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OCT 19 2016

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Panel Decision

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Appellate Case No. 2016-001380

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David Pate,

Employee, Claimant,  
Respondent,

v.

TAC Logging, Inc.,

Employer,  
Respondent, and

Forestry Mutual Insurance  
Company,

Carrier, Appellant,

South Carolina Uninsured  
Employers' Fund,

Defendant,  
Respondent

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INITIAL REPLY BRIEF OF APPELLANT

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## REPLY

This reply brief addresses UEF's assertion in its brief on pages 11 and 12 that notice of cancellation was not mailed *or* delivered to the insured, in this case TAC, on February 19, 2015, which was 10 days prior to the effective date of cancellation for nonpayment of premium, as required by S.C. Code Ann. § 38-75-730(a) (2016). First, there is no finding of fact by the Commission that Forestry failed to mail notice of the cancellation to TAC on February 19, 2015. Furthermore, all evidence indicates that Forestry did in fact mail notice of cancellation to TAC on February 19, 2015.

Forestry issued a letter to TAC entitled "Confirmation of Policy Termination/Cancellation/Reinstatement Notice," and it clearly and conspicuously states the issue date as February 19, 2015. In that letter, Forestry notified TAC that its policy with Forestry was being terminated effective March 1, 2015, for nonpayment of premium, nonpayment of January self-reporting premium, and missing payroll report from January 2015. (APAs p. 46).

As further confirmation that this letter was mailed to TAC on February 19, 2015, a search of NCCI online records conducted on September 20, 2015, documents a cancellation notice was mailed to TAC on February 19, 2015, and the effective date of cancellation for nonpayment of premium was March 1, 2015. (APAs p. 56). And, consistent with a February 19, 2015 mailing date, a certified mail return receipt is in evidence and part of the Commission's record, showing that notice was delivered to the TAC on February 24, 2015. (Ex. A of Motion to Supplement Record and Response to UEF's Supplemental Brief).<sup>1</sup>

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<sup>1</sup> At the hearing before the single Commissioner on September 29, 2015, UEF never disputed the fact that Forestry mailed notice of cancellation to TAC on February 19, 2015. However, the issue was raised for the first time in UEF's Supplemental Memorandum in Support dated October 21, 2015, prompting Forestry to file a copy of the certified mail receipt on October 26, 2015, which became part of the record without objection by the parties.

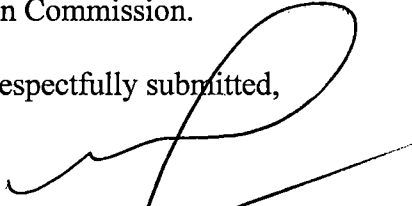
In sum, all the evidence in the record supports Forestry's assertion that it mailed notice of cancellation to the insured on February 19, 2015, 10 days prior to the effective date of cancellation for nonpayment of premiums.

**CONCLUSION**

For the reasons stated in Forestry's brief and this reply, this Court should reverse the decision of the South Carolina Workers' Compensation Commission.

Respectfully submitted,

October 17, 2016



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In The Court of Appeals

APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 2016-001380

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David Pate,

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Employers' Fund,

Respondent.

PROOF OF SERVICE

I certify that I have served the Initial Reply Brief of Appellant on David Pate by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2016, addressed to his attorney of record, Christopher Isgett, Post Office Box 1505, Columbia, South Carolina 29202, to the South Carolina Uninsured Employers' Fund, by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2016, addressed to the attorney of record, Samuel Brunson, 521 West Evans Street, Florence, South Carolina 29501, to TAC Logging, Inc. by depositing a copy of it in the United States Mail via Certified Mail, postage prepaid, on October 17, 2016, addressed to TAC Logging, Inc., 1807 Osprey Drive, Florence, South Carolina, 29501, to the South Carolina Court of Appeals by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2016, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals, Post Office Box 11629, Columbia, South Carolina, 29211.

October 17, 2016



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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: David Pate, Employee, Claimant, Respondent, v. TAC Logging, Inc., Employer, Respondent, and Forestry Mutual Insurance Company, Carrier, Appellant, South Carolina Uninsured Employers' Fund, Defendant, Respondent.

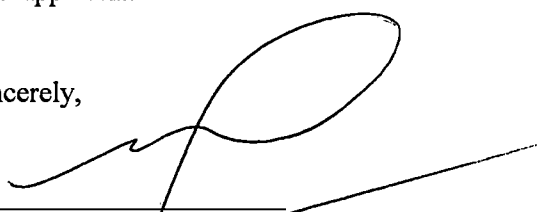
**Appellate Case No. 2016-001380**

Dear Ms. Kitchings:

Enclosed for filing in the above referenced case are the following documents:

- (1) Initial Reply Brief of Appellant; and
- (2) Proof of Service of the Initial Reply Brief of Appellant.

Sincerely,



William T. Littlejohn  
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