

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2015-000806

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MAR 31 2016

SC Court of Appeals
Respondent

Ard Trucking Company

v.

Travelers Property Casualty Company
of America d/b/a The Travelers Indemnity
Company of Illinois

Appellant.

RECORD ON APPEAL

VOLUME I OF III

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STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF DARLINGTON

FOR THE OF Appeals
FOURTH JUDICIAL CIRCUIT

C/A 2010-CP-16-0435

ARD TRUCKING COMPANY, INC.

PLAINTIFF,

VERSUS

TRAVELERS PROPERTY CASUALTY
COMPANY OF AMERICA, D/B/A THE
TRAVELERS INDEMNITY COMPANY OF
ILLINOIS.

DEFENDANT.

**SUMMARY
JUDGMENT
ORDER
IN FAVOR OF
PLAINTIFF**

SCOTT BEARDSLEY
CLERK OF COURT
DARLINGTON COUNTY, S.C.

2015 FEB 13 AM 11:33

FILED

This case involves a dispute regarding whether the insurance policy for coverage year from November 7, 2003 through November 7, 2004 issued by Defendant to Plaintiff included language authorizing extraordinary additional premiums charges for losses after the coverage year ended. The parties come before the Court on cross motions for summary judgment.

Plaintiff maintains that after paying Defendant's "Final Premium Bill" under the policy, Defendant refused to refund and wrongfully converted \$52,116 from a May 2004 "Letter of Credit" Plaintiff had pledged to secure payment of any additional premiums due and owing based on Defendant's "Final Audit" after the coverage year ended.¹

Defendant claims Plaintiff owes additional extraordinary premiums totaling \$175,064 pursuant to a "Loss Sensitive Rating Plan" (hereafter LSRP) approved for use in South Carolina by the SC Department of Insurance (SCDOI), which became effective on November 1, 2003, just six days before the policy in question was issued.

1. It is noted that Plaintiff's May 2004 letter of credit pledge of \$52,116 was treated by Defendant as a "return premium" debt owed to Plaintiff. This fact is reflected by a policy "change document" Defendant issued under policy on July 27, 2004. Defendant's said "return premium" document makes no mention whatsoever of the LSRP.

Sam B. Stapp
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

APPELLANT ROA 001

In response to Defendant's LSRP claim, Plaintiff maintains that the LSRP provisions Defendant relies on were specifically negated and excluded from Defendant's South Carolina policy it issued to Plaintiff due to the clear and unambiguous language in Defendant's policy.

FACTS

Plaintiff obtained the workers compensation insurance policy in question through a broker in North Carolina, which located a South Carolina "assigned risk" policy with an estimated annual premium approximately \$168,000. Defendant's said policy was issued on December 1, 2003 to cover a one year period from November 7, 2003 to November 7, 2004.

Included in the initial policy were 11 separate endorsements. The only place where the term "LSRP" was addressed was under Endorsement WC 00 06 17 (00) (also known as the LSRP Notification Endorsement). Endorsement WC 00 06 17 (00) specifically listed all states wherein LSRP applied; however, South Carolina was excluded from the list.

Subsequently on March 1, 2004, following an early 2004 corporate reorganization of Defendant, Defendant replaced the initial policy had issued to Plaintiff with a replacement policy for the same insurance coverage year. Defendant's replacement policy contained 13 endorsements, or two endorsements not contained in the initial policy. Nevertheless, the identical LSRP Notification Endorsement which was contained in the initial policy was also included in the replacement policy.

Accordingly, identical LSRP Notification Endorsement was incorporated into both the initial and replacement policy. Again, the endorsement contained in both the initial and replacement policies informed and notified Plaintiff that LSRP was not applicable to Plaintiff's South Carolina policy.

After the policy year ended on November 7, 2004, and pursuant to the policy's terms relating to the computation of premiums, Defendant conducted an on-site "Final Audit" of

Plaintiff's operations (number of employees, positions held, salaries, etc.) to determine the "Final Premium" due to Defendant. On February 9, 2005, Defendant notified Plaintiff that a "Final Premium Bill" of \$29,245 was due by February 24, 2005. Plaintiff promptly paid this sum to Defendant on February 22, 2004.

On July 21, 2005, Defendant informed Plaintiff that an extraordinary premium of \$175,064 was due under the policy's LSRP provisions. After reviewing the initial policy dated December 1, 2003 and the replacement policy dated March 1, 2004, Plaintiff's counsel concluded that the LSRP Notification Endorsement, included under both policies, clearly and specifically excluded South Carolina from LSRP application.

When Defendant refused to release and or refund Plaintiff's \$52,116 Letter of Credit and, instead, applied this sum to the alleged LSRP extraordinary premium Defendant had asserted, Plaintiff initiated this lawsuit to recover the \$52,116 from Defendant. Defendant counterclaimed to recover the extraordinary LSRP premiums it had asserted.

LEGAL ISSUE PRESENTED

The sole issue for determination in this case is whether the LSRP, upon which Defendant claims extraordinary premiums from Plaintiff, applied under the policy issued to Plaintiff. This issue requires examination of the pertinent terms contained in the two policies Defendant issued to Plaintiff on December 1, 2003 and March 1, 2004.

Both parties cite a 2004 South Carolina Bankruptcy Court case, *Georgetown Steel Company v. Capital City Insurance Company*, 318 B.R. 313 (USBC/D.S.C 2004), as supporting their respective contentions. The principal issue in *Georgetown Steel* was whether LSRP

provisions contained in a South Carolina assigned risk workers compensation policy were valid and enforceable. In deciding this issue, the bankruptcy court in *Georgetown Steel* held

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that questions regarding the terms under insurance contracts require courts to examine the policy language used to determine if the terms in question are clear and unequivocal, or not.

The following analysis of Defendant's pertinent policy provisions applies the same law and logic as applied by the bankruptcy court in *Georgetown Steel*. This analysis demonstrates that Defendant's policy is clear and unambiguous language regarding the application of LSRP. Based on Defendant's own clear and unambiguous language, LSRP did not apply to the South Carolina policy issued to Plaintiff, since both of the initial and replacement policies issued to Plaintiff clearly and unequivocally excluded LSRP application from South Carolina policies.

PERTINENT POLICY LANGUAGE EXAMINED

Insurance policies typically contain declarations and provisions, and include endorsements applicable to various situations and identified venues. The Defendant's policy initially had 11 endorsements and its replacement policy had 13 endorsements. Several endorsements included under the initial (12/1/2003) policy and replacement (3/1/2004) policy bear scrutiny in deciding whether LSRP applied to the South Carolina policy issued to Plaintiff.

1. The Assigned Risk Endorsement

Both the initial and replacement policies issued to Plaintiff contain an identical one-page Assigned Risk Adjustment Program Endorsement (WC 00 06 15 (00)), informing Plaintiff that Defendant may add a "surcharge" to the premium for South Carolina "assigned risk" policies. Without question, this endorsement applies to Plaintiff's South Carolina policy because the endorsement specifically lists South Carolina among the ten (10) states wherein the "assigned risk" surcharge may be applied.

The first paragraph of the Assigned Risk Endorsement states,

The (assigned risk) program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the program. (Balance omitted.)

It is noted that the Assigned Risk Endorsement does not incorporate, explain, or even mention LSRP in any way. Accordingly, and not to be confused with the extraordinary premiums charged whenever LSRP is applicable, the Assigned Risk Endorsement clearly and unequivocally notifies and informs Plaintiff that (1) a surcharge may be applied to the premium under the Assigned Risk Adjustment Program and, importantly, and (2) the assigned risk surcharge addressed in the Assigned Risk Endorsement is applicable to South Carolina insureds, which included Plaintiff.

2. A/R Loss Sensitive Rating Plan Notification Endorsement

Defendant's initial and replacement policies both contained an extremely important endorsement entitled the Assigned Risk Loss Sensitive Rating Plan Notification Endorsement (WC 00 06 17 (00)), hereafter the LSRP Notification Endorsement.² An LSRP Notification Endorsement containing the identical language was attached to the initial and replacement

2. On November 1, 2003, the South Carolina Department of Insurance (SCDOI) authorized insurance companies to include LSRP provisions under assigned risk workers compensation policies issued in South Carolina. SCDOI's rules regarding LSRP specifically required insurers to include a "notification" endorsement in all such policies to "ensure" that all South Carolina insureds were properly notified that LSRP would applied to their policy and how LSRP could affect premiums:

D. Notice to Assigned Risk Policyholders.

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies. (Emphasis supplied.)

See SCDOI's BASIC MANUAL for rules regarding LSRP insurance provisions.

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South Carolina policies issued to Plaintiff. These identical LSRP Notification Endorsements clearly and unequivocally declared that LSRP was not applicable to policies issued in South Carolina. Specifically, both endorsements stated as follows:

This endorsement applies in the states listed in the schedule below:

STATE	SCHEDULE	PREMIUM ELIGIBILITY
Alabama		\$200,000
Alaska		\$200,000
Connecticut		\$200,000
District of Columbia		\$200,000
Georgia		\$200,000
Idaho		\$200,000
Illinois		\$200,000
Indiana		\$100,000
Kansas		\$200,000
Nevada		\$200,000
New Hampshire		\$175,000
North Carolina		\$200,000
South Dakota		\$200,000

Stated differently, the two LSRP Notification Endorsements incorporated by Defendant into the two South Carolina policies issued to Plaintiff expressly negated the application of LSRP to the policies. Defendant's own clear and unambiguous language excluded both of the policies issued to Plaintiff from any LSRP application. Therefore, LSRP provisions did not apply to the South Carolina policy issued by Defendant to Plaintiff.

Defendant could easily have clearly and unequivocally applied LSRP to the two South Carolina policies issued to Plaintiff, just as Defendant clearly and unequivocally applied the Assigned Risk Endorsement to Plaintiff's policy. However, Defendant failed to include, and therefore clearly excluded, LSRP application from Plaintiff's South Carolina policy.

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Instead of notifying and informing Plaintiff that LSRP and extraordinary LSRP premiums applied to Plaintiff's South Carolina policy, Defendant's own plain, ordinary, and unequivocal language declared that LSRP provisions did not apply in South Carolina; and, therefore, did not apply to Plaintiff's South Carolina policy. The die was cast by Defendant and this Court cannot rewrite Defendant's policy.

3. Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement

Other than Defendant's LSRP Notification Endorsement which excluded LSRP application under the South Carolina initial and replacement policies issued to Plaintiff, the only other endorsement related to LSRP contained in the policy was the Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement (MARLSRP Endorsement) (WG 00 06 18 (00)). It is noted that this endorsement was not included in the initial (12/1/2003) policy, but only included in replacement (3/1/2004) policy. The purpose of the MARLSRP Endorsement is to explain how the LSRP extraordinary premiums, if and when applicable, were to be computed.

While the MARLSRP Endorsement stated, "This endorsement applies where the LSRP has been approved," nowhere in the endorsement does it specifically state LSRP was ever approved in the state of South Carolina. As already noted, the LSRP Notification Endorsement discussed above and which was included in both the initial and replacement policies Defendant delivered to Plaintiff, clearly and unequivocally declares that LSRP does not apply in South Carolina.

4. Other Policy References to LSRP

Except for (1) the LSRP Notification Endorsement (contained in both policies) which clearly and unequivocally exclude Plaintiff's South Carolina policies from LSRP application, and (2) the MARLSRP Endorsement (only contained in the March 1, 2004 policy) which simply explained how LSRP premiums, if applicable, were to be determined, there were no other

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endorsements or provisions under Defendant's initial or replacement policies which address the application of LSRP. All told, there are only two other references to LSRP anywhere else in the replacement policy, both of which appear on the two page "Extension of Info Page Schedule." However, such scant and unexplained use of LSRP terminology ("Loss Sensitive Rating Plans" is used on one page and "LSRP" is used on another page) falls far short of overcoming Defendant's own clear and unambiguous exclusion of LSRP from having any application to the South Carolina replacement policy issued to Plaintiff, which exclusion is contained in Defendant's own LSRP Notification Endorsement.

GEORGETOWN STEEL CASE SUPPORTS PLAINTIFF'S CLAIM

Defendant urges the Court to accept the proposition that LSRP was *automatically* included in the policy it issued to Plaintiff *as a matter of law*, because LSRP had been approved by the SCDOI for use in South Carolina assigned risk policies. However, acceptance of Defendant's proposition requires the Court to disregard Defendant's clear and unambiguous exclusion, under its LSRP Notification Endorsement, of South Carolina from the list of states wherein LSRP applies. Moreover, by accepting Defendant's proposition, this Court would have to ignore established rules of contract law that should control.

In *Georgetown Steel*, the bankruptcy court held that the parties to a contract are bound by the clear and unambiguous terms in the contract. The facts in *Georgetown Steel* are similar in many respects to the facts before the Court now. Importantly, however, the policy language used by the insurer in *Georgetown Steel* was radically different from the policy language adopted for use by the Defendant herein.

The debtor in *Georgetown Steel* was insured under an assigned risk workers compensation insurance policy. The debtor sought to negate the application of LSRP provisions within the insurer's policy issued to the debtor so that the debtor could recover

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substantial funds the insurer was holding to cover LSRP premiums owed to the insurer by the debtor.³ The critical question in *Georgetown Steel* was whether LSRP provisions contained under the debtor's assigned risk insurance policies were valid or not. After applying the law of contracts to the facts, the bankruptcy court in *Georgetown Steel* held that LSRP clearly applied to the debtor's insurance policy.

Before undertaking its analysis of the contract provisions, the *Georgetown Steel* bankruptcy court stated the controlling principles of contract law:

General rules of contract instruction pursuant to South Carolina law apply. The intent of the parties is to be primarily considered, which can be ascertained from the language of the Policies. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 169-70, 594 S.E.2d 511, 518 (Ct.App.2004). If the language is clear and unambiguous, the language alone is controlling. *Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134. If capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. *Hansen v. USAA*, 350 S.C. 62, 68, 565 S.E.2d 114, 117 (Ct.App.2002) (citation omitted).

After applying the law to the debtor's policy, the bankruptcy court concluded that the insurer "specifically and unambiguously notified the policyholder that LSRP has been adopted in South Carolina and states that "the plan will be adjusted based upon the losses incurred." In reaching this conclusion, the bankruptcy court was compelled by the clear and unequivocal language contained in the insurer's two separate LSRP Notification Endorsements which

3. The debtor in *Georgetown Steel* argued that "blanks" (zeros) on a worksheet on the final page of the insurer's MAR LSRP Endorsement effectively rendered the policy's LSRP provisions "invalid and meaningless." However, the bankruptcy court rejected this argument because the policy contained clear and unambiguous language applying LSRP to the debtor's policy before it.

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specifically notified and informed the insured debtor that the LSRP provisions were specifically applicable under the debtor's South Carolina policy:

Perhaps the most telling portion of the Policies with respect to the application of an LSRP is the Endorsements included in the Policies. The Policies contain an Assigned Risk Loss Sensitive Rating Plan Notification Endorsement and an Assigned Risk Loss Sensitive Rating Plan Notification Endorsement (the "Endorsements"). The Endorsements provide as follows:

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

The Endorsements further specifically state that:

Your insurance is written under the South Carolina Workers Compensation Assigned Risk Plan that has adopted the Loss Sensitive Rating Plan (LSRP).

The Endorsements further set forth the LSRP Premium elements, the formula for calculation of the LSRP Premium, and when calculations and payments related to the LSRP Premium must be made. Accordingly, the Policies, including the Endorsements, unambiguously provide that an LSRP applies in South Carolina and should have put Debtor on notice as to the further adjustment of premium.

(Emphasis supplied.)

In sum, the insurer in *Georgetown Steel* specifically and explicitly notified and informed the debtor under the LSRP Notification Endorsement (WC 00 06 17 (00)), which was incorporated into to the two South Carolina policies issued to the debtor, that LSRP applied to the debtor's South Carolina policy.

Your insurance is written under the South Carolina Workers Compensation Assigned Risk Plan that has adopted the Loss Sensitive Rating Plan (LSRP).

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However, no such language exists within the two policies Defendant issued to Plaintiff herein. Instead, Defendant plainly and unambiguously provided under the LSRP Notification Endorsement it included in both the initial and replacement policies issued to Plaintiff that a specific list of the states wherein LSRP had been adopted and applied. Clearly and unambiguously, South Carolina was excluded from the list. The only reasonable interpretation of Defendant's own clear and unambiguous language used in the LSRP Notification Endorsement is that LSRP did not apply to either of the two South Carolina policies Defendant issued to Plaintiff.

DEFENDANT'S ARGUMENTS ARE WITHOUT MERIT

Defendant's arguments are based on Defendant's assumption that LSRP applied to the initial and replacement policies issued to Plaintiff. Since the language used by the Defendant in its own policy negated any LSRP application to Plaintiff's policy, Defendant contends that LSRP applied to the policy issued to Plaintiff, as a matter of law, notwithstanding Defendant's own policy language excluding the application of LSRP to the South Carolina policy issued to Plaintiff. This contention, however, defies the rules of insurance contract law requiring courts to apply contract law. Insurers are bound by the terms used in their policies.

Simply because SCDOI allowed insurers to include LSRP provisions in South Carolina assigned risk policies beginning November 1, 2003, LSRP provisions were not automatically incorporated into every South Carolina assigned risk policy. The Court rejects this notion as fallacious reasoning which amounts to nothing more than a distraction or diversion, often referred to as a "red herring." Contract cases are determined by applying settled law to the used within the insurance contract; not by collateral and extraneous matters which contradict the policy's terms and language. See, e.g., *Georgetown Steel, supra*.

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Since insurers are deemed to be experts, and in order to protect the public and insured parties, the insurance industry is highly regulated. SCDOT's BASIC MANUAL regarding the use of LSRP by insurers specifically requires insurers to incorporate the LSRP Notification Endorsement into their assigned risk policies "to ensure that all possible qualifying risks (insureds) are notified of the intent and details of the ("LSRP")":

D. Notice to Assigned Risk Policyholders.

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies. (Emphasis supplied.)⁴

However, instead of using the required LSRP Notification Endorsement to notify Plaintiff that LSRP would be applied to the South Carolina policy issued to Plaintiff by Defendant, the language Defendant used in the required endorsement not only failed to include South Carolina as a state where in LSRP applied, it effectively excluded Plaintiff's South Carolina policy from being subject to LSRP application. Therefore, the LSRP Notification Endorsements Plaintiff received from Defendant in both the initial policy and the replacement policy failed to notify Plaintiff that LSRP applied to the South Carolina policy Defendant issued to Plaintiff. Instead, the endorsement provided to Plaintiff clearly and unequivocally informed Plaintiff that LSRP would not apply to the policies issued to Plaintiff.

The fact that an insurer is authorized to include LSRP provisions within a South Carolina policy does not automatically write the LSRP provisions into such policies. If this were true, contracting parties could never rely on the language contained in their contracts and chaos would

4. See Footnote 2.

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roign within the business world and within the courts. The proposition urged by the Defendant arises out of desperation. Contract cases must be determined by settled contract law which requires contracts to be interpreted by their own terms, and not by extraneous matters.

Defendant's policy not only failed to inform Plaintiff that LSRP would apply to the policy issued by Defendant, the policy specifically informed Plaintiff, in clear and unambiguous language, that LSRP did not apply to the South Carolina policy issued to Plaintiff. Defendant cannot retroactively rewrite its own insurance contract in order to suit its own pleasure. Instead, Defendant is bound by the plain and unambiguous language in the policy it unilaterally drafted, issued and delivered to Plaintiff.

Defendant also argues that Plaintiff failed to provide expert testimony to demonstrate that Defendant had breached a duty owed to Plaintiff. Under the controlling contract principles applied in *Georgetown Steel* and relied on by Plaintiff in its motion for summary judgment, no expert testimony is required. The Court, as fact finder, can readily read Defendant's insurance policy and determine what the policy says.

More particularly in this case, the Court can read Defendant's LSRP Notification Endorsement and determine what it says about the application of LSRP to the South Carolina policy issued to Plaintiff. It is clear to the Court that Defendant's own language specifically excluded the application of LSRP from the South Carolina policy issued to Plaintiff. *See also, Brouwer v. Sisters of Charity Providence Hospitals*, 2014 WL 3844059 (S.Ct. 2014) (it is not necessary to have expert testimony regarding matters of common knowledge).

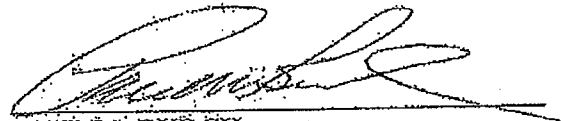
In sum, the Court holds that Defendant is bound by its own clear and unambiguous contractual terms which unequivocally state that LSRP did not apply to the South Carolina policy issued to Plaintiff.

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ORDER

Based on the application of South Carolina law to the analysis of the insurance contracts issued by Defendant to Plaintiff, including the clear and unambiguous exclusions of LSRP from application to the South Carolina insurance policy in question, Plaintiff's Motion for Summary Judgment is hereby granted. Accordingly, Plaintiff is entitled to recover \$52,116 by way of an unearned premium, as the liquidated contractual damages, plus interest at the legal rate from February 23, 2005 when the Final Premium bill from Defendant was paid by Plaintiff, resulting in an additional amount of \$51,728.74 for a total of \$103,844.74. Therefore, judgment in favor of Plaintiff Ard Trucking Company is granted against Defendant Travelers Insurance Company in the sum of \$103,844.74.

AND IT IS SO ORDERED!



**PAUL M. BURCH
CIRCUIT COURT JUDGE FOR THE
FOURTH JUDICIAL CIRCUIT**

February
January 5th, 2015

FILED
2015 FEB 13 AM 11:30
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

TRUE CERTIFIED COPY,
Scott B. Suggs
**CLERK OF COURT/RMC
DARLINGTON COUNTY, SC**

COPY

STATE OF SOUTH CAROLINA

COUNTY OF DARLINGTON

Ard Trucking Company,

Plaintiff,

v.

Travelers Property Casualty Company of
America d/b/a The Travelers Indemnity
Company of Illinois,

Defendant.

IN THE COURT OF COMMON PLEAS
OF THE FOURTH JUDICIAL CIRCUIT

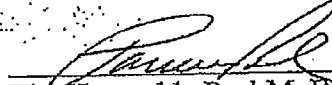
Case Number: 2010-CP-16-0435

ORDER

This matter is before the Court on Defendant's Motion to Alter or Amend. After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Defendant's Motion Pursuant to Rules 52(b) and 59(e), SCRPC, is hereby DENIED.

THEREFORE, Defendant's Motion to Alter or Amend is hereby DENIED.

AND IT IS SO ORDERED.


The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Chesterfield, South Carolina
March 20, 2015

FILED
2015 MAR 24 PM 12:20
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,

Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO. 2010-CP-16-435
Ard Trucking Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER GRANTING TRAVELERS'
	)	MOTION FOR SUMMARY
Travelers Property Casualty Company	)	JUDGMENT AND JUDGMENT OF
Of America d/b/a The Travelers Indemnity	)	\$160,908.20 IN FAVOR OF
Company of Illinois,	)	TRAVELERS
	)	
Defendant.	)	
	)	

THIS MATTER came before me upon Travelers' and Plaintiff's cross-motions for summary judgment on December 18, 2014. Present in the courtroom were Phillip S. Ferderigos, counsel for Defendant Travelers Property Casualty Company of America d/b/a The Indemnity Company of Illinois (hereinafter "Travelers"), and Martin S. Driggers, Sr., Esquire, counsel for Plaintiff Ard Trucking Company (hereinafter "ATC"), and Plaintiff Allen Ard, President of ATC. After reviewing the parties' motions and memoranda and accompanying exhibits and documentation and considering the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

BACKGROUND

South Carolina law provides for a workers' compensation market for workers' compensation policies of last resort, generally referred to as Assigned Risk workers' compensation policies. Assigned Risk policies are for high risk employers who are unable to obtain workers' compensation coverage in the voluntary market. Assigned Risk policies are issued pursuant to the WCIP and are administrated through the NCCI.¹ NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP

¹ For those entities that cannot obtain workers' compensation coverage in the voluntary market, the State has an established "Assigned Risk" or "residual market." Rates for such a program are established by the State, and rules and procedures have been promulgated by the State as they relate to the Assigned Risk market – the South Carolina Workers' Compensation Assigned Risk Plan (WCIP), operating rules and procedures. The Plan administrator for the residual market is the National Council on Compensation Program, Inc. (NCCI).

provisions and utilize forms as required by the NCCI in South Carolina. Finally, the South Carolina Department of Insurance has verified that, in South Carolina, the Loss Sensitive Rating Plan ("LSRP")² is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, the WCIP mandates that LSRP is applicable to ATC's Assigned Risk policy, which was issued on November 7, 2013 as a matter of law.

This matter involves a premium dispute wherein ATC alleges Travelers improperly charged ATC premium pursuant to the WCIP's LSRP. In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms, Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.³

FINDINGS OF FACT

ATC submitted an Assigned Risk application for an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP through its producer, Michael P. Hair & Associates, Inc. on 11/6/03. Pursuant to the application, ATC agreed to be bound by the WCIP. In its Application, ATC also acknowledged the LSRP was explained to ATC and that an explanatory notice or brochure had been provided to ATC and that ATC would be bound by the LSRP if ATC's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on ATC's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to ATC for the policy period effective 11/7/2003.

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on ATC's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to ATC for the policy period of 11/07/03 to 11/07/04. The Assigned Risk policy issued to ATC contained the NCCI required Assigned Risk policy standard SCWCIP LSRP

² The LSRP is a plan that adjusts the premium for an Assigned Risk policy, following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. A retrospective rating plan for those employers who have an assigned risk workers' compensation insurance premium of \$200,000 or more. Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program details are further set forth in the NCCI approved Plan documents and NCCI brochure entitled "*The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program.*"

³ Per South Carolina law and the WCIP, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, LSRP is applicable to ATC's Assigned Risk policy as a matter of law.

Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Subsequently, pursuant to the WCIP rules, Travelers performed a preliminary audit survey of ATC's payroll in February, 2004, which in turn triggered the WCIP LSRP provisions.

Pursuant to the WCIP, on or about March 1, 2004, Travelers issued a rewritten Assigned Risk policy, which included the NCCI required "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI. On or about March 1, 2004, Travelers also sent ATC and its producer a letter advising that ATC Assigned Risk policy had been issued as part of the mandatory LSRP and also provided ATC and its producer with an explanatory pamphlet entitled "*The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program.*"

ATC representatives initially testified that they did not know if they received the rewritten Assigned Risk policy or the booklet in or about March of 2004. However, in the Affidavit of Harry Brown, at the time Safety Director of ATC and now ATC's vice-president, submitted to the Court prior to the summary judgment hearing, ATC admitted that Travelers sent the re-written Assigned Risk policy as well as the NCCI pamphlet entitled "Loss Sensitive Rating Plan," to ATC on or about March of 2004.

Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and ATC provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for \$52,116. On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited ATC with an Annual Physical Audit and issued a final bill to ATC. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated and issued a LSRP bill for ATC for \$175,064 based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. ATC refused and has continued to refuse to pay Travelers' bill for additional premium of \$175,064 owed per the LSRP. Subsequently, per the LSRP provisions, Travelers drew upon the \$52,116 ILOC and ATC still owes Travelers \$122,948 for premium owed. Further, ATC did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI as required pursuant to WCIP Rule 4.

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium pursuant to the LSRP. Here, I hereby find Travelers, the servicing carrier, is entitled to the premium it seeks.

CONCLUSIONS OF LAW

No dispute exists between the parties concerning the amount of payroll/remuneration ATC paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to ATC's South Carolina Assigned Risk policy. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to ATC's South Carolina Assigned Risk policy. Through his producer, ATC submitted an Assigned Risk application and ATC was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, ATC agreed to be bound by the terms of the WCIP.⁴ The Assigned Risk Binder and Policy were issued in accordance with the WCIP. The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to ATC pursuant to WCIP. Accordingly, I hereby find that the LSRP applies to ATC's Assigned Risk policy, and Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

1. WCIP HAS THE "FORCE OF LAW."

In South Carolina, the WCIP has the force of law. According to the applicable provisions of the South Carolina Assigned Risk plan, the WCIP, as administered by NCCI, is the only "mechanism" in the state for implementing the Assigned Risk pool and has been approved by the Director of the Department of Insurance for use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an Assigned Risk plan by approving the WCIP for its use in the Assigned Risk practice in this State. Id. The WCIP provides the framework for the Assigned Risk pool and includes numerous provisions governing Assigned Risk practice. Id. Without the WCIP, there would be nothing guiding Assigned Risk practice and its procedure, such as an employer's application process for Assigned Risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an Assigned Risk policy is by applying through NCCI and the WCIP and

⁴ This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that it is not bound by the LSRP and (2) that the carrier is otherwise estopped from seeking the additional premium it is owed pursuant to the LSRP.

certifying that the employer is unable to obtain voluntary coverage. Id. NCCI is designated in the WCIP as the “plan administrator.” Id. The Supreme Court affirmed that WCIP rules have the “force of law” concerning Assigned Risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the Assigned Risk Basic Manual and Supplement “is controlling law with respect to the issues it addresses.”

2. SOUTH CAROLINA ASSIGNED RISK POLICIES APPLY THE LSRP FOR ASSIGNED RISK POLICIES ISSUED AFTER NOVEMBER 1, 2003.

In South Carolina, Assigned Risk policies are governed by the WCIP. Pursuant to S.C. Department of Insurance, the LSRP applies to South Carolina Assigned Risk policies issued on or after November 1, 2003. The South Carolina Department of Insurance has verified:

“Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.”

In South Carolina, the WCIP has the force of law. Pursuant to the WCIP, the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as ATC’s Assigned Risk policy was applied for on 11/6/03 and was issued on 11/7/03, the LSRP applies to the Assigned Risk policy issued to ATC.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advised ATC of the LSRP’s applicability. In his application, ATC signed an applicant statement agreeing to be bound by the WCIP and agreeing that his policy may be subject to the LSRP. Specifically, the Assigned Risk application states:

“The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan. If my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Here, ATC signed and submitted such application to NCCI, and ATC is bound by such Applicant's Statement. ATC acknowledged that it is bound by the LSRP if South Carolina has approved the LSRP in South Carolina. Admittedly, Allen Ard testified that he did not review ATC's application before he signed it, did not read the entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by. In South Carolina, "[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Id. at 663-64, 582 S.E.2d at 440. "The law does not impose a duty on the [defendant] to explain to an individual what he could learn from simply reading the document." Id. at 664 582 S.E.2d at 440 (citing Citizens & S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)). Based on the SCDOI approval of LSRP in South Carolina for Assigned Risk policies after 11/1/2003, I hereby find that ATC is bound by the LSRP as a matter of law.

4. ASSIGNED RISK POLICY

Identical with WCIP, the Assigned Risk policy itself allows Travelers to charge premiums in accordance with the WCIP. Specifically, the Assigned Risk policy states:

"A. OUR MANUALS

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

Moreover, the Assigned Risk policy and binder set forth:

"COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN

THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer's failure to comply with the terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan."

...
"Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Accordingly, per the Assigned Risk policy terms itself, I hereby find that the WCIP's LSRP applies to ATC's Assigned Risk policy.

5. ATC'S PRODUCER IS AN AGENT OF ATC, NOT TRAVELERS.

In South Carolina, the WCIP mandates and I hereby find that the producer is an agent of the insured, not the servicing carrier Travelers. Pursuant to the WCIP and South Carolina law, the producer who submitted the Assigned Risk application on behalf of ATC is the agent of ATC, not Travelers. As such, any failure of ATC's producer to explain to his own client the WCIP, the LSRP, the Assigned Risk policy or its implications rests solely with ATC's own agent, not with Travelers. See S.C.W.C.I.P. "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities" ... [a producer] "is not a contract agent or agent of the servicing carrier. [Producers] have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship." Moreover, both ATC and its producer admitted that the producer is the agent of ATC, not the servicing carrier.

Here, ATC's producer admitted he was aware that the LSRP applied to ATC's Assigned Risk policy before ATC provided the ILOC to the servicing carrier. Also, ATC's producer admitted he became aware of and had conversations with ATC about the LSRP on or about March of 2004, before ATC issued its ILOC to Travelers. I hereby find that the producer had knowledge that ATC's Assigned Risk policy had triggered the LSRP and that ATC's Assigned Risk policy was subject to the LSRP prior to ATC issuing an ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to ATC as a matter of law. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306 (S.C. 1979); see 3 Am.Jur.2d, Agency, § 273, et seq.; 3 C.J.S. Agency § 432, et seq.;

American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1985); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943). Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133, S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations); 18B Am.Jur.2d Corporations § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment").

As ATC's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to ATC issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to ATC, and I hereby find that ATC had knowledge that the LSRP applied to its Assigned Risk policy prior to ATC issuing an ILOC to Travelers.

6. ATC HAS FAILED TO PROVIDE ANY EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.

ATC has failed to list any expert to opine that Travelers breached any standard of care. Indeed, the South Carolina Department of Insurance has verified that LSRP applies to Assigned Risk policies issued after November 1, 2003 date and, therefore, specifically applies to ATC's Assigned Risk policy. ATC has not listed any expert to opine that Travelers has improperly determined that the LSRP applies to ATC's Assigned Risk policy or breached any standard of care in regard to its audits. Indeed, no expert testimony exists that Travelers took any act that violated any standard of care or caused any damages to ATC. In South Carolina, a party is required to provide expert testimony to establish the standard of care and deviation from such standard in order to proceed with a professional negligence case. See City of York v. Turner – Murphy Company, Inc., 317 S.C. 194, 452 S.E.2d 615 (1995) (stating "In a professional negligence cause of action, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.... Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct").

Although ATC argues that Travelers provided ATC with an Assigned Risk policy that was better than a typical South Carolina Assigned Risk policy (due to the Notification Endorsement's failure to specifically list South Carolina), ATC has provided no evidence that the Endorsements (the Notification and Mandatory endorsements) issued by Travelers to ATC were not standard Endorsements drafted, copyrighted and mandated by NCCI. ATC has provided no evidence that a servicing carrier, such as Travelers, has any discretion to vary the Endorsements mandated by the NCCI. Here, ATC has failed to provide any expert testimony that Travelers, its underwriters, or its auditor breached any standard of care or to provide any evidence that the Endorsements used by Travelers were not mandated by NCCI. Accordingly, I hereby find that ATC's lack of any expert testimony to support its claims against Travelers is also fatal to ATC's claims.

7. ATC FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.

ATC asserts that Travelers is estopped from seeking the premium it is owed. However, ATC failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires ATC to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission and/or Administrative Law Judge and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed LSRP determination binds ATC per the WCIP requirements. The WCIP Rule 4 provides ATC with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 set forth the following mechanism:

"Any Assigned Risk policyholders affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances. For further information on this process, refer to Basic Manual Rule 4-A-10.

The state's approved workers compensation appeal mechanism is the forum for hearing the dispute. This process is administered by NCCI in its capacity as rating organization and/or Plan Administrator. The Plan Administrator's intervention in disputes is generally limited to matters involving experience rating modification factors, application of rules contained in NCCI manuals, eligibility and assignment under the WCIP, classification assignment, and Assigned Risk pricing programs."

"Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a de novo

review by the regulatory authority, by requesting such binding arbitration or de novo review in writing and at its own expense, within thirty (30) days after the date of such decision.”

“The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator’s intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs”

Here, as required by the WCIP, ATC did not file any appeal of Travelers’ LSRP decision to the NCCI. Rather, ATC abandoned its appeal of the dispute and, pursuant to WCIP, the insured is bound by Travelers’ decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating “an unchallenged ruling, right or wrong, becomes law of the case.”); Bennett v. S.C. Dep’t of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating “the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action”).

Accordingly, ATC is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and ATC is bound by the prior unappealed Travelers/NCCI determination pursuant to the WCIP. As no genuine issue of fact exists for a jury to determine any factual issue as the servicing carrier’s entitlement to premiums has been established pursuant to the WCIP provisions and ATC’s abandoned appeal via NCCI pursuant to the WCIP provisions, I hereby find that Travelers is entitled to the premium it seeks on such grounds as well. Accordingly, as ATC failed to timely appeal Travelers’ decision to the NCCI, the administrative body charged with administering the WCIP, ATC cannot collaterally attack Travelers unappealed decision via this present collateral lawsuit. If ATC wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

8. ATC'S COUNTER-ARGUMENTS ARE WITHOUT MERIT.

Finally, ATC's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, ATC must demonstrate: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Stringer v. State Farm Mutual Automobile Ins. Co., 386 S.C. 188 (Ct. App. 2011). Here, I find that ATC had the means of knowledge and implied, if not actual, knowledge of the LSRP. I also find that ATC did not "reasonably rely" on any representation by Travelers.

ATC's first counter-argument is that the LSRP does not apply to ATC's South Carolina Assigned Risk policy because of the LSRP "Notice" Endorsement contained in the Assigned Risk policy. ATC argues that the LSRP "Notice" Endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds.⁵ However, ATC's argument has already been soundly rejected by South Carolina courts. Specifically, the reasoning and holding of the Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C. (D.S.C.) 2004) decision is particularly instructive. In Georgetown, the South Carolina bankruptcy court held that the servicing carrier's use of standard forms and policies (such as the Assigned Risk LSRP Notification Endorsement) is not ambiguous to a reasonable person in South Carolina as a matter of law. The Court held that the Assigned Risk application, the WCIP, and Assigned Risk policy terms put the insured on notice of the LSRP and its details as a matter of law because "an insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." Moreover, "the standard LSRP endorsements drafted and copyrighted by NCCI" ... "specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina and states that the plan will be adjusted based upon the losses incurred." Similarly, ATC "could have examined the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." ATC failed to do so, at its own peril.

⁵ ATC ignores the Mandatory Endorsement completely in asserting its arguments. As the NCCI has determined that the "Notification" and "Mandatory" Endorsements provide the requisite notice to an Assigned Risk policy insured, such Endorsements provide adequate notice to ATC of the LSRP applicability to Assigned Risk policies in South Carolina.

