commissioner may take his own view of the evidence in reaching any conclusion as to the litigated issues but it does not follow that UEF may raise an objection to evidence that has been readily available and at issue since 2012.

Deposition Testimony

As discussed at length in FirstComp's prior Memorandum of Law, the South Carolina Rules of Civil Procedure explicitly state that a party must make objection to any error with respect to the notice of deposition "promptly" and such objections are deemed waived if not made "at the time the error could have been corrected." Rule 32(d), SCRCP; *comments* to Rule 32. It is admitted by FirstComp that UEF did not get notice of the depositions of Claimant's employers until the day they were taken on April 11, 2012. Nevertheless, UEF did not object at that time to the insufficient notice, nor did it seek to reconvene the depositions to assert any right to cross examine. UEF did not object to their introduction at the prior hearing, did not seek to cross examine the deponents at that hearing and did not appeal the admissibility of those transcripts when requesting a review by the Full Commission. It is disingenuous at best for UEF to now take the position that "no objection could be made" to this error given the ample and numerous opportunities for it to do so. See UEF's Memo, p. 5.

Having failed to object to any defect in the notice of the depositions of Mr. Loughery and Mr. Wilkie, UEF argues that the depositions are nonetheless inadmissible at the *de novo* hearing because the witnesses were not present and available to be cross-examined at the hearing. As the Commission is aware, these individuals are the principals for the defendant employer, J&L Construction, LLC. As such, they received notice of the hearing but failed to appear. Their testimony constitutes the statements of party opponents and is, by definition, not hearsay and cannot be excluded on that basis. On its face, UEF's argument that this *de novo* hearing is somehow different given the absence of these witnesses lacks merit because UEF had the opportunity to cross-examine these witnesses at the prior hearing as to any matter in their deposition and chose not to. In so doing, UEF expressly waived any objection to these depositions and agreed to allow their use in this matter.

As for the deposition testimony of Ms. Talisa Miller, UEF's argument is, if possible, even more tenuous. UEF admits that its own attorney was actually present and participated in the deposition of Ms. Miller. Plainly, any objection as to the sufficiency of the notice for that deposition could have been made at that time and was not so it is deemed waived by the Rules of Procedure. Nor was any objection raised in the over two years since that deposition took place. Moreover, UEF purports to be raising an objection on behalf of Mr. Loughery and Mr. Wilkie. Clearly, issues as to notice and admissibility are waivable issues by any party to any litigation. Neither Mr. Loughery nor Mr. Wilkie have ever objected to the notice or admissibility of Ms. Miller's deposition, despite having the very same opportunities as UEF in the past two years. UEF does not cite to any authority for its novel position that it has standing to raise a procedural objection on behalf of another defendant, especially one who did not appear at the hearing. To the extent Mr. Loughery and Mr. Wilkie have any objection as to the sufficiency of their notice under the Rules of Civil Procedure or the admissibility of any evidence at the hearing, it is incumbent on them to make them and not the UEF. Consequently, UEF's objections as to Ms. Miller's deposition are entirely without merit.

Void Ab Initio

In its Memo, UEF misconstrues FirstComp's position and the plain meaning of S.C. Code §38-75-730. First, UEF states that is it FirstComp's position that S.C. Code §38-75-730 does not apply to workers' compensation policies. As was made clear at the hearing, that is not the position of FirstComp at all. FirstComp's position, supported by ample legal authority, is that S.C. Code §38-75-730 only controls the "cancellation" of policies of insurance (including workers' compensation policies) but does address "rescission" where the law allows such action. In its memorandum of law, FirstComp cites numerous insurance law cases where both South Carolina courts and courts from other jurisdictions have drawn a distinction between terminating

a contract and rescinding one that has been entered into fraudulently. At the hearing, UEF argued, without any authority, that these cases do not apply in a workers' compensation context. The code section relied upon by UEF is contained in Title 38 of the South Carolina Code which governs insurance of all types; it is not a statute specifically governing workers' comp policies. For this reason, UEF argument that general insurance law does not apply to this case is in direct conflict with its position that the outcome in this case should be governed by a statute found in the general insurance code.

Additionally, UEF has misconstrued the provisions of S.C. Code §38-75-730. UEF contends that this statute contemplates the very type of fraud at issue in this case. On the contrary, the statute merely provides a carrier with a basis for cancellation of a policy based on "material misrepresentations of fact which, if known to the company, would have caused the company not to issue the policy." See Memo, p. 6. As the Commission is well aware, there are many types of factual misrepresentations that would cause a carrier to refuse to issue a policy. For example, an employer could misrepresent that nature of work done by that employer. Such representations could include stating that it does no above-ground work, or does no work involving toxic chemicals, or indications of the classifications of type of work that are not accurate. These are material misrepresentations of fact that would impact a carrier's decision to issue a policy and at what rate. In these circumstances, the General Assembly has deemed it in the public policy of this state to require a carrier to follow the statutory procedure for cancelling a policy after such misrepresentations have been discovered.

The case of Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App. 2007) cited by UEF illustrates this difference. In Oxendine, the carrier sought to cancel a workers comp policy for "underwriting reasons" and the N.C. Court of Appeal held that the carrier had to provide the proper statutory notice. "Underwriting reasons" is the equivalent of "misrepresentations of fact"

under our statute whereby the information provided at the time of the application, if known, would have affected the issuance of a policy. The Oxendine case and S.C. Code §38-75-730 do not address the separate and distinct issue of a policy of insurance obtained through fraud for the sole purpose of covering a claim that pre-existed the policy. Under the authorities cited by FirstComp in its memorandum, the law in South Carolina and other jurisdictions clearly supports rescission of such a policy on the basis that no policy ever truly existed.

Public Policy

UEF further argues that the clear law in South Carolina on rescission should not apply to a workers' compensation policy because the injured claimant is deemed to be a party to the contract. While this may be true with respect to validly issued policies, the same cannot be said of fraudulently obtained policies that are issued after the employee is injured. In such a case, while the employee is certainly innocent of the fraud, he is no worse position given that his employer had no workers' compensation policy at all at the time of his injury. On the other hand, the carrier is certainly prejudiced and significantly harmed if forced to cover a claim that occurred prior to the issuance of the policy and about which it had no notice or acceptance of the risk.

More importantly, the position argued by UEF would severely undercut the entire insurance industry and lead to far reaching and catastrophic results to employers and employees as well as carriers. The entire insurance industry is grounding on the principal of pooled risk. Every covered employer in South Carolina participates by obtaining workers compensation coverage and spreading their risk across the state with every other employer and their annual premiums pool together to cover those compensable claims that occur during the policy period. If, however, an employer were given leave (as UEF would have it) to simply wait for an injury and then go out and obtain a policy to cover that injury (whether through outright fraud or not),

the resources available would quickly dry up as premiums would only be paid in the event of an accident and the exposure for those claims would almost certainly exceed the premiums paid. Such a scheme could never survive and is plainly contrary to good public policy and the sound administration of the insurance industry as a whole and the S.C. Workers' Compensation system in particular.

Finally, UEF makes the contention that FirstComp's backdating of the policy constitutes recklessness, is a negligent business practice, and undercuts its defense based on the fraudulent conduct of Claimant's employers. With all due respect to counsel for UEF, such contentions are unsupported in law and have no basis in fact before the Commission. Counsel for UEF is not an expert on the insurance industry and is not competent to testify regarding her opinions as to the conduct of an insurance carrier and the industry standard for issuance of insurance policies. As Ms. Miller testified in her deposition, in the voluntary insurance market, policies are issued to go into effect on the day they are issued. See Miller Depo, p. 82, l. 19-24. As evidenced by the records in this case, the policy was issued on January 4, 2012 and was, therefore, effective as of the start of that day; i.e. 12:01 a.m. A business decision on the part of a carrier to assume the risk associated with backdating a policy can be based on numerous justifiable business factors and has never been found to be improper or prohibited under South Carolina law. Such business decision, however, should properly be based on the truthful representations of an applicant and it would be patently inequitable to hold the carrier liable when provided statements that are patently or by omission fraudulent. It may serve UEF's position to declare a common practice of insurance underwriting to be "negligent," but there is no testimony before the Commission to that effect and no evidence upon which such a finding can be based.

Conclusion

For the above reason, UEF's argument that the policy obtained by the fraud of Mr. Loughery and Mr. Wilkie cannot be void *ab initio* is without merit.

Respectfully submitted, this, the 10th day of September, 2014.



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Attorneys for FirstComp Insurance

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1200479
Carrier File #: 007337
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: DALLAS P. BESSINGER SSN: 250 - 47 - 3402 Employer's Name: R-N-M BUILDERS & ASSOC, LLC
Address: POST OFFICE BOX 234 Address: C/O RONALD W. STOKES
107 L AVENUE
City: PELION State: SC Zip: 29123 City: WEST COLUMBIA State: SC Zip: 29172
Home Phone: (803) 894 - 4466 Work Phone: () - Insurance Carrier: SC UNINSURED EMPLOYERS' FUND
Preparer's Name: AMY V. COFIELD Law Firm: COFIELD LAW FIRM Preparer's Phone #: (803) 951 - 0389

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☐ employer Date of injury: 1/4/2012
☒ Carrier (check one)

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 EXHIBIT "A" GROUNDS FOR APPEAL

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to **SEE ATTACHED CERTIFICATE OF SERVICE** on the 8th day of APRIL, 2015 by ☒ first class mail; ☐ personal service; ☐ certified mail

Preparer's Signature

Attorney for SC Uninsured Employers' Fund
Title

April 8, 2015
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

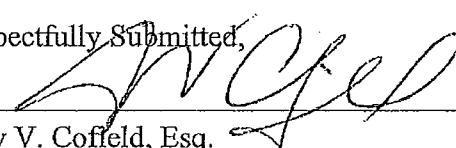
EXHIBIT "A" - FORM 30 (GROUNDS FOR APPEAL)

**DALLAS P. BESSINGER V. R-N-M BUILDERS & ASSOCIATES, LLC AND
FIRST COMP INSURANCE AND SC UNINSURED EMPLOYERS' FUND**

WCC FILE NO. 1200479

1. Did the Single Commissioner err in his interpretation of a Remand by the Full Commission for a "Hearing de novo" as demonstrated in Findings of fact (FOF #3, 4, 6, 7, 9, 10, 11, 12, 13, and 14) when such findings are clearly erroneous and contrary to the laws of South Carolina.
2. Did the Single Commissioner err in Finding of Fact #19 that "First Comp is not and cannot be the carrier in this case", when such finding is clearly erroneous in view of the reliable, probative and substantial evidence and by the laws of South Carolina.
3. Did the Single Commissioner err in Finding of Fact #17, 18, 21 and 22 that Mr. Addison's arguments regarding the existence of an insurance contract procured by fraud can be "void ad ibnitio" or "rescinded" when such finding is clearly erroneous in view of the reliable, probative and substantial evidence of the case and contrary to the laws of South Carolina.
4. Did the Single Commissioner err in Findings of Fact 1 - 40 and Conclusions of Law 2 - 5 and 6 - 16 when such findings are based on "evidence" submitted at a previous hearing, some of which were objected to, and were not gleaned from a hearing de novo as demanded by the Order of the Full Commission?
5. Did the Single Commissioner err in Finding of Fact #22 that "a contract binding two parties could not exist. A binding contract, which an insurance policy is, cannot be created when the facts are perverted by criminal fraud" which is contrary to any evidence submitted at this de novo hearing and contrary to the laws of South Carolina.
6. Did the Single Commissioner err in Finding of Fact #23 that "In this case, Mr. Wilkie and Mr. Loughery attempted to obtain a policy which would obligate the issuer to assume liability for an accident that had already happened" when such finding of fact was not based on any evidence presented in the de novo hearing, but instead, from a previous hearing which is contrary to the laws of South Carolina.
7. Did the single Commissioner err in Finding of Fact # 17, 18, 19, 21, 22, 23, 24, 25, 26, 36, 38, 39 and Conclusions of Law 10, 11, 12, 13 and 14 that all indicate that a workers' compensation policy can be "void ab initio" or "rescinded" when such finding is against the law of South Carolina.

Respectfully Submitted,


Amy V. Coffield, Esq.

Attorney for the SC Uninsured Employers' Fund
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809 South Lake Drive
Lexington, South Carolina 29072
Telephone: 803-951-0389

April 8, 2015
Lexington, South Carolina

South Carolina Workers' Compensation Commission
1335 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: **1200479**
Carrier File #: **FSC900085974**
Carrier Code #:
Employer FEIN #:

Claimant's Name: Dallas Paul Bessinger SSN: 250-47-3402 Employer's Name: R-N-M Builders & Associates, LLC
Address: 362 Terry Road Address: 107 L Avenue
City: Pellon State: SC Zip: 29123-9796 City: West Columbia State: SC Zip: 29172
Home Phone: Work Phone: Insurance Carrier: FirstComp a division of Markel, Inc.
Preparer's Name: R. Daniel Addison Law Firm: Hedrick Gardner Kincheloe & Garofalo, LLP Preparer's Phone #: (803) 727-1200

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ claimant ☒ employer (check one) Date of injury: January 4, 2012

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).

The Commission erred in proceeding with the hearing as the order of the Appellate Panel remanding the case for a new hearing was invalid and contrary to the APA and Commission Regulations as the Appellate Panel's order lacked specific and definite findings to support remanding the matter for new hearing, failed to articulate any basis for the remand, and remanded the case in a manner not prescribed under the controlling statutory authority.

The Single Commissioner erred in Findings of Fact No. 9 and 10 by finding that the Full Commission was clear in its order when the order of the Full Commission contained to findings whatsoever in support of its order to vacate the prior order and remand the case for a de novo hearing.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Amy V. Cofield

Address 809 South Lake Drive, Pellon, SC, 29072 on the 14th day of April, 2015, by XX first class postage certified mail personal service.

Preparer's Signature

Attorney
Title

daddison@hedrickgardner.com
Email

April 14, 2015
Date

Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

WCC Form # 30
Revised 7/13

30

REQUEST FOR COMMISSION REVIEW

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479**

Dallas Paul Bessinger,
Employee/Claimant,

vs.

R-N-M Builders & Assoc., LLC,
Employer,

and

First Comp, a Division of Markel, Inc.,
Carrier/Defendants,

and

SC Uninsured Employers' Fund,
Defendant.

**APPELLANT'S BRIEF ON BEHALF
OF THE SOUTH CAROLINA
UNINSURED EMPLOYERS' FUND**

STATEMENT OF THE CASE

This matter was originally before the Workers' Compensation Commission pursuant to Form 50 and Form 51. A Hearing was held in St. Matthews, South Carolina on July 18, 2012. An Order from that hearing was issued on December 18, 2012 and was appealed by the South Carolina Uninsured Employers' Fund. The Full Commission issued its Order dated April 17, 2014 ordered that the Order of the Single Commissioner be vacated and the matter reset for a "Hearing De Novo."

The "Hearing De Novo" was set before Commissioner McCaskill on August 21, 2014. There were no witnesses present and there was no testimony taken. Only the attorneys presented oral arguments to the Commissioner. Commissioner McCaskill issued his Order on March 31,

2015 wherein he made 40 Findings of Fact based on information gleaned from the first hearing and the evidence submitted therein.

ISSUE

The Single Commissioner erred in his interpretation of a Remand by the Full Commission for a "Hearing de Novo" as demonstrated in the Findings of Fact, 3, 4, 6, 7, 9, 10, 11, 12, 13 and 14 as they are each contrary to the laws of South Carolina.

ARGUMENT

There were numerous issues arising from the first hearing before Commissioner Roche that gave rise to the Full Commission appeal. So many issues were raised by the Form 30 and the arguments before the Full Commission that it should have been no surprise that the parties needed to "start over". There were issues as to the naming of the correct parties, notices not given to the direct employers, no findings as to who the immediate employer was, etc. This, of course, was paramount to a finding that the South Carolina Uninsured Employers' Fund was liable for any benefits.

A hearing de novo is one defined by West Law Dictionary as, "meaning "from the new". When a court hears a case de novo, it is deciding the issues without reference to the legal conclusions or assumptions made by the previous court to hear the case." This case is tried as if being retried for the first time. The judge should not consider anything previously decided. "A trial de novo is one in which "the whole case is tried as if no trial whatsoever had been had in the first instance." *Blizzard v. Miller*, 306 S.C. 373, 412 S.E.2d 406 (1991).

A hearing de novo, "as if no trial whatsoever has been held in the first instance" requires a party to present admissible evidence at the time of the hearing. Prior to this "De Novo" hearing SCUEF made objections by way of Motion objecting to FIRSTCOMP's Form 58 that indicated it would be to submitting some deposition testimony that has been submitted into

evidence. FIRSTCOMP argues that the evidence that it sought to submit at the de novo hearing was automatically admissible because objections to it were not made at the initial hearing. This is false. This is a hearing de novo. All evidence must be admissible when presented for introduction into evidence at the present hearing.

The hearing Commissioner herein failed to have any hearing at all. There was no testimony taken or evidence submitted. There were only oral arguments made. The Commissioner committed fatal error by determining that he could consider all matter already “in the record”. There were many issues that were on appeal to the Full Commission that were never addressed by either the full commission or on the remand. All the issues were not addressed because the Commissioner never had a “De Novo hearing” to determine all issues.

ISSUE

The Single Commissioner erred in Finding of Fact Number 39 that denied the Motion made by the SCUEF to admit into evidence certain deposition testimony that was not properly before the Commission.

ARGUMENT

The SCUEF objected to three (3) deposition transcripts that the Defendant, FIRSTCOMP INS. attempted to submit into evidence at the de novo hearing. A review of the South Carolina Rules of Civil Procedure clearly state under Rule 30(b) that “A party desiring to take deposition of any person upon oral examination shall give ten (10) days notice in writing to every other party to the action. . .” South Carolina Rules of Civil Procedure Rule 32(a) states that “**Use of Depositions.** At the trial or upon the hearing of a motion of an interlocutory proceeding, any First, a hearing de novo, “as if no trial whatsoever has been held in the first instance” requires the Defendant to present admissible evidence at the time of the hearing. SCUEF made objections to

FIRSTCOMP's Form 58 that was submitted into evidence as it contained information as to the findings of the Single Hearing Commission in 2012. FIRSTCOMP argued that the deposition testimony it desired to submit at the hearing on remand was automatically admissible because objections to it were not made at the initial hearing. This is false. This is ordered to be a hearing de novo. All evidence must be admissible when presented for introduction into evidence at the new hearing.

A deposition, or any part of a deposition, under the rules of evidence may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness, or for any other purpose permitted by the rules of evidence.

(2) The deposition of a party or of anyone who at the time of taking the deposition was an officer, director, or managing agent, or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a public or private corporation, partnership or association or governmental agency which is a party may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds:

(A) that the witness is dead; or

(B) that the witness is at a greater distance than 100 miles from the place of trial or hearing, or is out of the State, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(C) that the witness is unable to attend or testify because of age, illness, infirmity, or imprisonment; or

(D) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(E) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used."

The first deposition transcript that FIRSTCOMP sought to admit into evidence was that of a witness by the name of Talisa Miller. Talisa Miller was alleged to be a thirty party witness. FIRSTCOMP has presented absolutely no information regarding proper notice to all of the parties of the deposition of Talisa Miller. In fact, it is clear from the transcript that the parties at attendance of the deposition were Claimant's Attorney, Steven D. Haymond, FIRSTCOMP's Attorney, R. Daniel Addison, and Attorney for the SCUEF, Timothy B. Killen. There has been no evidence submitted by FIRSTCOMP that proper notice of this deposition was served on the Employer/Defendants, J&L Construction, LLC or R-N-M Builders & Associates, LLC or their respective attorneys. Depositions cannot be used against a defendant without the opportunity to cross-examine. If Talisa Miller had been subpoenaed to the Hearing then the alleged Employers/Defendants would have been noticed and an opportunity to cross examine whether or not the Employers/Defendants chose to attend the hearing. Without proof of notice to the Employers/Defendants of Talisa Miller's deposition, that deposition may not be used in a Hearing against the Employer/Defendants. It is hearsay and the Employers/Defendants have not had the opportunity to cross-examine.

FIRSTCOMP also sought to introduce the depositions of John Loughery and Emory Wilkie. Despite objections by the SCUEF to the admission of these depositions, proof of service of Notice of Depositions was not given pursuant to the South Carolina Rules of Civil Procedure. Appearances at that Deposition were Claimant's Attorney, Steven D. Haymond and FIRSTCOMP's Attorney, R. Daniel Addison. Not only was proper notice not provide to the SCUEF or to the Employers/Defendants, but it is clear that no one from the SCUEF was even present. FIRSTCOMP argued that this deposition testimony is admissible into a hearing de novo because no one objected to it at the first hearing. The depositions taken of the two alleged

Employees, John Loughery and Emory Wilkie may have been admissible in the first hearing only because the Defendants were in attendance and were able to be cross-examined. However, just because they were admissible then, did not make them in the de novo hearing. The evidence must be admissible at the time they are introduced into evidence. It is very interesting that FIRSTCOMP would cite Rule 32(d)(1) South Carolina Rules of Civil Procedure which states that "All errors and irregularities in the notice for taking a deposition are waived unless written objection is promptly served upon the parties giving the notice." The initial problem being that there was **NO NOTICE GIVEN**, therefore, no objection could be made.

Issues such as the admission of the depositions is exactly why a hearing de novo was ordered by the Full Commission. On remand, the Single Commissioner erred in failing to conduct a proper hearing de novo.

ISSUE

The Single Commissioner erred in all Findings of Fact 17, 18, 19, 21, 22, 23, 24, 25, 26, 36, 38 and 39 and Conclusions of Law 10, 11, 12, 13 and 14 that resulted in an order that a workers' compensation policy can "void ab initio" or "rescinded" contrary to the laws of the state of South Carolina that require a workers' compensation policy to be properly cancelled.

ARGUMENT

FIRSTCOMP argues that the workers' compensation policy it issued was void ab initio as it was procured through fraud. The SCUEF makes the argument that even if the workers' compensation policy was procured through fraud, S.C. Code Ann. §38-75-730 makes it clear that even policies procured by fraud must be properly cancelled and are never void ab initio. (S.C. Code Regs. 67-405)

Interestingly at our hearing de novo, when FIRSTCOMP should be presenting any evidence it has regarding the allegations of fraud, there is absolutely no witness to testify regarding how or when a policy was procured. There were absolutely no witnesses present for this hearing to testify for FIRSTCOMP whatsoever. Therefore, without further argument FIRSTCOMP has failed to make a case regarding any fraud much less of how its policy should be void ab initio.

CANCELLATION OF WORKERS' COMPENSATION POLICIES

The Fund asserts that an insurance company licensed to do business in South Carolina must adhere to the statutory scheme insofar as it relates to the cancellation or rescission of insurance policies.

FIRSTCOMP INS. alleges that it may declare a workers' compensation insurance policy void ab initio as part of a proceeding brought by a Claimant against its insured¹. According to FIRSTCOMP Ins., it is entitled to do so because the insurance agreement was induced by fraud on the part of John Loughery and Emory Wilkie. This argument is flawed. In particular, S.C. Code Ann. §38-75-730 governs the cancellation of workers' compensation insurance policies. Further, the Claimant, as a party to the agreement, can't be denied benefits due to the fraudulent actions of the Employers, especially where a policy was in place at the time of the accident.

FIRSTCOMP argues that S.C. Code Ann. §38-75-730 does not apply to workers' compensation policies. However, S.C. Code Ann. §38-1-20 (11) clearly states "'Casualty insurance' means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers' compensation insurance . . ."

¹ FIRSTCOMP INS. did not bring its own action to have the policy declared void ab initio, but has only asserted this as a defense.

S.C. Code Ann. §38-75-730, in specifying its requirement for cancellation, contemplates the precise types of actions that FIRSTCOMP INS. complains of herein. Specifically, cancellation for a “material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy” is “not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation.” S.C. Code Ann. §38-75-730; SCUEF APA Submissions, page 29.

Terms of cancellation also appear in the policy itself, and these also require a notice period prior to cancellation. SCUEF APA Submissions, page 10. The insurer did not reserve a right to rescission or right to void its contract.

As discussed in the Fund’s Form 58, the Courts in North Carolina have already addressed this issue. Oxendine v. TWL, Inc., 184 N.C. App. 162, 645 S.E.2d 864 (N.C. App 2007); SCUEF APA Submissions, page 31. According to the North Carolina Court of Appeals, “a workers’ compensation insurance contract will therefore never be void ab initio, but must be cancelled in the manner prescribed by N.C. Gen. Stat. §58-36-105 [the insurance policy cancellation section].” Oxendine v. TWL, Inc., 184 N.C. App. 162, 165, 645 S.E.2d 864, 866 (N.C.App. 2007); SCUEF APA Submissions, page 31. Further, the N.C. Court of Appeals pointed out that the N.C. Code Section, like S.C. Code Ann §38-75-730, “contemplates the very sort of ‘material misrepresentation or non disclosure of a material fact in obtaining the policy’ . . . [and] it clearly governs our review of this matter.” Oxendine v. TWL, Inc., 184 N.C. App. 162, 166, 645 S.E.2d 864, 866 (N.C.App. 2007); SCUEF APA Submissions, page 31; also see J. Bend v. Shamrock Services, 59 So.3d 153, 36 Fla.L.Weekly D430 (Fla.App.1 Dist. 2011) and Cruz v. New

Millenium Construction & Restoration Corp., 793 N.Y.S.2d 548, 17 A.D.3d 19 (N.Y. Sup. Ct. App. Div 3rd Dept. 2005).

To support its position that a workers' compensation insurance policy may be declared void ab inito, FIRSTCOMP INS. cites Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). However, that case is distinguishable from the instant matter because it concerned a first-person health insurance policy. That case centers on S.C. Code Ann. §38-71-40, which states:

“The falsity of any statement in the application for any policy covered by this chapter does not bar the right to recovery there under unless the false statement was made with actual intent to deceive or unless it materially affected either the acceptance of risk or hazard assumed by the insurer.”

(emphasis added). “This chapter,” as referenced in that section, is Chapter 71, or “Accident and Health Insurance.” Workers' compensation insurance policies are specifically excluded from Chapter 71: “Nothing in this chapter applies to or affects . . . any policy of workers' compensation insurance . . .” S.C. Code Ann. §38-1-20(1) (“‘Accident and health insurance’ means insurance of human beings against death or personal injury by accident . . . but not including coverages required by the Workers' Compensation Law of this State.”) S.C. Code Ann. §38-1-20 (11) (“‘Casualty insurance’ means each insurance against legal liability of the insured for bodily injury to or death of another person, including workers' compensation insurance . . .”).

This distinction is significant not only because it is statutorily based, but also because it affords protection to the injured employee, who is not at fault in this action and against whom there is not allegation of fraud. As noted by the South Carolina Supreme Court, a workers' compensation insurance policy is a contract or agreement between the insurer and the person or

persons entitled to compensation benefits. Carter v. Boyd Const. Co., 255 S.C. 274, 280, 178 S.E.2d 536, 539 (1971).

Even if a workers' compensation insurance policy could be declared void ab inito, then FIRSTCOMP INS. must show, by clear and convincing evidence, that the Claimant – the other party to the contract, per the Supreme Court – committed fraud in seeking to obtain benefits. Because the Claimant would be the party entitled to the benefits, actions by the employer(s), whether fraudulent or not, cannot affect his entitlement to benefits under the policy.

Further, it has been repeatedly established by the South Carolina Courts that “the law strictly construes insurance policies against the drafter and in favor of coverage for the insured.” General Acc. Ins. Co. v. Safeco Ins. Companies, 314 S.C. 63, 72 443 S.E.2d 813, 818 (Ct. App. 1994) (citing South Carolina State Budget & Control Bd., Div. of Gen. Servs., Ins. Reserve Fund v. Prince, 304 S.C. 241, 403 S.E.2d 643 (1991)). The Policy at issue was drafted and signed by FIRSTCOMP INS., and therefore, terms and language of the policy are to be construed in favor of the insured, the business entity formed by Emory Wilkie and John Loughery. The policy itself does not allow for the type of “relief” sought by FIRSTCOMP INS.

As its primary support for its position, FIRSTCOMP INS. cites the 1970 case of Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 176 S.E.2d 131 (1970). Chavis does not involve a casualty or workers' compensation insurance policy. Chavis is a case involving the rescission of an automobile insurance policy. Chavis was decided under former law (S.C. Code Ann. §76-750-51 (1962)), and it also predates the effective statute herein.

FIRSTCOMP INS. asserts that requiring it to provide benefits to the injured Claimant, should he be entitled to any, would not “comport with the clear policy of South Carolina in refusing to sanction fraudulent conduct . . .” This argument overlooks a number of issues.

First, FIRSTCOMP INS. was reckless and negligent in the issuance of the policy. For reasons known only to FIRSTCOMP INS. and its agent, this policy was issued where Emory Wilkie was the named applicant and listed as the sole owner of the business, but where John Loughery – not Emory Wilkie – signed the application. Then FIRSTCOMP INS. named the insured as “E&W Construction, LLC,” which doesn’t even exist. Then, after the accident and after proper cancellation of the policy, FIRSTCOMP INS. issued a refund check to Emory Wilkie alone. SCUEF APA Submissions page 28.

Even further evidence of negligence is obvious and the reason the parties are arguing this issue: FIRSTCOMP INS. backdated the policy. Clearly, backdating an insurance policy is a negligent business practice. It is axiomatic that insurance is a policy against contingencies, not against that which is already past. However, for whatever reason, this is what FIRSTCOMP’s chose to do. The solution was simple: FIRSTCOMP INS. could have made the policy effective at the time of contracting or subsequent thereto. However, they did not.

If a workers’ compensation insurance could be void ab initio (which the Fund denies), FIRSTCOMP’s negligence plays a role in whether they could be successful. That’s because the party seeking rescission, especially a sophisticated party like FIRSTCOMP INS., cannot do so where it was negligent in the formation of the contract. In fact,

“a court will not rescind a contract solely on the basis of unilateral mistake unless the party opposing rescission induced the mistake “by fraud, deceit, misrepresentation, concealment, or imposition . . . , without negligence on the part of the party claiming rescission, or where mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement.”

