

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RECEIVED

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

FEB 25 2016

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 II**

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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

DALLAS BESSINGER,	)	
	)	HEARING
CLAIMANT,	)	BEFORE COMMISSIONER
	)	ANDREA C. ROCHE
v.	)	
	)	<u>TRANSCRIPT</u>
RNM BUILDERS & ASSOCIATES,	)	
LLC,	)	
	)	
EMPLOYER,	)	
AND	)	
	)	
UNINSURED,	)	
	)	
DEFENDANT.	)	

 COPY

THE WORKERS' COMPENSATION HEARING, TAKEN
BEFORE CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR
THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
1:20 P.M., WEDNESDAY, JULY 18, 2012, COUNTY COURTHOUSE
ANNEX, 102 COURTHOUSE DRIVE, SAINT MATTHEWS, SOUTH
CAROLINA 29135.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
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REPORTED BY

CORA ELLIS BRUTON - COURT REPORTER
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 803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT: Today's date is July the 18th, 2012.
2 This is WCC File Number 1200479. This is the case of
3 the Claimant, Dallas Bessinger, represented by
4 Attorney Steven B. Haymond, versus the Employer, J & L
5 Construction, and we also have RNM Builders &
6 Associates, LLC listed as an Employer. There is a
7 Carrier -- well there is an alleged Carrier, Firstcomp
8 Insurance Company and R. Daniel Addison on their
9 behalf. Timothy B. Killen is here on behalf of The
10 Uninsured Employers Fund as there's a coverage issue.
11 Jerry Finney is here on behalf of RNM Builders, but
12 they're not participating in the hearing today.
13 They're just here to observe. Is that correct, Mr.
14 Finney?

15 MR. FINNEY: That's correct, Your Honor.

16 THE COURT: Emery Wilkie, who is part of J & L
17 Construction and John Loughery, who is also part of J
18 & L Construction, they are both here today as
19 Defendants.

20 Mr. Wilkie and Mr. Loughery, before we went on
21 the record I advised y'all that y'all had the right to
22 have an attorney represent you today. It is my
23 understanding you wish to go forward representing
24 yourself; is that correct?

25 MR. WILKIE: We can't -- can't afford an

1 attorney.

2 THE COURT: Well, I can't speak to that but you
3 have the right to have one here with you so as long as
4 you understand you have that right and by proceeding
5 forward you're waiving that right and you'll be held
6 to the standards of any lawyer that's in here that's
7 gone to school and all of that; y'all understand that?

8 MR. WILKIE: Yes.

9 THE COURT: Mr. Loughery?

10 MR. LOUGHERY: Yes.

11 THE COURT: We're here today for the date of
12 accident of January the 4th, 2012. Have y'all come to
13 an agreement on average weekly wage and comp rate?

14 MR. ADDISON: I've got nothing to suggest what it
15 should be, Commissioner.

16 THE COURT: All right. Mr. Haymond, what is your
17 position on average weekly wage and comp rate?

18 MR. HAYMOND: \$520.00 average weekly wage and
19 \$346.68 comp rate based on 13 hours -- \$13.00 an hour
20 for a 40 hour week.

21 THE COURT: All right. We're here today to
22 determine the issues on his Form 50 and also to
23 determine which Employer or Carrier, if any, are
24 liable for compensation, if any due.

25 Are there any objections to APAs, jurisdiction,

1 venue or any other items? Mr. Haymond.

2 MR. HAYMOND: No, Your Honor.

3 THE COURT: Mr. Killen?

4 MR. KILLEN: None for the Fund, Your Honor.

5 THE COURT: Mr. Addison.

6 MR. ADDISON: Commissioner, it would be our
7 position that we don't have a policy here I think the
8 jurisdiction
9 -- there is no -- Commission doesn't have jurisdiction
10 over us since we think the policy itself does not
11 exist, however, I know that we have that (inaudible),
12 so we'll go forward today.

13 THE COURT: All right.

14 MR. ADDISON: Commissioner, I also wanted to
15 bother at this point to point out what I said when we
16 were off the record now that Mr. Stokes is in the
17 room, that I did previously have a contractual
18 relationship with them ten years ago per -- he was the
19 contractor redoing a building that I owned in downtown
20 Columbia, that would be with consent, but I just want
21 to make sure that wasn't a conflict for anyone.

22 THE COURT: Let's just make the record clear, Mr.
23 Stokes is RNM Builders and it's my understanding, Mr.
24 Finney, that your client does not mind if Mr. Addison
25 continues in his representation of Firstcomp Insurance

1 Company in this matter?

2 MR. FINNEY: That's correct, Your Honor.

3 THE COURT: Okay. Mr. Wilkie, what I'm asking
4 right now if there's any objection to the medical
5 records that have been handed up, the depositions that
6 have been handed up, jurisdiction which means my power
7 as a Commissioner to hear this claim, or that you were
8 subject to the Act, having had four or more employees;
9 and venue means the fact that we're here in St.
10 Matthews as opposed to say Greenville County or Horry
11 County or someplace like that. So any objections to
12 APAs, jurisdiction, or venue, Mr. Wilkie?

13 MR. WILKIE: No.

14 THE COURT: All right. Mr. Loughery?

15 MR. LOUGHERY: No.

16 THE COURT: Without objection the Commission's
17 File becomes a part of the record with the exception
18 of self-serving declarations and unstipulated medical
19 reports.

20 Before going on the record we did have a
21 pre-hearing conference.

22 It is the position of the Claimant that he
23 sustained an injury by accident arising out of the
24 course and scope of his employment when he fell off a
25 roof. What was the body part Mr. Haymond?

1 MR. HAYMOND: At the time, his left hip, right
2 arm, ribs and back, but now he's just having problems
3 with the left hip but disability is premature.

4 THE COURT: That he would be entitled to
5 temporary total disability benefits from January 4th,
6 2012, through April 4th, 2012 when he was released to
7 return to work although he was not placed at MMI. It
8 is the position of the Claimant that it is premature
9 to determine whether or not he's been placed at MMI.
10 I think there may be something that happened last week
11 but we don't have evidence on that today so that issue
12 is premature and it is their position that any
13 disability determination would be premature. He is
14 seeking his past causally related medical treatment
15 and medical care and treatment up until the date of
16 MMI.

17 It is the position of the Defendant Firstcomp
18 Insurance Company that they are not the Carrier in
19 this claim, that the owners of the business went to
20 their agent the day of the accident and attempted to
21 get coverage to cover the accident that had already
22 occurred, that they misrepresented to the agent that
23 there had not been any accidents and that therefore,
24 due to fraud, that the policy would be void ad initium
25 and that they were effective in their decision of the

1 policy and, therefore, there would be no policy to
2 cover this accident.

3 It is the position of the Uninsured Employers
4 Fund that the Firstcomp policy is effective, that
5 Section 38-75-730 of the Code governs this, that that
6 code section contemplates the material
7 misrepresentation of fact, that even if there is one
8 that the Carrier would have to go through the steps in
9 38-75-730 in order to cancel and that, therefore, this
10 policy for this accident would be in effect.

11 Mr. Addison has handed up a Brief on the issue.
12 Mr. Killen had sort of Briefed it in his Pre-hearing
13 Brief but I think he wants a chance to respond to the
14 Brief that Mr. Addison - I'll give you two weeks for
15 anybody to respond to anything that -- from a legal
16 standpoint.

17 MR. KILLEN: Thank you, Commissioner.

18 THE COURT: It is the position of Mr. Wilkie and
19 Mr. Loughery that they had workers' comp insurance in
20 place, that they were told just to come up and pay the
21 renewal which they did and that Firstcomp should cover
22 this accident.

23 Is there anything anybody would like to add
24 before we start testimony?

25 MR. HAYMOND: No, Your Honor.

1 MR. ADDISON: Commissioner, I would just like to
2 cite for the record that the certificate that's been
3 provided to you as evidence of this coverage that
4 preexisted going through February of 2012, was not
5 written with the insurance being under any policy or
6 program that Firstcomp had and that if you'll note the
7 Certificate of Accident shows that the coverage would
8 be under National Grange Mutual Insurance which is not
9 any type or part of the subsidiary of Firstcomp
10 Insurance as well as under Hartford Underwriters
11 Insurance Company which, again, is not an entity that
12 has any relationship with Firstcomp Insurance, so this
13 was not a certificate showing a prior coverage with
14 Firstcomp Insurance.

15 THE COURT: All right. Anything anybody else
16 would like to add?

17 MR. ADDISON: One other thing, Commissioner, if
18 there's a ruling by the Commission that my client has
19 a responsibility to cover this case, we would ask that
20 the Claimant's tax returns for the year prior to the
21 year 2011 be submitted to the Commission for
22 determination of the proper compensation rate, average
23 weekly wage other than just his testimony as to what
24 he's earning per hour. I will cite that per Stephens
25 vs. Stephens Construction.

1 THE COURT: All right. And I did fail to mention
2 that it's the position of the Claimant that his
3 average weekly wage is \$520.00 with a resulting
4 compensation rate of \$346.68 and we have no 20 in the
5 file.

6 All right. Mr. Haymond, I understand that the
7 Claimant is your first witness?

8 MR. HAYMOND: Yes, Your Honor.

9 THE COURT: Okay. Mr. Bessinger, please raise
10 your right hand. Do you swear to tell the truth, the
11 whole truth and nothing but the truth?

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Please state your full name for the
14 record.

15 THE WITNESS: Ma'am?

16 THE COURT: Please state your full name for the
17 record.

18 THE WITNESS: Dallas Paul Bessinger.

19 THE COURT: Okay. Mr. Haymond, your Witness.

20 MR. HAYMOND: Thank you, Your Honor.

21 THE COURT: You're going to need to speak up, Mr.
22 Bessinger. We're recording it and that's why we all
23 talk in loud voices. Okay? We're recording
24 everything in here and our court reporter has to hear
25 everything that you say and has to hear it clearly,

1 okay, so be sure to speak up.

2 Dallas Paul Bessinger,

3 Having first been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HAYMOND:

6 Q Dallas, how old are you?

7 A 35.

8 Q Are you married?

9 A No, sir.

10 Q Do you have any children?

11 A Yes, sir.

12 Q How many?

13 A Three.

14 Q Okay. How far did you go in your education?

15 A 11th grade.

16 Q And since then have you had any other
17 technical or vocational education?

18 A No, sir.

19 Q What types of jobs have you done since
20 leaving the 11th grade?

21 A Roofing, framing, labor.

22 Q Have you had any workers' comp claims before
23 working with this employer?

24 A No, sir.

25 Q Okay. Have you had any auto accidents?

1 A No, sir.

2 Q Okay. When you started working for RNM were
3 you in good health?

4 A Yes, sir.

5 Q And what were you hired to do?

6 A Framing.

7 Q How many times did you work for this
8 particular outfit?

9 A Twice, I think.

10 Q The first time how long did you work with
11 them?

12 A About five months.

13 Q And was that framing?

14 A Yes, sir.

15 Q Did you do anything else other than framing?

16 A Not the first time.

17 Q And you went back to work for them a second
18 time?

19 A Yes, sir.

20 Q Okay. And what were you hired to do then?

21 A Framing.

22 Q And how much were you paid?

23 A \$13.00 an hour.

24 Q And how many hours a week would you average?

25 A Anywhere from 30 to 40 hours a week.

1 Q Was that pretty steady, 30 to 40 hours?

2 A Yes, sir.

3 Q And were y'all doing residential framing?

4 A Residential, commercial the first time.

5 Q What about the second time.

6 A Residential.

7 Q All right. Now on January 4, 2012, where
8 were y'all working?

9 A In Orangeburg, South Carolina.

10 Q Okay. And were y'all -- what was the job
11 site you were working on; was it a house or a
12 building?

13 A It was a house.

14 Q Okay. How long had y'all been on that
15 particular jobsite?

16 A About a month.

17 Q Okay. And how many hours a week were you
18 averaging during that month y'all worked on that
19 house?

20 A About I'd say 30, 35, 40.

21 Q Okay. And what did framing involve exactly;
22 tell us that.

23 A Framing walls, windows, putting on the roof.

24 Q Okay. And how many stories were on this
25 house?

1 A It was three.

2 Q Okay. Tell us what happened on January 4th,
3 2012, when you hurt yourself.

4 A I was up there rolling up felt and I felt
5 the front side and when I got on the other side the
6 felt come from under me.

7 Q And you were up on the roof?

8 A Yes, sir.

9 Q So you fell roughly how far?

10 A Three stories.

11 Q Okay. Whatever three stories is?

12 A Yes.

13 Q All right. Did you lose consciousness?

14 A Yes, sir.

15 Q Okay. Any idea how long?

16 A No.

17 Q Okay. Who was there at the time; do you
18 recall?

19 A Me, Johnnie.

20 Q Who's Johnnie, Mr. Loughery?

21 A Yes, sir.

22 Q Okay.

23 A Robbie.

24 Q Do you know Robbie's last name?

25 A Bessinger.

1 Q Okay.

2 A It was Matthew Bessinger and I can't think
3 of the other man's name.

4 Q Okay. Was Emery Wilkie out there?

5 A Yeah, but he had to leave.

6 Q Okay. And what about Mr. Stokes; was he
7 involved in this project?

8 A Mr. Stokes? No, he wasn't there.

9 Q Okay. Had he been out there?

10 A Not that day.

11 Q Okay. Before on that same project?

12 A Right.

13 Q Okay. You're say you lost consciousness.
14 What's the next thing you remember; were you still at
15 the jobsite or were you taken somewhere?

16 A I was at the jobsite when the ambulance and
17 all got there. That's all I remember.

18 Q All right. And you were taken to
19 Orangeburg?

20 A Yes, sir.

21 Q How long were you at Orangeburg; do you
22 recall?

23 A Just a few hours and they transferred me to
24 Richland.

25 Q Okay. And how long were you at Richland

1 Memorial?

2 A About two and a half weeks.

3 Q Okay. And then you came under the care of
4 whom? Who is the doctor who saw you after you left
5 the hospital; was that Dr. Jones?

6 A Yes, sir, that's him.

7 Q Okay. And you last saw him when?

8 A Last week.

9 Q Okay. Leading up to then have you been back
10 to work anywhere?

11 A No, sir.

12 Q Okay. Have you seen any other doctors other
13 than that doctor?

14 A No, sir.

15 Q Okay. And what was he primarily treating
16 you for?

17 A For my wrist, ribs, my back and my forearm.

18 Q Okay. You having any problems with your arm
19 now?

20 A No, sir.

21 Q When did that stop being a problem?

22 A About three weeks ago, four weeks ago.

23 Q Okay. What problems were you having with
24 your arm?

25 A I couldn't bend it.

1 Q Is it great now? Are you having any
2 problems at all with it?

3 A No, not with my arm.

4 Q Okay. What about your back?

5 A No, sir, it's fine.

6 Q Okay. Did you break any ribs?

7 A Yeah, I broke two through six -- two through
8 eight.

9 Q Okay. How's that doing now?

10 A Fine.

11 Q Okay. So is the only problem you're having
12 now your left hip?

13 A My left hip.

14 Q Okay. Tell us, sitting like you are right
15 now, what do you feel in your left hip?

16 A Just a little pain.

17 Q Okay. And where specifically do you feel
18 that pain?

19 A Right above my -- right above my waistline.

20 Q Okay. Is there always something there?

21 A Yes, sir.

22 Q Okay. Can it get worse on its own or do you
23 have to be doing something?

24 A When I sit so long it -- it hurts.

25 Q Okay. Are you able to walk?

1 A Yeah, but not for a far distance.

2 Q Are you able to lift?

3 A Not a lot of stuff.

4 Q Okay. How much can you lift?

5 A I don't know, probably 70, 80 pounds.

6 Q Okay. How much could you lift before this?

7 A About 110.

8 Q Okay. Are you on any medications now?

9 A No, sir.

10 Q Okay. He prescribed you medication in
11 April; did you take that medication?

12 A Yes, sir.

13 Q Okay. And do you take anything in addition
14 to what you took then; anything over the counter?

15 A No, sir.

16 Q Does anything help your pain like heat or
17 ice or anything like that?

18 A No, sir.

19 Q Okay. Do you feel like now that you're able
20 to do the work that you did for this outfit?

21 A Probably not.

22 Q And why not?

23 A Because I just can't do what I done before.
24 I can't lift nothing like I used to.

25 Q Okay. The doctor released you last week.

1 Do you feel like there's anything further that needs
2 to be done or do you feel like you're as good as
3 you're going to get?

4 A Probably as good as I'm going to get.

5 Q Okay. That's all I have right now, Your
6 Honor.

7 THE COURT: All right. Mr. Addison.

8 CROSS EXAMINATION

9 BY MR. ADDISON:

10 Q Mr. Bessinger, I was reading through the
11 medical records in the case and it indicated that you
12 had -- one of your eyes is a glass eye; is that
13 correct?

14 A Yes, sir, my left eye.

15 Q How did you lose that eye?

16 A I lost it when I was -- with a compound bow.

17 Q I'm sorry?

18 A I lost it with a compound bow.

19 Q Okay. So you had a compound bow injury --
20 or shooting a bow and you had an injury of some sort,
21 got you in the eye?