The Assigned Risk policy Endorsement's language is mandated by the NCCI and South Carolina's Department of Insurance. The Assigned Risk policy itself mandates that "Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement." As ATC agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, ATC had the means of knowledge to obtain and review a copy of the WCIP, or contact his producer, or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse: "It is fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state. 31A C.J.S. Evidence Section 132(1) (1980); Benn v. Camel City Coach Co., 162 S.C. 44, 160 S.E. 135 (1931); Gregory v. Gregory, 292 S.C. 587 (Ct. App. 1987). In South Carolina, the WCIP's LSRP is the law. Moreover, as ATC's producer admitted he knew the LSRP applied to ATC's Assigned Risk policy before he asked ATC to issue the irrevocable LOC to the servicing carrier; such knowledge is imputed to ATC. Finally, as ATC's producer testified he advised ATC of the LSRP before ATC issued its ILOC to Travelers, I hereby find ATC had the means of knowledge, imputed knowledge, and actual knowledge of the LSRP during the pendency of its Assigned Risk policy.

Accordingly, ATC not only had the means of knowledge, but also had knowledge that the LSRP applied to the Assigned Risk policy before ATC issued an irrevocable LOC to the servicing carrier. Further, in key parts of their depositions, Allen Ard and Harry Brown both testified that they did not rely on the Assigned Risk "Notice" Endorsement, negating any reasonable reliance on the part of ATC. For these reasons, ATC's first counter-argument fails.

For a second defense/counter-argument, ATC argues that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which ATC paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. ATC supports its position by a selective reading of Section E of the Premium section of the Assigned Risk policy. However, ATC ignores Section A of the Premium section which clearly sets forth that: "All premium for this policy will be determined by our manuals, rates, rating plans and classifications."

As the LSRP applies to this Assigned Risk policy, I hereby find Travelers is entitled to the additional premium pursuant to the LSRP and it may not be estopped based on Travelers having issued a "final bill" to ATC where LSRP specifically requires additional billings after the "final bill" is calculated during the policy term, and the policy itself and the WCIP mandate such retrospective LSRP charges.

CONCLUSION

I hereby grant Travelers' Motion for Summary Judgment and find that Travelers is entitled to the additional premium of \$122,948 (a liquidated amount) and interest from 6/29/05 to the present of an additional amount of \$37,960.20 for a total of \$160,908.20. I hereby issue a judgment in favor of Travelers against Ard Trucking Company in the amount of \$160,908.20.

IT IS SO ORDERED!

Paul M. Burch, Presiding Judge
Fourth Judicial Circuit

Dated: _____

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
 COUNTY OF DARLINGTON) 2010-CP-16-0435

ARD TRUCKING COMPANY)
 PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD
)
 TRAVELERS PROPERTY CASUALTY)
 COMPANY OF AMERICA d/b/a THE)
 TRAVELERS INDEMNITY COMPANY OF)
 ILLINOIS)
 DEFENDANT)

December 18, 2014
 Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

A P P E A R A N C E S:

MARTIN S. DRIGGERS, SR., ESQUIRE
 Attorney for the Plaintiff

PHILLIP S. FERDERIGOS, ESQUIRE
 Attorney for the Defendant

HATTIE O. GORDON
 Circuit Court Reporter

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

THE COURT: All right.

MR. FERDERIGOS: Your Honor, may it please the Court.

My name is Phillip Ferderigos, and I represent Travelers.

We have a cross motion for summary judgment here today.

Mr. Driggers is running late. He isn't here right now.

So I won't talk no more at this time.

THE COURT: Ready?

MR. DRIGGERS: Thank you.

THE COURT: All right.

MR. FERDERIGOS: Your Honor, it's my pleasure to represent Traveler, an assigned risk carrier in this matter. The quick one minute version of my argument, Your Honor, is that Mr. Ard and the Plaintiff signed an assigned risk application which said that he would be bound by the W.C.I.P. The policy of insurance that was issued pursuant to an assigned risk plan said that he would be bound by the W.C.I.P. W.C.I.P. is Workers Compensation Insurance Plan.

And, Your Honor, the end result is that the Plaintiff is bound by the W.C.I.P., the Workers Compensation Insurance Plan. South Carolina has stated, and this is the most important document, Your Honor, Document Exhibit Number One to my motion from the South Carolina Department of Insurance that the W.C.I.P. says that the L.S.R.P., the

1 Loss Sensitive Rating Plan, applies to assigned risk
2 policies when he got an assigned risk policy. That's the
3 one minute version of my argument.

4 The application says he's bound by the W.C.I.P. The
5 policy says he's bound by the W.C.I.P. The W.C.I.P. is
6 the law in South Carolina, and I cited cases before that
7 for Your Honor. And because of the W.C.I.P. said that
8 he's bound by the L.S.R.P, the Loss Sensitive Rating Plan,
9 which is reflected in Exhibit Number One, 40 pages, that
10 sets forth specific plans that have been adopted in South
11 Carolina.

12 Mr. Ard and the assigned risk policy that he has has
13 other L.S.R.P. requirements. Therefore, as a matter of
14 law the cross motion for summary judgment are that either
15 we're entitled to the additional premium that we seek
16 under the L.S.R.P. because there is no dispute about what
17 that figure would be or Mr. Ard is entitled to get back
18 his letter of credit which Travelers drew pursuant to the
19 L.S.R.P. So that's the one minute argument.

20 The details are somewhat important though, Your
21 Honor. As I indicated this is a premium dispute between a
22 servicing carrier and an assigned risk policy. An
23 assigned risk policy is a policy of last resort. It is
24 not a policy of insurance that comes from a voluntary
25 market. It's governed by the Workers Compensation

1 Insurance Plan, and it's administered by the
2 administrative body which is called N.C.C.I.

3 In South Carolina and there are multiple cases that I
4 referred to for Your Honor the W.C.I.P. when it comes to
5 assigned risk policies is the law. The Supreme Court said
6 that a couple times already. And as I indicated Exhibit
7 Number One says that in South Carolina the L.S.R.P.
8 applies to assigned risk policies after they were issued
9 after November 1 of 2003. And that's the sole issue in
10 this case.

11 Mr. Ard's assigned risk policy, Your Honor, was
12 applied for November 6th 2003. Was issued November the
13 7th 2003. So a week after the L.S.R.P. became effective
14 in South Carolina.

15 Now, Your Honor, the other issue with the Workers
16 Compensation Insurance Plan the Workers Compensation
17 Insurance Plan says that a Producer that Mr. Ard used to
18 submit the assigned risk application to the N.C.C.I. is as
19 a matter of law the agent of the Plaintiff, not the
20 servicing carrier. So anything that the Producer failed
21 to do or didn't fail to do that's between the Plaintiff
22 and his own agent and is not attributed to the servicing
23 carrier.

24 That's consistent with the testimony in this case of
25 both the Producer and everybody from the Plaintiff

1 testified that the Producer was the Plaintiff's agent not
2 the servicing carrier's agent. Now, Your Honor, the
3 assigned risk application says, "That the Plaintiff agrees
4 to be bound by the W.C.I.P. and bound by the L.S.R.P. if
5 the L.S.R.P. is applicable in South Carolina."

6 And, Your Honor, in my memorandum on Page One I've
7 got the specific language where it says, "That the
8 undersigned applicant understands that because he is
9 unable to secure workers compensation coverage through any
10 other insurance provider; that would be the voluntary
11 market that this coverage is being afforded through the
12 Workers Compensation Insurance Plan in that the rates
13 charged may be higher than those in the voluntary market."
14 As you can imagine the rates are going to be higher.

15 It also says, "The following statement is only
16 applicable in jurisdictions where N.C.C.I. has been
17 approved for use." And I remind you that in South
18 Carolina it has been approved for use -- well, six months
19 before but that it became implemented a week before this
20 policy to Mr. Ard was issued.

21 It says, "By signing below I acknowledge that the
22 N.C.C.I. Loss Sensitive Rating Plan has been explained to
23 me or that explanatory notice or brochure has been
24 provided to me, and I agree that I shall be bound by this
25 such plan." And it goes on to say, "If the premiums are

1 triggered for that plan then the servicing carrier can
2 charge that premium."

3 Now, Your Honor, the binder and the policy itself has
4 similar language where the policy says, as far as charging
5 premium and this is on Page Seven of my memo, "All premium
6 for this policy will be determined by our manuals of
7 rules, rates, rating plan and classification. We may
8 change our manuals and apply the changes to this policy as
9 authorized by law or a governmental agency regulating this
10 insurance," which would be the N.C.C.I.

11 It says, "That please note that premiums may be
12 assigned higher than the standard voluntary market."
13 Importantly, it says, "Coverage is being bound subject to
14 your signed statement acknowledging and agreeing to the
15 terms of the L.S.R.P. in the event that your estimated
16 annual premium or preliminary physical audit meets or
17 exceeds the premium eligibility requirement."

18 So, Your Honor, what happened in this case was
19 Travelers sent the following documents, three documents,
20 to the Plaintiff and the Producer. The first document, in
21 accordance with the initial policy, and this is an
22 N.C.C.I. form that is a standard form that is required by
23 the N.C.C.I. The servicing carrier cannot vary this form.
24 It is the Assigned Risk Loss Sensitive Rating Plan
25 Notification Endorsement.

1 Your Honor, that is the first endorsement that is
2 required the servicing carrier to send. That is the
3 endorsement that you're going to hear about a little bit
4 from Mr. Driggers. That's the endorsement that does not
5 have South Carolina listed on it. That's what's required
6 in South Carolina, and this is reflected in Exhibit Number
7 One. You can see where that form is there as well.

8 Your Honor, after the amount of premium was sent to
9 N.C.C.I -- this is a larger employer. We're talking about
10 a multi-million dollar employer here, the W.C.I.P. says
11 that there is an initial interrump audit which hasn't been
12 marked since 2014. When that happened that triggered the
13 L.S.R.P. requirements which meant that pursuant to the
14 W.C.I.P. Travelers then had to send a rewritten assigned
15 risk policy with another N.C.C.I. form, the mandatory
16 assigned risk loss sensitive rating plan endorsement.

17 The first one was the notice which is Exhibit Six.
18 The second one is the mandatory which is Exhibit Nine.
19 And, finally, the third document, Your Honor, is the Loss
20 Sensitive Rating Plan L.S.R.P. Employer's Guide for the
21 Mandatory Assigned Risk Program which is also prepared by
22 N.C.C.I. and written by N.C.C.I. All of those three
23 documents the servicing carrier was required to forward to
24 the Plaintiff and the Producer or forward to the Plaintiff
25 and Producer. The Plaintiff and Producer have admitted

1 that they have received each of those three documents.

2 Okay. Your Honor, the Producer testified that when
3 he first wrote the policy to Mr. Ard he himself did not
4 know what the L.S.R.P. is. That's unfortunate, but that's
5 what he testified to. He discovered about -- and this is
6 his testimony. It's in my memo. That once the interrump
7 audit had taken place and the rewritten policy was issued
8 with the explanatory booklet he learned about the L.S.R.P.
9 policy and then told the Plaintiff about the L.S.R.P.
10 policy.

11 At that point the Producer asked and W.C.I.P.
12 required an L.S.R.P. deposit, and what the Plaintiff did
13 was issue an irrevocable letter of credit in order to
14 satisfy that deposit. And the Plaintiff can do that. So
15 Travelers requested an L.O.C., Letter of Credit, and the
16 Plaintiff issued a letter of credit. That was for
17 approximately \$52,000, Your Honor.

18 After that -- that was all during the policy period.
19 At the end of the policy period and this is after the
20 interrump audit there was the final audit W.C.I.P. and at
21 that final audit Travelers determined that there was an
22 additional \$29,000 owed pursuant to the W.C.I.P. Nothing
23 to do with the L.S.R.P. They issued that bill to
24 Plaintiff. Plaintiff did pay that bill. Then the
25 L.S.R.P. bill came, and the Plaintiff did not pay the

1 L.S.R.P. bill. And the L.S.R.P, Your Honor, is three
2 different valuations -- four different valuations over a
3 period of months after the policy ends.

4 And, Your Honor, that L.S.R.P. bill was for
5 approximately \$175,000. The Plaintiff refused to pay for
6 the bill so Travelers drew on the letter of credit. So
7 Travelers is still owed approximately \$120,948. Your
8 Honor, that's just the key facts of the case.

9 Flipping very quickly to argument, and I know it
10 looks like alphabet soup with a lot of L.S.R.P. and
11 W.C.I.P. but the details are important. We have three
12 affidavits from our experts: Underwriter, auditor and
13 L.S.R.P. expert. It says, "The servicing carrier did
14 everything that they were supposed to do. The Plaintiff
15 has failed to list any expert at all, and there is no
16 testimony that the servicing carrier violated any
17 standards of care at all."

18 Finally, Your Honor, the Plaintiff did not appeal
19 Travelers decision until the Rule Four, which is in my
20 memorandum -- in my memorandum of the W.C.I.P. which says,
21 "If you have a problem with these issues you have to
22 appeal it to the N.C.C.I. which is the administrative
23 body. The Plaintiff never did that.

24 So the Plaintiff cannot collaterally attack Travelers
25 in N.C.C.I. decision in this court here today when they

1 abandoned their appeal right to get an administrative
2 decision cause, Your Honor, an unchallenged ruling of an
3 administrative body is the law of the case.

4 Your Honor, I quickly move to the very first
5 endorsement, the notice endorsement that does not
6 specifically list South Carolina. N.C.C.I. in its wisdom
7 mandated that the notice endorsement was to go out without
8 having South Carolina listed. That's their key argument
9 that the servicing carrier should be estopped from saying
10 that L.S.R.P. applies. This is under the first
11 endorsement.

12 But, Your Honor, that issue has already been
13 litigated in South Carolina and through the reported
14 decision, Georgetown Steel Company v. Capital City
15 Insurance Company. And in that case, Your Honor, that's a
16 bankruptcy case. Not a Court of Appeals or a Supreme
17 Court case. And in that case the court said that use of
18 standard forms and policies such as the notice endorsement
19 that was pled here did not have South Carolina is not
20 ambiguous to a person in South Carolina as a matter of
21 law. The assignments application of the W.C.I.P. and the
22 assignment of the policy put the insured on notice of the
23 L.S.R.P. and its details as a matter of law."

24 The Court held that, "An insured is examined the
25 South Carolina plan determined the specific factors

1 applicable to all policies written under the assigned risk
2 claim. And that the standard L.S.R.P. endorsement drafted
3 and incorporated by N.C.C.I." So, Your Honor, there is
4 already a reported decision rejecting the argument that
5 Plaintiffs are going to make.

6 Also, Your Honor, the Plaintiff admitted that he
7 didn't even read or review the application before he
8 signed it, and in key parts of their deposition testimony
9 the Plaintiff and his safety director admitted that they
10 didn't read or review the notice endorsement and didn't
11 rely on it. So there is no -- there is means and
12 knowledge, and ignorance of the law is no excuse. And
13 there is also actual knowledge.

14 But also the Producer himself testified that he knew
15 about the L.S.R.P. before the I.L.S.C. was given to
16 Travelers. Therefore, that's imputed knowledge to the
17 principal as a matter of law. So, Your Honor, what this
18 basically comes down to is a simple question: Does the
19 L.S.R.P. apply. And because, as a matter of law, the
20 W.C.I.P. mandates that the L.S.R.P. apply. It does in
21 this case.

22 So, Your Honor, nothing further unless you have any
23 questions.

24 THE COURT: Thank you.

25 MR. FERDERIGOS: Thank you for your patience.

1 THE COURT: Mr. Driggers.

2 MR. DRIGGERS: Your Honor, ordinarily any case
3 involving insurance policy, in my experience over the
4 years, the insurance company has been the one who said,
5 'read the fine print'. In this case the insured, Mr. Ard
6 here, is the one who tells the insurance company, 'read
7 your own policy'.

8 The basics that we are relying on in this case have
9 not been changed and they are not changed by the fact that
10 the South Carolina Insurance Commission permits insurance
11 company to impose certain requirements on the insured. We
12 believe in spite of all that that there is also -- there
13 always exists a basic rule of insurance contract law that
14 applies to this case.

15 An insurance company, if they had intend for
16 something to be stated in their policy then they have an
17 obligation to state in their policy clear, plain language
18 and unambiguously what they intend to do. In this case
19 you will see in a moment the insurance company
20 specifically told Mr. Ard that there is this L.S.R.P, the
21 Loss Sensitive Rate Plan, which is adopted and has been
22 agreed to by the South Carolina Insurance Commission.

23 It can be imposed on an insured, but they told him in
24 his policy it didn't apply to South Carolina. And as
25 counsel for the insurance company just stated this is a

1 plan that went into effect on November 1, 2003. That's
2 the same time Mr. Ard was looking for a policy to cover
3 his company for worker's compensation beginning November
4 6, 2003. Well, not a week's time. Nobody ever told him
5 that South Carolina had adopted this L.S.R.P. Plan on
6 November 1, 2003.

7 And like I first said it's kind of hard to organize
8 it and explain it. I'm hoping for the Court to
9 understand, but let me stop right there and tell you that
10 very interestingly when Mr. Ard applied for the policy the
11 only thing they asked him to do was sign that application.
12 And in his affidavit, and I'm going to hand it up to you
13 right now. It's in the record already, but several
14 documents in here that I'd like to point out to you.

15 But when he -- when Mr. Ard was looking for insurance
16 at that time his agent on his deposition Mr. Ard put they
17 never heard of the L.S.R.P. They didn't know a thing
18 about it. And there is a statement in there that to the
19 effect on the application. "If the L.S.R.P. applies to
20 your jurisdiction you will be bound by it."

21 But they didn't tell them he was -- that this
22 particular L.S.R.P. feature had been adopted in South
23 Carolina. And when the policy was delivered a month later
24 it specifically told him that L.S.R.P. did not apply in
25 South Carolina. So on that basis alone we believe that

1 Mr. Ard is entitled to rely on the contract issued by the
2 insurance company.

3 Interestingly, within about -- I think it was three
4 months later the insurer in this case, Travelers, went
5 through a transformation, reorganized itself, and they
6 issued Mr. Ard a second policy. Same coverage terms, and
7 it had the identical endorsement in that -- in the policy
8 that stated, "This L.S.R.P. does not apply in South
9 Carolina." And I'll sure there is more specific language.

10 So not only do they tell him when the first policy
11 was issued on December 1st he never heard of it before.
12 Oh, L.S.R.P., don't worry. That doesn't apply in South
13 Carolina. Then on March the 1st 2003 -- do you have a
14 copy of that for the Court? Again, they failed the same
15 thing. They said "The L.S.R.P. does not apply in South
16 Carolina."

17 And, Judge, I think anybody should be able to rely on
18 what the insurance company says. I don't know why the
19 insurance company said that when they could have said that
20 in South Carolina the L.S.R.P. does apply in South
21 Carolina. But they specifically told Mr. Ard it does not.
22 They have him a list of I think ten states that -- where
23 it was covered, and South Carolina was not listed. Let me
24 show that document to you. It's in Mr. Ard's affidavit.
25 I'm under the policy listing. If you want to look at it.

1 You're looking at Mr. Ard's affidavit.

2 Under the second exhibit which is the policy itself.
3 There is the policy if you want to pull it out and look at
4 it yourself. It might be helpful, but anyway, this is the
5 entire policy issued to Mr. Ard. The only mention in this
6 entire policy of L.S.R.P, Loss Sensitive Rating Plan, is
7 on an endorsement entitled, "Assigned Risk Loss Sensitive
8 Rating Plan Notification Endorsement." Now, this
9 endorsement is very interesting.

10 The counsel for Travelers included this in his brief.
11 A manual that was adopted by the South Carolina Insurance
12 Commission when it allowed insurance companies to impose
13 an L.S.R.P. requirement on their -- on people who buy
14 insurance. And it's about a 20 page document inside
15 Phillip's brief. And it says, "State special rating plan
16 and assigned risk mandatory lost sensitive rating plan,
17 L.S.R.P, South Carolina." And it's numbered, South
18 Carolina Department of Insurance, 00020.

19 And it states the basic manual insert, and in this
20 basic manual it -- not only does it address L.S.R.P. and
21 how it can be applied in South Carolina. Very
22 importantly, if I can show you on this page here. If you
23 look at Page Ten of the manual, and it's listed S.C.D.O.I.
24 00029. Do you have a copy of that, by the way, sir? If
25 you don't I'll hand this up to you.

1 THE COURT: If you could hand that to me. I don't
2 see that here.

3 MR. DRIGGERS: This was from the South Carolina
4 Insurance Commission, and it specifically states on that
5 form there what the insurance company must do that adopts
6 the L.S.R.P. And I've blown it up here, and it says right
7 here, "Notice." Now, we all know that notice is an
8 important concept under the law, and the Insurance
9 Commission notice to assigned risk policy holders.

10 Now, what it tells and first, right off the top, all
11 assigned risk policies shall be endorsed with policy
12 endorsement W.C.000417, and I'll show you that second page
13 here is that 000417, Assigned Risk Policy Sensitive Rating
14 Plan Notification Endorsement required by the South
15 Carolina Commission.

16 Okay. Assigned Risk Loss Sensitive Plan
17 Notification, "In order to insure that all possible
18 qualifying risks are notified of the intent and details of
19 the plan all assigned carriers shall be required to attach
20 this endorsement to all assigned risk policies." All
21 right, sir. And so what happened? In November 2003 when
22 the issue of this policy to Mr. Ard following the order of
23 the South Carolina Insurance Commission under to attach
24 this 17, "In order to insure that all possible qualifying
25 risks are notified of the intent and details of the plan

1 shall be required to attach."

2 This is what they sent. "The endorsement is issued
3 because you may qualify to have the cost of your insurance
4 subject to the assigned risk mandatory loss sensitive plan
5 eligibility," and it lists here certain requirements in
6 order for this required endorsement to apply to the
7 insured and the policy being issued.

8 At the bottom it says, "This endorsement applies in
9 the states listed in the schedule below. Schedule
10 states -- and the premium goes up if you meet a certain
11 threshold of premium that would kick in." I won't read
12 them all, Judge. Closest thing to South Carolina on this
13 list is South Dakota. No South Carolina listed anywhere.

14 This was the notice pursuant to the South Carolina
15 Insurance Commission order for insurance companies to
16 notify Mr. Ard concerning the loss sensitive rating plan.
17 And what did they tell him? "This endorsement applies in
18 the states listed in the schedule below." South Carolina
19 is not listed.

20 Now, that is plain. That is unambiguous. I don't
21 think any first grader could read this and you ask him,
22 'Does this endorsement apply in South Carolina'? He looks
23 at the list of states and clearly it does not. And
24 Mr. Ard didn't draw this up. Mr. Ard received it when he
25 got his policy issued to him and after he paid his premium

1 and it bound him and actually it's on December 1st 2003.
2 This particular form, however, is dated March 1, 2004.
3 They reissued the same thing when that changed their name
4 three months later. They sent him the same form and again
5 told Mr. Ard the same thing, "This endorsement applies in
6 the states listed in the schedule below, and here is the
7 list."

8 Now, the case that Mr -- that Mr. Phillip -- I
9 apologize for not calling you by your last name, but it's
10 Greek to me.

11 MR. FERDERIGOS: That's okay.

12 MR. DRIGGERS: Judge, hold on one second, please.

13 THE COURT: Hold on. You ready. Okay.

14 MR. DRIGGERS: Your Honor, as I understand the theory
15 of Travelers, and by the way, Your Honor, the -- Mr. Ard's
16 company is the plaintiff in this case. He brought the
17 lawsuit to recover the money that he understood would be
18 applied to the final premium of coverage in this case.
19 And like all worker's compensation insurance policies
20 insurance companies reserve the right to come in at the
21 end of the year and do an audit to make sure that all
22 employees are accounted for and their job titles and the
23 rating and risk is properly accounted for.

24 And they did that, and the policy they issued
25 Mr. Ard, too, the one that you have before you there, if

1 you look back just a page or two before that there is
2 about five pages called 'Worker's Compensation Employer
3 Liability Insurance Policy', and it tells him that you pay
4 a premium based on your rate and it would be rated up
5 because it's worker's compensation and it's also because
6 it's a target insured to worker's compensation and you are
7 an assigned risk insured. It's going to be rated up. Pay
8 for it.

9 But by the end of the year we will send you a final
10 premium, and they did. They sent a final premium in
11 January of 2005 -- excuse me. February of 2005, and he
12 paid it before it was due, 29,000 additional dollars.
13 That did not take into account a lump sum of money that
14 they had asked him to put up in a line of credit with
15 Mr. Ard. And if you look at the line of credit you won't
16 see loss sensitive rating plan on that line of credit
17 anywhere.

18 In fact the only place you see loss are -- those
19 initials and that term, L.S.R.P. on the policy they issued
20 to him is that one endorsement telling him that it doesn't
21 apply in South Carolina. So it's not anywhere on here
22 that put Mr. Ard on notice. They didn't tell him about it
23 until he got the policy. It wasn't even in effect until
24 the week before he started, and he had not met the
25 threshold that they claim on his premium because his

1 premium was hundreds of thousands of dollars. Nobody said
2 anything to him about L.S.R.P. ever being involved in the
3 policy so he never had a reason to go look for it.

4 I think, again, I keep repeating myself. An
5 insurance company must put in their policy what they
6 expect to rely on, and an insured can rely on the policy
7 issued to them. So Phillip indicates this case and he
8 cites it in his brief. I've cited it in my brief. I
9 think the case is a great case. The case stands for the
10 proposition that I maintain Mr. Ard's entitled to, and
11 I'll give you a copy of that case, Your Honor.

12 It's a bankruptcy case. I don't know how they
13 managed the trial in bankruptcy. I don't think they would
14 have a jury, what have you, but in this case let me give
15 you some of the background on this case. The plaintiff in
16 this case was Georgetown Steel, and the defendant was
17 Capital Insurance Company. And it was a worker's
18 compensation insurance policy.

19 Interestingly, in this case, and it's by the way the
20 case was decided in April of 2004 which is just within a
21 year and a half after Mr. Ard took out the policy. But
22 this case is very similar in many respects. The insurance
23 company first of all had a policy that was issued to them,
24 and they -- while that policy in issue they had -- they
25 were going through some financial difficulties. And at

1 some point in time a second policy was issued. So two
2 policies issued in this case.

3 And there were endorsements filed and -- on the
4 policy. Very similar. This very same endorsement --
5 where is the number? 0417 was important in this case.
6 And it was not just like this one but just like the one
7 this company did. We'll talk about that in just a moment.
8 But, anyway, so policy was issued and one of the
9 endorsements which was a detailed explanation about the
10 L.S.R.P. premium was to be determined.

11 In the Georgetown case had a worksheet page on it.
12 Hear it is. The last page of this endorsement which is
13 0418 is one right behind this -- and by the way, this
14 endorsement was not on Mr. Ard's original policy guide.
15 It was not there. And the last page, and again, it's a
16 detailed several pages, but it details how the L.S.R.P. is
17 being computed. On the last page, if you will see there,
18 there is a little worksheet for an example of how the
19 L.S.R.P. is computed.

20 Now, I don't think I would have done this but for
21 anybody, but the lawyer for Georgetown Steel, and I don't
22 know his name. I don't want to disparage him, but he said
23 in that case the fact that there were zeros down there
24 next to the L.S.R.P. on that worksheet form there negated
25 the application of L.S.R.P. to the policy issued to

1 Georgetown Steel. But, Judge, I don't think it would take
2 a long time to decide that that was not -- that wasn't
3 such a hot argument. And the court didn't buy it. They
4 said, "That's just a worksheet. That's just a form. That
5 doesn't mean that there is no charge for L.S.R.P. There
6 is nothing to base it on. Those zeros there are just put
7 there on a blank form."

8 And you can't transform the policy and say that the
9 L.S.R.P. doesn't apply, and that form, by the way, is
10 right on the schedule. A larger endorsement explains how
11 the L.S.R.P. system works. They told -- and so the court
12 threw that argument out and ruled in favor of the
13 insurance company and said that L.S.R.P. does apply and
14 just because an insurance company puts a form like that on
15 to a policy it does not have figures on it is not a reason
16 to change the intent of the whole policy.

17 Now, importantly, very importantly, Georgetown Steel
18 case, and if you look on that case, Your Honor, on about
19 the third page and this is all cited in my brief. Let me
20 find it. It says the following. And by the way, the
21 court also points out in the -- and the Georgetown Steel
22 case points out the following: General rules of contract
23 instruction pursuant to South Carolina law apply. And
24 he's talking about a policy here, Judge, very similar.
25 Worker's comp policy that has an insurance company trying

1 to impose the L.S.R.P. provisions upon the insured. He
2 says, "General rules of contract instruction pursuant to
3 South Carolina law applies." There is Page 3 -- 5 of my
4 brief. The intent of the parties is to be primary
5 considered which can be ascertained from the language of
6 the policies. It give citations. "If the language is
7 clear and unambiguous the language alone is controlling.
8 If capable of two reasonable interpretations that
9 construction which is most favorable to the insured will
10 be adopted."

11 Then he turns -- the court turns to addressing the
12 arguments and the policy before the court in the
13 Georgetown case. And I think it's important here it says
14 that -- one second. It says in determining that the
15 insured was bound by the L.S.R.P. in the Georgetown case
16 and this is -- I think it's Page 313 on the bankruptcy
17 case. Perhaps the most telling of the policies with
18 respect to the application of L.S.R.P. is the endorsements
19 included in the policy. The policies contain -- these are
20 two policies. One that the first issue. The second
21 issue.

22 He says, "The policy contain -- I'm reading from the
23 Court's order, and it says here, 'assigned risk loss
24 sensitive rating plan notification endorsements'. All
25 right, sir. He goes on to say, "The endorsements provides

1 as follows." We're talking about -- please understand
2 that we're talking about the Georgetown case endorsement.
3 And this is what they said, "This plan will adjust your
4 premiums for this insurance based upon the losses incurred
5 during the period covered by the insurance. The
6 endorsement further specifies specific that -- and this is
7 very important, your insurance is written under South
8 Carolina Worker's Compensation Assigned Risk Plan that has
9 adopted the loss sensitive rating plan. There is nothing
10 like that language on the same endorsement that they
11 attached to Mr. Ard's first policy. And they attached to
12 his second policy.

13 And so this case is clearly distinguishable, and the
14 Georgetown case that Travelers relies upon the court
15 clearly found that they had -- they did what they were
16 supposed to do. They used this like the Insurance
17 Commission told them to do it, notifying the insurance --
18 the insurer. Notify them so that they understand all
19 risks or notify them. And they did this, and they didn't
20 put down here.

21 Instead of saying, 'this endorsement applies to
22 states listed below and not put South Carolina'. They
23 said, 'your insurance is written under South Carolina
24 Worker's Compensation Risk Plan and has adopted the loss
25 sensitive rating plan'. That's what they said. What

1 Travelers says is the only way you can read that at all is
2 that South Carolina is not covered by L.S.R.P. plan.

3 And so at the end of the year Mr. Ard paid the final
4 premium off. I think that was in February. In June or
5 July I think it was they notified him for the first time,
6 'oh, by the way, Mr. Ard, you owe us another premium of
7 \$75,000 under this L.S.R.P. plan. He admittedly asked for
8 legal assistance to look into the policy and see what
9 we're talking about. He never heard of that. And low and
10 behold we go looking and we didn't find anything like that
11 in the policy.

12 What they said is we found South Carolina did not --
13 was not covered by the L.S.R.P. by their own written
14 endorsement. I want to also point out just momentarily
15 get back to the Georgetown case. It says that in the case
16 that in that particular policy that I find -- bear with me
17 just one second, Your Honor. It says that the policy in
18 the Georgetown case was replete with reference to
19 applicability of an L.S.R.P. There is not one word in
20 that policy that was issued to Mr. Ard in December that
21 said one word about that endorsement. In fact just the
22 opposite.

23 The only mention of L.S.R.P. said it was not
24 applicable in South Carolina. For those reasons we resort
25 to the same common law that we recited in the case before

1 you there by the bankruptcy court. Contract rules should
2 apply. Notice rules should apply. The South Carolina
3 Insurance Commission had a special requirement to notify
4 their insurer by endorsement that they were covered under
5 that policy in South Carolina by L.S.R.P. They told Mr.
6 Ard just the opposite.

7 So, again, Your Honor, it's our position that the
8 policy speaks for itself, and of course, if it's not
9 covered by the L.S.R.P. Mr. Ard had no duty to do anything
10 with respect to the L.S.R.P. including any type time of
11 appeal. They didn't -- he didn't think it ever applied.
12 He still doesn't because they told him it did not. Thank
13 you.

14 THE COURT: Thank you.

15 MR. FERDERIGOS: Thank you. Your Honor, if I may
16 just very quickly.

17 THE COURT: Yes, sir.

18 MR. FERDERIGOS: Your Honor, ignorance of the law is
19 not an excuse. The W.C.I.P. is the law. And the L.S.R.P.
20 applies to this policy as a matter of law. Anything the
21 producer failed to say or not say, and at a certain point
22 Mr. Driggers said they didn't notify him of this. They
23 didn't notify him of that. That's the producer. That's
24 his own agent, not the servicing carrier.

25 Your Honor, I'm not going to read the Georgetown

1 decision to you or cherry pick parts to read to you. If
2 you read to Georgetown decision you will see that it
3 rejects the Plaintiff's arguments. The noticed
4 endorsement that is blown up over there, Your Honor,
5 without South Carolina listed, is what is referred to in
6 the Georgetown decision. And, Your Honor, at that point
7 in time South Carolina was not listed on that endorsement.
8 That's an N.C.C.I. requirement, Your Honor.

9 Mr. Driggers argued that the servicing carrier could
10 have added this or take that out. The servicing carrier
11 had no authority to do that under the plan administered
12 through the state.

13 Your Honor, the Plaintiff's counsel did not bring to
14 your attention the second policy that they admitted they
15 received. The rewritten policy has a mandatory
16 endorsement as well as a notice endorsement, and that's
17 what the W.C.I.P. requires. Initially it goes out with
18 that endorsement, the notice endorsement. If there is an
19 interrump item and it triggers the L.S.R.P. and in this
20 case there was, they send it out with that again and the
21 mandatory endorsement which is listed as Exhibit Nine.

22 They've admitted that they received that, but Mr.
23 Driggers didn't talk about that today. That's what the
24 W.C.I.P. requires the servicing carrier to do. Send out
25 that document, send out the mandatory endorsement, send

1 out the booklet. That's what the servicing carrier did.
2 There is no expert testimony from the other side to prove
3 their case.

4 And, finally, Your Honor, as far as the final bill
5 argument by it's nature an L.S.R.P. retrospective planning
6 you can't jus quote Part E of the manual and ignore Part A
7 that said that the W.C.I.P. determines our ratings.

8 So, Your Honor, for all those reasons it's a simple
9 case of what I started off with at the beginning. The
10 Plaintiff signed an application that he didn't read that
11 says he's bound by the W.C.I.P. The policy says he's
12 bound by the W.C.I.P. He's bound by the W.C.I.P. and all
13 of these arguments are just background noise. They're not
14 really relevant. To the contrary. Thank you, Your Honor.

15 THE COURT: All right, gentlemen, I want proposed
16 orders in 20 days. Exchange any briefs that you want to
17 present to the Court.

18 MR. FERDERIGOS: Thank you, Your Honor. And also
19 there may have been some few pages, Pages 33 and 34, of my
20 Exhibit A, and Page 12 and Page 16 of Exhibit 16 that may
21 not have made it with my filings. May I submit those to
22 the Court?

23 THE COURT: Yes, sir.

24 MR. FERDERIGOS: They're in my brief. I referred to
25 them, but they may not have made it into my brief. Thank

1 you, Your Honor.

2 END OF TRANSCRIPT OF RECORD

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Darlington County, South Carolina, on the 18th day of December, 2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

June 22, 2015

[Handwritten signature]

HATTIE O. GORDON, Court Reporter

61
STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE ☒ COURT OF COMMON PLEAS
FAMILY COURT

Ard Trucking Company)

CASE NO.: 2010-CP-16-0435

☐ Plaintiff)

v.)

Travelers Property Casualty Company)

Of America d/b/a The Travelers)

Indemnity Company of Illinois,)

☒ Defendant)

MOTION INFORMATION FORM
AND COVER SHEET

COPY

name, S.C. Bar no. and address of plaintiff's attorney

Martin S. Driggers, Sr., Esq.

Driggers & Moyd

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Barnwell Whaley Patterson & Helms, LLC

PO Drawer H

Charleston, SC 29402

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fax: 843-577-7708

e-mail: pferderigos@barnwell-whaley.com

☒ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

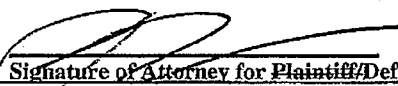
Estimated Time Needed: 45 minutes

Court Reporter Needed: Yes

SECTION II: Motion Type

☒ Written motion attached

Form Motion I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff/Defendant

September 15, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25 when Motion was filed

EXEMPT:
(check reason)

Rule to Show Cause in Child or Spousal Support

Domestic Abuse or Abuse and Neglect

Indigent Status

State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRCP)

Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

Other: Order of Protection (vacation)

2014 SEP 16 AM 10:58
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

FILED

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE

Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

MOTION FEE COLLECTED: _____

CONTESTED - AMOUNT DUE: _____

TRUE CERTIFIED COPY,



CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)
C/A NO. 2010-CP-16-435

Ard Trucking Company,

Plaintiff,

vs.

Travelers Property Casualty Company
Of America d/b/a The Travelers Indemnity
Company of Illinois,

Defendant.