State Accident Fund v. South Carolina Second Injury Fund, 388 S.C. 67, 77, 693 S.E.2d 441, 446 (Ct.App. 2010) (quoting Truck South, Inc. v. Patel, 339 S.C. 40, 49, 528 S.E.2d 424, 429 (2000)).

No one has alleged that the Claimant committed any fraud. According to the Supreme Court, he is the party to this contract, and as the party, he would be entitled to benefits under the policy – not Emory Wilkie or John Loughery. Further, if FIRSTCOMP INS. were defrauded by Emory Wilkie and/or John Loughery, FIRSTCOMP INS. can find relief at law, where it can sue the parties for its damages or audit and charge additional premiums.

CONCLUSION

The Single Commissioner committed grave error in failing to conduct a proper hearing de novo. Therefore, the order on appeal must, once again, be set aside and the matter remanded for a full hearing de novo as defined in South Carolina law.

The entire order on appeal resulted from an improper order, and therefore, the legal conclusion, as to whether or not a policy was procured from fraud and whether or not a policy can be “void ab initio” are completely without substance or merit and must be reversed.

Respectfully Submitted,

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May 8, 2015
Lexington, South Carolina

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

DALLAS PAUL BESSINGER,

Claimant,

vs.

R-N-M BUILDERS & ASSOCIATES, LLC,

Employer,

and

FIRSTCOMP INSURANCE,

Carrier.

**BRIEF OF FIRSTCOMP &
RESPONSE TO BRIEF OF UEF**

This matter comes before the Appellate Panel of the South Carolina Workers' Compensation Commission pursuant to the Form 30, *Request for Commission Review*, of the South Carolina Uninsured Employer's Fund ("UEF") and the Form 30, *Request for Commission Review*, of FirstComp Insurance ("FirstComp"). In the interest of judicial economy and to avoid unnecessarily duplicative filings in this matter, FirstComp hereby submits its brief in support of its Form 30, as well as its response to the brief of UEF.

This matter arises originally out of a Form 50 filed by Dallas Paul Bessinger ("Claimant") with respect to an alleged injury sustained on January 4, 2012. In his Form 50, Claimant alleged that FirstComp was the carrier with respect to this incident pursuant to a policy of insurance issued on the date of injury. FirstComp filed a Form 51 asserting as an affirmative defense that the insurance policy issued by FirstComp to Claimant's employer, J&L Construction ("J&L"), was procured by fraud in the inducement and is, therefore, void *ab initio*. A hearing was held on July 18, 2012 before Commissioner Andrea C. Roche. A Decision and Order dated December 18, 2012 ("12/18/12 Order") was issued in which the Commissioner

found, *inter alia*, that the FirstComp workers' compensation policy at issue in this case was procured by fraud and misrepresentations and was, therefore, void *ab initio*. The Commissioner also found that the South Carolina Workers' Compensation Uninsured Employers' Fund ("UEF") was responsible for Mr. Bessinger's claim. UEF appealed that Order to the Appellate Panel.

On April 17, 2014, the Appellate Panel issued a Decision and Order ("Remand Order") vacating the 12/18/12 Order and remanding the case for a "hearing de novo to reconsider the evidence, receive further evidence, and rehear the parties or their representatives." A subsequent hearing was set before Commissioner McCaskill ("Single Commissioner") on August 21, 2014. On March 31, 2015, the Single Commissioner issued a Decision and Order ("3/31/15 Order") finding the FirstComp policy was procured through fraud and dismissed FirstComp from the claim. UEF appealed the 3/31/15 Order. FirstComp also appealed the 3/31/15 Order on the limited basis that the Remand Order was improper and the 12/18/12 Order should not have been vacated.

STATEMENT OF THE CASE

Pursuant to the Remand Order, a hearing was convened before the Single Commissioner on August 21, 2014. Present at the hearing were counsel for Claimant, counsel for UEF, and Counsel for FirstComp, with each party having submitted evidence pursuant to their respective Form 58, *Pre-Hearing Briefs*, and APA submissions. The Single Commissioner determined that all parties had been properly notified of the hearing and the hearing would proceed. Though included on the notice for the hearing, J&L did not appear either through counsel or through its identified representatives, John Loughery and Emory Wilkie. The issues for determination in the hearing were determination of Claimant's employer, determination of the proper carrier, Claimant's compensation rate and his entitlement to temporary total disability ("TTD") benefits.

At the outset of the hearing, FirstComp objected to the basis for convening a *de novo* hearing in this matter. FirstComp argued that the Remand Order was improper on the grounds that it did not contain necessary findings of fact sufficient to determine the basis for vacating the 12/18/12 Order or what, if any, error occurred in the prior hearing requiring a new hearing. The Single Commissioner found that jurisdiction was proper for him to proceed with a *de novo* hearing and that the Commission file, with the exception of self-serving declarations and unstipulated medical reports would be part of the record. UEF moved to strike certain exhibits from FirstComp's APA, specifically three deposition transcripts. The Single Commissioner took UEF's motion under advisement.

The evidence submitted in the case shows that, on the morning of January 4, 2012, Claimant fell from a roof where he had been laying roofing tar paper. At the time, Claimant was an employee of J&L Construction, LLC ("J&L"). At the time of Claimant's injury, J&L did not have a workers' comp insurance policy. After Claimant was transported to The Orangeburg Regional Medical Center for treatment, John Loughery and Emory Wilkie went to the Lexington, South Carolina location of Midlands Insurance Center, Inc. ("Midlands") to submit an application for insurance coverage and paid the initial premium payment in cash. (UEF APA p. 24; Deposition of Talisa Miller, p. 18, ll. 5-11). The application identified Mr. Wilkie as the Manager with 100% ownership of the insured. UEF APA p. 24. The signatory to the application was John Loughery. *Id.* The application indicates that the insured is a class "5437" business and is described as "Carpentry – Installation of Ca". *Id.* No prior loss history is identified and, among the specific questions asked, the response to the question "Any work performed underground or above 15 feet?" is "No". *Id.* On the basis of this application, FirstComp issued policy No. WC01331654-01 to J&L with an effective date of 12:01 a.m., January 4, 2012. (UEF APA p. 1).

UEF argued that the deposition testimony of Mr. Loughery, Mr. Wilkie and Ms. Miller should be excluded based on defective notice of those depositions when they were conducted in 2012 prior to the initial hearing in this matter. The Single Commissioner ruled that this testimony was admissible and proper as they were already part of the record of the case.

UEF also argued that S.C. Code Ann. §38-75-730 and S.C. Code Regs. 67-405 govern the cancellation of workers' compensation insurance policies and that Commission does not have the power to find a workers' compensation policy to be void, even if procured by fraud.

Claimant testified on his behalf at the hearing. Claimant testified he was hired by J&L to do framing and he worked with five or six other employees on the job. He had been working for J&L about two months prior to his injury. On cross examination by counsel for UEF, Claimant testified that he was hired by Wilkie and Loughery and that they were J&L. Claimant's father also testified at the hearing regarding his efforts at finding someone to cover his son's injuries.

The Single Commissioner found that Mr. Wilkie and Mr. Loughery committed insurance fraud when they applied for a workers' compensation policy with full knowledge that Mr. Bessinger's accident had already occurred and they failed to disclose that fact to the agent. On the basis of that fraud, the Single Commissioner found that no binding contract for insurance could exist. The Single Commissioner determined that to allow a contract for insurance to stand when based on fraud would undermine the foundation of the workers' compensation system. Consequently, the Single Commissioner ruled that the FirstComp policy provided no coverage over Mr. Bessinger's injury.

UEF contends that the Single Commissioner erred on the basis that S.C. Code Ann. §38-75-730 and S.C. Code Regs. 67-405 govern the cancellation of workers' compensation insurance policies. As discussed more fully below, the Single Commissioner properly considered these arguments and found that the cited statute and regulation do not govern where a policy of

insurance was obtained through fraud. Consequently, the findings and conclusions of the Single Commissioner were not in error and the Order should be affirmed.

ARGUMENT ON DIRECT APPEAL

As noted above, FirstComp appeals from the 3/31/15 Order on the basis that the Remand Order failed to comply with the Administrative Procedures Act and the Commission's own regulations and, consequently, it was error to vacate the 12/18/12 Order and remand the case for a *de novo* hearing. In the Remand Order, the Appellate Panel provided a Statement of Case that incorporated verbatim the Findings of Fact, Conclusions of Law and ordering provisions from the 12/18/12 Order. Following this recitation, the Appellate Panel made the following "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.

(emphasis in original) No additional findings were provided and no indication as to what "good grounds" had been shown to support the above order. As such, the Remand Order is facially invalid and does not comply with the requirements of the South Carolina Workers' Compensation Act, the regulations promulgated by the Commission, the Administrative Procedures Act, and the mandates of the South Carolina Supreme Court.

The South Carolina Workers' Compensation Act provides that, upon a request for review of a single commissioner's order, the Commission "shall review the award and, if good grounds

be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." S.C. Code § 42-17-50. This provision provides a mechanism for the Appellate Panel to reconsider evidence from a hearing on review, to receive additional evidence, rehear the parties or amend an underlying award. This provision does not expressly authorize the Appellate Panel to vacate an award and remand the case to a single commissioner for a new hearing. Consequently, the Remand Order violates the Workers' Compensation Act by ordering a remedy that is not within the statutory authority of the Commission.

Similarly, the Remand Order is contrary to the Commission's own regulations. S.C. Code Regs, §67-709(E) provides that the Appellate Panel may "modify" an order of a single commissioner by "making a new finding of fact, conclusion of law, or modifying the Hearing Commissioner's finding of fact or conclusion of law." The Appellate Panel's authority to remand is limited. The Commission's regulations provide that the Commission, when sitting as a five or six member review panel, "may remand a case to the Hearing Commissioner *only for taking additional or newly discovered evidence or for exceptional circumstances set forth in the order.*" (emphasis added). The Remand Order violates this regulation on its face as it purports to remand the entire case for a full rehearing and does so without specifying what "exceptional circumstances" require this action.

Moreover, the Proposed Order is defective as it does not satisfy the obligations of the Commission as set for the South Carolina Supreme Court under the APA. According to the Court, the Commission is required to "make such specific and definite findings upon the evidence reported as will enable this court to determine whether the general finding or conclusion should stand, particularly when there are material facts at issue." Drake v. Raybestos-Manhattan, Inc., 241 S.C. 116, 127 S.E.2d 288 (1962). "Where material facts are in

dispute, the administrative body must make specific, express findings of fact.” Brayboy v. Clark Heating Co., Inc., 306 S.C. 56, 409 S.E.2d 767 (1991). In this case, the Remand Order lacks even minimal findings of fact, much less anything that would satisfy the requirements as stated by the Supreme Court. In the Remand Order, the only findings of fact are those that were found by the Single Commissioner. The Remand Order goes on to state 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.” The Remand Order does not specify what those grounds are or why they support a rehearing of any kind, much less a full de novo hearing. The Supreme Court has made it clear that every order of the Commission must state with specificity not only what is being ordered but the supporting findings and conclusions for that order so that a reviewing court can determine what was done and why. An order purporting to vacate an order of a single commissioner without enumerating the findings supporting that action does not state its findings with sufficient specificity to allow a reviewing court to determine the propriety of those findings. Consequently, Remand Order is facially deficient and does not comply with the statutes, rules and requirements for an order of the Commission.

For the above reasons, FirstComp contends that Remand Order is invalid and it was improper, without stating with specificity the basis for its decision, to vacate the 12/18/12 Order and remand the case for a de novo hearing.

ARGUMENT IN RESPONSE TO UEF’S APPEAL

Notwithstanding the issues on direct appeal by FirstComp, FirstComp contends that the issues raised on appeal by UEF are without merit and do not warrant a reversal of the Single Commissioner. In its Brief to the Full Commission, UEF raises three (3) principal issues with respect to the 3/31/15 Order.

1. The Single Commissioner did not err in his interpretation of what constitutes a *de novo* hearing.

UEF contends that the Single Commissioner erred in accepting into evidence deposition testimony that had been admitted without objection at the prior hearing. UEF argues, without citation to any controlling authority, that a remand for a *de novo* hearing requires the Commission and the parties to “start over” and that the Commission cannot consider relevant, reliable, and probative evidence that was previously made part of the Commission record without objection from anyone. Not only does UEF’s argument lack authority, it is contrary to established law. It is common practice for reviewing courts to use the term “*de novo* hearing” when remanding for further proceedings and it has never been held that the underlying court has to pretend that otherwise probative evidence has to be readmitted as if the prior hearing had not occurred.

While UEF correctly points out that a *de novo* hearing is generally stated to be one “as if no trial whatsoever has been held in the first instance,” the true import of this is that the court or agency on remand is not bound by any findings or conclusions from the prior hearing. This is especially true given the qualifying language in the Remand Order ordering the Single Commission to “reconsider the evidence, receive further evidence, and rehear the parties.” In ordering the Single Commissioner to “reconsider the evidence,” this necessarily implies reconsideration of evidence already in the record. On its face, it does not order the Single Commission to expunge the record and “start over.” Similarly, ordering the Single Commissioner to “receive further evidence” clearly implies that some evidence has already been received. This is not an order to “re-receive” the evidence in the case. In essence, the Remand Order authorized the Single Commissioner to make any decision he saw fit based on the evidence in the record and to take additional evidence on the disputed issues.

Regardless of the specifics of the Remand Order, our courts have made it very clear that the ordering of a *de novo* hearing does not allow a party to take new positions on matters that have been previously waived or contest evidence previously admitted. The South Carolina Court of Appeals addressed this specific issue in Brunson v. American Koyo Bearings, 367 S.C. 161, 623 S.E.2d 870 (Ct. App. 2005). In that case, the employer admitted the compensability of the alleged injury but denied permanent disability. The single commissioner ordered the employer to pay temporary disability and causally-related medical care. On appeal, the Full Commission vacated the single commissioner's order and remanded for a *de novo* hearing. The claimant appealed. In affirming the dismissal of the appeal as interlocutory, the Court of Appeals held that a *de novo* hearing on remand "extends only to those issues within the application of review" and did not include issues that were not litigated previously. In short, a *de novo* hearing only involves issues that were previously litigated and preserved unless specifically ordered by the reviewing court. See e.g., Bobo v. Marshane Corp., 302 S.C. 86, 89, 394 S.E.2d 2, 4 (Ct. App. 1990) (citing In re Doherty, 222 Mass. 98, 109 N.E. 887 (1915)) ("where a remand order did not authorize the commission to expunge the old record and to make a new one, the commission lacked authority to make a new record."); Smith v. S. Carolina Dep't of Mental Health, 329 S.C. 485, 501, 494 S.E.2d 630, 638 (Ct. App. 1997), *aff'd* by 335 S.C. 396, 517 S.E.2d 694 (1999) ("The Commission in its discretion may conduct a *de novo* hearing in which testimony from all witnesses is again taken, or the Commission may rely on the testimony previously given.").

In this case, UEF's Form 30, following the 12/18/12 Order, makes no reference whatsoever to any objection as to the admissibility of any deposition testimony and, therefore, that issue is not properly contested on remand, even at a "*de novo*" hearing. Brunson, 367 S.C. at 167, 623 S.E.2d at 873 ("Since the remand to the single commissioner is limited to those matters included in Employer's appeal to the Commission, the compensability of Brunson's

contact dermatitis claim will not be relitigated.”). As discussed more fully below, UEF waived any objection to the contested depositions by not notifying any party of any those depositions prior to the first hearing in this matter. All the parties in this case were well aware of the fact of these depositions and their relevance to the issues in this case. UEF did not object to their admissibility at the initial hearing or on appeal to the Full Commission. Consequently, UEF cannot now challenge the admissibility of that testimony. Allowing UEF to argue against the admissibility of evidence that had been entered without objection at a prior hearing, and to which no objection was made until the eve of the *de novo* hearing, unfairly prejudices FirstComp who relied on UEF’s waiver and acquiescence as to this evidence. It is within the purview of the Single Commission at a *de novo* hearing to take his own view of such evidence in reaching his decision as to properly litigated issues but it does not follow that UEF may raise an objection to evidence that has been readily available and at issue in the case since 2012.

Finally, UEF takes the position that Single Commissioner erred by failing “to have any hearing at all” and that there “was no testimony taken or evidence submitted.” This argument is plainly not supported by the record in this matter. As set forth in the Single Commissioner’s 3/31/15 Order, evidence in the form of APA submissions by Plaintiff, UEF, and FirstComp was all admitted into the hearing record. Additionally, live testimony was taken from Plaintiff and Plaintiff’s father. To contend that this record and entirety of the corresponding hearing transcript constitutes “no hearing at all” is clearly without any merit whatsoever.

While reserving its objections to the enforceability of the Remand Order, FirstComp contends that the Single Commissioner committed no error in considering the previous record in this matter in conjunction with holding a *de novo* hearing to reconsider that evidence and rehear the parties. As such, UEF’s argument on appeal should be dismissed.

2. The Single Commissioner did not err in admitting deposition testimony.

In its brief, UEF argues that the Single Commissioner erred in admitting the deposition testimony of Mr. Loughery, Mr. Wilkie and Ms. Miller. The basis for this contention is UEF's belief that the original notices of deposition regarding these parties and witnesses were defective. As set forth below, this argument is without merit and the Single Commissioner committed no error in admitting the evidence.

Deposition of Ms. Miller – UEF's position is that the deposition of Ms. Miller is inadmissible in the *de novo* hearing because there is no evidence establishing that J&L was given proper notice of the witness' deposition. In making this argument, UEF is taking the novel position that it can raise a notice objection for another party. As UEF admits in its brief, UEF was represented at the deposition of Ms. Miller and actively participated in the deposition. Despite this fact, UEF now wants to argue the testimony is inadmissible because the J&L did not get proper notice of the deposition.¹ It is the position of FirstComp that UEF simply does not have standing to raise this objection or assert the rights of any other party, especially when such objection was not preserved at the time the deposition was conducted.

The South Carolina Rules of Civil Procedure state that a party must make objection to any error with respect to the notice of deposition "promptly" and such objections are deemed waived if not made "at the time the error could have been corrected." Rule 32(d), SCRCP; comments to Rule 32. Plainly, any objection as to the sufficiency of the notice for Ms. Miller's deposition could have been made, either by UEF or J&L, at that time or since. It was not until

¹ FirstComp admits that J&L was not provided written notice of the deposition of Ms. Miller. Nevertheless, the record shows that Mr. Wilkie and Mr. Loughery were provided verbal notification at their depositions the day prior. Neither objected to the deposition at that time or at any time since. J&L received notice of the *de novo* hearing and did not appear, thus any objections as to the admissibility of evidence is waived by it.

shortly before the second hearing that UEF ever voiced any objection regarding the notice as to this deposition.

UEF does not cite to any authority for its novel position that it has standing to raise a procedural objection on behalf of another defendant, especially one who did not appear at the hearing. To the extent Mr. Loughery and Mr. Wilkie have any objection as to the sufficiency of their notice under the Rules of Civil Procedure or the admissibility of any evidence at the hearing, it is incumbent on them to raise those objections, not UEF. Consequently, UEF's objections as to Ms. Miller's deposition are entirely without merit.

Deposition of Mr. Wilkie and Mr. Loughery – With respect to the depositions of Mr. Wilkie and Mr. Loughery, FirstComp admits that UEF did not get notice of their depositions until the day they were taken on April 11, 2012. Nevertheless, as counsel for UEF admitted on the record at Ms. Miller's deposition, he did receive verbal notice of the depositions of Wilkie and Loughery prior to them going forward but was unable to attend.²¹ Importantly, counsel did not object at that time to the insufficient notice, did not request that the depositions be rescheduled, nor did UEF seek to reconvene the depositions at any time after that to assert any right to cross-examine the witnesses. As the record reflects, UEF did not object to their admissibility at the initial hearing, did not attempt to cross-examine the deponents at that hearing and did not appeal the admissibility of those transcripts when requesting a review of the 12/18/12 Order by the Full Commission. Plainly, UEF has constructively if not expressly waived any objection it could have raised to a defect in the deposition notice.

² "I'm Tim Killen, and I represent the South Carolina Workers' Compensation Uninsured Employers' Fund, and I'm here voluntarily. My client did not receive actual – well, legal notice this -- . . . So I'm here voluntarily. I just found out about it yesterday. We did not receive – The fund did not receive notice of yesterday's two depositions until after they were underway or were just about to be underway, and I had a hearing out of town and I could not attend yesterday." Deposition of Talissa Miller, pp. 8-9.

In response, UEF contends that because they did not receive written notice of the depositions that “no objection could be made.” In taking this disingenuous position, UEF very conveniently omits reference to the period between April 11, 2012 and the date of the original hearing, as well as the testimony of its own attorney the next day admitting he was notified of the depositions. The record is very clear that UEF had ample time to raise an objection to any defect in the deposition notices for Wilkie and Loughery and failed to do so. This failure to timely object to the notice of deposition is a waiver of that objection. Rule 32(d), SCRCF.

Having failed to timely object to any defect in the notice of the depositions of Mr. Loughery and Mr. Wilkie, UEF now also argues that the depositions are nonetheless inadmissible at the *de novo* hearing because the witnesses were not present and available to be cross-examined at the hearing. As the record reflects, these individuals are the principals for the defendant employer, J&L. As such, they received notice of the hearing but failed to appear. Their testimony constitutes the statements of party opponents and is, by definition, not hearsay and cannot be excluded on that basis.

On its face, UEF’s argument that this *de novo* hearing is somehow different given the absence of these witnesses lacks merit because UEF had the opportunity to cross-examine these witnesses at the prior hearing as to any matter in their deposition and chose not to. In so doing, UEF expressly waived any objection to these depositions and agreed to allow their use in this matter.

3. The Single Commissioner did not err in finding that the FirstComp policy was obtained through fraud and, therefore, void *ab initio*.

UEF argues that the Single Commissioner erred in finding that a workers’ compensation policy of insurance is void when obtained through obvious and demonstrable fraud. In making this argument, it is important to note that UEF does not contest the finding that J&L committed actual insurance fraud in seeking to obtain coverage for an injury that occurred before the policy

was ever written. Rather, UEF contends that the carrier must be held on the risk for such a claim and its only remedy is to follow the statutory procedure for cancellation of a policy. FirstComp asserts that the Single Commissioner made no error in reaching this conclusion and that UEF's position is contrary to established law, is counter to public policy and would undermine the workers' compensation scheme if allowed to stand.

a. Under general principles of law, a contract procured by fraud is void.

Under South Carolina law, a contract may generally be rescinded where a party has been induced by fraud into entering into the agreement. Stated more fully:

South Carolina law allows for a contract to be rescinded for a unilateral mistake when that mistake has been induced by fraud, deceit, misrepresentation, concealment, or imposition of the party opposed to rescission, without negligence on the part of the party claiming rescission, or when the mistake is accompanied by very strong and extraordinary circumstances which would make it a great wrong to enforce the agreement.

Scott v. Mid Carolina Homes, Inc., 293 S.C. 191, 359 S.E.2d 291 (1987). With respect to insurance contracts specifically:

It has long been the law of this state that in order to void a policy of insurance on the ground that fraudulent representations were made in the procuring of such policy, the burden of proof rests upon the insurer to show, by clear and convincing evidence, not only that the statements complained of were untrue, but in addition thereto that their falsity was known to the applicant, that they were material to the risk, were relied on by the insurer, and that they were made with intent to deceive and defraud the company.

Lanham v. Blue Cross and Blue Shield of South Carolina, Inc., 349 S.C. 356, 563 S.E.2d 331 (2002). In order to void an insurance policy, our courts have required the following elements:

- (1) the statement was false;
- (2) the falsity was known to the applicant;
- (3) the statement was material to the risk;
- (4) the statement was made with the intent to defraud the insurer; and
- (5) the insurer relied on the statement when issuing the policy.

Primerica Life Ins. Co. v. Ingram, 365 S.C. 264, 269, 616 S.E.2d 737, 739 (Ct. App. 2005) (citing Strickland v. Prudential Ins. Co. of Am., 278 S.C. 82, 86-87, 292 S.E.2d 301, 304 (1982))

In this case, the Single Commissioner found that each of these elements has been established. The Single Commissioner specifically found that the application omitted any disclosure of prior losses. The Single Commissioner found that the evidence clearly shows that, at the time the application was prepared, Mr. Wilkie and Mr. Loughery both knew of Claimant's injury and had knowledge of the falsity of the information in the application. The Single Commissioner found that false representations were material and that the intent to defraud was self-evident based on the materiality of the false statements and omissions, particularly in light of the timing of the application. See Floyd v. Ohio General Ins. Co., 701 F.Supp. 1177 (D.S.C. 1988) ("Under South Carolina law, an intent to deceive may be inferred when there is no other reasonable or plausible explanation for the applicant's false representation."). The Single Commissioner also found that FirstComp had relied on these statements in issuing the policy based on the material misrepresentations and omission. Government Employees Insurance Co. v. Chavis, 254 S.C. 507, 513. 176 S.E.2d 131, 133-134 (1970) ("Where a fact is specifically inquired about, or a question so framed as to elicit a desired fact, a full disclosure must be made, and the insurer has the right to rely upon the answer."). Based on these findings, the Single Commissioner properly found that the FirstComp policy was obtained through fraud and was void *ab initio*, consistent with the general law in South Carolina.

b. S.C. Code § 38-75-730 does not abrogate the general rule.

UEF contends that S.C. Code § 38-75-730 alters the general law of South Carolina and precludes a finding that an insurance contract issued under fraudulent circumstances is void *ab initio*. S.C. Code § 38-75-730 provides: "No insurance policy or renewal thereof *may be canceled by the insurer* prior to the expiration of the term stated in the policy, except for one of the following reasons:...(2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy." S.C. Code § 38-75-730(a) (emphasis

added). In order to cancel a contract for insurance under § 38-75-730(a), certain procedures must be followed, including providing ten days written notice to the insured and the agent of record. S.C. Code § 38-75-730(b). Thus, the plain language of S.C. Code § 38-75-730 establishes that it only controls the “cancellation” of policies of insurance (including workers’ compensation policies) but does address “rescission” where the law allows such action.

“Rescission” is defined as a party’s “unilateral unmaking of a contract for a legally sufficient reason . . .” Black’s Law Dictionary, 1308 (7th Ed. 1999). The unmaking of a contract is distinguished from the cancellation of a contract. To “cancel” a contract is to “terminate a promise, obligation, or right.” *Id.* at 197; see also S.C. Code § 38-75-720(3) (defining “cancellation” as “termination of a policy at a date other than its expiration date.”). A cancellation works prospectively; a rescission is retrospective. By its terms, S.C. Code § 38-75-730 limits the rights of an insurer to unilaterally “cancel” a contract under certain circumstances. By referencing only an insurer’s right to cancel, it is evident that the law was not intended to abrogate an insurer’s right to rescind a contract obtained through fraud. As explained by our Supreme Court:

In the case of U.S. Fidelity & Guaranty Co. v. Security Fire & Indemnity Co., 248 S.C. 307, 149 S.E.2d 647, we held that cancellation refers to the termination of the policy prior to the end of the policy period, and termination refers to the expiration of policy by the lapse of the policy period. Rescission is not merely a termination of contractual obligation but is abrogation or undoing of it from the beginning, which seeks to create a situation the same as if no contract ever had existed. Brannock v. Fletcher, 271 N.C. 65, 155 S.E.2d 532. The cancellation of a liability insurance policy operates prospectively and is to be distinguished from rescission which destroys the policy *Ab initio*.

Chavis, 254 S.C. at 516, 176 S.E.2d at 135 (emphasis added). A plain reading of § 38-75-730 illustrates that this section was intended to prevent arbitrary cancellations of insurance contracts. By its terms, it authorizes cancellation for such reasons as failure to pay premiums, a substantial change in the risk assumed, breaches of contractual duties, loss of the insurer’s reinsurance and

material misrepresentations. No court has defined “material misrepresentations” as used in § 38-75-730 but the language of the statute evidences an intent to cover circumstances where an insured conceals or misrepresents material facts that would cause an insurer to refrain from issuing a policy because of the affect those misrepresentations would have on the level of risk being assumed by the insurer; for example, the applicant has an unusual claims history, prior cancellations for non-payment, or the applicant employs a class of workers that carrier ordinarily does not cover. These are instances where the facts would be material to an insurer in choosing to issue a policy but would likely fall under the provisions of § 38-75-730. The situations covered by this section are far different from the intentional concealment of an existing claim in order to fraudulently procure a policy of insurance to cover that claim.

In this case, the record is clear that the application for insurance was made after Claimant’s accident and was not disclosed on the application or to the agent. Based on this evidence, the Single Commissioner properly found that this concealment of a prior known claim constitutes insurance fraud and is grounds for rescission and voiding of the policy.

c. Claimant’s cited authority is not applicable.

Contrary to the assertion of UEF, North Carolina has not addressed the issue of a carrier’s right to rescind a policy procured by intentional fraud. The case of Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App. 2007) is readily distinguishable from the case at hand. In Oxendine, the insurer attempted to cancel a policy that was effective from March 2002 through March 2003 due to “underwriting reasons.” The opinion does not specify what the particular “underwriting reason” was. The insurer sent a notice of cancellation to the insured on November 25, 2002 but failed to send the notice in the manner prescribed by statute. The claimant was injured in an accident that occurred on January 31, 2003. The North Carolina court found that the statutory procedure had not been followed and that “underwriting reasons” was not sufficient to constitute

a “precise reason” as required by the N.C. statute. The court further concluded that the statutory cancellation provisions dealing with “material misrepresentations” contemplated the very sort of issues raised by the insured in that case. The North Carolina Court simply was not faced with the question of whether they would permit recovery under a policy fraudulently obtained to include an accident that had already occurred. Similarly, none of the other authorities cited by Claimant address the fraud at issue in this case; rather, they address situations where the misrepresentations went to concealment of the level of risk being assumed by the insurer and, therefore, are inapplicable.

d. Legal precedent supports a finding that a policy of workers’ compensation insurance is void if procured by fraud.