22 A Right.

23 Q Okay. But you've never had another workers'
24 compensation claim before?

25 A No, sir. Yes, sir, with my right leg.

1 Q Okay. So you had a prior claim for your
2 right leg?

3 A Yeah. It's been probably seven or eight
4 years ago.

5 Q Okay. What did you do to your right leg?

6 A Fell off a roof.

7 Q Okay. And did you break your right leg?

8 A Yes, sir.

9 Q Okay. And who treated you for that; do you
10 remember?

11 A I think it was Dr. Lee.

12 Q Okay. Did you end of getting some workers'
13 comp benefits from that claim?

14 A Yes, sir.

15 Q Okay. Do you remember how much you got for
16 it?

17 A Not right offhand.

18 Q Okay. Did you have to go to a hearing like
19 what we're doing here today?

20 A Yes, sir.

21 Q So you've been through this before?

22 A Yes, sir.

23 Q All right. Now you also talked about who
24 was there on the jobsite when you got hurt. You named
25 some of the people. I want to go through them again.

1 Okay? It was you and John Loughery was there at the
2 time, Robbie Bessinger was there and I think you said
3 Matt Bessinger?

4 A Yes, Matthew, that's my nephew.

5 Q Okay. And you called him Matty, I think; is
6 that what you called him?

7 A Matthew.

8 Q Matthew? Okay. And you said some other
9 guy, you can't remember his name?

10 A Yeah, I can't -- I can't remember his name.

11 Q But he -- he was another laborer? He was
12 not one of the bosses; he was another guy doing the
13 work?

14 A Yeah, just --

15 Q Okay. All right. And then also Emery
16 Wilkie was out at times on the jobsite with y'all,
17 correct?

18 A Right.

19 Q All right. Testimony that we got from Mr.
20 Wilkie and Mr. Loughery indicated that Mr. Wilkie was
21 the one that drove all of y'all there; is that right?

22 A Correct.

23 Q Do you have a driver's license?

24 A No, sir.

25 Q How long have you not had a driver's

1 license?

2 A I've never had one.

3 Q You've never had one? You've had to rely on
4 other people to drive you around?

5 A Correct?

6 Q All right. And, typically, Mr. Loughery,
7 excuse me, Mr. Wilkie was the one that would drive you
8 to this jobsite?

9 A Yes, sir.

10 Q Okay. All right. And you had worked for
11 these guys before and then you were working for them
12 at this point and you'd been working for a couple of
13 months at the time you got hurt?

14 A Yes, sir.

15 Q When I say these guys, you were asked how
16 long you'd been working for Ronnie Stokes. Were you
17 working for Ronnie Stokes or were you working for --

18 A I was working for Emery and Rob Bessinger.

19 Q Okay. Had you ever worked for Rob Bessinger
20 before?

21 A Yeah, the first time I worked.

22 Q How about before -- you say you worked for
23 them two different times. The first time that you
24 worked for Rob Bessinger how far in the past had it
25 been that you worked for him?

1 A Probably a year and a half, two years.

2 Q Okay. At one point, according to the
3 testimony from Mr. Loughery and Mr. Wilkie, Rob
4 Bessinger actually ran the crew and had his own
5 company?

6 A Correct.

7 Q If I -- I can't remember the name of it --
8 it was like Carolina Builders or Columbia Builders,
9 something like that?

10 A I don't know nothing about that.

11 Q You don't know anything about that?

12 A No, sir.

13 Q Okay. But you understand that Robbie
14 Bessinger was the crew leader at that point, correct?

15 A Yes, sir.

16 Q All right. Are you any relation to Robbie
17 Bessinger?

18 A No, sir.

19 Q Just similar last name?

20 A Just the last name.

21 Q Okay. All right. The fellows that were all
22 there that day, Matt -- Matthew Bessinger, is he still
23 around; is he still in Columbia?

24 A Yes, sir.

25 Q Okay. And does he still work for these

1 guys; do you know?

2 A No, sir.

3 Q Who does he work for now; do you know?

4 A What's the name -- Adam Jeffcoat.

5 Q Okay. How about Rob Bessinger; do you know
6 where he is now?

7 A No, sir.

8 Q All right. Who -- who paid you when you
9 would go do the work for these -- this crew that you
10 were working with?

11 A Emery.

12 Q Emery would?

13 A Yes, sir.

14 Q How often did you get paid?

15 A Every week.

16 Q All right. Every week?

17 A Yes, sir.

18 Q Okay. And I know y'all had been working on
19 this job for some period of time. How long had y'all
20 been there before you got hurt?

21 A About a month and a half.

22 Q Okay. All right. So about a month and
23 half? It took y'all a month and a half to get some
24 ground level all -- just putting felt on?

25 A We had to build it from the ground up.

1 Q Okay. So y'all actually did all the brick
2 work, too, underneath?

3 A No, no brick work.

4 Q Okay.

5 A All woodwork.

6 Q Okay. What was the -- what was the
7 foundation of the house?

8 A The foundation was concrete.

9 Q So it was a concrete slab?

10 A Yes, sir.

11 Q All right. So y'all built from the slab up
12 -- y'all framed -- this was a stick built house?

13 A Yes, sir.

14 Q And y'all had framed it out and you were up
15 to the felt at that point?

16 A Yes, sir.

17 Q It took -- it took you six weeks to get to
18 the felt?

19 A Yeah -- yes, sir.

20 Q Okay. So all of y'all were -- it was just
21 the frame of the house; y'all weren't doing any
22 electrical work or plumbing or anything at that point?

23 A No, sir.

24 Q All right. The testimony from Mr. Loughery
25 and Mr. Wilkie in their depositions was that work had

1 been extraordinarily slow, that they were essentially
2 desperate looking for work and hadn't had work for
3 quite some time and that they finally got this job
4 with Mr. Stokes and was -- were doing this job? So,
5 y'all only had this one job, right? I mean -- had you
6 worked for them before that?

7 A Yeah, I worked with them before that.

8 Q How long had it been between jobs?

9 A I'd say almost a year and a half, two years.

10 Q Okay. So, you weren't working 30, 40 hours
11 a week every week for a year prior to this job were
12 you?

13 A I didn't work with them that long.

14 Q Where were you working before you worked
15 with them?

16 A Just doing little side jobs.

17 Q Okay. And how much were you earning doing
18 those little side jobs; do you know?

19 A \$150.00, \$200.00 bucks.

20 Q Okay. Did you file tax -- a tax return for
21 the year 2011?

22 A I don't think so.

23 Q Okay. When was the last time you filed a
24 tax return?

25 A It was -- I think it was last year.

1 Q Okay. Do you have a copy of it at your
2 house?

3 A No, sir.

4 Q Did you use one of the services to do it for
5 you?

6 A Turbo Tax.

7 Q Turbo Tax? You went on line and did it?

8 A Yes, sir.

9 Q Okay. And -- but if you needed to you could
10 contact the IRS and get a copy of your tax return from
11 the year 2011 if you needed to, you feel like?

12 A Right.

13 Q Okay. Do you remember how much you
14 indicated to the IRS that you had made as gross wages
15 for the year 2011?

16 A No, sir, not right at this time.

17 Q Okay. Did anybody give you a 1099 for any
18 of the work that you did in 2011?

19 A No, it was just a handwritten piece of
20 paper.

21 Q Okay. Do you have any kind of documentation
22 showing what you earned in the year 2011?

23 A No, sir.

24 Q Nobody gave you any kind of pay stubs --

25 A No, just a receipt.

1 Q Who gave you a receipt?

2 A Well, I was doing all that side work.

3 Q Okay. And who was that that gave that to
4 you; do you remember?

5 A I can't think of his name right now.

6 Q Okay. Do you have a copy of that receipt
7 anywhere?

8 A Yeah, at the house.

9 Q Okay. But you think it was only for maybe a
10 couple of hundred dollars, right?

11 A Yeah.

12 Q Okay. Did any of the employers that you may
13 have worked for in the year 2011 ever provide you with
14 any kind of tax document like a W-2 or a 1099 or any
15 type of documentation showing what you actually had
16 earned with that employer?

17 A Gave me a 1099.

18 Q Okay. Who gave you a 1099?

19 A I can't -- I can't really -- I can't think
20 of his name right now.

21 Q This is the side work person you're talking
22 about?

23 A Yes, sir.

24 Q Okay. All right. Did you receive any other
25 1099's from any other employer?

1 A No, sir.

2 Q Did Mr. Wilkie or Mr. Loughery ever give you
3 a 1099?

4 A No, sir.

5 Q Did they ever give you any kind of written
6 documentation of what you were earning with them?

7 A No, sir.

8 Q Did you ever receive any pay checks from
9 anyone that was in actual check form, where you got a
10 check from somebody?

11 A No, sir.

12 Q All right. Let's go to the day of the
13 injury again. You got hurt -- y'all -- y'all drove
14 down to Orangeburg, right?

15 A Right.

16 Q Do you live somewhere out in the
17 Pelion/Lexington area; somewhere out there?

18 A Pelion.

19 Q Okay. Basically, all of y'all lived in the
20 Pelion area, right?

21 A Right.

22 Q Emery would go around and pick everybody up
23 in the truck and drive everybody down to Orangeburg,
24 right?

25 A Right. I always meet him at his house.

1 Q Okay. Who would get you to his house?

2 A My brother.

3 Q Okay. So somebody would drop you off then
4 y'all would all drive from Pelion down to Orangeburg?

5 A Correct.

6 Q Okay. And you got down there -- what time
7 of day was it that you got there that day when you got
8 hurt?

9 A It was 10:30.

10 Q All right. So it was fairly late in the
11 morning before y'all got there?

12 A Yes, sir.

13 Q All right. So y'all had just arrived and
14 you started doing work on the house and then you fall
15 off the roof, correct?

16 A Correct.

17 Q And from my understanding, the ambulance was
18 called, right?

19 A Correct.

20 Q The ambulance picked you up and took you to
21 the hospital down in Orangeburg, correct?

22 A Correct.

23 Q All right. I've got the hospital records
24 from the hospital in Orangeburg and they indicate that
25 you arrived at the hospital at 11:50.

1 A Yeah, I sat there that long before somebody
2 would call the ambulance.

3 Q Okay. How long had you been working --
4 y'all got there about 10:30, how long had you been up
5 there working before you got hurt?

6 A Probably -- probably a hour and 30 minutes.

7 Q Okay.

8 A I fronted the whole -- the whole front of
9 the house.

10 Q Okay. All right. You understand 11:50 is
11 11:50 a.m.? Y'all got there about 10:30 and you were
12 at the hospital by 11:50.

13 A I started -- we started working before
14 10:30; I fell at 10:30.

15 Q You fell at 10:30?

16 A I fell at 10:30.

17 Q Okay. So you actually fell off the roof at
18 10:30? What time did y'all arrive then, if it wasn't
19 10:30, what time --

20 A About 7:00, 7:30.

21 Q Okay. So you got there early and been
22 working for several hours before you got hurt?

23 A Yes, sir.

24 Q All right. So you worked for several hours
25 and you get hurt and fall off the roof and get hurt,

1 the ambulance comes in and picks you up and they get
2 you to the hospital?

3 A Yes, sir, 45 minutes after I fell they
4 called the ambulance.

5 Q Okay. So you'd been on ground for awhile
6 before they called the ambulance?

7 A Yes, sir.

8 Q Okay. The ambulance comes and gets you,
9 takes you directly to the hospital and then they
10 started dealing with you at the hospital. But you
11 don't feel that you were at the hospital by some time
12 before noon that morning, correct?

13 A Correct.

14 Q All right.

15 MR. ADDISON: One second, Commissioner.
16 Commissioner, I'm not going to ask any more questions
17 at this point regarding the extent of disability or
18 anything like that.

19 THE COURT: All right.

20 MR. ADDISON: Especially I think Steve is asking
21 that it be held in abeyance.

22 THE COURT: Okay. Mr. Killen.

23 MR. KILLEN: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. KILLEN:

1 Q Mr. Bessinger, how long were you working on
2 that job before you got hurt; not that day but how
3 many days?

4 A I'd say about a month, month and a half.

5 Q And who was there working with y'all?

6 A There was me --

7 Q You, Emery Wilkie --

8 A Johnnie.

9 Q John Loughery?

10 A Yes, sir.

11 Q Okay.

12 A Matthew Bessinger, Rob Bessinger, and I
13 can't remember the other man that was there.

14 Q One other man? What did the other man look
15 like?

16 A He was a tall fellow, kind of heavysset.

17 Q Okay. And was Rob Bessinger one of your
18 bosses?

19 A Yes.

20 Q He was? Okay. And Emery Wilkie was one of
21 your bosses?

22 A Yes, sir.

23 Q And John Loughery was one of your bosses,
24 right?

25 A No, sir.

1 Q He wasn't? What was he doing?

2 A Well, he was working right along with me.

3 Q Oh. He was a coworker.

4 A The only ones that told me what to do was
5 Rob and Emery.

6 Q Pardon me?

7 A The only one that told me anything to do
8 with Rob and Emery.

9 Q Okay. Did Rob and Emery tell Mr. Loughery
10 what to do?

11 A Yes, sir.

12 Q They did? Okay. And who was the general
13 contractor on that site?

14 A I reckon Ronnie.

15 Q Ronnie Stokes?

16 A Yes, sir.

17 Q Or his company?

18 A His company, yeah.

19 Q Did he know his company's called?

20 A No, sir.

21 Q All right.

22 MR. KILLEN: That's all the questions I have,
23 Commissioner.

24 THE COURT: Okay. Mr. Wilkie, any questions of
25 this witness?

1 MR. WILKIE: No.

2 THE COURT: Mr. Loughery, any questions for this
3 witness?

4 MR. LOUGHERY: No.

5 THE COURT: All right. Mr. Haymond?

6 MR. HAYMOND: Nothing.

7 THE COURT: All right. Any other witnesses for
8 the Claimant?

9 MR. HAYMOND: No, ma'am.

10 THE COURT: Any witnesses for Firstcomp Insurance
11 Company other than depositions that I have?

12 MR. ADDISON: The deposition testimony,
13 Commissioner, from various parties, especially the one
14 (inaudible) and Miller and then again as we discussed,
15 I would have liked to have had Garry Smith here, but
16 obviously since he did retire that's not possible to
17 testify as to coverage request issues.

18 THE COURT: All right. Any witnesses for the
19 UEF, Mr. Killen?

20 MR. KILLEN: No, Your Honor.

21 THE COURT: Mr. Wilkie, any witnesses on your
22 behalf today?

23 MR. WILKIE: No.

24 THE COURT: Mr. Loughery, any witnesses on your
25 behalf today?

1 MR. LOUGHERY: No.

2 THE COURT: All right. That concludes the
3 hearing.

4 (The hearing concluded at 2:10 p.m.).
5
6
7
8

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON) CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
 WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
 AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THAT THE FOREGOING TRANSCRIPT CONSISTING OF 36
 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.

WITNESS MY HAND AND SEAL THIS 9TH DAY OF
 NOVEMBER, 2012.

CORA ELLIS BRUTON
 NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES JANUARY 18, 2015

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1200479

Dallas Bessinger,)
)
Claimant,)
)
v.)
)
RNM Builders & Associates,)
)
Employer,)
)
and)
)
First Comp a division of)
Markel, Inc. and South)
Carolina Uninsured Employers')
Fund,)
)
Carriers/Defendants.)
)
-----)

FULL COMMISSION PANEL HEARING

Tuesday, October 15, 2013
4:05 p.m. - 4:22 p.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 15th day of October, 2013 before Jill H. Vickers, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

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Gene McCaskill

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Attorney for the Respondent/Defendant, FirstComp

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EXHIBITS

(There were no exhibits marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: Today is October 15, 2013. This is
2 South Carolina Workers' Compensation Case
3 Number 1200479. This is the case of Dallas
4 Bessinger, Claimant, versus RNM Builders &
5 Associates and FirstComp a division of Markel,
6 Inc. and South Carolina Uninsured Employers'
7 Fund is the Carrier. The Appellant is the
8 Defendant/Carrier, SCUEF, represented by Amy
9 Cofield. The Respondent is the
10 Defendant/Carrier, FirstComp, represented by
11 Daniel Addison. Each side is allowed ten
12 minutes for oral argument and Appellant three
13 minutes in reply. You are requested to argue
14 the grounds of exception and stay within the
15 record.