**MOTION FOR SUMMARY
JUDGMENT**

SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

2014 SEP 16 AM 10:58

FILED

TO: MARTIN S. DRIGGERS, SR., ESQUIRE, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that within ten (10) days or as soon thereafter as counsel for the Defendant may be heard, Defendant will move pursuant to SCRCF Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment to Defendant Travelers Property Casualty Company of America (hereinafter "Travelers") as no genuine issue of fact exists and Travelers is entitled to the premium it seeks pursuant to its Assigned Risk policy and the Workers' Compensation Insurance Plan (WCIP).

A. BACKGROUND

South Carolina law provides for a workers' compensation market for workers' compensation policies of last resort, generally referred to as Assigned Risk workers' compensation policies. Assigned risk policies are for high risk employers who are unable to obtain workers' compensation coverage in the voluntary market. Assigned risk policies are issued pursuant to the WCIP and are administrated through the NCCI.¹ NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina.

¹ For those entities that cannot obtain workers' compensation coverage in the voluntary market, the State has an established "assigned risk" or "residual market." Rates for such a program are established by the State, and rules and procedures have been promulgated by the State as they relate to the assigned risk market – the South Carolina Workers' Compensation Assigned Risk Plan (WCIP), operating rules and procedures. The Plan administrator for the residual market is the National Council on Compensation Program, Inc. (NCCI).

SCOTT B. SUGGS
CLERK OF COURT/RMO
DARLINGTON COUNTY, S.C.

APPELLANT ROA 0062

This matter involves a premium dispute wherein Plaintiff alleges Travelers improperly charged Plaintiff premium pursuant to the WCIP's Loss Sensitive Rating Plan (LSRP). In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms, Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.² The LSRP is a plan that adjusts the premium for an Assigned Risk policy, following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. Pursuant to the WCIP, based on Plaintiff's payroll, Plaintiff's Assigned Risk policy triggered the LSRP under the WCIP. Accordingly, pursuant to South Carolina law and the WCIP, Travelers, as the servicing carrier, is entitled to the additional premium it seeks pursuant to the LSRP.

B. FACTS

Ard Trucking Company submitted an Assigned Risk application for an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP through its producer, Michael P. Hair & Associates, Inc. on 11/6/03. Pursuant to the application, Plaintiff agreed to be bound by the WCIP. Plaintiff also acknowledged the LSRP was explained to Plaintiff and that an explanatory notice or brochure had been provided to Plaintiff and that Plaintiff would be bound by the LSRP if Plaintiff's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 1/20/03, NCCI assigned Travelers to be the servicing carrier based on the Ard Trucking Company's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period effective 11/7/2003.³

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on the Plaintiff's Assigned Risk application and issued an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period of 11/07/03 to 11/07/04. The Assigned Risk policy issued to Plaintiff contained the Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Pursuant to the WCIP rules, Travelers performed a preliminary audit of Plaintiff's payroll in

² Per South Carolina law and the WCIP, based on the Plaintiff's payroll, premium is properly charged pursuant to the LSRP.

³ Admittedly, Plaintiff testified that he did not review his application before he signed it, did not read his entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by.

February, 2004. The preliminary audit's payroll triggered the WCIP LSRP provisions. On or about March 1, 2004, Travelers then issued a rewritten Assigned Risk policy, which included the "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI.⁴ On or about March 1, 2004, Travelers also sent Ard Trucking Co. and its producer a letter advising that the Ard Trucking Company Assigned Risk policy had been issued as part of the mandatory LSRP and also provided Plaintiff and its producer with an explanatory booklet entitled "*The Loss Sensitive Rating Plan (LSRP): An employer's guide to the mandatory Assigned Risk retrospective rating program.*" Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and Ard eventually provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (LOC) for \$52,116.

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited Ard Trucking Company with an Annual Physical and issued a final bill to Ard Trucking Company.⁵ In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated an LSRP bill for Plaintiff based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. Plaintiff refused and has continued to refuse to pay Travelers' bill for additional premium owed per the LSRP. However, Plaintiff did not contest Travelers' LSRP determination with Travelers by filing a written request for a reconsideration or appeal, and Plaintiff did not appeal any determination to the NCCI. Ard Trucking Company did not appeal Travelers' LSRP determination to NCCI as required pursuant to WCIP Rule 4.⁶

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium for payroll that triggers the LSRP. In this case, Plaintiff's payroll triggered the LSRP for Assigned Risk policies, and Travelers, the servicing carrier, is entitled to the premium it seeks as a matter of law.

⁴ Plaintiff and his representatives have testified that they do not know if they received the rewritten Assigned Risk policy or the booklet in March of 2004. Travelers' representatives will testify that these items were sent to the Plaintiff and its producer. Nevertheless, whether or not these items were sent or received by Plaintiff is irrelevant as the LSRP applies to South Carolina assigned risk policies as a matter of law.

⁵ The WCIP and the Assigned Risk policy allow an applicant to obtain an assigned risk policy via an estimate based on the representations of the Plaintiff and its producer. Based on the Plaintiff's application, Plaintiff was issued a South Carolina Assigned Risk policy. After the initial interim audit, per the WCIP and policy terms, Travelers determined the Plaintiff's premium triggered South Carolina's LSRP applicable to assigned risk policies. Based on the WCIP and applicable audit standards, Travelers was entitled to an additional premium of \$175,064 based on the LSRP. Travelers issued a premium bill to the Plaintiff for the additional \$175,064 in premium owed. Plaintiff refused to pay the additional premium owed. Subsequently, per the LSRP, Travelers drew upon the \$52,116 LOC and Plaintiff still owes Travelers \$122,948 for premium owed.

⁶ Indeed, Plaintiff did not appeal any issue to NCCI as is required by WCIP Rule 4.

C. DISPOSITIVE LEGAL ISSUE

No dispute exists between the parties concerning the amount of payroll/remuneration Plaintiff paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to Plaintiff's South Carolina Assigned Risk policy. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to Plaintiff's South Carolina Assigned Risk policy. Through his producer, Plaintiff submitted an Assigned Risk application and was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, Plaintiff agreed to be bound by the terms of the WCIP.⁷ The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to the Plaintiff pursuant to WCIP. Accordingly, as LSRP applies to Plaintiff's Assigned Risk policy, Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

1. WCIP HAS THE "FORCE OF LAW."

In South Carolina, the WCIP has the force of law. According to the applicable provisions of the South Carolina Assigned Risk plan, the WCIP, as administered by NCCI, is the only "mechanism" in the state for implementing the Assigned Risk pool and has been approved by the Director of the Department of Insurance for use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an Assigned Risk plan by approving the WCIP for its use in the Assigned Risk practice in this State. Id. The WCIP provides the framework for the Assigned Risk pool and includes numerous provisions governing Assigned Risk practice. Id. Without the WCIP, there would be nothing guiding Assigned Risk practice and its procedure, such as an employer's application process for Assigned Risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an Assigned Risk policy is by applying through NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. NCCI is designated in the WCIP as the "plan administrator." Id. The Supreme Court affirmed that WCIP rules have the "force

⁷ This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that he is not bound by the LSRP, and (2) that the carrier is estopped from seeking the additional premium it is owed pursuant to the LSRP.

of law” concerning Assigned Risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the Assigned Risk Basic Manual and Supplement “is controlling law with respect to the issues it addresses.”

2. SOUTH CAROLINA ASSIGNED RISK POLICIES APPLY THE LSRP FOR ASSIGNED RISK POLICIES ISSUED AFTER NOVEMBER 1, 2003

In South Carolina, Assigned Risk policies are governed by the WCIP. Pursuant to S.C. Department of Insurance, the LSRP applies to South Carolina Assigned Risk policies issued on or after November 1, 2003. The South Carolina Department of Insurance has verified:

“Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the assigned risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.”

In South Carolina, the WCIP has the force of law. The South Carolina Department of Insurance has verified that (1) the LSRP applies to Assigned Risk policies on or after November 1, 2003. Specifically, the South Carolina Department of Insurance has verified the above via its letter dated June 24, 2014 and accompanying documents Bates stamped SCDOI 0001 – 00040 attached as Exhibit 1 to this Motion. Accordingly, as a matter of law, as the Plaintiff’s Assigned Risk policy was applied for on 11/6/03 and was issued on 11/7/03, the LSRP applies to the Assigned Risk policy issued to the Plaintiff. As a matter of law, the LSRP applies to Ard Trucking Company’s South Carolina Assigned Risk Policy pursuant to the WCIP.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advises Plaintiff of the LSRP’s applicability. In his application, Plaintiff signed an applicant statement agreeing to be bound by the WCIP and agreeing that his policy may be subject to the LSRP. Specifically, the Assigned Risk application states:

“The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan. If my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Here, Plaintiff signed and submitted such application to NCCI, and the Plaintiff is bound by such Applicant's Statement.

4. ASSIGNED RISK POLICY

Identical with WCIP, LSRP, and Rules 2-A and 2-H, the Assigned Risk policy itself allows Travelers to charge premiums in accordance with the WCIP. Specifically, the Assigned Risk policy states:

"A. OUR MANUALS

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

Moreover, the Assigned Risk policy and binder set forth:

"COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer's failure to comply with the terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan."

...

"Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Accordingly, per the AR policy terms itself, the WCIP's LSRP applies to Plaintiff's Assigned Risk policy as a matter of law.

5. PLAINTIFF'S PRODUCER IS AN AGENT OF THE INSURED

In South Carolina, the WCIP mandates that the producer is an agent of the insured, not the servicing carrier Travelers. Pursuant to the WCIP and South Carolina law, the producer who submitted the assigned risk application on behalf of Plaintiff is the agent of Plaintiff, not Travelers, as a matter of law. As such, any failure of Plaintiff's producer to explain to his own client the WCIP and assigned risk policy or its implications rests solely with Plaintiff's own agent, not with Travelers. See S.C.W.C.I.P. "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities" ... [a producer] "is not a contract agent or agent of the servicing carrier. [Producers] have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship." SCWCIP, Section I. Moreover, the admitted knowledge of the producer is imputed to Plaintiff as a matter of law.

Here, Plaintiff's producer admitted he was aware that the LSRP applied to the Plaintiff's Assigned Risk policy before Plaintiff provided the irrevocable LOC to the servicing carrier.⁸ As his producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to Plaintiff issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to the Plaintiff as a matter of law and the Plaintiff himself had specific knowledge that the LSRP applied to his Assigned Risk policy.

6. PLAINTIFF'S COUNTER-ARGUMENTS ARE FLAWED.

Plaintiff's first counter-argument is that the LSRP does not apply to South Carolina Assigned Risk policies because of the LSRP Endorsement contained in the Assigned Risk policy. Plaintiff argues that the LSRP endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds. However, Plaintiff's argument has already been soundly rejected by South Carolina courts. Specifically, in the recent Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C.(D.S.C.) 2004) decision, the South Carolina bankruptcy court held that the servicing carrier's use of standard forms and policies (such as the Assigned Risk LSRP notification endorsement) are not ambiguous to a reasonable person in South Carolina as a matter of law. The Assigned Risk application, the WCIP, and Assigned Risk

⁸ In addition, both the insured and the producer testified that the producer is the agent of the insured, not the servicing carrier.

policy terms put the insured on notice of the LSRP and its details as a matter of law. The court held that “an insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan.” Moreover, “the standard LSRP endorsements drafted and copyrighted by NCCI” ... “specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina and states that the plan will be adjusted based upon the losses incurred.”

The Assigned Risk policy Endorsement’s language is mandated by the NCCI and South Carolina’s Department of Insurance. The Assigned Risk policy itself mandates that **“Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.”** As the Plaintiff agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, Plaintiff had the means of knowledge to contact his producer or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse and, in South Carolina, the WCIP’s LSRP is the law. Moreover, as Plaintiff’s producer admitted he knew the LSRP applied to Plaintiff’s Assigned Risk policy before he asked Plaintiff to issue the LOC to the servicing carrier, such knowledge is imputed to the Plaintiff as a matter of law.

Accordingly, Plaintiff not only had the means of knowledge, but also had actual knowledge that the LSRP applied to the Assigned Risk policy before the Plaintiff issued an LOC to the servicing carrier. For these reasons, Plaintiff’s first counter-argument fails as a matter of law.

For a second defense/counter-argument, Plaintiff argues that the servicing carrier should be estopped due to the servicing carrier having issued a “final” bill which the Plaintiff paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. As the LSRP applies to this Assigned Risk policy as a matter of law, Travelers is entitled to the additional premium pursuant to the LSRP and may not be estopped based on Travelers having issued a “final bill” to the Plaintiff where LSRP specifically requires additional billings after the “final bill” is calculated during the policy term.

7. PLAINTIFF HAS NO EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.⁹

Finally, Plaintiff has not listed any expert to opine that Travelers has improperly determined the LSRP applies to Plaintiff's Assigned Risk policy or breached any standard of care in regard to its audits. In South Carolina, a party is required to provide expert testimony to establish the standard of care and deviation from such standard in order to proceed with a professional negligence case. See City of York v. Turner – Murphy Company, Inc., 317 S.C. 194, 452 S.E.2d 615 (1995) (stating "In a professional negligence cause of action, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.... Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct"). Here, Plaintiff has failed to provide any expert testimony that Travelers or its auditor breached any standard of care. Indeed, Plaintiff failed to list any expert at all. Accordingly, Plaintiff's lack of any expert testimony to support its claims against Travelers is fatal to Plaintiff's claims as a matter of law.

8. PLAINTIFF FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.¹⁰

Plaintiff has asserted that Travelers is estopped from seeking the premium it is owed. However, aside from being meritless, Plaintiff failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires Plaintiff to

⁹ Plaintiff has failed to list any expert to opine that Travelers breached any standard of care. Plaintiff has also failed to create an issue of fact as it has retained no expert who has opined that Travelers breached any standard of care to it. Indeed, the South Carolina Department of Insurance has verified that LSRP applies to assigned risk policies issued after November 1, 2003 date and, therefore, specifically applies to the Plaintiff's AR policy. Moreover, Plaintiff has not provided any evidence that Travelers' calculations of the LSRP are incorrect. Accordingly, Plaintiff has failed to create any issue of fact that Travelers breached any standard of care and, Travelers is entitled to summary judgment.

¹⁰ Plaintiff failed to appeal Travelers' decision to the NCCI pursuant to Rule 4 of the WCIP and, therefore, Plaintiff failed to exhaust his administrative remedies and cannot contest Travelers' decision via this present lawsuit. The WCIP Rule 4 sets forth the appeal mechanism whereby the Plaintiff was required to file an appeal to the NCCI if the Plaintiff contested the LSRP's applicability to South Carolina assigned risk policies or the premium amount Travelers sought pursuant to the LSRP. As the Plaintiff failed to appeal Travelers' decision (that the LSRP applies to South Carolina policies), Travelers is entitled to additional premium pursuant to the LSRP formulas, and Plaintiff can no longer contest Travelers' determination via a collateral lawsuit.

appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Administrative Law Judge and ultimately to the State Supreme Court. Here, Plaintiff abandoned its appeal of the dispute and, pursuant to WCIP, the insured is bound by Travelers' decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating "an unchallenged ruling, right or wrong, becomes law of the case."); Bennett v. S.C. Dep't of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating "the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action").

Accordingly, Plaintiff is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation and is bound by the prior unappealed NCCI determination pursuant to the WCIP. Moreover, based on NCCI's determination, the servicing carrier's entitlement to premiums set forth in its Complaint has been established as a matter of law, and Plaintiff is bound by such NCCI adjudication which is the "law of the case." As no genuine issue of fact exists for a jury to determine any factual issue as the servicing carrier's entitlement to premiums has been established pursuant to the WCIP provisions and the Plaintiff's abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks. Accordingly, as Plaintiff failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, Plaintiff cannot collaterally attack Travelers unappealed decision via this present lawsuit. If Plaintiff wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

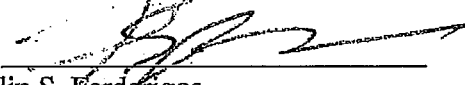
D. CONCLUSION

Based on the above, Travelers is entitled to the additional premium of \$122,948 (a liquidated amount) and interest from 6/29/05 to the present, and Travelers respectfully requests this Court issue an Order granting it summary judgment on such grounds. For the reasons set forth above, Travelers respectfully requests this Honorable Court grant its Motion for Summary Judgment.

Respectfully submitted,

(Signature on following page)

Barnwell Whaley Patterson & Helms, LLC

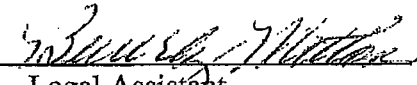
By: 
 Phillip S. Ferderigos
 288 Meeting Street (29401)
 P.O. Drawer H
 Charleston, SC 29402
 843-577-7700
 Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2014, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
 323 West Home Avenue
 P.O. Box 1439
 Hartsville, SC 29551

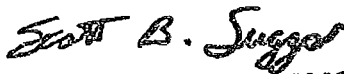
Barnwell Whaley Patterson & Helms, LLC

By: 
 Legal Assistant

2014 SEP 16 AM 10:58
 SCOTT B. SUGGS
 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.

FILED

TRUE CERTIFIED COPY,


 CLERK OF COURT/RMC
 DARLINGTON COUNTY, S.C.



South Carolina Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

June 24, 2014

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Phillip Perderigos
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

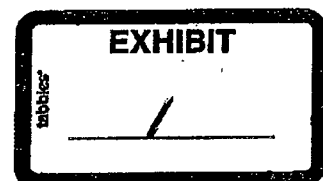
To Whom It May Concern:

This letter is provided in response to your inquiry as to the history of the Loss Sensitive Rating Program (LSRP). Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the assigned risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.

Willie L. Davis, Jr., FCAS, MAAA

P&C Actuary

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.



SCDOI 0001
APPELLANT ROA 0073



National
Council on
Compensation
Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

An employer's guide to
the mandatory assigned risk
retrospective rating program

Retrospective rating is a method of pricing insurance which determines your final workers compensation premium after the policy period has ended, based on your actual losses during the policy period.

Pictorial, Inc.

This pamphlet has been created to help you understand the concept and details of the Loss Sensitive Rating Plan (LSRP). You are encouraged to read this material and discuss it with your producer, broker, assigned insurer or an NCCL, Inc. customer service representative. ■

Purpose

The purpose of the assigned risk mandatory Loss Sensitive Rating Plan (LSRP) is to provide a retrospective rating plan for those employers who have an assigned risk workers compensation insurance premium of \$200,000 or more. (Note: The premium threshold amount may vary by state.) The LSRP is designed to:

- **Promote Safety and Loss Control** by requiring you to accept greater financial responsibility for the losses that you incur.
- **Depopulate the Residual Market** by encouraging you to obtain coverage in the voluntary market.
- **Provide Fairness** by rewarding those of you with good loss experience with lower premiums while penalizing those employers with poor loss experience with higher premiums. ■

Background

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through other means. (Note: This would include such options as self-insurance.) The residual market is not intended to compete with the voluntary market by allowing employers to avoid various loss sensitive rating plan offers in exchange for guaranteed cost policies.

Among the rating alternatives for the large employer, loss-sensitive rating is the most equitable because it gives you the opportunity to have your insurance costs more directly related to your losses during the policy period. ■

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (Note: The implementation date may vary by state.) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. ■

Definition of Terms Used in the LSRP Program

Note: Any of the following definitions may vary by state.

Allocated Loss Adjustment Expense

ALAE includes costs associated with specific claims such as defense costs.

Basic Premium

A percentage of the Standard Premium, determined by multiplying the Standard Premium by a Basic Premium Factor. The Basic Premium includes insurance carrier expenses such as acquisition, loss control services, premium audit, producer fees and other general administrative costs. The Basic Premium does not cover premium taxes or claim adjustment expenses. These costs are usually provided for in the Tax Multiplier and Loss Conversion Factor.

Converted Losses

The results of applying the Loss Conversion Factor (LCF) to your Incurred Losses.

Deposit Premium

The deposit you must pay at the time of application or policy renewal. It is comprised of the WCIP Deposit Premium and the LSRP Contingency Deposit Premium.

Incurred Losses

Your losses occurring during the policy period including:

- Losses which have been paid and reserves for losses which are outstanding. Reserves are established to anticipate the insurance company's obligation on claims that have been incurred but have not yet been settled. These reserves must be added to paid claims to establish total Incurred Losses.

Individual Loss Limitation (Loss Cap)

The maximum portion of any loss subject to retrospective rating. There are no Individual Loss Limitations available in the LSRP program.

Loss Conversion Factor (LCF)

A loading to incurred losses to cover Unallocated Loss Adjustment Expenses. In this plan, it is a fixed factor of 1.125.

LSRP Contingency Deposit Premium

It is calculated as 20 percent of your Standard Premium and collected *in addition to* the WCIP Deposit Premium. The LSRP Contingency Deposit Premium must be paid at time of application, or policy renewal, to collateralize any additional premium that may be due the assigned carrier as a result of LSRP valuation activities.

As an alternative to a cash contingency deposit, you may substitute an acceptable, clean, unconditional Irrevocable Letter of Credit (ILOC) containing an automatic renewal clause, drawn on a Federal Reserve bank. The ILOC must be for an amount at least equal to the LSRP 20 percent Contingency Deposit Premium. The cash deposit or ILOC shall be held as collateral until at least the first adjustment. (The retention period may vary by state.)

LSRP Development Premium Factors (RDFs)

This premium element is an additional loading that recognizes the probable increase in value over time of your losses and helps stabilize your premium adjustments. The LSRP Development Premium Factors anticipate a pattern of increasing valuation of your losses after the policy has expired. The factor is included only in the first three annual adjustments and is not included in the fourth and final calculation. The RDFs vary from state to state.

Maximum Premium (Max)

The most premium you will pay under the LSRP program, irrespective of your losses. The Maximum Premium has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

- *Maximum Premium Factor.* A factor that is multiplied by your Standard Premium to determine your Maximum Premium. The Maximum Premium Factor is a fixed factor of 1.75 of Standard Premium.

Minimum Premium (Min)

The least amount of premium you will pay even if you have no losses.

- **Minimum Premium Factor.** A factor that is multiplied by your Standard Premium to determine your Minimum Premium. The Minimum Premium Factor is a fixed factor of 0.75 of Standard Premium.

Standard Premium (SP)

For the purposes of this Plan, Standard Premium means your premium determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs where appropriate, loss constants where applicable, and Minimum Premiums. Determination of Standard Premium shall exclude:

Premium discount, expense constant (unless it is part of Minimum Premium), premium resulting from the non-ratable element codes in the *Experience Rating Plan Manual*, premium developed under Class Code 7421 (aircraft-related operations), and premium developed by the occupational disease rates for employers subject to the Federal Coal Mine Health and Safety Act.

Tax Multiplier (TM)

This covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium they collect. The TM varies from state to state.

Unallocated Loss Adjustment Expenses (ULAE)

General claim adjustment expenses which include the cost of the insurance carrier claim services such as investigation of claims and filing claim reports.

WCIP Deposit (or Initial) Premium

WCIP Deposit Premium is calculated by multiplying your Estimated Annual Premium by the required Deposit Premium percentage. The ILOC option is not available for the WCIP Deposit Premium. ■

Summary of LSRP

>Objective

The principal objective is to create a plan that is appropriate for an employer of your size and will encourage you to seek coverage outside of the residual market and to control your losses.

>Parameters (Factors)

The LSRP is a simple loss sensitive rating plan constructed to be uniformly applied to all eligible employers. The plan parameters which form the basis of the LSRP are not negotiable for two reasons: individually "tailored" plans are available in the voluntary market; and, as the residual market assignment mechanism is random, the "luck of the draw" could determine the type of plan provided by the carrier, thus reducing the chance of fairness.

>Factors

The LSRP factors are:

• Basic Premium Factor (Basic)	0.30
• Loss Conversion Factor (LCF)	1.125
• Tax Multiplier (TM)	Varies by state*
• Retro Development Factors (RDFs)	Varies by state*
• Minimum Factor (Min)	0.75
• Maximum Factor (Max)	1.75

* The tax multiplier (TM) represents the currently approved tax multiplier in your state exclusive of any assigned risk subsidy. Current retrospective development factors (RDFs) are also used. These factors will change with subsequent changes in state rates and rating values. Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.

Some additional comments on the factors:

- Your policy premium will be adjusted, based on your losses, at intervals beginning six (6) months after the policy expires and at twelve (12) month intervals thereafter to a total of four (4) adjustments.

- The LSRP Development Factors (RDFs) will be used with the first three (3) valuations to reflect the actuarial probability that losses will develop (increase in value) over time. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and last adjustment.
- Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.
- The decision not to offer loss caps was based on the desire to avoid any plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low and tends to serve as a loss cap.

> Premium Payments

The following unique payment provisions apply:

LSRP Contingency Deposit Premium (Additional 20 percent)

- The carrier will be required to retain the 20 percent Contingency Deposit Premium and any final audit return premium without interest until the first valuation has been completed and billed. (The time held may vary by state.)

Irrevocable Letter of Credit

- In lieu of the additional 20 percent Contingency Deposit Premium in cash, an acceptable, clean, unconditional Irrevocable Letter of Credit containing an automatic renewal clause, drawn on a Federal Reserve bank can be provided at time of application or policy renewal.

Rating Plan Premium

- Your rating plan premium will be determined after the rating plan period ends (six months after policy expiration). Three additional annual premium adjustment calculations will be made.

Cancellation Provision

- The carrier will have the right to cancel the current assigned risk policy if any additional premiums on either current or prior assigned risk policies are not paid as required. The dispute resolution procedure in your state's Workers Compensation Insurance Plan (WCIP) applies to legitimate premium disputes. *Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.*

> Premium Variation

To accommodate premium increases while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days was established to retroactively convert a guaranteed cost policy to the LSRP and visa versa.

If after the first 120 days of the coverage term it is determined that you qualify for the LSRP, the current policy shall not be affected, but the LSRP will apply at renewal.

If your premium falls below the premium threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below the threshold, a retroactive conversion to guaranteed cost would result.

Since depopulation is a major goal of the LSRP, a release clause also applies. If you obtain coverage in the voluntary market within 120 days of policy inception, your premium would be calculated based on guaranteed cost.

120 DAYS FROM EFF DATE

>Multistate

The LSRP will apply to an employer with multistate operations when the total premium of all requested states that have approved LSRP meets the eligibility requirement for the LSRP state generating the largest premium. (This provision may vary by state.) ■

Impact on Your Workers Compensation Costs

The ultimate impact of the LSRP will depend on your losses over time. However, with good loss experience an individual employer's final premium is typically less than standard; it is more than standard with poor loss experience. ■

LSRP Calculation: Example

Illustrative Values

Standard Premium (SP)	=	\$339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

LSRP Factors

Basic	=	0.30
Minimum	=	0.75 or \$254,250 (\$339,000 × 0.75 = \$254,250 minimum premium)
Maximum	=	1.75 or \$593,250 (\$339,000 × 1.75 = \$593,250 maximum premium)

Loss Conversion

Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.126*

Retrospective

Development		
Factors (RDFs)	=	1st Adjustment 0.31*
	=	2nd Adjustment 0.21*
	=	3rd Adjustment 0.15*
	=	4th Adjustment 0.00

* Values shown here are for illustration only and are not necessarily the values in your state.

Formula

LSRP Premium (LSRP) =

Tax [(Basic × SP) + (RDF × LCF × SP) + (LCF × Incurred Losses)]

LSRP PREMIUM CALCULATIONS:

1st Adjustment

$$\text{LSRP} = 1.126 [(0.30 \times 339,000) + (0.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)]$$

$$\text{LSRP} = 1.126 [101,700 + 118,226 + 286,031]$$

$$\text{LSRP} = 1.126 [505,957]$$

$$\text{LSRP} = 569,708$$

$$\text{Additional Premium (AP)} = \$162,908 [569,708 - 339,000 - 20\% \text{ LSRP Contingency Deposit Premium}]$$

2nd Adjustment

$$\text{LSRP} = 1.126 [(0.30 \times 339,000) + (0.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)]$$

$$\text{LSRP} = 1.126 [101,700 + 80,089 + 305,100]$$

$$\text{LSRP} = 1.126 [486,889]$$

$$\text{LSRP} = 548,237$$

$$\text{Return Premium (RP)} = \$21,471 [569,708 - 548,237]$$

3rd Adjustment

$$\text{LSRP} = 1.126 [(0.30 \times 339,000) + (0.21 \times 1.125 \times 339,000) + (1.125 \times 305,100)]$$

$$\text{LSRP} = 1.126 [101,700 + 57,206 + 343,238]$$

$$\text{LSRP} = 1.126 [502,144]$$

$$\text{LSRP} = 565,414$$

$$\text{Additional Premium (AP)} = \$17,177 [565,414 - 548,237]$$

4th Adjustment

$$\text{LSRP} = 1.126 [(0.30 \times 339,000) + (0.0 \times 1.125 \times 339,000) + (1.125 \times 339,000)]$$

$$\text{LSRP} = 1.126 [101,700 + 0 + 381,375]$$

$$\text{LSRP} = 1.126 [483,075]$$

$$\text{LSRP} = 534,942$$

$$\text{Return Premium (RP)} = \$30,472 [565,414 - 534,942]$$

Questions & Answers

Q How will I know that I am eligible for the LSRP?

A If you are a new applicant to the assigned risk plan, the application will have the following language in the "Employer Signature Section":

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the binder is issued, the following language will be noted advising you that this is a mandatory program and it will be applicable to your policy:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

If you are already insured in an assigned risk plan, similar language will be on renewal quotes with estimated annual premium of \$150,000 or greater, advising you that the program may be applicable.

In addition, the assigned carrier will perform a preliminary audit within 120 days of inception for all renewal policies and new applications whose estimated annual premium exceeds \$150,000.

Q If I have operations in more than one state, will LSRP apply?

A The LSRP has been designed to accommodate the large assigned risk employer who has operations in several states. The plan provides for a multistate policy when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

Q What loss control services will carriers be required to offer under the LSRP?

A Although it may vary by state, under the current performance standards, servicing carriers are required to notify the policyholder and producer, in writing, within 90 calendar days of receipt of assignment, of available loss control services and safety information, including instructions on how to obtain these services and information.

Servicing carriers are required to provide a minimum of one consulting survey annually for each single location to any policyholder with an estimated annual premium greater than \$25,000.

Direct assignment carriers must adhere to any and all requirements as set forth by the state in which they are writing assigned risk business.

Contact your carrier or insurance advisor for more information or to arrange for loss control services.

Q If I am determined to be eligible for the LSRP during the first 120 days of the policy term, how much time am I given to provide the additional deposit/LOC?

A The carrier will usually give an insured 30 days to obtain any additional premium or appropriate LOC needed to continue the policy in force. This will also be true for any additional premium resulting from any of the four annual adjustments.

Q Do premium discounts apply when determining eligibility?

A By definition, Standard Premium does not include the premium discount; therefore, no discounts would be used in determining LSRP eligibility.

Q Is the 20 percent Contingency Deposit Premium for LSRP calculated from the total Standard Premium only in those states that approved the LSRP, or from the entire policy premium, regardless of the LSRP approvals? Will this require more than one policy?

A The 20 percent LSRP Contingency Deposit premium is calculated from the Standard Premium from those states that have approved LSRP. If the assigned risk employer requests coverage in a state where the LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one policy and then issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide coverages for all requested states; additional applications will then be necessary. ■



National
Council on
Compensation
Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994

SC-94-01

FLAN-SC-94-1

Page 1 of 1

Contact: James P. Nau, Director 407-997-4563

Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4331

SOUTH CAROLINA ITEM FILING

~~SC-94-01~~ ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.123
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.



National
Council on
Compensation
Insurance

P.S. #33 South Carolina
Item Filing

Government, Consumer and
Industry Affairs

File -
M. M. Pinc R
N. Cohen
Roy D. Wood
Director

February 25, 1994

Honorable John G. Richards V
Chief Insurance Commissioner
State of South Carolina
Department of Insurance
1812 Marion Street
Columbia, South Carolina 29201

RECEIVED
P & C

MAR 7 1994

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

98471003

APPEALANT

Re. Item 01-SC-94 - Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)

Dear Commissioner Richards:

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

In accordance with the applicable statutes and regulations of South Carolina, I am filing for your consideration and approval the above-captioned item filing. This item filing is proposed to become effective on March 1, 1994, applicable to new and renewal business in the Workers Compensation Insurance Plan. Once the filing is approved the program will apply, to eligible accounts, with effective dates on or after September 1, 1994.

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to provide large employers with added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP has the added advantage of encouraging the large employer to obtain coverage in the voluntary market by removing the potential financial advantage that guaranteed cost residual market coverage may currently provide.

Included as part of the filing package is a listing of employers from current records identified as potentially being eligible for the LSRP. Any existing WCIP employers identified as being eligible will receive a six month notice of the implementation of LSRP in order to be provided the opportunity to place coverage in the voluntary market. New eligible risks coming into the WCIP on or after the implementation date will be provided a 120 day window of opportunity, after effective date of coverage, to place coverage voluntarily thereby avoiding application of LSRP to the period for which coverage was in effect.

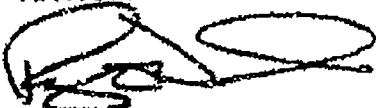
Page 2

Pursuant to the authority of the Plan, NCCI in its capacity as Plan Administrator, is making this filing on behalf of the participating insurers in the Workers' Compensation Insurance Plan in your jurisdiction.

Please contact me if you need additional information.

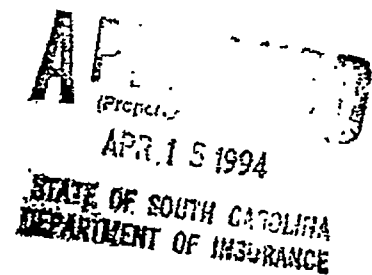
Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION INSURANCE



Roy O. Wood
Director
Government, Consumer and Industry Affairs

cc: Executive Director, Workers' Compensation Commission





National
Council on
Compensation
Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994

SG-94-01

PLAN-SC-94-1

Page 1 of 1

Contact: James R. Nau, Director 407-997-4563

Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4331

SOUTH CAROLINA ITEM FILING

ITEM 01-SC-94--ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.125
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.

Charlotte should advise

Retros plan @ \$200,000

750 Park of Commerce Drive, Boca Raton, FL 33487 • Telephone: 407-997-1000

OIR950.1

SCDOI 00013
APPELLANT ROA 0085

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SC-94

FILING MEMORANDUM

Item 01-SC-94 Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)
 To be effective 12:01 A.M., March 1, 1994, applicable to New and Renewal Business

Purpose:

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to depopulate the residual market, to promote safety and loss-control, and to provide fairness.

Large employers would be encouraged to obtain coverage in the voluntary market since the potential financial advantage that guaranteed cost residual market coverage may currently provide for these employers would be removed. Therefore, the LSRP has the potential for depopulating the residual market and thus reducing the assigned risk burden.

The LSRP would also provide large employers with an added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP promotes fairness by rewarding those risks with good loss experience with lower premiums and penalizing those risks with poor loss experience with higher premiums.

Background:

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through the voluntary market. The residual market was not intended to compete with the voluntary market by allowing risks to avoid various loss sensitive rating offers for guaranteed cost policies.

In considering alternatives for the large employer, a loss-sensitive plan is the preferred rating method. Loss-sensitive rating is more equitable because those employers incurring the losses help pay them, and employers affected by the LSRP are large enough that they should have the means to effectively reduce losses.

Proposal:

It is proposed that the attached LSRP be implemented six months from the date of regulatory approval of this program. Upon approval, all LSRP-eligible accounts, the producers and current servicing carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. These large employers will be encouraged to obtain coverage in the voluntary market and the six month advance notice gives them sufficient time to do so.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SG-94

Summary of the Plan:

To reduce losses, a plan should provide a positive, long-term financial incentive by rewarding excellent performance with reduced cost. However, as this is the residual market, such a plan had to provide this incentive without being competitive with voluntary market loss-sensitive pricing programs. Therefore, the LSRP must be mandatory and contain parameters that are less favorable than typical plans available in the voluntary market.

The following is a summary of LSRP which demonstrates that a mandatory loss sensitive rating plan is appropriate for this size risk and will be effective in reducing employer losses and depopulating the residual market.

Eligibility is established at \$200,000 in standard premium primarily because risks of this size are expected to have a sufficient number of claims to allow loss control programs to be effective. Loss-sensitive plans are also customarily available in the voluntary market for risks of this size.

The LSRP is a simple loss sensitive plan constructed to be uniformly applied to all eligible risks. The "one-set-of-parameters-fits-all" approach was designed to engender a basic premium factor whose impact increases with size of risk. This is appropriate since the larger the risk, the greater the opportunity for finding coverage in the voluntary market. These plan parameters are not negotiable for two reasons: "tailored" or designed plans are available in the voluntary market; and as the residual market assignment mechanism is random, the "luck of the draw" would determine the type of plan provided, thus reducing the chance of fairness.

A principal objective is to create a plan which is not competitive with balanced, voluntary market plans. With the selected 0.75 minimum (low enough to produce a reasonable return), the 1.75 maximum (appropriate for this size risk), and the 1.125 loss conversion factor (LCF), a basic factor for a balanced plan can be calculated. However, unlike traditional retrospective rating plans, LSRP is not intended to be balanced. Therefore, the basic factor was selected to be a fixed 0.30. This is consistent with the goal of the plan to encourage such insureds to find voluntary coverage.

The fixed 0.30 basic factor means the LSRP basic premium factor is higher than it would have been under a balanced plan, with the impact increasing with the size of risk. This occurs for two reasons. First, the expense portion of the basic doesn't take into account the effect of the premium discounts, and second, the fixed basic is in contrast to the fact that the insurance charge should decrease as the risk size increases.

The proposed state tax multiplier for South Carolina will be 1.123. It represents the currently approved tax multiplier exclusive of any assigned risk subsidy. Currently approved retrospective development factors (RDFs) will be used. These factors will change with subsequent changes in rates and rating values. These factors will be published in the state exception pages of the basic manual.