In arguing that the Single Commissioner erred, UEF has not produced any authority to demonstrate that South Carolina has abrogated an insurer’s generally acknowledged right to repudiate a workers’ compensation policy that was obtained through outright fraud with the intent of covering a claim that occurred prior to the issuance of the policy. The applicability of the general rule, as set forth above, in the workers’ comp context is expressly recognized in Larson’s treatise on Workers’ Compensation:

The only situation in which the insurance would be defeated for all purposes by act of the employer is that in which the insurance is absolutely *void ab initio*, rather than voidable; this would occur if the employer attempted to insure against an accident that had already occurred, by pre-dating the insurance and fraudulently concealing the known existence of an accident within the period so covered.

9 Larson’s Workers’ Compensation Law, § 150.02[4] (Rev. 2007). Furthermore, this rule has been adopted by courts in other jurisdictions that have addressed this precise issue. See e.g., Star Insurance Co. v. Neighbors, 138 P.3d 507, 512 (Nev. 2006) (holding that a workers’ compensation policy “procured by fraud for the purpose of creating the obligation to compensate a pre-existing loss is void from the beginning.”); Matlock v. Hollis, 109 P.2d 119 (Kan. 1941)

("[t]he conclusion is inescapable that the concealment of the injury went to the very heart of the contract, made it void at its inception, and no one can predicate any rights upon it."); Hunt v. Aetna Casualty and Surety Co., 387 P.2d 405 (Colo. 1963) (holding no workers' comp coverage for accident concealed by employer when ordering the policy); Century Indemnity Co. v. Jameson, 131 N.E.2d 767 (Mass. 1956) (holding that ordinary principles of nondisclosure apply in voiding workmen's comp policy ordered by owner after accident without disclosure); Lima v. Industrial Acc. Com., 1 Cal. App. 2d 43 (Cal. App. 1934) (affirming industrial commission's finding that policy that was antedated by fraud to cover accident was not binding on carrier). Based on these precedents, and the general law of this State, there is no basis for excluding workers' compensation carriers from the principal that a policy procured by fraud is void and unenforceable.

e. UEF's position is contrary to public policy.

The position argued by UEF would produce absurd results and is contrary to the public policy of this State. Adopting the rule as argued by UEF would have the perverse incentive of encouraging employers to engage in fraud, i.e., obtaining workers' comp policies only after a claim arises, knowing that the carrier would be responsible for the claim regardless of the circumstances of the procurement of the policy. Indeed, under the position of UEF, a workers' comp carrier could never be able to absolve itself of liability for a claim that occurred prior to the issuance of a policy. Under UEF's interpretation of § 38-75-730, the only recourse for an insurer who found itself victim of fraud would be to initiate cancellation procedures. Those procedures, however, would only cancel the policy as to future claims. There is no doubt that there is a presumption under South Carolina law that leans in favor of coverage for the insured but, like all presumptions, it can be overcome. Absent clear legislative intent to abrogate the general rule on

fraudulently obtained policies, there is no justification for irrevocably imposing fraudulently concealed obligations on a workers' compensation insurer.

UEF further argues that the law in South Carolina on rescission should not apply to a workers' compensation policy because the injured claimant is deemed to be a party to the contract. While this may be true with respect to validly issued policies, the same cannot be said of fraudulently obtained policies that are issued after the employee is injured. In such a case, while the employee is certainly innocent of the fraud, he is no worse position given that his employer had no workers' compensation policy at all at the time of his injury. On the other hand, the carrier is certainly prejudiced and significantly harmed if forced to cover a claim that occurred prior to the issuance of the policy and about which it had no notice or acceptance of the risk.

As noted by the Single Commission, the position argued by UEF would undermine the very foundation of the workers' comp system. The entire insurance industry is grounding on the principal of pooled risk. Every covered employer in South Carolina participates by obtaining workers compensation coverage and spreading their risk across the state with every other employer and their annual premiums pool together to cover those compensable claims that occur during the policy period. If, however, an employer were given leave (as UEF would have it) to simply wait for an injury and then go out and obtain a policy to cover that injury (whether through outright fraud or not), the resources available would quickly dry up as premiums would only be paid in the event of an accident and the exposure for those claims would almost certainly exceed the premiums paid. Such a scheme could never survive and is plainly contrary to good public policy and the sound administration of the insurance industry as a whole and the S.C. Workers' Compensation system in particular.

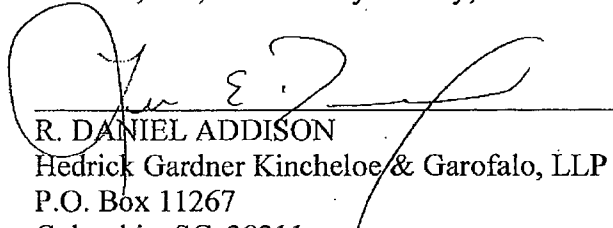
UEF's wholly unsupported response to this is its contention that backdating of the policy to 12:01 a.m. on the day the policy is issued constitutes a negligent business practice that should negate FirstComp's right to rescind a fraudulently obtained policy. With all due respect to counsel for UEF, such a contention is unsupported in law and has no basis in fact before the Commission. Counsel for UEF is not an expert on the insurance industry and is not competent to testify regarding her opinions as to the conduct of an insurance carrier and the industry standard for issuance of insurance policies. As Ms. Miller testified in her deposition, in the voluntary insurance market, policies are issued to go into effect on the day they are issued. See Miller Depo, p. 82, l. 19-24. As evidenced by the records in this case, the policy was issued on January 4, 2012 and was, therefore, effective as of the start of that day; i.e. 12:01 a.m. A business decision on the part of a carrier to assume the risk associated with backdating a policy can be based on numerous justifiable business factors and has never been found to be improper or prohibited under South Carolina law. Such business decision, however, should properly be based on the truthful representations of an applicant and it would be patently inequitable to hold the carrier liable when provided statements that are premised in committing a fraud against the carrier. It may serve UEF's position to unilaterally declare a common practice of insurance underwriting to be "negligent," but there is no competent testimony before the Commission to that effect and no evidence upon which such a finding can be based.

f. Conclusion.

For all the above reasons, FirstComp requests an order finding that Remand Order was improper and should be reversed, with the 12/18/12 Order being reinstated. In the alternative, FirstComp contends that the Single Commissioner did not err in finding that the FirstComp policy in this case was procured through fraud and was thus void *ab initio*. The contentions of UEF on appeal are based on an incorrect reading of S.C. Code § 38-75-730; are counter to the

general rules of contract law; are contrary to the greater weight of legal authority; and are contrary to the public policy of South Carolina. Consequently, without waiving its objections to the validity of the Remand Order, and in the alternative to a reinstatement of the 12/18/12 Order, the 3/31/15 Order of the Single Commissioner should be affirmed in its entirety.

Respectfully submitted, this, the 20th day of May, 2015.



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Attorneys for FirstComp Insurance

**BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479**

Dallas Paul Bessinger,)
)
 Employee/Claimant,)
)
 vs.)
)
 R-N-M Builders & Assoc., LLC,)
)
 Employer,)
)
 and)
)
 FirstComp, a Division of Markel, Inc.,)
)
 Carrier/Defendants,)
 and)
)
 SC Uninsured Employers' Fund,)
)
 Defendant.)
 _____)

**SC UNINSURED EMPLOYERS' FUND
REPLY TO DEFENDANT'S APPEAL
AND BRIEF**

FirstComp sets forth two questions on appeal:

1. The Commission erred in proceeding with the hearing as the order of the Appellate Panel remanding the case for a new hearing was invalid and contrary to the APA and Commission Regulations as the Appellate Panel's order lacked specific and definite findings to support remanding the matter for new hearing, failed to articulate any basis for the remand, and remanded the case in a manner not prescribed under the controlling statutory authority.
2. The Single Commissioner erred in Finding of Fact No. 9 and 10 by finding that the Full Commission was clear in its order when the order for the Full Commission contained to findings whatsoever in support of its order to vacate the prior order and remand the case for a de novo hearing.

ARGUMENT

It seems a rather novel argument to allege that the Workers' Compensation Commission lacks the authority to vacate and remand a matter for a hearing de novo. FirstComp sites S.C. Code Section 42-17-50 that provides the Commission "shall review the award and, if good grounds be shown therefore, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award". FirstComp is correct in citing this statute, but apparently misinterprets it. First, the statute does not mandate listing the "good grounds" only that "good grounds be shown". Second, directives to "reconsider the evidence, receive further evidence, rehear the parties..." can only be done with a new hearing.

South Carolina case law is replete with matters that involve the Workers' Compensation Commission remanding cases for a hearing de novo. A review of these cases demonstrates that an order can certainly be vacated and remanded for a hearing de novo, but if the remand give specifics regarding the issues to be remanded the Commission may not go beyond those specific issues. *Bobo v. Marshane Corp.*, 302 SC86, 394 SE2d 2 (1990) FirstComp is correct, though, in its statement that the remand order on its fact purports to remand the entire case for a full rehearing since no specific restrictions were provided.

FirstComp's brief sites the case of *Smith v. SCDMH* 329 SC485, 494 SE2d 630 (1997) which states specifically, "The Commission in its discretion may conduct a de novo hearing in which testimony from all witnesses is again taken, or the Commission may rely on the testimony previously given".

This would be a very sensible conclusion to reach given the wide variety of issues involved in the initial hearing and the hearing before the full Workers' Compensation Commission. Issues were raised regarding the proper parties, proper employees, notice to

parties, drafting errors in the order regarding stipulations, and omissions of evidence submitted, before you even get to the issue as to whether or not the Single Commissioner could declare a workers' compensation policy "Void ab initio".

FirstComp argues that when the Single Commissioner was instructed by remand order to reconsider the evidence already in the record or take new evidence that there is a presumption that the evidence in the record is admissible. Surely if the depositions submitted at the first hearing can be "reconsidered" by remand then in order to make new findings of fact the ADMISSIBILITY of that evidence should also be considered. It is without reason that FirstComp can take the position that the Commissioner can reconsider the deposition testimony but can't reconsider the admissibility of it.

Clearly all parties were not noticed and were not present during the depositions. FirstComp had another chance to make the evidence admissible at the de novo hearing, but failed and neglected to do that. Having the witnesses available for cross examination is all that had to be done. Further, the SCUEF filed a motion prior to the hearing to have the depositions omitted from evidence and FirstComp still failed to correct the admissibility issues.

FirstComp attempts to use inadmissible depositions as its "evidence" as to appealed issues such as the naming of the correct employer (direct and statutory) as well as the establishment of fraud to support its position that the policy issued should be void ab initio.

**REPLY TO THE ISSUE OF WHETHER A
WORKERS' COMPENSATION POLICY CAN EVER BE VOID AB INITIO**

First Comp alleges in its brief that the case of Oxendine v. TWL, Inc., 645 S.E.2d 864 (N.C. Ct. App. 2007) (See Attached Exhibit "A") is distinguishable from this case because the carrier attempted to cancel a policy for "underwriting reasons". However, a clear reading of this

case shows that it involves the exact same situation. In that case Canal sent a notice stating that the policy would be cancelled for "underwriting reason", but clearly on appeal, "Canal argues that TWL made material misrepresentations in its application to Canal for insurance, and that those material misrepresentations prevent recovery under the insurance contract under N.C. Gen. Stat. Section 58-3-10..." Canal took the position that NC general statute applied so that "no contract was ever formed". The court held specifically, "a workers' compensation insurance contract will therefore never be void ab initio, but must be cancelled in the manner prescribed by Section 58-3-10.

North Carolina Statute Section 58-3-10 reads:

a) No policy of workers' compensation insurance or employers' liability insurance written in connection with a policy of workers' compensation insurance shall be **cancelled** (emphasis added) by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons:

- (1) Nonpayment of premium in accordance with the policy terms.
- (2) **An act or omission by the insured or the insured's representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy** (emphasis added), continuing the policy, or presenting a claim under the policy.
- (3) Increased hazard or material change in the risk assumed that could not have been reasonably contemplated by the parties at the time of assumption of the risk.
- (4) Substantial breach of contractual duties, conditions, or warranties that materially affects the insurability of the risk.
- (5) **A fraudulent act against the company** (emphasis added) by the insured or the insured's representative that materially affects the insurability of the risk.

Almost identical to this NC statute is SC Statute Section 38-75-730 that reads:

SECTION 38-75-730. Restrictions on cancellation of policies and renewals; notice of cancellation; exceptions.

(a) No insurance policy or renewal thereof may be canceled by the insurer prior to the expiration of the term stated in the policy, except for one of the following reasons:

- (1) nonpayment of premium;
- (2) material misrepresentation of fact which, if known to the company, would have caused the company not to issue the policy;
- (3) substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the policy;
- (4) substantial breaches of contractual duties, conditions, or warranties;
- (5) loss of the insurer's reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil the insurer's solvency or place that insurer in violation of the insurance laws of this State. Prior to cancellation for reasons permitted in this item, the insurer shall notify the director or his designee, in writing, at least sixty days prior to such cancellation and the director or his designee shall, within thirty days of such notification, approve or disapprove such action.

(b) Cancellation under subsection (a)(1) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under subsection (a)(2) through (5) is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice.

Although it appears that there has been no case law on this subject in South Carolina, it has clearly been established in North Carolina and it is very relevant to note the similarities in statutes in which both South Carolina and North Carolina address the cancellation of policies.

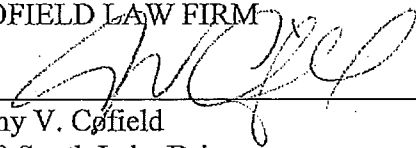
CONCLUSION

The Single Commissioner committed grave error in failing to conduct a proper hearing de novo. Therefore, the order on appeal must, once again, be set aside and the matter remanded for a full hearing de novo as defined in South Carolina law.

The entire order on appeal resulted from an improper hearing and subsequent order, and therefore, the legal conclusion, as to whether or not a policy was procured from fraud and whether or not a policy can be "void ab initio" is completely without substance or merit and must be reversed.

Respectfully Submitted,

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Employers' Fund*

June 8, 2015
Lexington, South Carolina

Oxendine v. TWL, INC., 645 S.E.2d 864 (N.C. Ct. App. 2007)

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Court of Appeals of North Carolina

Filed: June 19th, 2007

Status: Precedential

Citations: 645 S.E.2d 864

Docket Number: COA06-1397

Judges: Elmore

Fingerprint: 092cc6d6ab4adb7bd3aecfc06db2347d68a93adc

645 S.E.2d 864 (2007)

**Phillip OXENDINE, Plaintiff-Appellee,
v.
TWL, INC., Defendant-Appellee, and
Canal Insurance Company, Defendant-
Appellant.**

No. COA06-1397.

Court of Appeals of North Carolina.

June 19, 2007.

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McAngus, Goudelock & Courie, PLLC, by Trula R. Mitchell, Charlotte, for defendant-appellant.

ELMORE, Judge.

The present appeal stems from the workers' compensation insurance contract between TWL, Inc. (TWL) and Canal Insurance Company (Canal). Canal and TWL entered into an insurance contract in March, 2002; the policy's effective dates were 20 March 2002 through 20 March 2003. On 18 September 2002, Canal prepared a "Notice of Cancellation of Insurance." The notice stated that TWL's policy would be cancelled, effective 7 December 2002, for "underwriting reasons." On 25 November 2002, Patty Watts, who worked for Canal's managing agent, Golden Isle Underwriting, Inc. (Golden), sent TWL a letter thanking TWL for its recent payment and stating that TWL's policy would be cancelled 7 December 2002 due to "underwriting reasons." TWL had paid its premiums through 7 December 2002. All parties agree that the notice of cancellation was sent via regular mail, and that the reason given for the purported cancellation was "underwriting reasons."

On 31 January 2003, Phillip Oxendine (plaintiff) was involved in a car accident. At that time, plaintiff worked for TWL; the accident arose out of his employment with the company. Plaintiff suffered serious injuries and incurred medical expenses in excess of \$200,000.00. All parties agree that plaintiff's injury was compensable. However, as a result of the dispute as to insurance coverage, plaintiff's payments were significantly delayed. Accordingly, plaintiff filed a motion to join Canal as a party on 20 April 2004, which Chief Deputy Commissioner Stephen T. Gheen granted in an order filed 28 April 2004.

On 27 June 2006, Chairman Buck Lattimore, on behalf of the Full Commission, filed an opinion and award affirming Deputy Commissioner George R. Hall, III's 22 August 2005 opinion and award.^[1] Canal appealed.

On appeal, Canal argues that TWL made material misrepresentations in its application to Canal for insurance, and that those material misrepresentations prevent recovery under the insurance contract under N.C. Gen. Stat. § 58-3-10 and related case law. *See, e.g., Bell v. Nationwide Ins. Co.*, 146 N.C.App. 725, 726, 554 S.E.2d 399, 401 (2001) (noting, "It is a basic principle of insurance law that the insurer may avoid his obligation under the insurance contract by a showing that the insured made representations in his application that were material and false.") (quotations and citations omitted). Accordingly, argues Canal, the Full Commission erred in holding that cancellation of the policy was required pursuant to N.C. Gen.Stat. § 58-36-105. Canal's argument is without merit.

Our standard of review for cases originating in the Industrial Commission is well established:

Our review of the Commission's opinion and award is limited to determining whether competent evidence of record supports the findings of fact and whether the findings of fact, in turn, support the conclusions of law. If there is any competent evidence supporting the Commission's findings of fact, those findings will not be disturbed on appeal despite evidence to the contrary. However, the Commission's conclusions of law are reviewed *de novo*.

Rose v. City of Rocky Mount, ____ N.C.App. ____, ____, 637 S.E.2d 251, 254 (2006) (internal quotations, alterations, and citations omitted). "A question of statutory interpretation is ultimately a question of law for the courts." *Brown v. Flowe*, 349 N.C. 520, 523, 507 S.E.2d 894, 896 (1998) (citation omitted). We therefore review this issue, which is controlled by statute, *de novo*.

The crux of Canal's argument is that the insurance contract at issue was void *ab initio* due to alleged misrepresentations *866 TWL made in its application for insurance. Because the contract was never valid to begin with, argues Canal, the requirements for cancellation found in N.C. Gen.Stat. § 58-36-105 do not apply. Instead, Canal would have this Court apply N.C. Gen.Stat. § 58-3-10 and hold that

no contract was ever formed. We hold that N.C. Gen.Stat. § 58-36-105 does apply; a workers' compensation insurance contract will therefore never be void *ab initio*, but must be cancelled in the manner prescribed by N.C. Gen.Stat. § 58-36-105.

N.C. Gen.Stat. § 58-3-10 reads: "All statements or descriptions in any application for a policy of insurance, or in the policy itself, shall be deemed representations and not warranties, and a representation, unless material or fraudulent, will not prevent a recovery on the policy." N.C. Gen.Stat. § 58-3-10 (2005).

N.C. Gen.Stat. § 58-36-105 is titled "Certain workers' compensation insurance policy cancellations prohibited." N.C. Gen.Stat. § 58-36-105 (2005). It reads, in pertinent part:

(a) No policy of workers' compensation insurance . . . shall be cancelled by the insurer before the expiration of the term or anniversary date stated in the policy and without the prior written consent of the insured, except for any one of the following reasons:

* * *

(2) An act or omission by the insured or the insured's representative that constitutes material misrepresentation or nondisclosure of a material fact in obtaining the policy, continuing the policy, or presenting a claim under the policy.

N.C. Gen.Stat. § 58-36-105 (2005).

It is a general rule of statutory construction that

[w]here one of two statutes might apply to the same situation, the statute which deals more directly and specifically with the situation controls over the statute of more general applicability. When two statutes apparently overlap, it is well established that the statute special and particular shall control over the statute general in nature . . . unless it clearly appears that the legislature intended the general statute to control.

Fowler v. Valencourt, 334 N.C. 345, 349, 435 S.E.2d 530, 532-33 (1993) (quoting *Trustees of Rowan Technical College v. J. Hyatt Hammond Associates, Inc.*, 313 N.C. 230, 238, 328 S.E.2d 274, 279 (1985)) (internal quotations and citations omitted).

In this case, § 58-3-10 is the more general statute, applying to "any application for a policy of insurance." N.C. Gen.Stat. § 58-3-10 (2005). In contrast, § 58-36-105 applies specifically to workers' compensation insurance. As § 58-36-105 contemplates the very sort of "material misrepresentation or nondisclosure of a material fact in obtaining the policy" that Canal alleges in this case, it clearly governs our review of the matter. N.C. Gen.Stat. § 58-36-105(a)(2) (2005).

Having established that N.C. Gen.Stat. § 58-36-105 applies, we must consider whether Canal's attempted cancellation of the policy was effective. N.C. Gen.Stat. § 58-36-105 provides in pertinent part:

(b) Any cancellation permitted by subsection (a) of this section is not effective unless written notice of cancellation has been given by registered or certified mail, return receipt requested, to the insured not less than 15 days before the proposed effective date of cancellation. . . . The notice shall state the precise reason for cancellation. Whenever notice of intention to cancel is required to be given by registered or certified mail, no

cancellation by the insurer shall be effective unless and until such method is employed and completed.

N.C. Gen.Stat. § 58-36-105(b) (2005) (emphasis added).

It is uncontested that Canal failed to send its purported notice of cancellation via registered or certified mail. Despite this, Canal argues that "[t]he legislative intent of N.C. Gen.Stat. § 58-36-105 was fulfilled" by TWL's actual receipt of the notice more than fifteen days prior to cancellation.

As plaintiff points out in his brief, "If the North Carolina Legislature intended to forego the requirement of service by registered or certified mail, it would not have provided language in the statute which specifically states that a cancellation is not effective until service by certified or registered *867 mail is 'employed and completed.'" "[A] statute must be considered as a whole and construed, if possible, so that none of its provisions shall be rendered useless or redundant. It is presumed that the legislature intended each portion to be given full effect and did not intend any provision to be mere surplusage." *R.J. Reynolds Tobacco Co. v. N.C. Dep't of Env't & Natural Res.*, 148 N.C.App. 610, 616, 560 S.E.2d 163, 168 (2002) (quoting *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981)) (internal quotations and citations omitted) (alteration in original). Canal's argument regarding substantial compliance therefore must fail.

Moreover, even if this Court were to agree on that issue, we could not hold that the bald assertion of "underwriting reasons" constitutes a "precise reason for cancellation."^[2] No court has interpreted the meaning of "precise reason." As our Supreme Court recently stated, however, "When the language of a statute is clear and without ambiguity, it is the duty of this Court to give effect to the plain meaning of the statute, and judicial construction of legislative intent is not required." *Patronelli v. Patronelli*, 360 N.C. 628, 631, 636 S.E.2d 559, 561 (2006) (quoting *Diaz v. Div. of Soc. Servs.*, 360 N.C. 384, 387, 628 S.E.2d 1, 3 (2006)). The term "precise" is defined as "[c]learly expressed or delineated; definite," or "[e]xact, as in performance or amount; accurate or correct. . . ." *The Am. Heritage Coll. Dictionary* 1076 (3rd ed. 1997). We think it clear that a vague assertion of "underwriting reasons" fails to meet that standard. Furthermore, we observe that our legislature demands, "[i]n the event of an adverse underwriting decision," that an insurance company "provide [] the applicant, policyholder, or individual proposed for coverage with the *specific reason or reasons* for the adverse underwriting decision . . ." N.C. Gen.Stat. § 58-39-55 (2005) (emphasis added). As noted, we "presume [] that the legislature intended each portion [of a statute] to be given full effect and did not intend any provision to be mere surplusage." *R.J. Reynolds Tobacco Co.*, 148 N.C.App. at 616, 560 S.E.2d at 168. If the legislature believed that the phrase "underwriting reasons" was precise, it is unlikely that it would have included a requirement that insurance companies provide "specific reason or reasons" for adverse underwriting decisions. Accordingly, Canal's purported notice of cancellation stumbles over another statutory hurdle.

Canal concedes that it failed to follow the procedure outlined by N.C. Gen.Stat. § 58-36-105. Accordingly, the insurance contract was in effect at the time of the compensable injury as a matter of law. Canal's remaining arguments on appeal are therefore irrelevant, and the Full Commission's opinion and award are affirmed.

Affirmed.

Judges HUNTER and GEER concur.

NOTES

[1] The earlier opinion and award does not appear to be a part of the record on appeal.

[2] We note that Canal's only treatment of this issue in its brief is a statement that "[t]he reason for cancellation was noted." We will not consider unsupported contentions in the absence of legal argument or authority. *See, e.g., Animal Legal Def. Fund v. Woodley*, ___, N.C.App. ___, ___, 640 S.E.2d 777, 779 (2007) ("Assignments of error not set out in the appellant's brief, or in support of which no reason or argument is stated or authority cited, will be taken as abandoned.") (quotations and citations omitted).

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner T. Scott Beck
Commissioner Susan S. Barden
Commissioner Avery B. Wilkerson, Jr.

RECEIVED

OCT 02 2015

SC Court of Appeals

SCWCC File No. 1200479

Dallas Paul Bessinger, ... Claimant

v.

R-N-M Builders & Associates, LLC, Employer; and
FirstComp a division of Markel, Inc., Carrier; and
South Carolina Uninsured Employers' Fund, ... Defendants

of whom R-N-M Builders & Associates, LLC, Employer and
FirstComp a division of Markel, Inc., Carrier
is the Respondent

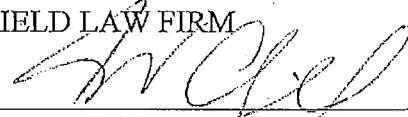
of whom the South Carolina Uninsured Employers'
Fund is the Appellant

NOTICE OF APPEAL

South Carolina Uninsured Employers' Fund appeals the Decision and Order of Commissioner T. Scott Beck, Commissioner Susan S. Barden and Commissioner Avery B. Wilkerson, Jr., September 3, 2015. Appellant received written notice of entry of this order on September 3, 2015.

Attorney's Signature on Following Page

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION APPELLATE PANEL

T. Scott Beck, Commissioner
Susan S. Barden, Commissioner
Avery B. Wilkerson, Jr., Commissioner

W.C.C. File No. 1200479

Dallas Paul Bessinger, ... Claimant,

v.

R-N-M Builders & Associates, LLC, ... Employer/Defendant,

and

FirstComp a division of Markel, Inc., ... Carrier/Defendant,

and

S.C. Uninsured Employers Fund.....Defendant.

Of Whom

Claimant, Employer/Defendant, and S.C. Uninsured Employers Fund are Respondents,

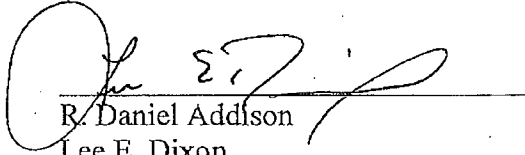
and

Carrier/Defendant is Appellant.

NOTICE OF CROSS-APPEAL

The above-captioned Carrier/Defendant, FirstComp a division of Markel, Inc.
("FirstComp"), hereby cross-appeals the Orders of the Appellate Panel of the Full Commission

dated September 3, 2015 and April 17, 2014. FirstComp received Appellant's Notice of Appeal on October 6, 2015.



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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 1200479

DALLAS P. BESSINGER,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
J&L CONSTRUCTION, LLC AND R-N-M	)	
BUILDERS & ASSOCIATES, LLC,	)	EMORY WILKIE
	)	
EMPLOYER,	)	
	)	
FIRSTCOMP INSURANCE,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Emory Wilkie, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 9:35 a.m., Wednesday, April 11th, 2012, at the law offices of Harris & Graves, 1518 Richland Street, Columbia, South Carolina.

COPY

Reported by
Sandra M. Snead

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Exhibits

No exhibits marked.

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, has been redacted or blacked out.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

Emory Wilkie, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: Emory Wilkie.

Examination

By Mr. Addison:

Q Mr. Wilkie, my name is Dan Addison. I'm here on behalf of FirstComp Insurance in regard to a workers' compensation claim that's been filed by Dallas Bessinger. We're here today to take your deposition in regard to your position with the employer -- or putative employer of Mr. Bessinger. Before we get started into the guts of all this, I need to inform you that I have been -- I have been retained by FirstComp to represent their interest only. I do not represent you or J&L Construction in any manner. If you so choose, you may have an

1 attorney represent you in all of this. That's up
2 to you. That's your decision. FirstComp has
3 indicated they do not believe that they have a
4 policy of insurance with your company and, as such,
5 they are going to provide -- not going to provide
6 any sort of defense for you or your company in
7 this. Our position is, is there is no policy that
8 would cover any of the events that Mr. Bessinger
9 alleges occurred back in January. There is a
10 hearing scheduled for next week in front of
11 Commissioner Wilkerson with the South Carolina
12 Workers' Compensation Commission. It's going to be
13 held --

14 Mr. Addison: Here, Steve, or is it in
15 Orangeburg?

16 Mr. Haymond: St. Matthews.

17 Q -- in St. Matthews on the 18th at 2:15. It's been
18 sent -- There's a hearing notice that's been sent
19 out on this. We've informed the commission that we
20 do not represent you and that we are only
21 representing -- when I say we, I'm talking about
22 my law firm and me -- only represent FirstComp
23 Insurance in regard to this claim. We're going to
24 do your deposition today. It's your right to have
25 an attorney here today, as well. If you want that

1 attorney, it's your right. Certainly, if you want
2 to raise that, you certainly can, but you have to
3 tell me whether or not you want to do that. If you
4 don't want to have an attorney and want to go
5 forward today, that's fine. We can go forward
6 today, as well.

7 A I mean, I don't know if I need one, and I couldn't
8 afford one anyways.

9 Q Okay. So, it would be your decision to go ahead
10 and go forward today without an attorney?

11 A I guess I have to.

12 Q Okay. All right. Okey-doke.

13 [Off the record briefly at 9:37
14 a.m.]