16 MS. COFIELD: The facts in this case are not really
17 in dispute. We had a claimant who sustained an
18 injury and on a date who has alleged the
19 employer went to an agent and procured Workers'
20 Comp. Policy, and then, of course, they didn't
21 divulge they had already had an accident at
22 work that day. Those facts aren't disputed at
23 all. Before I get to the crux of the argument,
24 just a few brief things. We start with what I
25 would call not a great written order. The



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1 caption is incorrect. We have already kind of
2 discussed that. Emory Wilkie and Loughery both
3 appeared as pro se employers, and they're not
4 listed on the caption. The single
5 commissioner's order also made no specific
6 finding of fact as to who exactly the immediate
7 or the statutory employer were, and that has to
8 be made in order to ever even get to UEF. If
9 you get to the UEF, you have to establish that
10 they were both initially liable for the claim.
11 Just from the caption aspect because everybody
12 knows who everybody was, and they were provided
13 notice and everybody appeared and went on
14 record. That's just a scrivener's error. It
15 just needed to be corrected. And the statute
16 is for the finding of the employer and
17 statutory employer. The order makes a specific
18 finding that there was fraud. In South
19 Carolina, you have elements of fraud. There
20 were no findings of fact as to each element of
21 fraud. It's not up to the commission to
22 determine what the fraud is. When you're
23 talking about claimant fraud, I believe there
24 has been no issue. The only issue -- well, I
25 don't know about that part. There hasn't been

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1 any finding about that, either. That was also
2 absent from the order. The main and most
3 interesting part of the question that's
4 presented here is, okay, now, we have what
5 appears to be fraud, even though I think the
6 order should clear that up and make specific
7 findings. Now what? It's the position of the
8 carrier that the order and the finding of the
9 single commissioner that the policy becomes
10 voided, so there's no policy, and there's no
11 coverage. It's the position of the UEF that we
12 have a specific statute, and I've put it on top
13 of my papers I gave you, and if you look at
14 Number 2, this says "Restrictions on
15 cancellation of policies and renewal". No
16 insurance policy or renewal thereof may be
17 canceled by the insurer prior to the expiration
18 of the term except for one of the following
19 reasons: Number 2, "A material
20 misrepresentation of the facts which, if known
21 to the company, would have caused the company
22 not to issue the policy". That's what we have
23 here. I'm sure they would say that it's fraud,
24 and if it weren't for that fraud, this company
25 would not have issued this policy. So, we have

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1 competing theories about the statute. We have
2 the theory of the contract that that should
3 void the policy, but yet, we have a specific
4 Workers' Comp. policy that says, "This is when
5 you cancel it". My argument, then goes, okay,
6 so you have got those two completing interests.
7 You have got basic contract principles, and
8 then you have a specific Workers' Comp.
9 statute. The caselaw that I've attached, the
10 first one case of Oxendine versus TWL which is
11 very interesting, and to me the on-the-point
12 case. It's a North Carolina case addressing
13 their statute that looks identical to our
14 statute. It contemplates fraud. It's fraud
15 here in Number 2. So, therefore, the policy
16 needs to be canceled according to cancellation
17 rules. It is not void from the beginning,
18 therefore leaving no coverage for the claimant
19 who had no part in the fraud. There is no
20 allegation the claimant was involved in the
21 fraud at all. Okay. The next case is Cruz
22 versus New Millennium Construction, and in this
23 case, they found that general insurance law was
24 not compatible with the Workers' Comp. law.
25 Workers' Comp. says the coverage cannot be

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1 canceled retroactively. You have to have a
2 policy necessary for cancelling. Also, as an
3 issue in this case, is the fact that the agent
4 for the carrier who issued this policy was not
5 absolved of any negligence herself, so when she
6 issued this policy, those two names came in,
7 Wilkie and Loughery. Wilkie was listed as the
8 applicant and Loughery signed the application,
9 and the named insured was E & W Construction,
10 of which there is none, and when they issued a
11 refund on the policy, they issued it to Wilkie,
12 but the remarkable part of what she did is she
13 backdated the policy from midnight of the day
14 before. She didn't make it effective when they
15 procured the policy. She made it retroactive.
16 So, a question rises as to whether or not their
17 own negligence is a problem with this case. I
18 do know that she made it for 12:01 the day
19 before. It was prior to the accident, prior to
20 the people coming in and applying. The main
21 part of my argument is that we have this
22 specific statute, and it controls over general
23 contract law. This statute anticipates that
24 there were employers out there that are going
25 to commit fraud. We see it every day here.



1 Thank you.

2 MR. ADDISON: I do have one little housekeeping
3 thing. In what Ms. Cofield turned in, I would
4 object to the handwritten note at the top. The
5 handwritten note needs to be redacted.

6 MS. COFIELD: That's my messiness.

7 COMMISSIONER TAYLOR: And you have no problem with
8 that?

9 MS. COFIELD: I have no problem with that. That was
10 my notes for what to tell you.

11 MR. ADDISON: May it please the commission.
12 Commissioners, Ms. Cofield kind of summed it up
13 pretty well. You have an employee working for
14 them on a house being built in Orangeburg
15 County, and he fell off a roof and broke his
16 hip. They took him to the hospital. They made
17 sure me wasn't going to die. They got in the
18 car, and they drove to Lexington, South
19 Carolina from the Orangeburg Hospital where
20 they went straight to Midlands Insurance and
21 walked in and tried to procure a policy to
22 cover their business, upon which they're asked
23 multiple questions by the individuals that
24 worked at Midlands about why they wanted a
25 policy. They said they were contractors, and



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1 they bought a minimum coverage policy as
2 subcontractors always do. It's a pretty simple
3 application. That signature is pretty hard to
4 read. According to the testimony from -- and
5 I can't think of her name now. The woman that
6 worked for Midlands, we took her deposition,
7 and she said "Those people came in, and they
8 told me they needed a policy to cover their
9 work as contractors, and I provided a policy to
10 them". They did not make one single mention
11 that they had just gotten in a truck and driven
12 from the Orangeburg hospital where they had an
13 employee sitting in the emergency room at this
14 time because he had a broken hip, and she said
15 they were real specific about wanting to know,
16 when did the policy begin, did it begin when
17 they gave her the money, or did it begin before
18 that. Okay. And she asked them why, and they
19 said because they were trying to get work, but
20 it wasn't "We have an employee sitting in the
21 hospital, and we want to get coverage". That
22 was Mr. Wilkie and Mr. Loughery's position.
23 Well, they didn't have an active policy at that
24 point and had not had one in a couple years.
25 Mr. Wilkie had had one with his father-in-law



1 with that insurance policy about two or three
2 years prior, but it was under the
3 father-in-law's name, not under Mr. Wilkie's
4 name. So, he knew where the agent existed, and
5 he went to try to get a policy trying to cover
6 the business because he's got an employee
7 sitting there with a broken hip. My folks found
8 all this out after the fact, obviously, because
9 they received a phone call from the injured
10 claimant's father who is sitting in the
11 hospital saying "When are y'all going to pay
12 benefits?" They said, "What are you talking
13 about?" And they said, "My son is sitting here
14 in the hospital. He's got a broken hip. Y'all
15 need to start paying for all this." They said,
16 "You send the money back, and we're not
17 cancelling the contract. We're rescinding the
18 contract." There's a big distinction. The law
19 Ms. Cofield landed y'all up was for a policy
20 that was a standard policy that was written and
21 entered into in a normal manner, and the policy
22 actually existed. If you look at the law I
23 cited in my brief, our Supreme Court has said
24 in GEICO versus Chavis, there's a difference
25 between the termination of a policy and the



1 rescission of a policy. This policy was
2 rescinded by First Comp because they were duped
3 into giving the contract of insurance to the
4 couple of idiots who had somebody sitting in a
5 hospital. They would have never given them a
6 policy of insurance, especially for a guy
7 sitting in a hospital with a broken hip.
8 Anybody, I don't care if you're an underwriter
9 or not, would know that's not the kind of risk
10 you undertake as an insurance company. Once
11 they found out about the issues, they clearly
12 then rescinded the contract and sent the money
13 back to the parties they thought were the
14 parties that had entered into the initial
15 contract or the attempted contract of
16 insurance. Everything that's been done since
17 then has been us, "us" being First Comp,
18 consistently saying "We don't have a policy.
19 We didn't write this policy under the terms of
20 which you brought it to us. We brought it
21 thinking that we were insuring someone that was
22 just a party that needed coverage to be a
23 contractor, not that you had an individual that
24 was sitting in a hospital." Clearly, if you
25 read the law, especially Chavis, in the



1 application of Chavis to the facts of this
2 case, it's pretty clear the Supreme Court has
3 made it their position that if you have a
4 situation as exists in this claim that what you
5 have is a voided contract. There is no
6 contract. And that's really the position that
7 First Comp has put before you. I have briefed
8 it, and I've said everything I have to say.

9 MS. COFIELD: Okay. First of all, there is no
10 finding that any policy that was issued was
11 ever rescinded. There's nothing in the record
12 about a rescission. The order does not say
13 it's rescinded. It said it was void ab initio.
14 The caselaw establishes that a Workers' Comp.
15 policy can never be void ab initio. We have a
16 specific statute that says it has to be
17 canceled. I don't see any difference in an
18 annulment of a marriage and this.

19 COMMISSIONER WILKERSON: Well, one cost money and
20 one doesn't.

21 MS. COFIELD: He has related to Chavis that he's
22 cited. That was former law and predated the
23 statute. That does not apply. He's cited a
24 case -- the only case he's cited that would
25 void a policy ab initio was the Blue Cross case



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1 which was a first person fraud case where the
2 applicant committed the fraud in applying for
3 health insurance, not Workers' Comp. There's
4 not a specific statute on health insurance.
5 Finally, if there is relief for an insurance
6 company, it says it in one of those that their
7 relief is to turn around and sue those people
8 for damages because they committed fraud. That
9 is their relief. They also have the right to
10 go back and sue those people. One final
11 cleanup matter is that the carrier relied on
12 the deposition of this Talisa person, and her
13 deposition was in the record, and the UEF
14 promptly objected that that deposition come
15 into the record because our two people that
16 aren't here today were also not at that
17 deposition and were not noticed to that
18 deposition, so that testimony was objected to,
19 and that is what they relied on to establish
20 fraud to start off with. So, that was never
21 ruled on, and that's what the order is based
22 on, that fraud, so there's a whole lot of
23 problems with this, and it's mixed up, but
24 ultimately, I say that we have a particular
25 statute, and that policy must be canceled

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1 according to our Workers' Comp. statute.

2 COMMISSIONER TAYLOR: Thank you.

3 (Whereupon, the hearing concluded 4:22 p.m.)

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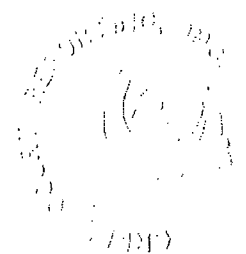
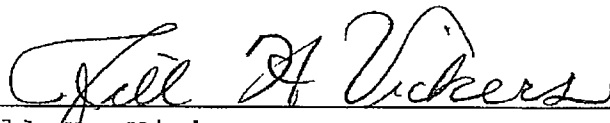
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CERTIFICATE

This is to certify that the within hearing consisting of fourteen (14) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on January 7, 2016.



Jill H. Vickers
Certified Court Reporter

Notary Public for South Carolina
My Commission Expires: July 5, 2016



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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200479

Dallas Bessinger,	)	
	)	
Claimant,	)	
	)	
vs.	)	
	)	TRANSCRIPT OF PROCEEDINGS
RNM Builders &	)	
Associates, LLC,	)	August 21, 2014
	)	
Employer,	)	
	)	
and	)	
	)	
First Comp and South	)	
Carolina Uninsured	)	
Employers Fund, Carrier,	)	
	)	
Defendants.	)	
	)	

This hearing was held before
Commissioner Gene McCaskill, reported by
Kimberly T. Power, Court Reporter and Notary
Public in and for the State of South Carolina;
said proceedings were held at the South
Carolina Workers' Compensation Commission, 1333
Main Street, Columbia, South Carolina, on
Thursday, August 21, 2014, commencing at the
hour of 9:30 a.m.

1 APPEARANCES

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1 THE COURT: Today's date is
2 August 21, 2014. This is Workers' Compensation
3 Commission File Number 1200479. This is the
4 case of Dallas Bessinger vs. RNM Builders and
5 Associates, LLC. Also -- well, let's put it
6 this way. The Claimant is represented by Steve
7 Haymond. The employer is not present, nor is
8 the employer now represented. The employer was
9 represented at one time, but that counsel has
10 been asked to be removed and has been removed
11 from this case. Also in the caption is J&L
12 Construction, LLC. So I'm not quite sure about
13 that, but I guess I'll hear about that. We
14 know of no carrier in this case. Well, yeah,
15 we do. It says carrier none or unknown and
16 then it's got the Uninsured Employers Fund and
17 Ms. Amy Cofield is present representing them.
18 And then First Comp Insurance Company and Dan
19 Addison is here representing them as well. And
20 I'm sure y'all will both expound on what your
21 roles are here today.

22 Looks like average weekly wage is in
23 dispute. So we'll defer on that. The date of
24 the accident is January 4, 2012.

25 Let me ask this next usual question

1 in this way: Are there objections to
2 jurisdiction or venue?

3 MR. HAYMOND: No, Your Honor..

4 MS. COFIELD: No, sir.

5 MR. ADDISON: None from us.

6 THE COURT: All right. And I know
7 because Ms. Cofield has a motion that there
8 will be objections to certain APA submissions.

9 MR. ADDISON: And, Commissioner, I
10 would -- just so the record is clear, I don't
11 have any specific objections to us going
12 forward today with the hearing being held in
13 Columbia. We do have some concerns about the
14 procedural history of this case. When the Full
15 Commission issues its ruling, I and Mr. Haymond
16 both asked the Commission to clarify what they
17 were telling us that they were going to do.
18 They did not give us any kind of instruction as
19 to why this was being remanded for a new
20 hearing. We looked into doing an appeal. We
21 were told it would be an interlocutory appeal.
22 I just want to make sure the record is clear
23 that our intention was to appeal, but we were
24 told it was going to be interlocutory depending
25 on what happens here.

1 The procedural history of this case
2 is so convoluted, I want to make sure the
3 record is clear I'm not waiving any concerns
4 that we have over the jurisdiction being back
5 at the Full -- at the same Commission level
6 pursuant to the Full Commission Order that has
7 been issued that we are here under. So I do
8 have some objections to that aspect.

9 THE COURT: All right. And
10 that's --

11 MS. COFIELD: So is that an
12 objection to jurisdiction?

13 MR. ADDISON: I'm objecting to the
14 jurisdiction in terms of us not having a clear
15 understanding from the Full Commission as to
16 exactly what this Commissioner is supposed to
17 be doing today, and it's not for a lack of us
18 asking. I asked and so did Mr. Haymond for the
19 Full Commission to give us some understanding
20 exactly what it was that the Full Commission
21 wanted us to do. They have not indicated what
22 was deficient with Commissioner Roche's Order
23 in any way, shape or form. There's not
24 anything saying she screwed this up and,
25 therefore, we're sending the hearing back for a

1 de novo hearing. There's none of that. It was
2 just essentially a wiping of the -- it's like
3 taking a dry erase board and wiping it off and
4 saying go do this again. And I don't know that
5 the Full Commission can necessarily do that.
6 I'm not saying that they don't have the
7 jurisdictional power to make a decision, but I
8 don't know that it's a proper decision.

9 So I am concerned the jurisdiction
10 here today may not be necessarily sufficient.
11 However, we are here today to go forward and
12 see what happens from this point.

13 THE COURT: All right. And that's
14 so noted for the record. Any other objections
15 other than I understand we will be -- at least
16 Ms. Cofield will be objecting to some APA
17 submissions?

18 MS. COFIELD: Can I address the
19 jurisdiction issue?

20 THE COURT: Absolutely.

21 MS. COFIELD: Commissioner, when a
22 case is referred from the Full Commission for a
23 trial de novo, Mr. Addison is incorrect, we
24 know exactly what the Full Commission directed.
25 A trial de novo. A new hearing. A start from

1 the beginning as if nothing has ever happened
2 before. For that reason, the Commission does
3 not have to tell you why it found that way.
4 And I think after questions were made by both
5 attorneys two or three times why is it being
6 remanded for a trial de novo, they said it's
7 being a trial de novo.

8 If it has been referred to make a
9 finding of fact more clear or because they felt
10 that one of the findings of fact were improper,
11 then they would have addressed that finding of
12 fact. But when you start over, when there's a
13 hearing de novo, he knows exactly what is ruled
14 and why we are here.

15 So I would say that jurisdiction is
16 proper, Full Commission had authority and did
17 it the correct way by referring it for a trial
18 de novo.

19 THE COURT: Mr. Haymond, do you wish
20 to speak to that?

21 MR. HAYMOND: No, I don't, Your
22 Honor.

23 THE COURT: All right. And I
24 actually agree with Ms. Cofield that the
25 directive of the Full Commission is for a

1 hearing de novo, which is a new hearing as if
2 the first hearing never happened. And that's
3 what we're proceeding on. I understand you
4 object to that, Mr. Addison.

5 MR. ADDISON: No, sir. I just have
6 one comment back to what Ms. Cofield said. She
7 said that I know exactly what the Full
8 Commission was doing. I don't know what they
9 were doing. I've asked them --

10 MS. COFIELD: A de novo hearing.

11 MR. ADDISON: I've asked them --

12 MS. COFIELD: You don't know why.

13 MR. ADDISON: Can I finish, Amy?

14 MS. COFIELD: Well, you're making an
15 incorrect statement.

16 MR. ADDISON: Did I interrupt you?

17 MS. COFIELD: A couple of times.

18 MR. ADDISON: No, I did not. Not
19 when you were making your argument.

20 THE COURT: All right, folks. Let's
21 move on.

22 MR. ADDISON: Commissioner, I've
23 asked for clarification of the Full Commission.
24 The APAs are very clear that the Commission has
25 to give a basis as to its findings on any

1 matter including if they decide to send
2 something back for a de novo hearing. They can
3 certainly send it back for de novo. But to
4 undo what was done before, there is no basis in
5 the Full Commission Order to suggest why the
6 Full Commission acted in the manner that it
7 did. And that's what we were asking for, is
8 clarification on that issue.

9 The Administrative Procedures Act
10 makes it abundantly clear that it has to be
11 clear on the face of the Order as to why the
12 Full Commission makes any decision it makes,
13 and that's been decided by the Supreme Court
14 numerous times. I'm more than happy to cite
15 cases for you if you want me to. But that's
16 the position we're taking, is that we have no
17 clarification from the Full Commission as to
18 why we had to have a de novo hearing. There's
19 no ruling from the Full Commission as to why
20 the hearing was deficient the first time
21 around. That's my point.

22 I understand this is a de novo
23 hearing. I certainly understand that part of
24 the law. But as to why we're having a de novo
25 hearing, we don't know. Nobody knows. Nobody

1 in this room knows. Okay.

2 THE COURT: All right. Very good.
3 Anything else? All right. We have -- I have a
4 motion before me from Ms. Cofield. But in the
5 interest of judicial economy, I'm going to have
6 everybody put their positions on the record.
7 So Mr. Haymond, if you would, please sir, place
8 your client's position on the record.