As mentioned above, the factors were selected because they "work" in combination. Some additional comments on the factors however, are appropriate:

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- * The RDFs will be used with the first three (3) valuations to reflect loss development. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and final adjustment.
- * The decision not to offer loss caps was based on the desire to avoid any carrier/insured plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low for this book of business and it tends to serve as a loss cap.
- * Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.

The LSRP's success will ultimately be determined by the extent to which insureds obtain coverage in the voluntary market and the impact on the employer's losses. The essential elements are present for significant safety improvements and loss reduction to occur-employer motivation to lessen the bottom-line insurance costs and the availability of loss control programs.

Collection problems are to be anticipated, however, several steps have been taken to minimize uncollectibles:

- * An additional 20% LSRP deposit premium is required which will be held without interest until the first adjustment. This is a deviation from the traditional voluntary retro plan, which normally requires collateral to be based upon the difference between incurred losses and ultimate projection of those losses and for the collateral to be held until the retro plan is closed. This is generally a larger amount and held for an indefinite period.
- * The carrier will be required to retain the 20% additional LSRP deposit and any final audit return premium until the first valuation has been completed and billed.
- * Even though the LSRP deposit is preferred, to provide options to an employer, an acceptable, clean, unconditional, irrevocable Letter of Credit (ILOC) containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve and obtained at binding, is satisfactory.
- * The carrier will have the right to cancel the current assigned risk policy if the adjustments are not paid as required. It should be noted that the dispute resolution procedure in the WCIP applies to legitimate premium disputes.

Carriers must be consistent with both the voluntary customers and the LSRP customers in handling claims and collections as applied to cancellations and bankruptcies. In the event of cancellation or bankruptcy, the maximum premium generated under the original LSRP calculation will remain in effect. This will ensure that the reinsurance mechanism is protected for the maximum exposure should subsequent adjustments generate additional premiums.

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It is recognized that many factors contribute to premium changes after policy inception, especially audit. To accommodate premium increase, while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days is considered reasonable to retroactively convert a guaranteed cost policy to the LSRP. If after the 120 days of the coverage term, it is determined that the employer qualifies for the LSRP, the current policy shall not be affected, but LSRP will apply at renewal. A provision has been included to convert the policy pro rata from inception to the LSRP, if at any time it is determined that misrepresentation or omission of pertinent information occurred by the insured, its agent, employees, officers or directors that caused the policy to be improperly written as guaranteed cost.

If the employer's premium falls below the \$200,000 threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below \$200,000, a retroactive conversion to guaranteed cost would result. Since depopulation is a major goal of LSRP, a "release" clause will be available. If voluntary coverage is obtained within 120 days of policy inception, premium would be calculated based on guaranteed cost.

The LSRP has been designed to accommodate the large assigned risk employer when that employer has operations in several states. The plan provides for a multi-state policy when the following conditions exist: 1) when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium; and 2) the assigned carrier is capable of providing service in all requested states. If multi-state coverage is applicable and includes states that have not approved the LSRP, then separate policies will be issued.

Example I:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$40,000 and the premium for State B is \$160,000. LSRP will apply to this account since the total policy premium meets the eligibility threshold for State B and State B has the largest premium.

Example II:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$160,000 and the premium for State B is \$40,000. LSRP will not apply to this account since the eligibility threshold for State A is \$250,000 and State A has the largest premium, which does not meet the eligibility requirements.

In order for LSRP to be successful, every employer in the residual market must understand the potential impact of the LSRP on its premium. The following notification methods were selected:

- * Every policy issued in the residual market will carry an endorsement advising that any policy exceeding the eligibility threshold will be eligible for the LSRP.
- * Assigned risk application instructions will be modified to include a statement containing potential applicability of the LSRP and details of the Plan.
- * The WCIP binder additional notice will include a statement regarding the applicability of the LSRP for employers meeting the premium eligibility requirement. Also, assigned carriers' renewal quotes will carry a similar statement.

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- * In addition, a brochure explaining the LSRP will be provided to carriers and producers, and will be made available to employers.

Producer fees are payable in accordance with the South Carolina Producer Fee Schedule subject to the following exceptions:

- * No additional producer fee is payable or return commission chargeable as a result of LSRP valuation activity.
- * Producer fees will not be paid on the LSRP Contingency Deposit Premium.

Impact:

Currently in South Carolina, there are approximately 36 risks with premium of \$200,000 or more. These risks comprise about 0.02% of the policies in the residual market, but make up about 8% of the total premium written.

In South Carolina, the total impact of LSRP on residual market premium is expected to be negligible. The ultimate impact of LSRP, however, will depend on the individual employer's losses over time, the extent to which employers obtain coverage in the voluntary market, and the adequacy of rates at the time LSRP goes into effect. With good loss experience, the employer's final premium is typically less than standard; it is more than standard with poor loss experience.

Implementation:

The attached exhibits illustrate the Basic Manual changes which will be required in order to implement LSRP, the endorsements which will be utilized and the financial reporting procedures required to track the program. Additionally, either the NCCI application or ACORD 133 application, whichever is appropriate, shall be modified to contain a statement of applicant acknowledgement of the LSRP. Approval of this program constitutes approval of any necessary application or instruction changes.

Conclusion:

The LSRP is expected to provide large employers with the incentive to seek coverage in the voluntary market, to improve safety, and reduce losses.

The attached example illustrates the method of determining the retrospective premium for each of four adjustments for an average-size risk with losses determined by an average expected loss ratio.

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LSRP CALCULATION EXAMPLE

$$\text{Retro Premium (RP)} = \text{Tax}[(\text{Basic} \times \text{SP}) + (\text{RDF} \times \text{LCF} \times \text{SP}) + \text{LCF} \times \text{Insured Loss}]$$

Standard Premium (SP)	=	339,000
Expected Losses (SP x LR)	=	339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	306,100
Incurred Loss 4th Valuation	=	339,000

Retrospective Development Factors (RDF)	1st Adjustment	0.31
	2nd Adjustment	0.21
	3rd Adjustment	0.15
	4th Adjustment	0.00

Basic	=	0.30		
Minimum	=	0.75	or	\$264,250 (minimum premium)
Maximum	=	1.75	or	\$593,250 (maximum premium)
Loss Conversion Factor (LCF)	=	1.125		
Tax (Tax Multiplier)	=	1.126		

1st Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)] \\ \text{RP} &= 1.126[101,700 + 118,226 + 286,031] \\ \text{RP} &= 1.126[505,957] \\ \text{RP} &= 567,708 \end{aligned}$$

2nd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)] \\ \text{RP} &= 1.126[101,700 + 80,089 + 305,100] \\ \text{RP} &= 1.126[486,889] \\ \text{RP} &= 548,237 \end{aligned}$$

3rd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.15 \times 1.125 \times 339,000) + (1.125 \times 306,100)] \\ \text{RP} &= 1.126[101,700 + 57,206 + 343,238] \\ \text{RP} &= 1.126[502,144] \\ \text{RP} &= 565,414 \end{aligned}$$

4th Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.0 \times 1.125 \times 339,000) + (1.125 \times 339,000)] \\ \text{RP} &= 1.126[101,700 + 0 + 381,375] \\ \text{RP} &= 1.126[483,075] \\ \text{RP} &= 534,942 \end{aligned}$$

STATE SPECIAL RATING PLANS AND PROGRAMS
ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)
SOUTH CAROLINA
BASIC MANUAL INSERT

PART ONE

DESCRIPTION OF THE PLAN

I. INTRODUCTION

The rules under this Plan are mandatory and apply only to Workers Compensation & Employers Liability Insurance that is written under a Workers Compensation Insurance Plan (WCIP) in those states that have adopted the Loss Sensitive Rating Plan (LSRP). The LSRP shall apply to all assigned risk employers qualifying for the Plan. The elements in the LSRP are fixed and premium is determined and defined below.

A. GENERAL EXPLANATIONS

1. Plan is Mandatory

The Assigned Risk LSRP is a mandatory Plan and shall apply to all assigned risk policies with total estimated annual Standard Premium or total audited Standard Premium which equals or exceeds \$200,000.

2. Object of the Plan

This Plan adjusts the premium for the insurance to which it applies on the basis of losses incurred during the period covered by that insurance. The intent is to charge a premium which reflects those losses. This Plan uses the losses incurred during the term of the policy to establish the cost of insurance and includes provisions for all expenses and taxes on premium.

3. Loss Control Incentive in Use of the Plan

The LSRP provides an incentive to the employer to control and reduce losses because the LSRP premium will be the result of losses during the policy period. To the extent the employer controls losses, there is a reward through lower premiums. To the extent the insured does not control losses, there is a penalty through higher premiums.

4. Experience Rating Plan Manual

Separate policies in the WCIP under common majority ownership as provided by the rules of the Experience Rating Plan which are assigned to the same assigned risk carrier shall be combined for computation of the LSRP premium.

5. Risks Operating in More Than One State

LSRP may be applied on an intrastate or interstate basis. Refer to Part Three for Multi-state procedures.

6. Premium Discount

In states where premium discount is allowed under a WCIP, the standard premium under this Plan is not subject to the premium discount as defined in Rule VII of the Basic Manual for Workers Compensation and Employers Liability Insurance.

7. Increased Limits for Employers Liability

If the policy provides increased limits for employers liability, such premium and incurred losses shall be subject to LSRP.

8. LSRP Expenses

The Plan does not include tables of expense ratios for use by stock and non-stock companies. The expenses are fixed and are included in the Basic Premium.

9. Aircraft Classifications

If the insurance subject to the Plan includes any of the aircraft classifications, the premium and losses for such classifications shall be included in the LSRP.

10. Exclusion of Statutory Medical Benefits - Ex-Medical Coverage

Policies written on an ex-medical basis are subject to this Plan in states where permitted.

11. Large Construction Projects

Large Construction Projects are subject to this Plan in states where permitted.

II. DEFINITIONS

A. Employer

Means any business organization or enterprise that is required by statute to maintain workers compensation insurance in a state or any state(s) under the WCIP. The term shall include any business organizations or enterprises that are affiliated as a result of common ownership.

B. Insured

Insured means the assigned risk employer designated in the Information Page of the policy or policies to which this Plan is applied by the assigned carrier that issues such insurance. An insured may be two or more legal entities if the same person, or group of persons, owns the majority interest in such entities. The Experience Rating Plan defines majority interest. It usually means:

1. Majority of voting stock, or
2. Majority of members or directors if there is no voting stock, or
3. Majority participation of general partners in profits of a partnership.

C. Risk

Risk means the insured to which this Plan is applied.

D. Rates

1. Authorized rate means those rates approved for use under a WCIP.
2. Manual rate means the rate shown after the classification code number on the state rate pages in Part Three of the Basic Manual for Workers Compensations and Employers Liability Insurance.

E. Standard Premium

For the purpose of this Plan, Standard Premium means the premium for the risk determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs other than LSRP, loss constants where applicable, and minimum premiums. Determination of Standard Premium shall exclude:

1. Premium Discount,
2. The Expense Constant,

3. Premium resulting from the Non-Ratable Element Codes listed in the Experience Rating Plan Manual, for Workers Compensations and Employers Liability Insurance,
4. Premium developed by the passenger seat surcharge under Code 7421—Aircraft Operation—flying crew, and
5. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

F. Deposit Premium

The deposit premium shall depend upon the schedule in effect in the state generating the most payroll at the time of application. Refer to the state WCIP or ACORD application for the applicable premium payment schedule.

In addition to the applicable state WCIP premium payment plan or deposit premium an additional LSRP deposit premium of 20%, or an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve, shall be required on all LSRP policies. Refer to Part Two of this Plan to calculate the appropriate deposits.

G. Incurred Losses

Incurred losses used in the rating formula for determining premium under this Plan are those reported under the rules of the Workers Compensation Unit Statistical Plan adopted by the rating organization. Generally, incurred losses are the actual losses paid and outstanding, interest on judgments, expenses incurred in obtaining third-party recoveries, and allocated loss adjustment expenses for employers liability losses.

Incurred losses resulting from an accident involving two or more persons under any classification code containing a non-ratable catastrophe element shall be limited to the total of the two most costly claims, subject to any further loss limitation applicable.

The rating formula shall not include losses involving passenger employees resulting from the crash of an aircraft under Classification Code 7421.

For detailed instructions regarding incurred losses, refer to the Workers Compensation Statistical Plan.

H. Rating Organization

Rating organization means the National Council on Compensation Insurance or any other licensed rating organization.

I. Anniversary Rating Date

1. Single Policy Risk

The anniversary rating date for application of this Plan shall be the effective month and day of the current policy in effect.

2. Multiple Policy Risk

If the risk subject to the Plan includes more than one policy with different effective dates, the anniversary rating date shall be determined by the rating organization.

PART TWO

OPERATION OF THE PLAN

I. HOW PREMIUM IS DETERMINED UNDER THE PLAN

LSRP premium is computed on the basis of the formula in Part A.1 of this section.

A. THE LOSS SENSITIVE RATING PLAN FORMULA (LSRP)

The premium for a risk subject to this program is determined by the following formula:

1. Loss Sensitive Rating Plan Premium =
 - a. Basic Premium (= standard premium x basic premium factor)
plus
 - b. Converted Losses (= incurred losses x loss conversion factor)
plus
 - c. LSRP Development Premium (= standard premium x LSRP
Development factor x loss
conversion factor)
 - d. Multiply the sum of (a + b + c) by the Tax Multiplier.

This formula produces a premium which shall not be less than the LSRP Minimum Premium or more than the LSRP Maximum Premium.

If the risk to which the Plan is applied includes more than one legal entity, a single LSRP premium is calculated on the basis of the premium and losses of the combined entities, not individually for each legal entity.

B. DEFINITION OF TERMS USED FOR THE FORMULA

1. Standard Premium

Standard Premium is defined in Part One, II.E of this Plan.

2. Basic Premium

The Basic Premium is a percentage of the Standard Premium. It is determined by multiplying the Standard Premium by a Basic Premium Factor.

The Basic Premium includes: insurance carrier expenses such as those for servicing the Insured's account, loss control services, premium audit and general administration of the insurance.

The Basic Premium does not cover premium taxes or claim adjustment expenses. These elements are usually provided for in the Tax Multiplier and the Loss Conversion Factor.

The Basic Premium Factor is .30.

3. Converted Losses

Converted Losses are based on the incurred losses of the risk during the policy or policies to which this Plan applies. A Loss Conversion Factor is applied to such losses to produce the Converted Losses.

4. Loss Conversion Factor

The Loss Conversion Factor (LCF) is a fixed factor at 1.125. It covers claim adjustment expenses and the cost of the insurance carrier's claim services such as investigation of claims and filing claim reports.

5. Tax Multiplier

The Tax Multiplier varies by state and covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium which it collects.

Refer to the state exception pages for the appropriate tax multiplier.

6. Minimum Premium

The Minimum Premium for this Plan is the least amount of premium to be paid by a risk subject to LSRP.

The Minimum Premium Factor is .75.

7. Maximum Premium

The Maximum Premium for this Plan is the greatest amount of premium to be paid by a risk subject to this Plan. It has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

The Maximum Premium Factor is 1.75.

8. Individual Loss Limitations

There are no individual loss limitations under the mandatory LSRP.

9. LSRP Development Premium

The purpose of this premium element is to stabilize premium adjustments for risks subject to this program. The LSRP Development Premium anticipates a pattern of increasing valuation of losses after the policy is expired. The LSRP Development Premium is included in only the first three adjustments of the LSRP premium and is not included in the fourth and final calculation.

Refer to the state exception pages for the LSRP development factors.

10. Deposit Premium

Is the premium required to be paid at the time of application or policy renewal and, under the Plan, is comprised of the WCIP deposit premium and the LSRP contingency deposit premium.

a. WCIP Deposit Premium

The WCIP deposit premium is the deposit premium as referenced on the WCIP or ACORD application in the state generating the most payroll. The WCIP deposit premium is calculated by multiplying the Estimated Annual Premium by the required premium percentage.

b. LSRP Contingency Deposit Premium

The LSRP Contingency Deposit Premium is calculated as an additional 20% of Standard Premium and is added to the WCIP deposit premium. The LSRP Contingency Deposit Premium is to be paid at the time of application, or policy renewal, to collateralize premium which may be due the assigned carrier at the first adjustment.

If an acceptable, clean, unconditional, irrevocable Letter of Credit (ILOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve is obtained in an amount at least sufficient to secure the dollar amount equal to the LSRP 20% Contingency deposit premium, an LSRP Contingency deposit premium will not be required and the deposit premium on such policy shall be equal to the WCIP deposit premium. The LOC shall be held as collateral until first adjustment.

PART THREE

ADMINISTRATION OF THE PLAN

I. ADMINISTRATIVE RULES

A. Eligibility

1. The Loss Sensitive Rating Plan (LSRP) shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or total audited Standard Premium equals or exceeds \$200,000.
2. A decrease in premium during the first 120 days of coverage which results in the employer falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be effected until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by insured, its agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.

B. Multi-State Procedures

The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

If the assigned risk employer requests coverage in a state where LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one or more policies and issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide all requested states; additional applications may be necessary.

C. 120 Day Grace Period

The LSRP will not apply to an assigned risk policy subject to the Plan if the employer obtains workers compensation coverage outside the assigned risk market within 120 days of the effective date.

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy endorsement WC 00 04 18.

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP.

The ACORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the policy is bound a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

E. Bankruptcy/Insolvencies

The Insurer may make a special adjustment as of the date that an insured is declared bankrupt or insolvent; makes an assignment for the benefit of creditors; is involved in any reorganization, receivership, or liquidation; or disposes of all or substantially all of its assets. The insured shall be liable for any additional premium or credit due at the time of the special adjustment.

F. Administration

It is the responsibility of the assigned carrier to administer the program, provide proper notification and application of the LSRP impact to premium, make the required LSRP calculations following the normal valuations, and collect the premium.

II. CANCELATION OF POLICY

A. Explanation

While the Cancellation condition of the Standard Policy permits cancellation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancellation in the Basic Manual for Workers Compensation and Employers Liability Insurance.

B. Coverage Obtained on the Voluntary Market

The LSRP will not apply to any policy canceled by the insured, within the first 120 days of coverage, because coverage was placed in the voluntary market. Said policy will be treated as a guaranteed cost policy with final audited premium calculated according to the appropriate rating rules.

C. LSRP Premium, Determination Upon Cancellation

1. Cancellation By the Insurance Carrier, except for non-payment of premium.
2. Cancellation By the Insured When Retiring From Business provided:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. the employer retires from all business covered by the insurance;

Note: For the purpose of this rule, a change in ownership of a corporation which results in elimination of experience under the rules of the Experience Rating Plan Manual does not constitute retiring from the business insured by the policy.

3. If the reason for the cancellation is No. 1 or 2 above, LSRP premium for the canceled policy shall be computed as follows:
 - a. Standard Premium: Determine the premium for the canceled policy on a pro rata basis in accordance with Basic Manual Rule X-B. The resulting premium shall be the Standard Premium.

- b. LSRP Premium: The LSRP premium for the canceled policy shall be determined by using the LSRP formula in Part Two of the Plan. Use the Standard Premium in a. above to establish the Basic Premium, and if applicable, Retrospective Development Premium for this formula.

EXCEPTION FOR NON-PAYMENT OF PREMIUM:

If the cancellation by the insurance carrier is because of non-payment of premium by the insured, the Maximum LSRP premium shall be based on a Standard Premium which shall be the premium for the canceled policy (under Basic Manual Rule X-B) extended pro rata to an annual basis.

Failure by an insured to pay all LSRP premiums, including premiums due as the result of adjustment, will result in cancellation of current coverage and disqualification from future assignments through the WCIP Plan.

The maximum premium payable on a canceled policy shall be based on the annual Standard Premium unless the employer has secured coverage outside the WCIP within 120 days of policy inception.

- 4. Cancellation By the Insured, Except When Retiring From Business For the Reasons Stated in II-B-2 above.

Determine the LSRP premium as follows:

- a. The premium for the canceled policy is to be calculated on a short rate basis under Basic Manual Rule X-D.
- b. Use the LSRP formula in this Part Two of the Plan to establish the LSRP premium as shown below:
 - i. Basic Premium and if applicable, Retrospective Development Premium shall be computed by using the short rate premium in 4a above as the Standard Premium.
 - ii. Minimum LSRP premium shall be the short rate premium in 4a above.
 - iii. Maximum LSRP premium shall be based on a Standard Premium which shall be calculated by using the actual payroll for the period of the policy in effect extending that payroll pro rata to an annual basis and then multiplying such extended payroll by the authorized rates and experience rating modification,

ARAP, and any applicable assigned risk surcharge program. The Maximum Premium Factor shall be applied to this Standard Premium.

EXAMPLE: CALCULATION OF MAXIMUM RETROSPECTIVE PREMIUM UNDER RULE 4b: ASSUME:

Policy In effect	185 days
Authorized Rate (per \$100 payroll)	5.00
Actual payroll for 185 days	\$555,000
* Experience Rating modification	1.00
Maximum Premium Factor	1.75

(a) Payroll extended to an annual basis:

$$\$555,000 \times \frac{365 \text{ days}}{185 \text{ days}} = \$1,095,000$$

(b) Annual Standard Premium =

$$\begin{aligned} & \$1,095,000 \times 5.00 \text{ (per \$100)} \times 1.00 \\ & = \$54,750 \end{aligned}$$

(c) Maximum Retrospective Premium:

$$\$54,750 \times 1.75 = \$95,813$$

*Note: In those states where ARAP or an assigned risk surcharge have been approved, these programs are to be included in the calculation of LSRP standard premium.

III. REPORTS OF PREMIUM AND POLICY COUNTS UNDER THE LSRP

In addition to following the statistical reporting requirement in accordance with the Workers Compensation Statistical Plan, all residual market carriers will make quarterly reports to the Plan Administrator, with such reports to be filed within 45 calendar days of the dates of March 31, June 30, September 30, and December 31, for activity relating to calendar quarters ending on these dates. Reports to the Plan Administrator will include, but not necessarily be limited to, the following:

A. Premium

These reports will separately identify WCIP and Contingency deposit premiums, as well as LSRP premium adjustments resulting from incurred loss valuations. If a Letter of Credit is secured in lieu of the LSRP Contingency deposit premium, identification of such security must be included in the quarterly report.

The Standard Premium used for determining the LSRP premium is that reported in accordance with the Workers Compensation Statistical Plan.

B. Policy Counts

Reports must include a listing and count of LSRP policies issued, renewed, non-renewed and canceled during the calendar period. An in-force policy count must also be provided.

C. Verification of Data

All reports will include the required information on an individual policy level, in the format and manner prescribed by the Plan Administrator.

Data reported under the Workers Compensation Statistical Plan shall be accepted as verified data for computation of the LSRP premium.

IV. COMPUTATION OF THE LSRP PREMIUM

- A. There will be four (4) adjustments computed to determine LSRP premium. The first, second and third calculations will be based on losses valued at the 18th, 30th, and 42nd month, respectively, after policy effective date and will include use of the LSRP Development Factors. A final adjustment, without an RDF, shall be calculated at the end of the 54th month.

Losses shall be valued in month 18, 30, 42, 54 and adjustments will be released as soon as practicable (i.e., month 21, 33, 45, and 57). The valuations and calculation of premiums are to be calculated by the assigned carrier, using premium and loss data which has been reported according to the Workers Compensation Statistical Plan.

1. First Computation of LSRP Premium

Under the Workers Compensation Statistical Plan, the reports of losses and premiums are submitted to the rating organization. As soon as practicable after data has been prepared in accordance with the Statistical Plan Manual, the first adjustment shall be made by the assigned carrier.

The assigned carrier shall notify the employer and return premium if the Plan premium is less than premium previously paid.

The insured shall promptly pay (within 30 days) any premium due. Failure to pay all premium, whether the premium is payable directly to the insurer or indirectly under a premium finance plan or extension of credit, shall constitute nonpayment of premium and be grounds for termination of any existing WCIP policy and resulting in disqualification from eligibility under the WCIP.

When a returned premium is generated by final audit, the assigned carrier shall hold any return premium until the first valuation. If returned premium is due the insured, the assigned carrier shall remit payment within 10 days after recording the LSRP adjustment.

Note: In certain cases, the assigned carrier may make an early calculation of LSRP premium. Such cases include bankruptcy, liquidation, reorganization, receivership, assignment for benefit of creditors, or other similar situations.

2. LSRP Adjustment After First Computation

- a. Subsequent calculations and adjustments of premium subject to this Plan shall be made by the assigned carrier annually after the first valuation. The procedure for such subsequent calculations shall be the same as in Rule 1 above except that such premium calculations shall be based upon the latest Unit Statistical Reports required. The assigned carrier shall continue to make such additional adjustments at the end of each 12 months period until the

54th month.

- b. If a subsequent valuation results in no change from the previous calculation, the assigned carrier shall notify the employer that there is no change in the premium payment and that subsequent calculations of premium will be made in accordance with Rule 3.a. below.

3. Final Computation of LSRP Premium

- a. The fourth and final valuation, without LSRP Development Factors will be calculated at the 54th month.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**WC 00 04 17**

Original Printing

Effective March 1, 1994

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under a Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
2. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
6. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULESTATEPREMIUM ELIGIBILITY

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 18

Original Printing

Effective March 1, 1994

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program.

Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.
2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 18

Original Printing

Effective March 1, 1994

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Rating Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.

4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 00 04 18

Original Printing

Effective March 1, 1994

2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3 will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 18

Original Printing

Effective March 1, 1994

SCHEDULE

1. Basic Premium Factor _____
2. Loss Conversion Factor _____
3. Tax Multiplier _____
4. Minimum Premium Factor _____
5. Maximum Premium Factor _____
6. LSRP Development Factors:
 - 1st Adjustment _____
 - 2nd Adjustment _____
 - 3rd Adjustment _____
 - Subsequent Adjustments 0.00

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-16-435

Ard Trucking Company,
Plaintiff,

vs.

Travelers Property Casualty Company
Of America d/b/a The Travelers Indemnity
Company of Illinois,
Defendant.

**TRAVELERS' MOTION
FOR RECONSIDERATION
PURSUANT TO SCRPC RULES
52 & 59 & RULES OF CIVIL
PROCEDURE**

COMES NOW Travelers which respectfully files its Motion for Reconsideration. Travelers respectfully submits that the Order adopted by Your Honor fails to make dispositive findings of fact, contains numerous erroneous findings of fact (for which no evidence in the Record supports) and reflects clear errors of law as more specifically set forth in this motion. In order to preserve its rights, Travelers hereby respectfully objects and requests Your Honor specifically issue specific findings of facts and/or conclusions of law as to the specific following issues:

1) whether Michael P. Hair & Associates was the producer of Ard Trucking Company (hereinafter "ATC"), as opposed to a mere "broker," which producer submitted an Assigned Risk application to NCCI on behalf of ATC;

2) whether, pursuant to the Workers Compensation Insurance Program (hereinafter "WCIP"), Michael P. Hair & Associates, ATC's producer, is an agent of the insured ATC in regard to the Assigned Risk policy issued to ATC;

3) whether ATC (through Allen Ard and Harry Brown) knew that the LSRP applied to ATC's Assigned Risk policy before ATC was asked to issue and thereafter issued an ILOC (Irrevocable Letter of Credit) in accordance with the LSRP;

4) whether ATC, which submitted an Assigned Risk application to NCCI through its producer Michael P. Hair & Associates, is bound by the knowledge of its producer (specifically that the producer- and ATC- knew that the LSRP applied to ATC's Assigned Risk policy before ATC issued an ILOC (Irrevocable Letter of Credit) in accordance with the LSRP;

5) whether ATC is bound by its Applicant's Statement where ATC agreed to be bound by and subject to the WCIP;

6) whether South Carolina's WCIP, including the Basic Manual and Supplemental Manuals and the South Carolina Department of Insurance (hereinafter "SCDOI") plan documentation, as adopted by NCCI, has the "force of law" in South Carolina in accordance with Avant and Burris decisions for ATC's Assigned Risk policy;

7) whether the LSRP has been approved and adopted in South Carolina pursuant to the SCDOI and SC WCIP;

8) whether the South Carolina's WCIP requires the LSRP to apply to Assigned Risk policies issued after November 1, 2003 as a matter of fact and as a matter of law and, therefore, the LSRP applied to ATC's Assigned Risk policy as a matter of fact and as a matter of law;

9) whether the Court is bound by South Carolina's WCIP, the Basic Manual and Supplemental Manual, and accompanying SCDOI documentation in regards to a servicing carrier's duties and an insured's duties relative to an Assigned Risk policy Travelers issued to ATC in accordance with the WCIP;

10) whether a Court is required to apply the law (i.e. the WCIP) even if the Court believes that the amount owed by an insured pursuant to the LSRP is "extraordinary," as it is the province of the Legislature (as delegated to NCCI) to determine the law applicable to Assigned Risk policies, not the courts;

11) whether a Court is required to apply the law (i.e. the WCIP) concerning SCDOI/NCCI's rules where Travelers, a servicing carrier, sent an initial Notice Endorsement, a subsequent Mandatory Endorsement, and a Brochure concerning the LSRP via FORMS required and approved by the NCCI, and, pursuant to the WCIP, such mandated FORMS constitute sufficient notice to ATC, an Assigned Risk insured, that the LSRP applies to Assigned Risk policies in South Carolina;

12) whether NCCI requires servicing carriers to use specific NCCI copyrighted and approved Endorsement forms and whether Travelers used the NCCI copyrighted and approved Endorsement FORMS required by NCCI in regards to the ATC Assigned Risk policy;

13) whether the Notice Endorsement, Mandatory Endorsement, and Brochure required by NCCI and provided to ATC in accordance with WCIP rules provides sufficient notice to ATC that the LSRP applies to ATC's Assigned Risk policy;

14) whether Travelers complied with its obligations pursuant to the WCIP by issuing the NCCI required Endorsements and Brochure in accordance with South Carolina's WCIP;

15) whether the Court erred by failing to find that the Mandatory Endorsement (and the Brochure) supplants/amends the Notice Endorsement and provides sufficient notice to ATC as a matter of fact and law;

16) whether the LSRP applies to ATC's Assigned Risk policy where Travelers sent and ATC received the NCCI mandated and required Application, Policy, Binder, Notice Endorsement, Mandatory Endorsement and Brochure as required by the WCIP and NCCI which provide notice to ATC that the LSRP applies to its Assigned Risk policy, where the WCIP mandates no further notice to ATC and where the WCIP was equally available to ATC, as it is to all Assigned Risk insureds;

17) whether it is erroneous for the Court to find that the Notice Endorsement excludes or negates the application of the LSRP to ATC's Assigned Risk policy when the WCIP rules require the issuance of the Notice Endorsement, the Mandatory Endorsement, and the Brochure which Travelers sent to and ATC received before ATC issued an ILOC to Travelers in accordance with the WCIP and LSRP;

18) whether it is erroneous for the Court to find that the Notice Endorsement excludes or negates the application of the LSRP where ATC was issued a re-written Assigned Risk policy with the required Mandatory Endorsement (and Brochure) which provides the WCIP required notice to ATC that LSRP applied to its Assigned Risk policy, especially where ATC admitted that it did not review or rely on the Notice Endorsement (and where ATC's producer admits he had actual knowledge that the LSRP applied to ATC's Assigned Risk policy), all prior to ATC issuing an ILOC to Travelers in accordance with the LSRP;

19) whether the Court's finding of fact that a servicing carrier has the discretion to somehow alter or revise South Carolina's WCIP and the applicability of the LSRP to South Carolina Assigned Risk policies by somehow unilaterally amending or revising the NCCI required and mandated Endorsement FORMS, a finding which no evidence in the Record supports, constitutes an erroneous finding of fact and error of law;

20) whether ATC's failure to procure any expert testimony establishing the standard of care of a servicing carrier or the breach thereof is fatal to its claims against Travelers;

21) whether ATC was required to comply with the WCIP Rule 4 appeal mechanism if ATC wished to preserve its right to contest Travelers' determination that the LSRP applied to ATC's policy or will ATC be allowed to side-step the administrative appeal mechanism set forth in the WCIP by seeking direct redress from the Court, where NCCI is the appropriate administrative body to address ATC's arguments;

22) whether ATC's failure to appeal Travelers' LSRP determination to NCCI in accordance with the WCIP requires that the unappealed administrative decision, right or wrong, to be the "law of the case" and not subject to a collateral attack by ATC via a collateral action in a court of law;

23) whether the Court's decision to negate the application of the LSRP to ATC's policy invades the province of the Legislature and threatens to undermine the LSRP as approved and implemented by the SCDOI in South Carolina and unnecessarily risks the continued viability of the Assigned Risk program in South Carolina;

24) whether the pre-judgment interest awarded by the Court is in error.

BACKGROUND

South Carolina law provides for a workers' compensation market for workers' compensation policies of last resort, generally referred to as Assigned Risk workers' compensation policies. Assigned Risk policies are for high risk employers who are unable to obtain workers' compensation coverage in the voluntary market. Assigned Risk policies are issued pursuant to the WCIP and are administrated through the NCCL.¹ NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina. Finally, the South Carolina Department of Insurance has verified that, in South Carolina, the Loss Sensitive Rating

¹ For those entities that cannot obtain workers' compensation coverage in the voluntary market, the State has an established "Assigned Risk" or "residual market." Rates for such a program are established by the State, and rules and procedures have been promulgated by the State as they relate to the Assigned Risk market – the South Carolina Workers' Compensation Assigned Risk Plan (WCIP), operating rules and procedures. The Plan administrator for the residual market is the National Council on Compensation Program, Inc. (NCCI).

Plan (“LSRP”)² is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, the WCIP mandates that LSRP is applicable to ATC’s Assigned Risk policy, which was issued on November 7, 2013 as a matter of law.

Here, pursuant to the WCIP and SCDOI approved plan, Travelers was required to issue and in fact issued the NCCI required Notice Endorsement, Mandatory Endorsement, and Brochure to ATC. ATC received these NCCI mandated FORMS, which NCCI has mandated provides notice to ATC (and to all Assigned Risk insureds in South Carolina) that the LSRP applies to its Assigned Risk policy. The Court, however, has erred in holding that the Notice Endorsement, in isolation, excludes the application of the LSRP to ATC’s policy, despite the fact that the Mandatory Endorsement and Brochure modify and supplant the Notice Endorsement as mandated by the WCIP. The Court has also erred by holding that Travelers could somehow modify or alter the required NCCI FORMS mandated by the WCIP and NCCI. Moreover, the Court has erred in outright ignoring the dispositive testimony of ATC’s producer that it, and therefore ATC, received the Mandatory Endorsement and Brochure and the producer not only had actual knowledge, but also understood and explained to ATC that the LSRP applied to ATC’s Assigned Risk policy before ATC issued Travelers an ILOC. In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms (including the NCCI mandated Notice And Mandatory Endorsements and Brochure), ATC had sufficient notice that the LSRP applied to its Assigned Risk policy and Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.³

² The LSRP is a plan that adjusts the premium for an Assigned Risk policy, following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. A retrospective rating plan for those employers who have an assigned risk workers’ compensation insurance premium of \$200,000 or more. Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program details are further set forth in the NCCI approved Plan documents and NCCI brochure entitled “*The Loss Sensitive Rating Plan (LSRP): An Employer’s Guide To The Mandatory Assigned Risk Retrospective Rating Program.*”

³ Per South Carolina law and the WCIP, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, LSRP is applicable to ATC’s Assigned Risk policy as a matter of law. Further, per the NCCI required Notice Endorsement, Mandatory Endorsement & Brochure, as expressly required by the WCIP, ATC had sufficient notice that the LSRP applied to its Assigned Risk policy.

UNCONTROVERTED EVIDENCE IN THE RECORD

ATC submitted an Assigned Risk application for an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP through its producer, Michael P. Hair & Associates, Inc. on 11/6/03. Pursuant to the application, ATC agreed to be bound by the WCIP. In its Application, ATC also acknowledged the LSRP was explained to ATC and that an explanatory notice or brochure had been provided to ATC and that ATC would be bound by the LSRP if ATC's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on ATC's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to ATC for the policy period effective 11/7/2003.

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on ATC's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to ATC for the policy period of 11/07/03 to 11/07/04. The Assigned Risk policy issued to ATC contained the NCCI required Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Subsequently, pursuant to the WCIP rules, Travelers performed a preliminary audit survey of ATC's payroll in February, 2004, which in turn triggered the WCIP LSRP provisions.

Pursuant to the WCIP, on or about March 1, 2004, Travelers issued a rewritten Assigned Risk policy, which included the NCCI required "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI. On or about March 1, 2004, Travelers also sent ATC and its producer a letter advising that ATC Assigned Risk policy had been issued as part of the mandatory LSRP and also provided ATC and its producer with an NCCI required and copyrighted explanatory brochure/pamphlet entitled "*The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program.*" Pursuant to the WCIP and SCDOI plan documents, once Travelers forwarded the NCCI required Notice Endorsement, Mandatory Endorsement and Brochure, ATC had notice that the LSRP applied to its Assigned Risk policy as set forth by the WCIP -- the WCIP requires no other notice to be sent to ATC or any other Assigned Risk insured.

ATC representatives initially testified that they did not know if they received the rewritten Assigned Risk policy, with the Mandatory Endorsement, or the booklet in or about March of 2004. However, in the Affidavit of Harry Brown, at the time Safety Director of ATC

and now ATC's vice-president, submitted to the Court prior to the summary judgment hearing, ATC admitted that Travelers sent the re-written Assigned Risk policy (which also contained the "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement"), as well as the NCCI brochure/pamphlet entitled "Loss Sensitive Rating Plan," to ATC on or about March of 2004.

Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and ATC provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for \$52,116. ATC's producer testified that when ATC's initial Assigned Risk policy was issued to ATC, he did not know the details of the LSRP. However, after Travelers requested an ILOC, ATC's producer became familiar with the LSRP and its applicability to ATC's Assigned Risk policy and the producer further advised ATC that the LSRP was applicable to ATC's Assigned Risk policy and ATC was required to issue an ILOC to Travelers in accordance to LSRP requirements if ATC wished to continue having an Assigned Risk policy pursuant to the WCIP. It was only after ATC's producer became aware of the LSRP and its applicability to ATC's Assigned Risk policy (and, per the producer's testimony, he advised ATC of the same) that ATC issued an ILOC to Travelers.⁴

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited ATC with an Annual Physical Audit and issued a final bill to ATC. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated and issued a LSRP bill for ATC for \$175,064 based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. ATC refused and has continued to refuse to pay Travelers' bill for additional premium of \$175,064 owed per the LSRP. Subsequently, per the LSRP provisions, Travelers drew upon the \$52,116 ILOC and ATC still owes Travelers \$122,948 for premium owed. Further, ATC did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI as required pursuant to WCIP Rule 4.

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms (including the NCCI required Notice Endorsement, Mandatory Endorsement, and Brochure), a servicing carrier is required to charge premium pursuant to the LSRP. Therefore, Travelers, the servicing carrier, is entitled to the premium it seeks.

⁴ Other than the LSRP, a servicing carrier has no authority or mechanism to request an ILOC by an Assigned Risk insured.

A) YOUR HONOR'S ADOPTIVE ORDER MISAPPREHENDS THE WCIP.

Initially, Your Honor's Order misapprehends the WCIP. The WCIP is "the law" and a servicing carrier can not alter or amend "the law" applicable to an Assigned Risk applicant/insured. Further, a servicing carrier is required to use the NCCI copyrighted and approved Endorsements and Brochure as required by NCCI and is required to comply with the WCIP/approved SCDOI plan. A servicing carrier does not have the discretion to alter or amend the WCIP, the NCCI required FORMS, or the LSRP as adopted by the SCDOI:

1. WCIP HAS THE "FORCE OF LAW."

In South Carolina, the WCIP has the force of law. According to the applicable provisions of the South Carolina Assigned Risk plan, the WCIP, as administered by NCCI, is the only "mechanism" in the state for implementing the Assigned Risk pool and has been approved by the Director of the Department of Insurance for use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an Assigned Risk plan by approving the WCIP for its use in the Assigned Risk practice in this State. Id. The WCIP provides the framework for the Assigned Risk pool and includes numerous provisions governing Assigned Risk practice. Id. Without the WCIP, there would be nothing guiding Assigned Risk practice and its procedure, such as an employer's application process for Assigned Risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an Assigned Risk policy is by applying through NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. NCCI is designated in the WCIP as the "plan administrator." Id. The Supreme Court affirmed that WCIP rules have the "force of law" concerning Assigned Risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the Assigned Risk Basic Manual and Supplement "is controlling law with respect to the issues it addresses."

2. ATC'S PRODUCER IS AN AGENT OF ATC, NOT TRAVELERS.

In South Carolina, the WCIP mandates that the producer is an agent of the insured, not the servicing carrier Travelers. Pursuant to the WCIP and South Carolina law, the producer who

submitted the Assigned Risk application on behalf of ATC is the agent of ATC, not Travelers. As such, any failure of ATC's producer to explain to his own client the WCIP, the LSRP, the Assigned Risk policy or its implications rests solely with ATC's own agent, not with Travelers. See S.C.W.C.I.P. "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities" ... [a producer] "is not a contract agent or agent of the servicing carrier. [Producers] have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship." Moreover, both ATC and its producer admitted that the producer is the agent of ATC, not the servicing carrier.⁵

Here, ATC's producer admitted he was aware that the LSRP applied to ATC's Assigned Risk policy before ATC provided the ILOC to the servicing carrier. Also, ATC's producer admitted he became aware of and had conversations with ATC about the LSRP on or about March of 2004, before ATC issued its ILOC to Travelers. As such, the producer had knowledge that ATC's Assigned Risk policy had triggered the LSRP and that ATC's Assigned Risk policy was subject to the LSRP prior to ATC issuing an ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to ATC as a matter of law. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306 (S.C. 1979); see 3 Am.Jur.2d, Agency, § 273, et seq.; 3 C.J.S. Agency § 432, et seq.; American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1985); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943). Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133, S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations); 18B Am.Jur.2d Corporations § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment").

As ATC's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to ATC issuing a letter of credit pursuant to the LSRP as

⁵ Your Honor's adoptive Order erroneously finds, in passing, that Michael P. Hair & Associates was a mere "broker" in North Carolina. The Order fails to find that Michael P. Hair & Associates was ATC's producer and that the producer's knowledge is imputed to ATC as a matter of fact and law. Travelers respectfully requests Your Honor issue specific findings of fact that the producer was an agent of ATC and that the knowledge of the producer was imputed to ATC, which had actual knowledge that the LSRP was applicable to its Assigned Risk policy.

required by the WCIP, the knowledge of the producer is imputed to ATC, and ATC had knowledge that the LSRP applied to its Assigned Risk policy prior to ATC issuing an ILOC to Travelers.

3. THE LSRP IS APPLICABLE FOR SOUTH CAROLINA ASSIGNED RISK POLICIES ISSUED AFTER NOVEMBER 1, 2003.

In South Carolina, Assigned Risk policies are governed by the WCIP. Pursuant to S.C. Department of Insurance, the LSRP applies to South Carolina Assigned Risk policies issued on or after November 1, 2003. The South Carolina Department of Insurance has verified:

“Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.”

In South Carolina, the WCIP has the force of law. Pursuant to the WCIP, the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as ATC's Assigned Risk policy was applied for on 11/6/03 and was issued on 11/7/03, the LSRP applies to the Assigned Risk policy issued to ATC.

Your Honor's adoptive Order mis-applies this fundamental point. ATC agreed to be bound by the WCIP. The WCIP mandates the LSRP applies to ATC's Assigned Risk policy. The WCIP mandates the notice to be provided to ATC: the NCCI required Notice Endorsement, Mandatory Endorsement and Brochure. Although the Notice Endorsement does not list South Carolina specifically, the NCCI has mandated that South Carolina not be listed in the Notice Endorsement. NCCI and the SCDOI have determined that the Mandatory Endorsement and Brochure (which Travelers sent and ATC received) amends and supplants the Notice Endorsement and provides sufficient notice to ATC that the LSRP applies to its Assigned Risk policy. Accordingly, the NCCI required Notice & Mandatory Endorsements (and the Brochure) [including the mandated Application, Policy & Binder], all of which ATC received in accordance with the WCIP, provides notice of the LSRP application to ATC's Assigned Risk policy as a matter of law; moreover, Your Honor's interpretation of the Notice Endorsement, to the exclusion of these other NCCI required Endorsements and Forms, erroneously negates the WCIP requirement that LSRP applies to ATC's policy and constitutes an error of law.

4. ASSIGNED RISK APPLICATION

The Assigned Risk application advised ATC of the LSRP's applicability. In his application, ATC signed an applicant statement agreeing to be bound by the WCIP and agreeing that his policy may be subject to the LSRP. Specifically, the Assigned Risk application states:

"The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan. If my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Here, ATC signed and submitted such application to NCCI, and ATC is bound by such Applicant's Statement. ATC acknowledged that it is bound by the LSRP if South Carolina has approved the LSRP in South Carolina. Admittedly, Allen Ard testified that he did not review ATC's application before he signed it, did not read the entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by. In South Carolina, "[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Id. at 663-64, 582 S.E.2d at 440. "The law does not impose a duty on the [defendant] to explain to an individual what he could learn from simply reading the document." Id. at 664 582 S.E.2d at 440 (citing Citizens & S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)). Based on the SCDOI approval of LSRP in South Carolina for Assigned Risk policies after 11/1/2003, ATC is bound by the LSRP as a matter of law.

5. ASSIGNED RISK POLICY

Identical with WCIP, the Assigned Risk policy itself allows Travelers to charge premiums in accordance with the WCIP. Specifically, the Assigned Risk policy states:

“A. OUR MANUALS

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

Moreover, the Assigned Risk policy and binder set forth:

“COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer's failure to comply with the terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan.”

...
“Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.”

Accordingly, per the Assigned Risk policy terms itself, the WCIP's LSRP applies to ATC's Assigned Risk policy.

6. THE NOTICE ENDORSEMENT, THE MANDATORY ENDORSEMENT & THE LSRP BROCHURE.

In Your Honor's adoptive Order, respectfully, the Court has erroneously held that the Notice Endorsement, in isolation, negates or excludes the application of the LSRP to Assigned Risk policies in South Carolina. However, Your Honor's decision fails to consider the WCIP/SCDOI rules concerning how the Notice Endorsement, the Mandatory Endorsement and the LSRP work in tandem provide sufficient notice to an Assigned Risk applicant/insured of the applicability of the LSRP to Assigned Risk policies.

The WCIP requires a servicing carrier to issue a Notice Endorsement upon the submission of an Assigned Risk application and the issuance of an initial Assigned Risk policy – Travelers issued the required Notice Endorsement. After the issuance of an initial Assigned Risk policy with

a Notice Endorsement, the WCIP allows a servicing carrier to perform an initial audit survey to determine whether the premium triggers the LSRP – Travelers performed such a survey, which triggered the LSRP. After the LSRP is triggered, the WCIP requires a servicing carrier to issue a rewritten policy with a required Mandatory Endorsement and a Brochure—Travelers issued the required Mandatory Endorsement and Brochure. These three documents (the required Notice Endorsement, Mandatory Endorsement & Brochure) are the only documents that the servicing carrier is required to forward to the Assigned Risk insured and Travelers forwarded such documentation to ATC.⁶ Accordingly, as NCCI (and therefore the Legislature) has determined that these three documents are the only documentation required to provide ATC with sufficient notice of the LSRP applicability to ATC's Assigned Risk policy, no other act is required by the servicing carrier to apply the LSRP to ATC's assigned Risk policy (See SCDOI Plan Documents SCDOI 0001 - 0039).

The above is especially true where ATC and its producer admitted that they knew that the LSRP applied to its Assigned Risk policy before ATC issued its ILOC to the servicing carrier. Not only did Travelers comply with the WCIP requirements to provide ATC with notice as required by the WCIP, ATC and its producer have admitted that they knew the LSRP applied to its Assigned Risk policy before ATC issued its ILOC to Travelers; yet, ATC argues and Your Honor's Order embraces the notion that, despite complying with the WCIP requirements which provides notice to an insured and despite the fact that ATC and its producer admit that they knew the LSRP applied to its policy before ATC issued an ILOC to Travelers, the Notice Endorsement, which fails to list South Carolina, in isolation, requires that the Assigned Risk policy does not allow, negates, or somehow excludes the LSRP to ATC's Assigned Risk policy...irrespective of the fact that the Mandatory Endorsement and Brochure amended the initial Notice Endorsement and were sent to

⁶ Your Honor's adoptive Order further errs by holding "However, instead of using the required Notification Endorsement to notify Plaintiff that LSRP would be applied to the South Carolina policy issued to Plaintiff by Defendant, the language Defendant used in the required endorsement not only failed to include South Carolina as a state wherein LSRP applied, it effectively excluded Plaintiff's South Carolina policy from being subject to LSRP application." Importantly, as set forth in the Affidavit of the Travelers underwriter, auditor and LSRP experts, the Notice Endorsement Travelers sent (which did not list South Carolina) was the NCCI required Endorsement. There is absolutely no evidence in the Record that Travelers was supposed to send any other Notice Endorsement and Your Honor's finding of fact to the contrary is erroneous. Further, no evidence in the Record exists to support any finding that Travelers could alter the NCCI required Endorsements and such finding of fact is also erroneous. Finally, the proposition that the law (i.e., the WCIP) is extraneous and not incorporated into an Assigned Risk policy is a clear error of law based on South Carolina law. In contrast to Your Honor's adoptive Order sentiments, respectfully, stripping the WCIP from applying to assigned risk policies would cause "chaos to reign within the business world and within the courts," specifically in the assigned risk markets.

and received by ATC before it issued its ILOC to Travelers. Respectfully, such result is absurd on its face, ignores the WCIP, evades the province of the NCCI and the Legislature, and risks the entire Assigned Risk program in South Carolina to inure to the benefit of ATC, which voluntarily applied for and received an Assigned Risk policy (by design, a more expensive policy of last resort) and voluntarily agreed to be bound by the WCIP.

Accordingly, respectfully, Your Honor is bound to apply the law (the WCIP) as set forth in the Basic Manual, Supplemental Manual, and the SCDOI plan documentation, and interpreting the initial Notice Endorsement, in isolation, as set forth in Your Honor's adopted Order violates the law and constitutes an error of law.

Respectfully, the fatal error in Your Honor's adoptive Order is that it ignores the WCIP, i.e., the law. In South Carolina, the WCIP, as adopted by the SCDOI and NCCI, mandates the LSRP applies to ATC's Assigned Risk policy as a matter of law. Respectfully, Your Honor errs by adopting ATC's argument that the Notice Endorsement excludes or negates the LSRP in South Carolina because it does not list South Carolina as a state to which the Notice Endorsement applies. Although the Notice Endorsement does not apply to South Carolina, the Mandatory Endorsement does apply to South Carolina and, most importantly, the NCCI/SCDOI has determined that the Mandatory Endorsement (along with the Brochure) amend/supplant the Notice Endorsement to provide sufficient notice to ATC that the LSRP applies to its South Carolina Assigned Risk policy. The WCIP requires Travelers to issue the NCCI required Notice Endorsement it issued to ATC. After the initial audit survey, once the payroll triggers the LSRP (as in this present case), the WCIP requires Travelers to issue a NCCI required Mandatory Endorsement and Brochure. Pursuant to the WCIP, the Mandatory Endorsement (and Brochure) revises and amends the Notice Endorsement and the WCIP mandates that the Mandatory Endorsement (and Brochure) provides sufficient notice that the LSRP applies to ATC's Assigned Risk policy.

In addition to the Mandatory Endorsement, the WCIP also requires that Travelers send the NCCI required Brochure which clearly explains the LSRP applicability in South Carolina, its purpose, and how the LSRP works. It is uncontroverted that Travelers sent and ATC received these NCCI required Forms. As such, according to the law, ATC had sufficient notice and ATC is deemed to have notice of the LSRP applicability to its Assigned Risk policy as a matter of law. To solely interpret the initial Notice Endorsement in isolation as excluding the LSRP applicability ignores the entire regulatory scheme as set forth in SCDOI 0001 – 00031, which mandates how a

servicing carrier notifies an insured of the LSRP's applicability. Respectfully, Your Honor can not ignore entire portions of the WCIP (i.e., the law) to render the LSRP program to be irrelevant. Further, Your Honor errs by finding the Mandatory Endorsement does not provide sufficient notice that the LSRP applies in South Carolina. The Mandatory Endorsement clearly advises that LSRP applies to an Assigned Risk policy in states that have approved the LSRP. In South Carolina, as the LSRP applies to all Assigned Risk policies after November 1, 2003, the Mandatory Endorsement incorporates the LSRP into ATC's Assigned Risk policy. The Mandatory Endorsement clearly states "This endorsement applies where the LSRP has been approved." Thus, although the Notice Endorsement may not apply in South Carolina, the Mandatory Endorsement clearly applies in South Carolina. Further, interpreting the Mandatory Endorsement to mean nothing and to render it a nullity based on the prior Notice Endorsement violates the WCIP and renders the entire LSRP obsolete in South Carolina and constitutes an error of fact and law.

B. ATC'S COUNTER-ARGUMENTS AS ADOPTED BY YOUR HONOR'S ORDER ARE WITHOUT MERIT.⁷

ATC's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, ATC must demonstrate: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Stringer v. State Farm Mutual Automobile Ins. Co., 386 S.C. 188 (Ct. App. 2011). Admittedly, ATC had the means of knowledge and implied, if not actual, knowledge of the LSRP. Also, per the WCIP, the Mandatory Endorsement & Brochure, as well as the entire WCIP's availability to ATC, provides notice, knowledge, and the means of knowledge of the LSRP's applicability. Further, admittedly, ATC did not "reasonably rely" on any representation by Travelers.

ATC's first counter-argument, which Your Honor has adopted in Your Order, is that the LSRP does not apply to ATC's South Carolina Assigned Risk policy because of the LSRP "Notice" Endorsement contained in the Assigned Risk policy. ATC argues that the LSRP "Notice" Endorsement excluded the LSRP applicability (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking

⁷ Indeed, Your Honor's adoptive Order holds that a strained interpretation of the Notice Endorsement did not advise ATC of what it already knew, where: 1) ATC is presumed to know the law (the WCIP) as a matter of law; 2) the Mandatory Endorsement and Brochure provided notice to ATC as a matter of law; 3) the producer admitted it knew the LSRP was applicable to ATC's policy; and 4) the producer told ATC that LSRP applied to its Assigned Risk policy.

additional LSRP funds.⁸ However, ATC's argument is flawed because the Mandatory Endorsement (and Brochure) supplants/amends and revises the Notice Endorsement (to the extent it may be interpreted to exclude the LSRP in South Carolina⁹).

Further, ATC's argument has already been soundly rejected by South Carolina courts. Specifically, the reasoning and holding of the Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C. (D.S.C.) 2004) decision is particularly instructive. In Georgetown, the South Carolina bankruptcy court held that the servicing carrier's use of standard forms and policies (such as the Assigned Risk LSRP Notification Endorsement at the time) is not ambiguous to a reasonable person in South Carolina as a matter of law. The Court held that the Assigned Risk application, the WCIP, and Assigned Risk policy terms put the insured on notice of the LSRP and its details as a matter of law because "an insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." Moreover, "the standard LSRP endorsements drafted and copyrighted by NCCI" ... "specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina and states that the plan will be adjusted based upon the losses incurred." Similarly, ATC "could have examined the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." ATC failed to do so, at its own peril.¹⁰ Further, the Application, the Policy, the Binder, the Mandatory

⁸ ATC ignores the Mandatory Endorsement completely in asserting its arguments. As the NCCI has determined that the "Notification" and "Mandatory" Endorsements (along with the Brochure) provide the requisite notice to an Assigned Risk policy insured, such Endorsements provide adequate notice to ATC of the LSRP applicability to Assigned Risk policies in South Carolina.

⁹ Indeed, a literal application of the Notice Endorsement merely sets forth that the Notice Endorsement itself does not apply to ATC's Assigned Risk policy, a far cry from "excluding" or "negating" the LSRP in South Carolina; rather, it merely notifies an insured of specific states which have LSRP programs pursuant to such specific Endorsement. Failure to list South Carolina as a specific state does not exclude or negate the LSRP from applying in South Carolina, rather it merely prevents the application of the Notice Endorsement itself. Moreover, once the payroll triggers the LSRP during an interim audit survey, the WCIP provides specific notice that the LSRP applies to an Assigned Risk policy via the Mandatory Endorsement and Brochure, which amend/supplant the Notice Endorsement anyway.

¹⁰ Bizarrely, ATC's interpretation, as adopted by Your Honor, negates the key holding of the Georgetown Steel decision. The fact that the Endorsements required by the WCIP/NCCI at the time of Georgetown decision differed than the Endorsements the WCIP/NCCI required at the time the ATC policy was issued does not mean that the Endorsements NCCI required to be sent to ATC are somehow defective. Rather, the crux of the Georgetown decision centers around a servicing carrier's use of NCCI approved and required Endorsements as providing notice to an Assigned Risk insured and, more importantly, an insured's own responsibility to review the WCIP to determine the applicability of the LSRP. ATC and its producer had the same access to the WCIP that the Georgetown insured had and, accordingly, the Georgetown decision supports Travelers position in this case. Further, under Georgetown's reasoning, the Mandatory Endorsement and Brochure amend the initial Notice Endorsement and provide sufficient notice of the LSRP to ATC in South Carolina.

Endorsement (which supplements/revises the Notice Endorsement) and the Brochure, all drafted, copyrighted, approved and required by NCCI, "specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina."

The Assigned Risk policy Endorsements' language is mandated by the NCCI and South Carolina's Department of Insurance. The Assigned Risk policy/Binder itself mandates that "Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement." As ATC agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, ATC had the means of knowledge to obtain and review a copy of the WCIP, or contact its producer, or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse: "It is fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state. 31A C.J.S. Evidence Section 132(1) (1980); Benn v. Camel City Coach Co., 162 S.C. 44, 160 S.E. 135 (1931); Gregory v. Gregory, 292 S.C. 587 (Ct. App. 1987). In South Carolina, the WCIP's LSRP is the law. Moreover, as ATC's producer admitted he knew the LSRP applied to ATC's Assigned Risk policy before he asked ATC to issue the irrevocable LOC to the servicing carrier, such knowledge is imputed to ATC. Finally, as ATC's producer testified he advised ATC of the LSRP before ATC issued its ILOC to Travelers, ATC had the means of knowledge, imputed knowledge, and actual knowledge of the LSRP during the pendency of its Assigned Risk policy.

Accordingly, ATC not only had the means of knowledge, but also had knowledge that the LSRP applied to the Assigned Risk policy before ATC issued an irrevocable LOC to the servicing carrier. Further, in key parts of their depositions, Allen Ard and Harry Brown both testified that they did not rely on the Assigned Risk "Notice" Endorsement, negating any reasonable reliance on the part of ATC. For these reasons, ATC's first counter-argument fails.

For a second defense/counter-argument, ATC argues, and Your Honor's Order implies, that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which ATC paid and the amount that ATC owed pursuant to the LSRP was somehow

"extraordinary."¹¹ This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill, and is intended to be a mechanism to ensure that large employers, such as ATC, pay their fair share based on the number of losses such employers have during the policy period.¹² Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing to capture such additional premium owed. Section A of the Premium section clearly sets forth that: "All premium for this policy will be determined by our manuals, rates, rating plans and classifications." Moreover, the LSRP program itself exists and was adopted by the SCDOI to ensure large employers pay their fair share to ensure the stability and continued financial viability of the Assigned Risk program in South Carolina. In other words, excusing ATC from the LSRP program based on a strained reading of the Notice Endorsement in isolation (while ignoring the Mandatory Endorsement/Brochure which amends the initial Notice Endorsement) will necessarily increase workers compensation costs on all other employers in South Carolina (based on how the Assigned Risk program is funded and maintain). Such result is contrary to the WCIP itself and the public policy reasons underpinning the LSRP as expressed by the Legislature and the SDOI.

C. ATC HAS FAILED TO PROVIDE ANY EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.

ATC has failed to list any expert to opine that Travelers breached any standard of care. Indeed, the South Carolina Department of Insurance has verified that LSRP applies to Assigned Risk policies issued after November 1, 2003 date and, therefore, specifically applies to ATC's Assigned Risk policy. ATC has not listed any expert to opine that Travelers has improperly

¹¹ Indeed, respectfully, Your Honor's adoptive Order reflects a bias against the LSRP, referring to the additional LSRP premium owed by ATC as "extraordinary additional premium charges for losses after the coverage year ended" and "extraordinary LSRP premiums" on eight occasions. It should be beyond the purview of the Court to question the wisdom or folly of the Legislature/SCDOI/NCCI in regard to the LSRP; rather, the Court should be limited to applying the law, not re-writing the law to suit ATC's needs. The Legislature/SCDOI/NCCI have determined that the LSRP is necessary/required to ensure the viability of the entire Assigned Risk program in South Carolina, to benefit all employers and South Carolina workers, and ad hoc judicial opinions negating the LSRP in South Carolina (via a strained interpretation of the Notice Endorsement) risk the entire Assigned Risk system and circumvent the intent of the Legislature.

¹² Your Honor's adoptive Order's footnote 1 is also erroneous based on the WCIP. Travelers' July 2004 (Letter of Credit for \$52,116) documentation is not evidence ATC was owed a "return premium," but it is merely a confirmation/receipt that the ILOC was received by Travelers on July 27, 2004. Indeed, the Travelers documentation was issued months before the first valuation of LSRP was triggered, well before the expiration of the policy, and merely reflects what premium would be returned is the LSRP valuation was zero in the future. As the LSRP valuations are not determined until after the policy periods end, Your Honor's finding that the July 27th Travelers document promises a return of the ILOC as a "return premium," before any LSRP valuation was completed, is erroneous and is not supported by any evidence in the Record.

determined that the LSRP applies to ATC's Assigned Risk policy or breached any standard of care in regard to its audits. Indeed, no expert testimony exists that Travelers took any act that violated any standard of care or caused any damages to ATC. In South Carolina, a party is required to provide expert testimony to establish the standard of care and deviation from such standard in order to proceed with a professional negligence case. See City of York v. Turner – Murphy Company, Inc., 317 S.C. 194, 452 S.E.2d 615 (1995) (stating “In a professional negligence cause of action, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.... Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct”).

Although ATC argues that Travelers provided ATC with an Assigned Risk policy that was “better” than a typical South Carolina Assigned Risk policy (due to the Notification Endorsement's failure to specifically list South Carolina), ATC has provided no evidence that the Endorsements (the Notification and Mandatory Endorsements) issued by Travelers to ATC were not standard Endorsements drafted, copyrighted and mandated by NCCI. ATC has provided no evidence that a servicing carrier, such as Travelers, has any discretion to vary the Endorsements mandated by the NCCI. Here, ATC has failed to provide any testimony, expert or otherwise, that Travelers, its underwriters, or its auditor breached any standard of care or to provide any evidence that the Endorsements used by Travelers were not mandated by NCCI. Accordingly, ATC's lack of any expert testimony to support its claims against Travelers is also fatal to ATC's claims.

Nowhere is the above more evident than where Your Honor's adopted Order simply finds that Travelers could have simply added in South Carolina to the initial Notice Endorsement or that Travelers somehow selected to provide ATC with defective Endorsements. No evidence (zero, zilch, nada) exists to support any finding that Travelers did not issue the NCCI required and copyrighted Endorsements or Forms.¹³ No evidence exists that Travelers had any authority to alter

¹³ Indeed, Your Honor's adoptive Order errs where it finds “simply because SCDOI allowed insurers to include LSRP provisions in South Carolina Assigned Risk policies beginning in November 1, 2003, LSRP provisions were not automatically incorporated into every South Carolina Assigned Risk policy.” In South Carolina, pursuant to the WCIP, the proposition that ATC is bound by the law (the WCIP) is not a red herring; to the contrary, pursuant to the WCIP and the policy terms itself, ATC is bound by the law and the LSRP is applicable to ATC pursuant to South Carolina law and the properly interpreted policy terms of the Assigned Risk policy.

or amend any of the NCCI required and copyrighted Endorsements or FORMS. In contrast, it is uncontroverted that Travelers issued the NCCI required and copyrighted Endorsements or FORMS and fully complied with all of its obligations as set forth in the WCIP.

D. ATC FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.

ATC asserts that Travelers is estopped from seeking the premium it is owed. However, ATC failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires ATC to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission, the circuit courts, and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed LSRP determination binds ATC per the WCIP requirements. The WCIP Rule 4 provides ATC with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 set forth the following mechanism:

"Any Assigned Risk policyholders affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances. For further information on this process, refer to Basic Manual Rule 4-A-10.

The state's approved workers compensation appeal mechanism is the forum for hearing the dispute. This process is administered by NCCI in its capacity as rating organization and/or Plan Administrator. The Plan Administrator's intervention in disputes is generally limited to matters involving experience rating modification factors, application of rules contained in NCCI manuals, eligibility and assignment under the WCIP, classification assignment, and Assigned Risk pricing programs."

"Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a de novo review by the regulatory authority, by requesting such binding arbitration or de novo review in writing and at its own expense, within thirty (30) days after the date of such decision."

"The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in NCCI manuals

- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs”

Here, as required by the WCIP, ATC did not file any appeal of Travelers’ LSRP decision to the NCCI. Rather, ATC abandoned its appeal of the dispute and, pursuant to WCIP, the insured is bound by Travelers’ decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating “an unchallenged ruling, right or wrong, becomes law of the case.”); Bennett v. S.C. Dep’t of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating “the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action”).

Accordingly, ATC is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and ATC is bound by the prior unappealed Travelers/NCCI determination pursuant to the WCIP. As no genuine issue of fact exists for a jury to determine any factual issue as the servicing carrier’s entitlement to premiums has been established pursuant to the WCIP provisions and ATC’s abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks on such grounds as well. Accordingly, as ATC failed to timely appeal Travelers’ decision to the NCCI, the administrative body charged with administering the WCIP, ATC cannot collaterally attack Travelers unappealed decision via this present collateral lawsuit. If ATC wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

E. YOUR HONOR’S PRE-JUDGMENT INTEREST AWARD IS IN ERROR PURSUANT TO S.C. CODE 34-31-20.

Assuming Your Honor does not reconsider his prior Order, S.C. Code Ann. § 34-31-20, entitled “Legal Rate of Interest,” sets forth that the correct pre-judgment interest award for ATC would be at the rate of 8 $\frac{3}{4}$ percent per annum. As the ATC’s ILOC was not drafted until September 8, 2005, the correct interest determination would be \$52,116 at 8 $\frac{3}{4}$ percent per annum from September 8, 2005 until February 13, 2015 (the date of Your Honor’s Order). Applying an 8 $\frac{3}{4}$ percent simple interest calculation, the correct pre-judgment interest award is \$42,941.40, not \$51,728.74, as set forth in Your Honor’s Order.

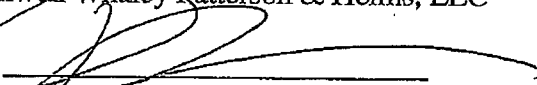
CONCLUSION

No dispute exists between the parties concerning the amount of payroll/remuneration ATC paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to ATC's South Carolina Assigned Risk policy. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to ATC's South Carolina Assigned Risk policy¹⁴. Through his producer, ATC submitted an Assigned Risk application and ATC was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, ATC agreed to be bound by the terms of the WCIP.¹⁵ The Assigned Risk Binder and Policy were issued in accordance with the WCIP. The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to ATC pursuant to WCIP. ATC received the NCCI mandated Notice Endorsement, the Mandatory Endorsement, and Brochure establishing ATC had notice of the LSRP as a matter of law. Accordingly, the LSRP applies to ATC's Assigned Risk policy, and Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

In summation, Travelers respectfully requests this Honorable Court to reconsider its prior decision, issue specific finding of fact and conclusions of law requested herein, and further grant Travelers' Motion for Summary Judgment and find that Travelers is entitled to the additional premium of \$122,948 (a liquidated amount) and interest from 6/29/05 to the present of an additional amount of \$103,993.52 for a total of \$264,901.72.

Respectfully submitted,

Barnwell-Whaley-Patterson & Helms, LLC

By: 
M. Dawes Cooke, Jr.
Phillip S. Ferderigos
288 Meeting Street (29401)
P.O. Drawer H

¹⁴ No reasonable jury could find for Ard based on the uncontroverted facts such that the Court is presented with an issue of law. At a minimum, however, triable issues of fact exist to prevent an issuance of an Order in favor of Ard's Motion for Summary Judgment as to Travelers.

¹⁵ This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that it is not bound by the LSRP and (2) that the carrier is otherwise estopped from seeking the additional premium it is owed pursuant to the LSRP.

March 2, 2015
Charleston, South Carolina

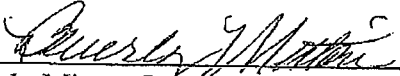
Charleston, SC 29402
843-577-7700
Counsel for Defendant Travelers

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2015, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
323 West Home Avenue
P.O. Box 1439
Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: 
Beverly Mitton, Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO. 2010-CP-16-435

Ard Trucking Company,
Plaintiff,

vs.

Travelers Property Casualty Company
Of America d/b/a The Travelers Indemnity
Company of Illinois,
Defendant.

**TRAVELERS' MEMORANDUM IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

2014 DEC 17 AM 8:30
FILED
SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, SC

TO: MARTIN S. DRIGGERS, SR., ESQUIRE, COUNSEL FOR THE PLAINTIFF
Defendant Travelers Property Casualty Company of America (hereinafter "Travelers")

respectfully submits this Memorandum in Support of its Motion for Summary Judgment.

A. BACKGROUND

South Carolina law provides for a workers' compensation market for workers' compensation policies of last resort, generally referred to as Assigned Risk workers' compensation policies. Assigned Risk policies are for high risk employers who are unable to obtain workers' compensation coverage in the voluntary market. Assigned Risk policies are issued pursuant to the WCIP and are administrated through the NCCI.¹ NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina. Finally, and most importantly, the South Carolina Department of Insurance has verified that, in South Carolina, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, the WCIP mandates that LSRP is applicable to Ard Trucking Company's Assigned Risk policy, which was issued on November 7, 2013, as a matter of law.

¹ For those entities that cannot obtain workers' compensation coverage in the voluntary market, the State has an established "Assigned Risk" or "residual market." Rates for such a program are established by the State, and rules and procedures have been promulgated by the State as they relate to the Assigned Risk market – the South Carolina Workers' Compensation Assigned Risk Plan (WCIP), operating rules and procedures. The Plan is administered by the residual market is the National Council on Compensation Program, Inc. (NCCP).

This matter involves a premium dispute wherein Plaintiff alleges Travelers improperly charged Plaintiff premium pursuant to the WCIP's Loss Sensitive Rating Plan (LSRP). In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms, Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.² The LSRP is a plan that adjusts the premium for an Assigned Risk policy, following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. Pursuant to the WCIP, based on Plaintiff's payroll, Plaintiff's Assigned Risk policy triggered the LSRP under the WCIP. Accordingly, pursuant to South Carolina law and the WCIP, Travelers, as the servicing carrier, is entitled to the additional premium it seeks pursuant to the LSRP.³

B. FACTS

Ard Trucking Company submitted an Assigned Risk application for an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP through its producer, Michael P. Hair & Associates, Inc. on 11/6/03. See Ard Trucking Company's Assigned Risk Application, dated 11/6/03, is attached as Exhibit 3 to the Affidavit of Ghayal. Pursuant to the application, Plaintiff agreed to be bound by the WCIP. Plaintiff also acknowledged the LSRP was explained to Plaintiff and that an explanatory notice or brochure had been provided to Plaintiff and that Plaintiff would be bound by the LSRP if Plaintiff's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on the Ard Trucking Company's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period effective 11/7/2003.⁴ See Travelers' Binder dated 11/20/03, attached as Exhibit 4.

² Per South Carolina law and the WCIP, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, LSRP is applicable to Ard Trucking Company's Assigned Risk policy as a matter of law.

³ Travelers hereby submits the Affidavits of Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista and accompanying exhibits attached as Exhibits 1, 2, and 3 to this Memorandum.

⁴ Admittedly, Allen Ard testified that he did not review his application before he signed it, did not read his entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by. In South Carolina, "[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Id. at 663-64, 582 S.E.2d at 440. "The law does not impose a duty on the [defendant] to explain to an individual what he could learn from simply reading the document." Id. at 664 582 S.E.2d at 440 (citing Citizens & S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 545, 443

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on the Plaintiff's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to Ard Trucking Company for the policy period of 11/07/03 to 11/07/04. See Travelers Assigned Risk policy attached as Exhibit 4 to the Affidavit of Ghayal. The Assigned Risk policy issued to Plaintiff contained the Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. See Travelers' Endorsement attached as Exhibit 6. Pursuant to the WCIP rules, Travelers performed a preliminary audit survey of Plaintiff's payroll in February, 2004. The preliminary audit survey's payroll triggered the WCIP LSRP provisions. See Travelers' Affidavits of Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista and accompanying exhibits attached as Exhibits 1, 2 and 3.

Pursuant to the WCIP, on or about March 1, 2004, Travelers then issued a rewritten Assigned Risk policy, which included the "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI.⁵ See Travelers' Assigned Risk policy issued on 3/01/04, attached as Exhibit 5 to the Affidavit of Ghayal; and the Endorsement, attached as Exhibit 9. On or about March 1, 2004, Travelers also sent Ard Trucking Company and its producer a letter advising that the Ard Trucking Company Assigned Risk policy had been issued as part of the mandatory LSRP and also provided Plaintiff and its producer with an explanatory pamphlet entitled "*The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program*."⁶ See Travelers' March 1, 2004 letter and pamphlet, attached as Exhibit 10. Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and Ard Trucking Company provided an acceptable, clean, unconditional, Irrevocable

S.E.2d 549, 551 (1994)). See first deposition transcript of Allen Ard, pp. 19, 20, 67 & 68 and second deposition transcript of Allen Ard, pp. 24-28, 153-155, attached as Exhibit 5.

⁵ Plaintiff and his representatives initially testified that they did not know if they received the rewritten Assigned Risk policy or the booklet in or about March of 2004. See second deposition transcript of Allen Ard pp. 13-20; 31-32; 85-89; 153; and Harry Brown pp. 17-21; 27; 29-31, attached as Exhibit 7. Plaintiff's producer testified, however, that he did receive the re-written Assigned Risk policy and he was aware that Ard Trucking Company Assigned Risk Policy was subject to the LSRP requirements before Ard Trucking Company issued its ILOC to Travelers. See Deposition transcript of Ard Trucking Company's producer pp. 7-9; 12; 15-16; 17-18; 21-22; 33-34; 37-38, attached as Exhibit 8.

⁶ Per the Affidavit of Harry Brown, Plaintiff now admits it received the re-written Assigned Risk policy on or about March of 2004, where Par. 5 states: "Travelers ... issued a replacement policy dated March 1, 2004, which I also reviewed and filed;" and Par. 7 which states "Travelers mailed Ard Trucking Company a brochure entitled "Loss Sensitive Rating Plan." I cannot recall receiving and reviewing this document, however, I have no reason to doubt that Travelers sent it to Ard Trucking Company."

Letter of Credit (ILOC) for \$52,116. See Ard Trucking Company's Irrevocable Letter of Credit dated 5/17/04, attached as Exhibit 11.

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited Ard Trucking Company with an Annual Physical Audit and issued a final bill to Ard Trucking Company. See Travelers' Final Premium Bill for \$29, 245.00 dated 2/9/05, attached as Exhibit 12. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated an LSRP bill for Plaintiff based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. Plaintiff refused and has continued to refuse to pay Travelers' bill for additional premium of \$175,064 owed per the LSRP.⁷ However, Plaintiff did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI. As such, Ard Trucking Company did not appeal Travelers' LSRP determination to NCCI as required pursuant to WCIP Rule 4.⁸

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium pursuant to the LSRP. Here, Travelers, the servicing carrier, is entitled to the premium it seeks as a matter of law.