15 Examination Continues

16 By Mr. Addison:

17 Q All right. Give me your -- You indicated your
18 name was Emory Wilkie. Do you have a middle name,
19 first name, anything? Is it just Emory Wilkie?

20 A L, middle initial.

21 Q I'm sorry?

22 A L is my middle initial.

23 Q What does that stand for?

24 A Lee.

25 Q Okay. How old are you, Mr. Wilkie?

- 1 A Let's see. Be forty-one.
- 2 Q Okay. What is your current address?
- 3 A 104 Marion Drive, Lexington.
- 4 Q How long have you been at that address?
- 5 A I don't know. I can't remember.
- 6 Q A year or two years, five years, ten years? I
- 7 mean, is it a long time, a short time?
- 8 A A year or two, something like that.
- 9 Q Okay.
- 10 A I can't remember.
- 11 Q Before that, did you live in the Lexington area?
- 12 A Yeah.
- 13 Q Okay. How long have you lived in the Lexington
- 14 area?
- 15 A Ten years.
- 16 Q Okay. And before that, where did you live?
- 17 A New York.
- 18 Q Okay. New York City or New York state?
- 19 A State.
- 20 Q Okay. Where in New York?
- 21 A Like south of Buffalo.
- 22 Q Okay. All right. Now, there's a company that's
- 23 called J&L Construction or J&L Construction, LLC,
- 24 or -- Is that your company?
- 25 A No.

1 Q Whose company is that?
2 A It's John Loughery's.
3 Q Okay. Is he the one that incorporated J&L?
4 A I don't think he ever incorporated. He was just --
5 Q Okay. Well, I'm just --
6 A -- doing business as John Loughery, as J&L
7 Construction.
8 Q Okay. I mean, because the documents that we've
9 received indicate that the company is an LLC, a
10 limited liability corporation which would denote
11 that it had been incorporated at some point. Do
12 you know whether or not it was ever incorporated?
13 A No, I don't think so.
14 Q Okay. Are you an officer of the company?
15 A No. I just -- I get work every now and then, you
16 know, help him out, --
17 Q Okay.
18 A -- but he just --
19 Q You just work for Mr. Loughery sometimes?
20 A Right.
21 Q Okay.
22 A I just happened to be a day laborer for Ronnie, and
23 I got him this job doing this house.
24 Q Okay. You got him this job. You mean Mr.
25 Loughery?

- 1 A Yeah.
- 2 Q Okay. And you do some work for Ronnie. Is Ronnie
- 3 the guy that owns R-N-M Construction?
- 4 A Right.
- 5 Q All right. And what's Ronnie's name?
- 6 A Ronnie Stokes.
- 7 Q Okay. How often have you worked for Ronnie Stokes?
- 8 A Just on and off. I mean, if he needs some help for
- 9 a day or something, he'll call me, and I'll go out
- 10 and help him for a day.
- 11 Q Okay. What does on and off mean? How long have
- 12 you worked for him? Has it been a year or two
- 13 years, five years?
- 14 A Well, a couple years. I've been working for him on
- 15 and off for a couple of years. You know, if he
- 16 needs a hand with something, he'll call me.
- 17 Q All right. Do you actually have a business, any
- 18 sort of incorporated company for yourself?
- 19 A No.
- 20 Q Okay. So, when you do any work for anybody, they
- 21 just pay you as Emory Wilkie; they don't pay --
- 22 A Right.
- 23 Q -- Emory Wilkie, LLC or Emory Wilkie --
- 24 A Correct.
- 25 Q -- doing business as EW Construction or anything

- 1 like that?
- 2 A Right.
- 3 Q Okay. And when you get paid, how do you normally
- 4 get paid? Is it cash or do you get a check from
- 5 folks when they're paying you --
- 6 A It depends. Cash, check, whatever they give me.
- 7 Q Okay. And when you get a check made out to you, is
- 8 it made out to Emory Wilkie or is it made out to
- 9 somebody else?
- 10 A Made out to me.
- 11 Q Okay. All right. How long have you been doing any
- 12 work with John Loughery?
- 13 A On and off for a couple of years.
- 14 Q Okay. And what exactly -- type of work does John
- 15 Loughery do on a regular basis?
- 16 A Any type of construction he can find.
- 17 Q Okay. When you say any kind of -- any type of
- 18 construction, are you talking about primarily
- 19 residential, commercial, a mix thereof?
- 20 A I guess anything he can find.
- 21 Q Okay. Is it framing work, electrical work?
- 22 A Mainly framing, --
- 23 Q Okay.
- 24 A -- I think.
- 25 Q Mainly framing?

1 A Yeah.

2 Q All right. Does he do any other type of
3 construction work, other than framing? Does he do
4 any trim work?

5 A I don't think so, but -- I mean, he'd probably
6 rake your lawn, though.

7 Q I'm sorry?

8 A I said he'd do anything, including raking your
9 lawn.

10 Q Okay.

11 A I mean, he ain't had no work in so long.

12 Q All right. But what was his -- What is his
13 primary focus as far as you know? Is it doing
14 framing work?

15 A Yeah, framing.

16 Q Okay. And how about you? What have you done? I
17 know you said you were doing day labor for various
18 people.

19 A I do day labor for -- for, you know, Ronnie.

20 Q Okay. And what type of -- When you say day labor
21 for Ronnie, what type of work are you doing? What
22 sort of jobs are you doing for him?

23 A It could be anything. I mean, we could be picking
24 trash up at a job, sweeping a house out, you know,
25 any -- anything.

1 Q Do you do any painting for him? Does he have other
2 crews that do that?
3 A I've done a little painting, yeah.
4 Q Okay. Done any framing for Ronnie?
5 A A little.
6 Q Okay. Have you done any roofing for Ronnie?
7 A No.
8 Q Okay. He has other crews that do that?
9 A Yeah. I mean, he's --
10 Q Are we talking about primarily remodel --
11 A He's --
12 Q -- jobs or new construction jobs?
13 A Yeah, he's -- He does more like trim, trim stuff.
14 Q I'm sorry?
15 A Trim work.
16 Q Who? Ronnie?
17 A Yeah. That's more like what he does.
18 Q Okay. But he does some remodeling work, does he
19 not?
20 A Yeah.
21 Q Okay. And he does some new construction, as well,
22 does he not?
23 A Right.
24 Q Okay. And he does some commercial work, as well,
25 does he not?

1 A I don't know. I don't know what --
2 Q Okay.
3 A -- commercial works Ronnie does.
4 Q Well, not just building a residential home; also
5 possibly working on office buildings or that type
6 of stuff? He may do some of that from time to
7 time? Do you know?
8 A He might. I don't know. I ain't never done no
9 office buildings with him.
10 Q You've never done anything with him on that?
11 A Not with office buildings, no.
12 Q Okay. All right. When you work with Ronnie and --
13 How many times have you brought John Loughery in to
14 work with Ronnie, as well, before this?
15 A I can't recall bringing him in before this.
16 Q Okay. How did you know John Loughery?
17 A Just -- Well, he lives close to me, and I've done
18 work with him before.
19 Q Okay. So, you had worked with him in the past
20 before this, just not for Ronnie Stokes?
21 A Right.
22 Q Okay. When y'all worked together before, how --
23 who brought who in? Did he bring you into the job
24 or did you bring him in, or how would that work?
25 A Well, we both used to work for Carolina Residential

1 before they went under, --

2 Q Okay.

3 A -- and that's -- that's why John started his little

4 thing.

5 Q All right.

6 A And I -- You know, I worked with him there.

7 That's how I know him.

8 Q Carolina Residential was what? What were they?

9 A Framing company.

10 Q Okay. And they were doing residential

11 construction, framing work for some of the bigger

12 builders or --

13 A Yeah, I mean, --

14 Q So, y'all go around and frame up new houses or --

15 A Well, that's --

16 Q -- possibly some --

17 A -- that's what we used to do. I mean, I --

18 Q That's what I'm asking you, is -- With Carolina

19 Remodel, is that what y'all were doing, was framing

20 up new houses?

21 A Yeah, back in the early 2000s.

22 Q All right. Back in the go-go days?

23 A Yeah.

24 Q All right.

25 A About mid 2000, I got hit by a car and messed up my

1 knees, and that kind of -- You know, I quit doing
2 a lot of construction work.

3 Q All right. When did -- To your knowledge, when
4 did John Loughery start J&L Construction?

5 A If I had to guess, I'd say at least four years ago,
6 I would think.

7 Q Four years ago?

8 A I would think so.

9 Q Okay.

10 A That's just a guess. I mean, I don't really know.

11 Q Had you worked with him under the name J&L before
12 this?

13 A Yeah.

14 Q Okay.

15 A I mean, I think he was working under J&L probably a
16 year or two before I even --

17 Q Okay.

18 A -- went to help him the first time.

19 Q All right. At any point, were you ever an owner or
20 operator of J&L --

21 A No.

22 Q -- Construction, LLC?

23 A No.

24 Q All right. To your knowledge, who was the only --
25 or who were the owners or -- and operators of J&L?

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- 1 A John Loughery?
- 2 Q Is he the only one as far as you know?
- 3 A As far as I know, yeah.
- 4 Q Okay. All right. Were you on the job site when
- 5 Dallas Bessinger got hurt back in January?
- 6 A No.
- 7 Q You were not?
- 8 A No.
- 9 Q Where were you that day?
- 10 A I was at Walmart trying to get a prescription. I
- 11 had bronchitis.
- 12 Q Okay. Did you have anything to do with any
- 13 dealings with Mr. Bessinger that day?
- 14 A No.
- 15 Q Okay. An application for insurance was entered
- 16 into that day with Midlands -- Midlands Insurance
- 17 Center over on Columbia Avenue in Lexington under
- 18 the name of E&L Construction, LLC with a -- an
- 19 address of 248 Fox Trot Trail in Pelion -- do you
- 20 know who lives at Fox Trot Trail --
- 21 A Yeah, that's John's address.
- 22 Q -- that's his address -- okay -- indicating that
- 23 the company did installation of cabinetry. At any
- 24 point, did y'all ever do any cabinetry installation
- 25 as the primary focus of what you and John were

- 1 doing together?
- 2 A No.
- 3 Q Okay. Can you think of a job where y'all ever did
- 4 any cabinetry, --
- 5 A Um, --
- 6 Q -- where you were doing just installation of
- 7 cabinetry?
- 8 A I mean, I ain't never done one -- none with him,
- 9 no.
- 10 Q Okay. And it indicates that the partners' or
- 11 officers' relatives to be included or excluded as
- 12 the individuals owning the business. It names
- 13 Emory Wilkie as being the manager, having 100
- 14 percent of the ownership of the company.
- 15 A I don't know why that's on there.
- 16 Q Okay. You have no clue why your name would have
- 17 been put on there?
- 18 A No.
- 19 Q Do you -- Did you ever have any ownership in any
- 20 business known as E&L Construction, LLC?
- 21 A No.
- 22 Q Okay. Did you believe yourself to be Dallas
- 23 Bessinger's boss?
- 24 A No.
- 25 Q How did Dallas Bessinger come to this job site? Do

1 you know?

2 A I know he called Robert and called me on a constant

3 basis.

4 Q Robert who?

5 A Robert Bessinger.

6 Q Who is Robert Bessinger?

7 A He's another one that works with us.

8 Q Okay. And is that his dad, his brother or his

9 cousin? Do you know?

10 A Who?

11 Q Robert Bessinger. Who is he?

12 A He -- He's the one that used to have Carolina

13 Residential.

14 Q Okay. And do you know how he is related to Dallas?

15 Any clue?

16 A I don't think he is.

17 Q Okay. It's just --

18 A I just think it's coincidence they got the same

19 name.

20 Q The same name. The same name but not related as

21 far as you know. So, Robert Bessinger was also

22 someone working on this job with y'all down in

23 Orangeburg?

24 A Yeah.

25 Q Okay.

1 A Uh-huh.

2 Q I'm just trying to understand the circumstances of

3 how Dallas Bessinger came to be on this job site.

4 From my understanding, you were asked by Ronnie

5 Stokes to work on this job site in Orangeburg, and

6 he needed additional help, and, so, you brought

7 John Loughery in. Is that correct?

8 A Right.

9 Q You gave him John's name, and Ronnie hired John as

10 the --

11 A Right.

12 Q -- as the other person to work on the job, --

13 A (Nods head.)

14 Q -- correct?

15 A Correct.

16 Q All right. Was this new construction? Was it a

17 remodel? What were y'all doing --

18 A It was new.

19 Q All right. A new -- Building a new house?

20 A Right.

21 Q All right. And what were y'all hired on to do?

22 What were y'all actually doing down there at the

23 time, back in January, the first week of January?

24 Were y'all framing --

25 A Oh.

- 1 Q -- it out?
- 2 A Yeah, framing it out.
- 3 Q All right. So, y'all were the frame crew down
- 4 there building -- doing the actual framing of the
- 5 -- of this house?
- 6 A Correct.
- 7 Q Okay. All right. Then y'all needed a crew to do
- 8 that, obviously?
- 9 A Right.
- 10 Q Okay. Who was the person that put the crew
- 11 together?
- 12 A Well, I mean, it was mainly me, Robert and John,
- 13 and then Paul when he wasn't doing his roofing.
- 14 Q Paul? That's Mr. Bessinger?
- 15 A Right.
- 16 Q That's Dallas, who I'm calling --
- 17 A Dallas.
- 18 Q -- Dallas?
- 19 A Yeah. I mean, I guess he has a roofing company or
- 20 something with his brother, and he would come on
- 21 days when he wasn't roofing.
- 22 Q Okay. And, so, he -- He would come whenever he
- 23 had an opportunity; he'd come and do some work on
- 24 this, as well?
- 25 A Right.

- 1 Q Okay.
- 2 A He was just looking for extra work and --
- 3 Q Okay. And at that time when he was hurt, what were
- 4 -- what was going on then? Were y'all roofing the
- 5 building? Were you sheathing the top of it? What
- 6 was -- You know, were you still framing it? What
- 7 was going on? Do you know?
- 8 A No. It was already all sheeted and everything.
- 9 Q Okay. So, was it being roofed, then, at that
- 10 point? Do you know?
- 11 A No.
- 12 Q Okay. What was going on construction-wise on
- 13 January the 4th, if you know? You were out sick
- 14 that day?
- 15 A No, --
- 16 Q You said you had bronchitis. Were you there the
- 17 day before?
- 18 A No. I was -- I was gone, at the pharmacy getting
- 19 -- I drove everybody back and forth. I mean, the
- 20 main reason I was on the job is because I'm the
- 21 only one that had a driver's license and a vehicle.
- 22 Q Okay. All right. Okey-doke. So, you went to the
- 23 pharmacy to fill a prescription, but you had been
- 24 to the job site that morning?
- 25 A Yeah. I took everybody out to the job site and --

- 1 Q Took everybody. And when you say everybody, what
2 is -- who is everybody?
- 3 A Let me think who was there. John, Robert, Dallas,
4 and I think his nephew or something.
- 5 Q Whose nephew?
- 6 A Dallas'.
- 7 Q Okay. All right. Do you know that person's name?
- 8 A No.
- 9 Q Okay. All right. So, everybody goes -- You take
10 them all out there. You're the only guy with a
11 driver's license and a vehicle. You got them all
12 out there. So, you take everybody -- And,
13 obviously, y'all were going from the Lexington area
14 down to the Orangeburg --
- 15 A Right.
- 16 Q -- area, correct?
- 17 A Correct.
- 18 Q Okay. So, you drive everybody down, you drop them
19 off. And then you went to the pharmacy at the
20 Walmart in Orangeburg?
- 21 A Yeah.
- 22 Q Okay. So, you went to the Orangeburg Walmart to
23 get a prescription filled for something for your
24 bronchitis?
- 25 A Right.

- 1 Q And that's when the injury occurred?
- 2 A Yeah.
- 3 Q Okay. What were they doing that morning before the
- 4 injury occurred? What was the crew working on?
- 5 A I think they were working on some stuff inside.
- 6 Q Okay. Well, Mr. Bessinger fell off the roof, so
- 7 why would he have been out on the roof? Do you
- 8 know?
- 9 A I don't know because I wasn't there at the time.
- 10 Q Okay. But it was sheathed as far as you knew?
- 11 A Oh, yeah, it was sheathed.
- 12 Q Was the tar paper already down?
- 13 A No.
- 14 Q Okay. Do you think they might have been putting
- 15 tar paper on?
- 16 A Maybe.
- 17 Q Okay. All right. But that was something y'all
- 18 were supposed to be doing, was all that type of
- 19 work? Y'all were the ones that sheathed it, y'all
- 20 were the ones that framed it out, and y'all were
- 21 the ones --
- 22 A Right..
- 23 Q -- that were going to put the tar paper down on it
- 24 to -- You were going to do the dry-in, right?
- 25 A Right.

1 Q You might not have been roofing it, but you were
2 going to do the dry-in phase?
3 A Right.
4 Q Okay. So, the fact that he was up on the roof was
5 not unexpected?
6 A No.
7 Q Okay. All right. So, who made the arrangements
8 for you to be the one to drive everybody down
9 there?
10 A Well, I'm the only one that had a vehicle and a
11 license, so that's --
12 Q Is that by default? Did everybody say --
13 A Yeah.
14 Q -- you've got to take us down there, --
15 A Yeah.
16 Q -- or did Ronnie Stoke say I want you to take
17 everybody down there? I mean, how did it work?
18 A No. He -- John don't have a license, and nobody
19 has a truck or a vehicle, so, you know, I drove
20 them back and forth all the time.
21 Q Okay. All right. You went to the -- went to the
22 pharmacy to get your prescription filled. Did you
23 go back to the job site?
24 A Yeah.
25 Q Okay. And when you got to the job site, had Mr.

1 Bessinger already been taken to wherever he was --
2 wherever he was taken?

3 A No. He --

4 Q Had he fallen at that point?

5 A Yeah, he had fallen before -- or he fell and -- I
6 don't know if he was on a ladder, the roof or where
7 he was at, but he had fallen and he was on the
8 ground when I got there.

9 Q Okay. And, so, who took him to the hospital?

10 A An ambulance.

11 Q Okay. So, an ambulance came and got him and took
12 him to the hospital?

13 A Right.

14 Q All right. Who called in the ambulance? Do you
15 know?

16 A It might have been me.

17 Q Okay. All right. So, the ambulance came and got
18 him. Did you go to the hospital with him?

19 A We rode up there.

20 Q Okay. We is who?

21 A Me, Robert and John.

22 Q Okay. So, his -- Robert Bessinger, John Loughery
23 and you rode to the hospital. Did y'all follow the
24 ambulance there or did y'all just go there on -- on
25 your own?

1 A Well, I mean, the ambulance had left, and we just
2 drove up to the hospital.
3 Q Okay.
4 A I mean, they --
5 Q All right. So, y'all went to the hospital and
6 checked on him to make sure everything was still --
7 done, whatever needed to be done at the hospital,
8 correct?
9 A Right.
10 Q All right. Did you have to fill out any paperwork
11 at the hospital for Paul, or Dallas, whatever you
12 want to call him?
13 A No, I didn't fill any paperwork out.
14 Q Okay. Do you know who did? Did anybody fill out
15 any paperwork for him?
16 A I don't know.
17 Q Okay. All right. And then where did you go from
18 there? When you left the hospital, where did you
19 go?
20 A I ran John up to the insurance company because when
21 he called the lady, she said that the renewal or
22 something had come up or that he didn't have
23 insurance, which --
24 Q Okay. So, you drove him to the -- to the insurance
25 company in Lexington?

- 1 A Right.
- 2 Q All right. And it's your understanding that you --
- 3 that he thought he was doing a renewal of his
- 4 insurance?
- 5 A Yeah, which I didn't understand because the last
- 6 papers he had said it was good until February.
- 7 Q Okay. So, per your understanding, he had some
- 8 prior relationship with this insurance agency in
- 9 Lexington?
- 10 A Yeah. I guess he's been using them since day one.
- 11 Q Okay. That was your understanding?
- 12 A Right.
- 13 Q Okay. And your understanding was that he was going
- 14 to renew a policy? You thought that --
- 15 A Right.
- 16 Q -- he had to renew a policy? Did he discuss
- 17 anything with you about what he was doing with the
- 18 agent?
- 19 A No.
- 20 Q Okay. Had you ever been --
- 21 A I mean, I -- I was sitting there when he went up
- 22 there to do it, and she asked me my name, and I
- 23 told her my name, and I think --
- 24 Q Okay.
- 25 A -- that's why it's on the paper she --

1 Q So, you were actually in the room, as well, then,
2 when you met --
3 A Right.
4 Q -- when he met with the agent, --
5 A Yeah.
6 Q -- right?
7 A Correct.
8 Q All right. Did y'all tell her that y'all had just
9 left a job site where you had taken a worker to the
10 hospital because he had fallen off a roof?
11 A Yeah. She was aware of that.
12 Q You told her that?
13 A (No response.)
14 Q You told her that?
15 A I don't know if I did or -- or who told her, but,
16 yeah, she knew that.
17 Q Okay. So, when you say she, you're talking about
18 the agent at Lexington Insurance was aware of that?
19 A Right.
20 Q Okay. And did you fill out any paperwork that was
21 done that day with the agent?
22 A No, I didn't fill out nothing.
23 Q Okay. All right. Had you ever dealt with that
24 agent before? Have you ever dealt with her before?
25 A I've drove Johnny up there several times.

1 Q And when? When --
2 A He just -- I don't know. In the past when he's
3 had to --
4 Q All right.
5 A -- make a payment on it.
6 Q When you say make a payment on it in the past, when
7 has he made payments on it -- on it -- in the past?
8 When you say it, you're talking about the insurance
9 policy?
10 A Yeah. I've had to drive him up there before so he
11 could, you know, pay like a hundred bucks on the
12 general liability, stuff like that.
13 Q Okay. All right. Have you ever made any of the
14 payments on it?
15 A No.
16 Q Okay. The check that was written that day was
17 written, apparently, by you? Did you write a check
18 to the insurance agency?
19 A No. I don't even have a checkbook.
20 Q Okey-doke. All right.
21 A They sent him a check or something in my name, --
22 Q Correct.
23 A -- and he asked me to cash it for him.
24 Q All right. So, that's your signature on that
25 check, --

1 A Yeah, it is.
2 Q -- cashing that check?
3 A Right. I don't know why they sent it back in my
4 name, but --
5 Q Okay.
6 A -- he needed the money. They were trying to go
7 look at some work in Myrtle Beach or something, --
8 Q Okay.
9 A -- so I went and cashed it for him so they could
10 have money.
11 Q All right.
12 A I mean, I -- I don't know.
13 Mr. Addison: I think that's all I have.
14 Steve, do you have any questions?
15 Mr. Haymond: No.
16 Mr. Addison: All right. Thank you, sir.
17 If you want to appear at the hearing, like I
18 told you, it's going to be on the 18th in St.
19 Matthews at two --
20 The Deponent: May I get a drink of
21 water?
22 Mr. Haymond: Sure. Mm-hmm. 2:15, --
23 Mr. Addison: -- 2:15.
24 Mr. Haymond: -- 4/18.
25 (Whereupon the deposition was concluded at

1

10:01 a.m.)

2

(Deponent has waived reading and signing.)

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State of South Carolina)
) Certificate
 County of Lexington)

Be it known that the foregoing deposition of Emory Wilkie was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 30 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 15th day of April 2012.

Sandra M. Snead

Sandra M. Snead

Notary Public for South Carolina
 My commission expires October 17, 2013.

Note: Recordings are retained for twelve (12) months from date of certification.

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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 1200479

DALLAS P. BESSINGER,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
J&L CONSTRUCTION, LLC AND R-N-M	)	
BUILDERS & ASSOCIATES, LLC,	)	JOHN LOUGHERY
	)	
EMPLOYER,	)	
	)	
FIRSTCOMP INSURANCE,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of John Loughery, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 10:05 a.m., Wednesday, April 11th, 2012, at the law offices of Harris & Graves, 1518 Richland Street, Columbia, South Carolina.

COPY

Reported by
Sandra M. Snead

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Reported By: Sandra M. Snead

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Exhibits

<u>Marked as Deposition Exhibit Number One; Deposition of John Loughery; copy of Certificate of Liability Insurance; one page</u>	<u>49</u>

Court Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. Double hyphens (--) denote interruption of speech, incomplete sentence/phrase, or trailing off. [ph] denotes phonetically written. [sic] denotes written as spoken. Social Security number, if present, been redacted or blacked out.

Stipulations

The reading and signing of this deposition is waived by the deponent and counsel for the respective parties.

Whereupon,

John Loughery, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: John Loughery.

Examination

By Mr. Addison:

Q Mr. Loughery, you have -- I'm Dan Addison. I'm here on behalf of FirstComp Insurance in regard to the workers' compensation claim that has been filed by Dallas P. Bessinger against R-N-M Builders as well as J&L Construction. We're here today to take your deposition regarding your involvement in this. The first thing I want to know is if you have any middle initials or a middle name? Is your name just John Loughery or --

A Vincent.

Q Vincent? John Vincent Loughery?

1 A Yeah, --
2 Q Okay.
3 A -- V.
4 Q All right. How old are you, Mr. Loughery?
5 A Forty-two.
6 Q Where do you currently live? What is your address?
7 A I'm living with my mama at 246 Fox Trot Trail.
8 Q Okay.
9 A That's Pelion, South Carolina.
10 Q How long have you lived at that address?
11 A I've been there a long time. I used to have my own
12 trailer there.
13 Q Okay.
14 A Got repo'd. I'm living with my mom on the same
15 land.
16 Q All right. So, basically, you've lived at that
17 address; you had your own trailer. --
18 A I'd say 17, 18 years --
19 Q Okay.
20 A -- I've been at that address, yeah.
21 Q All right. You're living with your mama now
22 because your trailer got repossessed, --
23 A Yeah.
24 Q -- but at one time you had your own trailer,
25 though?

1 A Right.

2 Q All right. You were telling us when we were off
3 the record that you cannot read; is that correct?

4 A Nah, not much. I can read little, --

5 Q Okay.

6 A -- tiny words, but --

7 Q You can read some, then?

8 A Yeah.

9 Q How far did you go in school?

10 A I went to eighth. I believe I failed out, so
11 really second, I reckon you could say.

12 Q Okay. And where was it that you attended school?

13 A Pelion.

14 Q All right.

15 A At the time, it was Pelion High. It was all one
16 school, but --

17 Q Right.

18 A -- now they got elementary, middle and all that.

19 Q Right. All right. We're here today to talk to you
20 about Dallas Bessinger's case. I need to let you
21 know that there's a hearing scheduled before the
22 commission, the workers' comp commission, on April
23 the 18th, which is next week, at 2:15 in the
24 afternoon in St. Matthews at the St. Matthews
25 courthouse. The hearing will be before

1 Commissioner Avery Wilkerson of the workers'
2 compensation commission. It will determine what
3 Mr. Bessinger may be entitled to and then who --
4 A Will I have to be at that meeting?
5 Q You -- You can come if you so desire. It's up to
6 you whether you want to attend or not. I can't
7 force you to go. I'd have to send you a subpoena.
8 A Yeah.
9 Q It may be in your best interest to go, but it's up
10 to you.
11 A Yeah, I'll have to see about a ride. I don't know
12 if I --
13 Q Okay.
14 A I ain't go no wheels, no license or nothing.
15 Q All right. You have no driver's license, correct?
16 A Right.
17 Q All right. Is that because you've had some trouble
18 in the past?
19 A Nah. The truck I had blew up.
20 Q Okay.
21 A I was out of work and all. I had to turn the tag
22 in. I had a 400-dollar fine on it.
23 Q Okay. All right. Have you had a driver's license
24 in the past?
25 A Yeah, I used to, but I think it was around probably

1 three years now.

2 Q Okay. All right. Do you not have a driver's

3 license because of too many tickets, a DUS, DUI or

4 anything like that?

5 A No. The fine on my -- not turning the tag in.

6 Q Not turning in the tag. All right. All right.

7 And you said the truck blew up?

8 A Yeah.

9 Q How did you get here today?

10 A I rode with Emory.

11 Q Mr. Wilkie?

12 A Yeah.

13 Q All right. All right. There's a company that's

14 been listed as being known as J&L Construction,

15 LLC. Is that your company?

16 A J&L Construction, yeah.

17 Q All right. That's --

18 A I don't know what's the L -- LCC or whatever it

19 was, what that --

20 Q All right. I mean, the documents that we have list

21 it as being an LLC which is a limited liability

22 corporation.

23 A Oh. Okay.

24 Q Did you ever file for LLC status? Do you know what

25 that means?

- 1 A Uh-uh. I've been with them for four years and --
- 2 Q All right. When you say you've been with them,
- 3 you've had J&L Construction as a name for four
- 4 years?
- 5 A Yeah.
- 6 Q Okay. And who is them? You said you've been with
- 7 them?
- 8 A That -- That insurance company. I've been with
- 9 them for a while. I don't know exactly years, but
- 10 --
- 11 Q All right. What I'm asking you is about the -- the
- 12 LLC status of J&L Construction. Have you ever
- 13 filed any papers with the State of South Carolina
- 14 to incorporate J&L Construction?
- 15 A I don't think so. Just went --
- 16 Q Okay. Do you have a computer? Do you have --
- 17 A Uh-uh. I don't know --
- 18 Q -- access to a computer?
- 19 A -- how to use a computer.
- 20 Q Okay. Have you ever come up to Columbia to the
- 21 Statehouse -- to the Statehouse grounds, to the
- 22 Secretary of State's office and filed any papers
- 23 for your company?
- 24 A Uh-uh.
- 25 Q Is that a no?

- 1 A No. I don't know nothing about all that there.
- 2 Q All right. Okey-doke. So, is it possible that you
- 3 may have just given it the name LLC but it really
- 4 wasn't an LLC?
- 5 A Uh, --
- 6 Q Do you think you may have written it anywhere --
- 7 A I told them my name. When I went to get workman's
- 8 comp, I just told them J&L Construction --
- 9 Q Okay.
- 10 A -- under John Loughery.
- 11 Q All right.
- 12 A That was the name of the company.
- 13 Q All right. So, it's really what we call a d/b/a, a
- 14 doing business as? It's John Loughery doing
- 15 business as J&L Construction?
- 16 A Right.
- 17 Q It's your company, --
- 18 A Right.
- 19 Q -- right?
- 20 A Right.
- 21 Q Okay. And you've had that name for about four
- 22 years now?
- 23 A Yeah, somewhere in there.
- 24 Q Okay.
- 25 A I couldn't tell you exact, but it's been a while.

- 1 Q All right. All right. Has anybody else owned J&L
2 other than you?
- 3 A Uh-uh.
- 4 Q Is that a no?
- 5 A No. Just me.
- 6 Q Okay. And what does J&L stand for? What's the L?
- 7 A It's my initials, J --
- 8 Q Okay.
- 9 A John Loughery is pretty much what it stands for.
- 10 Q All right. And what has J&L done? What is the
11 business of J&L Construction?
- 12 A Well, whatever I can get a hold of. Work ain't
13 been there.
- 14 Q Okay. What type of work? Are you talking about
15 residential construction primarily, working on
16 houses?
- 17 A Mainly I started wanting to do decks and all that
18 there, and then it got where I couldn't get no
19 work.
- 20 Q Okay.
- 21 A Illegals underbid every time.
- 22 Q Okay. So, you'd been -- you'd been trying to do
23 work doing decks and other things of that nature?
- 24 A Yeah, pretty much whatever I get a hold of and --
- 25 Q Okay. When you say everything you can get a hold

1 of, what does that mean? You've got to be a little
2 bit more specific.

3 A Mainly that's what I would do, but I did do the
4 house, a couple of houses, because it's the only
5 thing we could get -- I could find.

6 Q Okay. When you say doing -- What was the first
7 thing you said? I'm sorry. The main thing you
8 wanted to do was what?

9 A Decks, little stuff that I can handle myself, you
10 know, and --

11 Q Okay. All right. But then the only thing you
12 could get were doing some --

13 A Only thing --

14 Q -- some houses?

15 A -- that was available was a couple of houses at the
16 time, so --

17 Q And when you say houses, what do you mean by that?
18 When you say the only thing that was available was
19 houses, you're talking about doing framing work --

20 A That's -- I got two houses to do the whole year, I
21 think, and --

22 Q All right. You're talking about doing framing
23 work, building the house out of -- stick-building
24 the house from the ground up?

25 A Right.

1 Q Okay. All right. And who were you doing that work
2 for?
3 A For -- Jesus. What was his -- R-N-M Builders is
4 --
5 Q R-N-M Builders. That's the only folks you've been
6 able to find any work through, --
7 A Yeah.
8 Q -- is R-N-M?
9 A Well, I started a house for Crown, and they're used
10 to working all them illegals. They want ten men on
11 a crew and to knock at it, --
12 Q Okay.
13 A -- so they ended up getting rid of me and hiring a
14 Mexican crew with about ten people to knock it out
15 real quick.
16 Q Okey-doke.
17 A I mean, generally, I work three to four people tops
18 and --
19 Q All right. When you say you work three or four
20 people tops, you've -- you've put together crews of
21 three or four people to go out and do various jobs
22 for you?
23 A Yeah, on houses and stuff, I do about four people
24 --
25 Q Okay. All right. When you got the job, did you

1 get the job with Ronnie Stokes to do this work down
2 in Orangeburg?
3 A Actually, Emory turned me on to him. He was doing
4 daily labor here and there, --
5 Q Okay.
6 A -- helping them out a day or something.
7 Q Okay.
8 A Emory set me up with it.
9 Q All right. So, Emory set you up and -- But was
10 there -- Who brought Mr. Bessinger into the job?
11 Do you know?
12 A I think he -- I think Robbie let him in.
13 Q I'm sorry? Robbie?
14 A Yeah, another --
15 Q Is that --
16 A -- boy.
17 Q -- Robbie Bessinger?
18 A Yeah.
19 Q Okay.
20 A I think he met him somewhere --
21 Q Okay.
22 A -- and he was looking for work and --
23 Q How do you know Robbie Bessinger?
24 A I knowed [sic] him for a while.
25 Q Okay.

1 A Well, I was -- I was married to his sister,
2 actually.
3 Q Okay.
4 A Still am because I can't afford a divorce, but --
5 Q All right. Y'all just don't live together anymore?
6 A Uh-uh. Uh-uh.
7 Q Is that a no?
8 A Nah, we ain't lived together --
9 Q You've got to say yes or no whenever you say --
10 You can't say uh-huh or uh-uh or nod your head --
11 A Nah, we ain't lived together in probably four
12 years.
13 Q Okay. All right. So, Robbie Bessinger knew
14 Dallas, or Paul, Bessinger --
15 A Yeah.
16 Q -- somehow?
17 A I have no clue how or whatever, but --
18 Q Okay. And you knew Robbie Bessinger through your
19 marriage to his sister, and y'all have worked
20 together in the past, you and Robbie Bessinger that
21 is?
22 A Yeah, I used to work -- Before I started on my
23 own, I worked for him, actually.
24 Q Okay. All right. And that was with -- I think
25 Mr. Wilkie told us about a company called Carolina

1 Residential.

2 A Right.

3 Q All right. And y'all were doing framing work

4 primarily with Carolina Residential, --

5 A Yeah.

6 Q -- correct?

7 A Yeah. I used to pretty much drive nails for him

8 when he had --

9 Q Okay. All right. And, so, you have this business

10 and you were able to put together a crew of people?

11 You needed people to come do this job, or you and

12 Mr. Wilkie needed people to come do this job, --

13 A Right.

14 Q -- y'all were doing for Ronnie Stokes in

15 Orangeburg?

16 A Yeah.

17 Q All right. And y'all put the call out and said we

18 need some folks to come help us because we've got

19 this job framing this house?

20 A Right.

21 Q All right. So, that's what y'all went down to go

22 do, was go frame that house, right?

23 A Yeah.

24 Q Okay. Had you done any cabinetry work before this

25 of any --

- 1 A Cabinetry? What do you mean?
- 2 Q Had you done any kind of cabinetry work where you
- 3 were doing cabinets?
- 4 A No, I ain't did no cabinets. No.
- 5 Q Okay. All right. Have you ever been in the
- 6 business of doing just trim work or cabinetry work?
- 7 A I have done a little trim. I ain't never --
- 8 Q Has that been --
- 9 A -- done no cabinetry.
- 10 Q Has that been your primary work, was just putting
- 11 trim in and just working inside the house doing
- 12 trim work and cabinetry work?
- 13 A Nah. I'd say primary I would do -- I did then was
- 14 pretty much decks.
- 15 Q Okay. Decks and framing work?
- 16 A Yeah.
- 17 Q Okey-doke. Mr. Wilkie has indicated that he drove
- 18 all of y'all down there that day.
- 19 A Right.
- 20 Q Was that --
- 21 A He was the only with a license, yeah.
- 22 Q He's the only one that could get y'all back and
- 23 forth?
- 24 A Mm-hmm.
- 25 Q Is that a yes?

1 A Yes.

2 Q All right. Were you dependent upon him driving you
3 back every day?

4 A Yes.

5 Q Okay. All right. Who paid y'all? How did y'all
6 get paid for that job when you were down in
7 Orangeburg?

8 A Ronnie Stokes.

9 Q And was he paying you directly and then you were
10 paying everybody else, or -- or --

11 A Well, that's the way it was supposed to be, but he
12 messed up the first couple of times. I think he
13 writ it to Emory, but --

14 Q Okay. When you say he writ it, --

15 A -- he was supposed to --

16 Q -- did -- you meant he wrote -- Whatever check for
17 the entire crew was given to Emory?

18 A Right, to Emory.

19 Q All right. Then y'all disbursed it out to whoever?

20 A Right.

21 Q All right. But Ronnie was writing one check --

22 A Right.

23 Q -- for the four of y'all?

24 A Right.

25 Q Then the four of y'all would then split whatever

1 money was there, that was written out, from that
2 check from Ronnie?
3 A Right.
4 Q Okay. And how much were y'all getting paid for
5 doing the job?
6 A Ooh boy. That's been --
7 Q I mean, was it a per man-, per day-type charge?
8 A Nah. It was --
9 Q Or was it just a set fee for doing the work?
10 A A set fee. It was kind of split up into -- but --
11 Q Okay. I mean, if you built -- You know, if you
12 got it sheathed, you'd get X amount of dollars?
13 A Right.
14 Q All right. And, so, ground up, and then are we
15 talking about a one-story house, a two-story house?
16 What is this?
17 A It was a small two-story.
18 Q Okay. So, it's a two-story house?
19 A Right.
20 Q And y'all built it out, doing the framework from
21 the ground up?
22 A Right.
23 Q Getting it sheathed and then dried in with the tar
24 paper on top, correct?
25 A Mm-hmm. Yeah.

- 1 Q Okay. Were y'all supposed to roof it, as well, or
2 were y'all just doing the tar paper?
- 3 A Just tar paper is all we did.
- 4 Q Okay. All right. Do you remember what,
5 approximately, you earned per week when you were
6 there?
- 7 A We kind of -- We paid the other boys, and me and
8 Emory and Robbie just kind of worked it out from
9 what bills and all --
- 10 Q Okay.
- 11 A -- and tried to figure it up to where we all had a
12 few hundred dollars to eat on and stuff.
- 13 Q What did you earn off of it, roughly? Just give me
14 a rough idea of what you earned off of it.
- 15 A I earned or what the house --
- 16 Q What you earned.
- 17 A I'd say -- After expenses and gas and all that,
18 getting back and forth, I'd say maybe four or five
19 hundred a week --
- 20 Q Okay.
- 21 A -- after --
- 22 Q All right. Have you worked on any other jobs since
23 then?
- 24 A No. Since then, I ain't had nothing.
- 25 Q Okay. Not just from Mr. Stokes. I'm talking about

1 for anybody.

2 A No, nobody. I wish. It's been tough.

3 Q I know it's tough out there in the construction

4 field. All right. Tell me the day that -- that

5 Mr. Bessinger, that Paul, or Dallas -- I'm going

6 to call him Dallas because that's just the easiest

7 thing for me to call him because that's what

8 everything says on it. The day that Dallas got

9 hurt, were you there that day?

10 A Yes, I was there.

11 Q Okay. And what were y'all doing when -- when Mr.

12 Bessinger -- when Dallas got hurt?

13 A Well, I was hanging some plywood around the corner.

14 Q Okay. When you say hanging some plywood, where

15 were you hanging it?

16 A Down on a low -- a little low part of the roof, a

17 little --

18 Q Okay.

19 A -- half gable going up it.

20 Q All right. So, basically putting some sheathing

21 down?

22 A Yeah.

23 Q Okay. You were sheathing part of the roof? What

24 was --

25 A Actually the half gable, the little wall --

1 Q Okay.

2 A -- that comes down in between the --

3 Q It was like -- kind of like a fascia-type thing

4 that you were putting on?

5 A Yeah. Yeah.

6 Q Okay. All right. And what was Mr. -- What was

7 Dallas doing at that point?

8 A Apparently he was running tar paper, apparently.

9 Q He was running tar paper?

10 A I don't know if he made it up there or what the

11 deal was.

12 Q Okay. But he was up on the roof, putting tar paper

13 on the roof, as well, --

14 A That's --

15 Q -- correct? That's your --

16 A -- what I --

17 Q -- understanding?

18 A -- understand, yeah.

19 Q Okay. All right.

20 A He actually wasn't supposed to. He was supposed to

21 wait until we all got up there, but I think he kind

22 of took it on his own and went up there.

23 Q All right. But that's something y'all had planned

24 on doing that day?

25 A Right.

1 Q Y'all were going to be -- That was part of what
2 y'all were supposed to be doing, was putting tar
3 paper --
4 A Mm-hmm.
5 Q -- on the roof of this building, --
6 A Yeah.
7 Q -- correct?
8 A Yeah.
9 Q Okay. All right. Now, where -- You were putting
10 this fascia on when he fell? That's where you were
11 when he fell?
12 A Yeah.
13 Q Okay. Did you hear him fall, see him fall?
14 A I heard somebody holler, and I looked down, and he
15 was hollering from the ground, because --
16 Q Okay. All right. And the person --
17 A -- where I was was kind of under the roof.
18 Q Right. You were blocked?
19 A I was blocked. I couldn't see nothing, but --
20 Q And the person hollering was Dallas?
21 A Actually, I think it was his little nephew --
22 Q Okay. Who's his nephew? That's the other guy --
23 A -- or whatever his relation is. God, I mean, it's
24 been -- I can't remember his name --
25 Q Okay. So, who all was there on the job site that

1 day when he got hurt, when Dallas got hurt? How
2 many people were there?
3 A Just me, Robbie and him and his nephew.
4 Q Okay. So, the four of y'all were there, --
5 A Yeah.
6 Q -- right? And Emory had driven you all down there?
7 A Right. And he was gone. He had to go get some
8 blood pressure medicine or something.
9 Q Okay.
10 A He wasn't even there. We had to call Emory --
11 Q All right. So, --
12 A -- to hurry up back.
13 Q So, you got Dallas Bessinger, Robbie Bessinger,
14 Dallas Bessinger's nephew, whatever his name is, --
15 Do you --
16 A Yeah.
17 Q -- know his name?
18 A I can't remember his name for nothing right now.
19 Q Okay. -- and you? The four of y'all were on the
20 job site working?
21 A Right.
22 Q And y'all were the crew that Emory had driven down?
23 Emory was going to work with you, too? He just was
24 going to the hospital -- or going to the --
25 A Right.

- 1 Q -- going to the --
- 2 A He wasn't feeling that good that day. He was --
- 3 Q -- a prescription -- to get a prescription filled?
- 4 A Yeah.
- 5 Q Okay. He'd been working for -- with y'all, as
- 6 well, on that job; is that correct?
- 7 A Correct.
- 8 Q How many days had y'all been on the job before
- 9 Dallas got hurt?
- 10 A Ooh, I'd say probably a couple -- Shoot, I would
- 11 say for weeks, because we was on the roof.
- 12 Q All right. Several weeks at that point. Y'all
- 13 were framing -- Y'all had done a bunch of work at
- 14 that point?
- 15 A Yeah. Was on the roof, so --
- 16 Q Okay.
- 17 A -- yeah.
- 18 Q All right. When Dallas fell, did you come down
- 19 from the roof at that point?
- 20 A Yeah, we did.
- 21 Q Okay. All right. And then, obviously, he went to
- 22 the hospital. We know he went to the Orangeburg
- 23 Regional Hospital.
- 24 A Yeah. We called the ambulance and --
- 25 Q Who called the ambulance? Do you remember?

1 A I think it might have been Robbie.
2 Q Okay. All right. Did y'all have cell phones or
3 did only a few of you have a cell phone or --
4 A Robbie -- At the time, Robbie and his nephew was
5 the only two with phones at the time, --
6 Q Okay.
7 A -- I think, because Emory was gone.
8 Q All right. So, y'all dialed 9-1-1 -- or somebody
9 dialed 9-1-1 and said we need an ambulance over
10 here?
11 A Yeah.
12 Q All right. And the ambulance came and picked him
13 up, and did Emory show up at any point --
14 A Yeah, he --
15 Q -- during this?
16 A Yeah, he had came in right after.
17 Q Right after what?
18 A I'm trying to remember. He pulled up as the
19 ambulance was ready to leave, I think.
20 Q Okay. All right. And then what did y'all do from
21 there?
22 A We went up to the hospital --
23 Q Okay.
24 A -- and waited to see what was going on and --
25 Q Who is we, all four of you?

1 A Yeah.

2 Q You, Emory, Robbie and the nephew?

3 A His nephew. Yeah.

4 Q All right. So, all four of y'all went over to the

5 hospital?

6 A Yeah.

7 Q All right. Y'all were just checking on -- on

8 Dallas to see what was going on?

9 A Right.

10 Q Okay. How long did y'all stay around the hospital?

11 Do you know?

12 A I'd say an hour or so.

13 Q Okay.

14 A And they said he was out and all and --

15 Q Okay. And then after that --

16 A I'm thinking it was the Sunday or the Saturday, the

17 weekend after, I went up to Lexington -- or -- No.

18 What hospital was that, Richland? Whatever

19 hospital he was in, I went up there and seen him.

20 Q Okay.

21 A Then I got bronchitis. I couldn't do nothing for a

22 while.

23 Q All right. So, he was at Orangeburg Regional and,

24 later on, was at Palmetto Richland. You stuck

25 around Orangeburg Regional for about an hour or so

1 checking on him while he was there that day?

2 A Right.

3 Q And then where did you go from there? When you

4 left the hospital, where did you go?

5 A We went down there to talk to the workman's comp

6 lady.

7 Q Workman's comp lady. You're talking about the

8 insurance company?

9 A Right.

10 Q All right. And what insurance company is that?

11 A Shoot, --

12 Q Do you know?

13 A I believe it's Lexington something. It's probably

14 on there (indicating) because this is the paper

15 stating that we had the insurance and all when he

16 was --

17 Q Okay. So, you've got --

18 A -- was hurt.

19 Q Midlands Insurance Center?

20 A Midlands, yeah.

21 Q Okay. This is a certificate of insurance written

22 on National Grange Mutual Insurance, listing the

23 insured as John Loughery, with a policy date of

24 February of 2011 to February 2012, and it shows a

25 workers' compensation and employers' liability

1 policy with a policy number of 39-80411-08025-
2 769268. And it's your understanding that you had a
3 certificate of insurance issued by Midlands
4 Insurance on June the 9th of 2011? It was issued
5 to Downeast Builders & Realty. Was that somebody
6 you were doing some work for back then?

7 A What -- What was the name --

8 Q It's a company out of Georgia, Downeast Builders &
9 Realty Company. Downeast Builders --

10 A Oh. That's the -- Crown. That's the one we worked
11 with, done a little bit of work and they said they
12 needed a bigger crew and wanted it done quicker.

13 Q Okay. All right.

14 A I don't think we worked but maybe a week there.

15 Q It's signed by a TaLisa Miller; is that correct?

16 A Yeah.

17 Q All right.

18 Mr. Addison: Let's get a copy of this
19 and make the copy as an exhibit to the -- to
20 this.

21 Q So, you -- you went up there to deal with the
22 insurance agent after you took the -- After y'all
23 had gone to see Mr. Bessinger at the hospital, you
24 went to go deal with --

25 A Right.

1 Q -- your insurance lady? Why did you feel like you
2 needed to go deal with the insurance lady that day?
3 A She told us that we needed to get down there, that
4 there was a payment due or something, --
5 Q Okay. She -- She --
6 A -- so we went --
7 Q You talked to her on the phone that day?
8 A Yeah. We called her and told her what happened and
9 all, and she said, "Well, y'all need to get down
10 here," that a payment's coming up, and we -- We
11 paid something on it, you know, --
12 Q Okay.
13 A -- and then we --
14 Q When did you --
15 A -- hunted that -- hunted that (indicating) down
16 after we done paid it, and they sent us that money
17 back. They sent me that money right -- They sent
18 me --
19 Q All right.
20 A -- a check back for --
21 Q You paid some money that day --
22 A Yeah, down --
23 Q -- to TaLisa Miller?
24 A Yeah.
25 Q All right. Do you understand that you put in an

1 application for a new policy that day, on January
2 the 4th of 2012?

3 A Yeah. She said it was time to restate it or
4 something like --

5 Q Okay.

6 A I thought we was still good. I thought that we --

7 Q All right.

8 A And --

9 Q Were you the one that filled out the application
10 with her that day, on January the 4th of 2012?

11 A Right.

12 Q All right. It indicates that Emory Wilkie is the
13 100 percent owner of a company known as E&L
14 Construction, LLC --

15 A No. I don't even know where she got E&L.

16 Q Okay. All right. Is that your signature on that
17 page there?

18 A Yeah.

19 Q All right.

20 Mr. Addison: And that's page 51 of
21 Defendant's APA.

22 Q Did she have a discussion with y'all that day, talk
23 to y'all about it?

24 A A little bit. I mean, she didn't really explain
25 everything to me.

1 Q Huh?

2 A A little bit. She didn't explain it --

3 Q Okay.

4 A -- it all. I reckon she figured she'd done done

5 that down the road or something. I don't know.

6 Q Okay. Is it your understanding that you had a

7 policy with National Grange before, National Grange

8 Mutual Insurance, and that -- oh -- excuse me --

9 with Hartford for your workers' compensation

10 insurance, Hartford Underwriters Insurance Company?

11 Is that your understanding, that you had a policy

12 of workers' comp insurance with --

13 A Yeah, that --

14 Q -- this agency as per this certificate of insurance

15 that was issued in June of 2011?

16 A Right, and she told me I had to renew it, and I

17 said, well, you know, it's --

18 Q Okay.

19 A -- about to go out. Then I --

20 Q All right. So, y'all --

21 A -- found this later, and I'm like, well, --

22 Q Okay. So, y'all called Ms. Miller on the phone

23 that -- that day after you were at the hospital?

24 A Right.

25 Q And said what, said we had somebody just fall off

1 the roof?

2 A Yeah, tell her we had an accident and --

3 Q Okay. That you were trying to report an accident?

4 A Yeah.

5 Q All right. And then she said y'all need to come

6 see me?

7 A She -- Yeah, she said, you know, "Y'all need to

8 come and renew your policy."

9 Q Okay.

10 A But according to this (indicating), I mean, like

11 what I thought -- I thought we was insured at the

12 time because we ain't -- When we started with

13 Crown, we went and took care of it.

14 Q All right. Had you ever received a notification

15 from Ms. Miller or from Hartford Insurance or

16 National Grange Insurance that you did not have a

17 policy after June the 9th of 2011 because you

18 hadn't made any premium payments? Did anybody

19 contact you and say you haven't paid your premium,

20 you don't have a policy --

21 A The letters I received -- After he done fell, they

22 sent me a letter saying they was canceling the

23 insurance, and they sent me the --

24 Q Well, that was First --

25 A -- check back.

1 Q That was FirstComp. I'm talking about for the
2 folks that you had the coverage back in 2011. Did
3 you ever receive anything from Hartford Insurance
4 or National Grange Insurance indicating they didn't
5 have a policy on you anymore?

6 A No, I didn't.

7 Q Okay. Did Ms. Miller ever send you anything from
8 Midlands Insurance Center --

9 A Uh-uh.

10 Q -- indicating that you did not have a policy with
11 Hartford Insurance anymore?

12 A Nope.

13 Q Okay. Or with National Grange Insurance?

14 A Nope.

15 Q Okay. When y'all called her, who did y'all --
16 Whose cell phone did you use to call her that day?

17 A Oh, goodness. Probably Emory's.

18 Q Probably Emory's?

19 A (Nods head.)

20 Q All right. Y'all called her and said we just had
21 an accident and we need to come talk to you about
22 it?

23 A Mm-hmm.

24 Q All right. So, is it your position that Ms. Miller
25 was aware there had been an injury down in

1 Orangeburg when y'all came and met with her to
2 discuss the issues with her --
3 A Oh, --
4 Q -- on that day?
5 A Oh, yeah, she was aware.
6 Q Okay. So, when this application for the policy was
7 created that you signed, you knew at the time that
8 you created this application that you had had an
9 injury with an employee, Mr. Bessinger, --
10 A Mm-hmm.
11 Q -- down in Orangeburg; is that correct?
12 A Yeah.
13 Q Okay. Is that a yes?
14 A Yes.
15 Q All right. All right. And you -- It's your
16 testimony that you told Ms. Miller at the time of
17 the creation of this application that you had had
18 an injury with an employee?
19 A Yeah.
20 Q All right.
21 A Yeah, she knew that.
22 Q Okey-doke. Did you check off any of these blocks?
23 There's a bunch of little blocks on this thing that
24 has to be checked off by the person making the
25 application. Did you check those off? They ask

1 questions, do you have this type of work, do you do
2 this, do you do that. Did you fill that out? Were
3 you the person she was asking the questions of, Ms.
4 Miller?

5 A Yeah, I don't know. She probably -- Either her or
6 Emory probably read it to me because I can't read
7 --

8 Q Okay. So, Emory was right there with you at the
9 same time when y'all were filling all this out?

10 A Right.

11 Q All right. It indicates that -- It has a loss
12 history section in the middle of the second page,
13 --

14 Mr. Addison: It's on page 51 of the APA.

15 Q -- and there's no indication of any loss that has
16 occurred, including -- loss means an injury -- that
17 there's no indication there had been an injury with
18 anybody on that date. Were you aware of that, that
19 there's no indication on this application anywhere
20 that y'all had an injury that y'all had just come
21 from?

22 A Oh. I -- I don't know about that. It --

23 Q Okay.

24 A -- should --

25 Q All right. It also indicates that there is no work

1 performed above 15 feet, and, obviously, y'all were
2 working over 15 feet that very morning, correct?

3 A Yeah.

4 Q Okay. All right. And you routinely did work that
5 took you over 15 feet? You work on framework
6 pretty routinely, the work that you do?

7 A Well, the -- Not really most the time.

8 Q Okay.

9 A We did, like I said, do houses all year, but --

10 Q Was Emory ever an owner of the business --

11 A I didn't know they --

12 Q -- with you?

13 A -- had a feet thing. She didn't explain that to me
14 well.

15 Q I'm sorry?

16 A I said I didn't know there was a -- a foot thing,
17 how many feet in there.

18 Q Okay. Did --

19 A I mean, she knew I was framing houses. She didn't
20 tell me that. --

21 Q At any point, did Emory own the business with you,
22 where he was a --

23 A No. He just helps me out here and there.

24 Q Okay. Is there any particular reason why this
25 document would indicate that Emory Wilkie was the

1 manager and owned 100 percent --

2 A Uh-uh.

3 Q -- of this company known as E&L?

4 A No. I don't even know where E&L was created.

5 Q Did y'all ever operate --

6 A She created that, I reckon.

7 Q Did y'all, meaning you and Emory, ever operate as

8 E&L Construction at any point?

9 A Uh-uh.

10 Q Is that a no?

11 A No.

12 Q Okay.

13 A I've never even worked for Emory.

14 Q All right. You think Emory had -- Do you know

15 Emory's cell phone number?

16 A Yeah. I mean, I got it on me. I don't know it by

17 heart.

18 Q Okay. Well, tell me -- Pull it out and tell me

19 what you know it to be.

20 A This thing's a little hard to see. Oh, there it

21 is. 394-1313.

22 Q Okay. Has he ever had a phone number of 240-4162?

23 A I couldn't tell you.

24 Q Do you know whose cell phone --

25 A It's the only number --

1 Q -- number that could be?
2 A -- I've known, so --
3 Q Huh?
4 A I said that's the only phone number I've known.
5 Q Okay. Have you ever had a cell phone number of
6 240-4162?
7 A It's a possibility, but I couldn't --
8 Q Okay.
9 A -- remember. I've had the number I've got now for
10 a long time.
11 Q All right. And it's your contention that you have
12 had an active proper policy of insurance for four
13 years, all through Midlands Insurance Agency?
14 A Yeah. I mean, I couldn't guarantee it to be
15 exactly, but -- It could be a little under or a
16 little more, but I know I've been with them for a
17 while.
18 Q Okay. And do you have --
19 A Now, it's the same place I go in. Now, if they're
20 using different -- I don't know.
21 Q I'm sorry?
22 A With the same place I go to get it anyway. I've
23 been going there for that long, but if they --
24 Q I need you to take your hand down from your mouth.
25 A Oh.

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1 Q It's hard for the court reporter to see what you're
2 doing -- or talking. I'm sorry.

3 A Oh. I've been going to this Midlands place for
4 that long. Now, if they use different companies, I
5 don't --

6 Q Okay. But you've been dealing with Midlands
7 Insurance Center on Columbia Avenue in Lexington
8 for about four years --

9 A Right.

10 Q -- to receive insurance coverage on your -- your
11 business known as J&L Construction?

12 A Yes.

13 Q Consistently throughout that four years?

14 A Mm-hmm.

15 Q Is that a yes?

16 A Well, consistent -- Now, I mean, there's times I
17 didn't have no work for a while.

18 Q Okay.

19 A I didn't pay it, and I'd go up when something come
20 through, and I would --

21 Q Okay. When you would get a policy through
22 Midlands, any policy that you received, would you
23 write a check for it or did you pay cash for it?
24 How did you --

25 A Cash. I done everything cash.

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- 1 Q You did it all by cash. You would never write a
2 check for it?
- 3 A No.
- 4 Q Okay. When y'all went up and got the --
- 5 A Now, I'd say -- Now, he helped me out a couple
6 times. I don't know if he writ a check or not.
- 7 Q He being Emory Wilkie?
- 8 A Emory Wilkie, yeah.
- 9 Q All right. On January the 4th of two thousand --
- 10 A I always pay cash, but sometimes I sent him up
11 there. I didn't have the money or something, and
12 he --
- 13 Q All right. On January the 4th of 2012, when y'all
14 met with Ms. Miller that afternoon, --
- 15 A Right.
- 16 Q -- y'all had to pay some money to her that day?
- 17 A Yeah.
- 18 Q How did y'all pay it? Was it cash or check?
- 19 A I think that was cash.
- 20 Q Okay.
- 21 A I'm pretty sure.
- 22 Q Was it cash that you had on you or Emory had on him
23 or some y'all cobbled together?
- 24 A I think we cobbled together.
- 25 Q Okay.

1 A I know he had cash. I think he paid cash then. He
2 might have put it in his account and writ a check.
3 I'm not positive.
4 Q Okey-doke.
5 A I want to think it was cash that day, but --
6 Q Is it possible that he wrote a check?
7 A I reckon it's possible, but I'm pretty sure he gave
8 cash that day. I ain't sure.
9 Q But you've known him to write a check for you
10 before with that insurance agency?
11 A I don't know for sure because I -- If it was just
12 a payment, a lot of times he would --
13 Q Okay.
14 A -- I didn't go with him. He would just go up there
15 and pay it.
16 Q How much did y'all pay to the agency that day?
17 A I want to think it was 400.
18 Q Okay.
19 A I think it was \$400.
20 Q A check then was issued back to Emory Wilkie in the
21 early part of February.
22 A That 400.
23 Q \$405. Do you think that's what y'all paid?
24 A Five. Yeah, that's --
25 Q That's what y'all paid to the agency that day, --

1 A Yeah.

2 Q -- was \$405?

3 A Yes, that's probably correct.

4 Q All right. And Mr. Wilkie has indicated that you

5 asked him to sign the check so you could get the

6 money back. Did you get the \$405 back?

7 A Yes.

8 Q Okay. So, he gave you -- He cashed the check and

9 then gave you the \$405?

10 A Yes.

11 Q Okay. All right. Were there any other people

12 working for Ronnie Stokes there, other than the

13 five of y'all? The five of y'all were the crew

14 basically building --

15 A Right.

16 Q -- this house, correct?

17 A Right.

18 Q Okay. That was you, Emory Wilkie, Paul Bessinger

19 and Robbie Bessinger and Paul Bessinger's --

20 A Nephew.

21 Q -- or Paul/Dallas Bessinger -- his nephew, whatever

22 his name is?

23 A Yeah.

24 Q So, the five of y'all were working on that and had

25 been working on that job site for several weeks --

- 1 A Yeah.
- 2 Q -- before Dallas Bellinger/Paul Bessinger fell?
- 3 A Right.
- 4 Q Okay. Was there anybody else working out there for
- 5 Ronnie Stokes as far as you knew?
- 6 A I don't think there was that day.
- 7 Q All right. And as far as you --
- 8 A The heating and air -- It might have been --
- 9 Q That's what I was going to ask. Any mechanical
- 10 contractors or electrical contractors or plumbing
- 11 contractors that had come in and out during that
- 12 time frame, working there, that you know of?
- 13 A I don't think so.
- 14 Q Okay.
- 15 A Now, they did start around that time, but I don't
- 16 think they was out there that day. I think it was
- 17 like right after, the plumbers and all started
- 18 coming in.
- 19 Q Who did the foundation? Was that in place before
- 20 y'all got there, or did y'all --
- 21 A Yeah, it was in --
- 22 Q All right. It was already in place. Y'all came
- 23 and it was ready for y'all to start putting wood
- 24 on?
- 25 A Right.

1 Q All right.

2 Mr. Addison: I'm going to go ahead and
3 just tell you while we're on the record, just
4 so it's on the record, the hearing -- You
5 know, like I told you before, the hearing is
6 on -- next week on the 18th --

7 The Deponent: Right.

8 Mr. Addison: -- in St. Matthews. I'll
9 just be real frank with you. It's probably in
10 your best interest for you to go to this
11 hearing. We may want to send you a subpoena
12 and Mr. Wilkie a subpoena just to have y'all
13 there because I think y'all probably need to
14 be there. Ronnie Stokes is probably going to
15 be there, as well. I assume he will be there.
16 We'll send the subpoena for him, as well. But
17 I think it's in all of y'all's best interest.
18 I'm not giving you any advice as an attorney.
19 I'm just telling you as one of the parties
20 involved that it may be, you know, in your
21 best interest to go to this hearing. Okay?

22 The Deponent: Okay.

23 Mr. Addison: The commission has issued
24 an opinion. The commission's compliance
25 division has issued an opinion that that

1 certificate is fraudulent.

2 The Deponent: Fraudulent?

3 Mr. Addison: Yes. Gary Smith, who is
4 the gentleman at the commission that handles
5 all of the insurance coverage questions, has
6 issued a report that he believes that that is
7 a fraudulent certificate, or at least the one
8 that was given to Mr. Stokes was a fraudulent
9 certificate, --

10 The Deponent: I'm sure he should have
11 read it, whatever --

12 Mr. Addison: -- so, you know, I'm just
13 giving you fair warning here that it may be in
14 your best interest for you to show up at this
15 hearing. Okay?

16 The Deponent: Okay.

17 Mr. Addison: And I'll tell you, we'll go
18 ahead and send a subpoena out today for y'all
19 to be there, for both you and Mr. Wilkie to be
20 there, and I think we'll subpoena Mr. Stokes
21 to be there, as well. It's our position that
22 we have no policy of insurance with you.

23 The Deponent: Yeah.

24 Mr. Addison: The policy that was entered
25 into the day that Mr. -- that Mr. Bessinger

1 was injured, in our opinion, was fraudulently
2 entered into. We had no knowledge that Mr.
3 Bessinger had fallen. We had no policy with
4 you before this date. There was no policy
5 that was ever issued to J&L Construction by
6 FirstComp Insurance. That's who I represent,
7 is FirstComp Insurance. It's a different
8 insurance company than what's listed on your
9 certificate that you have there in front of
10 you. We had never heard of the company
11 before. The information that was provided to
12 us, all that your company did was do work
13 inside the houses, putting up cabinetry, that
14 you did no work on the roof, that you did no
15 work over -- over 15 feet. We specifically
16 were never told that there was an actual
17 injury that had occurred earlier that day.
18 So, it's our position that there is no
19 contract of insurance with J&L or E&L or
20 whoever this may have been that y'all tried to
21 create that day with Mrs. Miller.

22 The Deponent: Now, I don't know where
23 E&L -- I don't know what she --

24 Mr. Addison: Right. So, --

25 The Deponent: She made a mistake or

1 something.

2 Mr. Addison: -- our position is -- is
3 that we have no coverage with you or Mr.
4 Wilkie, that there never was an actual
5 contract of insurance with my clients, because
6 it's our position that we were given false
7 information about what was going on that day.
8 We had absolutely no knowledge that Dallas
9 Bessinger had fallen off of a roof and been
10 injured or we would have never entered into
11 even the concept of doing an application of
12 insurance with you. I can promise you that.
13 So, I'm giving you fair warning today that
14 it's probably in your best interest to show up
15 at this hearing next week with the commission
16 to give your side of all of this.

17 The Deponent: Mm-hmm.

18 Mr. Addison: Okay?

19 The Deponent: Yeah.

20 Mr. Addison: All right.

21 The Deponent: Uh-huh.

22 Mr. Addison: Let's get a copy. We need
23 to get a copy of that. We're going to make
24 that an exhibit to the deposition.

25 Mr. Haymond: Let me ask a couple of

1 things.

2 Examination

3 By Mr. Haymond:

4 Q So, you are the sole owner of J&L Construction; --

5 A Right.

6 Q -- is that correct?

7 A Yes.

8 Q Okay. So, Emory Wilkie, Robert Bessinger, Dallas
9 Bessinger and Dallas Bessinger's nephew were all
10 employees of yours?

11 A Right.

12 Q Okay. Mr. Bessinger told me that he was paid \$13
13 an hour for 40 hours a week. Does that sound
14 right?

15 A Probably.

16 Q So, \$13 an hour for a 40-hour workweek for Dallas
17 Bessinger?

18 A Well, they generally went around a hundred dollars
19 a day, really, --

20 Q Okay.

21 A -- with him --

22 Q All right. But you did consider all four of them
23 employees of yours?

24 A Right.

25 Q Okay.

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1 Mr. Addison: (to Mr. Haymond) That's
2 about the same, then. It's really roughly --
3 A hundred dollars a day --

4 Mr. Haymond: Yeah.

5 Mr. Addison: -- and \$13 an hour --

6 Mr. Haymond: Yeah.

7 Mr. Addison: -- is about exactly the
8 same.

9 Mr. Haymond: Okay. All right. That's
10 all I have.

11 (Whereupon the deposition was concluded at
12 10:45 a.m.)

13 (At the conclusion of the deposition, the
14 following exhibit was marked.)

15 Marked as Deposition Exhibit Number

16 One; Deposition of John Loughery;
17 copy of Certificate of Liability
18 Insurance; one page.

19 **(Deponent has waived reading and signing.)**

State of South Carolina)
)
 County of Lexington)

Certificate

Be it known that the foregoing deposition of John Loughery was taken before me;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth concerning the matter in controversy aforesaid;

That the foregoing transcript of 49 typewritten pages represents a true, accurate and complete transcription of the testimony so given at the time and place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

Signed this 15th day of April 2012.

Sandra M. Snead

Sandra M. Snead

Notary Public for South Carolina
 My commission expires October 17, 2013.

Note: Recordings are retained for twelve (12) months from date of certification.

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CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

06/09/2011

PRODUCER

LANDS INSURANCE CENTER INC
8 COLUMBIA AVE
LEXINGTON, SC 29072
PH. 803.957.3311 FAX 803.951.3908

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

JOHN LOUGHERY
PO BOX 308
LEXINGTON, SC 29071

INSURERS AFFORDING COVERAGE

NAIC #

INSURER A: NATIONAL GRANGE MUTUAL INSURANCE CO

INSURER B: HARTFORD UNDERWRITERS INC CO

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 ALTR	ADDP INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS												
A		GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☐ POLICY ☐ PROJECT ☐ LOC	MP11776F	02/17/2011	02/17/2012	<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$ 1,000,000</td></tr><tr><td>DAMAGE TO RENTED PREMISES (Ea occurrence)</td><td>\$ 500,000</td></tr><tr><td>MED EXP (Any one person)</td><td>\$ 10,000</td></tr><tr><td>PERSONAL & ADV INJURY</td><td>\$ 1,000,000</td></tr><tr><td>GENERAL AGGREGATE</td><td>\$ 2,000,000</td></tr><tr><td>PRODUCTS - COM/OP AGG</td><td>\$ 2,000,000</td></tr></table>	EACH OCCURRENCE	\$ 1,000,000	DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000	MED EXP (Any one person)	\$ 10,000	PERSONAL & ADV INJURY	\$ 1,000,000	GENERAL AGGREGATE	\$ 2,000,000	PRODUCTS - COM/OP AGG	\$ 2,000,000
EACH OCCURRENCE	\$ 1,000,000																	
DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 500,000																	
MED EXP (Any one person)	\$ 10,000																	
PERSONAL & ADV INJURY	\$ 1,000,000																	
GENERAL AGGREGATE	\$ 2,000,000																	
PRODUCTS - COM/OP AGG	\$ 2,000,000																	
		AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS				<table border="1"><tr><td>COMBINED SINGLE LIMIT (Ea accident)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per person)</td><td>\$</td></tr><tr><td>BODILY INJURY (Per accident)</td><td>\$</td></tr><tr><td>PROPERTY DAMAGE (Per accident)</td><td>\$</td></tr></table>	COMBINED SINGLE LIMIT (Ea accident)	\$	BODILY INJURY (Per person)	\$	BODILY INJURY (Per accident)	\$	PROPERTY DAMAGE (Per accident)	\$				
COMBINED SINGLE LIMIT (Ea accident)	\$																	
BODILY INJURY (Per person)	\$																	
BODILY INJURY (Per accident)	\$																	
PROPERTY DAMAGE (Per accident)	\$																	
		GARAGE LIABILITY ☐ ANY AUTO				<table border="1"><tr><td>AUTO ONLY - EA ACCIDENT</td><td>\$</td></tr><tr><td>OTHER THAN AUTO ONLY: EA ACC</td><td>\$</td></tr><tr><td>AGG</td><td>\$</td></tr></table>	AUTO ONLY - EA ACCIDENT	\$	OTHER THAN AUTO ONLY: EA ACC	\$	AGG	\$						
AUTO ONLY - EA ACCIDENT	\$																	
OTHER THAN AUTO ONLY: EA ACC	\$																	
AGG	\$																	
		EXCESS/UMBRELLA LIABILITY ☐ OCCUR ☐ CLAIMS MADE DEDUCTIBLE RETENTION \$				<table border="1"><tr><td>EACH OCCURRENCE</td><td>\$</td></tr><tr><td>AGGREGATE</td><td>\$</td></tr><tr><td></td><td>\$</td></tr><tr><td></td><td>\$</td></tr><tr><td></td><td>\$</td></tr></table>	EACH OCCURRENCE	\$	AGGREGATE	\$		\$		\$		\$		
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B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	39-80411-08025-769268	02/17/2011	02/17/2012	<table border="1"><tr><td>WC STATUTORY LIMITS</td><td></td></tr><tr><td>OTHER</td><td></td></tr><tr><td>E.L. EACH ACCIDENT</td><td>\$ 100,000</td></tr><tr><td>E.L. DISEASE - EA EMPLOYEE</td><td>\$ 100,000</td></tr><tr><td>E.L. DISEASE - POLICY LIMIT</td><td>\$ 500,000</td></tr></table>	WC STATUTORY LIMITS		OTHER		E.L. EACH ACCIDENT	\$ 100,000	E.L. DISEASE - EA EMPLOYEE	\$ 100,000	E.L. DISEASE - POLICY LIMIT	\$ 500,000		
WC STATUTORY LIMITS																		
OTHER																		
E.L. EACH ACCIDENT	\$ 100,000																	
E.L. DISEASE - EA EMPLOYEE	\$ 100,000																	
E.L. DISEASE - POLICY LIMIT	\$ 500,000																	
		OTHER																

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
THE CERTIFICATE HOLDER IS LISTED AS ADDITIONAL INSURED WITH REGARDS TO GENERAL LIABILITY

EXHIBIT

PENGLAD 800-631-6969

I Loughery
SMS 4/11/12

CERTIFICATE HOLDER

DOWNEAST BUILDERS & REALTY INC, SC PILLON
HOMES INC
1371 DOGWOOD DR SW
CONYERS, GA 30012

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL CL10 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

Page 37

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE # 1200479

DALLAS P. BESSINGER,	)	
	)	
CLAIMANT,	)	
	)	DEPOSITION
VS.	)	
	)	OF
J&L CONSTRUCTION, LLC AND R-N-M	)	
BUILDERS & ASSOCIATES, LLC,	)	TALISA MILLER
	)	
EMPLOYER,	)	
	)	
FIRSTCOMP INSURANCE,	)	
	)	
CARRIER,	)	
	)	
DEFENDANTS.	)	

Deposition of Talisa Miller, taken pursuant to the South Carolina Rules of Civil Procedure and the Administrative Procedures Act, commencing at the hour of 8:35 a.m., Thursday, April 12th, 2012 at the law office of Harris & Graves, 1518 Richland Street, Columbia, South Carolina.

COPY

Reported by
Sandra M. Snead

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Appearances

For the Claimant: Steven D. Haymond, Esquire
Harris & Graves, PA
1518 Richland Street
P.O. Box 11566
Columbia, SC 29211

For the Carrier: R. Daniel Addison, Esquire
Hedrick, Gardner, Kincheloe &
Garofalo, LLP
1301 Gervais Street, Suite 1900
P.O. Box 11267
Columbia, SC 29211

For SC Uninsured
Employers' Fund: Timothy B. Killen, Esquire
SC Second Injury Fund and
Workers' Compensation Uninsured
Employers' Fund
100 Executive Center Drive,
Suite 101
Columbia, SC 29210

Reported By: Sandra M. Snead

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Exhibits

No exhibits marked.

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Stipulations

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

TaLisa Miller, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified and deposed as follows:

The Court Reporter: State your name for the record.

The Deponent: TaLisa L. Miller.

Examination

By Mr. Addison:

Q Ms. Miller, my name is Dan Addison. I'm here on behalf of FirstComp Insurance in regard to a workers' compensation claim that's been filed by Dallas P. Bessinger, also known as Paul Bessinger. We're here today to ask you some questions regarding this claim and your involvement as an insurance agent who has issued the -- I'm just going to call it the -- the application for insurance that was submitted to FirstComp Insurance back in January, specifically on January the 4th of this year, of 2012. As we discussed when we were

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1 off the record, there are other parties involved.
2 We gave them notice yesterday of the -- I don't
3 know if -- I'm not sure whether to call them the
4 employer or not because, quite frankly, the
5 information we got from them yesterday was a bit
6 convoluted. But two gentlemen that were involved
7 in this scheme, for lack of a better word, Emory
8 Wilkie and John Loughery, we both -- we deposed
9 both of those gentlemen yesterday about these
10 events, and we told them yesterday that they could
11 attend and participate in this deposition if they
12 wanted to. I did -- You know, I specifically told
13 them on the record I do not represent them and was
14 not giving them advice as their lawyer. I just was
15 specifically telling them that if they wanted to
16 attend, they could, that they have a vested
17 interest in the proceedings that are going forward
18 with Mr. Bessinger's case. Your deposition was
19 scheduled for 8:30 a.m. in the same location where
20 Mr. Wilkie and Mr. Loughery's depositions took
21 place yesterday, the office of Harris & Graves on
22 Richland in Columbia. We told the two of them
23 yesterday that they could attend today at 8:30 if
24 they wanted to. They have not attended,
25 apparently. We've waited until 8:35 to see if they

1 might show up, and they have not, so we're going to
2 go forward with your deposition now.

3 A Okay.

4 Q As we also discussed off the record, there's
5 certain rules about doing depositions. You've
6 indicated you have never done a deposition before?

7 A Correct.

8 Q This deposition is for the purposes of the hearing
9 -- Well, it's really a discovery deposition, but
10 we've got a hearing coming up next Wednesday with
11 the commission about who ultimately will be
12 responsible for Mr. Bessinger's benefits, if any,
13 that might be owed to him. And what we're going to
14 be doing today is just kind of talking to you about
15 your involvement with the agent here, the agent
16 that produced this application and policy with
17 FirstComp. This deposition itself -- Basically,
18 when I ask you a question, you need to respond with
19 the answer to the question. If the answer requires
20 a yes or a no as part of the answer, you need to
21 say the words yes or no instead of uh-uh or uh-huh
22 or some other nonword.

23 A Right.

24 Q If you say one of the nonwords, we'll tell you to
25 say yes or no.

1 A Okay.

2 Q Okay. Also, if you'll always try to keep your
3 voice up. The court reporter is taking all this
4 down and will produce it in a nice little booklet
5 later on. She may have to review the tape at some
6 point, so if you'll make sure you keep your voice
7 up at all times during this.

8 A Okay.

9 Q Do you have any questions about the process today,
10 any concerns?

11 A No.

12 Q Okay. As we told you off the record, -- I'll tell
13 you again on the record -- you do have a right to
14 have an attorney here today. None of the parties
15 -- None of the lawyers here represent you. If you
16 want to have a lawyer, you can certainly obtain a
17 lawyer to represent your interest, but I think you
18 told us off the record you have no real desire to
19 have a lawyer, you're fine with going forward today
20 --

21 A Yes.

22 Q -- and that -- okay -- all right -- without a
23 lawyer. All right.

24 Mr. Killen: (to Mr. Addison) Before we
25 get started, can I say something --

1 Mr. Addison: Absolutely. Go ahead.

2 Mr. Killen: -- just for the record? I'm
3 Tim Killen, and I represent the South Carolina
4 Workers' Compensation Uninsured Employers'
5 Fund, and I'm here voluntarily. My client did
6 not receive actual -- well, legal notice of
7 this --

8 Mr. Addison: And I'll -- I'll agree with
9 that. Well, I'm not --

10 Mr. Killen: Yeah.

11 Mr. Addison: I intended -- I didn't
12 mean this -- When I said it was basically
13 like saying it was de bene esse, I didn't mean
14 to say it that way.

15 Mr. Killen: Right. Right. And I'm not
16 saying anything you said was wrong.

17 Mr. Addison: Yeah.

18 Mr. Killen: I'm just saying -- I just
19 want to put this down in case years from now
20 somebody's reading this.

21 Mr. Addison: Yeah.

22 Mr. Killen: So, I'm here voluntarily. I
23 just found out about it yesterday. We did not
24 receive -- The Fund did not receive notice of
25 yesterday's two depositions until after they

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1 were underway or were just about to be
2 underway, and I had a hearing out of town and
3 I could not attend yesterday. And it's my --
4 also my understanding that the gentlemen, John
5 Loughery and Emory Wilkie, did not receive any
6 written notice of this deposition here this
7 morning. You may have told them --

8 Mr. Addison: Right.

9 Mr. Killen: -- to -- I'm speaking to
10 Dan now. You may have told them yesterday,
11 but they didn't receive an actual written
12 notice.

13 Mr. Addison: And I would agree to every
14 bit of that. We -- We, quite frankly, kind
15 of screwed up some of the services of various
16 things, but to try to correct all of that, I
17 went ahead and had my office send subpoenas to
18 everybody for the hearing for next week, and,
19 you know, sort of the way I was looking at it
20 was, quite frankly, just trying to figure out
21 what's -- what went on back in January with
22 all of this so that we could present some of
23 that to the commission. And we've gone ahead
24 and sent subpoenas to everybody.

25 Q I think we probably sent a subpoena to you, just so

- 1 you can come to the hearing, as well. I know
2 that's somewhat of a difficulty, but because of
3 everything that is involved here, we may have to
4 get you there.
- 5 A Okay.
- 6 Q Okay. It's next week on the 18th at 2:15 in St.
7 Matthews, is where it's going to take place, right
8 at the St. Matthews -- basically the courthouse.
9 There's an annex back behind the courthouse.
- 10 A Okay.
- 11 Q So, the process we'll be doing today is trying to
12 kind of put the pieces together, and, when we get
13 to the hearing, we'll talk to the commissioner
14 about the specifics. All right?
- 15 A Okay.
- 16 Q Alrighty. If you would, give us your -- I know
17 you've given us your name as TaLisa L. Miller. Can
18 you tell us what the L stands for?
- 19 A Lynn.
- 20 Q Okey-doke. And is Miller your married name, maiden
21 name?
- 22 A Married name.
- 23 Q Married name. Okay.
- 24 A Married name.
- 25 Q What is your maiden name?

1 A Harsey, --
2 Q Okay.
3 A -- H-a-r-s-e-y.
4 Q Okey-doke. All right. How old are you, Ms.
5 Miller?
6 A I'm forty.
7 Q All right. And how far did you go through school?
8 A High school and some after school.
9 Q Okay. All right. You attended some college?
10 A Mm-hmm.
11 Q Is that --
12 A Yes.
13 Q -- a yes?
14 A Yes.
15 Q Okay.
16 A I'm sorry.
17 Q How many years of college did you have?
18 A About half a year.
19 Q Okey-doke. Alrighty. And do you hold any
20 certifications within the insurance industry? I
21 mean, did you obtain some training within the
22 insurance industry itself?
23 A Yes.
24 Q Okay.
25 A Yes.

1 Q I know y'all have the alphabet soup after y'all's
2 names typically. What sort of --
3 A Well, I'm just a --
4 Q -- designation --
5 A I'm a producer.
6 Q Okay. A producer?
7 A A producer.
8 Q All right. Okay. All right. And are you -- Do
9 you have any certifications within the industry --
10 A No.
11 Q -- at all?
12 A No.
13 Q Okay. All right. You work for a broker in charge
14 of some sort, I would guess?
15 A An independent agent.
16 Q Okay. Who is that person?
17 A Cliff Shealy --
18 Q Okay.
19 A -- at Midlands Insurance Center.
20 Q Okay. Alrighty. And as a producer -- What are
21 your responsibilities as a producer?
22 A Quote policies; write policies; service clients.
23 Q Okay. And does Cliff have to look over your
24 shoulder on all this stuff, or he just kind of has
25 the legal status as the agent and --

1 A Just the legal --
2 Q -- you're the --
3 A -- status, yes.
4 Q Okay. And you're sort of the -- for lack of a
5 better word, sort of the staff person that's there
6 managing the day-to-day operations?
7 A Yes.
8 Q At least as to some clients?
9 A Yes.
10 Q Okay. All right. How long have you worked with
11 that agency?
12 A Approximately six years.
13 Q Okay. Prior to working there, where did you work?
14 A At South Carolina Insurance Brokers.
15 Q Okay.
16 A They're no longer in business.
17 Q All right. How long did you work for them?
18 A A year.
19 Q Okay. And then prior to that?
20 A South Carolina Home Builders Self Insurers Fund, --
21 Q Okay.
22 A -- two years.
23 Q What were you doing for the Home Builders?
24 A I was basically a CSR.
25 Q Okay. All right. Customer service --

1 A Yes.

2 Q -- type stuff? Were you on the selling side of the

3 --

4 A No.

5 Q -- or the -- the administration?

6 A The administration side.

7 Q Okay. All right. So, it's almost like handling

8 claims, basically?

9 A Yes.

10 Q Okay. All right. And how long were you with Home

11 Builders?

12 A Two years.

13 Q Okay. All right. And before the -- that?

14 A Hipkins Insurance.

15 Q Okay. And what did you do with Hipkins?

16 A I was a producer there, as well.

17 Q All right. How long was Hipkins?

18 A About four years.

19 Q Okay. And before Hipkins?

20 A I was a stay-at-home mommy.

21 Q All right. Okay. So, altogether, it looks like --

22 six, seven, nine -- 13 to 15 years or so --

23 A Yes.

24 Q -- in the insurance industry?

25 A Yes.

- 1 Q Okay. So, we'll call it approximately 14 years in
2 the insurance industry?
- 3 A Correct.
- 4 Q All right. And if I'm -- You've done both the
5 selling side of insurance as well as sort of like
6 the adjusting side of insurance? I know you
7 haven't been an adjuster, but on that side, on the
8 handling claims side --
- 9 A Yes.
- 10 Q You did that when you were at the Home Builders?
- 11 A Yes.
- 12 Q All right. Okay. Your six years with Midlands,
13 have you done essentially the same job the whole
14 time you've been there?
- 15 A Yes.
- 16 Q Okay. Kind of walk me through the day-to-day --
17 what you do as a producer with Midlands. You don't
18 have to give me a lot of detail, but just kind of
19 tell me what your typical --
- 20 A I -- I answer telephones. People ask what their
21 payments are. I tell them how much their payments
22 are. I take payments. Clients come in for quotes.
23 I quote their auto, home, commercial. Mostly I'm
24 in -- on the commercial side --
- 25 Q Okay.

1 A -- there. You know, I ask them what their payroll
2 amounts are and different things like that.
3 Q Okay.
4 A And I do mail, you know, write letters to insureds.
5 That's basically my day.
6 Q Okay. All right. When you say commercial, you're
7 referring to both general liability --
8 A General liability, workers' comp, BOP.
9 Q Okay. BOP?
10 A BOP.
11 Q Explain that. What is --
12 A Business owners policies.
13 Q Okay. All right. In your day-to-day, you said
14 mostly what you're doing is commercial. What
15 percentage of your workload would you think is
16 commercial versus being --
17 A 70-30.
18 Q -- okay --
19 A Commercial, 70.
20 Q -- individual. -- Versus individual, --
21 A Yes.
22 Q -- homeowners or auto or whatever?
23 A Yes.
24 Q Okay. All right. And how much of that is writing
25 workers' compensation coverage would you say?

- 1 A About 30 percent.
- 2 Q Okay. All right. Alrighty. I'm going to show you
- 3 what's been marked in our, meaning FirstComp's,
- 4 submissions for the hearing next week as pages 50
- 5 and 51 of defendant FirstComp's APA. I'm going to
- 6 show that to you real quick, and I'll just let you
- 7 sit there and look at that real quick. Do you
- 8 recognize that document?
- 9 A Yes.
- 10 Q Okay. It's an ACORD form, an application for a
- 11 workers' comp policy; is that correct?
- 12 A Yes.
- 13 Q All right. Is that a document that you helped
- 14 produce?
- 15 A Yes.
- 16 Q Okay. All right. It was done on January the 4th
- 17 of 2012, correct?
- 18 A Yes.
- 19 Q All right. And tell me how you go about producing
- 20 an application like this. What is -- Well, I'll
- 21 tell you what, we'll just get specific. What do
- 22 you remember about doing this particular
- 23 application?
- 24 A This particular application, the two gentlemen came
- 25 in, said that they needed workers' comp insurance.

1 I asked them what they did. They did interior
2 trim. And, actually, only one gentleman talked the
3 whole time. His name was Emory Wilkie.
4 Q Okay.
5 A I asked them how much their payroll was, got them
6 an estimate, went online, quoted it with FirstComp
7 and gave them the rates, and they signed the
8 application and paid the down payment.
9 Q Do you remember what -- how they paid you the down
10 payment?
11 A They paid in cash.
12 Q In cash. Okay. Is that uncommon?
13 A No. No, but we are, effective May 1st, going to
14 checks or money orders only.
15 Q Okay. All right. And when I say is that uncommon,
16 I mean these gentlemen were obviously in the
17 construction industry, correct?
18 A Correct.
19 Q Is that uncommon for, you know, --
20 A No.
21 Q -- smaller contractors --
22 A No.
23 Q -- to pay in cash?
24 A No.
25 Q Okay. All right. Had you ever met either of these

1 two fellows before?

2 A No.

3 Q Had you ever dealt with Mr. Wilkie or Mr. Loughery
4 in the past?

5 A No.

6 Q Okay. Mr. Loughery has given us a -- some
7 certificates -- or at least he's provided us
8 yesterday with a certificate of insurance that
9 purports that he had coverage with you, that he's
10 dealt with Midlands for several years in the past.

11 Mr. Killen: And I will object to these
12 items from yesterday's depositions --

13 Mr. Addison: Sure.

14 Mr. Killen: -- or any reference to
15 yesterday's --

16 Mr. Addison: Okay.

17 Mr. Killen: -- depositions.

18 Q Let me just show you this, and, I mean, do -- Does
19 that appear to be your signature on there, -- and
20 it may well be, but I don't know -- on that
21 certificate?

22 A No.

23 Q It's not your signature?

24 A No.

25 Q Okay. Why would you think it's not your signature?

1 A Just because of the -- I mean, the R in my last
2 name. I always put a middle initial.

3 Q Okay. All right. And did you check your records
4 at all to see if you'd ever -- When these guys
5 came in and talked to you on the 4th, did you look
6 to see if you'd ever had them as a client before?

7 A I did not, no.

8 Q Okay. Is that something y'all do or don't do or --

9 A Well, occasionally we do, but most of the time I
10 know the people that are coming in.

11 Q Okay. All right. And did you not recognize either
12 one of them?

13 A No.

14 Q All right. And Mr. Loughery has also indicated
15 that he had an ongoing relationship with your
16 agency and that he had paid for prior policies,
17 that he would go by there fairly routinely and make
18 payments for policies in the past. Had you ever
19 seen him before making any payments?

20 A No.

21 Q Okay. Do you recall having any dealings with Mr.
22 Loughery prior to January the 4th of 2012?

23 A No.

24 Q Okay. How about Mr. Wilkie? Had you ever seen him
25 before, had any dealings with him in the past?

1 A He looked familiar, but I have -- I have never
2 dealt with him personally.

3 Q Okay. All right. And before we went on the
4 record, you said something about -- you know, about
5 the Bessingers. Had you dealt with the Bessingers
6 before?

7 A Not those Bessingers, but there is a gentleman
8 named Robert Bessinger --

9 Q Okay.

10 A -- that I had dealt with --

11 Q Okay.

12 A -- before.

13 Q Well, would he maybe also be known as Robbie
14 Bessinger?

15 A Yes.

16 Q All right. And did Robbie Bessinger have a policy
17 with y'all at sometime, with Midlands?

18 A He had some personal policies, --

19 Q Okay.

20 A -- and he may have dealt with an agent that
21 formerly was with us on the commercial side.

22 Q Okay. Per the testimony we received from the other
23 fellows, he had a company -- Robbie Bessinger had a
24 company called Carolina Residential, which was a
25 framing company, multiple years ago. Do you think

1 it's possible that Midlands had a policy with
2 Carolina Residential?

3 A It is possible.

4 Q Okay.

5 A We did look through our old files, and I didn't see
6 anything.

7 Q Okay. But Robbie Bessinger was somebody that y'all
8 knew --

9 A Yes.

10 Q -- or knew of?

11 A Yes.

12 Q Okay. All right. Had he ever done anything to
13 introduce Mr. Loughery to you in the past?

14 A No.

15 Q All right. Were you aware that he was Mr.
16 Loughery's brother-in-law?

17 A No.

18 Q Okay. All right. When these gentlemen came in on
19 January the 4th, what specifically did they tell
20 you? Do you recall? You said Mr. Wilkie did most
21 of the talking?

22 A Yes. He said that he needed to get workers' comp
23 to prove that he had insurance to a contractor that
24 he was working for.

25 Q Okay. Did he tell you who that contractor was?

1 A Ron -- I think he said R-N-M Builders.
2 Q Okay. All right.
3 A I know his first name's Ron, but I can't remember
4 his last name.
5 Q All right. And he was telling you he needed to get
6 a typical contractor's coverage so that he could
7 show a certificate to the --
8 A Yes.
9 Q -- employer?
10 A Yes.
11 Q Did he inform -- Did either one of them -- That
12 morning -- or that afternoon, -- excuse me -- did
13 either one of them inform you that they had just
14 had an injury with a putative employee --
15 A No.
16 Q -- that morning?
17 A No.
18 Q Okay. What time was it that they came to see you
19 that day? Do you remember?
20 A It was approximately three o'clock.
21 Q Okay. Had you received any phone calls from either
22 one of them prior to that time, --
23 A No.
24 Q -- prior to three o'clock?
25 A No.

- 1 Q Okay. Both of them have given testimony that they
2 contacted you from Orangeburg and said that they
3 had just had an injury with a putative employee and
4 needed to confirm the coverage that they had
5 through your agency. Did you have any kind of
6 phone conversation --
- 7 A No.
- 8 Q -- with them like that?
- 9 A No.
- 10 Q All right. During the process when you were
11 producing the application that's in front of you,
12 marked as pages 50 and 51 from Defendant
13 FirstComp's APA, did they discuss with you at any
14 point during that application process that they had
15 had an injury with a putative employee some several
16 hours just prior to this application process?
- 17 A No, they did not or I would have not written this
18 policy.
- 19 Q Okay. Do you ask them that question, do --
- 20 A Yes.
- 21 Q Okay.
- 22 A Yes, that is a question that we do ask, --
- 23 Q Okay. And you do ask --
- 24 A -- if they have knowledge of a prior injury or any
25 litigation. We do ask those questions.

1 Q Okay. Then their answer to you on that was what?

2 A No.

3 Q Okay. All right. Would you have created this
4 particular policy had you been informed by the two
5 of them, as they have indicated, that they had a --
6 a person laying in the hospital in Orangeburg?

7 A Absolutely not.

8 Q Okay. All right. In my discussions -- or my
9 office's discussions with you on this, prior to
10 this deposition, you indicated that they were
11 fairly insistent, wanting to know when this policy
12 took place; --

13 A Yes.

14 Q -- is that correct?

15 A Yes.

16 Q Okay. Did they seem a bit anxious about that?

17 Mr. Killen: Object to the form of the
18 question.

19 Mr. Addison: And I'm -- I know I'm
20 getting a little bit -- I know I'm getting
21 into a little bit of leading here, and I'll
22 try to answer -- I'll try to ask it a little
23 bit differently.

24 Mr. Killen: And let me just state I have
25 a running objection to all of this, the

1 hearsay questions about what they said
2 yesterday or what they said to you prior, but
3 -- These gentlemen aren't parties to this
4 claim right now.

5 Mr. Addison: Yet.

6 Mr. Killen: Yet. Yet. That's true.
7 But right now they're not. And, so, I just
8 want to -- So, I don't have to object every
9 single time, it's a --

10 Mr. Addison: And that's fine.

11 Mr. Killen: -- running objection.

12 Mr. Haymond: Well, R&L is a party to
13 this claim.

14 Mr. Addison: R-N-M --

15 Mr. Killen: You're talking about --

16 Mr. Addison: J&L.

17 Mr. Killen: -- J&L?

18 Mr. Addison: It's J&L.

19 Mr. Haymond: Yeah, J&L is a party to
20 this.

21 Mr. Killen: Well, J&L is not a person.

22 Mr. Haymond: That would be correct, yes.

23 Mr. Addison: Well, I don't know -- We
24 kind of have to say on the record I think
25 that's a question for the commissioner

1 because, actually, he's not an LLC, so he may
2 just be a d/b/a, and, if so, then maybe he is
3 the party. I don't know.

4 Mr. Killen: And if that's the case, that
5 would -- that's fine with me, he or they or
6 who, --

7 Mr. Addison: Whatever.

8 Mr. Killen: -- you know.

9 Mr. Addison: Yeah.

10 Q All right. Back to the -- my line of questioning.
11 Just describe for me what was going on with these
12 guys when they came in. Did -- Did they appear to
13 be just regular old Joes, contractor --

14 A Just --

15 Q -- guys coming in?

16 A They did appear to be just regular contractors that
17 come into my office on --

18 Q Okay.

19 A -- on a normal basis. I did find it kind of
20 strange that Mr. Wilkie did all the talking, and,
21 apparently, the other fellow was John Loughery.

22 Q Mm-hmm.

23 A He did not introduce himself to me. He sat silent
24 the whole time, and he did appear a bit nervous.

25 Q Okay. All right. The contract -- Well, the

1 application here indicates a name of E&L --

2 A And I believe that was --

3 Q -- Construction --

4 A -- a typo on my part.

5 Q Okay. All right. And then the listed owner is

6 Emory Wilkie?

7 A Correct.

8 Q Did you create that information or was that

9 something that they provided to you at that --

10 A They provided this to me.

11 Q All right. So, during that --

12 A Emory Wilkie did all the talking.

13 Q Okay. So, he indicated to you that -- that he was

14 the owner, 100 percent owner, of J -- what we

15 believe to believe J&L Construction?

16 A Yes.

17 Q All right. And y'all have J&L Construction being

18 listed as an LLC on here. Where did that

19 information come from?

20 A They told me that --

21 Q Okay.

22 A -- or Emory -- Let me correct myself. Emory

23 Wilkie told me that, not they, because Mr. Loughery

24 did no talking.

25 Q All right. Then in the general information section

1 on page two, or also marked as page 51 of the APA,
2 it's got all these things, the standards that are
3 asked of an applicant on an ACORD application.

4 A Yes.

5 Q Who gave you the answers to those various
6 questions?

7 A Mr. Wilkie.

8 Q Mr. Wilkie did?

9 A Yes.

10 Q Okay. All right. And then down at the bottom,
11 it's actually signed, the application is signed by
12 John Loughery. Can you explain why he signed it
13 instead of Wilkie?

14 A Honestly, I did not pay any attention because when
15 they gave me the money, I went back to get them
16 change, --

17 Q Okay.

18 A -- handed them the pen, I said go ahead and sign --
19 because I had already signed. I said go ahead and
20 sign, when I get back with your change, I'll make
21 you some copies.

22 Q Okay.

23 A And when I got back, it was signed, and I did not
24 pay attention to the signature, --

25 Q All right. Okay.

1 A -- and that's --

2 Q And it's not the easiest one to read. I will

3 certainly agree with that. But you saw a signature

4 --

5 A Yes.

6 Q -- and assumed that -- what?

7 A I assumed that Mr. Wilkie signed --

8 Q Okay.

9 A -- the document.

10 Q All right. And when did you figure out that he had

11 not been the one to sign that?

12 A When I did the phone deposition -- or the phone

13 recording with -- with FirstComp.

14 Q Okay. All right. Okay. So, you had had an

15 application process that you had gone through with

16 them where they were physically present, --

17 A Yes.

18 Q -- discussing with you what their business was and

19 producing the application, and you submitted the

20 information to the system, I would assume?

21 A Yes.

22 Q Was this an assigned risk situation or -- or not?

23 It was a voluntary -- Is it -- This is the

24 voluntary market? Is this what --

25 A Voluntary market, yes.

1 Q Okay. So, you said, you know, FirstComp is someone
2 that will pick up people like this --
3 A Yes.
4 Q -- and you submitted it to the underwriters at
5 FirstComp?
6 A Yes.
7 Q All right. And you were given a thumbs-up based
8 upon the information that was given to you on the
9 application?
10 A Correct. Yes.
11 Q All right. Did you provide any information to
12 FirstComp that these people told you that they had
13 had an injury, with the person sitting in the
14 hospital in Orangeburg, that they were trying to
15 get coverage to cover that injury?
16 A Not on that day.
17 Q Okay.
18 A When I found out the following Monday, when I got
19 the telephone call on our answering machine, I
20 contacted FirstComp immediately.
21 Q Okay. But at the time of this application --
22 A No.
23 Q -- is what I'm saying.
24 A No.
25 Q Okay. All right. At any point during that day,

1 January the 4th, 2012, did either of these two
2 fellows or Mr. Bessinger have any conversation with
3 you saying that there had been an injury -- When I
4 say Mr. Bessinger, I'm talking about Paul, or
5 Dallas, Bessinger, the injured guy sitting in
6 Orangeburg on that day. Did anybody contact you
7 and say we need to have benefits for this guy?

8 A No.

9 Q All right. There had been no policy with FirstComp
10 prior to this date, correct?

11 A No.

12 Q Had you had any -- Did you, your insurance agency,
13 have any type of policy with John Loughery, as far
14 as you know, prior to January the 4th, 2012?

15 A No.

16 Q Okey-doke. They indicated to you -- When I say
17 they, I'm referring to the two gentlemen there with
18 you that day. You said Mr. Wilkie did most of the
19 talking but Mr. Loughery was there; is that
20 correct?

21 A Correct.

22 Q Was he corroborating what Mr. Wilkie would say?

23 A He was silent the whole time.

24 Q Okay. All right. Did -- These questions
25 basically ask several things. One of the things

1 they ask is -- is there any work done over 15 feet.
2 I think it's about the third of the way down here
3 on the first --
4 A It's question number three.
5 Q Okay. Did you just check that or did you ask them
6 if they did any --
7 A I asked them these questions.
8 Q Okay. And they indicated to you that they did not
9 do any work over 15 feet?
10 A Yes.
11 Q Why is that important? Why do y'all ask that
12 question?
13 A Because if they do work over 15 feet, they're not
14 just doing interior carpentry trim.
15 Q Right. And that's what was told to you, that --
16 That classification of what the company did, --
17 A Yes.
18 Q -- that was told to you by whom?
19 A Mr. Wilkie.
20 Q Okay. And he informed you they were a company that
21 did carpentry work that was trim carpentry and
22 putting in cabinetry?
23 A Yes.
24 Q All right. And that's important why? Why is that
25 an important factor?

- 1 A If they were doing exterior carpentry, framing,
2 roofing, anything like that, they would have had to
3 have gone through the residual market --
- 4 Q Okay. All right. Would --
- 5 A -- because we do not have a standard market for
6 that type of risk.
- 7 Q There's no voluntary market that would --
- 8 A No, sir.
- 9 Q -- cover that? All right. And I believe, if you
10 look on the first page, it indicates that the age
11 of the company is actually -- that this is a new
12 company, essentially. Is that correct?
- 13 A Yes.
- 14 Q It shows here that zero --
- 15 A Zero years in business.
- 16 Q Yeah, zero years in business, up here at the top,
17 meaning that it's a brand new -- it's basically a
18 brand new company --
- 19 A Yes.
- 20 Q -- that was created by these gentlemen? Is that
21 uncommon?
- 22 A No.
- 23 Q Okay.
- 24 A No.
- 25 Q All right. And a brand new company, typically,

1 when you have -- When you're a brand new company,
2 is it easy to get coverage or hard to get coverage,
3 depending on --
4 A It depends on the class code, --
5 Q Okay.
6 A -- what -- what they're doing.
7 Q Okay. Class code meaning the type of --
8 A The type of --
9 Q -- work?
10 A -- work they're doing.
11 Q Okay. All right. If you are a framing outfit
12 where you're doing exterior carpentry and framing
13 work, is that an easy thing to insure?
14 A No.
15 Q All right.
16 A No.
17 Q Okey-doke. Is the class code for that different
18 than the class code for doing interior carpentry
19 and --
20 A Yes.
21 Q -- cabinetry work?
22 A Yes.
23 Q All right.
24 A Much more expensive and much more of a risk.
25 Q Okay. The risk factors associated with the class

1 codes for the different jobs create different
2 premium values. Is that an accurate statement?

3 A Correct. Yes.

4 Q Okay. What would be the difference of -- Just
5 based on your knowledge and your years of service,
6 -- and just give me an estimate. I don't need to
7 know an exact. But what do you think the
8 difference would have been in the premium they
9 would have had to pay if they'd actually given you
10 a statement that they were doing framing work above
11 15 feet versus what they actually told you?

12 A It probably would have been at least triple the
13 premium.

14 Q Okay. All right. Do you rely on the insureds to
15 provide accurate information to you when coming up
16 with what the premiums should be for their company?

17 A Yes.

18 Q All right. Do you consider inaccurate information
19 to be a problem?

20 A Yes, I do.

21 Q All right. Would you have written -- gone ahead
22 and gone through the process of writing this policy
23 had you known they were giving you inaccurate
24 information that day?

25 A Absolutely not.

1 Q Okey-doke. I know this isn't really your call, but
2 do you believe that what they did with the -- with
3 having an injury and coming to you was proper,
4 trying to get a policy to cover it?
5 A Absolutely not.
6 Q Okay. Okay.
7 A No.
8 Q All right. When did you first find out about this
9 injury that Mr. Bessinger had?
10 A The following Monday after this Friday, which would
11 have been January the 7th, at about 8:30 a.m.
12 Q Okay.
13 A I came in to work, checked the messages on the
14 answering machine, and there was a message from Mr.
15 Bessinger's father, and I took down the
16 information, and the first person I contacted was
17 FirstComp, --
18 Q Okay.
19 A -- immediately.
20 Q All right. And said what?
21 A I said that it had come to my attention that there
22 was an injury before this policy was written and we
23 needed to either cancel this policy flat or get in
24 touch with the proper authorities.
25 Q Okay. All right. And did you do anything else

1 with the investigation that FirstComp did
2 subsequent to that? Did you continue to be
3 involved?
4 A Yes.
5 Q Okay.
6 A Yes.
7 Q All right. And when you say Mr. Bessinger's
8 father, you mean Dallas Bessinger --
9 A The claimant's -- Dallas --
10 Q Okay.
11 A Dallas Bessinger's father.
12 Q Okay. He contacted you and said my son's been
13 injured, we need to get some benefits?
14 A Yes.
15 Q Okay. All right. Did you have any conversations
16 with Mr. -- Mr. Bessinger Senior that day? Did you
17 ever talk to him?
18 A Yes. He called the office --
19 Q Okay. All right.
20 A -- and --
21 Q That day?
22 A Yes.
23 Q All right. You -- So, you, personally, talked to
24 him that day?
25 A I have, yes.

1 Q That day, did you talk to him?

2 A That day, yes.

3 Q All right. And what were your -- What discussions
4 did you have, on your end, with him?

5 A I told him that they came in that afternoon and got
6 the policy, I did not know if there would be
7 coverage because they became in -- they came in and
8 falsely represented things and that he would have
9 to contact FirstComp.

10 Mr. Addison: Okay. All right. I think
11 that's all I have. I will go -- I mean, just
12 -- Do you have the certificates that -- that
13 -- Do you have the report? I haven't gotten
14 the report yet.

15 (Attorney Killen presents document to Attorney
16 Addison.)

17 Mr. Addison: Okay.

18 Mr. Killen: That's my only copy.

19 Mr. Addison: Okey-doke.

20 Q Gary Smith over at the commission is the --
21 Actually, he's not --

22 Mr. Addison: What is he now? What's his
23 new title? I don't even know his new title.

24 Mr. Haymond: Director of compliance.

25 Q He's the director of the compliance division --

1 because we have a new coverage person now.

2 Mr. Addison: What's that guy's name? I
3 can't think of it? What's his name? What's
4 the new coverage guy's name? They've split
5 them up. Coverage and compliance are two
6 separate divisions.

7 Q Anyway, Gary Smith is the compliance director, and
8 he's issued -- He's issued a couple of reports,
9 but he's got a new one. This is the April 9th
10 report regarding Mr. Wilkie and Mr. Loughery and R-
11 N-M Builders and multiple other people.

12 Mr. Addison: Is this the same one I
13 have? Yeah. Was there a separate one other
14 than this June 9th?

15 Mr. Killen: There was an earlier one
16 that just said J&L had coverage and --

17 Mr. Addison: Here it is. It's this one.
18 This is the one you're talking about.

19 Q All right. This one, I think, is the other one
20 that we've talked about. This is in the report,
21 and it's a certificate of -- of insurance to a John
22 Loughery, not to J&L, but to a John Loughery by
23 Midlands with what appears to be your signature.
24 Do you think that might be your signature on this
25 one?

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1 A It's similar, but I always pronounce my Rs in my
2 signatures.

3 Q Okay. All right. But it's possible that this may
4 be --

5 A It's possible.

6 Q Okay. All right. Per the report, --

7 Mr. Addison: And correct me if I'm
8 wrong, Tim, but, I mean, I think this was a
9 policy that had been canceled at some point.
10 Is that correct?

11 Mr. Killen: Oh, I don't know about the
12 validity or terms of those policies --

13 Mr. Addison: Okay. All right.

14 Mr. Killen: -- on those certificates.

15 Q And Gary --

16 Mr. Addison: And, I mean, I haven't had
17 a chance to read the report. I don't know.

18 Mr. Killen: Yeah.

19 Mr. Addison: I'm just basing it on what
20 Gary told me in his conversation, and you can
21 object to the hearsay --

22 Mr. Killen: No, --

23 Mr. Addison: -- aspect to it, but I just
24 need to try to get to the bottom of -- of it.

25 Q Gary has indicated -- Gary Smith has indicated to

1 us that there were some certificates provided to
2 Ronnie Stokes, who is R-N-M Builders, R-N-M -- that
3 R-N-M turned those over to Gary Smith. Those
4 certificates had been given to him by John
5 Loughery. And Gary Smith has indicated to us, as
6 his -- in his capacity as the compliance director
7 at the commission, that they are fraudulent
8 certificates, they are not accurate certificates.

9 A Yes.

10 Q And we're just trying -- You know, I'm trying to
11 figure out where they may have come from. And, you
12 know, it clearly is what appears to be a proper
13 certificate, but --

14 Mr. Killen: Object to the form of the
15 question.

16 Mr. Addison: Sure. Sure.

17 Q -- what appears to be a proper certificate, but
18 Gary Smith has indicated that he can't find that
19 the policy numbers match up to any known policy
20 that may be in existence. One of the ones that we
21 have in this report is the one that I showed you
22 earlier. It's the one of June of 2011. It's a
23 certificate given to Downeast Builders and Realty,
24 Inc., South Carolina Pillon, P-i-l-l-o-n, -- I
25 guess is how you pronounce it -- Homes --

1 Mr. Killen: Yeah.

2 Mr. Addison: Pillon -- Pillon --

3 Mr. Killen: I don't know.

4 Mr. Addison: -- Pillon -- I don't know.

5 Q -- out of Conyers, Georgia, which is listed as
6 Exhibit E of this report of the commission, and
7 then a second one is the one that I just showed
8 you, which is dated October the -- excuse me --
9 August the 4th of 2009, written to a John Loughery,
10 written on -- The insured's name is John Loughery.
11 The certificate holder was A Trim Builders in
12 Summerville, South Carolina, --

13 Mr. Addison: And it's A, capital A, Trim
14 Builders.

15 Q -- with what appears to be your signature on --
16 purports to be your signature on here. Again, Mr.
17 Smith has indicated that this certificate, in his
18 opinion, is a fraudulent, false whatever you want
19 to call it, certificate because he cannot match up
20 the -- the policy numbers on here, as well, to any
21 known policy with any particular insurance carrier.
22 How many certificates do you think you've issued in
23 your career?

24 A Thousands.

25 Q Okay. All right. Have you ever seen anybody

1 dummy-up a certificate based upon another
2 certificate?
3 A Not personally, --
4 Q Okay.
5 A -- no.
6 Q All right. Do you think it would be impossible to
7 do that?
8 A Yes.
9 Q Okay. All right.
10 A I -- I did a little research after all of this
11 happened, --
12 Q Okey-doke.
13 A -- and there are some websites out there that --
14 Q Oh. You're saying it would be -- I said do you
15 think it would be impossible to do?
16 A Oh. Yes, it -- No, it would not be impossible.
17 Q Okay. All right. You said there's some websites
18 or places you can go find --
19 A Yes.
20 Q -- certificates --
21 A Yes.
22 Q Okay. All right. And you had had some dealings
23 with Robbie Bessinger in the past, correct?
24 A Yes.
25 Q All right. But you had no knowledge that Robbie

- 1 Bessinger was John Loughery's brother-in-law, did
2 you?
- 3 A No.
- 4 Q Okay. All right. Do y'all sell for Hartford? Is
5 that somebody y'all write for?
- 6 A Not directly. They may be in the residual market.
- 7 Q Okay. How about National Grange? Do y'all write
8 for them?
- 9 A We do, yes.
- 10 Q Okay. And -- All right. One last question. When
11 they came in and talked with you about their
12 payroll when they were doing the application, how
13 much payroll did they indicate to you that they
14 had?
- 15 A 10,000.
- 16 Q Okay. Did they give you any -- a list of any names
17 of anybody that they were paying?
- 18 A No.
- 19 Q Did they tell you how many employees they had?
- 20 A One.
- 21 Q One?
- 22 A Mm-hmm.
- 23 Q Being Mr. Wilkie?
- 24 A Mm-hmm.
- 25 Q Is that a yes?

1 A Not Mr. Wilkie. One besides Mr. Wilkie --
2 Q Okay.
3 A -- because he was going to be excluded from the
4 policy.
5 Q And who did they say that individual --
6 A They did not give me a --
7 Q -- was?
8 A -- name.
9 Q All right. Did they provide Paul Bessinger or
10 Dallas Bessinger's name to you at any point?
11 A No.
12 Q All right. At any point, did you calculate premium
13 and charge any premium based upon any individual
14 name, --
15 A No.
16 Q -- Bessinger, Paul Bessinger or Robbie Bessinger,
17 Dallas Bessinger, --
18 A No.
19 Q -- anything that --
20 A No.
21 Q -- that might have Bessinger as the last name?
22 A No.
23 Q Okay. Alrighty. Do you recall what you charged
24 them on that date?
25 A Well, the total premium was 1339 and they did

1 quarterly payments, so it was \$400 and something.

2 Q Okay. All right. FirstComp has reimbursed \$405 to
3 Mr. Wilkie, which he then cashed and gave to Mr.
4 Loughery because, apparently, Mr. Loughery is the
5 one that paid these --

6 Mr. Killen: Object to the form of the
7 question.

8 Q -- these monies. And I'm basing this on what they
9 told us yesterday. And would that sound accurate?
10 I mean, Mr. Loughery agreed that's what he had paid
11 in cash that day, --

12 A Yes.

13 Q -- was \$405. Does that --

14 A Yes.

15 Q -- sound accurate as to what you actually received
16 from him on January the 4th of 2012?

17 A Yes, it does.

18 Q Okay.

19 Mr. Addison: Alrighty. She's all yours,
20 Tim.

21 Mr. Killen: Thank you.

22 Examination

23 By Mr. Killen:

24 Q Ms. Miller, I am Tim Killen, and I represent the
25 state Workers' Compensation Uninsured Employers'

- 1 Fund. Have you received the subpoena my office
2 sent to yours regarding documents and materials?
3 A Yes. Yes.
4 Q Have -- Are you preparing a response to that?
5 A We are.
6 Q Okay. When do you anticipate having that response
7 to me?
8 A I believe it was mailed out yesterday afternoon.
9 Q Okay. Good.
10 A I think Cliff took -- sent it out yesterday.
11 Mr. Killen: Well, I'd like to hold this
12 deposition open, --
13 Mr. Addison: That's fine.
14 Mr. Killen: -- if possible, --
15 Mr. Addison: Yeah, that's fine.
16 Mr. Killen: -- until I can review those
17 materials, and then maybe we'll reconvene,
18 maybe we won't, probably not, but you never
19 know.
20 Q Okay. And your office had never had any dealings
21 with J&L Construction, LLC before; is that correct?
22 A Not me, personally, no.
23 Q Okay. What about your office, Midlands --
24 A As far as I know, no.
25 Q Is it possible?

1 A We -- It's possible because we've had some agents
2 leave in the past three years. Some have retired.
3 Some have moved out of state. So, it's possible.
4 Q Okay.
5 A I'm not saying that it's impossible.
6 Q Do you keep records in electronic formats --
7 A No.
8 Q -- or on a server or anything?
9 A No. No. Everything --
10 Q Everything is paper?
11 A -- is paper. We are trying to go over to
12 electronic now, but everything from -- from here
13 past is paper.
14 Q How do you generate documents such as a workers'
15 compensation --
16 A We have --
17 Q -- application?
18 A Well, the workers' compensation applications come
19 from the actual website, FirstComp's website or
20 NCCI's website or what other company -- They
21 generate those documents. The certificates, we
22 have access to acord.org. That's where we go in
23 and generate our certificates.
24 Q And, so, you do use computers at work, but you just
25 don't use them to store any information?

1 A Correct. Everything is paper.

2 Q How many people work over there at Midlands?

3 A We have four now. Cliff is the agency owner, two

4 producers, and a receptionist.

5 Q And do you know whether or not Midlands has had any

6 dealings with -- with Robert Bessinger? They have,

7 correct?

8 A We have, yes.

9 Q Okay. But you never worked any policies up for

10 him; is that right?

11 A Commercial policies --

12 Q Any types of policies.

13 A A personal policy for Robert Bessinger, yes.

14 Q Okay. What kind of personal policy?

15 A Auto.

16 Q Okay. And do you know what agent handled his

17 commercial policies?

18 A I do not, no.

19 Q Do you know -- And, so, then you don't know if

20 that agent is still with Midlands?

21 A No. I don't -- I don't believe Robert Bessinger

22 had commercial policies with us.

23 Q Okay.

24 A I -- I -- The only file we had for him was a

25 personal file.

- 1 Q What about J&L Construction of Gaston, LLC?
- 2 A No.
- 3 Q No what? You've never dealt with them, or you --
- 4 A I've never dealt --
- 5 Q -- don't know?
- 6 A -- with them. I've never dealt with them.
- 7 Q Do you know who that is?
- 8 A No.
- 9 Q What about Carolina Residential Framing and
- 10 Remodeling, LLC?
- 11 A No.
- 12 Q No personal dealings?
- 13 A No.
- 14 Q What about your business? Have they dealt with
- 15 them?
- 16 A No.
- 17 Q What about Above Standard Customs Homes, LLC?
- 18 A No.
- 19 Q Now, are you sure about this or are you just saying
- 20 that you don't remember?...
- 21 A No. I'm sure about this.
- 22 Q Okay. Do you know what -- who runs Above Standard
- 23 Custom Homes?
- 24 A No, sir.
- 25 Q Do you know who runs Carolina Residential Framing

- 1 and Remodeling?
- 2 A No, sir.
- 3 Q What about J&L Construction of Gaston?
- 4 A Well, I do now.
- 5 Q Do you?
- 6 A From what's been going on, as far as I know, John
- 7 Loughery.
- 8 Q Is that different from J&L Construction, LLC, --
- 9 because the name's different.
- 10 A Okay. Yeah, I guess I'm confused, then.
- 11 Q Okay. So, you don't -- you don't know?
- 12 A I don't know. I don't know.
- 13 Q What kind of materials did you put in the subpoena
- 14 response that y'all mailed out yesterday?
- 15 A Everything that was in the file. We copied the
- 16 entire file.
- 17 Q Which file?
- 18 A For the -- this -- this workers' comp policy that
- 19 we're referencing today.
- 20 Q Who -- Who is that policy for?
- 21 A Well, it (says here E&L Construction, but it is a
- 22 typo. It's J&L Construction, LLC. And I also
- 23 copied Robert Bessinger's personal file.
- 24 Q Now, you said that you met with Mr. Wilkie and who
- 25 else on January 4th?

1 A I'm -- I'm assuming it was John Loughery, but he
2 did not introduce himself, so I don't know -- I
3 didn't know on that day what his name was.
4 Q Mr. Loughery did not provide you any -- If it --
5 If it were him, he did not provide you any
6 identification?
7 A No, he did not.
8 Q He didn't introduce himself?
9 A No, he did not.
10 Q Emory Wilkie didn't say this is John Loughery, --
11 A No, he --
12 Q -- nice to meet you?
13 A -- did not.
14 Q So, you don't know who it was, do you?
15 A I don't.
16 Q How do you know it was Emory Wilkie?
17 A He did introduce himself. He told me his name.
18 Q So, the one thing we do know is that you met with
19 Emory Wilkie?
20 A Yes.
21 Q You don't know who else you met with that day?
22 A Correct.
23 Q And the insurance application, --
24 Mr. Killen: It's page 50 -- pages 50 and
25 51 of FirstComp's APA submissions.

1 Q -- who inputs this information, that -- that fills
2 these boxes on this application?

3 A I do.

4 Q So, you put in E&L Construction, LLC?

5 A I did.

6 Q Now, did you ask to see any articles of
7 organization?

8 A No, I did not.

9 Q Did you ask -- Did you check the Secretary of
10 State's website just to see if that company really
11 exists?

12 A No, I did not.

13 Q Well, how do you know that a business actually
14 exists when somebody comes in to buy a policy?

15 A I typically go by what ~~the insured~~ says.

16 Q When do they become the insured?

17 A When they sign this policy and pay the down
18 payment.

19 Q Okay. So, at that appointment, after he signed
20 this application and he made the payment to you,
21 that's when he became the insured, --

22 Mr. Addison: Object to the form. It
23 calls for legal speculation -- or legal
24 opinion.

25 Q -- in your opinion?

1 A In my opinion, if he had not misrepresented
2 himself, yes, he would have been an insured.
3 Q ~~Can you look through those two pages~~ and tell me
4 where it's -- where the question is -- we'll use
5 your language -- where it asks him about prior
6 injury or any litigation?
7 A There's no question on here, but we do ask that
8 question in our office.
9 Q Do you write that answer down?
10 A No.
11 Q So, all we have to go on is what you're telling us;
12 --
13 A Yes.
14 Q -- is that right?
15 A Yes.
16 Q Isn't it -- Wouldn't it seem to be important to --
17 to write the answer down somewhere in the file?
18 A Yes, it would be important.
19 Q Wouldn't it be important to have the insured, or
20 perspective insured, to sign something saying we
21 don't have any prior accidents or any, as you said,
22 -- any litigation, as you said?
23 A Yes.
24 Q It seems like all the material considerations
25 issuing the policy should be on this application,

1 correct?

2 Mr. Addison: Again, objection. It calls
3 for a legal --

4 Mr. Killen: That's fine. You can
5 object.

6 Mr. Addison: -- conclusion.

7 Q But you can answer the question.

8 A I'm going to say no.

9 Q Why?

10 A Because, as a producer, asking additional questions
11 to kind of cover my behind doesn't necessarily have
12 to be on this application.

13 Q Okay. So, is that what this is about?

14 A I don't understand what you're asking me.

15 Q Is this -- or -- Is this to cover your behind?

16 A No.

17 Q Well, what do you mean by that?

18 A I'm -- I'm saying that the question about prior
19 accidents or litigation is a question that we ask
20 formally so that we're not writing a fraudulent
21 policy.

22 Q Formally. What do you mean you ask it formally?

23 A I say do you have prior accidents, knowledge of
24 prior accidents or knowledge of litigation.

25 Q Okay. And do you know or can you say whether or

1 not Mr. Wilkie had knowledge of prior accidents or
2 prior litigation?

3 A I cannot.

4 Q And how would you define prior?

5 A Anything prior to when he came into my office at
6 three o'clock.

7 Q Not prior to the date that the policy would be
8 effective?

9 A Anything prior to three PM when he came in my
10 office to write that policy.

11 Q Did you tell him that you mean -- When you asked
12 him that question, or say that you asked him that
13 question, did you tell him I'm not talking -- I'm
14 talking about everything prior to right now? You
15 didn't say prior to the date this policy would be
16 effective, which was midnight of last night?

17 A No.

18 Q Okay.

19 A No. And I did not give him indication that the
20 policy would be effective midnight of last night.

21 Q What indication did you give him?

22 A I told him the policy would be effective at three
23 PM when he wrote the policy.

24 Q You told him that?

25 A I told him that.

- 1 Q Is it your understanding that policy was actually
2 effective at three PM or at midnight the previous
3 night?
- 4 A It's my understanding that the policy goes into
5 effect the time and the date that they come in.
- 6 Q Have you seen the actual policy?
- 7 A Have I seen the actual --
- 8 Q Policy that was issued to Emory Wilkie and/or his
9 alleged company.
- 10 A Yes.
- 11 Q What time does that say the policy is effective?
- 12 A I don't know because I don't have it in front of
13 me.
- 14 Q I don't either.
- 15 A Yeah. I don't know.
- 16 Q I've asked for it, but I don't have it, although
17 it's my understanding it's effective at midnight,
18 12:01 of January 4th. Does that sound right to
19 you?
- 20 A That's a gray area that I just -- I don't -- I
21 don't know.
- 22 Q And that's fine. And Mr. Wilkie told you that he
23 was a hundred percent owner of this purported
24 company; is that --
- 25 A Yes.

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- 1 Q -- right? Okay. How do you know they came in at
2 three o'clock?
- 3 A How do I know they came in at three o'clock?
- 4 Q Or -- Yes, Mr. Wilkie and the unidentified
5 individual. How do you know they came in at three
6 o'clock?
- 7 A Because I looked at the clock when they came in.
- 8 Q Okay. And it said three o'clock?
- 9 A It said three o'clock.
- 10 Q Are you sure it wasn't 2:30, two, 1:30, one?
- 11 A I'm sure.
- 12 Q Positive?
- 13 A Yes.
- 14 Q One hundred percent positive they came in at three
15 o'clock?
- 16 A It was 2:56.
- 17 Q Are you being sarcastic or --
- 18 A No. I'm -- I'm saying --
- 19 Q You're being accurate?
- 20 A I'm being -- 2:56 was -- is the time stamped on
21 the policy when I wrote the policy.
- 22 Q So, they had actually been in there for some time
23 prior to that, right?
- 24 A No.
- 25 Q So, you time-stamped it the day they walked -- I

1 mean the moment they walked in the door?

2 A They wrote the policy at three o'clock, 2:56.

3 Q So, when did they come in?

4 A It could be a few minutes before that, but it -- it

5 couldn't have been 2:30. It was probably 2:45 when

6 they came in the door, --

7 Q Do you have any explanation --

8 A -- and I -- I remember I had a customer in my

9 office and they had to wait a minute.

10 Q Did you ever tell anybody from FirstComp that it

11 was some other time other than three o'clock?

12 A No, probably not.

13 Q Probably?

14 A Uh-uh.

15 Q Is that a no?

16 A No.

17 Q Are you sure?

18 A Yes.

19 Q Positive, 100 percent positive?

20 A Yes.

21 Q Okay. And if they would have answered yes to the

22 15-foot question, you would have charged more, a

23 higher premium, right?

24 A I would have written them with a different company

25 and charged a higher premium, yes.

- 1 Q When did you do the phone recording with FirstComp?
- 2 A When did I do it?
- 3 Q Yes.
- 4 A Oh, gosh. I don't remember the date.
- 5 Q Okay. How long after you had this policy issued
- 6 did you do your phone recording with FirstComp?
- 7 A Maybe a week and a half, two weeks.
- 8 Q Do you know whether or not they produced a written
- 9 transcript of that?
- 10 A I do not.
- 11 Q How long were you on the phone with them?
- 12 A Maybe 15 minutes.
- 13 Q And you didn't actually see anyone sign this
- 14 workers' comp application?
- 15 A I did not. No, I did not.
- 16 Q But the application says that Emory Wilkie is a
- 17 hundred percent owner, but someone else signed it.
- 18 Is that your understanding? That was --
- 19 A That's my understanding now, yes.
- 20 Q That was your testimony earlier?
- 21 A Yes.
- 22 Q So, Emory Wilkie didn't actually make these
- 23 representations on this document; is that right?
- 24 A Yes, he did.
- 25 Q He did verbally --

- 1 A He did verbally.
- 2 Q -- is your testimony?
- 3 A Yes.
- 4 Q But on this document, it's not Emory Wilkie who
- 5 made these representations, is it?
- 6 A No. As far as the signature goes, no.
- 7 Q Do you think it's important to see which individual
- 8 is signing the application if there's one person
- 9 getting a policy and one person just along for the
- 10 ride? Wouldn't you think that, that's important?
- 11 A Yes.
- 12 Q But you didn't do that, did you?
- 13 A No, I did not.
- 14 Q And you said you found out that there was an
- 15 accident the following Monday?
- 16 A Correct.
- 17 Q What day of -- What day was that? You testified
- 18 it was January 7th; is that right?
- 19 A Yes.
- 20 Q Okay. This policy -- They came in on January 4th,
- 21 correct?
- 22 A January the 4th.
- 23 Q January the 4th was what day of the week?
- 24 A Friday.
- 25 Q How do you remember that it was a Monday that you

1 found out?

2 A Because we only put the answering machine on over
3 the weekend and that's where I got the message
4 from.

5 Q Okay. But you're sure it was just the next working
6 day when you found out; is that right?

7 A Correct. Yes.

8 Q One hundred percent positive of that?

9 A One hundred percent positive.

10 Q So, they didn't come in on a Wednesday?

11 A No.

12 Q And you didn't find out about it the next day, on
13 Thursday?

14 A Right.

15 Q You didn't find out about it the next day, on a
16 Friday?

17 A Yes.

18 Q You didn't find out on Saturday or Sunday?

19 A Yes.

20 Q You found out the next Monday?

21 A Yes.

22 Q Which was the next business day after they came in?

23 A Yes.

24 Q Are you as positive about that as you are that they
25 told you they -- that they came in at three?

- 1 A Yes.
- 2 Q Are you as positive about that that -- that they
- 3 misrepresented to you that they didn't have any
- 4 prior accidents?
- 5 A Yes.
- 6 Q How did you know when Mr. Bessinger got hurt?
- 7 A When I spoke to his father.
- 8 Q Did he leave that on the answering machine or when
- 9 you actually talked to him?
- 10 A When I actually spoke to him.
- 11 Q Do you have a cell phone?
- 12 A Do I have a cell phone?
- 13 Q Yes.
- 14 A Yes.
- 15 Q What's your cell phone number?
- 16 A 530-9446.
- 17 Q Is that area code 803?
- 18 A Yes.
- 19 Q Who is your provider?
- 20 A Verizon.
- 21 Q Back in January of this year, did you have the same
- 22 cell phone?
- 23 A Yes.
- 24 Q The same provider?
- 25 A Yes.

1 Q What's your business's phone number?
2 A 803-957-3311.
3 Q Are there any other lines?
4 A Yeah. I do not know their numbers. There's --
5 Q That's the main --
6 A -- four lines.
7 Q Is that the main line --
8 A That's the main line.
9 Q -- that people call on?
10 A Yeah.
11 Q You said that the gentleman that was with Mr.
12 Wilkie looked familiar to you before?
13 A No. I said Mr. Wilkie looked familiar to me --
14 Q Okay.
15 A -- when he came in.
16 Q Do you know where you had seen him before?
17 A I do not.
18 Q Was it related to your business? Do you know?
19 A I don't know.
20 Q You could have just seen him around --
21 A Yeah.
22 Q -- town?
23 A Exactly. Yes.
24 Q Did you check Mr. Wilkie's driver's license?
25 A No, I did not.

- 1 Q Did you ask him for his driver's license?
- 2 A No, I did not.
- 3 Q Did you ask him for any identification whatsoever?
- 4 A No, I did not.
- 5 Q Did you ask him for a business card?
- 6 A No, I did not.
- 7 Q Would it hurt your career if insurance carriers
- 8 found out that you were issuing policies to people
- 9 who -- after there were accidents on their jobs?
- 10 A If I had prior knowledge, yes, it would hurt my
- 11 career.
- 12 Q What would happen?
- 13 A I would probably lose my job and my license.
- 14 Q You said the total premium of this policy was how
- 15 much?
- 16 A \$1,339.
- 17 Q How do you get paid?
- 18 A How do I get paid?
- 19 Q Yeah.
- 20 A On salary.
- 21 Q Do you get a percentage?
- 22 A No, I do not.
- 23 Q Okay. Do you get any bonuses for the signing of
- 24 policies?
- 25 A No.

1 Q What's your incentive for doing that?

2 A To get a weekly paycheck, to support my family, pay
3 my bills.

4 Q What if nobody comes into the office?

5 A If nobody comes into the office, then the office
6 closes and I have to look for another job. That's
7 with any business.

8 Q On this workers' compensation application, it has a
9 box that says, "Nature of business, description of
10 operations." Is there anything in that box?

11 A No.

12 Q Do you typically just leave that blank?

13 A Typically, yes.

14 Q Now, when you asked Mr. Wilkie whether or not he
15 had any prior litigation, did you explain that to
16 mean -- explain that to him to mean just court or
17 did it mean -- encompass anything other than that,
18 like possible litigation?

19 A I explained that if he had any prior accidents or
20 litigation, and I assumed that he knew what
21 litigation meant.

22 Mr. Killen: Okay. That's all the
23 questions I have. Thank you.

24 Mr. Addison: I just need to clear up a
25 couple of things.

Re-examination

By Mr. Addison:

Q You used the term -- He was asking you -- Mr. Killen was asking you about did you consider Mr. Wilkie or Mr. Loughery to be an insured. Is that a term of art that you use to describe your customers?

A Yes, it is.

Q Everybody that comes in is an insured --

A Insured.

Q -- in your mind?

A Yes.

Q Do you call them customers or do you call them insureds?

A Insureds.

Q Okay. You're not making some determination that anybody that has any dealings with your office is automatically an insured?

A No.

Q All right. Do you consider Mr. Wilkie or Mr. Loughery to be an insured as to the policy that was issued by FirstComp?

A No.

Q Why not?

A They came in under false pretenses and

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1 misrepresented themselves.

2 Mr. Killen: I'll object to that
3 question.

4 Mr. Addison: You opened the door.

5 Q You also were talking about -- He was asking you
6 about whether or not you discussed with Mr. Wilkie
7 his prior knowledge, per his conversation with you
8 that day, about these injuries. At any point did
9 he tell you that they were there because they had a
10 guy laying in the hospital in Orangeburg --

11 A No, they did not. No, --

12 Q -- and they -- and that they were trying to make
13 sure --

14 A -- he did not.

15 Q -- they had coverage for that?

16 A No, they did not.

17 Q Would you have written a policy with anybody, not
18 just FirstComp but with anybody, had they told you
19 that?

20 A No, I would not have.

21 Q Okay. It was inferred that somehow your business
22 might do that to try to make money. How much money
23 did y'all make off of that \$400 do you think, if
24 you would have made anything?

25 A If we would have made anything, probably \$30.

- 1 Q Okay. That's -- That's the agency's cut --
- 2 A Yes.
- 3 Q -- out of that premium?
- 4 A Yes.
- 5 Q All right. Has your agency ever been cited by the
- 6 Department of Insurance as being an agency that
- 7 does unfair, fraudulent-type business?
- 8 A No.
- 9 Q Have y'all ever been investigated for that?
- 10 A No.
- 11 Q Have you ever been investigated for that?
- 12 A No.
- 13 Q Have you ever been scolded or cited or infringed
- 14 upon in any manner by the insurance --
- 15 A No.
- 16 Q -- the Insurance Department --
- 17 A No.
- 18 Q -- for providing false certificates or --
- 19 A No.
- 20 Q -- false policies or fraudulent policies?
- 21 A No.
- 22 Q Has anybody from the State of South Carolina ever
- 23 indicated to you that you were doing anything
- 24 inaccurate or incorrect in your job as a producer
- 25 for any agency that you've ever worked for?

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- 1 A No.
- 2 Q Okay. You were asked about whether or not you had
- 3 asked for ID by Mr. Wilkie or Mr. Loughery at the
- 4 time you produced this document, the application.
- 5 Is that something you routinely ask for?
- 6 A No, not for workers' comp or general liability
- 7 policies.
- 8 Q Does the State of South Carolina Department of
- 9 Insurance require that you -- that you obtain ID of
- 10 an applicant insured?
- 11 A No.
- 12 Q Does any insurance company require that you get ID
- 13 from any applicant insured?
- 14 A No, not on commercial policies. No, sir.
- 15 Q Okay. All right. Are you aware of any law that
- 16 states that you are required to obtain that ID?
- 17 A No.
- 18 Q All right. What is it that you're asked to obtain
- 19 by the State of South Carolina?
- 20 A Name; address; ask the appropriate questions on the
- 21 application.
- 22 Q Okay. All right. Have you had any other instances
- 23 where the state or any insured -- insurance company
- 24 has come in and said you didn't properly do this
- 25 because you didn't obtain an ID and confirm that

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1 these people are who --

2 A No.

3 Q -- they say they are?

4 A No.

5 Q Okay. All right. Now I need to clarify something

6 as to the date and time. You were asked if you

7 were sure about everything. Have you looked at a

8 calendar to see what date January the 4th is?

9 A No, I have not.

10 Q But this definitely occurred on January the 4th,

11 that they came into your office?

12 A Yes.

13 Q All the documents say January 4th?

14 A Yes.

15 Q January 4th wasn't a Friday. Are you aware of

16 that?

17 A No.

18 Q Okay. All right. It's actually a Wednesday, okay?

19 A Okay.

20 Q All right. Is it possible that you were inaccurate

21 when you said that you were as firm about that as

22 you were about everything, that it was definitely a

23 Friday --

24 A Yeah.

25 Q -- that they came in?

- 1 A Yes, it is. It is. I don't have a calendar in
2 front of me.
- 3 Q All right. If it was, indeed, Wednesday, January
4 -- January the 4th was a Wednesday, then that's the
5 day they came in?
- 6 A Yes.
- 7 Q All right. And if the records that we have at
8 FirstComp show that the phone call came in on
9 Monday, the 9th, would that appear to be the actual
10 date that you received --
- 11 A Correct.
- 12 Q -- the phone call?
- 13 A Yes.
- 14 Q Did you contact FirstComp immediately after getting
15 --
- 16 A Immediately.
- 17 Q -- the phone call from Mr. Bessinger?
- 18 A Immediately.
- 19 Q All right. So, it was Monday that you received the
20 phone call?
- 21 A Yes.
- 22 Q But it's possible that it wasn't Friday that you
23 actually --
- 24 A It is possible.
- 25 Q -- filled out the documents?

- 1 A It is possible, yes.
- 2 Q Okay. All right. And as to the timing of when
- 3 this all occurred, the date stamped on this -- on
- 4 the policy is 2:56, I believe you said?
- 5 A Mm-hmm.
- 6 Q Is that a yes?
- 7 A Yes. Yes.
- 8 Q Okay.
- 9 A That's a yes.
- 10 Q Clearly, you spent some amount of time with them
- 11 prior to producing the policy, but was it an hour
- 12 or was it ten minutes?
- 13 A Maybe 15 minutes.
- 14 Q Okay. All right. And you believe they had been
- 15 there for some period of time --
- 16 A A few minutes, --
- 17 Q -- before you actually sat down --
- 18 A -- yes.
- 19 Q -- with them because you had another customer with
- 20 you?
- 21 A I had another customer in my office.
- 22 Q All right. But all of that would have been in the
- 23 afternoon of January the 4th?
- 24 A Yes.
- 25 Q All right. It was not in the morning of January

- 1 the 4th, was it?
- 2 A No, it was not.
- 3 Q All right. Do you know what time Mr. Bessinger was
- 4 injured, roughly?
- 5 A Roughly 10:30 in the morning.
- 6 Q Okay.
- 7 A That's what I was told --
- 8 Q Okay.
- 9 A -- by Mr. Bessinger's father when I spoke to him.
- 10 Q All right. When he spoke to you on that Monday?
- 11 A Yes, on Monday.
- 12 Q Okay. Did you have a meeting, a phone call or
- 13 discussion in any way, shape or form with either of
- 14 these gentlemen, Mr. Loughery or Mr. Wilkie, prior
- 15 to 10:30 on January the 4th?
- 16 A No.
- 17 Q All right. On that day when you met with them,
- 18 when they came into your office, did either of them
- 19 at any point discuss with you that there had been
- 20 an injury and that they were there to renew their
- 21 policy with your company?
- 22 A No.
- 23 Q All right. Did you have a policy for them to renew
- 24 as far as you were aware?
- 25 A No.

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- 1 Q Did they discuss with you at that point that they
2 had a policy with you and that they wanted to renew
3 and that they were trying to get it -- make sure
4 that it was in good shape, whatever you want to
5 call it, to cover them for this injury they had,
6 with this injury --
- 7 A No, they did not.
- 8 Q -- in Orangeburg? All right. Would you risk your
9 career for 30 bucks?
- 10 A No, I would not.
- 11 Q All right. Would you risk your agent's license for
12 \$30.
- 13 A No, I would not.
- 14 Q All right. Do you think you made a mistake --
- 15 A I wouldn't risk it for \$3,000.
- 16 Q Okay. Did you -- Do you think you made a mistake
17 in not checking that signature on the application?
- 18 A I did.
- 19 Q Okay. That was a screw-up; you admit to that?
- 20 A Yes.
- 21 Q All right. But it was still an application that
22 was submitted and you had gone through the process
23 with the people that were there, the two
24 individuals that were there; only one of them
25 really gave you much information; that was your

1 understanding to be Mr. Wilkie, and you produced a
2 document that then produced a -- an attempt at a
3 policy with my client, FirstComp?

4 A Yes.

5 Q All right. And they provided information to you as
6 a putative insured would do, or an application
7 process?

8 A Yes.

9 Q They then also provided part of the payment of the
10 premium to you on that date?

11 A Yes.

12 Q And, as such, you went through the process of
13 trying to get an insurance policy for them?

14 A Yes.

15 Q Okay. Is that uncommon?

16 A No, it is not.

17 Q That entire process?

18 A No, it is not.

19 Q Is that what you do with everyone, with --

20 A Yes.

21 Q -- type -- contractor-types that come in?

22 A Yes.

23 Q In a given year, how many times would you do
24 something like this with a -- with a contractor?

25 A An approximate, 40, 50.

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- 1 Q Okay. Forty or 50 times a year you would go
2 through this same process, --
- 3 A Yes.
- 4 Q -- sit down with a person, who -- whoever comes in
5 and wants to get a policy?
- 6 A Yes.
- 7 Q You ask them these same questions that are on this
8 application, plus the additional questions that you
9 ask?
- 10 A Yes.
- 11 Q And then go through the same process of getting
12 them to sign the -- someone to sign the
13 application?
- 14 A Yes.
- 15 Q And then submit all that to the insurance company
16 to see if a policy can be obtained?
- 17 A Yes.
- 18 Q And if there's an approval on the end, writing end,
19 that's when you get the premium money; is that
20 correct?
- 21 A Yes.
- 22 Q Okay. All right. With the understanding that they
23 will make additional payments --
- 24 A Yes.
- 25 Q -- on that?

- 1 A Yes.
- 2 Q All right. Have you ever had a prior putative
3 insured, someone that's walked in that's going to
4 make an application for a policy, ever tell you I
5 just had an injury this morning, I want to get a
6 policy?
- 7 A No.
- 8 Q You always ask them that question, have you had any
9 injuries before you walked in here, --
- 10 A Yes.
- 11 Q -- not you -- but anybody that works for you have
12 any injuries that are not reported?
- 13 A Yes.
- 14 Q Okay. All right. Have you, in the past, ever
15 gotten in trouble for writing a policy for someone
16 that had told you they had an injury and they
17 needed coverage?
- 18 A No.
- 19 Q Do you get paid a flat salary?
- 20 A Yes.
- 21 Q All right. You get no bonuses or anything based
22 upon what Mr. Shealy does with his agency?
- 23 A No.
- 24 Q Okay. How much do you make, your salary? What's
25 your salary, your current salary?

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1 A I bring home 459.37 a week.

2 Q Okay.

3 A That's after taxes. Before taxes, I think it's
4 550.

5 Q All right. Have you received any kind of
6 significant raise by Mr. Shealy in the past year?

7 A No.

8 Q Okay. All right.

9 Mr. Addison: I believe that's it.

10 Re-examination

11 By Mr. Killen:

12 Q Are you sure you called FirstComp the day after you
13 met with them?

14 A I called FirstComp the day that I got the telephone
15 call from Mr. Bessinger's father, which was on
16 April the 9th.

17 Q January the 9th?

18 A I'm sorry. January the 9th, --

19 Q Okay.

20 A -- yes.

21 Q Earlier you testified it was the very next business
22 day. Is that right, wrong, --

23 A That was wrong.

24 Q Okay.

25 A That was incorrect. I don't --

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- 1 Q Why --
- 2 A -- have a calendar in front of me to --
- 3 Q That doesn't have anything to do with a calendar.
- 4 That's -- That's the next business day, I mean, --
- 5 A I made an error. It was the following Monday after
- 6 I wrote the policy, because Mr. Bessinger's father
- 7 called over the weekend.
- 8 Q Is there any other testimony you would like to
- 9 change?
- 10 A No.
- 11 Q Any other testimony you made a mistake in?
- 12 A No.
- 13 Q So, that was it? That was your only mistake?
- 14 A You want to go back through the questions? We can
- 15 do it again.
- 16 Q Uh-uh. No. I'm just saying, do you know of
- 17 anything else that you might want --
- 18 A No.
- 19 Q -- to change?
- 20 A No. That was an error on my part.
- 21 Q Well, why did you testify you were sure that it was
- 22 the very next business day?
- 23 A Probably because I'm a little on the nervous side.
- 24 I've never done this before, so --
- 25 Q Okay. That's fair. Who handed you the payment?

- 1 A Mr. Wilkie.
- 2 Q Okay. You were going to get not just the \$400 but
- 3 the rest of the entire premium, correct?
- 4 A That day?
- 5 Q No, not that day but over --
- 6 A Over time, --
- 7 Q Yeah.
- 8 A -- yes. They would have made payments, yes.
- 9 Q And your company would have gotten a portion of
- 10 those payments, right?
- 11 A Yes, probably.
- 12 Q So, it wasn't just the \$30; there was more to it
- 13 than that over time?
- 14 A Yeah, probably. Yes.
- 15 Q And you testified for Mr. Addison that you meet
- 16 with guys like this 40 or 50 times a year; is that
- 17 right?
- 18 A Yes.
- 19 Q Don't policies usually go into effect the day after
- 20 the application is submitted?
- 21 A Not with -- in the voluntary market, no. Most of
- 22 them do not, no. They go into effect that day. If
- 23 they go through the residual market, it is a 24-
- 24 hour waiting period.

25 Further Examination

1 By Mr. Addison:

2 Q Just -- And I meant to go when we started -- This
3 is your first time doing a deposition ever, --

4 A Yes.

5 Q -- correct?

6 A Yes.

7 Q All right. You've not had to go through this
8 process ever?

9 A No, I have not.

10 Q And you just stated, you're somewhat nervous --

11 A Yes.

12 Q -- about this? Okay. All right. But do you feel
13 comfortable with -- I mean, if the records show
14 that the policy was created on the 4th and the
15 first contact came on the 9th of January by Mr.
16 Bessinger, that those would be accurate dates as to
17 when all of this took place?

18 A Yes.

19 Q All right. It's only a couple of days separate?

20 A Yes.

21 Q Is it possible your memory is just a bit foggy on
22 that because of your being nervous today?

23 A Yes.

24 Q All right. But as to your memory regarding all the
25 contact with Mr. Wilkie and Mr. Loughery on that

1 date, do you have any belief that any of that was
2 inaccurate?

3 A No.

4 Q All right.

5 A No, no fog there.

6 Q All right. It could have been Wednesday, it could
7 have been Friday, but you remember what happened?

8 A Yes.

9 Q All right. And it may have been 2:38, it may have
10 been 2:47, but at some point prior -- just prior to
11 three o'clock is when you met with them on whatever
12 day you met with them, on January -- Well, it was
13 January the 4th. We've already established --

14 A Yes.

15 Q -- that, right? You met with them that date
16 sometime in the latter half of the afternoon?

17 A Yes.

18 Mr. Addison: Okay. All right.

19 Mr. Killen: No more.

20 Mr. Addison: Okey-doke. Steve?

21 Mr. Haymond: I got nothing.

22 The Deponent: Thank you, Lord.

23 (Whereupon the deposition was adjourned at
24 9:56 a.m.)

25 (Deponent will read and sign her deposition

1

transcript.)

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State of South Carolina)
) Certificate
 County of Lexington)

Be it known that the foregoing deposition of
 Talisa Miller was taken before me;

That I was then and there a Notary Public in
 and for the State of South Carolina-At-Large;

That by virtue thereof I was duly authorized
 to administer an oath;

That the witness was by me first duly sworn to
 testify the truth, the whole truth, and nothing but the
 truth concerning the matter in controversy aforesaid;

That the deponent reserved her right to read
 and sign the deposition transcript, and Review by
 Deponent and Errata sheets were provided to the deponent
 with instructions that they were to be returned within
 thirty (30) days with any changes/corrections to said
 deposition transcript.

The foregoing transcript of 85 typewritten
 pages represents a true, accurate and complete
 transcription of the testimony so given at the time and
 place aforesaid to the best of my skill and ability;

That I am not related to nor an employee of
 any of the parties hereto, nor a relative or employee of
 any attorney or counsel employed by the parties hereto,
 nor interested in the outcome of this action.

Signed this 16th day of April 2012.

Sandra M. Snead

Sandra M. Snead

Notary Public for South Carolina
 My commission expires October 17, 2013.

Note: Recordings are retained for twelve (12) months
 from date of certification.

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