9 MR. HAYMOND: Thank you, Your Honor.
10 It's the Claimant's contention that he was
11 injured on January 4, 2012. He was working for
12 Daniel Construction who was under RNM Builders.
13 The APAs from both of the carriers do not
14 indicate that compensability is an issue, and I
15 would agree that it's clear that he hurt
16 himself. He will testify that he was making
17 \$13 an hour for a 40-hour workweek which would
18 give us an average weekly wage of \$520 and a
19 compensation rate of \$346.68.

20 Based on the medical reports, he was
21 out of work from January 4, 2012 through
22 April 4, 2012 and we would ask for temporary
23 total benefits for that period of time. We
24 would ask for payment for the medical care that
25 he has already sustained and payment for a

1 return to the doctor to see -- first go off
2 anything further is necessary. But if not,
3 final impairment rating to get this matter
4 resolved eventually.

5 THE COURT: All right. Ms. Cofield.

6 MS. COFIELD: Did you want him to go
7 first?

8 THE COURT: Yeah, probably.

9 MR. ADDISON: All right.
10 Commissioner, the details -- the details of the
11 injury itself, nobody will fault that. The
12 Claimant did fall off of a building -- off of a
13 new house construction down in Orangeburg, was
14 taken immediately to the Orangeburg Regional
15 Medical Center where he was then later
16 transferred, I believe, to Richland. Is that
17 correct, Steve?

18 MR. HAYMOND: Yes.

19 MR. ADDISON: They sent him up here
20 to Columbia to Richland. He had a broken hip
21 and I don't even know which hip. Right or
22 left, Steve?

23 MR. HAYMOND: Left.

24 MR. ADDISON: He fractured his hip.
25 He's a young fellow. So it's not like some old

1 man breaking his hip. It was a guy who had a
2 pretty traumatic injury. So I don't think
3 there's any issue of there being an injury that
4 day. The records are replete regarding him
5 having injuries that moment on that particular
6 day.

7 Big question here is who is the
8 responsible party. The folks that ran this
9 particular outfit, the construction -- the
10 small construction group which was the framing
11 crew were working for RNM, and RNM is a guy
12 named Ronnie -- I can't think of his last name.
13 Ronnie Stokes. I actually had Ronnie as a
14 contractor on my building that I owned with Jay
15 McKay and Dan Santana and knew him fairly well
16 before. Didn't know he was involved in this
17 until we got involved in this.

18 Mr. Stokes had hired Mr. Loughery
19 and Mr. Wilkie to be the framing crew. They
20 performed the framing job, and they had
21 hired -- purportedly had hired Mr. Bessinger to
22 be an employee on the crew to work that
23 particular day or at least that time frame.

24 They were down there, did the job,
25 guy falls off the building that morning. They

1 take him to the hospital. They go from the
2 hospital straight to Lexington to go to an
3 insurance agent and get a policy that is an
4 assigned risk policy and NCCI signed it.

5 The next in line was First Comp. So
6 they are the ones that get it. The agent does
7 what she's supposed to do. It's a typical \$750
8 policy that doesn't cover any employees less
9 Mr. Loughery and Mr. Wilkie is the people that
10 are the owner of the business. I
11 affectionately dubbed them Tweedledee and
12 Tweedledumb at the first hearing the first time
13 around because they are not the most
14 intelligent guys in the world. They are kind
15 of just worker-be type folks that are not
16 particularly sophisticated. But there was no
17 real dispute by them --

18 MS. COFIELD: I'm going to object
19 because he's testifying for the record. This
20 is stuff he should put on his direct
21 examination.

22 MR. ADDISON: Which I'm going to get
23 to. I can certainly raise the issues. If she
24 wants to object to it coming in later, that's
25 fine.

1 MS. COFIELD: You're testifying.

2 MR. ADDISON: I haven't said
3 anything what anybody said. I'm giving him the
4 facts of what occurred to our knowledge.

5 These gentlemen come to Lexington,
6 they buy the policy. And the next day my
7 adjuster gets a phone call wanting to know from
8 Mr. Bessinger's father wanting to know were
9 they going to pay for his hospital bill.

10 MS. COFIELD: I'm going to object.
11 If the adjuster is not here to testify, he
12 can't --

13 MR. ADDISON: The father is sitting
14 in that room right there. I'm more than happy
15 to cross-examine him on that issue, Your Honor.

16 THE COURT: If he's here, go ahead.

17 MR. ADDISON: The father calls my
18 client and then started looking into we have no
19 clue what you're talking about. They started
20 investigating. They figured out what had gone
21 on after some period of time, and they then
22 informed everybody that the policy is void
23 pursuant to fraud.

24 We've been raising the fraud
25 argument for quite some time. We've been

1 raising the void aspect of this policy for very
2 long. The arguments that are before the Court
3 today were made the first time around. I
4 briefed everything for you and I've got it in
5 front of you. There's a brief Memorandum of
6 Law on this issue -- of the void issue is that
7 something that would create a contract or does
8 it not create a contract.

9 What Ms. Cofield is arguing is
10 underneath the statute in how you get rid of a
11 contract of insurance once you have created a
12 contract of insurance. There is a distinction
13 here. The statute deals with a policy that
14 actually exists. Our position that was ruled
15 on favorably the first time around is that a
16 policy that doesn't exist, does it fall under
17 the statute that requires 30 days' notice to
18 cancel the policy.

19 If you take the facts of this case
20 which are that they got a policy after the guy
21 fell out of a house -- off a two story house
22 and broke his hip, it's pretty clear that they
23 did something they shouldn't have done. All
24 the other issues are smoking mirrors,
25 Commissioner.

1 The whole issue of whether or not
2 somebody wasn't there when they were supposed
3 to be there for a deposition doesn't mean
4 anything. The facts aren't any different. The
5 facts are the facts. That facts that we know
6 are that these guys got a policy after their
7 employee fell off a roof and they had no policy
8 before. They had no existing policy they
9 thought they were under.

10 So what we have is these guys
11 driving up and getting the policy after the
12 fact and paying for it. Our position was that
13 it was void as a result. They had committed
14 fraud in defrauding the insurance agent who
15 then tide NCCI who tide in my client as the
16 next client in line for being an insurance
17 company that had provided a policy under the
18 assigned risk policy scheme. And our position
19 was back then and still is that a policy of
20 that -- an alleged policy of that nature can't
21 exist because nobody would enter into policies
22 of that nature because if that is the law, if
23 the position that Ms. Cofield is taking is the
24 position of the law that an employer has an
25 employee, goes to work, employee has a bad

1 accident and there is no coverage, all the
2 employer has to do is go to an insurance agent,
3 not tell them about the injury that just
4 occurred, get a policy and if the only avenue
5 that the insurance company could have would be
6 to wait 30 days and then cancel the policy
7 which obviously would cover the injury. If
8 that's the case, then every employer in South
9 Carolina is going to stop buying workers' comp
10 insurance. They will just wait until after
11 they have an injury. Why pay a premium if all
12 you've got to do is go buy a policy after an
13 accident? That's what we raised in our brief.

14 It makes no sense to take the
15 position that the UEF has proposed to the
16 Commission that an employer can go willingly
17 and knowingly to an insurance agent after an
18 injury and say, "I want a policy. Give me a
19 policy. And it covers me today, right? Here's
20 some money. Oh, by the way, I had a guy fall
21 off the roof and there's a couple hundred
22 thousand dollars in medicals that you're going
23 to have to pay." There's no insurance company
24 in their right mind that would enter into that
25 contract. That's why the wait avenue exists.

1 And I didn't make this up. This is not some
2 wild legal theory I've come up with. This is
3 an actual legal theory that exists that the
4 Supreme Court has dealt with. We have all of
5 that in our brief.

6 So our position is there is no
7 policy. It's not that the policy had to be
8 canceled properly. There is no policy, period.
9 You can't have a policy when some party that's
10 part of that contract is completely unclear
11 with their ideas in their hand.

12 You're familiar with the term in
13 equity of having clean hands. They don't have
14 clean hands. Mr. Loughery and Mr. Wilkie don't
15 have clean hands. They came in and didn't
16 provide enough information to the carrier ,
17 through the agent that wrote the policy for
18 there to actually be a contract. So that's
19 what we briefed you today.

20 The other issue going forward with
21 this being a de novo hearing and whether or not
22 the testimony of Mr. Loughery and Mr. Wilkie
23 come in I've dealt with in another document in
24 front of you. It's called "First Comp's
25 Response to the Motion to Strike" which I have

1 before you on this. As you see, we've gone
2 through all of the issues that were raised in
3 the motion by Ms. Cofield. The issues that
4 she's raising essentially is this information
5 can't come in, number one, because this is a de
6 novo hearing and that nothing that happened
7 before exists now. That's not accurate. You
8 can certainly take anything that's in the
9 Commission file, every bit of this is in the
10 Commission file, and you can review anything
11 that's in the Commission file. There's nothing
12 that stops you from doing that in a de novo
13 hearing.

14 The Form 58 sets forth timely that
15 we're going to present this prior testimony
16 that was taken. Then the issue is, is the
17 testimony something that can be allowed before
18 you today. Ms. Cofield's position on that is
19 that the UEF didn't have proper notice of the
20 deposition. The most primary deposition is the
21 one of Telisa Miller. Telisa Miller's
22 deposition took place and Tim Killen
23 representing the UEF was at the deposition. I
24 fully agree he didn't get ten days' notice of
25 the deposition. We contacted him the day

1 before, told him it was taking place. He came,
2 showed up, was there.

3 At no point during that deposition
4 did he raise any objection to going forward
5 with the deposition. He was there and
6 cross-examined Ms. Miller on behalf of the UEF
7 on the record. So the objections as to there
8 being some problems, some deficiency with the
9 notice to the UEF were waived by Mr. Killen
10 both at the time of the deposition by his
11 acquiescence and later where he specifically
12 waived his objections to that deposition. He
13 did that at the original hearing.

14 I understand this is a de novo
15 hearing, but his statements in front of the
16 prior Commission are still on the record and
17 are still a part of the Commission file. I
18 briefed all that in this reply for you, Your
19 Honor.

20 The third point is that somehow
21 Mr. Loughery's or Mr. Wilkie's rights were
22 somehow hampered by them having lack of notice.
23 As I state in the brief that's before you, we
24 told them when they had their depositions done
25 the day prior that we were deposing Ms. Miller

1 the next day. We told them they could
2 participate and ask her questions or they could
3 hire an attorney. I believe Mr. Haymond will
4 back me up on every bit of this because he was
5 there when all that took place. They indicated
6 they didn't want to come. I, when we started
7 Ms. Miller's deposition, went on the record and
8 put every bit of that on the record with Tim
9 Killen present as the attorney for the UEF and
10 noted that Mr. Loughery and Mr. Wilkie were
11 both informed of Ms. Miller's deposition taking
12 place the next day and that they had the
13 opportunity to participate. They were telling
14 us they did not want to participate. We also
15 informed them that they had the right to have
16 an attorney come and represent them in that
17 deposition, and they indicated they did not
18 desire to do so. I put all that on the record.
19 So there's not a lack of a record here of us
20 discussing this with these individuals.

21 It appears that Ms. Cofield is also
22 indicating that somehow her client, the UEF,
23 has a right to argue on behalf of Mr. Loughery
24 and Mr. Wilkie that because we didn't give them
25 proper notice, that their deposition shouldn't

1 come in. I don't see where the UEF has
2 standing to do so. They don't represent
3 Mr. Loughery or Mr. Wilkie. They're not their
4 attorneys. They're just the attorneys for the
5 UEF and the UEF is a solo party. I would argue
6 that standing does not exist for her to argue
7 on behalf of another party that there's some
8 deficiency. If Mr. Loughery or Mr. Wilkie want
9 to come in here and argue, that's fine.
10 They've been given notice of this hearing. I
11 don't see either one of them here. They were
12 given the opportunity to argue before. In the
13 prior hearing they were given that same
14 opportunity and they chose not to. And they
15 were actually at the last hearing and they
16 agreed to waive any objections.

17 MS. COFIELD: I want to object to
18 anything they said at the last hearing.

19 MR. ADDISON: It's on the record,
20 Commissioner. It's part of the Commission
21 record.

22 THE COURT: And the record will
23 speak for itself.

24 MR. ADDISON: Correct. A de novo --
25 just to deal with this de novo issue that Amy

1 keeps raising, just because we're on a de novo
2 hearing doesn't mean everything that happened
3 before doesn't exist in the Commission file and
4 is not a part of the record before you today.
5 You're starting a new hearing, but everything
6 that occurred through today is fair game to be
7 presented to you as Commissioner. There's
8 nothing in the Act that says that I can't do
9 that, and there's nothing in the Rules of Civil
10 Procedures that says I can't do that.

11 I'm sure she will discuss that for
12 you, but I'm aware of nothing from the Supreme
13 Court, no guidance from the Supreme Court that
14 tells me in a de novo hearing I can't go back
15 and look at the record that existed before.
16 You can make whatever decision you want to
17 based on that record, but the record is the
18 record and it is testimony and statements
19 before the Commission at a hearing where it was
20 a called hearing. It is a clear, procedural
21 matter before the Commission that is part of
22 the Commission file. So saying somehow we have
23 a magic wand that makes it all go away is not
24 accurate. It's in this Commission record and,
25 quite frankly, it was noted by Full Commission

1 in their Order. It's part of their Order.

2 They discussed this in their Order.

3 So I've got the two big issues out.
4 That's really where we are. The big argument
5 before you today isn't whether this gentlemen
6 has something wrong with him. Quite frankly, I
7 don't know what's going on with Mr. Bessinger.
8 I have no clue. I don't know if he's back at
9 work. I don't know what's going on with him as
10 an individual. Our position is that we have no
11 policy. There never was a policy. This was an
12 improperly entered policy. As such, my client
13 shouldn't be here. The UEF has a
14 responsibility for someone that falls into that
15 crack, and it's the UEF's responsibility to
16 provide whatever benefits would be necessary
17 for Mr. Bessinger.

18 THE COURT: All right. Ms. Cofield.

19 MS. COFIELD: I have to take a deep
20 breath for this one, all right, as I have
21 already explained to the Court previously and
22 will attempt to do again. First of all, there
23 is nothing in workers' comp that says you can
24 void a workers' comp policy from the beginning.
25 There's only a provision for canceling of a

1 workers' comp policy. There's also nothing
2 written in the policy --

3 THE COURT: All right. Back up. I
4 want to make sure I get this in my notes. Tell
5 me from the beginning.

6 MS. COFIELD: There is no provision
7 in workers' comp that provides for a workers'
8 compensation policy to ever be void ab initio.
9 There is only language and statutes and case
10 law that support how to cancel a policy once it
11 was issued whether by fraud or any other
12 reason.

13 There is a difference between a
14 first person policy and a third person policy.
15 First person policy would be I'm applying for
16 life insurance and I lie and say I don't have
17 cancer. Then I have committed fraud so that I
18 can get coverage. In a workers' comp policy,
19 they would have to prove that the claimant
20 participated in the fraud for the claimant to
21 be denied coverage under that policy. There's
22 no evidence to establish any sort of thing.
23 There was no fraud on behalf of the claimant.
24 The claimant is being denied coverage because
25 of the fraud of the employer.

1 The statute is Section 38-75-730.

2 It specifically anticipates these circumstances
3 in which fraud was used to induce the carrier
4 to issue the policy. That statute specifically
5 says this is -- the title of it is,
6 "Restrictions on Cancellation of Policy and
7 Renewals, Notice of Cancellation."

8 THE COURT: Tell me the statute
9 again.

10 MS. COFIELD: 38-75-730.

11 THE COURT: Got it.

12 MS. COFIELD: (A) No insurance
13 policy or renewal thereof may be cancelled by
14 the insurer prior to the expiration of the term
15 stated in the policy except for one of the two
16 following reasons: One, non-payment of
17 premium. Then you can cancel. Two, material
18 misrepresentation of fact which if had been
19 known to the company would have caused the
20 company not to issue the policy.

21 Mr. Addison argues that these people
22 went in and asked for a policy when they knew
23 that their employee had already been injured.
24 Third party had already been injured. The
25 insurance company issued the policy and, by the

1 way, made it retroactive back to midnight of
2 the night before. If they had worried about
3 fraud, if they ever intended to take care of
4 themselves and prevent any negligence on their
5 part, why did they not make a policy good from
6 that minute forward. She made it retroactive.

7 You cannot take away the rights of
8 the injured innocent third party claimant. Any
9 time an insurance company has been defraud --
10 and we see this all the time in cases like, oh,
11 we weren't insuring roof work. We were only
12 insuring landscaping or whatever. Then the
13 insurance company has the right then to go
14 after the employer and make them pay additional
15 premium.

16 The insurance company here still has
17 that right. The insurance company is not going
18 to be left in the dark. It's the -- it's the
19 claimant that's left in the dark, the innocent
20 party, by his assumption that you can void a
21 policy ab initio. There's nothing in the
22 record, there's nothing in the law, there's no
23 foundation at all for an argument that a
24 workers' comp policy can ever be void ab
25 initio. And for that reason we say that there

1 was a policy, they made it retroactive when
2 they issued it, so the claimant is entitled to
3 that coverage. Then the carrier has its right
4 of subrogation against the employer. That
5 happens in all the other kind of insurance
6 problem cases.

7 The next issue is the issue of the
8 evidence. Mr. Addison has spent a long time
9 giving what he calls the facts of the case
10 here. I say he can't do that. When you have a
11 trial de novo, you have a new trial. You do
12 not use anything that was in the trial before
13 unless it's also admissible today. His job is
14 to come in here today, even if he had a
15 deposition then and prove that that deposition
16 is good testimony today for this hearing. He
17 can't do that.