C. DISPOSITIVE LEGAL ISSUE

No dispute exists between the parties concerning the amount of payroll/remuneration Plaintiff paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to Plaintiff's South Carolina Assigned Risk policy. See first Allen Ard deposition transcript, pp. 38-39, attached as Exhibit 14. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to Plaintiff's South Carolina Assigned Risk policy. Through his producer, Plaintiff submitted an Assigned Risk application and Plaintiff was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP.

⁷ The WCIP and the Assigned Risk policy allow an applicant to obtain an Assigned Risk policy via an estimate based on the representations of the Plaintiff and its producer. Based on the Plaintiff's application, Plaintiff was issued a South Carolina Assigned Risk policy. After the preliminary audit survey, per the WCIP and policy terms, Travelers determined the Plaintiff's premium triggered South Carolina's LSRP which is applicable to Assigned Risk policies. Based on the WCIP and applicable audit standards, Travelers is entitled to an additional premium of \$175,064 based on the LSRP. Travelers issued a bill to the Plaintiff for the additional \$175,064 in premium owed. Plaintiff refused to pay the additional premium owed. Subsequently, per the LSRP, Travelers drew upon the \$52,116 ILOC and Plaintiff still owes Travelers \$122,948 for premium owed.

⁸ Indeed, Plaintiff did not appeal any issue to NCCI as is required by WCIP Rule 4. See first deposition transcript of Allen Ard, pp. 37; 53; 65, attached as Exhibit 13.

In his application, Plaintiff agreed to be bound by the terms of the WCIP.⁹ The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to the Plaintiff pursuant to WCIP. Accordingly, as LSRP applies to Plaintiff's Assigned Risk policy, Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

1. WCIP HAS THE "FORCE OF LAW."

In South Carolina, the WCIP has the force of law. According to the applicable provisions of the South Carolina Assigned Risk plan, the WCIP, as administered by NCCI, is the only "mechanism" in the state for implementing the Assigned Risk pool and has been approved by the Director of the Department of Insurance for use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an Assigned Risk plan by approving the WCIP for its use in the Assigned Risk practice in this State. Id. The WCIP provides the framework for the Assigned Risk pool and includes numerous provisions governing Assigned Risk practice. Id. Without the WCIP, there would be nothing guiding Assigned Risk practice and its procedure, such as an employer's application process for Assigned Risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an Assigned Risk policy is by applying through NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. NCCI is designated in the WCIP as the "plan administrator." Id. The Supreme Court affirmed that WCIP rules have the "force of law" concerning Assigned Risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the Assigned Risk Basic Manual and Supplement "is controlling law with respect to the issues it addresses."

⁹ This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that he is not bound by the LSRP, and (2) that the carrier is estopped from seeking the additional premium it is owed pursuant to the LSRP.

2. SOUTH CAROLINA ASSIGNED RISK POLICIES APPLY THE LSRP FOR ASSIGNED RISK POLICIES ISSUED AFTER NOVEMBER 1, 2003

In South Carolina, Assigned Risk policies are governed by the WCIP. Pursuant to S.C. Department of Insurance, the LSRP applies to South Carolina Assigned Risk policies issued on or after November 1, 2003. The South Carolina Department of Insurance has verified:

"Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI." See SCDOI documents 0001-0040 attached to the Affidavit of Roshani B. Ghayal, Exhibit 1.

In South Carolina, the WCIP has the force of law. The South Carolina Department of Insurance has verified that the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as Plaintiff's Assigned Risk policy was applied for on 11/6/03 and was issued on 11/7/03, the LSRP applies to the Assigned Risk policy issued to the Plaintiff.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advises Plaintiff of the LSRP's applicability. In his application, Plaintiff signed an applicant statement agreeing to be bound by the WCIP and agreeing that his policy may be subject to the LSRP. Specifically, the Assigned Risk application states:

"The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan. If my estimated annual premium or

preliminary physical audit premium meets or exceeds the premium eligibility requirement.”

Here, Plaintiff signed and submitted such application to NCCI, and Plaintiff is bound by such Applicant’s Statement. Plaintiff acknowledged that he is bound by the LSRP if South Carolina has approved the LSRP in South Carolina. Based on the SCDOI approval of LSRP in South Carolina for Assigned Risk policies after 11/1/2003, Ard Trucking Company is bound by the LSRP as a matter of law.

4. ASSIGNED RISK POLICY

Identical with WCIP, LSRP, and Rules 2-A and 2-H, the Assigned Risk policy itself allows Travelers to charge premiums in accordance with the WCIP. Specifically, the Assigned Risk policy states:

“A. OUR MANUALS

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

Moreover, the Assigned Risk policy and binder set forth:

“COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer’s failure to comply with the terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan.”

...
“Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.”

Accordingly, per the Assigned Risk policy terms itself and the Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista, the WCIP’s LSRP applies to Plaintiff’s Assigned Risk policy as a matter of law.

5. PLAINTIFF'S PRODUCER IS AN AGENT OF THE INSURED

In South Carolina, the WCIP mandates that the producer is an agent of the insured, not the servicing carrier Travelers. Pursuant to the WCIP and South Carolina law, the producer who submitted the Assigned Risk application on behalf of Plaintiff is the agent of Plaintiff, not Travelers, as a matter of law.¹⁰ As such, any failure of Plaintiff's producer to explain to his own client the WCIP, the LSRP, and Assigned Risk policy or its implications rests solely with Plaintiff's own agent, not with Travelers. See S.C.W.C.I.P. "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities" ... [a producer] "is not a contract agent or agent of the servicing carrier. [Producers] have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship." See SCWCIP, Section I attached as Exhibit 16.

Here, Plaintiff's producer admitted he was aware that the LSRP applied to the Plaintiff's Assigned Risk policy before Plaintiff provided the irrevocable LOC to the servicing carrier:

"Q. Okay. Now, after the binder was issued, did the producer become aware that due to the amount of premium for the case, the premium and the payroll of the insured, that the LSRP was triggered?

A. Not right away. I think it was sometime after an audit was performed and it was determined that the payroll was higher than what we – you know – what was submitted in the application so...

Q. Right. And that was the preliminary audit that's in line with the WCIP provisions?

A. I believe so, yes."

Gary T. Usher deposition transcript, p. 12, l. 9-19

"Q. Okay. At some point before the letter of credit was requested, was the producer Michael P. Hair informed of the LSRP program and the details set forth in Defendant's Exhibit No. 4? [March 1, 2004 letter from Travelers and LSRP booklet attached as Exhibit 10 to this Memorandum.]

A. Yes. We were when we received this."

Gary T. Usher deposition transcript, p. 16, l. 11-15

"Q. Okay. And did you have any conversations with the safety manager at Ard Trucking about the LSRP?

A. I'm sure I did."

Gary T. Usher deposition transcript, p. 16, l. 25 – p. 17, l. 3;

¹⁰ In addition, both the Plaintiff and its producer testified that the producer is the agent of the insured, not the servicing carrier. See first deposition transcript of Allen Ard, pp. 13-14; 21; 23-24; 27; 29, and the producer, pp. 4-5, attached as Exhibit 15.

"A. Harry Brown was the safety manager and he was my contact person there. He was who I talked to about whatever issues we needed to talk about.

Q. Okay. And did you advise Mr. Brown about the LSRP?

A. I'm sure once this -- it became aware to both of us I'm sure we had probably more than one discussion on it and just -- you know --- just discovering what it was and what was necessary and what had to be done going forward."

Gary T. Usher deposition transcript, p. 17, l. 5 – l. 14. See referenced producer deposition pages attached as Exhibit 17.

Here, the producer admitted he became aware of and had conversations with Plaintiff about the LSRP on or about March of 2004, before Plaintiff issued its ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to Plaintiff as a matter of law. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306 (S.C. 1979); see 3 Am.Jur.2d, Agency, § 273, et seq.; 3 C.J.S. Agency § 432, et seq.; American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1985); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943). Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133, S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations); 18B Am.Jur.2d Corporations § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment").

As Plaintiff's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to Plaintiff issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to the Plaintiff as a matter of law, and Plaintiff himself had specific knowledge that the LSRP applied to his Assigned Risk policy.

6. PLAINTIFF'S COUNTER-ARGUMENTS ARE FLAWED.

Plaintiff's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, the insured must demonstrate: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Stringer v. State Farm Mutual Automobile Ins. Co., 386 S.C. 188 (Ct. App. 2011). Here, as a matter of law, Plaintiff had the means of

knowledge and actual knowledge of the LSRP. Also, Plaintiff did not “reasonably rely” on any representation by Travelers.

Plaintiff’s first counter-argument is that the LSRP does not apply to South Carolina Assigned Risk policies because of the LSRP Endorsement contained in the Assigned Risk policy. Plaintiff argues that the LSRP Endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds. However, Plaintiff’s argument has already been soundly rejected by South Carolina courts. Specifically, in the recent Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C.(D.S.C.) 2004)¹¹ decision, the South Carolina bankruptcy court held that the servicing carrier’s use of standard forms and policies (such as the Assigned Risk LSRP notification endorsement) is not ambiguous to a reasonable person in South Carolina as a matter of law. The Assigned Risk application, the WCIP, and Assigned Risk policy terms put the insured on notice of the LSRP and its details as a matter of law. The court held that “an insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan.” Moreover, “the standard LSRP endorsements drafted and copyrighted by NCCI” ... “specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina and states that the plan will be adjusted based upon the losses incurred.”

The Assigned Risk policy Endorsement’s language is mandated by the NCCI and South Carolina’s Department of Insurance. The Assigned Risk policy itself mandates that **“Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.”** As the Plaintiff agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, Plaintiff had the means of knowledge to obtain and review a copy of the WCIP, or contact his producer, or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse: “It is fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state. 31A C.J.S. Evidence Section 132(1) (1980); Benn v. Camel City Coach Co., 162 S.C. 44, 160

¹¹ The Georgetown decision is attached as Exhibit 18 for the Court’s ease of reference.

S.E. 135 (1931); Gregory v. Gregory, 292 S.C. 587 (Ct. App. 1987). In South Carolina, the WCIP's LSRP is the law. Moreover, as Plaintiff's producer admitted he knew the LSRP applied to Plaintiff's Assigned Risk policy before he asked Plaintiff to issue the irrevocable LOC to the servicing carrier, such knowledge is imputed to the Plaintiff as a matter of law. Finally, as Plaintiff's producer testified he advised the Plaintiff of the LSRP before Plaintiff issued its ILOC to Travelers, Plaintiff had the means of knowledge, imputed knowledge and actual knowledge of the LSRP as a matter of law.

Accordingly, Plaintiff not only had the means of knowledge, but also had actual knowledge that the LSRP applied to the Assigned Risk policy before Plaintiff issued an irrevocable LOC to the servicing carrier. Further, in key parts of their depositions, Allen Ard and Harry Brown both testified that they did not even rely on the Assigned Risk Loss Sensitive Rating Plan Notification Endorsement, negating any reasonable reliance on the part of Plaintiff. See second deposition of Allen Ard, pp. 24, 30, 153-155, and Brown deposition, pp. 21, 29-31, attached as Exhibit 19. For these reasons, Plaintiff's first counter-argument fails as a matter of law.

For a second defense/counter-argument, Plaintiff argues that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which the Plaintiff paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. Moreover, the Assigned Risk policy itself sets forth that "All premium for this policy will be determined by our manuals, rates, rating plans and classifications" See Section 4 of this Memorandum.

As the LSRP applies to this Assigned Risk policy as a matter of law, Travelers is entitled to the additional premium pursuant to the LSRP and it may not be estopped based on Travelers having issued a "final bill" to the Plaintiff where LSRP specifically requires additional billings after the "final bill" is calculated during the policy term, and the policy itself and the WCIP mandate such retrospective LSRP charges.

7. PLAINTIFF HAS NO EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.¹²

Plaintiff has not listed any expert to opine that Travelers has improperly determined that the LSRP applies to Plaintiff's Assigned Risk policy or breached any standard of care in regard to its audits. Indeed, no expert testimony exists that Travelers took any act that violated any standard of care or caused any damages to the Plaintiff. In South Carolina, a party is required to provide expert testimony to establish the standard of care and deviation from such standard in order to proceed with a professional negligence case. See City of York v. Turner – Murphy Company, Inc., 317 S.C. 194, 452 S.E.2d 615 (1995) (stating "In a professional negligence cause of action, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff cannot meet this burden, then the professional cannot be found liable as a matter of law.... Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct").

Here, Plaintiff has failed to provide any expert testimony that Travelers, its underwriters, or its auditor breached any standard of care. Indeed, Plaintiff failed to list any expert at all. Accordingly, Plaintiff's lack of any expert testimony to support its claims against Travelers is fatal to Plaintiff's claims as a matter of law.

8. PLAINTIFF FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.¹³

Plaintiff has asserted that Travelers is estopped from seeking the premium it is owed. However, aside from being meritless, Plaintiff failed to make such arguments via the appeal

¹² Plaintiff has failed to list any expert to opine that Travelers breached any standard of care. Plaintiff has also failed to create an issue of fact as it has retained no expert who has opined that Travelers breached any standard of care to it. Indeed, the South Carolina Department of Insurance has verified that LSRP applies to Assigned Risk policies issued after November 1, 2003 date and, therefore, specifically applies to the Plaintiff's Assigned Risk policy. Moreover, Plaintiff has not provided any evidence that Travelers' calculations of the LSRP are incorrect.

¹³ Plaintiff failed to appeal Travelers' LSRP determination or any other decision to the NCCI pursuant to Rule 4 of the WCIP and, therefore, Plaintiff failed to exhaust his administrative remedies and cannot contest Travelers' decision via this present lawsuit. The WCIP Rule 4 sets forth the appeal mechanism whereby the Plaintiff was required to file an appeal to the NCCI if the Plaintiff contested the LSRP's applicability to South Carolina Assigned Risk policies or the premium amount Travelers sought pursuant to the LSRP. As the Plaintiff failed to appeal Travelers' decision (that the LSRP applies to South Carolina policies), Travelers is entitled to additional premium pursuant to the LSRP formulas, and Plaintiff can no longer contest Travelers' determination via a collateral lawsuit.

mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires Plaintiff to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission and/or Administrative Law Judge and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed code classification binds Ard Trucking Company per the WCIP requirements. The WCIP Rule 4 provides Ard Trucking Company with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 (attached as Exhibit 18) set forth the following mechanism:

"Any Assigned Risk policyholders affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances. For further information on this process, refer to Basic Manual Rule 4-A-10.

The state's approved workers compensation appeal mechanism is the forum for hearing the dispute. This process is administered by NCCI in its capacity as rating organization and/or Plan Administrator. The Plan Administrator's intervention in disputes is generally limited to matters involving experience rating modification factors, application of rules contained in NCCI manuals, eligibility and assignment under the WCIP, classification assignment, and Assigned Risk pricing programs."

"Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a de novo review by the regulatory authority, by requesting such binding arbitration or de novo review in writing and at its own expense, within thirty (30) days after the date of such decision."

"The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs"

Here, as required by the WCIP, Ard Trucking Company never filed any appeal of Travelers' LSRP decision to the NCCI. Here, Plaintiff abandoned its appeal of the dispute and, pursuant to

WCIP, the insured is bound by Travelers' decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating "an unchallenged ruling, right or wrong, becomes law of the case."); Bennett v. S.C. Dep't of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating "the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action").

Accordingly, Plaintiff is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and Plaintiff is bound by the prior unappealed Travelers/NCCI determination pursuant to the WCIP. Moreover, based on NCCI's determination, the servicing carrier's entitlement to premiums set forth in its Complaint has been established as a matter of law, and Plaintiff is bound by such NCCI adjudication (i.e., the unappealed Travelers decision) which is the "law of the case."

As no genuine issue of fact exists for a jury to determine any factual issue as the servicing carrier's entitlement to premiums has been established pursuant to the WCIP provisions and the Plaintiff's abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks. Accordingly, as Plaintiff failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, Plaintiff cannot collaterally attack Travelers unappealed decision via this present lawsuit. If Plaintiff wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

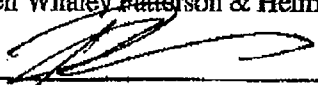
D. CONCLUSION

Based on the above, Travelers is entitled to the additional premium of \$122,948 (a liquidated amount) and interest from 6/29/05 to the present, and Travelers respectfully requests this Court issue an Order granting it summary judgment on such grounds. For the reasons set forth above, Travelers respectfully requests this Honorable Court grant its Motion for Summary Judgment.

Respectfully submitted,

[Signature on following page]

Barnwell Whaley Patterson & Helms, LLC

By: 

Phillip S. Ferderigos
288 Meeting Street (29401)
P.O. Drawer H
Charleston, SC 29402
843-577-7700
Counsel for the Defendant

December 17, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2014, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows: ✓

Martin S. Driggers, Sr., Esquire
323 West Home Avenue
P.O. Box 1439
Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: 

Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF DARLINGTON)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
C/A NO: 2010-CP-16-435

Ard Trucking Company,)
Plaintiff,)

AFFIDAVIT OF ROSHANI B. GHAYAL

vs.)

Travelers Property Casualty Company)
Of America d/b/a The Travelers Indemnity)
Company of Illinois,)
Defendant.)

The undersigned, Roshani B. Ghayal, having been duly sworn, hereby deposes and says that:

1. I am the Travelers' underwriter representative who is an expert in the areas of South Carolina assigned risk policy underwriting, the WCIP, and the Loss Sensitive Rating Plan (LSRP) and all aspects related thereto.
2. Attached as Exhibit 1 is my résumé setting forth my training and qualifications.
3. I am over the age of eighteen, I am not a party in this action, and I am competent to testify concerning the matters contained in this Affidavit, and I submit this Affidavit with information based on my personal knowledge, and, if called as a witness, could or would testify to the truth of the facts stated here. Further, my expert opinions set forth herein are to a reasonable degree of certainty, more likely than not, within the field of my expertise set forth above.
4. I have reviewed Travelers' documentation kept in the ordinary course and scope of its business, as well as the South Carolina Department of Insurance documentation [SCDOI 0001-0040] attached as Exhibit 2, evidencing that South Carolina Workers' Compensation Insurance Plan (SCWCIP) mandates that the Loss Sensitive Rating Plan (LSRP) is applicable to South Carolina Assigned Risk policies on or after November 1, 2003.
5. On or about November 6, 2003, Ard Trucking Company, through its producer Michael P. Hair & Associates, Inc. submitted an Assigned Risk Application [BWPB Ard Trucking 4 - 7] attached as Exhibit 3.
6. Pursuant to the application, Ard Trucking Company, the Plaintiff, agreed to be bound by the terms of the WCIP as set forth in the applicant's statement.
7. Pursuant to the application, Travelers was assigned as the servicing carrier pursuant to the WCIP and issued a policy binder and assigned risk policy number 6JUB-0188B92-3-03, dated 12-01-03, policy period from 11-07-03 to 11-07-04, attached as Exhibit 4.

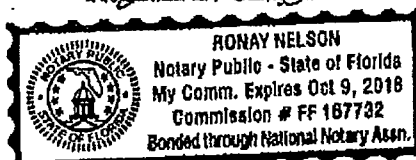


8. As required by the WCIP, the policy contained the LSRP Endorsement as mandated by the NCCI and the WCIP.
9. Pursuant to the WCIP, Travelers conducted a preliminary audit survey based on the payroll of the Plaintiff; given the Plaintiff's payroll at such time and pursuant to the WCIP, the assigned risk policy was re-written as an assigned risk LSRP policy on or about March 1, 2004.
10. Based upon a review of Travelers' records kept in the ordinary course of business, and in accordance with Travelers' regular practice and protocols, pursuant to the WCIP, Travelers sent the re-written policy, policy number R6EJUB-9560A28-5-030, dated 3-1-04 [BWPH Ard Trucking 00065-94] attached as Exhibit 5, as well as the pamphlet, "The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program" [BWPH 63, & 243-250] attached as Exhibit 6, to the Plaintiff and its producer on or about March 1, 2004.
11. On or about May 2004, in accordance with the LSRP requirements, Travelers requested that the Plaintiff pay the additional LSRP deposit or submit an irrevocable letter of credit in accordance with the WCIP.
12. In accordance with LSRP requirements, Plaintiff provided an irrevocable letter of credit for \$52,116 in favor of Travelers on or about June 2004.
13. Following the expiration of the term of the policy on or about December 24, 2004, Travelers conducted a physical audit in accordance with the WCIP and, based on the payroll of the Plaintiff, Travelers determined that additional premium was owed and, pursuant to the LSRP and the loss history of the Plaintiff during the policy term, Travelers determined that an additional \$175,064 was owed by the Plaintiff.
14. The Plaintiff refused to make the required LSRP premium payments and, pursuant to the WCIP and LSRP, Travelers properly drafted the irrevocable letter of credit that Plaintiff had issued previously in favor of Travelers.
15. Based on the WCIP, Travelers' charges for premium, including charges for LSRP premium, are proper and in accordance with the WCIP and LSRP and Travelers is entitled to an additional \$122,948.00 in premium that the Plaintiff still owes Travelers.
16. Finally, Plaintiff never filed an appeal of Travelers' LSRP determination to NCCI in accordance with the WCIP.

FURTHER AFFIANT SAYETH NOT.

[Signature]
 Witness
[Signature]
 Witness

[Signature]
 Roshani B. Ghayal



Sworn to and Subscribed before me
 this 16th day of December, 20 14.

[Signature] **Ronay Nelson**
 Notary Public for the State of: Florida

Expires Oct 9, 2018

My Commission expires: Expires Oct 9, 2008

Roshani B Ghayal

14118 Baroness Court, Orlando, FL 32828.

Home: (407) 282-7277 Cell: (407) 592-0108 Work: (407) 388-3068 Email: ghayalrb@gmail.com

A Senior Underwriter with 20+ years of proven technical experience in workers compensation underwriting and state compliance procedures. Superior record of delivering simultaneous large-scale account management and alliance building. Excellent interpersonal, organizational and communication skills. Proficient in working with senior management and corporate leadership.

- Proven Leadership abilities include managing a team of 13 underwriters and 2 account assistants
- Consistently meet goals and increase premium by using critical thinking and logical analytics.
- Investigative experience gained from New Scotland Yard and Travelers Insurance from over 20 years.
- Excellent Customer Service record with internal and external business partners.
- Strong emphasis on alliance building and superior organizational skills.
- Special Assignment to collaborate with FBI and US States Attorney.
- Successfully represented Travelers on a multimillion premium dispute case.
- Trusted to handle complex projects with detail preparation, accuracy, and confidentiality.
- Extensive knowledge of multiple state insurance plans and applicable state regulations
- Member of Toastmasters International Club

Work Experience:

June 1990 – Present –Travelers Insurance Companies, Orlando, FL.

2002-present Senior Account Manager Underwriter, Orlando, FL.

Primary responsibility is to implement new guidelines and procedures for management and support teams. Lead teams and facilitate weekly meetings in absence of assistant operations manager for Massachusetts, Indiana, and Georgia and Michigan teams. As the senior member of the team I mentor underwriters individually and in group settings. Review performance and prepare development plans as necessary. Presented an overview of corporate in house computer systems to re-insurers.

Manage multi-million dollar policies and increase premium by \$10.5 million for 70 accounts. Consistently exceed all Premium Accuracy goals.

I represented Travelers on a large premium dispute matter with Indiana Bureau.

Selected to be part of a team assembled by FBI and United States Attorney to collate data and subsequently testified to the validity of company documents on a high profile Washington DC account.

Continue to represent Travelers by providing depositions and witness testimonies in numerous court cases involving premium and coverage issues.

Handle specific Temporary/Leasing and Multiple Coordinated accounts

Independently manage an assigned book of business including specialty coverage's.

Respond to consumer complaints in a timely fashion.

Assisted in the development of core underwriting strategies for Massachusetts and Georgia.

Prepared files for Market Conduct reviews for Direct Assignment clients.

Conducted department wide hands-on training for navigation and use of NCCI website

2000-2002- Team Coordinator, Travelers Insurance Companies, Orlando, FL.

Responsible for managing and providing leadership to a team of 13 underwriters and 2 account assistants. Administered all human resources related functions as they applied to team members i.e. individual performance assessments, goal setting, counsel/coach/motivate individuals/team to achieve appropriate results. Ensured state and regulatory compliance by conducting monthly file reviews for 8 states.

1996-2000 - Project Analyst II, Travelers Insurance Companies, Orlando, FL.

Duties included support of underwriting department through management practices to ensure compliance with state and regulatory standards. I developed and conducted training to upgrade skills of underwriters. I reviewed and analyzed state regulatory and bureau guidelines to determine overall impact on departmental workflow. I developed new operational procedures and practices.

1993-1996 - Account Specialist, Travelers Insurance Companies, Orlando, FL.

Responsibilities included startup of Policy Issuance Team. Created training program, targeting use of Travelers systems, rules and procedures. Monitored production and checked daily work. Provided on-going training of new team.

Attended local job fairs to attract new applicants. Interviewed and checked references for new hires. Participated as a group mentor for new underwriters.

1990-1993 - Customer Service, Travelers Insurance Companies, Naperville, Illinois

Answered 100+ calls per day. Personally handled any problems to ensure complete customer satisfaction.

**1985- 1989 – Investigations Officer, New Scotland Yard, London, England.
Kilburn Police Station, London**

Investigation of Traffic Accidents and Drink/Drive accidents. Researched accidents involving diplomats and police officers. Wrote court summons for offenses. Interpreter for police department as necessary. Handled/managed financial ledgers for overtime and expenses. Analyzed witness statements, photographs and all investigative reports. Made recommendations to the Chief Inspector, and Great Britain Foreign Office suggesting action to be taken against suspects and diplomats. Successfully deported diplomats that were repeat offenders. Prepared off-site location for arrival of special victims for medical sample collection and questioning by detectives. Trained and guided new employees to review and process cases.



**South Carolina
Department of Insurance**

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

June 24, 2014

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Phillip Ferderigos
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

To Whom It May Concern:

This letter is provided in response to your inquiry as to the history of the Loss Sensitive Rating Program (LSRP). Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the assigned risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.

Willie L. Davis, Jr., FCAS, MAAA

P&C Actuary



SCDOI 0001
APPELLANT ROA 00157



National
Council on
Compensation
Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

An employer's guide to
the mandatory assigned risk
retrospective rating program

Retrospective rating is a method of pricing insurance which determines your final workers compensation premium after the policy period has ended, based on your actual losses during the policy period.

Pictorial, Inc.

This pamphlet has been created to help you understand the concept and details of the Loss Sensitive Rating Plan (LSRP). You are encouraged to read this material and discuss it with your producer, broker, assigned insurer or an NCCL, Inc. customer service representative. ■

Purpose

The purpose of the assigned risk mandatory Loss Sensitive Rating Plan (LSRP) is to provide a retrospective rating plan for those employers who have an assigned risk workers compensation insurance premium of \$200,000 or more. (Note: The premium threshold amount may vary by state.) The LSRP is designed to:

- **Promote Safety and Loss Control** by requiring you to accept greater financial responsibility for the losses that you incur.
- **Depopulate the Residual Market** by encouraging you to obtain coverage in the voluntary market.
- **Provide Fairness** by rewarding those of you with good loss experience with lower premiums while penalizing those employers with poor loss experience with higher premiums. ■

Background

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through other means. (Note: This would include such options as self-insurance.) The residual market is not intended to compete with the voluntary market by allowing employers to avoid various loss sensitive rating plan offers in exchange for guaranteed cost policies.

Among the rating alternatives for the large employer, loss-sensitive rating is the most equitable because it gives you the opportunity to have your insurance costs more directly related to your losses during the policy period. ■

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (Note: The implementation date may vary by state.) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. ■

Definition of Terms Used in the LSRP Program

Note: Any of the following definitions may vary by state.

Allocated Loss Adjustment Expense

ALAE includes costs associated with specific claims such as defense costs.

Basic Premium

A percentage of the Standard Premium, determined by multiplying the Standard Premium by a Basic Premium Factor. The Basic Premium includes insurance carrier expenses such as acquisition, loss control services, premium audit, producer fees and other general administrative costs. The Basic Premium does not cover premium taxes or claim adjustment expenses. These costs are usually provided for in the Tax Multiplier and Loss Conversion Factor.

Converted Losses

The results of applying the Loss Conversion Factor (LCF) to your Incurred Losses.

Deposit Premium

The deposit you must pay at the time of application or policy renewal. It is comprised of the WCIP Deposit Premium and the LSRP Contingency Deposit Premium.

Incurred Losses

Your losses occurring during the policy period including:

- Losses which have been paid and reserves for losses which are outstanding. Reserves are established to anticipate the insurance company's obligation on claims that have been incurred but have not yet been settled. These reserves must be added to paid claims to establish total Incurred Losses.

Individual Loss Limitation (Loss Cap)

The maximum portion of any loss subject to retrospective rating. There are no Individual Loss Limitations available in the LSRP program.

Loss Conversion Factor (LCF)

A loading to incurred losses to cover Unallocated Loss Adjustment Expenses. In this plan, it is a fixed factor of 1.125.

LSRP Contingency Deposit Premium

It is calculated as 20 percent of your Standard Premium and collected *in addition* to the WCIP Deposit Premium. The LSRP Contingency Deposit Premium must be paid at time of application, or policy renewal, to collateralize any additional premium that may be due the assigned carrier as a result of LSRP valuation activities.

As an alternative to a cash contingency deposit, you may substitute an acceptable, clean, unconditional Irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a Federal Reserve bank. The LOC must be for an amount at least equal to the LSRP 20 percent Contingency Deposit Premium. The cash deposit or LOC shall be held as collateral until at least the first adjustment. (The retention period may vary by state.)

LSRP Development Premium Factors (RDFs)

This premium element is an additional loading that recognizes the probable increase in value over time of your losses and helps stabilize your premium adjustments. The LSRP Development Premium Factors anticipate a pattern of increasing valuation of your losses after the policy has expired. The factor is included only in the first three annual adjustments and is not included in the fourth and final calculation. The RDFs vary from state to state.

Maximum Premium (Max)

The most premium you will pay under the LSRP program, irrespective of your losses. The Maximum Premium has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

- *Maximum Premium Factor.* A factor that is multiplied by your Standard Premium to determine your Maximum Premium. The Maximum Premium Factor is a fixed factor of 1.75 of Standard Premium.

Minimum Premium (Min)

The least amount of premium you will pay even if you have no losses.

- **Minimum Premium Factor.** A factor that is multiplied by your Standard Premium to determine your Minimum Premium. The Minimum Premium Factor is a fixed factor of 0.75 of Standard Premium.

Standard Premium (SP)

For the purposes of this Plan, Standard Premium means your premium determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs where appropriate, loss constants where applicable, and Minimum Premiums. Determination of Standard Premium shall exclude:

Premium discount, expense constant (unless it is part of Minimum Premium), premium resulting from the non-ratable element codes in the *Experience Rating Plan Manual*, premium developed under Class Code 7421 (aircraft-related operations), and premium developed by the occupational disease rates for employers subject to the Federal Coal Mine Health and Safety Act.

Tax Multiplier (TM)

This covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium they collect. The TM varies from state to state.

Unallocated Loss Adjustment Expenses (ULAE)

General claim adjustment expenses which include the cost of the insurance carrier claim services such as investigation of claims and filing claim reports.

WCIP Deposit (or Initial) Premium

WCIP Deposit Premium is calculated by multiplying your Estimated Annual Premium by the required Deposit Premium percentage. The HLOC option is not available for the WCIP Deposit Premium. ■

Summary of LSRP

> Objective

The principal objective is to create a plan that is appropriate for an employer of your size and will encourage you to seek coverage outside of the residual market and to control your losses.

> Parameters (Factors)

The LSRP is a simple loss sensitive rating plan constructed to be uniformly applied to all eligible employers. The plan parameters which form the basis of the LSRP are not negotiable for two reasons: individually "tailored" plans are available in the voluntary market; and, as the residual market assignment mechanism is random, the "luck of the draw" could determine the type of plan provided by the carrier, thus reducing the chance of fairness.

> Factors

The LSRP factors are:

• Basic Premium Factor (Basic)	0.30
• Loss Conversion Factor (LCF)	1.125
• Tax Multiplier (TM)	Varies by state*
• Retro Development Factors (RDFs)	Varies by state*
• Minimum Factor (Min)	0.75
• Maximum Factor (Max)	1.75

* The tax multiplier (TM) represents the currently approved tax multiplier in your state exclusive of any assigned risk subsidy. Current retrospective development factors (RDFs) are also used. These factors will change with subsequent changes in state rates and rating values. Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.

Some additional comments on the factors:

- Your policy premium will be adjusted, based on your losses, at intervals beginning six (6) months after the policy expires and at twelve (12) month intervals thereafter to a total of four (4) adjustments.

- The LSRP Development Factors (RDFs) will be used with the first three (3) valuations to reflect the actuarial probability that losses will develop (increase in value) over time. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and last adjustment.
- Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.
- The decision not to offer loss caps was based on the desire to avoid any plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low and tends to serve as a loss cap.

>Premium Payments

The following unique payment provisions apply:

LSRP Contingency Deposit Premium (Additional 20 percent)

- The carrier will be required to retain the 20 percent Contingency Deposit Premium and any final audit return premium without interest until the first valuation has been completed and billed. (The time held may vary by state.)

Irrevocable Letter of Credit

- In lieu of the additional 20 percent Contingency Deposit Premium in cash, an acceptable, clean, unconditional Irrevocable Letter of Credit containing an automatic renewal clause, drawn on a Federal Reserve bank can be provided at time of application or policy renewal.

Rating Plan Premium

- Your rating plan premium will be determined after the rating plan period ends (six months after policy expiration). Three additional annual premium adjustment calculations will be made.

Cancellation Provision

- The carrier will have the right to cancel the current assigned risk policy if any additional premiums on either current or prior assigned risk policies are not paid as required. The dispute resolution procedure in your state's Workers Compensation Insurance Plan (WCIP) applies to legitimate premium disputes. *Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.*

>Premium Variation

To accommodate premium increases while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days was established to retroactively convert a guaranteed cost policy to the LSRP and visa versa.

If after the first 120 days of the coverage term it is determined that you qualify for the LSRP, the current policy shall not be affected, but the LSRP will apply at renewal.

If your premium falls below the premium threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below the threshold, a retroactive conversion to guaranteed cost would result.

Since depopulation is a major goal of the LSRP, a release clause also applies. If you obtain coverage in the voluntary market within 120 days of policy inception, your premium would be calculated based on guaranteed cost.

120 DAYS FROM EFF DATE

> Multistate

The LSRP will apply to an employer with multistate operations when the total premium of all requested states that have approved LSRP meets the eligibility requirement for the LSRP state generating the largest premium. (This provision may vary by state.) ■

Impact on Your Workers Compensation Costs

The ultimate impact of the LSRP will depend on your losses over time. However, with good loss experience an individual employer's final premium is typically less than standard; it is more than standard with poor loss experience. ■

LSRP Calculation: Example

Illustrative Values

Standard Premium (SP)	=	\$339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

LSRP Factors

Basic	=	0.30
Minimum	=	0.75 or \$254,250 (\$339,000 × 0.75 = \$254,250 minimum premium)
Maximum	=	1.75 or \$593,250 (\$339,000 × 1.75 = \$593,250 maximum premium)
Loss Conversion Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.126*
Retrospective Development Factors (RDFs)	=	1st Adjustment 0.31*
	=	2nd Adjustment 0.21*
	=	3rd Adjustment 0.15*
	=	4th Adjustment 0.00

* Values shown here are for illustration only and are not necessarily the values in your state.

Formula

LSRP Premium (LSRP) =

Tax [(Basic × SP) + (RDF × LCF × SP) + (LCF × Incurred Losses)]

LSRP PREMIUM CALCULATIONS:

1st Adjustment

LSRP = 1.126 [(30 × 339,000) + (.31 × 1.125 × 339,000) + (1.125 × 254,250)]

LSRP = 1.126 [101,700 + 118,226 + 286,031]

LSRP = 1.126 [505,957]

LSRP = 569,708

Additional Premium (AP) = \$162,908 [569,708 - 339,000 - 20% LSRP Contingency Deposit Premium]

2nd Adjustment

LSRP = 1.126 [(30 × 339,000) + (.21 × 1.125 × 339,000) + (1.125 × 271,200)]

LSRP = 1.126 [101,700 + 80,089 + 305,100]

LSRP = 1.126 [486,889]

LSRP = 548,237

Return Premium (RP) = \$21,471 [569,708 - 548,237]

3rd Adjustment

LSRP = 1.126 [(30 × 339,000) + (.21 × 1.125 × 339,000) + (1.125 × 305,100)]

LSRP = 1.126 [101,700 + 57,206 + 343,238]

LSRP = 1.126 [502,144]

LSRP = 565,414

Additional Premium (AP) = \$17,177 [565,414 - 548,237]

4th Adjustment

LSRP = 1.126 [(30 × 339,000) + (.0 × 1.125 × 339,000) + (1.125 × 339,000)]

LSRP = 1.126 [101,700 + 0 + 381,375]

LSRP = 1.126 [483,075]

LSRP = 534,942

Return Premium (RP) = \$30,472 [565,414 - 534,942]

Questions & Answers

Q How will I know that I am eligible for the LSRP?

A If you are a new applicant to the assigned risk plan, the application will have the following language in the "Employer Signature Section":

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the binder is issued, the following language will be noted advising you that this is a mandatory program and it will be applicable to your policy:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

If you are already insured in an assigned risk plan, similar language will be on renewal quotes with estimated annual premium of \$150,000 or greater, advising you that the program may be applicable.

In addition, the assigned carrier will perform a preliminary audit within 120 days of inception for all renewal policies and new applications whose estimated annual premium exceeds \$150,000.