18 The deposition of Telisa Miller that
19 he proposes to submit was attended by the UEF
20 and Mr. Haymond and Mr. Addison. There's no
21 proof anywhere that the defendants, the alleged
22 employers, were parties to this deposition.
23 Therefore, her deposition is not admissible in
24 court. You have to notice every party to a
25 deposition.

1 I can't tell you how many
2 depositions I've attended as the UEF attorney
3 and said, well, the employer is not here. Did
4 you notice them? If you did, we can go
5 forward. If you did not notice them, the
6 deposition is not good. It is not admissible.
7 So for that reason the employer did not have a
8 right to cross-examine Telisa Miller and,
9 therefore, this testimony is hearsay and not
10 admissible today at our new trial.

11 The other two depositions were the
12 deposition of Emery Wilkie and also John
13 Loughery. These two depositions were only
14 attended by Mr. Addison and Mr. Haymond. No
15 employers and not the UEF. I've seen not one
16 piece of evidence that shows that the employer
17 was served with notice of these depositions,
18 that the UEF was served with notice of these
19 depositions. And, in fact, none of us attended
20 these depositions. Therefore, they were then
21 hearsay and they still are hearsay. Now, if
22 these people were here today to testify, then
23 they're not hearsay anymore. But he doesn't
24 have them here today, so they're hearsay and it
25 is not admissible.

1 I am not the attorney for these two
2 guys. I'm the attorney for the UEF. I don't
3 have to be their attorney to say their
4 testimony is hearsay. I don't know where that
5 argument came from. It's hearsay for my
6 client. It is not admissible. My client was
7 not there to cross-examine and they aren't here
8 today. So that evidence shouldn't come in.

9 His Form 58 is improper. It goes
10 through issues that were before the previous
11 Commissioner and how the previous Commissioner
12 ruled on those issues. All that is improper in
13 a hearing de novo. We're starting over.
14 Anything that was good then has to be proven
15 good today. Just that information in the Form
16 58 that he has provided to the court and I also
17 argue to the court is inadmissible. Therefore,
18 we object, and by my motion I have objected to
19 that testimony coming in.

20 I've already argued on the
21 jurisdiction issue, so I don't need to do that
22 again. As far as the claimant, of course the
23 claimant is in a hearing de novo as well. So
24 the claimant needs to come in and testify about
25 his accident and establish it for the record.

1 The Commission would want him to do that
2 because mainly the employers aren't here and
3 you don't want to give them any reason to
4 appeal a case. They have to -- they have to
5 start over. I don't think Mr. Haymond objects
6 to that.

7 I will also add that Mr. Addison
8 argued a lot of facts that this happened and
9 that happened and this happened and that's
10 fine -- well, it's not really fine because what
11 he has failed to do is provide the court or any
12 party with evidence or testimony to support
13 what he alleges to be fact. This is a hearing
14 de novo. He has to have these parties here to
15 testify or he has to submit to us proper
16 depositions. He's known for months that we had
17 a hearing de novo. He could have re-deposed
18 these people and properly noticed us all. He
19 did not. So for that reason, this is not
20 admissible today and it's not to be considered.

21 I think that's all.

22 THE COURT: Anything else,
23 Mr. Haymond?

24 MR. HAYMOND: No, Your Honor.

25 THE COURT: Anything else,

1 Mr. Addison?

2 MR. ADDISON: Yes, sir.

3 Commissioner, I didn't raise this earlier, but
4 I'm going to raise it now. Amy did not
5 properly serve her motion to the Commission.
6 It was perfected yesterday. Ten days' notice
7 pursuant to the Rules of Procedure have to be
8 provided by all parties before any motion is
9 made before any court in the State of South
10 Carolina including the Workers' Comp
11 Commission.

12 I've replied and submitted a reply
13 to you, but I'm just pointing that out for a
14 specific reason. In cases like this where you
15 have so many parties involved, people get
16 missed on notices. The depositions of
17 Mr. Loughery and Mr. Wilkie were not my
18 depositions. They were ones that Mr. Haymond
19 was taking. He served the parties. We
20 contacted Tim Killen. There's testimony in the
21 record -- statements from Tim Killen in the
22 record before the Commission last time around
23 that he was contacted when we did the
24 depositions of Loughery and Wilkie, that he was
25 out of town, he couldn't come.

1 MS. COFIELD: This is not admissible
2 and I object to this argument.

3 MR. ADDISON: Amy, did I say a word
4 during your statement?

5 MS. COFIELD: I'm just making an
6 objection for the record that your argument is
7 improper.

8 MR. ADDISON: I'm responding to
9 everything you said. He made comments on the
10 record before the last Commissioner that he had
11 no objection. Rule 32 of the South Carolina
12 Rules of Procedure is what governs here. Rule
13 32 is very clear that a party that is objecting
14 to a deposition has to timely make that
15 objection to the deposition. That timely
16 objection has to be at the time when it could
17 have been corrected which would have been in
18 2012. The prior attorney for the UEF made no
19 objection. Mr. Loughery and Mr. Wilkie made no
20 objection to any of this. She has zero
21 standing.

22 The UEF has no standing to make any
23 argument on behalf of Loughery and Wilkie. She
24 just admitted that. She said, "I'm not their
25 attorney." She can't make an argument for

1 Mr. Loughery or Mr. Wilkie to say that somehow
2 they were affected by any of this. It's their
3 right to raise that, not hers. There's nothing
4 in the rules that say it's hearsay if the
5 deposition wasn't properly noticed. That's not
6 accurate. What the deposition rules state is
7 that a party is supposed to have an opportunity
8 to come in and cross-examine a witness. The
9 UEF was there. They weren't there for Loughery
10 and Wilkie, but they were told about it. They
11 also waived their objection to that Loughery
12 and Wilkie deposition after the fact.
13 Essentially said we don't care, it's fine, it
14 comes in.

15 The Miller deposition, Ms. Miller,
16 the one that's the primary deposition, the UEF
17 attended. Came in, Tim Killen said -- I've got
18 it right here. His statement on the record,
19 "I'm Tim Killen. I represent the South
20 Carolina Workers' Comp Uninsured Employers Fund
21 and I am here voluntarily. My client did not
22 receive actual -- well, legal notice of this,
23 so I'm here voluntarily. I just found out
24 about it yesterday. We did not receive -- the
25 Fund did not receive notice of yesterday's two

1 depositions until they were underway or just
2 about to be underway. I had a hearing out of
3 town and I could not attend yesterday." And
4 then after that he makes zero objection on the
5 record.

6 There's nothing where Tim Killen
7 says, "I object to those depositions going
8 forward and I object to this deposition going
9 forward that I'm going to sit through the rest
10 of the deposition on Ms. Miller." He
11 questioned Ms. Miller in the deposition. He
12 actually cross-examines her.

13 So all the objections that
14 Ms. Cofield is making made no sense. I don't
15 know what she's arguing about. Why she's
16 saying that now she gets to raise that again
17 because this is a de novo hearing. The
18 deposition took place two years ago. The UEF
19 attorney of record made no objection to any of
20 these depositions two years ago. Rule 32 is
21 pretty clear on its face. The objection has to
22 be made at that time. If she wanted to
23 re-depose Ms. Miller, she could have done it
24 herself too. She just made that point about me
25 that I could have recalled Ms. Miller and had

1 her deposition. I had already done it. I
2 didn't need to cross-examine her again. I had
3 already done it one time and the UEF was there
4 to cross-examine her as well.

5 As to the insurance argument, this
6 statement on the statute, the argument of the
7 coverage and whether there is coverage or not,
8 Ms. Cofield made an interesting argument. She
9 said -- and I wrote it down as she said it.
10 She said there is no provision in workers'
11 compensation law regarding a policy being void
12 ab initio and that you could only cancel by
13 statute which I presumed meant she was going to
14 tell us about a statute in the workers' comp
15 statutes that spoke to this. What she told you
16 about was a statute under the insurance part of
17 the workers' comp -- excuse me, the insurance
18 part of the South Carolina Code. She cited
19 32-75-730.

20 MS. COFIELD: No, 38.

21 MR. ADDISON: Excuse me. 38-75-730.
22 Which I am pretty sure is not part of the
23 workers' compensation statute and workers'
24 compensation act. It's part of the insurance
25 act. As I point out in my brief on these

1 issues, our courts have dealt with this issue.
2 You're dealing with insurance law. This is not
3 workers' comp law. This is insurance law. It
4 is an insurance contract, proper or not. And
5 how do we deal with an insurance contract?
6 That's what the insurance statutes deal with.
7 The Supreme Court has reviewed and made
8 decisions on all kinds of provisions of
9 insurance law including the argument of a void
10 ab initio policy. And what we keep dealing
11 with is the semantic difference between -- in
12 this case is the semantic difference between
13 cancellation and rescinding a policy. I've
14 cited all this on Page 3 of my Memorandum of
15 Law for you.

16 The court in the Chavis case, it's
17 Government Employees Insurance Company, or
18 GEICO, vs. Chavis. The cite is 176 Southeast
19 2nd 131. It's a 1970 case from the Supreme
20 Court. This is a quote from that case.
21 "Cancellation refers to the termination of the
22 policy prior to the end of the policy period
23 and termination refers to the expiration of the
24 policy by lapse of the policy period.
25 Rescission is not merely a termination of

1 contractual obligation, but is an abrogation or
2 undoing of it from the beginning which seeks to
3 create a situation the same as if no contract
4 had ever existed. The cancellation of a
5 liability insurance policy operates
6 perspectively and is to be distinguished from
7 rescission which destroys a policy void ab
8 initio."

9 The reason they cited a liability
10 policy is because that's what was at stake in
11 the Chavis case. It was GEICO, it was an
12 automobile policy -- an automobile liability
13 policy, but it didn't change the fact that it
14 was insurance law. This was our court
15 interpreting insurance law in South Carolina.

16 I don't care what the insurable
17 interest is. If it's a contract of insurance
18 creating a policy, it falls under insurance
19 law. It doesn't matter if it's workers' comp,
20 commercial insurance, individual automobile
21 drivers insurance, homeowners insurance.
22 They're all the same under the eyes of the
23 insurance laws of South Carolina. That's why
24 we have a separate section in the statute to
25 deal with it.

1 Our court has said very clearly void
2 ab initio does exist and can apply in a
3 situation where parties do something they
4 shouldn't have done and the policy should have
5 never been issued to begin with. So it's not
6 like I have to cancel it. The policy -- excuse
7 me. The statute that is continually cited by
8 the UEF, the 38-75-730 statute, deals with how
9 do you properly get rid of a policy that
10 exists. This policy didn't exist as per the
11 terms of a void ab initio ruling by the Supreme
12 Court.

13 Thank you.

14 THE COURT: Ms. Cofield.

15 MS. COFIELD: I don't understand his
16 arguments regarding these depositions. First
17 of all, he just argues, well, I said this and
18 he said that. Where's your proof? For a
19 deposition to be admissible in the court as
20 evidence, as a deposition de bene esse, that
21 means in place of the testimony. These were
22 just depositions. There's nowhere stated on
23 here that this was a deposition de bene esse to
24 be submitted in lieu of hearing testimony.
25 There was no reason that Tim had to -- Tim

1 Killen for the UEF had to object to these at
2 the time they were taken. Well, he wasn't
3 there when they were taken. He found out
4 afterwards.

5 MR. ADDISON: That's not accurate.
6 He was at Ms. Miller's.

7 MS. COFIELD: I thought you didn't
8 interrupt me.

9 MR. ADDISON: I'm going to because
10 you did on mine. So I figured we'd keep the
11 record straight.

12 MS. COFIELD: But today I come
13 before you and make these objections because
14 they're hearsay. I have that right on any
15 transcript that would try to come in today as
16 hearsay if I or my client has not had the
17 opportunity to cross-examine them.

18 At the first hearing, these people
19 appeared. They were there. So the depositions
20 didn't matter. They aren't here today. So
21 it's hearsay. It's hearsay for today in our de
22 novo hearing.

23 Mr. Addison argues that in a de novo
24 hearing you can still consider what happened at
25 the first hearing. Where does that come from?

1 A new hearing is a new hearing and you start
2 over. You have to prove today that anything
3 you want to submit is admissible into evidence.
4 He can't prove these are admissible into
5 evidence. He has argued that somebody waived
6 being there. Where's your proof? Where's your
7 notice? Where's your evidence that he waived
8 it? Where is any evidence that he waived any
9 objection to it coming into any hearing?
10 Doesn't exist because I can make that objection
11 now.

12 As far as my motion not having been
13 served ten days, it was served ten days. It
14 just didn't have a \$25 check attached to it
15 with the Commission. I didn't think a \$25
16 check needed to be with it because, actually,
17 this is a motion that was -- could take place
18 right this second. I didn't have to make this
19 motion ahead of time. I made it ahead of time
20 so everybody would know what my position was
21 coming in here today.

22 I can at any hearing stand up before
23 you and say I object to this coming in today
24 for whatever reason. So my motion was timely.
25 And even if it wasn't, it's timely for today.

1 So that has no relevance whatsoever.

2 I stand by my arguments that these
3 are not admissible. It's a de novo hearing.
4 He has to prove every inch of a case right now
5 and it has to be admissible right now.

6 MR. ADDISON: I want to address the
7 hearsay because I heard a lot of pronouns, but
8 not who the "he" was. If the "he" is Tim
9 Killen, Tim was there. He was there on behalf
10 of the UEF at Ms. Miller's deposition. If
11 she's arguing that the hearsay existed on
12 Ms. Miller's deposition, I'm not sure where
13 she's coming up with that particular argument
14 because you had counsel for her client at that
15 deposition and that counsel cross-examined the
16 witness. If she's raising that particular
17 deposition is hearsay as to her client, that's
18 fine, if that's your argument. If you're
19 arguing this on behalf of Mr. Loughery or
20 Mr. Wilkie or -- what is his last name? I keep
21 forgetting his last name.

22 MR. HAYMOND: Wilkie?

23 MR. ADDISON: No, Ronnie. The RNM
24 guy. Stokes. Ronnie Stokes. If she's arguing
25 on behalf of any of those three, she has no

1 standing to make that argument. She can't make
2 that argument.

3 MS. COFIELD: I can make that
4 argument.

5 MR. ADDISON: She can say it all she
6 wants to, but she has no standing to make that
7 argument. She is here on behalf of the UEF.
8 Her client is the UEF, period. She said that
9 for you earlier today. So she can't raise that
10 there's some deficiency on behalf of some other
11 party. All she can tell you is that my client
12 believes X.

13 She cannot tell you that
14 Ms. Miller's deposition is somehow hearsay
15 against her client. Her client was there and
16 had the right to question the witness. So her
17 ability to argue on behalf of any other
18 defendant doesn't exist. She can't state it's
19 not a good deposition for some other defendant.
20 She only has the ability or standing to make
21 that argument for her client, period. The
22 other folks under the rules have the right to
23 waive or the right to raise an objection. None
24 of them have done so. Under Rule 32, this is a
25 good deposition. It comes into the record.

1 That's all.

2 MS. COFIELD: I can object to these.

3 What he doesn't understand is that UEF sits
4 differently than the other parties. My
5 client's only rival -- because a finding is
6 going to be made against some uninsured person,
7 my liability flows from that uninsured person.
8 Why else would an uninsured attorney lawyer,
9 such as myself, ever even show up for the
10 hearings? It's because I'm going to defend
11 when that uninsured employer doesn't show up
12 and do the best I can on behalf of both of us
13 even though I don't represent that person. My
14 liability is going to flow through that person.
15 So because of that I do have a right to object
16 when they weren't noticed to a deposition. He
17 has given no evidence of a notice to them of
18 that deposition.

19 It is improper for the court to
20 consider it no matter who brings the objection
21 up. It's hearsay and they aren't here.

22 MR. ADDISON: If Amy's theory is
23 correct, Your Honor, because of the way the
24 liability flows since the liability would flow
25 to me if there is a policy and, therefore, I'm

1 making the same argument the other way. If
2 that's her position that the liability flows
3 from one party to the other through
4 Mr. Loughery or Mr. Wilkie, then I'm waiving
5 their objection to this deposition -- to any of
6 these depositions on the record. Thank you.

7 THE COURT: Anything else,
8 Ms. Cofield?

9 MS. COFIELD: I don't think you
10 better do that.

11 MR. ADDISON: I'm not saying I
12 represent them. Her argument is that --

13 MS. COFIELD: Well, then you can't
14 waive on their behalf.

15 MR. ADDISON: Your position is that
16 the liability flows through them to you as the
17 uninsured employer. And you specifically --

18 MS. COFIELD: It does.

19 MR. ADDISON: -- said you don't
20 represent them.

21 MS. COFIELD: Right.

22 MR. ADDISON: If the policy exists
23 because there is no void ab initio, which is
24 your argument, the liability would then shift
25 and flow through them to me. So I have just as

1 much rights as you to make an argument, and I
2 would indicate that there's been a waiver
3 before. I see no reason why there wouldn't be
4 a waiver now. And the argument can be made
5 that if the liability flows to me that that
6 argument -- that the objection would be waived
7 by Mr. Loughery or Mr. Wilkie. I'm making no
8 indication to this court that I represent
9 Mr. Loughery or Mr. Wilkie.

10 MS. COFIELD: Well, then you can't
11 waive for them their appearance.

12 MR. ADDISON: Then you can't argue
13 on their behalf, Amy. You can't argue on their
14 behalf either. You cannot make a statement to
15 the court on their behalf. That's my position.

16 MS. COFIELD: I disagree.

17 MR. ADDISON: You either have
18 standing or you don't.

19 MS. COFIELD: I do.

20 MR. ADDISON: If you're not their
21 attorney, you have zero standing. You can't
22 make this liability argument and have it say it
23 affects you only.

24 MS. COFIELD: I think you need to
25 read the UEF statute because I do have -- I'm

1 in a different place than you are.

2 MR. ADDISON: But you do not
3 represent those parties at all. You have no
4 standing as to those two gentlemen or
5 Mr. Stokes.

6 MS. COFIELD: Can we have it on the
7 record clearly are you or are you not
8 representing --

9 MR. ADDISON: I represent no party
10 other than First Comp. I am only the lawyer
11 for First Comp.

12 MS. COFIELD: You don't have to
13 provide a defense for them?

14 MR. ADDISON: Do not. We've
15 informed them. We sent a reservation of rights
16 to them and informed them of all the aspects of
17 this. Our position is there is no policy.
18 There is no policy because it was void at the
19 initiation of the policy, creation of the
20 contract as it were. It was rescinded by us.
21 There is no policy. I have no requirement to
22 defend since there is no policy.

23 MS. COFIELD: Okay.

24 THE COURT: Anything else? I think
25 y'all are good. Mr. Haymond, don't feel like

1 you've been neglected in all of this. Anything
2 else you would like to place on the record?

3 MR. HAYMOND: As long as they're
4 saying what they're saying about my client
5 being the innocent victim, we're okay, Your
6 Honor.

7 THE COURT: All right. Ms. Cofield,
8 I'm going to deny your motion and we're going
9 to go forward. However, I will weigh your
10 arguments in consideration of the evidence and
11 will rule in my Order specifically as to
12 whether or not these depositions can be
13 considered in my decision in this matter.
14 Okay. All right.

15 MS. COFIELD: That is my motion,
16 though.

17 THE COURT: Well, I understand. I
18 am denying it at this point, but I will -- I
19 will, I guess, rule on it with finality in my
20 Order. How about that?

21 MS. COFIELD: Okay. So you're
22 really not ruling on it. You're going to rule
23 on it in the Order?

24 THE COURT: I'm deferring it. Thank
25 you. All right. Witnesses, Mr. Haymond?

1 MR. HAYMOND: The claimant, Your
2 Honor.

3 THE COURT: What we're going to do
4 is put you under oath in just a second. Two
5 requests for you. All three of these attorneys
6 here must hear you, I must hear you, and this
7 young lady here, Kim Power, who is making the
8 record must hear you. Okay. There's no
9 microphone. I don't know how loudly you speak,
10 but speak up. Okay?

11 THE WITNESS: Yes, sir.

12 THE COURT: And the other request is
13 if you are asked a yes or no question, give us
14 a verbal yes or no answer. I have a tendency
15 to shake and nod my head a lot. Well, if you
16 do that without saying yes or no, Ms. Power has
17 to look at you to see what you did and then she
18 has to write that in the record. Slows her
19 down. Uh-huh, huh-uh, too easily
20 misunderstood. So if you are asked a yes or no
21 question, give us a yes or no answer. Okay?

22 THE WITNESS: Yes, sir.

23 (DALLAS BESSINGER, being duly sworn
24 to tell the whole truth, testified as follows:)

25 THE COURT: Please state your name

1 for the record.

2 THE WITNESS: Dallas Paul Bessinger.

3 THE COURT: All right. Mr. Haymond,
4 your witness.

5 MR. HAYMOND: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MR. HAYMOND:

8 Q. Mr. Bessinger, how are old you?

9 A. Thirty-seven.

10 Q. How far did you go in your
11 education?

12 A. Eleventh grade.

13 Q. And since leaving the eleventh
14 grade, have you had any other technical or
15 vocational education?

16 A. No, sir.

17 Q. What types of jobs have you done
18 since leaving high school?

19 A. Framing and roofing.

20 Q. Is that all you've done?

21 A. That's it.

22 Q. Okay. Have you had any problems
23 with your left hip before working with J&L
24 Construction?

25 A. No, sir.

1 Q. What were you hired to do by J&L?

2 A. Frame -- I mean, put on -- you know,
3 just framing.

4 Q. Okay. And how many other people
5 work there with you?

6 A. Like five or six.

7 Q. And how long did you work on this
8 particular job site before the accident
9 happened?

10 A. It was like two months.

11 Q. Okay. And what specifically did you
12 do on that job site?

13 A. Just wrack plywood, felt paper, you
14 know.

15 Q. Speak up a little bit and speak as
16 clearly as you can.

17 A. Just, you know, wrack plywood, put
18 the felt paper on. You know, it was like it
19 was telling me what to do.

20 Q. Was that for roofing or siding?

21 A. That was for everything.

22 Q. Okay. All right. And you were in
23 good health as of January 4, 2012?

24 A. Yes, sir.

25 Q. Tell us what happened when you hurt

1 yourself.

2 A. Well, I was up there and I was
3 holding the felt paper and I was nailing it and
4 then the felt paper just slipped from
5 underneath me and I just lost all control.
6 There wasn't no stopping.

7 Q. How far did you fall?

8 A. Three stories.

9 Q. What were your immediate problems
10 after the fall? What parts of your body were
11 involved?

12 A. My hips, my ribs, my lungs, and my
13 wrist.

14 Q. Were Mr. Wilkie and Mr. Loughery
15 there at the time?

16 A. Yes, sir.

17 Q. Did they take you for medical care?

18 A. Yeah, after about an hour.

19 Q. Where did they take you?

20 A. It was Orangeburg.

21 Q. And then you were transported
22 elsewhere?

23 A. Yes, sir.

24 Q. Where was that?

25 A. Richland Memorial.

1 Q. Okay. And you came under the care
2 of which doctor?

3 A. Oh, man.

4 Q. Dr. Jones, right?

5 A. Yes.

6 Q. And Dr. Jones has treated you for a
7 period of time regarding this injury, correct?

8 A. Yes, sir.

9 Q. You have since returned to work
10 after being released by Dr. Jones?

11 A. Yes, sir.

12 Q. Are you still trying to do the same
13 type of work?

14 A. Yes, sir.

15 Q. Tell us what's going on with your
16 left hip right now.

17 A. Well, I tote a lot of stuff. It
18 hurts me a lot. And sitting for so long, it
19 bothers me.

20 Q. Do you feel like you need further
21 medical care or do you feel like you're as good
22 as you're going to get?

23 A. I don't -- I...

24 Q. It's hard to say, huh?

25 A. It's hard to say. I mean, it's

1 going to eventually bother me, you know, over
2 the years, I mean.

3 Q. Okay. Is it hampering how you do
4 your current job?

5 A. Yes, sir.

6 Q. How so?

7 A. Just the weight -- the weight of the
8 materials I have to tote.

9 Q. So that affects you when you do the
10 lifting?

11 A. Yes, sir.

12 Q. What about just general standing,
13 does that give you a problem?

14 A. For so long. Yes, it does.

15 Q. What about sitting like you are now,
16 does that give you any problems?

17 A. Yes. I move, switch, try to get
18 comfortable.

19 Q. Okay. Do you take any medication
20 now?

21 A. No, sir.

22 Q. You don't take anything over the
23 counter?

24 A. No, sir.

25 MR. HAYMOND: Okay. I believe

1 that's all I have, Your Honor.

2 THE COURT: All right. Mr. Addison,
3 any questions?

4 MR. ADDISON: I don't believe of
5 this Mr. Bessinger. No, sir.

6 THE COURT: All right. Ms. Cofield?

7 MS. COFIELD: Yes, sir. I have a
8 few.

9 CROSS-EXAMINATION

10 BY MS. COFIELD:

11 Q. Mr. Bessinger, who exactly is J&L?

12 A. J&L? I went through with Emery and
13 Rob or Johnny to get the job.

14 Q. Okay. Tell me their full names.

15 A. I don't know their whole names. All
16 I know is Emery Wilcus.

17 Q. Emery Wilkie?

18 A. Yes, ma'am. And Johnny. I don't
19 know his last name.

20 Q. Would it be Loughery?

21 A. Yes, ma'am, that's it.

22 Q. Okay. So as you understood it, they
23 hired you?

24 A. Yes, ma'am.

25 Q. And how much were you making?

1 A. It was \$13 an hour.

2 Q. How many hours a week did you work?

3 A. Forty.

4 Q. Always 40?

5 A. Well, it was really based, but they
6 kind of like throwed in, you know, 40. If it
7 was like 35 hours, they would give you 40. But
8 nine times out of ten, it was 40 hours every
9 week.

10 Q. What about the weeks it rained?

11 A. Rained? No, we didn't -- we
12 didn't -- we worked, but we sit at the job and
13 just waited, you know, until the rain stopped.
14 If it didn't stop, we left the job.

15 Q. Okay. So are you telling me that
16 even like we had a week where it rained two or
17 three days, you sat out there and got paid for
18 40 hours?

19 A. No. We sit out there and wait till
20 the rain stopped and they gave us time.

21 Q. What if it didn't stop?

22 A. If it didn't stop, we went home.

23 Q. Did you -- and you didn't get paid
24 for that?

25 A. No. They gave us a few hours.

1 Q. Okay. So there would be weeks when
2 you didn't make 40 hours a week?

3 A. No, ma'am.

4 Q. Never?

5 A. I mean, no, not never.

6 Q. You only worked there two months,
7 right?

8 A. Right.

9 Q. So there were times in the eight
10 week period that you didn't get a full 40
11 hours?

12 A. Right. But most of the time it was
13 40 hours. It might have been two weeks I
14 didn't get 40 hours.

15 Q. Okay. Two out of eight?

16 A. Two out of eight.

17 Q. So one-fourth of the time?

18 A. Right.

19 Q. Okay. All right. And as J&L
20 Construction, what was your job?

21 A. Just framing. It wasn't a labor
22 job. It was, you know, framing, doing what
23 they asked me to do, you know. It wasn't like
24 toting wood to them or -- you know, it was
25 actually being like the bossman. You know what

1 I'm saying? It was like sort of like being a
2 foreman. I mean, actually, that's what it was.
3 I was up there cutting, you know, rafters,
4 hanging it, wracking plywood. Like I say,
5 putting felt paper on, you know, wrapping the
6 house with plywood, getting on scaffolds. It
7 wasn't always on the ground. I was always in
8 the air.

9 Q. Okay. And how many other people
10 worked with you?

11 A. It was like seven other people.

12 Q. Okay. Well, now you testified a few
13 minutes ago it was five or six?

14 A. You got Johnny --

15 Q. Johnny, the owner?

16 A. It was Johnny and Emery.

17 Q. The owners?

18 A. Right.

19 Q. Okay. Who else?

20 A. It was Rob, my nephew, Matthew, and
21 you had Tom. And then you had -- what was his
22 other name? I can't think of the other two.
23 There was six or seven there.

24 Q. Okay. So you said a few minutes ago
25 five or six. Which is it?

1 A. I mean, it was me, Johnny, Emery,
2 Tom, nephew, me. That's six people.

3 Q. Okay. Four not counting the owners?

4 A. Yes. Four not counting the other
5 two. They're the owners. Not counting them.

6 Q. Okay. Now, do you know any of these
7 people's last names?

8 A. No, ma'am, but two of them like
9 Emery and Johnny and my nephew, Matthew
10 Bessinger. And Rob's last name is Bessinger,
11 but he's not kin to me.

12 Q. Okay. How long did they work for
13 J&L?

14 A. Well, my nephew worked when I worked
15 with them the two months that I worked with
16 them, but the other ones I don't know how long
17 they had been there.

18 Q. They were already there when you got
19 there?

20 A. They was already there when they
21 hired me.

22 Q. And they stayed there the entire two
23 months?

24 A. Right.

25 Q. Okay. When is the last time you

1 sought any treatment?

2 A. Any treatment was when they cut me
3 loose I think it was April, I think it was.

4 Q. April of 2012?

5 A. Yes, ma'am.

6 Q. Two years ago. So in over two and a
7 half years, you have not sought any treatment,
8 have you?

9 A. No, ma'am.

10 Q. Okay. And you're not taking any
11 medicine whatsoever?

12 A. No, ma'am.

13 Q. So when you say you're -- it's
14 affecting your new job, tell me how that
15 happens? How are you affected in your new job?

16 A. Because when I pick up with my left
17 side because that's where my hip is messed up,
18 my left side and put pressure on it, it bothers
19 me after so much weight getting on it. And
20 then when I walk for so long, it's like it just
21 irritates my hip.

22 Q. It gets sore?

23 A. Gets real sore and I can't put a lot
24 of pressure on it. But if I don't pick up
25 nothing, you know, real, real heavy, it doesn't

1 bother me. But when I sit, it just -- it's
2 like it aggravates me. I have to turn this way
3 or kick back on my right hip. Or when I'm
4 laying in the bed, I have to lay on my right
5 hip. Can't lay on my left hip. It bothers me
6 a lot.

7 Q. But not enough to have to take any
8 medicine?

9 A. No, ma'am.

10 Q. Your other parts you mentioned
11 hurting, your ribs and stuff, they're fine?

12 A. Sometimes when I breathe or smoke a
13 cigarette or something, it really bothers my
14 lungs. But my ribs are, I mean, they're fine.

15 MS. COFIELD: Okay. That's all I
16 have.

17 THE COURT: Mr. Haymond?

18 MR. HAYMOND: Nothing further from
19 this witness, Your Honor.

20 THE COURT: Mr. Addison?

21 MR. ADDISON: No, sir.

22 THE COURT: All right, sir. You may
23 step down.

24 MR. ADDISON: Commissioner, I wanted
25 to make sure we had something real clear for

1 the record because it was an issue. We've had
2 so many hearings on this case, I want to kind
3 of make sure we're clear. We had several
4 attempted hearings because of issues over
5 whether or not Mr. Stokes and Mr. Loughery and
6 Mr. Wilkie had proper notice of the hearing
7 today. Can you just confirm in the Commission
8 file that y'all provided notice? I know Steve
9 said he had tried to locate the two and have
10 them -- I'm going to get him to put that on the
11 record as well. But if you will make sure that
12 the Commission record is complete that those
13 parties were properly notified of this hearing
14 today.

15 MS. COFIELD: Probably should have
16 done that first.

17 MR. ADDISON: I didn't think about
18 it until now.

19 THE COURT: And I'll refer to that
20 in my Order. I mean, obviously if they
21 weren't, that changes my Order. But I will
22 make sure that that's confirmed.

23 MR. ADDISON: We had a least one, if
24 not two, punitive hearings that didn't happen
25 because one party or the other wasn't notified.

1 So we finally had the third -- the third time
2 was the charm, so to speak. And I think there
3 was an issue -- there was some discussion at
4 the Commission level at the Full Commission
5 hearing as to whether or not proper notice had
6 been given to all parties of the hearing that
7 Ms. Roche actually did have.

8 MS. COFIELD: Here's the hearing
9 notice for today.

10 MR. HAYMOND: Yeah, they're all on
11 the hearing notice.

12 MR. ADDISON: They're all on there.
13 I just want to make sure that the record
14 reflected that.

15 THE COURT: And I will make sure
16 that not only the record reflects it, but my
17 Order instructions will reflect it. All right.
18 Anything else, Mr. Haymond?

19 MR. ADDISON: Are you going to call
20 the daddy?

21 MR. HAYMOND: No. He doesn't affect
22 my claim, but he is out here. So you can call
23 him. That's the claimant's case, Your Honor.

24 THE COURT: That's your case. All
25 right. Mr. Addison?

1 MR. ADDISON: I just call
2 Mr. Bessinger's father, Mr. Bessinger, just
3 briefly, Your Honor, what we discussed earlier.

4 THE COURT: Two requests for you
5 right quick. One is you need to speak up.
6 There's no microphone. The attorneys need to
7 hear you, this young lady who is making the
8 record, she has to hear and I have to hear you.

9 THE WITNESS: Okay.

10 THE COURT: Okay. The second
11 request is if you're asked a yes or no
12 question, how about give us a yes or no answer.
13 If you shake or nod your head without saying
14 yes or no, she's got to look over to see what
15 you did and then she actually has to put that
16 in the record. So that slows her down. And
17 then some folks want to say uh-huh and huh-uh.
18 Well, that's too easily misunderstood. So if
19 you can just answer yes or no with yes or no,
20 that would be helpful. All right?

21 THE WITNESS: Yeah.

22 (PHILLIP BESSINGER, being duly sworn
23 to tell the whole truth, testified as follows:)

24 THE COURT: Please state and spell
25 your full name for the record, sir.

1 THE WITNESS: Phillip,
2 P-H-I-L-L-I-P, Bessinger, B-E-S-S-I-N-G-E-R.

3 THE COURT: All right, Mr.
4 Bessinger. Mr. Addison, your witness.

5 DIRECT EXAMINATION

6 BY MR. ADDISON:

7 Q. Mr. Bessinger, what's your
8 relationship to the plaintiff in this case?

9 A. My son.

10 Q. All right, sir. In the time when he
11 was injured back in January of 2012, were you
12 there at the hospital after he got hurt?

13 A. After he got hurt. Yes, sir.

14 Q. You came to the hospital trying to
15 deal with some of the issues?

16 A. Yes, sir.

17 Q. All right, sir. How were you paying
18 for his treatment there at the hospital? What
19 were you trying to do about that?

20 A. He finally ended up getting on
21 Medicaid.

22 Q. All right, sir. But were you trying
23 to get somebody to pay for that when he was in
24 the hospital?

25 A. Yes, sir. I was trying to get RNM

1 Builders to take care of it.

2 Q. And did they take care of it?

3 A. No, sir.

4 Q. What did they tell you to do?

5 A. He told me he couldn't do it because
6 he didn't have to --

7 MS. COFIELD: I'm going to object.
8 That's hearsay.

9 THE COURT: You can't tell me what
10 he told you, sir.

11 MR. ADDISON: Commissioner, he is a
12 party to this case and was noticed by this --
13 for this hearing.

14 THE COURT: Well, that's true.

15 MR. ADDISON: So it is not hearsay.

16 THE COURT: That is not because he
17 is a noticed party to the case. So you may
18 answer that question.

19 BY MR. ADDISON:

20 Q. So the fellow at RNM said he
21 couldn't take care of it?

22 A. Right. He couldn't take care of it
23 because didn't have to have workman's
24 compensation insurance.

25 Q. Who did you go to next?

1 A. I talked with I think it was Emery
2 Wilkie and John Lorick or whatever his name is,
3 and they made out like they had insurance.
4 They never would give me the name of the
5 company. Finally when I got the name of the
6 company, it was an agent over in Lexington. I
7 got in touch with the lady over there. She
8 told me that they had insurance, but they took
9 the insurance out that afternoon around three
10 o'clock.

11 Q. When you say "that afternoon," what
12 do you mean by that?

13 A. At the time of the accident. I
14 remember that exact date.

15 Q. So after the accident?

16 A. After the accident. They took the
17 insurance after the accident happened.

18 MS. COFIELD: I'm going to object.
19 This is hearsay too. That lady on the
20 telephone is not here and not a party.

21 THE COURT: That's true. She is not
22 here and she is not a party. That objection is
23 sustained.

24 BY MR. ADDISON:

25 Q. You attempted to try to find out?

1 A. Yes, sir. I attempted to try to
2 find out if they had insurance or not.

3 Q. All right, sir. And don't tell me
4 what the person said, but you were informed of
5 what? What was the status of the insurance?

6 A. I was informed that they had
7 insurance with First Comp.

8 Q. Okay. And did you contact First
9 Comp?

10 A. I contacted First Comp. And I guess
11 it's probably irrelevant too, I mean, I just
12 talked with the lady on the phone and she gave
13 me another name. I got -- he contacted us --
14 me, and he finally ended up coming down from
15 wherever they were out of, Iowa or somewhere.
16 He came to our house.

17 Q. Don't tell us what he told you, but
18 what happened as a result of the meeting?

19 A. He told me they --

20 Q. No, no.

21 THE COURT: You can't tell me what
22 he said.

23 BY MR. ADDISON:

24 Q. Don't say what he said specifically,
25 but what happened as a result of the meeting?

1 A. Nothing.

2 Q. They weren't able to cover him?

3 A. They weren't able to cover him.

4 Q. They wouldn't cover it, right?

5 A. No, sir. That's basically it.

6 Q. All right. And the rest he's been
7 trying -- your son has been working with
8 Medicare or trying to get it taken care of
9 otherwise?

10 A. Yes, sir.

11 Q. Okay. All right. Did you know
12 Mr. Loughery or Mr. Wilkie before at all?

13 A. No, sir. I didn't know any of them
14 boys.

15 Q. Or Mr. Stokes, RNM Construction?

16 A. No, sir. I didn't know none of
17 them.

18 MR. ADDISON: All right. That's all
19 I have.

20 THE COURT: Ms. Cofield, any
21 questions?

22 MS. COFIELD: No, sir.

23 THE COURT: Any questions, Mr.
24 Haymond?

25 MR. HAYMOND: No, Your Honor.

1 THE COURT: All right. Thank you,
2 sir. You can step down.

3 MR. ADDISON: Since it is still my
4 part of the case, if you are going to consider
5 Ms. Cofield's -- I know you said you were
6 initially going to deny her motion, but then
7 you were going to take it under consideration.
8 If you are going to consider it and you are
9 going to issue a ruling favorable to her
10 position, I would request that you consider our
11 request which is in my brief to hold the record
12 open and correct the defect, if there is a
13 defect, in these depositions that can be corrected
14 pursuant to the rules. So we would request
15 that if you decide that you're going to rule in
16 favor of Ms. Cofield's position, that I be
17 given the opportunity to retake these
18 depositions, all of them.

19 MS. COFIELD: Well, I might have
20 agreed to that to start off with. You didn't
21 ask me.

22 MR. ADDISON: I don't want to retake
23 them because I think it's proper they come in.
24 Our position is, though, if you're going to
25 rule that way, the rules also account for a

1 position that gives us the ability to -- any
2 party, it's not just me, it's any party to
3 correct some alleged deficiency.

4 THE COURT: Either of y'all want to
5 speak to that?

6 MR. HAYMOND: No, Your Honor.

7 MS. COFIELD: No, sir.

8 THE COURT: And that, Mr. Addison,
9 is exactly what I would do. ' I am much to the
10 dismay of Ms. Lindler given to leaving the
11 record open for depositions.

12 MS. COFIELD: She will chastise you.

13 THE COURT: Yes, she will. All
14 right. Any other witnesses, Mr. Addison?

15 MR. ADDISON: No, sir. Other than
16 obviously the submission of the depositions
17 we've already submitted to you, Your Honor.

18 THE COURT: Right. Any witnesses,
19 Ms. Cofield?

20 MS. COFIELD: No, sir.

21 THE COURT: All right. Well,
22 considering your motion, I do still need to put
23 this on the record that the Commission file
24 becomes a part of the record with the exception
25 of self-serving declarations and unstipulated

1 medical reports understanding that there is a
2 motion before me that specifically addresses
3 certain portions of the Commission file. Okay.

4 MS. COFIELD: Thank you very much.

5 THE COURT: Anything else from
6 either party? I generally don't ask that, but
7 this has been a little different. So I want to
8 make sure no one leaves here not saying what
9 they needed to say.

10 MR. HAYMOND: Nothing from me.

11 THE COURT: Anything else, Mr.
12 Addison?

13 MR. ADDISON: No, sir.

14 THE COURT: Anything else, Ms.
15 Cofield?

16 MS. COFIELD: No, sir.

17 THE COURT: That concludes this
18 matter.

19 (The hearing concluded at 11:12 a.m.)
20
21
22
23
24
25

1 CERTIFICATE OF REPORTER

2
3 I, Kimberly T. Power, Court Reporter
4 and Notary Public for the State of South
Carolina at Large, do hereby certify:

5 That the foregoing transcript of
6 proceedings was taken before me on the date and
7 at the time and location stated on Page 1 of
8 this transcript; that the witness was duly
9 sworn to testify to the truth; that the
10 testimony of the witness and all objections
11 made at the time of the proceeding were
recorded stenographically by me and were
thereafter transcribed; that the foregoing
transcript of proceedings as typed is a true,
accurate, and complete record of the
proceedings made at the time to the best of my
ability.

12 I further certify that I am neither
13 related to nor counsel for any party to the
14 cause pending or interested in the events
thereof.

15 Witness my hand, I have hereunto
16 affixed my official seal this 5th day of March,
2015, Lexington County, South Carolina.

17
18
19
20
21 _____
Kimberly T. Power, Court Reporter
22 Notary Public State of South Carolina
23 My Commission Expires: 07/22/2015
24
25

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1200479

Dallas Bessinger,)
)
Claimant,)
)
v.)
)
RNM Builders & Associates,)
)
Employer,)
)
and)
)
FirstComp a division of)
Markel, Inc. and South)
Carolina Uninsured Employers')
Fund,)
)
Carrier/Defendants.)
)

COPY

FULL COMMISSION HEARING

Monday, June 15, 2015
2:06 p.m. - 2:32 p.m.

The Full Commission Hearing was heard before Commissioners Susan S. Barden, T. Scott Beck and Avery Wilkerson, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 15th day of June, 2015, before Jennifer Nottle, Court Reporter and Notary Public in and for the State of South Carolina.



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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



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1 COURT REPORTER: Today is Monday, June 15th, 2015.
2 This is South Carolina Workers' Compensation
3 case number 1200479. This is the case of
4 Dallas Bessinger, Claimant, versus RNM Builders
5 & Associates. This is a cross appeal -- the
6 first -- sorry. The First Appellant is the
7 SCUEF, represented by Amy ---

8 MR. ADDISON: I need some get some water, can I do
9 that?

10 COMMISSIONER BECK: Yeah, go ahead. We'll just go
11 off the record.

12 MR. ADDISON: I'm sorry.

13 COURT REPORTER: Amy Cofield. The Second Appellant
14 is represented by R. Daniel Addison. Each side
15 is allowed eight minutes for argument and three
16 minutes in reply. You are requested to argue
17 the grounds of exception and stay within the
18 record. And y'all want to go off the record
19 for a minute until he gets back?

20 COMMISSIONER WILKERSON: Yeah, let's go off the
21 record and let Mr. Addison get some water.

22 (Off the Record)

23 COMMISSIONER WILKERSON: Mr. Addison has returned and
24 we're back on the record.

25 MS. COFIELD: You ready?



1 COMMISSIONER WILKERSON: I'm ready for you.

2 ARGUMENT BY MS. COFIELD:

3 MS. COFIELD: May it please the commission? This
4 case is so messed up that I don't know where to
5 start. And I know why I can't get it in in
6 eight minutes. So I'll just touch on the
7 highlights. This case started with a very
8 poorly written order, if you ask me. There
9 were so many things wrong with it, I appealed
10 it to the Full Commission. The first order was
11 written in December of 2012. There were things
12 wrong with it, such as an incorrect caption.
13 It didn't even have the right appearances on
14 there, who was there, who was not there. There
15 were no findings as to direct or statutory
16 employer in the order. No finding that any
17 employer was directly liable; therefore,
18 transferring any liability to the UEF. There
19 was no information in the order regarding post-
20 hearing briefs that were submitted in their
21 arguments. And before you even get to the big
22 issue that was presented, which is whether or
23 not a workers' compensation policy can ever be
24 void ab initio, which was the big legal issue
25 in this case. The Claimant -- it was alleged



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1 by the Carrier in this case that the Employer
2 committed fraud by going to an insurance
3 carrier and procuring an insurance policy after
4 a Claimant was injured. He said because of
5 that fraud the hearing commissioner agreed and
6 found that the workers' comp policy was void ab
7 initio. It's our position that a workers' comp
8 policy cannot ever be void ab initio, and
9 that's pursuant to our statute. I will go into
10 those arguments in a minute. Procedurally,
11 this was appealed to the Full Commission, and
12 all these arguments and many more were made
13 before the Full Commission. And afterwards, an
14 order was issued for a de novo hearing with no
15 further instructions, no further restrictions.
16 So the hearing was set in August before
17 Commissioner McCaskill. And it's my position
18 that it was not a hearing de novo, that it did
19 not follow the rules of civil procedure, nor
20 did it follow case law that establishes what
21 exactly a de novo hearing is. An interesting
22 thought thrown out by Mr. Addison is that there
23 were no grounds for a hearing de novo, that you
24 don't have the authority to have a hearing de
25 novo. First time I've ever heard that. He



1 also appeals the fact that the order for the
2 hearing de novo did not specifically state with
3 what grounds the hearing de novo was to
4 address. My position is, it says a hearing de
5 novo, we have a full hearing de novo on all
6 issues. So we show up to the hearing de novo,
7 which turned into about a two hour oral
8 argument between us in front of McCaskill. And
9 visiting at that time was Commissioner
10 Campbell. So we proceeded to argue our legal
11 positions for about two hours, probably, and
12 then an order was issued. One of the things
13 that I had objected to at the hearing de novo
14 was the admission of some deposition
15 transcripts that were presented at the very
16 first hearing. My first argument is that, at
17 the hearing de novo, this evidence is supposed
18 to be presented as new. As a matter of fact,
19 on his Form 58, Mr. Addison listed he was going
20 to submit this evidence at the hearing de novo.
21 I objected to that hearing -- that evidence
22 coming in at the new hearing based on the fact
23 that three depositions being submitted were not
24 proper in that not all parties were noticed of
25 those hearings -- of those depositions. And,



1 in fact, when reading the transcript, you can
2 see that all the parties were not even present
3 at the depositions. Now, two of the alleged
4 employers had their depositions taken, and
5 those were two he sought to put into evidence
6 at the de novo hearing. He said because they
7 were admissible at the first hearing, then that
8 made them admissible in the de novo hearing.
9 I object. A de novo hearing is from the start.
10 If you can reconsider evidence, then you should
11 be able to reconsider the admissibility. You
12 look at those two depositions and not all
13 parties were noticed. No evidence has ever
14 been shown by Mr. Addison that he noticed all
15 the parties to that deposition or that they
16 appeared. Now I will say, as to those two
17 parties, they themselves were present at the
18 first hearing. So therefore, there was an
19 opportunity to cross-examine them. And so
20 those depositions were probably okay. But the
21 insurance adjuster -- insurance person that he
22 wanted to submit her deposition, Talisa Miller,
23 was not proper, had not been noticed, all
24 parties did not appear, and none of the three
25 were present at the hearing de novo. The

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1 commissioner took it upon himself at the
2 hearing de novo to say that he could consider
3 all the evidence already in the record, of
4 which we objected to. We believe that there's
5 significant case law that I have put in my
6 brief that addresses the definition of hearing
7 de novo and what is to be considered. Just
8 because, also, that the Full Commission did not
9 limit the scope of the hearing de novo does not
10 say that your findings were wrong. I think by
11 the Full Commission's failure to limit the
12 hearing de novo, it was meant that all issues
13 were to be at the hearing de novo. And that
14 includes the admissibility of the evidence that
15 he attempted to submit. Second of all, let's
16 -- I want to address, as I did in my brief, the
17 issue of being void ab initio. He sites the
18 statute, this general liability statute, that
19 says based on fraud you can have a contract
20 void ab initio. However, there's a specific
21 statute that's for workers' comp cases. And
22 that is under Chapter -- Title 38. It's 38-75-
23 730. And identical to this statute is also one
24 in North Carolina where they have the identical
25 statute which says, basically, no insurance



1 policy can be cancelled by the insurer prior to
2 the expiration of the policy, except for one of
3 the following reasons: non-payment of premium,
4 or material misrepresentation of fact, if known
5 to the company, would have caused the company
6 not to issue the policy. That's exactly what
7 happened here. Even though the orders have
8 never found all the elements of fraud, another
9 problem raised on appeal, if there is fraud,
10 this statute specifically addresses fraud and
11 misrepresentation, or the company wouldn't have
12 issued the policy. Based on this statute that
13 clearly includes workers' comp insurance, there
14 is no provision for having it void ab initio,
15 but having it cancelled.

16 COMMISSIONER WILKERSON: Finish your thought.

17 MS. COFIELD: Okay. The Carrier wants to rely on
18 other kinds of cases like the Lanham Case in
19 the health insurance industry and their ability
20 to cancel policies ab initio. Those are first-
21 person policies where that person has
22 represented and he is the beneficiary. In
23 workers' comp we have no-fault insurance. It's
24 the third-party Claimant that's being denied
25 benefits. Okay. Time's up. I can address is



1 on reply. Thank you.

2 ARGUMENT BY MR. ADDISON:

3 MR. ADDISON: May it please the commission?
4 Commissioners, as Ms. Cofield said, this case
5 has a long procedural history, there are a lot
6 of issues. I have briefed this at length in my
7 brief, and I'll ask y'all to refer to that to
8 get a greater picture on all of this. But I'm
9 going to have to cover the highlights as well
10 because we have a short time. I'm going to
11 deal first with the void ab initio issue. Ms.
12 Cofield keeps going back to the statute saying
13 that, in her opinion, that a carrier that has
14 issued a policy that was obtained by fraud
15 could never, ever rescind the policy. She
16 keeps saying, it's canceled. We didn't cancel
17 this policy, we rescinded this policy. There
18 is a distinct difference between rescission of
19 a policy and cancellation of a policy. The
20 statute that she keeps citing to y'all deals
21 with the cancellation of a policy when a
22 carrier finds out that the insured has done
23 something that would have caused them to say,
24 you know, we're just not going to carry this
25 out for the full one-year term. That gives



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1 that 10 day notice, and then the 30 days of
2 coverage that gives that person the time to go
3 get another policy. That's standard law and
4 has been the law for a very long time, and is
5 going to remain to be the law in South
6 Carolina.

7 COMMISSIONER WILKERSON: Was this the first year
8 FirstComp was on this account?

9 MR. ADDISON: Yes. They -- this was a -- these
10 people had an injury. Their guy fell off of a
11 roof, broke his hip, they took him to the
12 hospital, got in their vehicle and drove to
13 Lexington, South Carolina to an insurance agent
14 and said we need a policy of coverage under --
15 and kind of the standard, we're a contractor
16 and we need policy, can you get us a policy.
17 They filled out a form, they provided the
18 information to the agent, signed it. One of
19 the big questions asked was if we buy a
20 voluntary policy, does it cover us today. The
21 agent said, yeah, like every voluntary policy,
22 it covers today. That's in Mrs. Miller's
23 deposition. So they got a policy after the
24 accident occurred. If you buy her argument
25 that a carrier in that circumstance could never



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1 rescind the policy, then why would any small
2 contractor employer ever voluntarily buy a
3 policy before they had an injury. You're
4 talking about a situation where it would
5 essentially turn the workers' comp system on
6 it's ear. Instead of going out and getting a
7 policy like you're supposed to and having
8 coverage, every small employer, heck,
9 practically everybody, would just wait until
10 they had a workers' comp injury, then they'd go
11 get a policy -- not tell the agent about the
12 injury they just had, get a cheap policy, and
13 have a huge amount of coverage available for a
14 very small amount of money. That's not how
15 this system was set up, it's not how it was
16 designed. It's not how it's supposed to work.
17 Our position in this has always been, had they
18 told the truth to the agent, obviously, the
19 agent would have never sold them the policy.
20 Clearly they committed fraud when they went and
21 bought an insurance policy to cover an event
22 that had already occurred without telling the
23 Carrier or the agent that an event had just
24 occurred. That they had a guy sitting in the
25 hospital, at that point, was now at Richland



1 Memorial Hospital, by the time they bought the
2 policy, with a broken hip. He had a fractured
3 pelvis. This wasn't some minor accident. The
4 guy fell off a roof and fractured a pelvis. It
5 was going to be an expensive matter, medically.
6 They knew that. They didn't say one word of
7 that to the agent. Her position -- Ms.
8 Cofield's position is it didn't matter they --
9 if any of that occurred that the Carrier has to
10 cover that circumstance. If they wrote a
11 policy, that the only thing that they would be
12 able to do at that point would be to say okay,
13 sorry, we're not going to cover you anymore J
14 & L. We're -- excuse me, cancelling your
15 contract. You're not going to have a contract
16 for insurance any more. That wouldn't prevent
17 them from being able to get rid of this one
18 claim they should have never had on their
19 books. I've gone through this in the law. The
20 law basically says -- it's a Supreme Court
21 case, it's Chavis. It's 176 Southeast Second
22 135 is where the actual site is. And it gives
23 you the difference between rescission and
24 cancellation. It says rescission is not merely
25 a termination of contractual obligation, but an

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1 abrogation or, an undoing it, from the
2 beginning. So the Supreme Court has already
3 looked at this and said there's a difference
4 between cancelling a policy and rescinding a
5 policy. Our position is, is that we can make
6 a policy rescinded or void at the beginning, or
7 void ab initio, the Latin term for it. If you
8 can't -- or excuse me, if you don't provide
9 that same way, y'all are essence taking the
10 workers' comp system and throwing 85 years, 80
11 years out the window saying, okay, fine, we're
12 not going to do it the way we've done it for
13 the past 80 years. Anyone that doesn't want to
14 get a policy, you don't have to get a policy.
15 Wait until you have a guy fall off the roof and
16 have a broken pelvis. And then you can go buy
17 a policy for \$1,500 and you're covered for
18 \$100,000 worth of medical coverage. How many
19 people are actually going to go buy a policy
20 voluntarily before they have that happen to
21 them? None. Especially not in the contractor
22 world. Excuse me. Moving past that argument
23 to the other arguments that we have here.
24 Finally, the argument that I've made on my
25 appeal is the issue of the remand. And my only



1 point was, we asked at the time of the original
2 order from the Full Commission when there was
3 remand order, Steve and I both, Mr. Haymond and
4 I both, sent e-mails to the commission saying
5 what are the terms of why this case is being
6 remanded, what is it exactly that you want us
7 to do on the de novo, what did the single
8 commissioner not do the first time around. But
9 the only answer we got was it's just a -- it's
10 a de novo appeal. And the law says y'all can
11 remand for a de novo hearing, but to do so,
12 y'all are supposed to give specific
13 instructions as to what the new commissioner is
14 supposed to do, what was the defect the first
15 time around that must be addressed the second
16 time around. The Full Commission panel didn't
17 do that in the original order. That's all we
18 were trying to get, some clarification on what
19 exactly what it -- was it that the Full
20 Commission last time thought was defective in
21 the order of Commissioner Roche, is who wrote
22 the first order. What was the problem with
23 what she found that needed to be addressed in
24 the new hearing. It can be a de novo hearing,
25 it just needs to be spelled out by the Full

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1 Commission, here's what we're sending it back
2 to, you know, what she -- whoever the new
3 person is, this is what you need to figure out.
4 That's what I had brought up on my appeal. We
5 actually appealed it from the Full Commission
6 over to the Court of -- we went and talked to
7 the Court of Appeals and they told us that Boan
8 was going to kick in and so just, you know,
9 they weren't even going to accept the appeal.
10 So we came here, I actually have raised it at
11 every level, from then until now, that we
12 believe, you know, that the case should have
13 been -- there should have been some resolution
14 of that issue the first time around as to
15 exactly why the case was being sent back. As
16 to the issue of what a de novo hearing is, I
17 have briefed that in great extent in my brief
18 as to what is de novo and what is not de novo.
19 De novo doesn't mean you throw everything out
20 and start all over. It means you do exactly
21 whatever the instructions were before. And the
22 instructions were -- before were, a de novo
23 hearing to reconsider the evidence, hear any
24 new evidence, and make new findings. That's
25 exactly what the Full Commission panel sent the



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1 case back to be done in front of the new
2 commissioner, the new single commissioner.
3 When the Full Commission the first time around
4 said, reconsider the evidence, that in and of
5 itself indicates you were supposed to look at
6 the old record, the existing record that was
7 there, including all of these depositions. Ms.
8 Cofield raises a ---

9 COMMISSIONER BARDEN: Don't you still have the due
10 process problem of the deposition not being
11 properly noticed. Put aside everything else,
12 put aside cancellation, put aside decision, put
13 aside what de novo is ---

14 MR. ADDISON: I'm going to address that right now.
15 That was my next point.

16 COMMISSIONER BARDEN: Okay.

17 MR. ADDISON: Tim Killan was representing the UEF at
18 that point. Mr. Killan - I called Mr. Killan
19 on the day of the two individuals of Mr.
20 Lockerie and Mr. Wilke's deposition and said,
21 look, I'm sorry. We've -- I'm admitting it.
22 We did not notice them of the depositions. And
23 said, I'm sorry, we didn't notice you. I think
24 Steve and I had actually kind of set up one of
25 their depositions and we just didn't -- the UEF



1 had come in the in-between time. We didn't get
2 the notice to them, but we contacted him and
3 said, look, we're doing these. We can move
4 them to a different day if you need us to.

5 COMMISSIONER WILKERSON: Go ahead and let him finish
6 your thought.

7 MR. ADDISON: He said I'm busy, I can't come today.
8 And we said, well, we've got the one tomorrow
9 with Talisa Miller. He said I'll be there for
10 that. So the UEF was actually at Talisa
11 Miller's. All of her objections about Talisa
12 Miller's have zero ground.

13 COMMISSIONER BARDEN: Was the employer present --
14 noticed for that?

15 MR. ADDISON: We gave them notice the day before.
16 We told them we were doing Talisa Miller's.

17 COMMISSIONER BARDEN: But not ---

18 MR. ADDISON: She can't raise that though,
19 Commissioner. She has no -- she has zero
20 standing to raise an objection on the part of
21 Mr. Lockerie and Mr. Wilke as to whether Talisa
22 Miller's deposition should come in. They can
23 do it ---

24 COMMISSIONER BARDEN: But if the UEF needs the
25 employers participation in order to defend



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1 their side of the claim ---

2 MR. ADDISON: As I do. It's exactly what I raised
3 with the single commissioner, she raised that
4 at the de novo single commissioner hearing, she
5 took this position that she -- the steps in
6 their shoes. I said, Amy, if that's the case
7 then so do I. And I can waive it because
8 you're saying that you stepped in there because
9 there is no coverage and you become their
10 Carrier of Record. If I'm the Carrier of
11 Record, then I can waive it. It's got to go
12 both ways. It either goes both ways or it
13 doesn't go either way which is they have to
14 raise it. That was my point was Lockerie and
15 Wilke would have to raise it.

16 COMMISSIONER BARDEN: So you feel like it was cured
17 because you told the guy the day before that --

18 -
19 MR. ADDISON: Absolutely. We told them they had a
20 right to be there if they wanted to, and they
21 said they didn't want to come. Mr. Haymond can
22 corroborate that. He was there when we had the
23 discussions with them. We said we're doing her
24 deposition tomorrow if you want to be here.

25 COMMISSIONER BARDEN: Okay, sir. I don't want to



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1 take your time, go ahead.

2 COMMISSIONER WILKERSON: You've got three minutes in
3 reply.

4 MR. ADDISON: Okay.

5 REPLY BY MS. COFIELD:

6 MS. COFIELD: First of all, Mr. Haymond (sic) would
7 like to say to you that all this evidence that
8 was present at the first hearing is admissible.
9 However, the question of whether it's
10 admissible is not something you can answer. He
11 wants you to consider those depositions in
12 deciding who's the employer and if there's
13 fraud and all the other issues. But he doesn't
14 want you to decide the admissibility of that
15 evidence. The depositions are not admissible.
16 They are not admissible in the second hearing.
17 He had plenty of time to cure that problem. A
18 motion was made by me prior to the de novo
19 hearing and said I object to these depositions
20 coming in. They do not meet what they're
21 supposed to meet. And he did not cure that.
22 He could have simply had the people there, or
23 he could have re-noticed the depositions. He
24 admitted to the court that the UEF was not
25 notified of two of the depositions until the



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1 day before at which time he said, I can't be
2 there. Okay. He wasn't there. The other two
3 were -- the two employers were never notified
4 of the deposition of Talisa Miller. He says
5 today, we told them. That's the first time in
6 a year that I have ever heard, we told them.
7 There has never been any proof given that they
8 were ever noticed of those two depositions --
9 of that deposition of that insurance person.
10 So therefore because they were never notified,
11 that deposition should not be admissible into
12 evidence unless we have a new hearing and they
13 either show up or we re-depose them. As far as
14 the being void ab initio, there is a case in
15 North Carolina that I have attached to my reply
16 to his appeal called Oxendine versus TWL and
17 Canal Insurance Company. And it is a 2007 case
18 which says specifically, same issues, same fact
19 pattern as here. We had some fraud committed
20 in the getting of the insurance policy. And
21 the question was whether it had to be void or
22 did they have to cancel it. And in this case
23 in North Carolina that has specifically decided
24 this issue, it says, although Canal made the
25 argument that it was never valid to begin with,



1 this Court finds that the general statute did
2 not apply to a workers' comp case and that
3 "workers' comp insurance contract will
4 therefore never be void ab initio but must be
5 cancelled in the manner prescribed by the North
6 Carolina statute", the one that looks identical
7 to our statute. That statute says a workers'
8 comp -- excuse me, policy will be canceled if
9 -- or can be canceled if there's a material
10 misrepresentation. That statute anticipates
11 there's going to be fraud, and this is what
12 happens when you have fraud.

13 COMMISSIONER WILKERSON: How do you know it
14 anticipates fraud?

15 MS. COFIELD: Because it gives as it's reason right
16 here is a copy of it, it says, restriction of
17 the cancellation of policies. No policy can be
18 cancelled except for non-payment of premium, or
19 material misrepresentation of fact which, if
20 known by the company, would have caused the
21 company not to issue the policy. His argument
22 is if they had known that this accident already
23 happened, they would not have issued the
24 policy. That's exactly what this statute says.
25 Also, he failed to mention one of the basic



1 ideas of contract law in our state. And
2 interestingly enough, this lady, Talisa Miller,
3 back-dated the policy to midnight instead of
4 making it proactive. Thank you.

5 REPLY BY MR. ADDISON:

6 MR. ADDISON: Ms. Miller addressed that. Every
7 voluntary policy is always written at 12:01
8 a.m., every policy, voluntary market policy, is
9 written at 12:01 a.m. of the day that it's
10 issued. These people came in the morning,
11 11:45/12:00 o'clock or so, in midday, got a
12 policy issued by 12:01 a.m. Every Carrier
13 issues their policy at 12:01 a.m. of the day
14 that it's issued. Mr. Wilkerson, I know you
15 know that because you're in the business. This
16 whole position that somehow we did something
17 wrong by issuing a policy like everybody else
18 issues a policy is ridiculous. The statement
19 she just read ya'll -- the statue she just read
20 y'all, there was one word in there I hope y'all
21 picked up on that she read. It said cancelling
22 a policy. At no time have I ever said that we
23 were cancelling a policy. I've said were
24 rescinding a policy. That's allowed in South
25 Carolina law. I just cited y'all the law as to



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1 what allows us to rescind this policy.
2 Larson's deals with the issue as well.
3 Larson's says, there's only one situation which
4 insurance will be defeated for all purposes by
5 act of an employer that -- is that in which the
6 insurance is absolutely void ab initio rather
7 than voidable. This would occur if the
8 employer attempted to insure against an
9 accident that had already occurred by predating
10 the insurance and fraudulently concealing the
11 known existence of an accident within the
12 period so covered. Nine Larson workers' comp
13 law, section 150.02(4), that's the 2007 revised
14 edition. That's the most current version of
15 Larson's. And that's what Larson's says on
16 this is, there is one specific time when you
17 can absolutely void ab initio, that's if an
18 employer has an injury, doesn't tell you about
19 it, and comes and gets a policy to try to cover
20 that injury. It's exactly what Larson's is
21 talking about is this case. As for the issue
22 of the -- of the depositions, South Carolina
23 Rules of Procedure say that a party must make
24 an objection to any error with the respect to
25 the notice of a deposition promptly, that means



1 the UEF had to raise this objection back when
2 I took it. Tim Killan made no objection at the
3 time. He flat said, y'all go ahead and take
4 it, I'm okay with it. That's in the deposition
5 the next day with Talisa Miller. He said, I
6 wasn't here yesterday, I told everybody it was
7 okay to go ahead. And we went ahead with
8 Talisa Miller's. Again, the UEF can't raise an
9 objection on behalf of Mr. Lockerie and Mr.
10 Wilke any more than I can or any more than I
11 can waive that objection. So if Lockerie and
12 Wilke want to show up here today and object to
13 the notice given to them, that's their
14 responsibility and their purview. It's not the
15 UEF's. The issue as to Ms. Miller's
16 deposition, the UEF was there. She can't
17 object to a deposition that she came to that
18 her own prior lawyer showed up, participated
19 in, and made no objection to the deposition at
20 the time of the deposition, or subsequent to
21 the deposition, or at the time of the hearing
22 of the -- on that particular case, the first
23 time around, or on the first appeal to this
24 Full Commission. At no point was it ever
25 objected to anywhere in that time frame. As

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1 such, it's been waived pursuant to South
2 Carolina Civil Procedure.

3 COMMISSIONER WILKERSON: Thank y'all.

4 (There being nothing further, the hearing concluded
5 at 2:32 p.m.)

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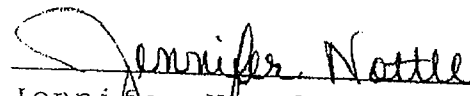
Page 615

CERTIFICATE

This is to certify that the within hearing consisting of twenty-six (26) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on October 29, 2015.

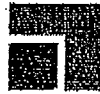

Jennifer Nottle
Court Reporter

Notary Public for South Carolina
My Commission Expires: 7/11/2023



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ATTORNEYS AT LAW

Charlotte • Raleigh • Wilmington • Columbia

April 3, 2014

Aisha Taylor, Commissioner
Avery V. Wilkerson, Jr., Commissioner
Melody James, Commissioner
SC Worker's Compensation Commission
1333 Main Street, Suite 500
Post Office Box 1715
Columbia, SC 29202

Reply to:
R. DANIEL ADDISON
Partner
P.O. Box 11267
Columbia, SC 29211
Direct: (803) 727-1201
Fax: (803) 727-1259
E-Mail: daddison@hedrickgardner.com

RE: Dallas P. Bessinger v. J&L Construction, LLC and R-N-M Builders & Associates, LLC
WCC File No: 1200479
Claim No: FSC900085974
Our File No: 00243L.00028

Dear Commissioners:

I am writing you to advise you of my objections to the proposed Decision and Order of the Appellate Panel that has been circulated with respect to the above-captioned matter. As you know, the matter was heard before the Appellate Panel on October 15th, 2013. On March 25, 2014, a proposed Decision and Order ("Proposed Order") was circulated amongst the parties. In the Proposed Order, the December 18, 2012 order of Commissioner Roche is vacated and remanded for a *de novo* hearing. Unfortunately, the Proposed Order is facially invalid as it 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. Consequently, I object to this Proposed Order being entered as an order of the Commission.

As you know, S.C. Code §42-17-50 details the procedure for review of an order of a single commissioner. Under this code section, 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." The Proposed Order violates this provision as it purports to remand the entire matter for a full *de novo* rehearing; something that is contrary to §42-17-50 and not within the statutory authority of the Commission.

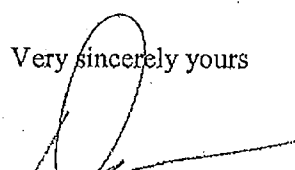
In addition, under S.C. Code Regs, §67-709(E) provides that the Appellate Panel may "modify" an order of a single commissioner by "making a new finding of fact, conclusion of law,

or modifying the Hearing Commissioner's finding of fact or conclusion of law." Moreover, the Appellate Panel's authority to remand is limited. The Commission's regulations provide that the Appellate 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." The Proposed 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. 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). The Proposed Order lacks even minimal findings of fact, much less anything that would satisfy the requirements as stated by the Supreme Court. In the Proposed Order, the only findings of fact are those that were found by the Single Commissioner. The Proposed Order goes on to state that "good grounds have been shown for the Commission to reconsider the evident, receive further evidence, and rehear the parties or their representatives pursuant to S.C. Code §42-17-50." However, the Proposed 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 parties are entitled to know the basis for the Appellate Panel's decisions and they should be stated with sufficient specificity to allow a reviewing court to determine the propriety of those findings. The Proposed Order is deficient in that regard.

For the above reasons, on behalf of my client, I object to this Proposed Order and request that the Appellate Panel issue an order that complies with the laws and regulations of South Carolina.

Very sincerely yours



R. Daniel Addison

RDA/led

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
FEB 25 2016
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

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. The undersigned certifies that the Record on Appeal complies with Rule 211(b), SCACR, and Supreme Court Order 2014-04-15-02, dated April 15, 2014 requiring redaction of personal data identifiers and other sensitive information in Appellate Court Filings.

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Uninsured Employers' Fund*

February 5, 2016