Q If I have operations in more than one state, will LSRP apply?

A The LSRP has been designed to accommodate the large assigned risk employer who has operations in several states. The plan provides for a multistate policy when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

Q What loss control services will carriers be required to offer under the LSRP?

A Although it may vary by state, under the current performance standards, servicing carriers are required to notify the policyholder and producer, in writing, within 90 calendar days of receipt of assignment, of available loss control services and safety information, including instructions on how to obtain these services and information.

Servicing carriers are required to provide a minimum of one consulting survey annually for each single location to any policyholder with an estimated annual premium greater than \$25,000.

Direct assignment carriers must adhere to any and all requirements as set forth by the state in which they are writing assigned risk business.

Contact your carrier or insurance advisor for more information or to arrange for loss control services.

Q If I am determined to be eligible for the LSRP during the first 120 days of the policy term, how much time am I given to provide the additional deposit/LOC?

A The carrier will usually give an insured 30 days to obtain any additional premium or appropriate LOC needed to continue the policy in force. This will also be true for any additional premium resulting from any of the four annual adjustments.

Q Do premium discounts apply when determining eligibility?

A By definition, Standard Premium does not include the premium discount; therefore, no discounts would be used in determining LSRP eligibility.

Q Is the 20 percent Contingency Deposit Premium for LSRP calculated from the total Standard Premium only in those states that approved the LSRP, or from the entire policy premium, regardless of the LSRP approvals? Will this require more than one policy?

A The 20 percent LSRP Contingency Deposit premium is calculated from the Standard Premium from those states that have approved LSRP. If the assigned risk employer requests coverage in a state where the LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one policy and then issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide coverages for all requested states; additional applications will then be necessary.



National
Council on
Compensation
Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994

SC-94-01

FLAN-SC-94-1

Page 1 of 1

Contact: James P. Nau, Director 407-997-4563

Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4331

SOUTH CAROLINA ITEM FILING

~~SC-94-01~~ ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.123
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.



National
Council on
Compensation
Insurance

P.S.#33 South Carolina
Item Filing

Government, Consumer and
Industry Affairs

John G. Wood
Director

February 25, 1994

Honorable John G. Richards V
Chief Insurance Commissioner
State of South Carolina
Department of Insurance
1612 Marion Street
Columbia, South Carolina 29201

RECEIVED
P & C

MAR 7 1994

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

98471003

APPEALANT

Re. Item 01-SC-94 - Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)

Dear Commissioner Richards:

STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

In accordance with the applicable statutes and regulations of South Carolina, I am filing for your consideration and approval the above-captioned item filing. This item filing is proposed to become effective on March 1, 1994, applicable to new and renewal business in the Workers Compensation Insurance Plan. Once the filing is approved the program will apply, to eligible accounts, with effective dates on or after September 1, 1994.

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to provide large employers with added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP has the added advantage of encouraging the large employer to obtain coverage in the voluntary market by removing the potential financial advantage that guaranteed cost residual market coverage may currently provide.

Included as part of the filing package is a listing of employers from current records identified as potentially being eligible for the LSRP. Any existing WCIP employers identified as being eligible will receive a six month notice of the implementation of LSRP in order to be provided the opportunity to place coverage in the voluntary market. New eligible risks coming into the WCIP on or after the implementation date will be provided a 120 day window of opportunity, after effective date of coverage, to place coverage voluntarily thereby avoiding application of LSRP to the period for which coverage was in effect.

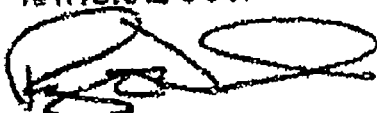
Page 2

Pursuant to the authority of the Plan, NCCI in its capacity as Plan Administrator, is making this filing on behalf of the participating insurers in the Workers' Compensation Insurance Plan in your jurisdiction.

Please contact me if you need additional information.

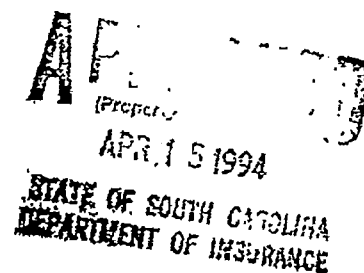
Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION INSURANCE



Roy O. Wood
Director
Government, Consumer and Industry Affairs

cc: Executive Director, Workers' Compensation Commission





National
Council on
Compensation
Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994

SC-94-01

PLAN-SC-94-1

Page 1 of 1

Contact: James R. Nau, Director 407-997-4563

Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4381

SOUTH CAROLINA ITEM FILING

ITEM 01-SC-94—ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.125
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.

Charlotte should advise

Retros plan @ \$200,000

Waiver from for handling

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SC-94

FILING MEMORANDUM

Item 01-SC-94 Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)
To be effective 12:01 A.M., March 1, 1994, applicable to New and Renewal Business

Purpose:

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to depopulate the residual market, to promote safety and loss-control, and to provide fairness.

Large employers would be encouraged to obtain coverage in the voluntary market since the potential financial advantage that guaranteed cost residual market coverage may currently provide for these employers would be removed. Therefore, the LSRP has the potential for depopulating the residual market and thus reducing the assigned risk burden.

The LSRP would also provide large employers with an added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP promotes fairness by rewarding those risks with good loss experience with lower premiums and penalizing those risks with poor loss experience with higher premiums.

Background:

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through the voluntary market. The residual market was not intended to compete with the voluntary market by allowing risks to avoid various loss sensitive rating offers for guaranteed cost policies.

In considering alternatives for the large employer, a loss-sensitive plan is the preferred rating method. Loss-sensitive rating is more equitable because those employers incurring the losses help pay them, and employers affected by the LSRP are large enough that they should have the means to effectively reduce losses.

Proposal:

It is proposed that the attached LSRP be implemented six months from the date of regulatory approval of this program. Upon approval, all LSRP-eligible accounts, the producers and current servicing carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. These large employers will be encouraged to obtain coverage in the voluntary market and the six month advance notice gives them sufficient time to do so.

Summary of the Plan:

To reduce losses, a plan should provide a positive, long-term financial incentive by rewarding excellent performance with reduced cost. However, as this is the residual market, such a plan had to provide this incentive without being competitive with voluntary market loss-sensitive pricing programs. Therefore, the LSRP must be mandatory and contain parameters that are less favorable than typical plans available in the voluntary market.

The following is a summary of LSRP which demonstrates that a mandatory loss sensitive rating plan is appropriate for this size risk and will be effective in reducing employer losses and depopulating the residual market.

Eligibility is established at \$200,000 in standard premium primarily because risks of this size are expected to have a sufficient number of claims to allow loss control programs to be effective. Loss-sensitive plans are also customarily available in the voluntary market for risks of this size.

The LSRP is a simple loss sensitive plan constructed to be uniformly applied to all eligible risks. The "one-set-of parameters-fits-all" approach was designed to engender a basic premium factor whose impact increases with size of risk. This is appropriate since the larger the risk, the greater the opportunity for finding coverage in the voluntary market. These plan parameters are not negotiable for two reasons: "tailored" or designed plans are available in the voluntary market; and as the residual market assignment mechanism is random, the "luck of the draw" would determine the type of plan provided, thus reducing the chance of fairness.

A principal objective is to create a plan which is not competitive with balanced, voluntary market plans. With the selected 0.75 minimum (low enough to produce a reasonable return), the 1.75 maximum (appropriate for this size risk), and the 1.125 loss conversion factor (LCF), a basic factor for a balanced plan can be calculated. However, unlike traditional retrospective rating plans, LSRP is not intended to be balanced. Therefore, the basic factor was selected to be a fixed 0.30. This is consistent with the goal of the plan to encourage such insureds to find voluntary coverage.

The fixed 0.30 basic factor means the LSRP basic premium factor is higher than it would have been under a balanced plan, with the impact increasing with the size of risk. This occurs for two reasons. First, the expense portion of the basic doesn't take into account the effect of the premium discounts, and second, the fixed basic is in contrast to the fact that the insurance charge should decrease as the risk size increases.

The proposed state tax multiplier for South Carolina will be 1.123. It represents the currently approved tax multiplier exclusive of any assigned risk subsidy. Currently approved retrospective development factors (RDFs) will be used. These factors will change with subsequent changes in rates and rating values. These factors will be published in the state exception pages of the basic manual.

As mentioned above, the factors were selected because they "work" in combination. Some additional comments on the factors however, are appropriate:

- * The RDFs will be used with the first three (3) valuations to reflect loss development. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and final adjustment.
- * The decision not to offer loss caps was based on the desire to avoid any carrier/insured plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low for this book of business and it tends to serve as a loss cap.
- * Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.

The LSRP's success will ultimately be determined by the extent to which insureds obtain coverage in the voluntary market and the impact on the employer's losses. The essential elements are present for significant safety improvements and loss reduction to occur-employer motivation to lessen the bottom-line insurance costs and the availability of loss control programs.

Collection problems are to be anticipated, however, several steps have been taken to minimize uncollectibles:

- * An additional 20% LSRP deposit premium is required which will be held without interest until the first adjustment. This is a deviation from the traditional voluntary retro plan, which normally requires collateral to be based upon the difference between incurred losses and ultimate projection of those losses and for the collateral to be held until the retro plan is closed. This is generally a larger amount and held for an indefinite period.
- * The carrier will be required to retain the 20% additional LSRP deposit and any final audit return premium until the first valuation has been completed and billed.
- * Even though the LSRP deposit is preferred, to provide options to an employer, an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve and obtained at binding, is satisfactory.
- * The carrier will have the right to cancel the current assigned risk policy if the adjustments are not paid as required. It should be noted that the dispute resolution procedure in the WCIP applies to legitimate premium disputes.

Carriers must be consistent with both the voluntary customers and the LSRP customers in handling claims and collections as applied to cancellations and bankruptcies. In the event of cancellation or bankruptcy, the maximum premium generated under the original LSRP calculation will remain in effect. This will ensure that the reinsurance mechanism is protected for the maximum exposure should subsequent adjustments generate additional premiums.

It is recognized that many factors contribute to premium changes after policy inception, especially audit. To accommodate premium increase, while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days is considered reasonable to retroactively convert a guaranteed cost policy to the LSRP. If after the 120 days of the coverage term, it is determined that the employer qualifies for the LSRP, the current policy shall not be affected, but LSRP will apply at renewal. A provision has been included to convert the policy pro rata from inception to the LSRP, if at any time it is determined that misrepresentation or omission of pertinent information occurred by the insured, its agent, employees, officers or directors that caused the policy to be improperly written as guaranteed cost.

If the employer's premium falls below the \$200,000 threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below \$200,000, a retroactive conversion to guaranteed cost would result. Since depopulation is a major goal of LSRP, a "release" clause will be available. If voluntary coverage is obtained within 120 days of policy inception, premium would be calculated based on guaranteed cost.

The LSRP has been designed to accommodate the large assigned risk employer when that employer has operations in several states. The plan provides for a multi-state policy when the following conditions exist: 1) when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium; and 2) the assigned carrier is capable of providing service in all requested states. If multi-state coverage is applicable and includes states that have not approved the LSRP, then separate policies will be issued.

Example I:

State A has a premium eligibility threshold of \$250,000.

State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$40,000 and the premium for State B is \$160,000. LSRP will apply to this account since the total policy premium meets the eligibility threshold for State B and State B has the largest premium.

Example II:

State A has a premium eligibility threshold of \$250,000.

State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$160,000 and the premium for State B is \$40,000. LSRP will not apply to this account since the eligibility threshold for State A is \$250,000 and State A has the largest premium, which does not meet the eligibility requirements.

In order for LSRP to be successful, every employer in the residual market must understand the potential impact of the LSRP on its premium. The following notification methods were selected:

- * Every policy issued in the residual market will carry an endorsement advising that any policy exceeding the eligibility threshold will be eligible for the LSRP.
- * Assigned risk application instructions will be modified to include a statement containing potential applicability of the LSRP and details of the Plan.
- * The WCIP binder additional notice will include a statement regarding the applicability of the LSRP for employers meeting the premium eligibility requirement. Also, assigned carriers' renewal quotes will carry a similar statement.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SC-84

- * In addition, a brochure explaining the LSRP will be provided to carriers and producers, and will be made available to employers.

Producer fees are payable in accordance with the South Carolina Producer Fee Schedule subject to the following exceptions:

- * No additional producer fee is payable or return commission chargeable as a result of LSRP valuation activity.
- * Producer fees will not be paid on the LSRP Contingency Deposit Premium.

Impact:

Currently in South Carolina, there are approximately 36 risks with premium of \$200,000 or more. These risks comprise about 0.02% of the policies in the residual market, but make up about 8% of the total premium written.

In South Carolina, the total impact of LSRP on residual market premium is expected to be negligible. The ultimate impact of LSRP, however, will depend on the individual employer's losses over time, the extent to which employers obtain coverage in the voluntary market, and the adequacy of rates at the time LSRP goes into effect. With good loss experience, the employer's final premium is typically less than standard; it is more than standard with poor loss experience.

Implementation:

The attached exhibits illustrate the Basic Manual changes which will be required in order to implement LSRP, the endorsements which will be utilized and the financial reporting procedures required to track the program. Additionally, either the NCCI application or ACORD 133 application, whichever is appropriate, shall be modified to contain a statement of applicant acknowledgement of the LSRP. Approval of this program constitutes approval of any necessary application or instruction changes.

Conclusion:

The LSRP is expected to provide large employers with the incentive to seek coverage in the voluntary market, to improve safety, and reduce losses.

The attached example illustrates the method of determining the retrospective premium for each of four adjustments for an average-size risk with losses determined by an average expected loss ratio.

LSRP CALCULATION EXAMPLE

$$\text{Retro Premium(RP)} = \text{Tax}[(\text{Basic} \times \text{SP}) + (\text{RDF} \times \text{LCF} \times \text{SP}) + \text{LCF} \times \text{Insured Loss}]$$

Standard Premium (SP)	=	339,000
Expected Losses (SP x LR)	=	339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

Retrospective Development Factors (RDF)	1st Adjustment	0.31
	2nd Adjustment	0.21
	3rd Adjustment	0.15
	4th Adjustment	0.00

Basic	=	0.30	
Minimum	=	0.75	or \$254,250 (minimum premium)
Maximum	=	1.75	or \$593,250 (maximum premium)
Loss Conversion Factor (LCF)	=	1.125	
Tax (Tax Multiplier)	=	1.126	

1st Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)] \\ \text{RP} &= 1.126[101,700 + 118,226 + 286,031] \\ \text{RP} &= 1.126[505,957] \\ \text{RP} &= 567,708 \end{aligned}$$

2nd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)] \\ \text{RP} &= 1.126[101,700 + 80,089 + 305,100] \\ \text{RP} &= 1.126[486,889] \\ \text{RP} &= 548,237 \end{aligned}$$

3rd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.15 \times 1.125 \times 339,000) + (1.125 \times 305,100)] \\ \text{RP} &= 1.126[101,700 + 57,206 + 343,238] \\ \text{RP} &= 1.126[502,144] \\ \text{RP} &= 565,414 \end{aligned}$$

4th Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.0 \times 1.125 \times 339,000) + (1.125 \times 339,000)] \\ \text{RP} &= 1.126[101,700 + 0 + 381,375] \\ \text{RP} &= 1.126[483,075] \\ \text{RP} &= 534,942 \end{aligned}$$

STATE SPECIAL RATING PLANS AND PROGRAMS
ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)
SOUTH CAROLINA
BASIC MANUAL INSERT

PART ONE

DESCRIPTION OF THE PLAN

I. INTRODUCTION

The rules under this Plan are mandatory and apply only to Workers Compensation & Employers Liability Insurance that is written under a Workers Compensation Insurance Plan (WCIP) in those states that have adopted the Loss Sensitive Rating Plan (LSRP). The LSRP shall apply to all assigned risk employers qualifying for the Plan. The elements in the LSRP are fixed and premium is determined and defined below.

A. GENERAL EXPLANATIONS

1. Plan is Mandatory

The Assigned Risk LSRP is a mandatory Plan and shall apply to all assigned risk policies with total estimated annual Standard Premium or total audited Standard Premium which equals or exceeds \$200,000.

2. Object of the Plan

This Plan adjusts the premium for the insurance to which it applies on the basis of losses incurred during the period covered by that insurance. The intent is to charge a premium which reflects those losses. This Plan uses the losses incurred during the term of the policy to establish the cost of insurance and includes provisions for all expenses and taxes on premium.

3. Loss Control Incentive in Use of the Plan

The LSRP provides an incentive to the employer to control and reduce losses because the LSRP premium will be the result of losses during the policy period. To the extent the employer controls losses, there is a reward through lower premiums. To the extent the insured does not control losses, there is a penalty through higher premiums.

4. Experience Rating Plan Manual

Separate policies in the WCIP under common majority ownership as provided by the rules of the Experience Rating Plan which are assigned to the same assigned risk carrier shall be combined for computation of the LSRP premium.

5. Risks Operating in More Than One State

LSRP may be applied on an intrastate or interstate basis. Refer to Part Three for Multi-state procedures.

6. Premium Discount

In states where premium discount is allowed under a WCIP, the standard premium under this Plan is not subject to the premium discount as defined in Rule VII of the Basic Manual for Workers Compensation and Employers Liability Insurance.

7. Increased Limits for Employers Liability

If the policy provides increased limits for employers liability, such premium and incurred losses shall be subject to LSRP.

8. LSRP Expenses

The Plan does not include tables of expense ratios for use by stock and non-stock companies. The expenses are fixed and are included in the Basic Premium.

9. Aircraft Classifications

If the insurance subject to the Plan includes any of the aircraft classifications, the premium and losses for such classifications shall be included in the LSRP.

10. Exclusion of Statutory Medical Benefits - Ex-Medical Coverage

Policies written on an ex-medical basis are subject to this Plan in states where permitted.

11. Large Construction Projects

Large Construction Projects are subject to this Plan in states where permitted.

II. DEFINITIONS

A. Employer

Means any business organization or enterprise that is required by statute to maintain workers compensation insurance in a state or any state(s) under the WCIP. The term shall include any business organizations or enterprises that are affiliated as a result of common ownership.

B. Insured

Insured means the assigned risk employer designated in the Information Page of the policy or policies to which this Plan is applied by the assigned carrier that issues such insurance. An Insured may be two or more legal entities if the same person, or group of persons, owns the majority interest in such entities. The Experience Rating Plan defines majority interest. It usually means:

1. Majority of voting stock, or
2. Majority of members or directors if there is no voting stock, or
3. Majority participation of general partners in profits of a partnership.

C. Risk

Risk means the Insured to which this Plan is applied.

D. Rates

1. Authorized rate means those rates approved for use under a WCIP.
2. Manual rate means the rate shown after the classification code number on the state rate pages in Part Three of the Basic Manual for Workers Compensation and Employers Liability Insurance.

E. Standard Premium

For the purpose of this Plan, Standard Premium means the premium for the risk determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs other than LSRP, loss constants where applicable, and minimum premiums. Determination of Standard Premium shall exclude:

1. Premium Discount,
2. The Expense Constant,

3. Premium resulting from the Non-Ratable Element Codes listed in the Experience Rating Plan Manual, for Workers Compensations and Employers Liability Insurance,
4. Premium developed by the passenger seat surcharge under Code 7421—Aircraft Operation—flying crew, and
5. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

F. Deposit Premium

The deposit premium shall depend upon the schedule in effect in the state generating the most payroll at the time of application. Refer to the state WCIP or ACORD application for the applicable premium payment schedule.

In addition to the applicable state WCIP premium payment plan or deposit premium an additional LSRP deposit premium of 20%, or an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve, shall be required on all LSRP policies. Refer to Part Two of this Plan to calculate the appropriate deposits.

G. Incurred Losses

Incurred losses used in the rating formula for determining premium under this Plan are those reported under the rules of the Workers Compensation Unit Statistical Plan adopted by the rating organization. Generally, incurred losses are the actual losses paid and outstanding, interest on judgments, expenses incurred in obtaining third-party recoveries, and allocated loss adjustment expenses for employers liability losses.

Incurred losses resulting from an accident involving two or more persons under any classification code containing a non-ratable catastrophe element shall be limited to the total of the two most costly claims, subject to any further loss limitation applicable.

The rating formula shall not include losses involving passenger employees resulting from the crash of an aircraft under Classification Code 7421.

For detailed instructions regarding incurred losses, refer to the Workers Compensation Statistical Plan.

H. Rating Organization

Rating organization means the National Council on Compensation Insurance or any other licensed rating organization.

I. Anniversary Rating Date

1. Single Policy Risk

The anniversary rating date for application of this Plan shall be the effective month and day of the current policy in effect.

2. Multiple Policy Risk

If the risk subject to the Plan includes more than one policy with different effective dates, the anniversary rating date shall be determined by the rating organization.

PART TWO

OPERATION OF THE PLAN

I. HOW PREMIUM IS DETERMINED UNDER THE PLAN

LSRP premium is computed on the basis of the formula in Part A.1 of this section.

A. THE LOSS SENSITIVE RATING PLAN FORMULA (LSRP)

The premium for a risk subject to this program is determined by the following formula:

1. Loss Sensitive Rating Plan Premium =
 - a. Basic Premium (= standard premium x basic premium factor)
plus
 - b. Converted Losses (= incurred losses x loss conversion factor)
plus
 - c. LSRP Development Premium (= standard premium x LSRP
Development factor x loss
conversion factor)
 - d. Multiply the sum of (a + b + c) by the Tax Multiplier.

This formula produces a premium which shall not be less than the LSRP Minimum Premium or more than the LSRP Maximum Premium.

If the risk to which the Plan is applied includes more than one legal entity, a single LSRP premium is calculated on the basis of the premium and losses of the combined entities, not individually for each legal entity.

B. DEFINITION OF TERMS USED FOR THE FORMULA

1. Standard Premium

Standard Premium is defined in Part One, II.E of this Plan.

2. Basic Premium

The Basic Premium is a percentage of the Standard Premium. It is determined by multiplying the Standard Premium by a Basic Premium Factor.

The Basic Premium includes: insurance carrier expenses such as those for a servicing the insured's account, loss control services, premium audit and general administration of the insurance.

The Basic Premium does not cover premium taxes or claim adjustment expenses. These elements are usually provided for in the Tax Multiplier and the Loss Conversion Factor.

The Basic Premium Factor is .30.

3. Converted Losses

Converted Losses are based on the incurred losses of the risk during the policy or policies to which this Plan applies. A Loss Conversion Factor is applied to such losses to produce the Converted Losses.

4. Loss Conversion Factor

The Loss Conversion Factor (LCF) is a fixed factor at 1.125. It covers claim adjustment expenses and the cost of the insurance carrier's claim services such as investigation of claims and filing claim reports.

5. Tax Multiplier

The Tax Multiplier varies by state and covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium which it collects.

Refer to the state exception pages for the appropriate tax multiplier.

6. Minimum Premium

The Minimum Premium for this Plan is the least amount of premium to be paid by a risk subject to LSRP.

The Minimum Premium Factor is .75.

7. Maximum Premium

The Maximum Premium for this Plan is the greatest amount of premium to be paid by a risk subject to this Plan. It has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

The Maximum Premium Factor is 1.75.

8. Individual Loss Limitations

There are no individual loss limitations under the mandatory LSRP.

9. LSRP Development Premium

The purpose of this premium element is to stabilize premium adjustments for risks subject to this program. The LSRP Development Premium anticipates a pattern of increasing valuation of losses after the policy is expired. The LSRP Development Premium is included in only the first three adjustments of the LSRP premium and is not included in the fourth and final calculation.

Refer to the state exception pages for the LSRP development factors.

10. Deposit Premium

Is the premium required to be paid at the time of application or policy renewal and, under the Plan, is comprised of the WCIP deposit premium and the LSRP contingency deposit premium.

a. WCIP Deposit Premium

The WCIP deposit premium is the deposit premium as referenced on the WCIP or ACORD application in the state generating the most payroll. The WCIP deposit premium is calculated by multiplying the Estimated Annual Premium by the required premium percentage.

b. LSRP Contingency Deposit Premium

The LSRP Contingency Deposit Premium is calculated as an additional 20% of Standard Premium and is added to the WCIP deposit premium. The LSRP Contingency Deposit Premium is to be paid at the time of application, or policy renewal, to collateralize premium which may be due the assigned carrier at the first adjustment.

If an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve is obtained in an amount at least sufficient to secure the dollar amount equal to the LSRP 20% Contingency deposit premium, an LSRP Contingency deposit premium will not be required and the deposit premium on such policy shall be equal to the WCIP deposit premium. The LOC shall be held as collateral until first adjustment.

PART THREE

ADMINISTRATION OF THE PLAN

I. ADMINISTRATIVE RULES

A. Eligibility

1. The Loss Sensitive Rating Plan (LSRP) shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or total audited Standard Premium equals or exceeds \$200,000.
2. A decrease in premium during the first 120 days of coverage which results in the employer falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be effected until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by Insured, its agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.

B. Multi-State Procedures

The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

If the assigned risk employer requests coverage in a state where LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one or more policies and issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide all requested states; additional applications may be necessary.

C. 120 Day Grace Period

The LSRP will not apply to an assigned risk policy subject to the Plan if the employer obtains workers compensation coverage outside the assigned risk market within 120 days of the effective date.

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy endorsement WC 00 04 18.

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP.

The ACORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the policy is bound a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

E. Bankruptcy/Insolvencies

The insurer may make a special adjustment as of the date that an insured is declared bankrupt or insolvent; makes an assignment for the benefit of creditors; is involved in any reorganization, receivership, or liquidation; or disposes of all or substantially all of its assets. The insured shall be liable for any additional premium or credit due at the time of the special adjustment.

F. Administration

It is the responsibility of the assigned carrier to administer the program, provide proper notification and application of the LSRP impact to premium, make the required LSRP calculations following the normal valuations, and collect the premium.

II. CANCELATION OF POLICY

A. Explanation

While the Cancellation condition of the Standard Policy permits cancellation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancellation in the Basic Manual for Workers Compensation and Employers Liability Insurance.

B. Coverage Obtained on the Voluntary Market

The LSRP will not apply to any policy canceled by the insured, within the first 120 days of coverage, because coverage was placed in the voluntary market. Said policy will be treated as a guaranteed cost policy with final audited premium calculated according to the appropriate rating rules.

C. LSRP Premium Determination Upon Cancellation

1. Cancellation By the Insurance Carrier, except for non-payment of premium.
2. Cancellation By the Insured When Retiring From Business provided:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. the employer retires from all business covered by the insurance;

Note: For the purpose of this rule, a change in ownership of a corporation which results in elimination of experience under the rules of the Experience Rating Plan Manual does not constitute retiring from the business insured by the policy.

3. If the reason for the cancellation is No.1 or 2 above, LSRP premium for the canceled policy shall be computed as follows:
 - a. Standard Premium: Determine the premium for the canceled policy on a pro rata basis in accordance with Basic Manual Rule X-B. The resulting premium shall be the Standard Premium.

- b. LSRP Premium: The LSRP premium for the canceled policy shall be determined by using the LSRP formula in Part Two of the Plan. Use the Standard Premium in a. above to establish the Basic Premium, and if applicable, Retrospective Development Premium for this formula.

EXCEPTION FOR NON-PAYMENT OF PREMIUM:

If the cancellation by the insurance carrier is because of non-payment of premium by the insured, the Maximum LSRP premium shall be based on a Standard Premium which shall be the premium for the canceled policy (under Basic Manual Rule X-B) extended pro rata to an annual basis.

Failure by an insured to pay all LSRP premiums, including premiums due as the result of adjustment, will result in cancellation of current coverage and disqualification from future assignments through the WCIP Plan.

The maximum premium payable on a canceled policy shall be based on the annual Standard Premium unless the employer has secured coverage outside the WCIP within 120 days of policy inception.

4. Cancellation By the Insured, Except When Retiring From Business For the Reasons Stated in II-B-2 above.

Determine the LSRP premium as follows:

- a. The premium for the canceled policy is to be calculated on a short rate basis under Basic Manual Rule X-D.
- b. Use the LSRP formula in this Part Two of the Plan to establish the LSRP premium as shown below:
- i. Basic Premium and if applicable, Retrospective Development Premium shall be computed by using the short rate premium in 4a above as the Standard Premium.
 - ii. Minimum LSRP premium shall be the short rate premium in 4a above.
 - iii. Maximum LSRP premium shall be based on a Standard Premium which shall be calculated by using the actual payroll for the period of the policy in effect extending that payroll pro rata to an annual basis and then multiplying such extended payroll by the authorized rates and experience rating modification,

ARAP, and any applicable assigned risk surcharge program. The Maximum Premium Factor shall be applied to this Standard Premium.

**EXAMPLE: CALCULATION OF MAXIMUM RETROSPECTIVE PREMIUM
UNDER RULE 4b: ASSUME:**

Policy In effect	185 days
Authorized Rate (per \$100 payroll)	5.00
Actual payroll for 185 days	\$555,000
* Experience Rating modification	1.00
Maximum Premium Factor	1.75

(a) Payroll extended to an annual basis:

$$\$555,000 \times \frac{365 \text{ days}}{185 \text{ days}} = \$1,095,000$$

(b) Annual Standard Premium =

$$\begin{aligned} & \$1,095,000 \times 5.00 \text{ (per \$100)} \times 1.00 \\ & = \$54,750 \end{aligned}$$

(c) Maximum Retrospective Premium:

$$\$54,750 \times 1.75 = \$95,813$$

***Note:** In those states where ARAP or an assigned risk surcharge have been approved, these programs are to be included in the calculation of LSRP standard premium.

III.

REPORTS OF PREMIUM AND POLICY COUNTS UNDER THE LSRP

In addition to following the statistical reporting requirement in accordance with the Workers Compensation Statistical Plan, all residual market carriers will make quarterly reports to the Plan Administrator, with such reports to be filed within 45 calendar days of the dates of March 31, June 30, September 30, and December 31, for activity relating to calendar quarters ending on these dates. Reports to the Plan Administrator will include, but not necessarily be limited to, the following:

A. Premium

These reports will separately identify WCIP and Contingency deposit premiums, as well as LSRP premium adjustments resulting from incurred loss valuations. If a Letter of Credit is secured in lieu of the LSRP Contingency deposit premium, identification of such security must be included in the quarterly report.

The Standard Premium used for determining the LSRP premium is that reported in accordance with the Workers Compensation Statistical Plan.

B. Policy Counts

Reports must include a listing and count of LSRP policies issued, renewed, non-renewed and canceled during the calendar period. An in-force policy count must also be provided.

C. Verification of Data

All reports will include the required information on an individual policy level, in the format and manner prescribed by the Plan Administrator.

Data reported under the Workers Compensation Statistical Plan shall be accepted as verified data for computation of the LSRP premium.

IV.

COMPUTATION OF THE LSRP PREMIUM

- A. There will be four (4) adjustments computed to determine LSRP premium. The first, second and third calculations will be based on losses valued at the 18th, 30th, and 42nd month, respectively, after policy effective date and will include use of the LSRP Development Factors. A final adjustment, without an RDF, shall be calculated at the end of the 54th month.

Losses shall be valued in month 18, 30, 42, 54 and adjustments will be released as soon as practicable (i.e., month 21, 33, 45, and 57). The valuations and calculation of premiums are to be calculated by the assigned carrier, using premium and loss data which has been reported according to the Workers Compensation Statistical Plan.

1. First Computation of LSRP Premium

Under the Workers Compensation Statistical Plan, the reports of losses and premiums are submitted to the rating organization. As soon as practicable after data has been prepared in accordance with the Statistical Plan Manual, the first adjustment shall be made by the assigned carrier.

The assigned carrier shall notify the employer and return premium if the Plan premium is less than premium previously paid.

The insured shall promptly pay (within 30 days) any premium due. Failure to pay all premium, whether the premium is payable directly to the insurer or indirectly under a premium finance plan or extension of credit, shall constitute nonpayment of premium and be grounds for termination of any existing WCIP policy and resulting in disqualification from eligibility under the WCIP.

When a returned premium is generated by final audit, the assigned carrier shall hold any return premium until the first valuation. If returned premium is due the insured, the assigned carrier shall remit payment within 10 days after recording the LSRP adjustment.

Note: In certain cases, the assigned carrier may make an early calculation of LSRP premium. Such cases include bankruptcy, liquidation, reorganization, receivership, assignment for benefit of creditors, or other similar situations.

2. LSRP Adjustment After First Computation

- a. Subsequent calculations and adjustments of premium subject to this Plan shall be made by the assigned carrier annually after the first valuation. The procedure for such subsequent calculations shall be the same as in Rule 1 above except that such premium calculations shall be based upon the latest Unit Statistical Reports required. The assigned carrier shall continue to make such additional adjustments at the end of each 12 months period until the

54th month.

- b. If a subsequent valuation results in no change from the previous calculation, the assigned carrier shall notify the employer that there is no change in the premium payment and that subsequent calculations of premium will be made in accordance with Rule 3.a. below.

3. Final Computation of LSRP Premium

- a. The fourth and final valuation, without LSRP Development Factors will be calculated at the 54th month.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 17

Original Printing

Effective March 1, 1994

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under a Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
2. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
6. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE

PREMIUM ELIGIBILITY

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program.

Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Rating Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.

4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY . WC 00 04 18

Original Printing

Effective March 1, 1994

2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3 will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

WC 00 04 18

Original Printing

Effective March 1, 1994

- SCHEDULE

1. Basic Premium Factor _____
2. Loss Conversion Factor _____
3. Tax Multiplier _____
4. Minimum Premium Factor _____
5. Maximum Premium Factor _____
6. LSRP Development Factors:
 - 1st Adjustment _____
 - 2nd Adjustment _____
 - 3rd Adjustment _____
 - Subsequent Adjustments 0.00

06-NOV-03 10:52AM

FROM-Michael P. Hair & Assoc.

704 543 0384

T-251 P.002/007 F-633

11-6-03

ACORD**WORKERS COMPENSATION APPLICATION**

PRODUCER PHONE (A/C, No, Ext)	(704) 543-0381	COMPANY	UNDERWRITER
Michael P. Hair & Assoc. P O Box 472224 Charlotte NC 28247		APPLICANT NAME ARD'S TRUCKING COMPANY, INC.	
		MAILING ADDRESS (including Zip code) P. O. BOX 504 DARLINGTON SC 29540	
		YRS IN BUS 59 YRS	
SIC		☐ Individual ☐ "S" Corporation ☐ Limited Corp. ☒ Corporation ☐ Partnership ☐ Other	
CODE:	SUB CODE:	FEDERAL EMPLOYER ID NUMBER 57-0804441	NCCL ID NUMBER
AGENCY CUSTOMER ID:		OTHER RATING BUREAU ID OR STATE EMPLOYER REGISTRATION NUMBER	

STATUS OF SUBMISSION**BILLING/AUDIT INFORMATION**

☐ Quote ☐ Bound (Give date and/or attach copy) ☒ Assigned Risk (Attach Acord 133) ☐ Issue Policy	BILLING PLAN ☐ Agency Bill ☒ Direct Bill	PAYMENT PLAN ☐ Annual ☐ Semi-Annual ☐ Quarterly MONTHLY % DOWN:	AUDIT ☒ At expiration ☐ Monthly ☐ Semi-Annual ☐ Other ☐ Quarterly
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LOCATIONS

#	STREET, CITY, COUNTY, STATE, ZIP CODE
GARAGE	1702 N GOVERNOR WILLIAMS DARLINGTON SC 29540-7631
1	
2	

POLICY INFORMATION

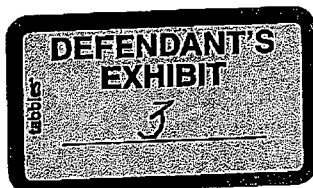
PROPOSED EFF DATE (MM/DD/YY) 11/7/03	PROPOSED EXP DATE (MM/DD/YY) 11-7-04	NORMAL ANNIVERSARY RATING DATE 11/1	☐ Participating ☒ Non-Participating	RETRO PLAN
PART 1 - WORKERS COMPENSATION (States) SC	PART 2 - EMPLOYER'S LIABILITY \$ 500,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 500,000 DISEASE-EACH EMPLOYEE	PART 3 - OTHER STATES INS ALL EXCEPT MONOPOLISTIC	DEDUCTIBLES ☐ Medical ☐ Indemnity ☐ Per Claim	AMOUNT % OTHER COVERAGES ☐ U.S.L.&H. ☐ Voluntary Compensation
DIVIDEND PLAN/SAFETY GROUP		ADDITIONAL COMPANY INFORMATION		

RATING INFORMATION

STATE	LOC	CLASS CODE	COM-PANY USE	CATEGORIES, DUTIES, CLASSIFICATIONS	# OF EMPLOYEES FULLTIME PARTTIME	ESTIMATED ANNUAL REMUNERATION	RATE	ESTIMATED ANNUAL PREMIUM
SC	1	7229		DRIVERS	70	2,100,000		
SC	1	8810		CLERICAL	22	410,000		
SC	1	8742		OUTSIDE SALES	1	16,000		

SPECIFY ADDITIONAL COVERAGES/ENDORSEMENTS

	FACTOR	FACTORED PREMIUM
TOTAL		3
INCREASED LIMITS		
DEDUCTIBLE		
EXPERIENCE MODIFICATION	.731	
LOSS CONSTANT		
ASSIGNED RISK SURCHARGE		
ARAP		
PREMIUM DISCOUNT		
EXPENSE CONSTANT		



157 333.00

MINIMUM PREMIUM

\$

DEPOSIT PREMIUM

\$

TOTAL EST ANNUAL PREMIUM

ACORD 130 (10/96)

PLEASE COMPLETE REVERSE SIDE

APPELLANT ROA 00197

11/06/2003 16:04 8647511

M P HAIR, GVILL SC

PAGE 02/02

08-NOV-03 02:46PM FROM: Michael P. Hair & Assoc.

704 543 0884

T-265 P.002/002 F-688

PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED. (Recommendation for inclusion must be part of rating information section.)

#	NAME	DATE OF BIRTH	TITLE/RELATIONSHIP	OWNER-SHIP %	DUTIES	INC/EXC	CLASS CODE	REMUNERATION
1	J WARD, SR	1/1/32	OWNER	48	OFFICE	Inc	8810	45,000
2	C ALLEN ARD	10/16/51	PRES	51	GEN. MGR	Inc	8810	45,000
3	MICHAEL HARLAN	1/17/60	V-P		OFFICE	Inc	8810	45,000
4	GRACE STREETT	7/11/49	SECTREA		OFFICE	Inc	8810	45,000
5								

PRIOR CARRIER INFORMATION/LOSS HISTORY

PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS

LOSS RUN ATTACHED ☒ Yes ☐ No

YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE
Current	CO: AMERICAN INTERSTATE POL:			4	45,929	161,875
1st Yr Prior	CO: CLARENDON NATIONAL POL:			1	4,499	1,185
2nd Yr Prior	CO: TRANS. EMP. SELF INSD T POL:			0		
3rd Yr Prior	CO: TRANS. EMP. SELF INSD T POL:			1	17,686	
4th Yr Prior	CO: POL:			0		

NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS

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

TRUCKER FOR HIRE

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES	Yes/No	EXPLAIN ALL "YES" RESPONSES	Yes/No
1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT/WATERCRAFT?	No	15. ARE ATHLETIC TEAMS SPONSORED?	No
2. DO HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVING (a) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL (e.g. KEROSENE, WILDFIRE, FUEL TANKS, etc)	No	16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?	No
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET?	No	17. ANY OTHER INSURANCE WITH THIS INSURER?	No
4. ANY WORK PERFORMED ON MARGES, VESSELS, DOCKS, BRIDGE OVER WATER?	No	18. ANY PRIOR COVERAGE DECLINED/ CANCELLED/RENEWED? (e.g. 1 year prior) NOT APPLICABLE IN MD	No
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?	No	19. ARE EMPLOYEE HEALTH PLANS PROVIDED?	No
6. ARE SUB-CONTRACTORS USED? IF YES, # OF WORK.	No	20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY?	No
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INS?	No	21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?	No
8. IS A FORMAL SAFETY PROGRAM IN OPERATION?	No	22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME?	No
9. ANY GROUP TRANSPORTATION PROVIDED?	No	CONTACT INFORMATION	
10. ANY EMPLOYEES UNDER 18 OR OVER 50 YEARS OF AGE?	No	IN. SPECTION PHONE: (843)393-5101	
11. ANY PART TIME OR SEASONAL EMPLOYEES?	No	NAME: HARRY BROWN	
12. IS THERE ANY VOLUNTEER OR DONATED LABOR?	No	ACCOUNTING RECORD PHONE: (843)393-5101	
13. ANY EMPLOYEES WITH PHYSICAL HANDICAP?	No	NAME: GRACE STREETT	
14. DO EMPLOYEES TRAVEL OUT OF STATE?	Yes	CLAIMS INFO PHONE: (843)393-5101	
		NAME: HARRY BROWN	

REMARKS

APPLICANT'S SIGNATURE

PRODUCER'S SIGNATURE

ACORD 130 (10/98)

BWP Hair & Trucking 0005
APPELLANT ROA 00198

ACORD TM	WORKERS COMPENSATION INSURANCE PLAN ASSIGNED RISK SECTION	DATE 10/30/2003
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THIS FORM ALONG WITH AN ACORD 130 WORKERS COMPENSATION APPLICATION CONSTITUTE AN APPLICATION FOR WORKERS COMPENSATION INSURANCE PLAN (ASSIGNED RISK) COVERAGE. THIS FORM MUST BE ATTACHED TO AN ACORD 130 FOR SUBMISSION. PLEASE REFER TO THE STATE SPECIFIC INSTRUCTIONS PAGE FOR SPECIFIC REQUIREMENTS.

APPLICANT NAME Ard Trucking Company, Inc.	PROPOSED EFF DATE 11/07/03
--	-------------------------------

SUPPLEMENTAL INFORMATION

PAYROLL OFFICE NAME, ADDRESS AND TELEPHONE NUMBER (A PO BOX ADDRESS ALONE IS NOT ACCEPTABLE. PLEASE PROVIDE DRIVING INSTRUCTIONS IF A ROUTE ADDRESS IS SHOWN.) 1702 North Governor Williams Highway Darlington, SC 29540	EXPLAIN ALL "YES" RESPONSES IN THE REMARKS SECTION 4. HAS THERE BEEN A NAME CHANGE, CONSOLIDATION, MERGER OR OWNERSHIP CHANGE DURING THE PAST FIVE YEARS? IF YES, GIVE PREVIOUS NAME AND DATE OF CHANGE. CONTACT THE PLAN ADMINISTRATOR ABOUT AN ERM-14.	YES	NO
			X
	5. IS APPLICANT RELATED THROUGH COMMON MANAGEMENT OR OWNERSHIP TO ANY ENTITY NOT LISTED HERE, WHETHER COVERAGE IS REQUIRED OR NOT? IF YES, GIVE DETAILED EXPLANATION.		X

STATE DEVELOPING HIGHEST PAYROLL: EXPLAIN ALL "YES" RESPONSES IN THE REMARKS SECTION 1. HAS THERE BEEN PREVIOUS WORKERS COMPENSATION COVERAGE: IN THIS STATE? ☒ YES ☐ NO IN ANY OTHER STATE? ☐ YES ☒ NO - IF NO TO BOTH QUESTIONS, WAS THIS DUE TO: ☐ NEW BUSINESS ☐ SELF INSURED-GROUP ☐ SELF INSURED-INDEP ☐ # EMPLOYEES	6. DO YOU LEASE WORKERS FROM A LABOR CONTRACTOR? IF YES, REFER TO WCIP INSTRUCTIONS.	YES	NO
			X
	7. DO YOU LEASE WORKERS TO A CLIENT COMPANY? IF YES, REFER TO WCIP INSTRUCTIONS.		X
	8. ARE YOU SEEKING TO COVER THE LEASED WORKERS? IF YES, REFER TO WCIP INSTRUCTIONS.		X
	9. DO YOU PROVIDE TEMPORARY LABOR SERVICES TO OTHER EMPLOYERS?		X

2. IS THERE ANY UNPAID WORKERS COMPENSATION PREMIUM DUE OR IN DISPUTE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? IF YES, EXPLAIN INCLUDING ENTITY NAME(S) AND POLICY NUMBER(S).	10. DO YOU HAVE A FRANCHISE OR LICENSING AGREEMENT? IF YES, PROVIDE DETAILS OF THE AGREEMENT.	YES	NO
			X
	11. DO TRUCKING CLASSIFICATIONS APPLY? IF YES, COMPLETE QUESTIONS 12-14.		X

3. YEAR APPLICANT'S BUSINESS BEGAN:						YES	NO
12. DO YOU OR YOUR EMPLOYEES REGULARLY OPERATE FROM A BASE TERMINAL(S) WHICH IS (ARE) USED TO LOAD, UNLOAD, STORE OR TRANSFER FREIGHT? IF YES, PLEASE PROVIDE A LIST OF TERMINAL ADDRESSES:						X	
#	STREET	CITY	COUNTY	ST	ZIP CODE		
1	1702 North Governor Williams Highway	Darlington	Darlington	SC	29540		
2							
3							

13. CAN EACH DRIVER'S STATE OF MAJORITY DRIVING TIME BE ESTABLISHED THROUGH VERIFIABLE RECORDS OR LOGS?	YES	NO
	X	

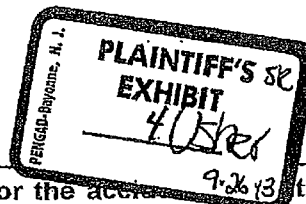
14. PLEASE PROVIDE A LIST OF ALL DRIVERS/HELPERS AND THEIR STATE OF RESIDENCE:				
	DRIVER NAME	TERMINAL # (SEE ABOVE)	MAJORITY DRIVING STATE	RESIDENCE STATE
1	List Attached			
2				
3				

INSURANCE COMPANIES WHO HAVE OFFERED/REFUSED INSURANCE

1. HAVE YOU RECEIVED ANY OFFERS OF VOLUNTARY COVERAGE? (INCLUDE MULTI-LINE OR RETROSPECTIVE RATING PLAN, IF APPLICABLE) IF YES, PROVIDE FULL DETAILS INCLUDING PLAN TERMS IN THE REMARKS SECTION.	YES	NO
	X	
2. INDICATE THE NUMBER OF INSURANCE COMPANIES WHICH HAVE REFUSED THE APPLICANT COVERAGE IN THE LAST 60 DAYS (OR IN ACCORDANCE WITH STATE SPECIFIC GUIDELINES): 3		
IN ACCORDANCE WITH PLAN RULES, THE APPLICANT OR ITS REPRESENTATIVE SHALL MAINTAIN ON RECORD FOR THIS POLICY PERIOD THE CARRIER NAME, CONTACT PERSON, ADDRESS, PHONE NUMBER AND DATE OF CONTACT OF THOSE CARRIERS REFUSING COVERAGE AND MAKE SUCH INFORMATION AVAILABLE TO THE PLAN ADMINISTRATOR OR ASSIGNED RISK CARRIER UPON REQUEST.		

REMARKS

SAFETY SERVICES



Notice to policy recipient: If you are not the person directly responsible for the activities for your company, please direct this Safety Services notice to the person that is directly responsible for them.

SAFETY IS OUR CONCERN

Thank you for purchasing your Workers' Compensation Insurance. Along with your agent, we appreciate your business and welcome the opportunity to be of service.

An important part of that service concerns accident prevention and safety engineering. Our Loss Prevention & Engineering Division has the experience, resources and capabilities to provide a range of safety services including site surveys, phone consultations or the provision of selected safety material. The following are some examples of our available services:

Accident Prevention - Our staff can help you identify present and potential safety hazards in your operations, premises and equipment, recommending measures for reducing or eliminating these hazards.

Analysis of Accident Causes - Although you investigate and keep records of accidents, we're available to help if needed.

Safety Consultations - Our field staff, supported by Home Office and field specialists, can help you with special problems such as ergonomics.

Industrial Hygiene/Health Services - We have the facilities and resources to answer your questions concerning job related industrial hygiene/health issues and to measure exposure to industrial hygiene hazards.

Safety Videos and Literature - We can provide you with basic videos and literature to assist you in your loss control efforts. Also, we can put you in contact with several companies able to provide additional safety materials including brochures, pamphlets and videos.

Safety Training - We can help you improve your safety training programs.

Internet Website - Visit the Loss Prevention & Engineering website page for helpful safety information. (<http://www.travelerspc.com/safety>). This website also has hot links to other safety-related Internet sites. For all requests for loss control assistance ONLY, please directly contact your local office listed on the following pages

The Travelers will provide these services upon request. Telephone consultation is also available if the nature of the operations and hazards warrant such service. See the rest of this document for the Loss Prevention & Engineering office nearest to you.

SAFETY IS YOUR CONCERN

U. S. employers spend billions of dollars each year on the direct and indirect costs of work-related accidents. Dollar figures can't begin to reflect the pain and suffering of an injured worker and his or her family. But they do give some indication of the multiple consequences of a job-related accident... loss of time, interrupted production, damaged materials and equipment, the expense of retraining or replacing an injured worker, possible legal action from government regulatory agencies, and increased insurance costs.

It makes good sense for both employers and their employees to actively participate in a sound accident prevention program. The success of such a program depends to a large extent on your commitment to safety procedures and accident prevention techniques. Safety is a management concern. Maybe we can help.

You may want to consider the following "Safety Checkpoints" as you evaluate your organization's safety activities:

SELF-INSPECTION PROGRAM:

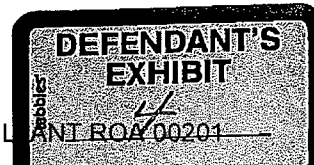
- * Do you conduct periodic surveys of premises?... equipment?... operations?
- * Do you analyze each job to find inherent hazards?
- * If you discover hazards, do you follow up with immediate corrective action?
- * Do you monitor such action to make sure it is implemented and effective?

ACCIDENT INVESTIGATION:

- * Do you investigate each accident?...determine the cause?
- * Do you take immediate steps to prevent a recurrence?
- * Do you keep records of accident investigations and follow-up measures?
- * Do you complete accident statistics and analyze trends?

EDUCATION AND TRAINING

- * Do you take the time to train each of your employees to perform tasks safely?
- * Do more-experienced employees receive training to correct bad habits that have developed over time?
- * Do all employees understand that safety is an important part of their jobs?



FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY

ALABAMA

Birmingham
3000 Riverchase Galleria,
Suite 600
Birmingham, AL 35244
(205) 982-4583

ALASKA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

ARIZONA

Phoenix
2401 W Peoria Ave., Suite 130
Phoenix, AZ 85029
(602) 861-8649

ARKANSAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

CALIFORNIA

Diamond Bar
21688 Gateway Center Drive
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

Glendale
700 N. Central Avenue, 8th Floor
P.O. Box 1840
Glendale, CA 91209
(818) 409-4220

Los Angeles
880 South Figueroa St., Suite 500
Los Angeles, CA 90017
(213) 533-3682

Sacramento
11090 White Rock Road
Rancho Cordova, CA 95670
(916) 638-6404

San Diego
9325 Sky Park Court, Suite 220
San Diego, CA 92123
(619) 616-6285

Walnut Creek
225 Lennon Lane, Suite 200
P.O. Box 8090
Walnut Creek, CA 94596-8090
(925) 945-4171

COLORADO

Denver
7600 E. Orchard Rd., Suite 380
Englewood, CO 80111
P.O. Box 173713
Greenwood Village, CO 80111
(303) 740-1691

CONNECTICUT

Hartford
300 Windsor Street
Hartford, CT 06120
(860) 277-6980

DELAWARE

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

DISTRICT OF COLUMBIA

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-6765

FLORIDA

Orlando
Orlway Ctr-1900 Legion Place,
10th Floor
P.O. Box 3555
Orlando, FL 32802-3555
(407) 649-2596

GEORGIA

Atlanta
4400 North Point Parkway
2nd Floor
Alpharetta, GA 30022
(770) 521-3020

HAWAII

Diamond Bar
21688 Gateway Center Drive
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

IDAHO

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

ILLINOIS

Chicago
190 S. LaSalle Street Suite 960
Chicago, IL 60603
(312) 609-2936

Naperville
215 Shuman Boulevard
P.O. Box 3208
Naperville, IL 60566
(630) 961-8074

INDIANA

Indianapolis
6081 E. 82nd St.,
P.O. Box 50485
Indianapolis, IN 46250-0485
(317) 841-2966

IOWA

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KANSAS

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KENTUCKY

Louisville
305 North Hurstbourne Pkwy,
Suite 125
Louisville, KY 40222
(502) 423-5447

LOUISIANA

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MAINE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

MARYLAND

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

MASSACHUSETTS

Boston
100 Summer Street, Suite 201A
Boston, MA 02110
(617) 984-1284

Hudson
1 Cabot Road, Suite 200
Hudson, MA 01749
(617) 984-1284

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-1284

MICHIGAN

Grand Rapids
3777 Sparks Ave., SE, Suite 200
P.O. Box 3010
Grand Rapids, MI 49501-0323
(616) 942-4344

Southfield
26555 Evergreen Rd., Suite 1240
Southfield, MI 48076-4385
(248) 423-2299

FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

MINNESOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

MISSISSIPPI

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MISSOURI

St. Louis
One City Place Drive
Creve Coeur, MO 63141
P.O. Box 66852
St. Louis, MO 63166-6852
(314) 994-2374

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

Missouri Workers' Compensation Plan (MWCP)

951 Hornet Drive
P.O. Box 42021
Hazelwood, MO 63042-2309
(314) 551-3208

MONTANA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

NEBRASKA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

NEVADA

Las Vegas
1850 E Flamingo, Suite 202
Las Vegas, NV 89119
(702) 669-4718

NEW HAMPSHIRE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

NEW JERSEY

Morris Plains
1100 American Road, 2nd Floor
Morris Plains, NJ 07950
(973) 606-5245

Pennsauken
4350 Haddonfield Road
Pennsauken, NJ 08109
(856) 488-5942

NEW MEXICO

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

NEW YORK

Albany
900 Watervliet-Shaker Road
Albany, NY 12205
(315) 424-7231

Buffalo
60 Lakefront Blvd.
P.O. Box 242
Buffalo, NY 14240-0242
(315) 424-7231

East Meadow
90 Merrick Ave., 4th Floor
East Meadow, NY 11554-1593
(973) 606-5245

New York
One Whitehall Street
New York, NY 10004-2108
(973) 606-5245

Rochester
75 Town Centre Drive
P.O. Box 23235
Rochester, NY 14692-3235
(315) 424-7231

Syracuse
440 South Warren Street
P.O. Box 4963
Syracuse, NY 13221-4963
(315) 424-7231

NORTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

Raleigh
3733 National Drive, Suite 200
Raleigh, NC 27612
(919) 420-1873

NORTH DAKOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

OHIO

Cincinnati
895 Central Avenue, Suite 800
Cincinnati, OH 45202
(216) 348-7512

Cleveland
Skylight Office Tower
1660 W. 2nd St., Suite 500
Cleveland, OH 44113-1454
(216) 348-7512

OKLAHOMA

Tulsa
9820 East 41st Street, Suite 401
P.O. Box 3510
Tulsa, OK 74101
(913) 661-3679

OREGON

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

PENNSYLVANIA

Harrisburg
5001 Louise Drive
Mechanicsburg, PA 17055
(717) 691-5101

Philadelphia
1500 Market Street
29th Floor W Tower
Philadelphia, PA 19102
(267) 675-3056

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

Reading
1105 Berkshire Blvd.
P.O. Box 13426
Wyomissing, PA 19612-3426
(610) 371-3809

RHODE ISLAND

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-12843

SOUTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

SOUTH DAKOTA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

TENNESSEE

Memphis
6750 Poplar Ave., Suite 408
P.O. Box 171225
Memphis, TN 38187
(901) 756-3011

Nashville
9020 Overlook Blvd., Suite 150
Brentwood, TN 37027
(615) 372-7747

TEXAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

Houston
10800 Richmond Ave., Suite 120
P.O. Box 42928
Houston, TX 77242-2928
(713) 787-4031

UTAH

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691

VERMONT

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

VIRGINIA

Richmond
300 Arboretum Place
P.O. Box 26426
Richmond, VA 23260-6426
(804) 330-6060

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-6765

WASHINGTON

Seattle
1501 4th Avenue, Suite 400
Seattle, WA 98101
(206) 464-3471

WEST VIRGINIA

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

WISCONSIN

Milwaukee
445 S. Moorland Ave., 2nd Floor
Brookfield, WI 53005
P.O. Box 3032
Milwaukee, WI 53201-3032
(262) 797-3113

WYOMING

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

NEW-03

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

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

DATE OF ISSUE: 12-01-03 TW

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC

ST. ASSIGN: SC

26XSD

APPELLANT ROA 00206

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
-----------------	---------	--	---------------------------------------	--------------------------------

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4789

	STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	166946
PREMIUM DISCOUNT	NONE
0900-39 EXPENSE CONSTANT	280
TERRORISM RISK INS ACT 2002	812
TOTAL ESTIMATED PREMIUM	167988
DEPOSIT AMOUNT DUE	167988

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

OFFICE: ORLANDO

870

PRODUCER: MICHAEL P HAIR & ASSOC

26XSD

APPELLANT ROA 00207

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE--SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING--ALL EMPLOYEES & DRIVERS	7229	2100000	10.47	219870
SALESPERSONS, COLLECTORS OR MESSENGERS--OUTSIDE	8742	16000	.83	133
CLERICAL OFFICE EMPLOYEES NOC	8810	590000	.31	1829

1.70% EMPL. LIAB. INCREASED LIMITS(9807)	\$	3771
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION		225603
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM		166946
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		166946
0.00% ARAP MODIFICATION PROGRAM		NONE
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		812
TOTAL ESTIMATED PREMIUM		167988
DEPOSIT AMOUNT DUE		167988

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

SCHEDULE NO: 1 OF LAST
APPELLANT ROA 00208



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
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The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

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

GENERAL SECTION

A. The Policy

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

B. Who Is Insured

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

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational dis-

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

D. State

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

E. Locations

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

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

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

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

B. We Will Pay

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

C. We Will Defend

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

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

D. We Will Also Pay

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

1. reasonable expenses incurred at our request, but not loss of earnings;

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

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

F. Payments You Must Make

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

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

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

G. Recovery From Others

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

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law.

Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

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

PART TWO—EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

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

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

B. We Will Pay

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

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

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
 2. for care and loss of services; and
 3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;
- provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. because of bodily injury to your employee that arises out of and in the course of employment,

claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

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

D. We Will Defend

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

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

E. We Will Also Pay

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

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

F. Other Insurance

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

hausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

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

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

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

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

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

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

H. Recovery From Others

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

I. Actions Against Us

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

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

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

PART THREE — OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if

we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

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

PART FOUR—YOUR DUTIES IF INJURY OCCURS

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

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses; and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

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

B. Classifications

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

C. Remuneration

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

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

D. Premium Payments

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

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy

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

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

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

F. Records

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

G. Audit

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

PART SIX—CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While

they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 15 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

(Rev. 03-03)

APPELLANT ROA 00215

POLICY NUMBER: (6JUB-01 88B92-3-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

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

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

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

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

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

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (OO)**

POLICY NUMBER: (6JUB-0188B92-3-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule			
State	Rate per \$100 of Remuneration	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030		

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

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

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by _____

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (6JUB-0188B92-3-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

SCHEDULE

STATE

MODIFICATION

SC

0.7400

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

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

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

B. Long Term Policy

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

C. Transfer of Your Rights and Duties

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

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

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

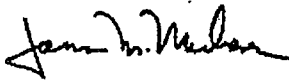
3. The policy period will end on the day and hour stated in the cancellation notice.

4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

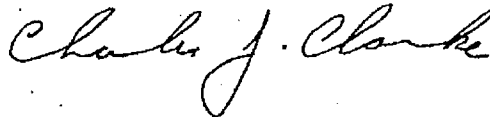
E. Sole Representative

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

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.



Secretary



President

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three--Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

ENDORSEMENT WC 00 04 02 (00)

POLICY NUMBER: (6JUB-0188B92-3-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

SCHEDULE

ANNIVERSARY RATING DATE	(MONTH)	(DAY)	(YEAR)
REFER TO INFORMATION PAGE SCHEDULE(S)			

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

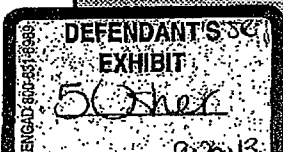
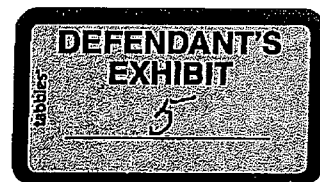
APPELLANT ROA 00222



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540



BWPH Ard Trucking 00065

APPELLANT ROA 00223

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and Identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the Insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

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

DATE OF ISSUE: 03-01-04 TW

OFFICE: ORLANDO

PRODUCER: MICHAEL P HAIR & ASSOC

870

26XSD

ST ASSIGN: SC

BWPH Ard Trucking 00066

APPELLANT ROA 00224

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
-----------------	---------	--	---------------------------------------	--------------------------------

SEE EXTENSION OF INFORMATION PAGE -- SCHEDULE (S)

SIC-CODE: 4789

	STANDARD	EXCESS
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	260581 \$	NONE
PREMIUM DISCOUNT	TO BE DETERMINED	
OTHER CHARGES & CREDITS	NONE	52116
0900-39 EXPENSE CONSTANT		230
TERRORISM RISK INS ACT 2002	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT D	261870	52346

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 03-01-04 TW

OFFICE: ORLANDO

PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

ST ASSIGN: SC

BWPH Ard Trucking 00067

APPELLANT ROA 00225

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE--SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
RATING MODE: RMD LOSS SENSITIVE RATING PLANS
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	3456061	10.47	361850
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	14976	.83	124

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 1 OF MORE

BWPH Ard Trucking 00068

APPELLANT ROA 00226

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01 (CONT'D)				
CLERICAL OFFICE EMPLOYEES NOC	8810	824523	.31	2556

	STANDARD	EXCESS
1.70% EMPL. LIAB. INCREASED LIMITS(9807)	\$ 6197	\$ NONE
5.10% DEDUCTIBLE CREDIT(9941)	18591	NONE
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION	352136	NONE
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM	260581	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	260581	NONE
0.00% ARAP MODIFICATION PROGRAM	NONE	NONE
LSRP CONTINGENT DEPOSIT (9700)	NONE	52116
EXPENSE CONSTANT(0900)	NONE	230
TERRORISM RISK INS ACT 2002 (9740)	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT DUE	261870	52346

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 2 OF LAST

BWPH Ard Trucking 00069

APPELLANT ROA 00227

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 06 03 00 - 001	BENEFITS DEDUCTIBLE ENDORSEMENT
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 18 00 - 001	MANDATORY A/R LSRP ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of LAST
BWPH Ard Trucking 00070
APPELLANT ROA 00228

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 06 03 (00)

POLICY NUMBER: (R5EJUB-9560A28-5-03)

BENEFITS DEDUCTIBLE ENDORSEMENT

This endorsement applies only to the insurance provided by Part One (Workers Compensation Insurance) because the states listed in the Schedule below are shown in item 3.A. of the Information Page.

1. Part One (Workers Compensation Insurance) applies only to benefits in excess of the deductible amount shown in the Schedule below.
2. This deductible applies separately to each claim for bodily injury by accident or disease.
3. If the law requires payment on a per accident or per disease basis, this provision applies in place of paragraph 2 above. This deductible applies separately to each accident or disease, regardless of the number of people who sustain injury by such accident or disease.
4. We will pay the deductible amount for you, but you must reimburse us within 30 days after we send you notice that payment is due. If you fail to fully reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.
5. If the statute requires or allows you to pay the deductible amount, this provision applies in place of paragraph 4 above. You will pay the deductible amounts directly to the persons entitled to them. We will be your guarantor for those payments. If we pay the deductible amount as guarantor, you must reimburse us within 30 days after we send you notice that payment is due. If you fail to reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.

SCHEDULE

State	Indemnity and Medical Deductible Amount	Medical Deductible Amount	Indemnity Deductible Amount
SC	\$1000		

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

PAGE 1 OF LAST
BWPB Ard Trucking 00071
APPELLANT ROA 00229



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three—Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00072
APPELLANT ROA 00230



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

SCHEDULE

ANNIVERSARY RATING DATE

(MONTH)

(DAY)

(YEAR)

REFER TO INFORMATION PAGE SCHEDULE(S)

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00073
APPELLANT ROA 00231



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (R6EJOB-9560A28-5-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

STATE	SCHEDULE MODIFICATION
SC	0.7400

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00074
APPELLANT ROA 00232

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (R6EJTB-9560A28-5-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

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

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

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00075
APPELLANT ROA 00233



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04.15 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 03-01-04 ST ASSIGN: SC

(Rev. 03-03)

BWPH Ard Trucking 00077
APPELLANT ROA 00235

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN
ENDORSEMENT**

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved; it determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

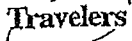
A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program. Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.
2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LLOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.
4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.
2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)**

POLICY NUMBER: (R6EJOB-9560A28-5-03)

SCHEDULE

1. Basic Premium Factor .30
2. Loss Conversion Factor 1.19
3. Tax Multiplier 1.143
4. Minimum Premium Factor .75
5. Maximum Premium Factor 1.75
6. LSRP Development Factors:
 - 1st Adjustment 0.00
 - 2nd Adjustment 0.00
 - 3rd Adjustment 0.00
 - Subsequent Adjustments 0.00

POLICY NUMBER: (R6EJUB-9560A28-5-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

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

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

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

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

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

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule			
State	Rate per \$100 of Remuneration	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030		

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

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

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by _____

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 2 of 2

BWPH And Trucking 00082
APPELLANT ROA 00240

WORKSHEET FOR WORKERS' COMPENSATION TELEPHONE REPORTING

THINGS TO REMEMBER WHEN COMPLETING THE INFORMATION BELOW:

Call the Telephone Reporting Center to quickly and easily report all Workers' Compensation injuries. We will be asking you the following questions, so please have the information handy. We will produce and submit the necessary state forms.

DO NOT DELAY IN CALLING IF YOU DO NOT HAVE ANSWERS TO ALL OF THE QUESTIONS

ACCOUNT INFORMATION

CALLER'S PHONE NUMBER/EXTENSION ()	CALLER'S NAME (FIRST, MI., LAST)	CALLER'S TITLE	BENEFIT STATE
EMPLOYER'S NAME	EMPLOYER'S ADDRESS (STREET, CITY, STATE & ZIP)	EMPLOYER'S MAILING ADDRESS (STREET, CITY, STATE & ZIP) ☐ SAME	
PARENT COMPANY/INSURED'S NAME	LOCATION CODE	NATURE OF BUSINESS	POLICY FORM POLICY NUMBER (R6BJUB-9560A28-5-03)

EMPLOYEE INFORMATION

EMPLOYEE'S NAME (FIRST, MI, LAST)	GENDER ☐ MALE ☐ FEMALE	SOCIAL SECURITY NUMBER
EMPLOYEE'S MAILING ADDRESS (STREET, CITY, STATE & ZIP)	IS EMPLOYEE'S HOME ADDRESS THE SAME? IF NO, STREET, CITY, STATE & ZIP ☐ YES ☐ NO	
MARITAL STATUS	EMPLOYMENT STATUS CODE ☐ FULL-TIME ☐ PART-TIME	NO. OF DEPENDENTS
	CLASS CODE	DATE OF BIRTH
	WAGE PERIOD	HOME PHONE NUMBER ()

ACCIDENT INFORMATION

DATE OF INJURY	TIME OF INJURY A.M. P.M.	DATE CLAIM REPORTED TO EMPLOYER	WAS THE ACCIDENT ON THE EMPLOYER'S PREMISES? ☐ YES ☐ NO
LOCATION OF ACCIDENT ADDRESS (STREET, CITY, STATE & ZIP)			COUNTY
DID EMPLOYEE LOSE ANY TIME FROM WORK? ☐ YES ☐ NO	IS THE EMPLOYEE BACK AT WORK? IF YES, DATE RETURNED ☐ YES ☐ NO	DATE EMPLOYEE LAST WORKED	WAS EMPLOYEE PAID FOR DATE OF INJURY? ☐ YES ☐ NO
DATE DISABILITY BEGAN	DATE DISABILITY ENDED	IS/ WAS EMPLOYEE'S SALARY CONTINUED? ☐ YES ☐ NO	WAS EMPLOYEE'S INJURY RELATED TO A COMPANY-SPONSORED EVENT? ☐ YES ☐ NO
WAS ACCIDENT FATAL? IF YES, DATE OF DEATH ☐ YES ☐ NO			
FULL DESCRIPTION OF ACCIDENT			

CAUSE OF ACCIDENT (E.G., SLIP/FALL, LIFTING, CHEMICAL)	IF MOTOR VEHICLE ACCIDENT, DRIVER'S LICENSE NUMBER	STATE WHERE ISSUED
CONTRIBUTING FACTORS	EQUIPMENT, MATERIAL OR SUBSTANCE INVOLVED	
IF OTHER PARTIES WERE INVOLVED NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER

WERE SAFEGUARDS PROVIDED? ☐ YES ☐ NO	DESCRIPTION OF SAFEGUARDS	WERE SAFEGUARDS USED? ☐ YES ☐ NO
WITNESS INFORMATION NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER

INJURY INFORMATION

PART OF BODY INJURED (E.G. HEAD, NECK, ARM, LEG)	NATURE OF INJURY (E.G. FRACTURE, SPRAIN, LACERATION)	PREVIOUS RELATED CONDITION? ☐ YES ☐ NO	PRE-EXISTING MEDICAL CONDITION(S)
CUMULATIVE INJURY? IF YES, LENGTH OF EXPOSURE ☐ YES ☐ NO	NATURE OF DUTIES	LENGTH OF TIME DOING ACTIVITY	
TREATMENT (*X* ALL THAT APPLY)	NAME (FIRST, MI, LAST)	WHAT TYPE OF FIRST AID WAS ADMINISTERED?	1ST DAY OF TREATMENT
☐ FIRST AID -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	TREATMENT	LENGTH OF STAY
☐ HOSPITAL/ ☐ CLINIC -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	PHONE NUMBER	SPECIALTY
☐ PHYSICIAN -	()	TREATMENT	1ST DAY OF TREATMENT

EMPLOYEE JOB INFORMATION

EMPLOYEE'S OCCUPATION WHEN INJURED:

IS THIS EMPLOYEE'S REGULAR OCCUPATION?

OCCUPATION IS: ☐ SEDENTARY ☐ LIGHT ☐ MEDIUM ☐ HEAVY

EMPLOYEE'S REGULAR WORK HOURS: HOURS/DAY DAYS/WEEK

EMPLOYEE'S PAY: \$ /HOUR; OR \$ /WEEK

DOES EMPLOYEE RECEIVE ADD'L BENEFITS (e.g. Overtime, Uniforms, Meals, etc.)?

EMPLOYEE'S DATE OF HIRE:

EMPLOYEE'S SUPERVISOR:

SUPERVISOR'S PHONE NUMBER: ()

SUPERVISOR'S REGULAR WORK HOURS:

STATE SPECIFIC INFORMATION

SEE WORKERS' COMPENSATION - FIRST REPORT OF INJURY - STATE SPECIFIC QUESTIONS
FOR YOUR INDIVIDUAL STATE.

CUSTOMER SPECIFIC INFORMATION

ADDITIONAL COMMENTS & INFORMATION

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

ARD TRUCKING COMPANY INC

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

☐ 1) Substance Abuse Policy Statement:

Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance-abuse-free environment.

☐ 2) Employee Notification:

In order to protect the individual rights of each employee and to begin the employee education process necessary for a well-defined, well-managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important-to-the employee correspondence or benefits delivery.

☐ 3) Testing Program:

The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

☐ 4) Test Results Confidentiality Protocols:

Test results information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information;
- (2) the purpose of the disclosure;
- (3) the precise information to be disclosed;
- (4) the duration of the consent; and
- (5) the signature of a person authorizing release of the information.

Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

I certify that the above information is accurate and that I may be subject to an additional premium charge if it is determined that there is any misrepresentation of the established drug and alcohol free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name_____
Date_____
Officer/Owner Signature*

*Application must be signed by an officer or owner

Title_____
Notary Public's Signature_____
Date_____
Exp. of Commission

POLICY NUMBER: (R6EJUB-9560A28-5-03)

EFFECTIVE DATE: 11-07-03

ARD TRUCKING COMPANY INC

GUNTHER OPERATOR:

**MANUALLY INSERT 1 COPIES OF CP-5952
SOUTH CAROLINA OVERSIZED POSTING NOTICES**

ATTACH STICKERS THAT MATCH DATA BELOW:

EMPLOYER—Name: ARD TRUCKING COMPANY INC

CARRIER—Name: THE TRAVELERS INSURANCE COMPANIES

Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

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See instructions on other side.

**STICKER LABELS AND/OR POSTING NOTICES
FOR MANUAL INSERT**

FOR POLICY PRINTED IN JOB #: G664063

Named Insured: ARD TRUCKING COMPANY INC

Policy Number: (R6EJUB-9560A28-5-03)

Effective Date: 11-07-03

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MANUAL
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INFORMATION

EMPLOYER - Name: ARD TRUCKING COMPANY INC

CARRIER - Name: THE TRAVELERS INSURANCE COMPANIES
Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

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EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

BWPH Ard Trucking 00090
APPELLANT ROA 00248

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

FOR PRODUCER ONLY; BILLING SCHEDULE BY COMMISSION RATE

INSTALLMENT DUE DATE	AMOUNT	COMMISSION RATE
11-07-03	\$ 53635	.0000
11-07-03	\$ 260581	.0243

THE AMOUNTS ABOVE WILL BE BILLED SEPARATELY.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH And Trucking 00091
APPELLANT ROA 00249

**BARNWELL
WHALEY**

PATTERSON & HELMS LLC

Attorneys for businesses & professionals since 1938

75
YEARS
1938-2013

Box 10F2

Phillip S. Ferderigos, Partner
pferderigos@barnwell-whaley.com

March 29, 2016

RECEIVED

1-13

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ard Trucking Company, Respondent

v.

Travelers Property Casualty Company of America d/b/a The Travelers Indemnity Company of Illinois, Appellant

Appellate Court Case No. 2015-000806

Dear Ms. Kitchings:

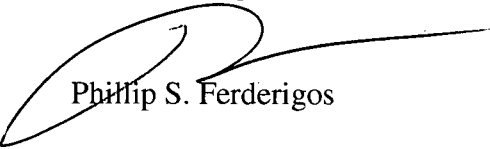
Please find enclosed the original and 16 copies of the Appellant's Record on Appeal and a Proof of Service. Please file the original and 15 copies and return one clocked copy to me in the envelope provided herein.

In addition, please find the original and one copy of Appellant's Motion to Supplement Record Pursuant to SCACR 212 along with our check for \$25. Please file the original and return the clocked copy in the envelope provided herein.

By copy of this letter and pursuant to the Certificates of Service, I am simultaneously serving counsel for the Respondent with copies of both documents.

Thank you for your assistance.

With kind regards,


Phillip S. Ferderigos

Enc.

Cc w/enc.: Martin S. Driggers, Sr., Esq.

PSF/bbm

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www.barnwell-whaley.com

SOUTH CAROLINA OFFICE:

288 Meeting Street, Suite 200, Charleston, SC 29401
P 843.577.7700 F 843.577.7708

NORTH CAROLINA OFFICE:

1427 Military Cutoff Road, Suite 202, Wilmington, NC 28403
P 910.679.1388 F 910.679.4663

REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE