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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

NOV 04 2015

SC Court of Appeals

Commissioner Gene McCaskill

Appellate Case No.: 2015-001546
WCC File No.: 0919909

Rudy Barreira Almazan, ... Employee,

v.

Henson & Associates, Employer and Auto Owners Insurance,
Carrier, ... Respondents,

and

S.C. Uninsured Employers' Fund, ... Appellant.

RECORD ON APPEAL

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INDEX

I. Orders

1.	Single Commission Order dated January 17, 2012.....	1
2.	Decision and Order of the South Carolina Workers' Compensation Appellate Panel dated August 3, 2012	24
3.	Single Commission Order dated July 8, 2014	47
4.	Decision and Order of the South Carolina Workers' Compensation Appellate Panel dated June 17, 2015.....	52

II. Forms and Pleadings

1.	Form 19 – Status Report and Compensation Receipt dated January 14, 2013	68
2.	Corrected Petition to Transfer Liability to the South Carolina Uninsured Employers' Fund dated November 12, 2013	69
i.	Certificate of Insurance – Contrearras Panels (4/23/09).....	77
ii.	Certificate of Insurance – Contreras Panels (5/8/09).....	78
iii.	Letter from Franklin Guerrero, Esq. to SC Workers' Compensation Commission re: coverage investigation.....	80
iv.	Letter to Wayne Ducote, Jr. dated 3/5/10 from Services Resource & Attached Declaration Page for Coverage Period 5/8/09 – 5/8/10.....	83
v.	Declaration Page – Auto Owners' Policy with Henson & Associates.....	86
vi.	Certificate of Insurance – Henson & Associates, Inc (2/10/2009).	89
vii.	Deposition Transcript of Wendy Henson	90
viii.	Driver's License – Wendy Henson.....	98
ix.	Certificate of Liability Insurance (3/18/13).....	99
x.	Certificate of Liability Insurance (7/31/13).....	100
3.	South Carolina Uninsured Employers' Fund's Return to Carrier's Petition to Transfer Liability dated November 12, 2013.....	101
4.	Form 58 – Pre-Hearing Brief and APA Submissions on behalf of Henson & Associates, Inc. and Auto Owners Insurance Company dated April 15, 2014....	109
5.	Memorandum of Law on behalf of Henson & Associates and Auto Owners Insurance dated April 24, 2014.....	115
6.	Form 30 – Request for Commission Review filed July 18, 2014.....	120
7.	Brief of Henson & Associates and Auto Owners Insurance dated September 22, 2014	122
8.	Respondent's Brief on Behalf of the S.C. Uninsured Employers' Fund dated October 27, 2014.....	131
9.	Respondent's Brief on Behalf of the Claimant dated November 4, 2014	138
10.	Appellant's Notice of Appeal dated July 17, 2015	139

III. Transcript of Proceedings

1.	Deposition Transcript of Kenneth Henson dated July 26, 2010	143
i.	Examination by Mr. Griffith.....	147
ii.	Examination by Mr. Killen	165
iii.	Examination by Mr. Montgomery	176
iv.	Examination by Mr. Dworjanyan	183
v.	Examination by Mr. Smith.....	185
vi.	Examination by Mr. Killen	191
vii.	Examination by Mr. Montgomery	192
2.	Transcript of Record of Hearing before Commissioner Andrea C. Roche on April 25, 2011	197
i.	Transcript of Record	197
ii.	Transcript of Juan Pablo Conteras Alcala (pp 33, 51-58).....	201
a.	Direct Examination by Mr. Elliott	201
b.	Cross Examination by Mr. Goudelock.....	202
c.	Cross Examination by Mr. Killen	202
d.	ReDirect Examination by Mr. Elliott.....	207
e.	ReCross Examination by Mr. Dworjanyan.....	207
iii.	Transcript of Gabriel Conteras (pp 58-81).....	209
a.	Direct Examination by Mr. Elliott	210
b.	Cross Examination by Mr. Griffith.....	215
c.	Cross Examination by Mr. Dworjanyan	215
d.	Cross Examination by Mr. Smith.....	218
e.	Cross Examination by Mr. Howell	223
f.	Cross Examination by Mr. Killen	224
g.	ReDirect Examination by Mr. Elliott.....	229
h.	ReCross Examination by Mr. Smith	230
i.	Cross Examination by Mr. Montgomery	231
iv.	Transcript of Maggie Contreras (pp 82-96)	233
a.	Direct Examination by Mr. Elliott	233
b.	Cross Examination by Mr. Griffith.....	238
c.	Cross Examination by Mr. Dworjanyan	239
d.	Cross Examination by Mr. Goudelock.....	244
e.	ReDirect Examination by Mr. Elliott.....	245
v.	Transcript of Kenneth Henson (pp 96-131)	247
a.	Direct Examination by Mr. Smith.....	248
b.	Cross Examination by Mr. Elliott	261
c.	Cross Examination by Mr. Howell	263
d.	Cross Examination by Mr. Montgomery	271
e.	Cross Examination by Mr. Killen	274
f.	ReDirect Examination by Mr. Smith	280
g.	ReCross Examination by Mr. Howell	282

3.	Transcript of Full Commission Panel Hearing held on February 23, 2015	283
IV.	APA Submissions and Exhibits	
1.	Defendant, Henson & Associates APA Submission No.: 2 from Hearing before Commissioner Andrea C. Roche on April 25, 2011	302
i.	Terms and Conditions of Agreement Between Henson & Associates and Contreras Panels dated April 7, 2009	302
2.	Respondents APA Submissions No.: 10 through No.: 11 from Hearing before Commissioner Andrea C. Roche on April 24, 2014 (pages 76-79)	310
i.	Affidavit of Kenneth Henson	310
ii.	Affidavit of Wendy Henson	312
V.	Certificate of Counsel	314

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 0919909

RUDY BARREIRA ALMAZAN,

EMPLOYEE/CLAIMANT,

vs.

SERVICES RESOURCE,

EMPLOYER

AND

INS. CO. OF THE STATE OF PA,

CARRIER/DEFENDANTS

DATE OF HEARING:

April 25, 2011

APPEARANCES:

The claimant was represented by Smith & Griffith with John P. Griffith appearing; J. Britt Hunt appeared as the interpreter; the South Carolina Uninsured Employers' Fund was represented by Timothy B. Killen; Insurance Company of the State of PA was represented by Collins & Lacy, P.C. of Columbia, with Peter H. Dworjanyn appearing; Edifice, Inc. and Amerisure Insurance were represented by Black Black & Montgomery with Ryan S. Montgomery appearing; Henson & Associates was represented by Wilson Jones Carter & Baxley with Zachary M. Smith appearing; Contreras Panels was represented by McDonald McKenzie Rubin Miller & Lybrand with B. Reynolds Elliott appearing; Services Resource was represented by McAngus Goudelock & Courie with J. Russell Goudelock, II appearing; and Auto Owners Insurance Company was represented by Trask & Howell with Roy A. Howell, III appearing.

PURPOSE OF
HEARING:

To determine issues as set forth on Forms 50 and 51.

COMMISSIONER:

The Honorable Andrea C. Roche

FILED:

January 17, 2012

STATEMENT OF THE CASE

This claim was set for a hearing on the Claimant's April 12, 2010, Fourth Amended Form 50. Claimant alleged he fell off of a 15-20 foot roof on September 26, 2009, while working on the York Comprehensive High School Project ("York Project"), with resulting injury to his back which affects his legs. Claimant named his employers as Contreras Panels, Henson & Associates, Services Resource, and Edifice, Inc. Claimant seeks a determination of compensability and a determination as to the responsible party for his worker's compensation benefits. He seeks payment of all past medical treatment, additional medical treatment for his injuries, temporary total disability benefits from January 18, 2010, through May 15, 2010, and temporary partial disability benefits from May 15, 2010, through October 29, 2010. He also contends he is not at maximum medical improvement. In the alternative, Claimant alleges he is entitled to an award of permanent partial disability to his back and legs as a result of this accident.

Contreras Panels admits it is the direct employer of the Claimant. Contreras Panels claims that at the time of the accident it was insured under policy WC005779464 issued by The Insurance Company of the State of Pennsylvania ("INSCOP"), and is entitled to coverage pursuant to *Rickborn v. Liberty Life Insurance Company*, 321 S.C. 291, 468 S.E.2d 292.

INSCOP maintains that the policy in question, WC005779464, provides only provides coverage only to Services Resource, a Texas company owned and operated by Lynn Wooten. ISNCOP further maintains the policy only provides coverage for Texas, Mississippi and Louisiana. Services Resource's insurance agent is Associate Benefits Agency. INSCOP contends it does not provide coverage to Contreras Panels and that Services Resource cannot add an uninsured employer (Contreras Panels) to its policy by directing its own agent (Associates

Benefits Agency) to issue a certificate of insurance in exchange for money, or otherwise.

Services Resource maintains that it is not a statutory employer, is not subject to the Act, and has no presence in the state of South Carolina, and therefore has no liability in this claim.

Henson & Associates admits it is an upstream contractor and alleges it is entitled to coverage through Auto Owners Insurance Company policy 35036819. However, Henson & Associates argues INSCOP provided coverage for Contreras Panels should pay the claim. Henson & Associates averred it reserves the right to seek indemnification from INSCOP and/or Contreras Panels. Henson & Associates further contends that, pursuant to S.C. Code § 42-1-415, Contreras Panels provided Henson & Associates with multiple certificates of insurance indicating that Contreras Panels had workers' compensation coverage in South Carolina, specifically on the York High School Project, at the time of Claimant's accident through the Insurance Company of the State of PA. Thus, Henson denies any liability for Claimant's alleged accident.

Auto Owners Insurance Company maintains that its policy did not provide any coverage in South Carolina. Auto Owners cites NCCI records and the investigative report of the South Carolina Workers' Compensation Department of Coverage & Compliance. Auto Owners objects to jurisdiction in South Carolina as its policy only provides coverage in the state of North Carolina. Auto Owners contends that, although there is an "Other States" provision the policy, Henson & Associates committed fraud in the application. Auto Owners alleges Henson & Associates was performing work in the state of South Carolina without notice to Auto Owners at the time the its application for insurance was completed. Alternatively, Auto Owners contends that it should be absolved from liability under the provisions of § 42-1-415.

Edifice, Inc. admits it is an upstream contractor insured by Amerisure Insurance

Company. Edifice maintains that INSCOP is the responsible party as the carrier for Contreras Panels. Edifice also alleges Auto Owners provides coverage in South Carolina for Henson & Associates, but that there may be fraud in the application, which would make the South Carolina Uninsured Employers' Fund (hereinafter referred to as "SCUEF") the responsible party. As such, Edifice indicated it reserved its right to transfer liability to the SCUEF.

The SCUEF maintains that Claimant was an employee of Contreras Panels at the time of his fall and that coverage is available through INSCOP policy 005779464. The SCUEF further contends that Henson and Auto Owners cannot transfer liability to the SCUEF under § 42-1-415, as the evidence fails to prove requirement with that statute, the relative case law, and S.C. Code Reg. 67-415.

The parties stipulated that timely and proper notice of the date, time, place and purpose of the hearing was provided to all parties of record. The parties consented to venue, for the purpose of the hearing in Columbia, South Carolina.

INSCOP objected to SCUEF's APA p. 34 and Claimant's APA p. 13, an email from Associates Benefits Agency to Tim Killen. The SCUEF agreed to withdraw the documents and they were not admitted into the record. The remaining APA Submissions of the parties were accepted without objection and, with the Commission's file, were made a part of the record in this case with the exception of self-serving hearsay.

APA SUBMISSIONS OF THE PARTIES

APA SUBMISSIONS SUBMITTED BY CLAIMANT:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Piedmont Medical Center	9/26/09	1-8
2	Carolinas Medical Center	9/26/09 – 10/2/09	9-16
3	Carolina Rehabilitation	10/20/09 – 10/22/09	17-43
4	Carolina Neurosurgery & Spine Associates	10/30/09 – 3/12/10	44-51

APA SUBMISSIONS SUBMITTED BY CONTRERAS PANELS:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Cancelled checks and money order receipts from Contreras Panels	February 2009 to July 2010	1-6, 6A, 6B, 6C
2	Invoices from Associates Construction & Labor, Inc.	10/23/09, 4/22/2010, 6/21/2010	7-9
3	Registered agent information on Associates Benefits Agency, Inc. from Texas Secretary of State	8/20/2010	10
4	Correspondence from Associates Benefits Agency, Inc.	8/20/2010	11-12
5	E-mail from Associates Construction and Labor, Inc.	9/23/2010	13
6	Certificates of Insurance from Associates Benefits Agency, Inc.	4/23/2009 and 2/8/2010	14-15

APA SUBMISSIONS SUBMITTED BY INSCOP:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
A	Certificate of Insurance Indicating Contreras Panels was insured by New Hampshire Ins.	4/23/09	1

	Co. policy 641-32-66		
B	Declarations pages and schedule of New Hampshire Ins. Co. policy 641-32-66 issued to Management Services, Inc.	5/10/08-5/10/09	2-4
C	Certificate of Insurance Indicating Contreras Panels was insured by Ins. Co. of the State of Pa. policy 005779464	5/8/09	5
D	Ins. Co. of the State of Pa. policy 005-77-9464, with application	5/8/09 – 5/8/10	6-72

APA SUBMISSIONS SUBMITTED BY SERVICES RESOURCE:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
D	Terms and conditions of Agreement between Henson & Associates, Inc. and Subcontractor Contreras Panels, including certificate of insurance	4/7/09	1-8
E	Standard Form of Agreement between Contractor Edifice, Inc. and Subcontractor Henson & Associates, including certificate of insurance	12/3/08	9-70

APA SUBMISSIONS SUBMITTED BY HENSON & ASSOCIATES:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Henson & Associates Workers' Compensation Policy from auto Owners	10/5/08 – 10/5/09	1-29
2	Contract between Henson & Associates and Contreras panels	4/7/09	30-37
3	Certificate of insurance to Henson & Associates from Contreras Panels for York Comprehensive High School Project	4/23/09 – 2/8/10	38-40

4	Certificates of Insurance to Henson & Associates from Contreras Panels for Other Projects	9/29/05 – 2/3/10	41-53
5	Service Resource Workers' Compensation Policy from The Insurance Company of the State of Pennsylvania	5/8/09 – 5/8/10	54-64
6	Certificates of Insurance for Henson & Associates prepared by Auto Owners' authorized representative	3/30/07 – 8/19/09	65-74
7	Fax from Lynn Wooten to Wayne Dukote, Jr.	3/5/10	75
8	Correspondence from Henson & Associates to Auto Owners/Auto Owners' Counsel	5/25/10 – 4/5/11	76-83
9	Depositions of Claimant, Gabrielle Contreras, Lynn Wooten and Kenneth Henson	To Be Submitted at Hearing	

APA SUBMISSIONS SUBMITTED BY AUTO OWNERS

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
7	Carolina Neurosurgery & Spine Assoc. – Dr. Paul Kim	10/1/09 – 4/1/11	59-62
8	Henson & Associates 2008-2009 Projects and Certificates of Insurance	3/30/07 – 3/16/11	63-95
9	Audit information	10/5/08 – 10/5/09	96-101
10	Workers' Compensation Application	10/8/08 – 11/11/10	102-104
11	Checks issued by Contreras Panels	2/2/09 – 7/6/10	105-110
12	Service Resource Policy Information	5/8/09 – 8/20/10	111-121
13	Henson & Associates Insurance Policy	10/5/09	122-157
14	Other States Insurance Workers Compensation Coverage	1/21/10	158-162

15	Commercial Insurance Application	11/11/10	163-164
16	Workers' Compensation Insurance Application by Henson & Associates for a period of coverage	10/5/08 – 10/5/09	165-169

APA SUBMISSIONS SUBMITTED BY AMERISURE:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Amerisure Claim Notes	4/15/10 – 4/19/10	
2	Correspondence tendering defense	5/21/10	
3	Certificate of Insurance Between Henson & Associates and Contreras Panels	4/23/09	
4	Certificate of Insurance between Henson & Associates and Edifice, Inc.	2/10/09	
5	Insurance policy issued to Henson & Associates by Owners Insurance	10/30/08	
6	Deposition Transcript of Kenneth Henson	7/26/10	
7	Order adding Owners Insurance	8/18/10	
8	All correspondence showing pleadings and hearing notices served on auto owners/Owners prior to Auto owners retaining counsel	Various	

APA SUBMISSIONS SUBMITTED BY SCUEF:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Condensed Transcript of the Deposition of Francis Lynn Wooten of Services Resource	July 12, 2010	1-13
2	Condensed Transcript of Gabriel Contreras	July 20, 2010	14-31

3	Letter from Lynn Wooten of Services Resource to South Carolina Workers' Compensation Commission	March 5, 2010	32
4	Letter from Reginald Villalovas of Associates Benefits Agency to counsel for Gabriel Contreras d/b/a Contreras Panels	August 20, 2010	33
5	Email correspondence from Associates Benefits Agency	September 23, 2010	34
6	Cancelled checks and money order receipts from Gabriel Contreras d/b/a Contreras Panels	February 2009 – July 2010	35-41
7	Invoices from Reginald Villalovas of Associates Benefits Agency d/b/a Associates Construction and Labor	October 23, 2009 & April 22, 2010	41-B-43
8	Advertisement for Associates Benefits Agency (http://reliabilitymall.com/members/associates_benefits_agency.htm)	Accessed July 21, 2010	44
9	Articles of Incorporation, Associates Labor & Construction	Filed: October 22, 2004	45-46
10	Articles of Incorporation, associates Labor & Construction, Inc.	Filed: November 8, 2004	47-48

EVIDENCE OF THE CASE

1. COMPENSABILITY AND BENEFITS

a. Testimony of Rudy Almazon

Claimant, Rudy Otoniel Barreira Almazon, testified through an interpreter. He is a 22 year old Guatemalan native with a fourth grade education. He came to the United States in 2007, speaks very little English, and cannot read or write in English. He has worked for Contreras

Panels since August 2008 laminating metal roof panels. His job with Contreras Panels required climbing and heavy lifting.

He was injured on September 26, 2009, when he fell off of a roof working on the York Project. He fell in a seated position injuring his back. (Hr'g tr. p. 18, lines 5 – 9) Gabriel Contreras took him to the hospital. At the time of his accident, he was making \$9.00 per hour and working 40 hours per week. (Hr'g tr. p. 12, line 18-22) He was paid in cash. (Hr'g tr. p. 12, lines 23-24) As part of his wages, Alamazon was provided a housing stipend, which included rent, utilities, and transportation. (Hr'g tr. p. 12, line 25 - p. 13, line 8) He believes this equates to additional \$400.00 per month in rent, \$150.00 per month for utilities, and \$150.00 per month for transportation, food, and other incidentals. (Hr'g tr. p. 14, lines 2-11)

Following the accident, Contreras Panels paid Alamazon \$360.00 per week until January 18, 2010. (Hr'g tr. p. 14, lines 15-18) It is Alamazon's understanding that his payments stopped because he was being forced to move out since he could not return to work. (Hr'g tr. p. 15, line 25 through p. 16, line 2) He moved to Manning, South Carolina and obtained a job at a Mexican restaurant on or about May 15, 2010. (Hr'g tr. p. 16, lines 3-9) He was paid \$300.00 per week in cash as a busboy/food prep worker. He maintained employment at the restaurant until his termination in mid-January 2011. A couple of months later, Alamazon began working raking straw two to three days per week making \$40.00-\$50.00 per day. (Hr'g tr. p. 17, lines 4-13)

He has continuing pain in his back that is a 5 out of 10 most of the time. (Hr'g tr. p. 18, line 24 - p. 19, line 6) He has difficulty bending, squatting, stooping, and lifting more than 30 pounds. (Hr'g tr. p. 19, lines 10-17) He believes he has lost 50% of the use of his back as a result of his accident. (Hr'g tr. p. 20, lines 14-17)

On cross-examination, Alamazon admitted the \$700.00 in living expenses that he received

was divided between himself and five or six other individuals he lived with while working for Contreras Panels.

b. Medical Evidence

Almazon was treated at Piedmont Medical Center on September 26, 2009, for back pain. (Claimant's APA at p. 1 - 8) Radiological studies of the lumbar spine revealed a L1 compression fracture. (Id. at p. 4) A CT Scan of the lumbar spine revealed a L1 compression fracture with posterior retropulsion resulting in spinal stenosis. Dr. Paul Kim Posterior performed open reduction and internal fixation of L1 burst fracture with left L1 transpedicular approach for ventral decompression and L1 laminectomy, pedicle screw instrumentation from T11 to L2 bilaterally and posterolateral fusion from T11 to L2 bilaterally on September 27, 2009. (Claimant's APA at pp. 12 - 15)

Almazon was treated postoperatively with pain medication, muscle relaxers, and rest. (Id. at pp. 18 -21) On October 30, 2009, four weeks postoperatively, he was noted to be doing very well with no radicular component. (Id. at p. 44) On March 12, 2010, Almazan denied low back or lower extremity pain and Dr. Kim recommended follow-up in six (6) months. (Id. at pp. 48 - 51) On April 1, 2011, Dr. Kim opined claimant suffered 10% permanent impairment to the back/whole person.

Dr. Neal S. Taub conducted an independent medical evaluation on October 29, 2010. Dr. Taub opined claimant was at maximum medical improvement and further treatment would not be helpful. He assigned claimant a 20% whole person impairment with a permanent 30 pound lifting restriction based on his examination and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

2. COVERAGE

a. Contreras Panels / INSCOP / Services Resource

(1) Testimony of Lynn Wooten

Frances Lynn Wooten's deposition was submitted into evidence. Wooten is the owner of a construction company, Services Resource. (SCUEF's APA 1 at p. 2) Services Resource performs construction work in Texas, Louisiana, and Mississippi. (*Id.*) Associates Benefits Agency is the independent insurance agent for Services Resource. (*Id.* at p. 3)

Wooten has known Pablo Contreras, of Contreras Panels, for 5 years. (*Id.*) At some point before May 8, 2009, Wooten received a phone call from Pablo Contreras requesting help with insurance coverage for work he had in South Carolina. (*Id.* at p. 3 - 4) Initially, Wooten could not help Pablo Contreras as she had not yet formed Services Resource. (*Id.* at p. 4) On the day Wooten formed Services Resources, she contacted her insurance broker, Bertene Higgins with Associates Benefits Agency, and asked Higgins to issue a certificate of insurance to Henson & Associates on behalf of Contreras Panels. (*Id.* at 3 - 4)

Wooten admitted Associate Benefits Agency made no representations about its authority to bind the insurance company. (*Id.* at p. 4) Higgins did inform Wooten that Services Resource's policy only covered employees who were working in or hired in one of the covered states, i.e., Texas, Louisiana, or Mississippi. (*Id.*) In exchange for adding Contreras Panels on its certificate of insurance, Services Resource received approximately \$1,500.00. (*Id.* at p. 6) Although Pablo Contreras and Wooten had worked with each other in the past, Wooten / Services Resource had no intention of performing work on the York Project in South Carolina. (*Id.* at p. 8, 11)

Wooten received notice of Almazon's injury on or about October 15, 2009, through a fax sent by Gabriel Contreras. (*Id.*) Wooten's understanding was Almazan's injuries were not severe

and a claim did not need to be filed. (Id. at p. 9) She spoke to Pablo Contreras two weeks before her deposition at which time she informed him that she did not believe the INSCOP worker's compensation policy covered Alamazon because he was not a Texas resident. (Id. at p. 10)

(2) Testimony of Gabriel Contreras

Gabriel Contreras testified at the hearing. His deposition testimony was also submitted into evidence. Gabriel Contreras is the owner of Contreras Panels. (SCUEF's APA 2 at p. 16; hr'g tr. p. 59, lines 16 - 19) Contreras Panels is a metal construction company that constructs roofing panels and wall panels. (SCUEF's APA 2 at p. 16) Henson & Associates hired Contreras Panels as a subcontractor for the York Project. The contract amount was \$228,120.00.

Gabriel Contreras denied knowing Services Resource or Lynn Wooten. (Id. at p. 21; hr'g tr. p. 61, lines 7 - 10) Services Resource had no part in carrying out the York Project and did not participate in a profit from the project. (Id.) He denied paying Lynn Wooten \$1,500.00 in order to get worker's compensation coverage. (SCUEF's APA 2 at p. 21; hr'g tr. p. 61, lines 11 - 12) He used to live in Houston, Texas at 13416 Champagne Street. (Hr'g tr. p. 63, lines 10 - 11) He moved out of Texas in 2000. (Hr'g tr. p. 65, lines 1 -2) His ex-sister in law currently resides at the address. (Hr'g tr. p. 65, lines 9 - 20) He used the Texas address as his mailing address until he purchased a home in South Carolina. (Hr'g tr. pp. 66 - 67)

His wife, Mary Contreras, manages the books for Contreras Panels and deals with the insurance company when a certificate of insurance is needed on a job. (Hr'g tr. p. 61, lines 20 - 23) However, Pablo Contreras requested the certificate of insurance for the York Project because Mary Contreras was out of town. (SCUEF's APA 2 at p. 22) Gabriel Contreras paid premiums every month to Associates Benefits Agency for workers compensation insurance. (Contreras Panel's APA 1 at pp. 1-6) Contreras Panels requested two certificates of insurance

from Associates Benefits Agency for work on the York project. New Hampshire Insurance Company policy WC641-32-66 with effective dates May 10, 2008, through May 10, 2009, and INSCOP worker's compensation policy WC00577-94-64 with effective dates May 8, 2009, through May 8, 2010. (SCUEF's APA 2 at p. 27, INSCOP APA A at p. 1, INSCOP APA C at p. 5)

(3) Testimony of Juan Pablo Contreras Alcala.

Juan Contreras Alcala is the brother of Gabriel Contreras. He does not have ownership interest in Contreras Panels. However, he has authority to obtain insurance on behalf of Contreras Panels. (SCUEF's APA 2 at p. 22) Contreras Panels has approximately 9 employees in the state of South Carolina. (Hr'g tr. p. 54, lines 24-25) His duties at Contreras Panels include distributing payroll, and communicating with the insurance agent. (Hr'g tr. p. 35, lines 9-24, p. 41, lines 1-3) The only insurance representative he has ever spoken to regarding worker's compensation coverage is "Mary Fielder" with Associates Benefits Agency. (Hr'g tr. p. 35, lines 21-24) When he needed a certificate of insurance for a job, he contacted Fielder. (Hr'g tr. p. 37, lines 8 – 15)

Pablo Contreras denies knowing Lynn Wooten or Services Resource. (Hr'g tr. p. 39, lines 11-14) He denied paying her \$1,500.00 in exchange for her adding Contreras as an insured on a certificate of insurance issued to Henson & Associates. (Hr'g tr. p. 39, lines 15 – 17)

(4) Documentary Evidence

Certificates of insurance dated 4/23/2009, and 5/08/2009, for worker's compensation policies WC641-32-66 and WC005779464, were issued by Associates Benefits Agency to Henson & Associates with Contreras Panels as the named insured; however, the underlying policies for the certificates did not name Contreras Panels as an insured. (See INSCOP APAs A

- D, pp. 1 - 72) Specifically, worker's compensation policy 641-32-66 was issued to Management Services, Inc. in Alvin, Texas. (See INSCOP APA B at pp. 2-4) Worker's compensation policy 005779464 was issued to Services Resource in LaPorte, Texas. (INSCOP APA D at pps 6 - 75)

Worker's compensation premiums were paid by Contreras Panels to Associates Benefits. (SCUEF's APA 6 at pp. 35 - 41 and APA 7 at pp. 41 - 43) However, there is no evidence in the record that premiums were paid to INSCOP or New Hampshire Insurance Company.

b. Henson & Associates / Auto Owners Insurance

(1) Documentary Evidence

Auto Owners Insurance Company provided worker's compensation insurance to Henson & Associates from October 5, 2008, to October 5, 2009, under policy 081715-35036819. (Henson & Associates' APA 1 at pp. 1 - 29) North Carolina is the only state listed under Section 3A. (Id. at p. 1) South Carolina is listed in the Other States provision in Section 3C. First Charter Insurance issued several certificates of insurance on behalf of Henson & Associates for work performed in South Carolina. (Henson & Associates APA 6 at pp. 66 - 67, 69 - 70, 72)

(2) Testimony of Ken Henson

Kenneth Henson is the President of Henson & Associates, a subcontractor that furnishes metal products, metal roofs, metal walls, and performs finish and erection work. Henson & Associates is a North Carolina corporation with its principal place of business is in Murphy, North Carolina. It has 3 full-time employees. (Hr'g tr. p. 97, lines 16-18) Henson & Associates entered into a contract with Edifice, Inc. to provide roofing and materials for the York Project. Henson & Associates subcontracted the labor for the job to Contreras Panels. (Hr'g tr. p. 100, lines 2-8; Henson & Associates APA 2 at pp. 30-37) As a part of the contract, Henson &

Associates required a certificate of insurance from Contreras Panels. (Hr'g tr. p. 100, line 24 - p. 101, line 2) Contreras Panels submitted two certificates of insurance dated April 23, 2009, and May 8, 2009, to Henson & Associates. (Hr'g tr. pp. 101, line 10 - p. 102, line 21; Henson & Associates APA 3 at pp. 38-39)

As part of its contract with Edifice, Henson & Associates had provide a certificate of insurance to Edifice, Inc. (Hr'g tr. p. 104, lines 19-25) Henson & Associates' insurance agent is First Charter Insurance in Charlotte, North Carolina. (Hr'g tr. at p. 105, lines 1-4) First Charter Insurance issued a certificate of insurance to Edifice, Inc. for the York Project on February 10, 2009. (Hr'g tr. at p. 105, lines 10-24; Henson & Associates APA 6 at p. 70) Henson believed he had worker's compensation coverage for the York Project based on the fact his insurance agent issued a certificate of insurance. (Hr'g tr. at p. 107, lines 1-5)

(3) Testimony of Garry Smith

Garry Smith is the director of the Compliance Division of the South Carolina Workers' Compensation Commission. Mr. Smith issued an opinion that Henson & Associates did not have coverage in the state of South Carolina when the claim was originally filed. (Hr'g tr. p. 132, lines 18-21) At the time the opinion was rendered, the Compliance Division could not find a policy that had been filed with NCCI. (Hr'g tr. p. 132, line 22 - p. 133, line 2) The Compliance Division later found a policy for Henson & Associates that existed in the state of North Carolina. (Id.) It is Mr. Smith's opinion that the 3C Other States provision of Henson & Associates' policy provides coverage in South Carolina. (Hr'g tr. p. 133, lines 3-18) It is Mr. Smith's opinion that if Auto Owners was aware of Henson & Associates work in South Carolina prior to the issuance of the policy, or shortly thereafter, the Auto Owners' policy would provide coverage to Henson & Associates in South Carolina. (Hr'g tr. p. 140, lines 19-23)

(4) Testimony of Michael Ross

Michael Ross is employed with Auto Owners Insurance as a commercial underwriter. (Hr'g tr. p. 142, lines 5-11) He was the underwriter for the Auto Owners insurance policy 35036819, the application for which was completed by Wendy Henson in October 2008. (Hr'g tr. p. 142, lines 12-18.) The application listed Murphy, North Carolina as the premises for Henson & Associates. Henson & Associates marked "No" to the following application questions:

- (1) "Is there any subcontract work?"
- (2) "Any employees travel out of state?"
- (3) "Anything above 15 feet above ground?"

(Hr'g tr. p. 142 , line 19 – p. 143, line 4) The application did not state work was being performed in South Carolina. (Hr'g tr. p. 143, lines 11-13) The policy was issued based on that information. Policy number 35036819 was issued to cover North Carolina as a 3A state and South Carolina as a 3C state. (Hr'g tr. p. 143, line 14 – p. 144, line 1)

Auto Owners conducted an audit of Henson & Associates in October 2009 which revealed Henson & Associates was conducting business in North Carolina and Georgia. (Hr'g tr. p. 145, lines 3-11; Auto Owners' APA 9 at pp. 96-101) The audit did not indicate Henson & Associates was conducting business in South Carolina or that Contreras Panels was one of its subcontractors in October 2009. (Hr'g tr. p. 145, line 12 – p. 146, line 1; Auto Owners' APA 9 at pp. 96-101)

Auto Owners consented to First Charter Insurance soliciting business on their behalf. (Hr'g tr. p. 146, line 25 - p. 147, line 2) First Charter insurance agent Darryl H. had actual authority to bind coverage with Auto Owners. (Hr'g tr. p. 147, lines 3-24) Baucom issued several certificates of insurance for Henson & Associates for South Carolina projects. (Henson

& Associates APA 6, pp. 66, 67, and 69) Ross admitted Baucom, the agent for Auto Owners, was aware Henson & Associates was doing work in South Carolina. (Hr'g tr. p. 148, lines 19-21) Ross had issued a certificate of insurance on October 3, 2008, two days before the policy went into effect on October 5, 2008, indicating Henson & Associates was performing work in Summerville, S.C. Ross admitted that although the Auto Owners policy states that the employer is to notify Auto Owners when doing work in another state. Employers normally contact their agent, as Auto Owners only uses independent agents and does not work directly with employers. (Hr'g tr. p. 147, lines 23-24; p. 149, lines 5-10)

On cross-examination by the attorney for the SCUEF Ross discussed the audit's indication that Contreras Panels, an insured subcontractor who worked for several companies installing sheet metal roofing, had been listed with their Certificate of Insurance information and was therefore not included in the audit. (Hr'g tr. p. 151, line 20-p. 152, line 13.)

c. Edifice, Inc. / Amerisafe Insurance Company

There is no dispute that Edifice, Inc. is the general contractor and the highest level upstream contractor. Edifice, Inc. is insured by Amerisure Mutual Insurance Company.

d. SCUEF

The issue of whether the statutory employers may transfer liability to the SCUEF pursuant to South Carolina Code § 42-1-415 is not before the Commission.

FINDINGS OF FACT

Based on the hearing testimony, the documentary evidence submitted by the respective parties pursuant to the Administrative Procedures Act and the Commission's file relative to this claim, I find as follow:

1. The South Carolina Workers' Compensation Commission has jurisdiction to decide

the issues in dispute.

2. The Claimant, Rudy Almazon, sustained an injury to his back on September 26, 2009, when he fell from a roof.
3. The injury arose out of the course and scope of his employment with Contreras Panels.
4. The application for insurance for workers' compensation policy WC 641-32-66 was made in Texas between Management Services and New Hampshire Insurance Company. Similarly, the application for workers' compensation policy WC 005779464 was made in Texas. The policy was delivered to Lynn Wooten, owner of Services Resource, in Texas and the contract was formed in Texas. Therefore, I find INSCOP policy WC 005779464 is governed by Texas law.
5. I find Contreras Panels is the direct employer and is uninsured. I find Contreras Panels failed to prove it had an insurance policy with INSCOP.
6. I find the testimony of Pablo and Gabriel Contreras regarding Lynn Wooten lacks credibility.
7. It appears Contreras Panels was paying Associates Benefits Agency for worker's compensation insurance, but I find there was no policy and no evidence regarding the authority of that agency to bind INSCOP.
8. Services Resource is not a statutory employer of Claimant.
9. The South Carolina Workers' Compensation has no jurisdiction over Services Resource in this claim.
10. Henson & Associates was covered by Auto Owners. The agent knew Henson & Associates was doing work in South Carolina. That is sufficient notice under the

policy. The work in South Carolina may affect the amount Henson & Associates owes the carrier, but it does not relieve the carrier of coverage.

11. There was no dispute that Edifice was a statutory employer and had coverage with Amerisure. Amerisure had liability on this claim with no viable defense to the claim itself. Therefore, I find Amerisure is liable for ½ hearing costs.
12. Claimant reached maximum medical improvement on October 29, 2010, and is entitled to causally related medical care pursuant to the fee schedule.
13. Claimant's average weekly wage is \$410.00 (accounting for his wages plus his living expenses that were provided by the employer) with a compensation rate of \$273.47. Claimant is entitled to temporary total disability benefits from January 18, 2010, until May 15, 2010, when he began working at the Mexican restaurant.
14. Claimant has sustained twenty-five percent (25%) permanent partial disability to his back.

CONCLUSIONS OF LAW

In view of the finding of facts, I conclude as matters of law:

1. Employee is defined in S.C. Code Ann. § 42-1-130.
2. Employer is defined in S.C. Code Ann. § 42-1-140.
3. Henson & Associates and Edifice, Inc. are upstream contractors pursuant to S.C. Code Ann. § 42-1-410; § 42-1-420.
4. Services Resource is not Claimant's statutory employer. S.C. Code Ann. § 42-1-140; § 42-1-410; § 42-1-420. Services Resource is dismissed from this claim with prejudice.
5. Claimant sustained an injury by accident arising out of and in the course and scope

of his employment with Contreras Panels. S.C. Code Ann. § 42-1-160.

6. The South Carolina Workers' Compensation Commission has exclusive jurisdiction pursuant S.C. Code Ann. § 42-1-540.
7. A contract of insurance is governed by the law of the state in which the application for insurance was made, policy delivered, and contract formed. Barkley v. Int'l Mutual Ins. Co., 227 S.C. 38, 86 S.E.2d 602 (1955). The application for insurance for workers' compensation policy WC 641-32-66 was between Management Services, a Texas company, and New Hampshire Insurance Company. I find WC 641-32-66 is governed by Texas law.
8. The application workers' compensation policy WC 005779464 was made between Associates Benefits Agency, a Texas company, and Services Resource, a Texas company. The policy was issued to Lynn Wooten, owner of Services Resource. Therefore, I find INSCOP policy WC 005779464 is governed by Texas law.
9. Under Texas law, a certificate of insurance does not confer rights outside of the underlying policy where the certificate warns that it does not alter, amend, or extend the coverage afforded by the policies listed therein. See Via Net v. TIG Ins. Co., 211 S.W.3d 310, 312-14 (Sup. Ct. TX 2006).
10. INSCOP's policy did not provide workers' compensation coverage to Contreras Panels.
11. Claimant's entitlement to temporary total disability benefits from the date of the injury until he was able to return to unrestricted employment is governed by S.C. Code Ann. § 42-9-260.
12. Claimant is entitled to twenty-five percent (25%) permanent partial disability benefits

to the back. S.C. Code Ann. § 42-9-30.

13. Claimant has reached maximum medical improvement and is entitled to medical treatment pursuant to S.C. Code Ann. § 42-15-60.

ORDER

IT IS THEREFORE ORDERED Auto Owners Insurance Company, as the carrier for the upstream contractor Henson & Associates, is the carrier responsible for benefits. It is further

ORDERED Auto Owners shall pay the Claimant temporary total disability benefits at the rate of \$273.47 for the period January 18, 2010, until May 15, 2010, or \$4609.91

ORDERED Auto Owners shall pay the Claimant 25%, or 75 weeks, of permanent partial disability benefits to the back for an award of \$20,510.25. The total of TTD and TPD is therefore \$25,120.16. It is further

ORDERED Auto Owners is financially responsible for all causally related medical treatment and shall continue to provide the Claimant with causally related medical treatment as a result of Claimant's work related injury. It is further

ORDERED Auto Owners is responsible, during the life of the claimant or for as long as such devices are necessary, to provide the claimant with prosthetic devices in the form of hardware placed into claimant during his back surgery.

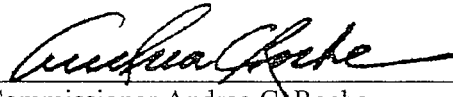
ORDERED that the Insurance Company for the State of PA. be dismissed as a party to this clam with prejudice. It is further

ORDERED Edifice, Inc. and its worker's compensation carrier Amerisure shall pay ½ hearing costs. As hearing costs are \$1,014.86, Amerisure shall pay \$507.34.

ORDERED that Services Resource be dismissed as a party to this clam with prejudice. It is further

ORDERED that in the event the issue of liability for the Claimant's benefits is appealed Auto Owners and the South Carolina Uninsured Employer's Fund shall each pay ½ of the benefits owed to the Claimant pending resolution of the liability for the Claimant's benefit with the prevailing party entitled to reimbursement from the liable party with interest at the legal rate of interest.

AND IT IS SO ORDERED!



Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

January 17, 2012

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

RUDY BARREIRA ALMAZAN,
Employee/Respondent,

v.

SERVICE RESOURCE, Employer, and
INSURANCE CO. OF THE STATE OF PA
Carrier, Respondents,

and

EDIFICE, INC., Employer, and
AMERISURE INSURANCE, Carrier,
Respondents,

and

HENSON & ASSOCIATES, Employer, and
AUTO OWNERS INSURANCE, Carrier,
Respondents,

and

CONTRERAS PANELS, Employer,
Respondent,

and

S.C. UNINSURED EMPLOYERS FUND,
Appellant.

This matter came before Hearing Commissioner Andrea C. Roche on April 25, 2011 for a hearing based on the Claimant's April 12, 2010, fourth amended Form 50, which alleges that the Claimant fell off of a 15-20 foot roof on September 26, 2009, while working on the York Comprehensive High School Project, resulting in an injury to his back and legs. The Claimant alleges his employers were Contreras Panels, Henson & Associates, Services Resource, and

Edifice, Inc..

Contreras Panels admitted it is the direct employer of the Claimant. Contreras Panels alleges that at the time of the accident it was insured through the Insurance Company of the State of Pennsylvania (hereinafter referred to as "INSCOP") pursuant to Rickborn v. Liberty Life Insurance Company, 321 S.C. 291, 468 S.E.2d 292.

INSCOP argued that its policy, WC005779464, provides coverage only to Services Resource in Texas, Louisiana, and Mississippi and objected to jurisdiction in South Carolina. Services Resource is a Texas company owned and operated by Lynn Wooten. Services Resource's insurance agent is Associate Benefits Agency. INSCOP contended it did not provide coverage to Contreras Panels and that Services Resource cannot add an uninsured employer (Contreras Panels) to its policy by directing its own agent (Associates Benefits Agency) to issue a certificate of insurance in exchange for money.

Services Resource argued that it is not a statutory employer, is not subject to the Act, has no presence in the state of South Carolina, and therefore has no liability in this matter.

Henson & Associates admitted it is an upstream contractor and alleges coverage through Auto Owners Insurance Company policy number 35036819. However, Henson & Associates alleged INSCOP provided coverage for Contreras Panels and is the carrier on risk for the date of loss. Henson & Associates, while admitting it is an upstream contractor, reserved the right to seek indemnification from INSCOP and/or Contreras Panels.

Auto Owners Insurance Company argued that its policy did not provide any coverage in the State of South Carolina pursuant to the records of NCCI and the investigative report of the South Carolina Workers' Compensation Department of Coverage & Compliance. Auto Owners Insurance Company objected to jurisdiction in South Carolina as it maintains its policy only provides coverage in North Carolina. Specifically, Auto Owners contends that, although there is

an "Other States" provision in the policy, Henson & Associates committed fraud in the application. Auto Owners alleges Henson & Associates was performing work in South Carolina without notice to Auto Owners at the time the its application for insurance was completed.

Edifice, Inc. admitted it is an upstream contractor insured by Amerisure Insurance Company. Edifice maintained that INSCOP is the responsible party as the carrier for Contreras Panels. Edifice also alleged Auto Owners provides coverage in South Carolina for Henson & Associates, but that there may be fraud in the application, which would make the South Carolina Uninsured Employers' Fund (hereinafter referred to as "SCUEF") the responsible party. As such, Edifice reserved the right to petition for a transfer liability to the SCUEF.

SCUEF maintains that Claimant was an employee of Contreras Panels at the time of his fall and that there is available coverage through INSCOP policy 005779464.

Hearing Commissioner Roche issued a Decision and Order on January 17, 2012, by which she found and concluded that the Claimant's injury arose out of his employment with Contreras Panels. According to the Hearing Commissioner, Contreras Panels was the Claimant's direct employer; however, Contreras Panels was uninsured at the time in question. As a result, the Hearing Commissioner concluded that the upstream contractor, Henson & Associates, and its carrier, Auto Owners Insurance, were responsible for medical and compensation benefits related to the Claimant's September 26, 2009 accident.

Following the January 17, 2012 Decision and Order, the UEF filed a Form 30, Request for Review by the Commission's Appellate Panel. No other appeals were filed. The UEF's Form 30 raises the following issues on appeal:

- 1. The Hearing Commissioner erred in naming the alleged uninsured employer as Contreras Panels, which is not a jural person, and against which no judgment may be entered, the error being that such a finding is contrary to the greater weight and preponderance of the evidence and represents an error of law;*

2. The Hearing Commissioner erred when she wrote, "[t]he issue of whether the statutory employers may transfer liability to the SCUEF pursuant to South Carolina Code § 42-1-415 is not before the Commission" ("Evidence of the Case," Section 2(d)), the error being that such a summary contradicts other parts of the Order, is contrary to the greater weight and preponderance of the evidence, and represents an error of law;

3. The Hearing Commissioner erred in Finding of Fact One (1) that the Commission has jurisdiction to decide the issues in dispute, where the alleged uninsured employer is not a jural person, where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, the error being that such a finding is contrary to the greater weight and preponderance of the evidence and represents an error of law;

4. The Hearing Commissioner erred in Finding of Fact Three (3) that the injury arose out of the course and scope of his employment with Contreras Panels, where the alleged uninsured employer is not a jural person, where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, the error being that such a finding is contrary to the greater weight and preponderance of the evidence and represents an error of law;

5. The Hearing Commissioner erred in Finding of Fact Five (5) that Contreras Panels is the direct employer and is uninsured, where the alleged uninsured employer is not a jural person, where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, the error being that such a finding is contrary to the greater weight and preponderance of the evidence and represents an error of law;

6. The Hearing Commissioner erred in Conclusion of Law Five (5) that Claimant's injury arose out of and in the course and scope of his employment with Contreras Panels, where the alleged uninsured employer is not a jural person, and where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, the error being that such a conclusion is contrary to the greater weight and preponderance of the evidence and represents an error of law;

7. The Hearing Commissioner erred in Ordering that, in the event the issue of liability for the Claimant's benefits is appealed Auto Owners' and the South Carolina Uninsured Employers' Fund shall each pay $\frac{1}{2}$ of the benefits owed to the Claimant pending resolution of the liability for the Claimant's benefit with the prevailing party

entitled to reimbursement from the liable party with interest at the legal rate of interest, where the alleged uninsured employer is not a jural person, where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, where there is no finding, conclusion or order that the alleged uninsured employer must be primarily responsible for benefits paid to or on behalf of the Claimant, where there is no finding, conclusion or order that the Fund's liability is derivative of and secondary to that of the alleged uninsured employer that is subject to the Act, where there is no basis in law or fact to force the Fund to pay any benefits that are fully and completely the liability of Henson & Associates and Owners Ins., where there has been no transfer of liability under S.C. Code Ann. § 42-1-415 and no finding that a jural person is subject to the Act and uninsured as would be necessary prior to ordering the Fund to pay any benefits, the error being that such an order is an abuse of discretion, is not allowed by any section under Title 42 or otherwise, is contrary to the greater weight and preponderance of the evidence, and represents an error of law;

8. The Hearing Commissioner erred in failing to rule on all of the issues before her, including the transfer of liability under S.C. Code Ann. § 42-1-415, where such issue was clearly before her (see page 3 of the Order) and where failure to deny such a petition amounts to an abuse of discretion, is contrary to the greater weight and preponderance of the evidence, and represents an error of law; and

9. The Hearing Commissioner erred in failing to dismiss the Fund under Miller v. Lawrence Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct.App. 1998), where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, where there is no finding, conclusion or order that the alleged uninsured employer must be primarily responsible for benefits paid to or on behalf of the Claimant, where there is no finding, conclusion or order that the Fund's liability is derivative of and secondary to that of the alleged uninsured employer that is subject to the Act, where the benefits are fully and completely the liability of Henson & Associates and Owners Ins. (or Edifice, Inc. and Amerisure, should the Owners policy not be valid in SC), where there has been no transfer of liability under S.C. Code Ann. § 42-1-415 and no finding that a jural person is subject to the Act and uninsured as would be necessary prior to ordering the Fund to pay any benefits, the error being that such an order is an abuse of discretion, is not allowed by any section under Title 42 or otherwise, is contrary to the greater weight and preponderance of the evidence, and represents an error of law.

6. The Hearing Commissioner erred in Conclusion of Law Five (5) that Claimant's injury arose out of and in the course and scope of his employment with Contreras Panels, where the alleged uninsured employer is not a jural person, and where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, the error being that such a conclusion is contrary to the greater weight and preponderance of the evidence and represents an error of law;

7. The Hearing Commissioner erred in Ordering that, in the event the issue of liability for the Claimant's benefits is appealed Auto Owners and the South Carolina Uninsured Employers' Fund shall each pay $\frac{1}{2}$ of the benefits owed to the Claimant pending resolution of the liability for the Claimant's benefit with the prevailing party entitled to reimbursement from the liable party with interest at the legal rate of interest, where the alleged uninsured employer is not a jural person, where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, where there is no finding, conclusion or order that the alleged uninsured employer must be primarily responsible for benefits paid to or on behalf of the Claimant, where there is no finding, conclusion or order that the Fund's liability is derivative of and secondary to that of the alleged uninsured employer that is subject to the Act, where there is no basis in law or fact to force the Fund to pay any benefits that are fully and completely the liability of Henson & Associates and Owners Ins., where there has been no transfer of liability under S.C. Code Ann. § 42-1-415 and no finding that a jural person is subject to the Act and uninsured as would be necessary prior to ordering the Fund to pay any benefits, the error being that such an order is an abuse of discretion, is not allowed by any section under Title 42 or otherwise, is contrary to the greater weight and preponderance of the evidence, and represents an error of law;

8. The Hearing Commissioner erred in failing to rule on all of the issues before her, including the transfer of liability under S.C. Code Ann. § 42-1-415, where such issue was clearly before her (see page 3 of the Order) and where failure to deny such a petition amounts to an abuse of discretion, is contrary to the greater weight and preponderance of the evidence, and represents an error of law; and

9. The Hearing Commissioner erred in failing to dismiss the Fund under Miller v. Lawrence Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct.App. 1998), where there is no finding, conclusion or order that the alleged uninsured employer regularly employed four (4) or more employees in South Carolina, and where there is no finding, conclusion or order that the alleged uninsured employer is subject to the terms and provisions of the S.C. Workers' Compensation Act, where there is no finding, conclusion or order that the alleged uninsured employer must be primarily responsible for benefits paid to or on behalf of the Claimant, where there is no finding, conclusion or order that the Fund's liability is derivative of and secondary to that of the alleged uninsured employer that is subject to the Act, where the benefits are fully and completely the

liability of Henson & Associates and Owners Ins. (or Edifice, Inc. and Amerisure, should the Owners policy not be valid in SC), where there has been no transfer of liability under S.C. Code Ann. § 42-1-415 and no finding that a jural person is subject to the Act and uninsured as would be necessary prior to ordering the Fund to pay any benefits, the error being that such an order is an abuse of discretion, is not allowed by any section under Title 42 or otherwise, is contrary to the greater weight and preponderance of the evidence, and represents an error of law.

EVIDENCE SUBMITTED

APA SUBMISSIONS SUBMITTED BY CLAIMANT:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Piedmont Medical Center	9/26/09	1-8
2	Carolinas Medical Center	9/26/09 – 10/2/09	9-16
3	Carolina Rehabilitation	10/20/09 – 10/22/09	17-43
4	Carolina Neurosurgery & Spine Associates	10/30/09 – 3/12/10	44-51

APA SUBMISSIONS SUBMITTED BY CONTRERAS PANELS:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Cancelled checks and money order receipts from Contreras Panels	February 2009 to July 2010	1-6, 6A, 6B, 6C
2	Invoices from Associates Construction & Labor, Inc.	10/23/09, 4/22/2010, 6/21/2010	7-9
3	Registered agent information on Associates Benefits Agency, Inc. from Texas Secretary of State	8/20/2010	10
4	Correspondence from Associates Benefits Agency, Inc.	8/20/2010	11-12
5	E-mail from Associates Construction and Labor, Inc.	9/23/2010	13
6	Certificates of Insurance from Associates Benefits Agency, Inc.	4/23/2009 and 2/8/2010	14-15

APA SUBMISSIONS SUBMITTED BY INSCOP:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
A	Certificate of Insurance Indicating Contreras Panels was insured by New Hampshire Ins. Co. policy 641-32-66	4/23/09	1
B	Declarations pages and schedule of New Hampshire Ins. Co. policy 641-32-66 issued to Management Services, Inc.	5/10/08-5/10/09	2-4
C	Certificate of Insurance Indicating Contreras Panels was insured by Ins. Co. of the State of Pa. policy 005779464	5/8/09	5
D	Ins. Co. of the State of Pa. policy 005-77-9464, with application	5/8/09 – 5/8/10	6-72

APA SUBMISSIONS SUBMITTED BY SERVICES RESOURCE:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
D	Terms and conditions of Agreement between Henson & Associates, Inc. and Subcontractor Contreras Panels, including certificate of insurance	4/7/09	1-8
E	Standard From of Agreement between Contractor Edifice, Inc. and Subcontractor Henson & Associates, including certificate of insurance	12/3/08	9-70

APA SUBMISSIONS SUBMITTED BY HENSON & ASSOCIATES:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Henson & Associates Workers' Compensation Policy from auto Owners	10/5/08 – 10/5/09	1-29
2	Contract between Henson & Associates and Contreras panels	4/7/09	30-37

3	Certificate of insurance to Henson & Associates from Contreras Panels for York Comprehensive High School Project	4/23/09 – 2/8/10	38-40
4	Certificates of Insurance to Henson & Associates from Contreras Panels for Other Projects	9/29/05 – 2/3/10	41-53
5	Service Resource Workers' Compensation Policy from The Insurance Company of the State of Pennsylvania	5/8/09 – 5/8/10	54-64
6	Certificates of Insurance for Henson & Associates prepared by Auto Owners' authorized representative	3/30/07 – 8/19/09	65-74
7	Fax from Lynn Wooten to Wayne Dukote, Jr.	3/5/10	75
8	Correspondence from Henson & Associates to Auto Owners/Auto Owners' Counsel	5/25/10 – 4/5/11	76-83
9	Depositions of Claimant, Gabrielle Contreras, Lynn Wooten and Kenneth Henson	To Be Submitted at Hearing	

APA SUBMISSIONS SUBMITTED BY AUTO OWNERS/EDIFICE, INC.:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
7	Carolina Neurosurgery & Spine Assoc. – Dr. Paul Kim	10/1/09 – 4/1/11	59-62
8	Henson & Associates 2008-2009 Projects and Certificates of Insurance	3/30/07 – 3/16/11	63-95
9	Audit information	10/5/08 – 10/5/09	96-101
10	Workers' Compensation Application	10/8/08 – 11/11/10	102-104
11	Checks issued by Contreras Panels	2/2/09 – 7/6/10	105-110
12	Service Resource Policy Information	5/8/09 – 8/20/10	111-121

13	Henson & Associates Insurance Policy	10/5/09	122-157
14	Other States Insurance Workers Compensation Coverage	1/21/10	158-162
15	Commercial Insurance Application	11/11/10	163-164
16	Workers' Compensation Insurance Application by Henson & Associates for a period of coverage	10/5/08 – 10/5/09	165-169

APA SUBMISSIONS SUBMITTED BY AMERISURE:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>
1	Amerisure Claim Notes	4/15/10 – 4/19/10	
2	Correspondence tendering defense	5/21/10	
3	Certificate of Insurance Between Henson & Associates and Contreras Panels	4/23/09	
4	Certificate of Insurance between Henson & Associates and Edifice, Inc.	2/10/09	
5	Insurance policy issued to Henson & Associates by Owners Insurance	10/30/08	
6	Deposition Transcript of Kenneth Henson	7/26/10	
7	Order adding Owners Insurance	8/18/10	
8	All correspondence showing pleadings and hearing notices served on auto owners/Owners prior to Auto owners retaining counsel	Various	

APA SUBMISSIONS SUBMITTED BY SCUEF:

<u>APA</u>	<u>PROVIDER/EXPERT</u>	<u>DATES OF REPORTS</u>	<u>P. NOS.</u>

1	Condensed Transcript of the Deposition of Francis Lynn Wooten of Services Resource	July 12, 2010	1-13
2	Condensed Transcript of Gabriel Contreras	July 20, 2010	14-31
3	Letter from Lynn Wooten of Services Resource to South Carolina Workers' Compensation Commission	March 5, 2010	32
4	Letter from Reginald Villalovas of Associates Benefits Agency to counsel for Gabriel Contreras d/b/a Contreras Panels	August 20, 2010	33
5	Email correspondence from Associates Benefits Agency	September 23, 2010	34
6	Cancelled checks and money order receipts from Gabriel Contreras d/b/a Contreras Panels	February 2009 – July 2010	35-41
7	Invoices from Reginald Villalovas of Associates Benefits Agency d/b/a Associates Construction and Labor	October 23, 2009 & April 22, 2010	41-B-43
8	Advertisement for Associates Benefits Agency (http://reliabilitymall.com/members/associates_benefits_agency.htm)	Accessed July 21, 2010	44
9	Articles of Incorporation, Associates Labor & Construction	Filed: October 22, 2004	45-46
10	Articles of Incorporation, Associates Labor & Construction Inc.	Filed: November 8, 2004	47-48

EVIDENCE SUMMARY

Claimant, Rudy Otoniel Barreira Almazan testified through an interpreter before the Hearing Commissioner. He is a 22 year old Guatemalan native with a fourth grade education.

He came to the United States in 2007, speaks very little English, and cannot read or write in English. He has worked for Contreras Panels since August 2008 laminating metal roof panels. (Hr'g tr. p. 12, lines 6-10). His job with Contreras Panels required climbing and heavy lifting. (Hr'g tr. p. 12, lines 11-17)

Almazan was injured on September 26, 2009, when he fell off of a roof working on the York Project. He fell in a seated position injuring his back. Gabriel Contreras took him to the hospital. At the time of his accident, he was making \$9.00 per hour and working 40 hours per week. (Hr'g tr. p. 12, line 18-22) He was paid in cash. As part of his wages, Almazan was provided a housing stipend, which included rent, utilities, and transportation. (Hr'g tr. p. 12, line 25 - p. 13, line 8) He believes this equates to additional \$400.00 per month in rent, \$150.00 per month for utilities, and \$150.00 per month for transportation, food, and other incidentals. (Hr'g tr. p. 14, lines 2-11)

Following the accident, Contreras Panels paid Almazan \$360.00 per week until January 18, 2010. It is Almazan's understanding that his payments stopped because he was being forced to move out since he could not return to work. He moved to Manning, South Carolina and obtained a job at a Mexican restaurant on or about May 15, 2010. (Hr'g tr. p. 16, lines 3-9) He was paid \$300.00 per week in cash as a busboy/food prep worker. (Hr'g tr. p. 16, lines 10-20) He maintained employment at the restaurant until his termination in mid-January 2011. A couple of months later, he began working raking straw two to three days per week making \$40.00-\$50.00 per day. (Hr'g tr. p. 17, lines 4-13)

He has continuing pain in his back that is a 5 out of 10 most of the time. (Hr'g tr. p. 18, line 24 - p. 19, line 6) He has difficulty bending, squatting, stooping, and lifting more than 30 pounds. He believes he has lost 50% of the use of his back as a result of his accident. (Hr'g tr.

p. 20, lines 14-17)

On cross-examination, Almazan admitted the \$700.00 in living expenses that he received was divided between himself and five or six other individuals he lived with while working for Contreras Panels.

Almazan was treated at Piedmont Medical Center on September 26, 2009, for back pain. (Claimant's APA at p. 1 - 8) Radiological studies of the lumbar spine revealed a L1 compression fracture. (Id. at p. 4) A CT Scan of the lumbar spine revealed a L1 compression fracture with posterior retropulsion resulting in spinal stenosis. (Id. at p. 5) Posterior open reduction and internal fixation of L1 burst fracture with left L1 transpedicular approach for ventral decompression and L1 laminectomy, pedicle screw instrumentation from T11 to L2 bilaterally and posterolateral fusion from T11 to L2 bilaterally was performed on September 27, 2009 by Dr. Paul Kim with Carolinas Healthcare System. (Claimant's APA at pp. 12 - 15)

Almazan was treated postoperatively with pain medication, muscle relaxers, and rest. (Id. at pp. 18 -21) On October 30, 2009, four weeks postoperatively, he was noted to be doing very well with no radicular component. On March 12, 2010, Almazan denied low back or lower extremity pain and Dr. Kim recommended follow-up in six (6) months. (Id. at pp. 48 - 51) An independent medical evaluation was conducted on October 29, 2010, by Dr. Neal S. Taub. Dr. Taub opined Almazan was at maximum medical improvement and further treatment would not be helpful. He assigned claimant 20% whole person impairment with a permanent 30 pound lifting restriction based on his examination and the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

Frances Lynn Wooten deposition was submitted into evidence. Wooten is the owner of a construction company, Services Resource. (SCUEF's APA 1 at p. 2) Services Resource

performs construction work in Texas, Louisiana, and Mississippi. (Id.) Associates Benefits Agency is the independent insurance agent for Services Resource. (Id. at p. 3)

Wooten has known Pablo Contreras, with Contreras Panels, for 5 years. (Id.) At some point before May 8, 2009, Wooten received a phone call from Pablo Contreras requesting help with insurance coverage for work he had in South Carolina. (Id. at p. 3 - 4) Initially, Wooten could not help Pablo Contreras because her company was not yet formed. (Id. at p. 4) On the day Wooten formed Services Resources, she contacted her insurance broker Bertene Higgins with Associates Benefits Agency to issue a certificate of insurance to Henson & Associates on behalf of Contreras Panels. (Id. at 3 - 4)

Wooten contends Associate Benefits Agency made no representations about its authority to bind the insurance company. (Id. at p. 4) However, Higgins did inform Wooten that Services Resource's policy only covered employees who were working in or hired in one of the covered states, i.e., Texas, Louisiana, or Mississippi. (Id.) In exchange for adding Contreras Panels on its certificate of insurance, Services Resource received approximately \$1,500.00. (Id. at p. 6) Although Pablo Contreras and Wooten had worked with each other in the past, Wooten and Services Resource had no intention of performing work on the York Project in South Carolina. (Id. at p. 8, 11) She never received any money from Henson and Associates or Edifice. She did not play any part in procuring the York Project. She did not provide any supervision or direction for the job. She has never entered a contract with Henson and Associate or Edifice for this or for any other job.

Wooten received notice of Almazan's injury on or about October 15, 2009, through a fax sent by Gabriel Contreras. (Id.) Wooten's understanding was Almazan's injuries were not severe and a claim did not need to be filed. (Id. at p. 9) She spoke to Pablo Contreras two weeks before

her deposition at which time she informed him that she did not believe the INSCOP worker's compensation policy covered Almazan because he was not a Texas resident. (Id. at p. 10)

Gabriel Contreras testified at the hearing before Commissioner Roche and his deposition testimony was submitted into evidence. Gabriel Contreras is the owner of Contreras Panels. (SCUEF's APA 2 at p. 16; hr'g tr. p. 59, lines 16 - 19) Contreras Panels is a metal construction company that constructs roofing panels and wall panels. (SCUEF's APA 2 at p. 16) Henson & Associates hired Contreras Panels as a subcontractor for the York Project. (Id. at p. 18) The contract was \$228,120.00. (Id.)

Gabriel Contreras denied knowing Services Resource or Lynn Wooten. (Id. at p. 21; hr'g tr. p. 61, lines 7 - 10) Services Resource had no part in carrying out the York Project and did not participate in a profit from the project. (Id.) He denied paying Lynn Wooten \$1,500.00 in order to get worker's compensation coverage. (SCUEF's APA 2 at p. 21; hr'g tr. p. 61, lines 11 - 12) He used to live in Houston, Texas at 13416 Champagne Street. (Hr'g tr. p. 63, lines 10 - 11) He moved out of Texas in 2000. (Hr'g tr. p. 65, lines 1 - 2) His ex-sister in law currently resides at the address. (Hr'g tr. p. 65, lines 9 - 20) He used the Texas address as his mailing address until he purchased a home in South Carolina. (Hr'g tr. pp. 66 - 67)

Gabriel Contreras's wife, Mary Contreras, manages the books for Contreras Panels and deals with the insurance company when a certificate of insurance is needed on a job. However, Pablo Contreras requested the certificate of insurance for the York Project because Mary Contreras was out of town. (SCUEF's APA 2 at p. 22) Gabriel Contreras sent money every month to Associates Benefits Agency to pay for workers compensation insurance. (Contreras Panel's APA 1 at pp. 1-6) Contreras Panels requested two certificates of insurance from Associates Benefits Agency for work on the York project.

Juan Contreras Alcala is the brother of Gabriel Contreras and also testified before the Hearing Commissioner. Juan does not have an ownership interest in Contreras Panels.

However, Juan has authority to obtain insurance on behalf of Contreras Panels. Contreras Panels has approximately 9 employees in the state of South Carolina. His duties at Contreras Panels include distributing payroll, and communicating with the insurance agent. The only insurance representative he has ever spoken to regarding worker's compensation coverage is "Mary Fielder" with Associates Benefits Agency. (Hr'g tr. p. 35, lines 21-24) When he needs a certificate of insurance for a job, he contacts Mary Fielder. (Hr'g tr. p. 37, lines 8 – 15)

Pablo Contreras denied knowing Lynn Wooten or Services Resource. (Hr'g tr. p. 39, lines 11-14) He denied paying her \$1,500.00 in exchange for her adding Contreras as an insured on a certificate of insurance issued to Henson & Associates. (Hr'g tr. p. 39, lines 15 – 17)

Certificates of insurance dated 4/23/2009, and 5/08/2009, for worker's compensation policies WC641-32-66 and WC005779464, were issued by Associates Benefits Agency to Henson & Associates with Contreras Panels as the named insured; however, the underlying policies for the certificates did not name Contreras Panels as an insured. (See INSCOP APAs A – D, pp. 1 - 72) Specifically, worker's compensation policy 641-32-66 was issued to Management Services, Inc. in Alvin, Texas. (See INSCOP APA B at pp. 2-4) Worker's compensation policy 005779464 was issued to Services Resource in LaPorte, Texas. (INSCOP APA D at pps 6 – 75)

Contreras Panels sent money to Associates Benefits, purportedly for workers compensation insurance. (SCUEF's APA 6 at pp. 35 - 41 and APA 7 at pp. 41 – 43) However, there is no evidence that premiums were paid to INSCOP or New Hampshire Insurance Company.

Auto Owners Insurance Company provided worker's compensation insurance to Henson & Associates from October 5, 2008, to October 5, 2009, under policy 081715-35036819. (Henson & Associates' APA 1 at pp. 1 - 29) North Carolina is the only state listed under Section 3a. of the policy. (Id. at p. 1) South Carolina is listed in the other states provision in Section 3c. (Id.) First Charter Insurance issued several certificates of insurance on behalf of Henson & Associates for work performed in South Carolina. (Henson & Associates APA 6 at pp. 66 - 67, 69 - 70, 72)

Kenneth E. Henson is the President of Henson & Associates, a North Carolina corporation with its principal place of business is in Murphy, North Carolina. Henson & Associates is a subcontractor that furnishes metal products, metal roofs, metal walls, and performs finish and erect work. It has 3 full-time employees. (Hr'g tr. p. 97, lines 16-18) Henson & Associates entered into a contract with Edifice, Inc. to provide roofing and materials for the York Project in January 2009. (Hr'g tr. p. 99, line 25 - p. 100, line 5) Henson & Associates subcontracted the labor for the job to Contreras Panels. (Hr'g tr. p. 100, lines 2-8; Henson & Associates APA 2 at pp. 30-37) As a part of the contract, Henson & Associates required a certificate of insurance from Contreras Panels. (Hr'g tr. p. 100, line 24 - p. 101, line 2) Contreras Panels submitted two certificates of insurance dated April 23, 2009; and May 8, 2009, to Henson & Associates. (Hr'g tr. pp. 101, line 10 - p. 102, line 21; Henson & Associates APA 3 at pp. 38-39)

As part of its contract with Edifice, Henson & Associates had to obtain and provide a certificate of insurance to Edifice. Henson & Associates' insurance agent is First Charter Insurance in Charlotte, North Carolina. (Hr'g tr. at p. 105, lines 1-4) First Charter Insurance issued a certificate of insurance to Edifice, Inc. for the York Project on February 10, 2009. (Hr'g

tr. at p. 105, lines 10-24; Henson & Associates APA 6 at p. 70) Henson believed he had worker's compensation coverage for the York Project based on the fact his insurance agent issued a certificate of insurance. (Hr'g tr. at p. 107, lines 1-5)

Garry Smith is the director of the Compliance Division of the South Carolina Workers' Compensation Commission. (Hr'g tr. p. 132, lines 14-17) When this claim was filed, Mr. Smith issued an opinion that Henson & Associates did not have coverage in the state of South Carolina. At the time the opinion was rendered, the Compliance Division could not find a policy that had been filed with NCCI. (Hr'g tr. p. 132, line 22 - p. 133, line 2) The Compliance Division later found a policy for Henson & Associates that existed in the state of North Carolina. (Id.) It is Mr. Smith's opinion that the 3C provision of Henson & Associates' policy provides an Other States insurance endorsement that provides coverage in South Carolina. (Hr'g tr. p. 133, lines 3-18) It is Mr. Smith's opinion that if Auto Owners was aware of Henson & Associates work in South Carolina prior to the issuance of the policy, or shortly thereafter, the Auto Owners' policy would provide coverage to Henson & Associates in South Carolina. (Hr'g tr. p. 140, lines 19-23)

Michael Ross is employed with Auto Owners Insurance as a commercial underwriter. (Hr'g tr. p. 142, lines 5-11) He is the underwriter for the Auto Owners insurance policy number 35036819. (Hr'g tr. p. 142, lines 12-14) Auto Owners consented to First Charter Insurance soliciting business on their behalf. (Hr'g tr. p. 146, line 25 - p. 147, line 2)

First Charter has actual authority to bind coverage with Auto Owners. (Hr'g tr. p. 147, lines 3-10) Specifically, First Charter insurance agent Darryl H. Baucom had authority to bind Auto Owners. (Hr'g tr. p. 147, lines 11-24) Baucom issued several certificates of insurance for Henson & Associates for South Carolina projects. (Henson & Associates APA 6, pp. 66, 67, and

69) Ross admitted Baucom, as the agent for Auto Owners, was aware Henson & Associates was doing work in South Carolina. (Hr'g tr. p. 148, lines 19-21) Ross further admitted that although the Auto Owners' policy states that the employer has to notify Auto Owners of doing work in another state, employers normally contact their agent, as Auto Owners only uses independent agents and does not work directly with employers. (Hr'g tr. p. 147, lines 23-24; p. 149, lines 5-10)

There is no dispute that Edifice, Inc. is the general contractor and the highest level upstream contractor. Edifice, Inc. is insured by Amerisure Mutual Insurance Company.

CONCLUSION

After considering briefs and oral arguments from the parties and after reviewing and weighing all of the evidence in the record, the Appellate Panel hereby AFFIRMS with amendments the Decision and Order of Hearing Commissioner Roche and enters the following:

Findings of Fact

1. The Claimant, Rudy Almazan, sustained injury to his back on September 26, 2009, when he fell from a roof, while working for Gabriel Contreras, who was doing business as Contreras Panels.
2. Gabriel Contreras (d/b/a Contreras Panels) was the Claimant's direct employer based upon the greater weight of the evidence in the record.
3. Also based upon the greater weight of the evidence in the record, Gabriel Contreras (d/b/a Contreras Panels) regularly employed four or more employees at the time in question.
4. Despite being subject to the South Carolina Workers' Compensation Act, Gabriel Contreras (d/b/a Contreras Panels) did not have workers' compensation insurance on September 26, 2009. The Hearing Commissioner previously found that "Contreras Panels failed to prove it

had an insurance policy with INSCOP,” and this finding was not appealed.

5. Gabriel Contreras (d/b/a Contreras Panels) was working under a contract with Henson & Associates at the time and place where the Claimant was injured on September 26, 2009.
6. On September 26, 2009, Henson & Associates was insured against South Carolina workers' compensation claims by Auto Owners Insurance.
7. Henson & Associates was working under a contract with Edifice, Inc., at the time and place where the Claimant was injured on September 26, 2009.
8. On September 26, 2009, Edifice, Inc., was insured against South Carolina workers' compensation claims by Amerisure.
9. Based upon the greater weight of the evidence in the record, the Claimant has received all causally-related and necessary medical treatment that would tend to lessen his period of disability and reached maximum medical improvement on October 29, 2010.
10. The Claimant's average weekly wage is \$410.00 (accounting for his wages plus his living expenses that were provided by the employer) and his applicable compensation rate is \$273.47.
11. The Claimant is entitled to temporary total disability compensation at the rate of \$273.47 per week for the period from January 18, 2010 until May 15, 2010, at which time the Claimant began working at the Mexican restaurant.
12. Based upon the greater weight of the evidence in the record, the Claimant has a twenty-five percent (25%) permanent loss of use of his back as a result of the September 26, 2009 accident. There is no competent evidence that the Claimant has any permanent loss of use of any other body member.
13. At the time of the hearing, no party had paid all benefits due to the Claimant under the

Workers' Compensation Act.

14. There being no appeal of the Hearing Commissioner's previous findings regarding Service Resources, they have already been dismissed as a party to this case.

Conclusions of Law

1. Pursuant to S.C. Code Ann. §§ 42-1-130, 42-1-140, and 42-1-150 the Claimant, Rudy Almazan, was engaged in an "employment," as defined by the Workers' Compensation Act, with Gabriel Contreras, who was doing business as Contreras Panels, at the time of the accident on September 26, 2009.
2. Pursuant to S.C. Code Ann. § 42-1-410, Gabriel Contreras (d/b/a Contreras Panels) was a subcontractor of Henson & Associates on September 26, 2009; therefore, Henson & Associates and its carrier, Auto Owners, are liable to the Claimant as if he had been Henson & Associates' own employee.
3. Pursuant to S.C. Code Ann. § 42-1-420, Henson & Associates was a subcontractor of Edifice, Inc., at the time in question and Edifice, Inc., was insured by Amerisure.
4. Pursuant to S.C. Code Ann. § 42-1-450, the Claimant may not recover compensation benefits from both Henson & Associates and Edifice, Inc.; therefore, Henson & Associates, as the subcontractor, shall assume liability for benefits at this time.
5. Pursuant to S.C. Code Ann. § 42-1-160, the Claimant sustained an injury to his back by accident arising out of and in the course his employment with Gabriel Contreras (d/b/a Contreras Panels) on September 26, 2009.
6. Pursuant to S.C. Code Ann. § 42-9-260, the Claimant is entitled to temporary total disability compensation at the rate of \$273.47 per week for the period from January 18, 2010 until May

- 15, 2010, at which time the Claimant's period of temporary disability ended.
7. Pursuant to S.C. Code Ann. § 42-15-60 and S.C. Code Reg. 67-1303, the Claimant's medical providers shall be paid under the South Carolina Workers' Compensation Fee Schedule for all causally-related and necessary medical treatment received by the Claimant prior to reaching maximum medical improvement on October 29, 2010.
 8. Pursuant to S.C. Code Ann. § 42-9-30, the Claimant is entitled to seventy-five (75) weeks of compensation at the rate of \$273.47 per week, representing benefits for a 25% loss of use of the back.
 9. The Claimant is not entitled to any benefits under S.C. Code Ann. § 42-9-10 or § 42-9-20, as he has had no loss of wage-earning capacity since he returned to work for a new employer on May, 15, 2010.
 10. Pursuant to S.C. Code Ann. 42-1-415, a higher tier contractor, such as Henson & Associates "shall in the first instance pay all benefits due under the title." Because all benefits currently due to the Claimant have not been paid, the issue of whether liability may be transferred to the UEF is not properly before the Commission at this time.

ORDER

IT IS, THEREFORE, HEREBY ORDERED that the Claimant sustained an injury to his back arising out of and in the course of his employment with Gabriel Contreras (d/b/a Contreras Panels) on September 26, 2009;

IT IS FURTHER ORDERED that Gabriel Contreras (d/b/a Contreras Panels) did not have workers' compensation insurance on September 26, 2009, despite being subject to the South Carolina Workers' Compensation Act;

IT IS FURTHER ORDERED that Auto Owners Insurance is liable for workers'

compensation benefits because Gabriel Contreras (d/b/a Contreras Panels) was a subcontractor of Auto Owners' insured, Henson & Associates, at the time in question;

IT IS FURTHER ORDERED that the Claimant is entitled to temporary total disability compensation at the rate of \$273.47 per week for the period from January 18, 2010, until May 15, 2010;

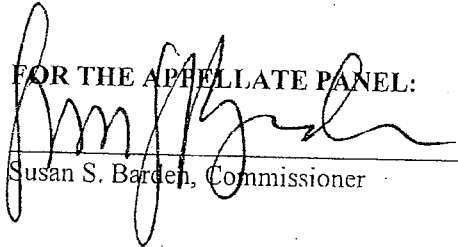
IT IS FURTHER ORDERED that the Claimant is entitled to 75 weeks of compensation at the rate of \$273.47 per week, representing benefits for a 25% loss of use of the back;

IT IS FURTHER ORDERED that the Claimant is entitled to have his causally-related medical expenses paid directly to his medical providers; and

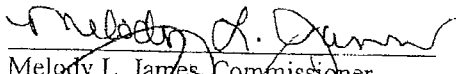
IT IS FURTHER ORDERED that the issue of whether liability may be transferred to the Uninsured Employers Fund is premature and not properly before the Commission at this time.

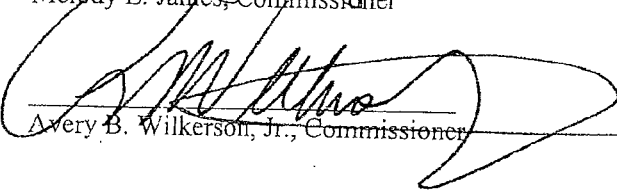
IT IS SO ORDERED!

FOR THE APPELLATE PANEL:


Susan S. Barden, Commissioner

WE CONCUR:


Melody L. James, Commissioner


Avery B. Wilkerson, Jr., Commissioner

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, postage paid, in the United State mail addressed to the attorney or attorneys for said parties

This 3rd day of August, 2012
By Valerie D. Keller

Administrative Assistant to the Commissioner

J. Russell Gaddelock
John P. Griffith

Timothy B. Keller
Ryan S. Montgomery
B. Reynolds Elliott
Roy A. Howell, III
Zachary M. Smith
Franklin D. Guerrero

DECISION AND ORDER
OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO: 0919909

RUDY ALMAZAN, EMPLOYEE/CLAIMANT

vs.

HENSON & ASSOCIATES, EMPLOYERS,

and

AUTO OWNERS INSURANCE, CARRIER,

and

SOUTH CAROLINA UNINSURED EMPLOYERS FUND/ DEFENDANT.

Hearing: Held in Columbia, South Carolina on May 15, 2014

Appearances: Employer, Henson & Associates and Auto Owners Insurance
represented by Roy Howell, Trask & Howell, LLC,
Mt. Pleasant, South Carolina

South Carolina Uninsured Employers' Fund, Defendant was
represented by Amy V. Cofield, Cofield Law Firm, Lexington,
South Carolina

Purpose of Hearing: To determine issues as set forth on Petition to Transfer Liability

Decision and Order: By Commissioner Andrea Roche

Date: July 8, 2014

STIPULATIONS

The parties stipulated to the following matters at the hearing:

1. The purpose of the hearing was to determine issues pursuant to Petition and Return whereby Petitioner seeks to transfer liability to the SCUEF pursuant to SC Code of Laws Section 42-1-415.
2. Notice of the hearing was timely and properly served upon all parties of interest.
3. Venue, set in Richland County, is proper.

APA SUBMISSIONS

ON BEHALF OF THE PETITIONER:

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
1	Declaration Page -- Auto Owner's Policy with Henson & Associates	10/5/08 -- 10/5/09	1-3
2	Certificate of Insurance -- Henson & Associates, Inc.	2/10/09	4
3	Certificate of Insurance -- Contreras Panels	4/23/09	5
4	Certificate of Insurance -- Contreras Panels	5/8/09	6
5	Letter to Wayne Ducote, Jr. dated 3/5/10 from Services Resource & Attached Declaration Page for coverage Period 5/8/09 -- 5/8/10	3/5/10	7-8
6	Letter from Franklin Guerrero, Esq,	6/11/10	9-10
7	Transcript of Record	4/25/11	11-14
8	Transcript of Kenneth Henson's Hearing testimony	4/25/11	15-51
9	Transcript of Gabriel Contreras' Hearing testimony	4/25/11	52-75
10	Affidavit of Kenneth Henson	2/24/12	76-77
11	Affidavit of Wendy Henson	2/24/12	78-79
12	Decision & Order	8/3/12	80-102
13	Form 19	1/14/13	103
14	Certificate of Liability Ins	3/18/13	104
15	Certificate of Liability Ins	7/31/13	105
16	Wendy Henson's deposition transcript	8/9/13	106-115
17	Driver's License -- Wendy Henson		116

ON BEHALF OF THE RESPONDENT

<u>EXHIBIT NO.</u>	<u>NAME OF REPORT/PHYSICIAN OR OTHER EVIDENCE</u>	<u>DATE OF REPORTS</u>	<u>NO. OF PAGES</u>
A	Fund's Return to Carrier's Petition	11/12/13	1 - 9
B	Certificate of Insurance	4/23/09	10
C	Certificate of Insurance	5/08/09	11
D	Deposition of Wendy Seiger Henson	7/31/13	12 - 21

STATEMENT OF THE CASE

This matter is before the South Carolina Workers' Compensation Commission pursuant to a Petition filed January 28, 2013 whereby the Employer/Carrier petitioned to transfer liability of this matter to the SCUEF pursuant to SC Code Section 42-1-415.

It was the Petitioner's position that the Employer/Carrier had met all the requirements of Section 42-1-415. It was argued that a Certificate of Insurance was properly collected from Contreras Paneling at the time Contreras Paneling was engaged to perform work at the worksite where the Claimant's accident occurred. Contreras had testified that he provided a certificate of insurance for each job he did for Henson prior to beginning work. This certificate was put into evidence and identified as a Form 25 Certificate of Insurance.

Petitioner argued that the form was a standard accepted form and that it was completed properly. It was further asserted that the signature of Ray Villalovas as the authorized agent for the insurance company was satisfactory for meeting statutory requirements because the signature on the certificate of insurance rose no red flags regarding the authority of the person signing the certificate. Therefore, the employer had no way to be on notice as to whether or not the agent had authority to sign the certificate. It was further argued to the undersigned Commissioner that this certificate differed from the certificate in the case of the Hopper case, (Hopper v. Terry Hunt

Construction, 383 S.C. 310, 680 S.E.2d 1 (2009) because Hopper had an incomplete certificate as it left a blank where there should have been a description of operations.

It was the position of the SCUEF that the Petitioner had not met the requirement of Section 42-1-4-5 and Regulation 67-415. The primary argument was based on the findings of the Hopper case. The facts there, it was argued, were similar to the case at bar as a certificate of insurance was presented to the employer that lacked information regarding any coverage in South Carolina. The certificate only had an out of state producer, holder, and insured. The employer should have been on notice to verify that there was or was not coverage in SC. The second argument for the SCUEF was that prior order had already determined that the individual who signed the certificate of insurance was not authorized to do so. Therefore, the Commission should not then be able to say that the certificate was "signed by an authorized agent" as required by statute.

FINDINGS OF FACT

1. The certificate of insurance at issue does not indicate coverage in South Carolina anywhere on its face.
2. The producer, insured and certificate holder were all shown on the certificate to be out of state.
3. Based on the case of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 1, 2009) the employer should have been on notice to investigate to confirm whether or not there was coverage in South Carolina.
4. The carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim.

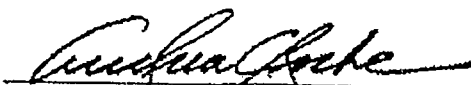
5. The undersigned does not agree with the argument made by the SCUEF that the request to transfer liability should be denied based on the lack of an authorized signature. The certificate was signed, and the employer had no further duty to investigate that signature.

CONCLUSIONS OF LAW

1. Pursuant to Section 42-1 415 and R. 67-415 and relative case law, the Petitioner is denied its motion to transfer liability to the SCUEF.

ORDER

IT IS THEREFORE ORDERED that the Employer, Henson & Associates, through its carrier, Auto Owners Insurance is denied its Petition to transfer liability to the SCUEF and therefore, remains liable for this claim.


Commissioner Andrea C. Roche

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).
July 8, 2014

By: Barbara Cheeseboro, Administrative Assistant to Commissioner Roche

RUDY BARREIRA ALMAZAN,)
)
Employee/Respondent,)
)
v.) DECISION & ORDER
)
HENSON & ASSOCIATES, Employer, and)
AUTO OWNERS INSURANCE, Carrier,)
)
Appellants,)
)
and)
)
S.C. UNINSURED EMPLOYERS FUND.,)
)
Respondent.)

RECEIVED
JUL 17 2015
SC Court of Appeals

This matter is before the Commission's Appellate Panel pursuant to the Form 30 filed by Henson & Associates and Auto Owners Insurance, by which they appeal the Decision and Order of Commissioner Andrea Roche dated July 8, 2014. Commissioner Roche denied the Appellants' Petition to Transfer Liability to the Uninsured Employers Fund. Commissioner Roche found that Henson & Associates "should have been on notice to investigate to confirm whether or not there was coverage in South Carolina." The Appellants, Henson & Associates and Auto Owners Insurance, argue that Commissioner Roche erred in denying the Petition to Transfer Liability. The Appellate Panel agrees. The overwhelming weight of the evidence in the record shows that the Appellants met all of the requirements to transfer liability to the Uninsured Fund pursuant to

§42-1-415. Therefore, the decision of Commissioner Roche is REVERSED.

Procedural History

Commissioner Roche entered the following findings of fact and conclusions of law on July 8, 2014:

1. *The certificate of insurance at issue does not indicate coverage in South Carolina anywhere on its face.*

2. *The producer, insured and certificate holder were all shown on the certificate to be out of state.*

3. *Based on the case of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 1, 2009) the employer should have been on notice to investigate to confirm where or not there was coverage in South Carolina.*

4. *The carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim.*

5. *The undersigned does not agree with the argument made by the SCUEF that the request to transfer liability should be denied based on the lack of an authorized signature. The certificate was signed, and the employer had no further duty to investigate that signature.*

1. *Pursuant to Section 42-1-415 and R. 67-415 and relative case law, the Petitioner is denied its motion to transfer liability to the SCUEF.*

The Appellants filed a Form 30 on July 18, 2014 raising the following grounds and exceptions:

1. *The single Commissioner erred as a matter of fact and as matter of law in finding that based on the case of Hopper v. Terry Hunt Construction, the employer should have been on notice to investigate to confirm whether or not there was coverage in South Carolina, the error being that Section 42-1-415 does not require the employer to investigate further once a certificate of insurance on the proper form has been presented by a lower tier sub-contractor;*

2. *The single Commissioner erred as a matter of fact and as matter of law in finding Fact No. 4 and finding that the carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim, the error being that the carrier did meet its burden of proving all of the requirements of Section 42-1-415;*

3. *The single Commissioner erred as a matter of fact and as a matter of law in rul-*

ing that pursuant to Section 42-1-415, and Regulation 67-415 and relative case law, the Petitioner was denied its Motion to Transfer Liability to the SCUEF;

4. The single Commissioner erred as a matter of fact and as a matter of law in ruling that the Employer, Henson & Associates, through its carrier, Auto Owners Insurance, is denied its Petition to transfer liability to the SCUEF and therefore, remains liable for the claim, the error being that the carrier met all of the requirements to transfer liability under Section 42-1-415 and Regulation 67-415.

5. The single Commissioner erred in denying the carrier's Petition to Transfer Liability to the UEF, the error being that the Commissioner found that undisputed evidence in the record shows that the employer and therefore the carrier met all the requirements under the plain language of Section 42-1-415 and Regulation 67-415 and therefore the Petition to transfer liability should have been granted as a matter of law.

Discussion

Henson & Associates and Auto Owners Insurance ("Appellants") petitioned to transfer liability for the above-referenced claim to the Uninsured Employers Fund ("UEF") and seeks reimbursement of all benefits paid to or on behalf of the Claimant pursuant to S.C. Code Ann. § 42-1-415. Section 42-1-415 provides that when a subcontractor "has represented himself...as having workers' compensation insurance" to a higher tier contractor, the higher tier contractor "must be relieved of any and all liability under this title." (emphasis added). In order to transfer liability under the statute, the statute only requires that the Appellants prove:

- Documentation of insurance was collected at the time the subcontractor "was engaged to perform work;"
- Documentation of insurance was "turned over to the Commission" at the time a claim is filed by the employee;

- Documentation of insurance was on a "standard form acceptable to the commission;"

Consistent with § 42-1-415, the Commission promulgated S.C. Code Reg. 67-415 to specify that a Certificate of Insurance "shall serve as documentation of insurance" and that the Certificate "must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Reg. 67-415 (Supp.2007).¹ Of course, the Regulation should not be interpreted to alter or add to the simple requirements of § 42-1-415, because the Commission had no authority to do so. Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995); Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496, 499 (1943); *see also* Society of Prof'l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (holding that "[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute."). Therefore, Regulation 67-415 does not and cannot do more than define what form qualifies as a "standard form acceptable to the commission."

Because the Appellants collected a Certificate of Insurance at the time the subcontractor,

¹ Note that S.C. Code Reg. 67-415 was amended after the accident in this case; therefore, the current version regulation is not applicable.

Contreras Panels, was engaged to perform work², because the Certificate was signed and dated, and because the Certificate was turned over to the Commission prior to the adjudication of the employee's claim, the Appellants have met all of the statutory requirements of S.C. Code Ann. § 42-1-415 and are entitled to transfer liability to, and reimbursement from, the UEF. To date, the UEF has refused to accept liability, arguing that the Appellants are required to meet additional requirements that are not contained in the statute.

The UEF suggests that the Appellants were required to conduct an investigation into the identity of the person who signed the Certificate of Insurance as the "authorized representative" and whether he was "acting outside of the scope of any authority he may have had." The UEF

² The job on which the Claimant was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22). Prior beginning work, Contreras was required to provide a Certificate of Insurance to Henson and Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26) Contreras Paneling provided Henson with a Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38). The Certificate of Insurance dated April 23, 2009 was provided before the work began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13). Prior to the expiration of the first Certificate of Insurance, a second certificate was obtained and dated May 8, 2009. (H.T. p. 102, l. 21; APA #8, p. 88). The May 8, 2009 Certificate of Insurance lists the Insurance Company of Pennsylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88). Kenneth Henson, President of Henson & Associates, believed that Contreras Paneling had workers' compensation coverage in South Carolina, as the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l. 15). Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6).

also argues that Henson had an obligation to investigate whether the Certificate on Insurance was for a policy that provided coverage in South Carolina. Commissioner Roche specifically rejected the UEF's argument that Henson was required to investigate the authenticity of the signature on the Certificate of Insurance and we agree that this argument is without merit. Accordingly, the only issue is whether the plain language of § 42-1-415 required Henson to do more to meet the requirements to transfer liability to the UEF.

S.C. Code Ann. § 42-1-415 does not require the Appellants to investigate the authenticity of a fully-completed Certificate of Insurance or to investigate whether the policy in question provides South Carolina coverage. In this case, each and every section of the Certificate of Insurance was completed: *the name of the producer, the name of the insured, the name of the insurance company, the date, the policy number, the policy dates, the policy limits, the description of operations, the name of the certificate holder, and an authorized representative's signature.* The fact that the Certificate of Insurance was fully completed clearly distinguishes the present case from that of Barton v. Higgs, 674 S.E.2d 145 (2009), which is cited by the UEF. In Barton, the Certificate of Insurance had no signature whatsoever and the Court held that the upstream contractor could not reasonably rely on an unsigned Certificate of Insurance without investigating further. However, Barton does not support the UEF's contention that the Appellants were required to investigate the authenticity of a fully completed Certificate or whether the policy provided coverage in South Carolina, as such an interpretation would have been beyond the scope of the Court's authority when § 42-1-415 says nothing about investigating the specific provisions of

the workers compensation policy, including whether the policy provided coverage in South Carolina. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495

(Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

If the Legislature had intended to require the Certificate holder to do more than "collect documentation," the Legislature would have explicitly included such a requirement in the statute. Therefore, because the Legislature mandated no such investigation requirement, it is not even within the authority of the Courts or the Commission – by regulation or otherwise – to impose additional requirements or to amend this clear and unambiguous statute. See Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (holding that "[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.") (internal citations omitted); see also City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language."); Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters

into it that are not in the legislature's language).

Commissioner Roche also cited Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 2d 1, (2009) as authority for her finding that Henson was required to do more to satisfy the requirement of § 42-1-415. The Commissioner's reliance on Hopper is misplaced. In Hopper, the higher tier contractor, Kajima, hired Terry Hunt Construction ("Hunt") as a subcontractor to install pipe at a jobsite in Greenwood, South Carolina. Hunt had worked for Kajima on a previous project and at that time presented an Acord Form 25-S Certificate of Insurance indicating that Hunt had a workers' compensation policy *See Hopper*, 680 S.E.2d. 1, 2. The Certificate in *Hopper* showed coverage for the period from May 2, 2002 through December 31, 2002 and included all of the appropriate information in the "Description of Operations/Locations" section including the project number, subcontract number, and the claim deductible. *Id.* Before beginning work on the Greenwood project, Hunt presented the Certificate to Kajima showing coverage for January 1, 2003 through December 31, 2003, but unlike the previous Certificate, the "Description of Operations/Locations" was blank. Hopper's accident occurred on February 19, 2004, and Hunt did not have workers' compensation insurance. Kajima and its carrier, Zurich, were required to pay the Hopper's award of workers' compensation benefits and petitioned the Commission under § 42-1-415 to transfer liability to the UEF. The single commissioner ruled that Kajima and Zurich could not shift liability because the Certificate of Insurance did not indicate

that Hunt had coverage in South Carolina. The Appellate Panel, adopted the single commission's order in its entirety. The Circuit Court reversed and found that there was no evidence that the Certificate of Insurance showed that there was coverage only in Georgia and no coverage in South Carolina. Id. at p. 3. The Court of Appeals held that there was substantial evidence to support the Commission's finding that Kajima did not comply with the requirements of § 42-1-415. The Supreme Court granted Certiorari. *Id.*

In affirming the Commission's decision, the Supreme Court ruled as follows:

"We find substantial evidence in the record to support the Commission's finding that Kajima failed to comply with the requirements of § 42-1-415(A). The Description of Operations box on the Certificate of Insurance was left blank and unlike the previous Certificate of Insurance that Kajima accepted, this Certificate contained no information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied. In failing to fill out the entire Accord Form, Hunt essentially submitted an incomplete document purporting to show that it had a workers' compensation policy, which Kajima accepted. In our view, accepting an incomplete Accord Form does not constitute proper documentation." *Id. at p 3*.

The instant case is clearly distinguishable from Hopper. First, Hopper was a substantial evidence case. The Court found there was substantial evidence to support the commission's findings of fact. In addition, the facts of this case are distinguishable from Hopper. Henson accepted

a fully completed Certificate of Insurance. Every section of the Certificate of Insurance was completed and provided Henson & Associates with documentation purportedly showing that Gabriel Contreras had workers' compensation insurance. The Court in Hopper ruled that an "incomplete Acord Form does not constitute proper documentation." Here the Acord Form was fully completed and; therefore, Commissioner Roche's reliance on Hopper was misplaced.

The UEF also argues that the Accord Form must contain information specifically showing that the policy provided coverage in South Carolina. This argument is similarly without merit. There was no statute or regulation requiring that a Certificate of Insurance state that the policy provided coverage in South Carolina. Regulation 67-415 was amended on February 26, 2010 to provide:

"For an out of state employer, the Acord Form 25-S is acceptable, provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy." See Reg. 67-415(A)(2).

This amendment is clear indicia that no such information was required prior to that amendment on February 26, 2010. There was no reason for Henson & Associates to request such information before accepting the Acord Form, which they reasonably relied upon.

S.C. Code Ann. § 42-1-415 only requires proof that the subcontractor (Contreras) *represented* itself as having workers' compensation insurance, not that it *actually* has such coverage. Similarly, nothing in § 42-1-415 requires that the producer or "authorized representative" have

actual authority. Instead, the Appellants were entitled to rely on the reasonable *representation* of authority.³ The facts of the case show that the Certificate of Insurance provided to Henson was fraudulent. In other words, this was not a situation in which there was coverage in place and the policy lapsed prior to the accident. It appears the agency in Texas was issuing Certificates showing coverage when in fact there was never any policy. However, the Certificate of Insurance was completely filled out with policy numbers, dates of coverage, the location of the job in York County, the amount of coverage, the name of the carrier, and the signature of an authorized representative of the carrier. Section 42-1-415 does not require Henson to investigate whether there really was a policy or whether the policy provided coverage in South Carolina. Henson is only required to collect the documentation on the required forms as set forth in § 42-1-415(A) and Reg. 67-415(A). Henson & Associates reasonably relied on the Certificate they collected and;

³ The greater weight of the evidence shows that Henson & Associates did, in fact, rely on the Certificates of Insurance they collected from Contreras. Despite the UEF's allegations to the contrary, the record contains the testimony of Wendy Henson, the company's office manager, who clearly stated that when she receives a Certificate of Insurance, she reads it, records that it was received, records the dates of coverage, and places the Certificate in a project file under the contractor's name. (W. Henson deposition p.18, lines 13—18; p.25, lines 8—10). Ms. Henson further testified that, looking at the face of the Certificate of Insurance she collected from Contreras, there was not anything that gave her pause to believe that it was not a valid Certificate of Insurance. (W. Henson deposition p. 13, lines 4-8). Instead, Ms. Henson relied upon the Certificates of Insurance provided by Contreras in making the decision to allow Contreras do work on the York High project. (W. Henson deposition p. 13, lines 9—12). This testimony is corroborated by the testimony of Kenneth Henson, as well as his sworn affidavit.

therefore, satisfied all of the statutory and regulatory requirements for a transfer of liability.

Therefore, based upon the undisputed evidence and the plain and unambiguous language of S.C. Code Ann. § 42-1-415, the greater weight of the evidence shows that Henson & Associates fully complied with the requirements of the Statute and therefore the Appellants are entitled to transfer liability to, and are further entitled to reimbursement from, the Uninsured Employers Fund.

Order

FINDINGS OF FACT

1. The job on which the Claimant, Almazan, was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22).
2. Prior beginning work, Almazan's employer, Contreras Paneling, was required to provide a Certificate of Insurance to Henson & Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26).
3. Contreras Paneling provided Henson & Associates with an Acord Form Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38).
4. The Certificate of Insurance dated April 23, 2009 was provided before the work by Contreras Paneling for Henson & Associates began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13).
5. Prior to the expiration of the April 23, 2009 Certificate of Insurance, a second certificate dated May 8, 2009 was collected by Henson & Associates. (H.T. p. 102, l. 21; APA #8, p. 88).
6. The May 8, 2009 Certificate of Insurance lists the Insurance Company of Penn-

sylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88).

7. Henson & Associates reasonably believed that Contreras Paneling had workers' compensation coverage in South Carolina and reasonably relied upon the Certificates of Insurance collected from Contreras Paneling in allowing them to commence work at the York High School Project where the Claimant, Almazan, was injured. Kenneth Henson, President of Henson & Associates, testified that the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l. 15). Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6). Wendy Henson, office manager of Henson & Associates, clearly stated that when she receives a Certificate of Insurance, she reads it, records that it was received and records the dates of coverage. (W. Henson deposition p. 18, lines 13—18; p. 25, lines 8—10). Ms. Henson further testified that, looking at the face of the Certificate of Insurance she collected from Contreras Paneling, there was not anything that gave her pause to believe that it was not a valid Certificate of Insurance. (W. Henson deposition p. 13, lines 4-8). Instead, Ms. Henson testified that she relied upon the Certificates of Insurance provided by Contreras in making the decision to allow Contreras do work on their project. (W. Henson deposition p. 13, lines 9—12).

8. Both the April 23, 2009 and the May 8, 2009 Certificates of Insurance were signed and dated by an individual purporting to be the authorized representative of the insurance carrier. Both Certificates were fully completed. There was nothing odd or unusual about either of these Certificates of Insurance and, on their face, gave Henson & Associates no reason to doubt the veracity of the information contained therein. Therefore, Henson & Associates rea-

sonably relied upon these Certificates of Insurance as documenting valid workers' compensation coverage for their subcontractor.

9. Based upon the greater weight of the evidence, Contreras Paneling represented itself as having workers' compensation insurance at the time it was engaged to perform work for Henson & Associates. There is no requirement that there actually be insurance for Henson & Associates to rely on this representation when, as here, the Certificates of Insurance are complete and appear reasonable on their face.

CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-415, Henson & Associates collected documentation of insurance at the time its subcontractor, Contreras Paneling, was engaged to perform work.

2. Pursuant to S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415, the documentation of insurance collected by Henson & Associates was on a standard form acceptable to the Commission, namely a complete Acord Form Certificate of Insurance, which was dated, signed, and issued by a purportedly authorized representative of the insurance carrier for Contreras Paneling.

3. Pursuant to S.C. Code Ann. § 42-1-415, the documentation of insurance collected by Henson & Associates from Contreras Paneling was turned over to the Commission at the time the claim was filed by the Claimant Almazan.

4. Pursuant to S.C. Code Ann. § 42-1-415, because Contreras Paneling represented

4. Pursuant to S.C. Code Ann. § 42-1-415, because Contreras Paneling represented itself as having workers' compensation insurance to its higher tier contractor, Henson & Associates.

5. Having met all requirements of S.C. Code Ann. § 42-1-415 and S.C. Code Reg. 67-415, Henson & Associates and its carrier, Auto Owners Insurance, is relieved of any and all liability under the Workers' Compensation Act and liability is hereby transferred to the South Carolina Uninsured Employers Fund.

6. Further pursuant to S.C. Code Ann. § 42-1-415, the Uninsured Employers Fund shall reimburse Henson & Associates and its carrier, Auto Owners Insurance, for any and all benefits paid to or on behalf of the Claimant Almazan under the Workers' Compensation Act.

ORDER

ITS IS, THEREFORE, HEREBY ORDERED that the Decision and Order of Hearing Commissioner Roche dated July 8, 2014 is reversed.

IT IS FURTHER ORDERED that Henson & Associates and its carrier, Auto Owners Insurance, is relieved of any and all liability under the Workers' Compensation Act and liability is hereby transferred to the South Carolina Uninsured Employers Fund.

IT IS FURTHER ORDERED that Henson & Associates and its carrier, Auto Owners Insurance, shall be reimbursed by the South Carolina Uninsured Employer's Fund for any and all

arising out of the accident of September 26, 2009, including any temporary disability, permanent disability, and/or any causal medical expenses.

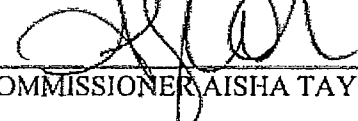
IT IS SO ORDERED!


COMMISSIONER GENE McCASKILL

DATE: _____

WE CONCUR:


COMMISSIONER MELODY L. JAMES


COMMISSIONER AISHA TAYLOR

1262/328 APPELLATE PANEL ORDER

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on June 17, 2015

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0919909
Carrier File # 36-2229-10
Carrier Code # 1018
Employer FEIN

Rudy Almazan
Claimant's Name SSN
2029 Dutchman Dr., Apt. G. Rock Hill, SC 29732
Address City State Zip
Home Phone Work Phone

Henson & Associates, Inc.
Employer's Name
3219 Blairsville Highway Murphy, NC 28906
Address City State Zip
Auto Owners Insurance Company
Insurance Carrier

Roy A. Howell, III
Preparer's Name

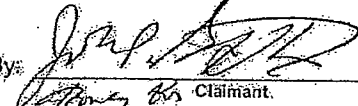
(843) 881-4228
Phone #

Compensation Paid	Number of Weeks	From	To	Amount
1. Number of weeks T.T.	17	1/18/10	5/15/10	\$4,609.91
2. Number of weeks T.P.				\$0
3. Number of weeks P.P.	25% Back			\$20,510.25
4. Disfigurement				\$0
5. Agreement and Final Release				\$0
Total Compensation Paid				\$25,120.16
6. Total Medical Benefits* Paid				\$59,234.13
7. Funeral Benefits				\$0

☐ Case Denied

Date of Injury: September 26, 2009
month day year

By signing this receipt, I acknowledge that I have received the compensation shown above:

By: 
Claimant

By: 
Employer's Representative

Date: January 14, 2013

Print or type the name of the person, other than the claimant, receiving benefits and sign below.

By: _____

Report of additional Fees and Recoupment

A. Carrier Reimbursement by Third Party \$
B. Attorney's Fee Paid by Employer \$
C. Attorney's Fee Paid by Claimant \$
(Non contingent fees, only)

File this form with the Claims Department according to R.67-414 and R.67-1204. A person, other than the claimant, receiving benefits should sign on the line provided. *Do not include as medical costs fees paid for expert testimony, fees for determining carrier's liability, costs of autopsy, birth and death certificates and impartial examination. Form 19 must be filed within sixteen days of final payment of compensation. Form 19 must be filed when a claim is denied

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 0919909

Rudy Almazan,	)	
	)	
Employee,	)	
	)	
-vs-	)	
	)	
Henson & Associates, Inc.,	)	
	)	
Employer,	)	PETITION TO TRANSFER
	)	LIABILITY TO S.C. UNINSURED
	)	EMPLOYERS' FUND PURSUANT
	)	TO S.C. CODE ANN. §42-1-415
-and-	)	
	)	
Auto Owners Insurance Company,	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: Commissioner T. Scott Beck, John Griffith, Esq., Zachary Smith, Esq., Amy V. Cofield, Esq., Ryan S. Montgomery, Esq., Contreras Panel, B. Reynolds Elliott, Esq.

PLEASE TAKE NOTICE that Henson & Associates, Inc. and Auto Owners Insurance Company hereby Petition the South Carolina Workers' Compensation Commission pursuant to S.C. Code Ann. § 42-1-415 to transfer liability for this claim to the S.C. Uninsured Employers' Fund based upon the following:

1. By Order of the Commission dated January 27, 2012, the Claimant was found to have sustained an injury to the lower back arising out of an accident that occurred in the course of his employment with Contreras Paneling on September 26, 2009.

2. The January 27, 2012 Order further found that Contreras Paneling was the direct employer and was uninsured. Therefore, Henson & Associates, Inc. was ordered to pay medical and compensation benefits under the Act as they were found to be the upstream contractor at the time of the Claimant's accident.
3. The Uninsured Employers' Fund appealed the January 27, 2012 Decision and Order. Following the submission of briefs and oral arguments, the Appellate Panel affirmed and amended the January 27, 2012, Decision and Order. By their Order, the Panel found the Claimant sustained an injury to the back in the course of his employment with Gabriel Contreras. The Order further found Gabriel Contreras (d/b/a Contreras Panels) did not have workers' compensation insurance despite being subject to the Act. Therefore, Auto Owners was liable for benefits because Gabriel Contreras was a subcontractor of Auto Owners' insured, Henson & Associates. The Appellate Panel also found the issue of whether liability could be transferred to the Uninsured Employers' Fund was premature and not properly before the Commission.
4. In accordance with the Order, Auto Owners Insurance paid the Claimant seventeen (17) weeks of temporary total disability benefits and benefits representing 25% loss of use of the back. Auto Owners has also paid the Claimant's medical benefits to date. (See attached Form 19s).
5. Pursuant to S.C. Code Ann. § 42-1-415(A), "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor,

contractor, or project owner must be relieved of any and all liability under this title...In the event that employer is uninsured...the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employer's Fund."

6. Pursuant to S.C. Code Ann. § 42-1-415(B), "[t]o qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee."
7. Under S.C. Code Ann. § 42-1-415, it is clear that when a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance, and the higher tier subcontractor, contractor, or project owner collects documentation of said insurance, the higher tier party must be relieved of any and all liability under this title. Auto Owners Insurance Co. has been found to have coverage for Henson & Associates, Inc. at the time of the accident.
8. At this time, Auto Owners Insurance Co. requests reimbursement and to transfer liability to the Uninsured Employers' Fund under S.C. Code Ann. § 42-1-415, as Henson & Associates, Inc. collected a Certificate of Insurance from Contreras

Paneling at the time Contreras Paneling was engaged to perform work at the worksite where the Claimant's accident occurred.

9. Gabriel Contreras, owner of Contreras Paneling, testified that Henson would not allow his company to work unless it was shown that they had workers' compensation coverage, which he requested every time they began a job. (H.T. p. 60, l. 23; p. 61, l. 1)
10. Gabriel Contreras further testified that he provided Henson & Associates, Inc. with a Certificate of Insurance for each job and provided a certificate to Henson before beginning work on the York job. (H.T. p. 68, l. 5)
11. Contreras Paneling represented itself to Henson & Associates, Inc. as having workers' compensation insurance coverage as evidenced by the attached Accord Form 25, Certificate of Insurance, which is a standard form acceptable to the Commission. (Exhibit A).
12. Kenneth Henson recalled that the contract for the York Technical Center job was entered into on April 7, 2009. Prior to allowing Contreras Paneling to begin work, he required that they provide him with a certificate of insurance. (H.T. p. 101, l. 2; EXHIBIT B).
13. Kenneth Henson never allowed a subcontractor to begin a job without receiving a certificate of insurance. (H.T. p. 101, l. 5)
14. Wendy Henson, secretary and office manager of Henson & Associates, Inc., testified that she received a Certificate of Insurance from Contreras Paneling in April 2009 for the York Technology and High School Project. The Certificate was received

prior the time Contreras began working at the jobsite. (Depo. of Wendy Henson, p. 6-9)

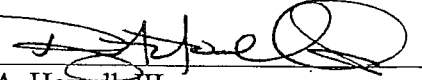
15. Wendy Henson also received an updated Certificate of Insurance in May 2009, prior to the commencement of work at the York Technology and High School project. (Depo. of Wendy Henson, p. 11)
16. Henson & Associates, Inc. relied on the Certificates of Insurance in deciding to allow Contreras Paneling to work on the jobsite in June 2009. (Depo. of Wendy Henson, p. 13)
17. Based on all of the above, Henson & Associates, Inc./Auto Owners Insurance Co. are informed and believes they have met the requirements to transfer liability under S.C. Code Ann. § 42-1-415 and must be relieved of any and all liability under this title.
18. The Commission found that Contreras Panels did not have coverage and in essence that the Certificate of Insurance provided to Henson & Associates, Inc. was fraudulent.

WHEREFORE, Defendants Henson & Associates, Inc. and Auto Owners Insurance Company respectfully request that the South Carolina Workers' Compensation Commission issue an Order relieving Henson & Associates, Inc. and Auto Owners Insurance Company from any liability under the Act for WCC Claim Number 0919909 in accordance with S.C. Code Ann. § 42-1-415 and transfer liability to the S.C. Uninsured Employers' Fund.

WE HEREBY SO MOVE.

TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By

A handwritten signature in black ink, appearing to read "Roy A. Howell, III", written over a horizontal line.

Roy A. Howell, III

Attorney for the Defendants

November 12, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 12~~E~~ day of November 2013, I have caused a true and corrected copy of the Petition to Transfer Liability to the S.C. Uninsured Employers' Fund to be mailed postage prepaid to the parties addressed as follows:

John Griffith, Esq.
P.O. Box 2866
Anderson, SC 29622

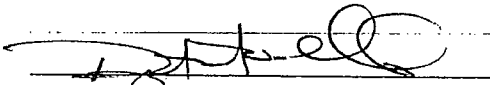
Amy V. Cofield, Esq.
809 South Lake Drive
Lexington, SC 29072

Zachary Smith, Esq.
Wilson Jones Carter & Baxley
872 South Pleasantburg Dr.
Greenville, SC 29607

Ryan Montgomery, Esq.
Black Black & Montgomery
108 Mills Avenue
Greenville, SC 29605

B. Reynolds Elliott, Esq.
McDonald McKenzie Rubin Miller & Lybrand
PO BOX 58
Columbia, SC 29202

Contreras Panels
13416 Champainge
Houston, TX 77039


Roy A. Howell, III, Esq.

1262/328\pet transfer liability

EXHIBIT A

ACORD. CERTIFICATE OF INSURANCE						DATE (MM/DD/YY)
PRODUCER ASSOCIATES BENEFITS AGENCY P.O. BOX 580449						THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
HOUSTON, TX 77258 (281) 333-1954 281 333-1924 FAX						
INSURED Contreras Panels 13416 Champaigne Houston TX 77039 (382) 489-7032						
COMPANIES AFFORDING COVERAGE						
COMPANY A CERTAIN UNDERRITERS @ LLOYDS - CBB						
COMPANY B NEW HAMPSHIRE INS. CO.						
COMPANY C MANAGEMENT SERVICES						
COMPANY D						
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.						
CO CTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
A	GENERAL LIABILITY					
	☒ COMMERCIAL GENERAL LIABILITY	ART404447	08/23/08	08/23/09	GENERAL AGGREGATE	\$2,000,000
	☐ CLAIMS MADE ☒ OCCUR				PRODUCTS - COMPO/OP AGG	\$1,000,000
	☐ OWNERS & CONTRACTORS PROT				PERSONAL & ADV INJURY	\$1,000,000
					EACH OCCURRENCE	\$1,000,000
					FIRE DAMAGE (Any one fire)	\$ 50,000
					MED EXP (Any one person)	\$ 5,000
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT	\$
	☐ ANY AUTO		/ /	/ /	BODILY INJURY (Per person)	\$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident)	\$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE	\$
	☐ HIRED AUTOS				AUTO ONLY - EA ACCIDENT	\$
	☐ NON-OWNED AUTOS				OTHER THAN AUTO ONLY	\$
	GARAGE LIABILITY				EACH ACCIDENT	\$
	☐ ANY AUTO		/ /	/ /	AGGREGATE	\$
	EXCESS LIABILITY				EACH OCCURRENCE	\$
	☐ UMBRELLA FORM		/ /	/ /	AGGREGATE	\$
	☐ OTHER THAN UMBRELLA FORM					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	WC641-32-66	05/10/08	05/10/09	☒ STATUTORY LIMITS	
	THE PROPRIETARY PARTNERS/EXECUTIVE OFFICERS ARE:				EACH ACCIDENT	\$1,000,000
	☒ INCL ☐ EXCL				DISEASE - POLICY LIMIT	\$1,000,000
	OTHER		/ /	/ /	DISEASE - EACH EMPLOYEE	\$1,000,000
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS						
Project: York High School and Tech Center						
Henson & Associates, Inc. Attn: Mr. Kenny 3219 Blairsville Hwy. Murphy NC 28906						
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Ray Vella-Lover</i>						

ACORD. CERTIFICATE OF INSURANCE					
PRODUCER ASSOCIATES BENEFITS AGENCY P.O. BOX 580449 HOUSTON, TX 77258 (281) 333-1954 281 333-1924 FAX				DATE (MM/DD/YY) 05/08/09	
INSURED Contreras Panels 13416 Champainge Houston TX 77039 (382) 489-7032				THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
				COMPANIES AFFORDING COVERAGE	
				COMPANY A CERTAIN UNDERWRITERS @ LLOYDS-CBE	
				COMPANY B INSURANCE COMPANY OF STATE OF PA	
				COMPANY C	
				COMPANY D	
THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
8 LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY ☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS MADE ☒ OCCUR ☐ OWNERS & CONTRACTORS PROT	ART404447	08/23/08	08/23/09	GENERAL AGGREGATE \$2,000,000 PRODUCTS - COM/OP AGG \$1,000,000 PERSONAL & ADV INJURY \$1,000,000 EACH OCCURRENCE \$1,000,000 FIRE DAMAGE (Any one fire) \$50,000 MED EXP (Any one person) \$5,000
	AUTOMOBILE LIABILITY ☐ ANY AUTO ☐ ALL OWNED AUTOS ☐ SCHEDULED AUTOS ☐ HIRED AUTOS ☐ NON-OWNED AUTOS		/ /	/ /	COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
	GARAGE LIABILITY ☐ ANY AUTO		/ /	/ /	AUTO ONLY - EX ACCIDENT \$ OTHER THAN AUTO ONLY \$ EACH ACCIDENT \$ AGGREGATE \$ EACH OCCURRENCE \$ AGGREGATE \$
	EXCESS LIABILITY ☐ UMBRELLA FORM ☐ OTHER THAN UMBRELLA FORM		/ /	/ /	STATUTORY LIMITS \$ EACH ACCIDENT \$1,000,000 DISEASE - POLICY LIMIT \$1,000,000 DISEASE - EACH EMPLOYEE \$1,000,000
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETARY PARTNERS/EXECUTIVE OFFICERS ARE ☒ INCL ☐ EXCL OTHER	WC 005779464	05/08/09	05/08/10	
			/ /	/ /	
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS Project: York High School and Tech Center					
Henson & Associates, Inc. Attn: Mr. Kenny 3219 Blairsville Hwy. Murphy NC 28906			SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Roy Villarovar</i>		

EXHIBIT B

WILLSON JONES CARTER & BAXLEY, P.A.

ATTORNEYS AT LAW

GREENVILLE CHARLESTON COLUMBIA CHARLOTTE

Franklin D. Guerrero
Direct (864) 527-3282
Fax (864) 235-6015
fdguerrero@wjlaw.net

872 S. Pleasantburg Drive
Greenville, SC 29607
www.wjcbllaw.net

June 11, 2010

South Carolina Workers' Compensation Commission
Attn: Mr. Garry Smith, Director
Coverage & Compliance
P.O. Box 1715
Columbia, SC 29202-1715

Re: Rudy Otoniel Barreira Almazan vs. JCR Masonry, LLC, Henson & Assoc Services et al
WCC File No.: 0919909 DOI: 9/26/2009
WJC&B File No.: 0910.00001

Dear Garry:

It is my understanding that you have, or that you are going to be performing a coverage investigation in the above-referenced matter. I have been retained by Henson & Associates to represent their interest in Mr. Almazan's workers' compensation claim. Mr. Almazan sustained an injury to his back on September 26, 2009. He has currently filed a workers' compensation claim against Edifice, Inc., Henson & Associates, Services Resource, and Contrerras Panels.

It is our position that the claimant was an employee at Contrerras Panels on the date of his accident. Mr. Almazan has never been an employee of Henson & Associates, and he was not an employee of Henson & Associates on the date of his alleged accident. Based on the previous coverage investigation performed by the Commission, Contrerras Panels had workers' compensation coverage at the time of his alleged accident, and thus, should be the responsible party for this claim.

The claimant further alleges that Henson & Associates is the statutory employer and that they should be responsible for workers' compensation coverage. However, Contrerras Panels had workers' compensation coverage at the time of the claimant's accident (Exhibit A). Thus, Contrerras Panels should be responsible for this claim, not Henson & Associates. Furthermore, even assuming Henson & Associates is a valid statutory employer under the Workers' Compensation Act, Henson & Associates is not responsible for the claimant's workers' compensation claim because they received two Certificates of Insurance from Contrerras Panels that indicated Contrerras Panels had workers' compensation coverage (Exhibit B). On April 23, 2009, Contrerras Panels provided Henson & Associates with a Certificate of Insurance that

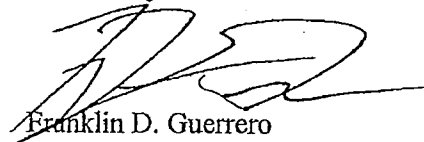
provided coverage from May 10, 2008 through May 10, 2009. On May 8, 2009, two days before the first Certificate of Insurance expired, Contrerras Panels presented Henson & Associates with a second Certificate of Insurance that provided workers' compensation coverage from May 8, 2009, through May 8, 2010. The claimant's accident occurred on September 26, 2009, which is within the coverage period provided on the Certificate of Insurance that Henson & Associates received from Contrerras Panels. It should be noted that Henson & Associates received this Certificate of Insurance prior to Contrerras Panels starting work on the project for which they were hired. Therefore, because Henson & Associates received a valid Certificate of Insurance prior to Contrerras Panels starting work on the project in which the claimant was injured, Henson & Associates is not the responsible party for the claimant's work injuries.

Henson & Associates maintains that it has workers' compensation coverage in South Carolina through Auto Owners. Attached as Exhibit C is a declaration's page for a workers' compensation/employers' liability policy that appears to provide coverage for Henson & Associates in the state of South Carolina (Exhibit C). It appears that Auto Owners is the carrier on the policy. The policy number is 081715 35036819. Please advise me if this policy covers Henson & Associates and if Auto Owners is the carrier on this policy. If this policy does provide coverage, then Auto Owners needs to be added as a party to this claim so that they can defend the interest of Henson & Associates.

Thank you for your assistance in this matter. If you have any questions or concerns from Henson & Associates, please contact my office.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Franklin D. Guerrero

FDG/trs

cc: Mr. Danny Henson - *via e-mail*

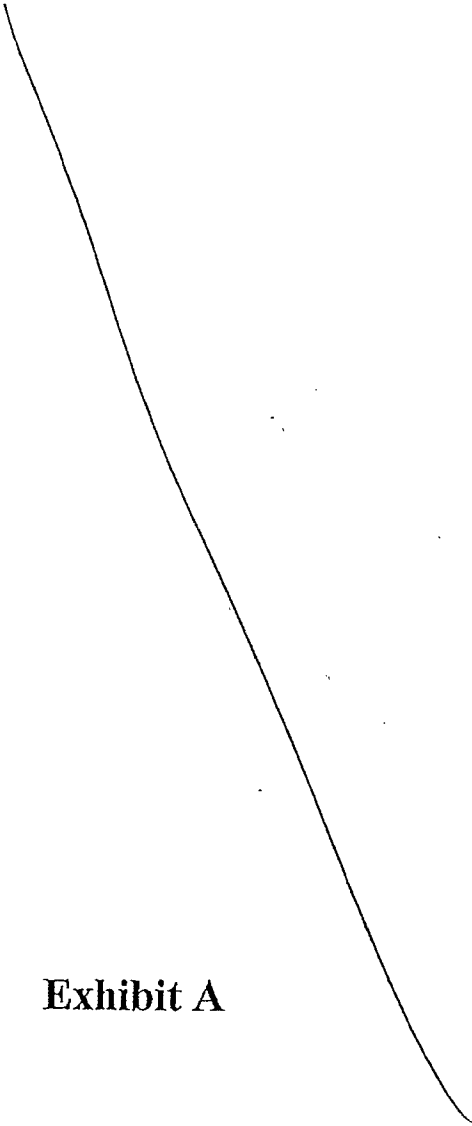


Exhibit A

SERVICES RESOURCE
P.O. BOX 97
LAPORTE, TEXAS 77572

PHONE: 281-808-2457 FAX: 281-333-1924

FAX:

7 PAGES

03/05/2010

TO: WAYNE DUCOTE, JR.

NUMBER: 803-737-1258

REFERENCE: CONTRERAS PANELS, SUB-CONTRACTOR

TEXT:

PER REQUEST I AM SENDING DECLARATIONS PAGE AND STATES COVERED.

MY AGENT HAS INFORMED ME OF YOUR REQUEST. MR. PABLO CONTRERAS NEVER REPORTED THIS ACCIDENT TO US. I ASKED HIM AND HE SAID HE HAD PAID FOR TREATMENT OF INJURED EMPLOYEE AND THAT IT WAS NOT SERIOUS.

WE CAN STILL FILE THIS CLAIM IF THE INJURED, IN FACT, WAS SERIOUSLY INJURED FROM THIS ACCIDENT.

IF YOU DEEM THAT OUR COVERAGE IS NOT SUFFICIENT FOR WORK IN SOUTH CAROLINA, PLEASE ADVISE SO WE CAN REMOVE CONTRERAS AS A SUB-CONTRACTOR OF OURS. WE HAVE ONLY FOUR PERSONS WORKING IN THAT STATE.

THANK YOU,

LYNN WOOTON
OWNER

cc: Associate Benefits Agency

ISSUED BY THE STOCK INSURANCE COMPANY HEREIN CALLED THE COMPANY
THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA
13889

AGENT NUMBER
0093978-00

POLICY NUMBER
WC 005-77-9464
013-52-0509-00

INCORPORATED UNDER THE LAWS OF PENNSYLVANIA
ITEM 1. NAMED INSURED: MAILING ADDRESS IDENTIFICATION NO.:

SERVICES RESOURCE
P.O. BOX 97
LA PORTE, TX 77572-0000

Southern Cross Underwriters
5750 Northwest Parkway
Suite : 800
San Antonio, TX 78249-3367

EXECUTIVE OFFICES:
70 PINE STREET, NEW YORK, N.Y. 10270

SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610

ID#

PRODUCERS NAME AND ADDRESS

WORKERS COMPENSATION AND EMPLOYERS
LIABILITY POLICY INFORMATION PAGE

CRC INSURANCE SERVICES INC
5750 NORTHWEST PARKWAY
STE 800
SAN ANTONIO, TX 78249-0000

INSURED IS
INDIVIDUAL

PREVIOUS POLICY NUMBER
NEW

OTHER WORKPLACES NOT SHOWN ABOVE: SEE EXTENSION OF ITEM 1. OF THE INFORMATION PAGE - WC990610

ITEM 2 POLICY PERIOD 12:01 A.M. standard time at the insured's
mailing address

FROM 05/08/09 TO 05/08/10

ITEM 3 A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed
here:
LA MS TX

B. Employers Liability Insurance: Part Two of the policy applies to the work in each state listed in item 3.A.
The limits of our liability under Part Two are:

Bodily Injury by Accident \$ 1,000,000 each accident
Bodily Injury by Disease \$ 1,000,000 policy limit
Bodily Injury by Disease \$ 1,000,000 each employee

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

AK AL AR AZ CA CO CT DC DE FL GA HI IA ID IL IN KS KY MA MD ME MI MN MO MT NC NE NH NJ
NH NV NY OK OR PA RI SC SD TN UT VA VT WI WV

D. This policy includes those

SEE EXTENSION OF ITEM 3.D. OF THE INFORMATION PAGE - WC990612

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

Classifications

Code Number

Estimated Total
Remuneration
☒ Annual ☐ 3 Year

Rate Per
\$100 OF Re-
muneration

Estimated
Premium
☒ Annual ☐ 3 Year

SEE EXTENSION OF ITEM 4. OF THE INFORMATION PAGE - WC7754

EXPENSE CONSTANT (EXCEPT WHERE APPLICABLE BY STATE)

\$172 LA

MINIMUM PREMIUM

\$750 LA

TOTAL ESTIMATED PREMIUM

\$24,409

If indicated below, interim adjustments of premium shall be made:

☐ Semi-Annually

☐ Quarterly

☐ Monthly

DEPOSIT PREMIUM

05/11/09 PHOENIX

52

Issue Date

Issuing Office

Authorized Representative

WC00 00 01

39937 (R-7/0 04/08)

INSURED

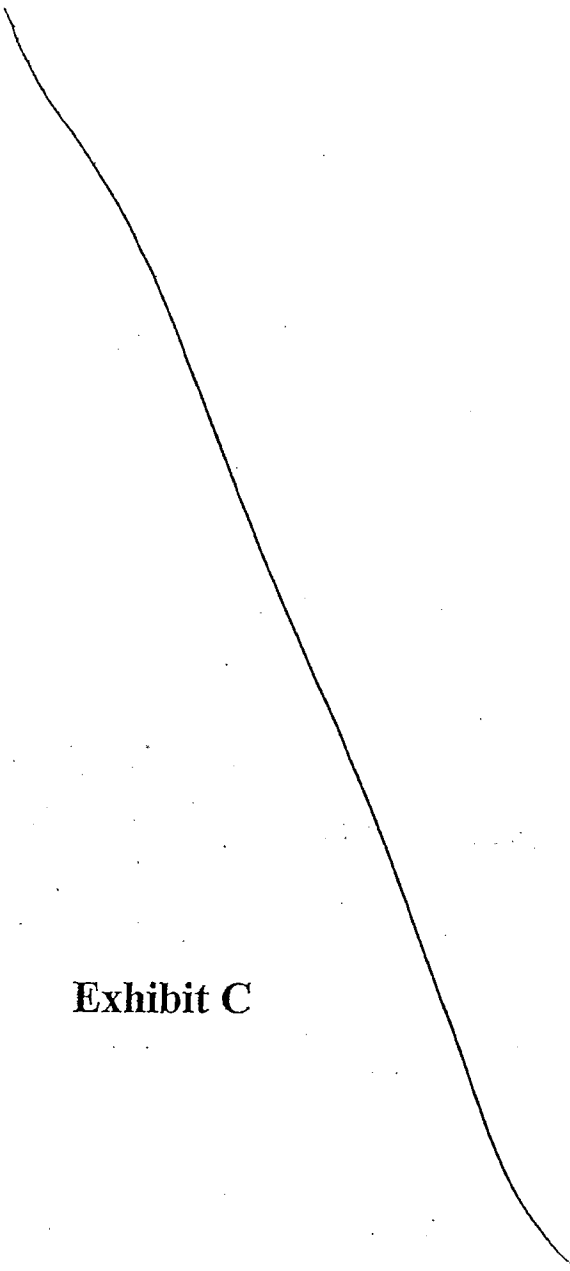


Exhibit C

Owners

PAGE 1

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

INSURANCE COMPANY 18147
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

INFORMATION PAGE

AGENCY FIRST CHARTER INSURANCE SERVICES INC
15-0245-00 10400 MALLARD CREEK RD # 310 (704) 688-1200
CHARLOTTE NC 28262 MKT TERR 045

ITEM 1
INSURED HENSON & ASSOCIATES INC

ADDRESS 3219 BLAIRSVILLE HWY
MURPHY NC 28906-6046

COMPANY
BILL

POLICY NUMBER
081715 35036819

ITEM 2 POLICY PERIOD
FROM 12:01 A.M. 10-05-2008
TO 12:01 A.M. 10-05-2009
AT THE INSURED'S
MAILING ADDRESS

INSURED IS - CORPORATION

OTHER WORK PLACES NOT SHOWN ABOVE:

- ITEM 3 A. WORKERS' COMPENSATION INSURANCE: PART ONE OF THE POLICY APPLIES TO WORKERS' COMPENSATION LAW OF THE STATES LISTED HERE: NC
- B. EMPLOYERS LIABILITY INSURANCE: PART TWO OF THE POLICY APPLIES TO WORK IN EACH STATE LISTED IN ITEM 3. THE LIMITS OF OUR LIABILITY UNDER PART TWO ARE:
- | | | |
|---------------------------|-----------|---------------|
| BODILY INJURY BY ACCIDENT | \$500,000 | EACH ACCIDENT |
| BODILY INJURY BY DISEASE | \$500,000 | EACH EMPLOYEE |
| BODILY INJURY BY DISEASE | \$500,000 | POLICY LIMIT |
- C. OTHER STATES INSURANCE: PART THREE OF THE POLICY APPLIES TO THE STATES, IF ANY, LISTED HERE: AL, AR, AZ, CO, FL, GA, IA, ID, IL, IN, KS, KY, MI, MN, MO, NC, NE, SC, SD, TN, UT, VA & WI UNLESS ALREADY LISTED IN ITEM 3A.
- ITEM 4 THE PREMIUM FOR THIS POLICY WILL BE DETERMINED BY OUR MANUALS RULES, CLASSIFICATIONS, RATES AND RATING PLANS. ALL INFORMATION REQUIRED BELOW IS SUBJECT TO VERIFICATION AND CHANGE BY AUDIT.

CLASSIFICATIONS OF OPERATIONS		PREMIUM BASIS	RATES	
	CLASS CODE	ESTIMATED TOTAL ANNUAL REMUNERATION	RATE PER \$100	ESTIMATED ANNUAL PREMIUM
STATE OF NORTH CAROLINA				
ID# 0010 (SEE FED NUM 001) DESC 000				
SHEET METAL WORK-INSTALLATION & DRIVERS	5535	100,000	11.64	11,640
ID# 0020 (SEE FED NUM 001) DESC 001				
CLERICAL OFFICE EMPLOYEES NOC	8810	20,000	.40	80

ISSUED 10-30-2008

27777 (10-88)(WC0000001A)

4133

Owners

PAGE 2

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

INSURANCE COMPANY 18147
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

INFORMATION PAGE

AGENCY FIRST CHARTER INSURANCE SERVICES INC
15-0245-00 10400 MALLARD CREEK RD # 310 (704) 688-1200
CHARLOTTE NC 28262 MKT TERR 045

ITEM 1
INSURED HENSON & ASSOCIATES INC

ADDRESS 3219 BLAIRSVILLE HWY
MURPHY NC 28906-6046

COMPANY
BILL

POLICY NUMBER
081715 35036819

ITEM 2 POLICY PERIOD
FROM 12:01 A.M. 10-05-2008
TO 12:01 A.M. 10-05-2009
AT THE INSURED'S
MAILING ADDRESS

TOTAL		11,720
INCREASED LIMITS ITEM 3 B	199	11,919
104% EXPERIENCE MOD	477	12,396
30.0% SCHEDULE CREDIT - NORTH CAROLINA	3,719-	8,677
PREMIUM DISCOUNT	401-	8,276
9% MULTI-POLICY DISCOUNT	745-	7,531
PAID IN FULL DISCOUNT	377-	7,154
EXPENSE CONSTANT	210	7,364
TERRORISM-SEE FORM 27317	12	7,376
CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM)	12	7,388
SEE FORM 27322		
TOTAL ESTIMATED ANNUAL PREMIUM		7,388

FEDERAL ID - 581863985

NC EXPERIENCE RISK ID - 008516111

NC EMPLOYER CODE - 0746986000

NC NUMBER OF EMPLOYEES - 5

COUNTY 020

A 9% CUMULATIVE MULTI-POLICY DISCOUNT APPLIES. SUPPORTING POLICIES ARE MARKED WITH AN (X):
COMM UMB(X) COMM PROP/COMM LIAB(X) COMM AUTO(X) LIFE() PERSONAL() FARM().

PAID IN FULL DISCOUNT APPLIES.

THE PAID IN FULL DISCOUNT DOES NOT APPLY TO FIXED EXPENSE FEES, STATUTORY CHARGES OR
MINIMUM PREMIUMS.

THE PAID IN FULL DISCOUNT IS BASED ON FAVORABLE LOSS EXPERIENCE FOR THE COLLECTIVE GROUP
OF POLICYHOLDERS WHO CHOOSE TO PAY THEIR PREMIUM IN FULL DIRECTLY TO THE COMPANY.

MINIMUM PREMIUM \$950 NORTH CAROLINA

ISSUED 10-30-2008

27777 (10-88)(WC000001A)

4134

Owners

PAGE 3

WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY

INSURANCE COMPANY 18147
6101 ANACAPRI BLVD., LANSING, MI 48917-3999

INFORMATION PAGE

AGENCY FIRST CHARTER INSURANCE SERVICES INC
15-0245-00 10400 MALLARD CREEK RD # 310 (704) 688-1200
CHARLOTTE NC 28262 MKT TERR 045

ITEM 1
INSURED HENSON & ASSOCIATES INC

ADDRESS 3219 BLAIRSVILLE HWY
MURPHY NC 28906-6046

COMPANY
BILL

POLICY NUMBER
081715 35036819ITEM 2 POLICY PERIOD
FROM 12:01 A.M. 10-05-2008
TO 12:01 A.M. 10-05-2009
AT THE INSURED'S
MAILING ADDRESS

AUDIT IS - ANNUAL

ENDORSEMENTS:

27011 (WC0000308) 27016 (WC0000000A) 27043 (WC320301B) 27279 (WC0000419) 27317 (WC0000422A)
27322 (WC0000421C) 27942 (WC0000414) 27958 (WC0000406A)

ISSUED 10-30-2008

COUNTERSIGNED BY: _____

27777 (10-88)(WC000001A)

4135

ACORD CERTIFICATE OF LIABILITY INSURANCE		OP ID C3 HEN90-1	02/10/09
PRODUCER First Charter Insurance - MC 10400 Mallard Creek Rd Ste 310 Charlotte NC 28262 Phone: 704-688-1228		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
INSURED Henson & Associates, Inc. and/or J & E Fabricating, Inc. 3219 Blairsville Hwy. Murphy NC 28906		INSURERS AFFORDING COVERAGE	NAIC #
		INSURER A: Owners Insurance Company	32700
		INSURER B: Peerless Insurance Company	24198
		INSURER C:	
		INSURER D:	
		INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR MODU LTR INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY	3580381800	10/05/08	10/05/09	EACH OCCURRENCE \$1,000,000
	☒ COMMERCIAL GENERAL LIABILITY				DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000
	☐ CLAIMS MADE ☒ OCCUR				NEO EXP (Any one person) \$5,000
	GEN'L AGGREGATE LIMIT APPLIES PER:				PERSONAL & ADV INJURY \$1,000,000
	☐ POLICY ☒ PROJECT ☐ LOC				GENERAL AGGREGATE \$2,000,000
					PRODUCTS - COMPROP AGG \$2,000,000
A	AUTOMOBILE LIABILITY	4780381800	10/05/08	10/05/09	COMBINED SINGLE LIMIT (Ea accident) \$1,000,000
	☒ ANY AUTO				BODILY INJURY (Per person) \$
	☐ ALL OWNED AUTOS				BODILY INJURY (Per accident) \$
	☐ SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident) \$
	☒ HIRED AUTOS				AUTO ONLY - EA ACCIDENT \$
	☒ NON-OWNED AUTOS				OTHER THAN EA ACC \$
					AUTO ONLY: AGG \$
A	GARAGE LIABILITY	4780381801	10/05/08	10/05/09	EACH OCCURRENCE \$3,000,000
	☐ ANY AUTO				AGGREGATE \$3,000,000
	EXCESS/UMBRELLA LIABILITY				\$
	☒ OCCUR ☐ CLAIMS MADE				\$
	☐ DEDUCTIBLE				\$
	☐ RETENTION \$				\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	35036819	10/05/08	10/05/09	☒ WC STATUTORY LIMITS ☐ OTHER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/ MEMBER EXCLUDED?				EL EACH ACCIDENT \$500,000
	If yes, describe under SPECIAL PROVISIONS below				EL DISEASE - EA EMPLOYEE \$500,000
	OTHER				EL DISEASE - POLICY LIMIT \$500,000
B	Contractors	IM8348707	10/05/08	10/05/09	Leased/ \$50,000
	Equipment				Rented \$500 DED

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Edifice, Inc. is included as additional insured regarding general liability per written contract.
Fax to (704) 332-0901

CERTIFICATE HOLDER

EDIFI-2 Edifice Inc. Attn: Sheryl Stewart Box 36349 Charlotte NC 28236	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE <i>Harry Wasson</i>

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

Harry Wasson ACORD CORPORATION 1988

BEFORE THE SOUTH CAROLINA WORKERS'

COMPENSATION COMMISSION

W.C.C. FILE NO. 0919909

RUDY ALMAZAN,

Employee/Claimant,

vs.

HENSON & ASSOCIATES, INC.,

Employer,

and

AUTO OWNERS INSURANCE COMPANY,

Carrier/Defendants.

Condensed
Transcript

DEPOSITION OF WENDY SEIGER HENSON

July 31, 2013

1:00 p.m.

---oOo---

Taken by the Defendants

Pursuant to Notice

At Henson & Associates

Murphy, North Carolina

Reported by:

Mary K. Stepp, Court Reporter

Job No. CS1676234

1 APPEARANCES 2 For the Plaintiff: 3 (Appearance by Telephone) 4 AMY V. COFIELD, ESQUIRE 5 809 South Lake Drive 6 Lexington, South Carolina 29072 7 For the Defendants: 8 (Appearance by Telephone) 9 ROY A. HOWELL, III, ESQUIRE 10 Trask & Howell, L.L.C. 11 763 Johnnie Dodds Boulevard 12 Mt. Pleasant, South Carolina 29465-2167	Page 2 1 WENDY SEIGER HENSON, 2 having been first duly sworn, was examined and testified 3 as follows: 4 EXAMINATION 5 BY MR. HOWELL: 6 Q. Okay. For the record, today's date is July 31, 7 2013. This is the deposition of Wendy Henson in 8 connection with WCC File No. 0919909, Rudy Almazan versus 9 Henson & associates, et al., South Carolina, Uninsured 10 Employers' Fund. This deposition is taking -- being 11 taken via telephone, being taken in lieu of Ms. Henson's 12 live testimony at any hearings that may take place. 13 Amy, is that your understanding or purpose of 14 the deposition? 15 MS. COFIELD: Yes. 16 (Deposition Exhibit No. 1 was marked for 17 identification.) 18 BY MR. HOWELL: 19 Q. Okay. Ms. Henson, if you will state your full 20 name for the record, please. 21 A. Wendy Seiger Henson. 22 Q. Okay. Again, Ms. Henson, we talked on the phone 23 before, but my name is Roy Howell, I represent 24 Auto-Owners Insurance Company and, of course, Henson & 25 Association -- Associates. And I've asked you to give a
Page 3 1 INDEX 2 Examination Page 3 By Mr. Howell 4, 24 4 By Ms. Cofield 13, 25 5 6 7 8 9 10 11 EXHIBITS 12 No. 1 (Driver's License Photocopy) 4 13 No. 2 (Certificate of Ins. 3/18/13) 24 14 No. 3 (Certificate of Ins. 7/31/13) 24 15 16 17 18 19 20 21 22 23 24 25	Page 5 1 deposition today in regards to some issues that are still 2 going on in the case. 3 If you could, give us your date of birth, 4 please. 5 [REDACTED] 6 Q. Okay. And are you married? 7 A. Yes. 8 Q. Okay. And what is your husband's name? 9 A. Kenneth Henson. 10 Q. Okay. And how long have you and Mr. Henson been 11 married? 12 A. 29 years in September. 13 Q. Okay. And are you familiar with Henson & 14 Associates? 15 A. Yes. 16 Q. What is Henson & Associates? 17 A. It's a corporation incorporated in North 18 Carolina in 1989. We do metal roofing and siding. 19 Q. Okay. And are you involved in the business? 20 A. Yes, I am. I am the secretary, office manager. 21 Q. And how long have you been involved in running 22 that? 23 A. Since 1989. 24 Q. All right. And in your job as secretary and 25 office manager, did you deal with subcontractors and

Page 10 1 workers' compensation insurance carrier? 2 A. Yes, it does. 3 Q. New Hampshire Insurance Company? 4 A. Yes. 5 Q. Okay. Does it have the policy period from 6 May 10, 2008 to May 10, 2009? 7 A. Yes, it does. 8 Q. Does it have the workers' compensation -- the 9 actual policy number on the policy? 10 A. Yes, it does. 11 Q. Does it have policy limits on it? 12 A. Yes, it does. 13 Q. Is there a description of the location of the 14 job? 15 A. Yes, York High School & Technology Center. 16 Q. Okay. Certificate holder is who? 17 A. Henson & Associates. 18 Q. Okay. That's your business? 19 A. Yes, it is. 20 Q. Okay. And then is this signed? 21 A. Yes, it's signed. 22 Q. Okay. And does it indicate that it's signed by 23 an authorized representative of the insurance company? 24 A. Yes, it does. 25 Q. All right. Is there anything on this document	Page 12 1 Q. All right. And, again, let's go through this 2 particular certificate. Does it have the name of 3 insured, Contreras Panels? 4 A. Yes, it does. 5 Q. Okay. The name of the workers' compensation 6 insurance carrier? 7 A. Yes, it does. 8 Q. Does it have the policy period, effective dates 9 of the policy? 10 A. Yes, it does. 11 Q. Does it have a policy number for the policy? 12 A. Yes. 13 Q. And does it have the policy limits of the 14 policy? 15 A. Yes. 16 Q. Does it have a description of the operations and 17 location of the project? 18 A. Yes. 19 Q. Which is where? 20 A. York High School & Technology Center. 21 Q. And is that where this work was ultimately done? 22 A. Yes. 23 Q. And who is the certificate holder? 24 A. Henson & Associates. 25 Q. Okay. And, again, was this signed by someone
Page 11 1 that would give you pause to think it was not a valid 2 certificate and that he did not have -- he being 3 Contreras Panels -- did not have valid coverage? 4 A. No, no. Everything is in order. 5 Q. All right. Now, the policy periods on this are 6 May 10th, 2008 to May 10th, 2009? 7 A. Yes. 8 Q. Did you subsequently request an updated 9 certificate, since this one was getting ready to expire? 10 A. Yes. 11 Q. And do you have that with you?	Page 13 1 who represented themselves to be an authorized 2 representative of the insurance company? 3 A. Yes. 4 Q. Okay. And, again, in looking at the face of 5 this document, is there anything in your mind that was 6 left out and would give you pause to believe that this 7 was not a valid Certificate of Insurance? 8 A. No, there's not. 9 Q. Okay. And did Henson & Associates rely upon 10 both of these certificates in making a decision to allow 11 Contreras Panels to do work on this job?
12 A. Yes, I do. 13 Q. All right. And what is the date of that 14 certificate? 15 A. May 8th, 2009. 16 Q. Okay. And is that the date you received it? 17 A. No, it would have been a couple of days later, 18 since it did come through the U.S. mail. 19 Q. Okay. So -- and, again, you indicated earlier 20 that the job, the actual work on this particular job 21 didn't begin until June; is that correct? 22 A. That's right. 23 Q. But the certificate would have been received 24 prior to the commencement of the work? 25 A. Yes.	12 A. Yes. 13 Q. And, again, when -- when did they actually start 14 work? 15 A. About the second week of June 2009. 16 Q. All right. If you'll bear with me for just a 17 minute, Ms. Henson. 18 A. Okay. 19 (Brief pause.) 20 MR. HOWELL: Ms. Henson, those are all the 21 questions I have. Please answer any questions that 22 Ms. Cofield may have for you. 23 EXAMINATION 24 BY MS. COFIELD: 25 Q. Hey, Ms. Hanson.

Page 18

1 A. Our attorney, which was -- what was the name of
 2 our attorney?
 3 MR. HOWELL: Zach Smith represented them at the
 4 time.
 5 THE WITNESS: That's correct, Zach Smith.
 6 That's right. He handled everything for us. We went
 7 through him.
 8 BY MS. COFIELD:
 9 Q. Okay. What steps did you take when you received
 10 one of these certificates in filing it in a
 11 subcontractor's file, where you store it?
 12 A. Where it's stored?
 13 Q. Yeah, do you -- what do you do with the
 14 certificate, when somebody gives it to you?
 15 A. We record that it was received. We record the
 16 dates of the coverage, the coverage period, and put it in
 17 a project file under that contractor's name -- that
 18 contractor's business name.
 19 Q. Okay. Do you have to put in your -- on the
 20 document you're creating the name of the insurance
 21 company?
 22 A. No, we're a small -- we're low tech. We're
 23 smaller than that. I still have a metal file cabinet.
 24 Q. Okay. So you just look at the coverage dates
 25 and you document that on a spreadsheet of some sort?

Page 19

1 A. No. No, ma'am. I have actual file folders that
 2 you actually put in a metal file cabinet.
 3 Q. Okay. Well, a minute ago you said you document
 4 somewhere --
 5 A. I have a pen, also, that I write in my folders
 6 with.
 7 Q. Okay. You just write in that person's folder
 8 the date?
 9 A. Yes, yes.
 10 Q. Okay. You don't keep that information anywhere
 11 else?

12 A. No.
 13 Q. You don't keep or summarize it somewhere else,
 14 like a whole list of subs? You just have an individual
 15 folder?
 16 A. Yes, yes. Each project has its own file with
 17 file folders and, you know, manila envelopes that I sort
 18 information in. No, I don't keep it on a computer.
 19 Q. Okay. And you have your own workers' comp
 20 insurance, correct?
 21 A. Yes, we do.
 22 Q. Okay. What states are you authorized to
 23 transact business under that policy?
 24 A. North Carolina, South Carolina, Virginia,
 25 Tennessee, and Georgia.

Page 20

1 Q. Okay. And you're aware of having to get
 2 additional coverage to cover different states then,
 3 aren't you?
 4 A. Yes, we are, but so far we're operating within
 5 those five states.
 6 Q. Okay. What on this certificate that you
 7 received from Contreras Panels indicates to you that he
 8 has coverage in any particular state?
 9 A. I guess the fact that they issued it makes me
 10 believe that they have the coverage. I mean, I've never
 11 seen an agency issue a certificate, if the client wasn't
 12 covered.
 13 Q. Okay. Do you see the words "South Carolina"
 14 written anywhere on this certificate?
 15 A. Uhm, no.
 16 Q. As a matter of fact, he's in Houston Texas,
 17 correct?
 18 A. That's -- yes, it is.
 19 Q. And the business is also listed to be in
 20 Houston, Texas?
 21 A. Yes, it is.
 22 Q. And your address at the very bottom of the
 23 certificate holder, you're in North Carolina, correct?
 24 A. Yes.
 25 Q. Okay. And the insurance -- who mailed you this

Page 21

1 certificate? You said you got it in the mail.
 2 A. Associates Benefits Agency.
 3 Q. Do you still have that envelope?
 4 A. No, I don't have the envelope.
 5 Q. Okay. So how do you know that they are the ones
 6 that mailed it to you?
 7 A. I --
 8 Q. Are you just assuming that they did?
 9 A. I opened the envelope. I can tell you it came
 10 from there. If you want proof of that, I don't have the
 11 envelope to show you, so --

12 Q. Is it from your memory you believe it came from
 13 them?
 14 A. Yes.
 15 Q. Okay. And they mailed it to you in North
 16 Carolina, correct?
 17 A. Yes.
 18 Q. Okay. How would Associates Benefits, from
 19 looking at this certificate, have any information that
 20 you were in South Carolina?
 21 MR. HOWELL: Objection, calls for speculation.
 22 BY MR. COFIELD:
 23 Q. Do you see anything on this certificate that
 24 indicates to anybody that work is being done in South
 25 Carolina?

Page 26

1 know, I guess that's a valid point. But it does say the
2 name of the job. And I assume that the man had informed
3 his insurance agency where the job was, when he gave him
4 the name of the job. I don't know, you know, how else
5 you would think about it, if you were looking at it.
6 MS. COFIELD: Okay. That's all I have. Thank
7 you.
8 THE WITNESS: Okay.
9 MR. HOWELL: Thank you, ma'am.
10 THE WITNESS: Sure.
11 THE REPORTER: I need to know if you're ordering
12 this?
13 MR. HOWELL: Yes, ma'am. I need an original and
14 a copy, please.
15 THE REPORTER: And Ms. Cofield?
16 MS. COFIELD: Yes, I need a copy as well.
17 THE REPORTER: And what would you like?
18 MS. COFIELD: Just a copy.
19 THE REPORTER: Just a regular copy? Okay. Do
20 you need it by a certain date?
21 MR. HOWELL: No, ma'am.
22 (Deposition was concluded at 1:34 p.m.)
23
24
25

Page 27

1 CERTIFICATE OF TRANSCRIPT
2 STATE OF NORTH CAROLINA)
3 COUNTY OF HENDERSON)
4 I, MARY K. STEPP, Court Reporter, notary public for
5 the State of North Carolina, do hereby certify that on
6 July 31, 2013, there appeared before me WENDY SEIGER
7 HENSON, who was duly sworn by me; that the appearances
8 were as shown in the caption hereof; that the foregoing
9 testimony was taken by me in stenotype and thereafter
10 reduced to typewritten form by me; that the foregoing
11 deposition is a true record of the testimony given by the
12 witness; that the deponent requested to read and sign the
13 deposition;
14 I further certify that I am not of kin or associated
15 with any of the parties to this action or their counsel
16 and that I am not interested in the event thereof.
17 DATE: July 31st, 2013.
18
19 _____
20 MARY K. STEPP, Court Reporter
21 Notary Public Number 20042390053
22 State of North Carolina
23
24
25

Page 28

1 ERRATA SHEET
2 VERITEXT CORPORATE SERVICES
3 800-567-8658
4 ASSIGNMENT NO. CS1676234
5 CASE NAME: Almazan, Rudy v. Henson & Associates
6 DATE OF DEPOSITION: 7/31/2013
7 WITNESS' NAME: Wendy Henson
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Wendy Henson

SUBSCRIBED AND SWORN TO
BEFORE ME THIS DAY
OF , 2013.

NOTARY PUBLIC
MY COMMISSION EXPIRES

Page 29

1 Veritext Legal Solutions
2 290 W. Mt. Pleasant Ave. - Suite 3200
3 Livingston, New Jersey 07039
4 Toll Free: 800-227-8440 Fax: 973-629-1287
5 , 2013
6 To: ROY A. HOWELL, III, ESQUIRE
7 Case Name: Almazan, Rudy v. Henson & Associates
8 Veritext Reference Number: 1676234
9 Witness: Wendy Henson Deposition Date: 7/31/2013
10 Dear Sir/Madam:
11 Enclosed please find a deposition transcript. Please have the witness
12 review the transcript and note any changes or corrections on the
13 included errata sheet, indicating the page, line number, change, and
14 the reason for the change. Have the witness' signature at the bottom
15 of the sheet notarized and forward errata sheet back to us at the
16 address shown above.
17 If the jurat is not returned within thirty days of your receipt of
18 this letter, the reading and signing will be deemed waived.
19
20 Sincerely,
21
22 Production Department
23
24 Encl.
25 Cc: AMY V. COFIELD, ESQUIRE

&	290 29:1	ah 15:17	b
& 1:7,18 2:8 4:9,24 5:13,16 6:4,14,18 6:21 7:1,24 10:15 10:17 12:20,24 13:9 22:1 28:3 29:6	29072 2:4 29465-2167 2:9	al 4:9 alaska 25:19	b 3:11 6:23 back 8:10 24:12
0	3	allow 6:6 13:10	29:14
07039 29:2 09 15:23 0919909 1:3 4:8	3 3:13 24:5 3/18/13 3:12 30th 16:24 31 1:14 4:6 27:6 3105 23:22 31st 23:16 27:17 3200 29:1 3rd 5:5	allowed 16:23 allowing 6:5 almazan 1:4 4:8 28:3 29:6 amy 2:3 4:13 7:7 8:8 29:25	bear 13:16 believe 7:5,14,15 8:7 13:6 20:10 21:12 22:11
1	4	answer 13:21 16:1,2	benefits 21:2,18
1 3:12 4:16 10 10:6,6 10th 11:6,6 1171 23:19 13 3:4 15th 16:23,24 1676234 29:7 18th 23:14 1965 5:5 1989 5:18,23 6:12 1:00 1:15 1:34 26:22 1st 16:25 17:4	4 3:3,12	anybody 21:24 anyplace 25:19 apa 7:11	beyond 17:14 bill 16:23 billed 17:1 birth 5:3
2	7	appearance 2:3,7	boiling 23:22,23
2 3:12 24:5 20042390053 27:20 2005 8:11 2008 6:20 10:6 11:6 2009 6:14 7:3,4,13 7:16,19,24 8:25 9:9	7 7:16 7/31/13 3:13 7/31/2013 28:3 29:8 763 2:8 7th 7:4,19	appearances 27:7 appeared 27:6 approximate 9:11 approximately 9:13 15:13	bottom 20:22 29:13 boulevard 2:8 brief 13:19 23:7 broad 23:19
9:22 10:6 11:6,15 13:15 16:20 17:4 24:13,13,21	8	april 7:3,4,13,16,19 7:23 8:25 9:9,14,22 15:22 24:13,13	business 5:19 8:11 10:18 16:13 18:18 19:23 20:19
2013 1:14 4:7 23:14 23:16 27:6,17 28:22 29:4	8 24:13 800-227-8440 29:2 800-567-8658 28:2 809 2:4 8th 11:15	asked 4:25 17:23,23 asking 14:20	c 2:1
23 9:9,22 24:13	9	assignment 28:2 associated 27:14 associates 1:7,18 4:9 4:25 5:14,16 6:4,14 6:18,22 7:1,24 10:17 12:24 13:9 21:2,18 28:3 29:6	cabinet 18:23 19:2 call 22:12 calls 21:21 caption 27:8
23rd 8:25 9:14	9 8:5 973-629-1287 29:2	association 4:25	carolina 1:1,18 2:4 2:9 4:9 5:18 6:16 14:6,8,10,16,16,19 14:19,25,25 17:10 17:10 19:24,24
24 3:3,12,13	a	assume 26:2 assuming 21:8 attention 6:13 attorney 17:13,19 18:1,2	20:13,23 21:16,20 21:25 22:7,8 23:20 23:23 25:23,25 27:2 27:5,20
25 3:4	action 27:15 actual 10:9 11:20 19:1 additional 20:2 address 15:5 20:22 23:1,17 29:15 addresses 25:11 agency 20:11 21:2 22:12 23:22 24:25 26:3 ago 14:5 19:3	authorized 10:23 13:1 19:22 auto 1:10 4:24 ave 29:1 aware 17:6,8 20:1	carrier 1:11 10:1 12:6 17:21 case 5:2 8:15 28:3 29:6 cause 25:18 cc 29:25 center 6:16 10:15 12:20 22:2
29 5:12			

follow 24:8 follows 4:3 foot 9:17 foregoing 27:8,10 form 8:5 27:10 forward 29:14 found 17:13 four 15:14,14 free 29:2 full 4:19 fund 4:10 17:11 further 27:14	henson's 4:11 7:14 hereof 27:8 hey 13:25 high 6:15 10:15 12:20 22:1,4 hold 23:2 holder 10:16 12:23 20:23 houston 15:5,8,24 16:4 20:16,20 22:3 howell 2:7,8 3:3 4:5 4:18,23 7:7,10,13 7:21 13:20 18:3 21:21 22:5 24:7,11 25:1 26:9,13,21 29:5 husband's 5:8	interested 27:16 involved 5:19,21 issue 8:4 20:11 issued 16:25 20:9 issues 5:1	license 3:12 lieu 4:11 limits 10:11 12:13 line 28:5 29:12 list 19:14 listed 20:19 live 4:12 16:17 lives 15:8,10 livingston 29:2 located 14:6,12 16:17 location 10:13 12:17 16:14 25:17 long 5:10,21 6:11 15:11 look 18:24 24:18 25:11 looking 7:5 13:4 15:4,25 17:7 21:19 24:12 26:5 looks 24:17,22 low 18:22
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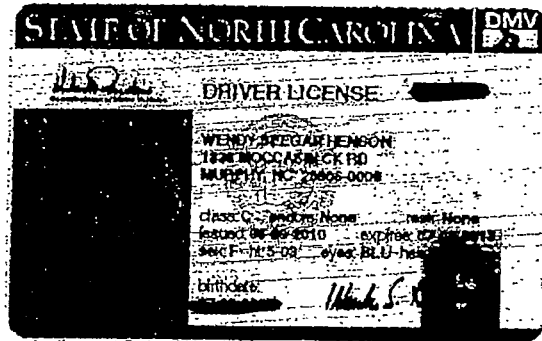


EXHIBIT
WITNESS: W. Henson
DATE: 7/31/13
MARY K. STEPP



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
03/18/2013

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Phone: (864) 599-6778 Fax: (864) 599-6764

WATSON INSURANCE AGENCY, INC.

PO BOX 160820

3105 BOILING SPRINGS ROAD

BOILING SPRINGS SC 29316

CONTACT NAME: Travis Watson

PHONE (A/C, No, Ext): (864) 461-2204

FAX (A/C, No): (864) 461-3980

E-MAIL ADDRESS: travisw@watsonagency.net

PRODUCER CUSTOMER ID: 7043

INSURED
CONTRERAS CONSTRUCTION COMPANY, LLC
1171 BROAD STREET
SUMTER SC 29150

INSURER(S) AFFORDING COVERAGE

NAIC #

INSURER A : National Grange Mutual

14788

INSURER B : National Grange Mutual

14788

INSURER C : National Grange Mutual

14788

INSURER D : National Grange Mutual

14788

INSURER E :

INSURER F :

COVERAGES

CERTIFICATE NUMBER: 20931

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY			MPJ4219W	08/05/12	08/05/13	
	☒ COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE \$ 1,000,000
	☐ CLAIMS-MADE ☒ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000
							MED. EXP (Any one person) \$ 10,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
							PRODUCTS - COMP/OP AGG \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER:						
	☒ POLICY ☐ PROJECT ☐ LOC						\$
B	AUTOMOBILE LIABILITY			B1J4219W	08/05/12	08/05/13	
	☐ ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
	☐ ALL OWNED AUTOS						BODILY INJURY (Per person) \$
	☒ SCHEDULED AUTOS						BODILY INJURY (Per accident) \$
	☐ HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$
	☐ NON-OWNED AUTOS						\$
							\$
							\$
D	UMBRELLA LIAB	☒	OCCUR	UMB4219W	08/19/12	08/19/13	
	EXCESS LIAB	☐	CLAIMS-MADE				EACH OCCURRENCE \$ 5,000,000
	DEDUCTIBLE						AGGREGATE \$ Not included
	RETENTION \$						\$
							\$
							\$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			W1J4219W	08/05/12	08/05/13	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NC)	☐	N/A				WC STATUTORY LIMITS ☒ OTH ER \$
	DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$ 500,000
							E.L. DISEASE-EA EMPLOYEE \$ 500,000
							E.L. DISEASE-POLICY LIMIT \$ 500,000
	EQUIPMENT RENTAL			MPJ42'9W	08/05/12	08/05/13	150000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

JOB: Leland Town Hall & Police Headquarters Leland, NC

EXHIBIT
WITNESS: W. Henson
DATE: 7/31/13
MARY K. STEPP

CERTIFICATE HOLDER

CANCELLATION

Henson & Associates
3219 Blalrsville Highway
Murphy, NC 28906

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

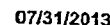
AUTHORIZED REPRESENTATIVE

Attention: dannyhenson@netscape.net

Travis Watson

ACORD 25 (2009/09)

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100

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Rudy Almazan,	)	WCC File No: 0919909
	)	
Employee,	)	
	)	
vs.	)	
	)	
Henderson & Associates, Inc.,	)	Fund's Return to Carrier's
	)	Petition to Transfer Liability
Employer,	)	
	)	
and	)	
	)	
Auto Owners Insurance Company	)	
	)	
Carrier,	)	
	)	
Defendants.	)	

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION, ROY A. HOWELL, III, ESQUIRE, ATTORNEY FOR THE DEFENDANTS, AND JOHN P. GRIFFITH, ESQUIRE

YOU WILL PLEASE TAKE NOTICE that the SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND (Fund) hereby files this Return to the Petition to Transfer Liability to S. C. Uninsured Employers' Fund pursuant to S.C. Code Ann. § 42-1-415, pursuant to Regulation 67-215 on the following grounds:

1. The Fund denies the relief sought in the petition in that the Employer/Carrier has not proven by a preponderance of the evidence that they are entitled to relief sought, and the Employer/Carrier has the burden of proof in this matter;
2. The Fund denies the relief sought in the Petition in that the Employer/Carrier cannot meet its burden of proof under the statute and relative case law.

ARGUMENT

The carrier in this instance has petitioned this Court to transfer liability to the South Carolina Workers' Compensation Uninsured Employers' Fund pursuant to §42-1-415. For the reasons set forth herein, the Petition for Transfer of Liability must be denied.

To warrant the granting of a Petition to Transfer Liability, the Carrier must meet **all** statutory requirements. §42-1-415 provides:

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund...

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and willful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud as provided by law. Knowing and willful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subject the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud

by law. Additionally, a contractor or subcontractor who knowingly and willfully falsely documents workers' compensation insurance or knowing and willfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and willfully falsely documents workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

The Commission, by its own Regulation (R. 67-415 (A)) established that:

(A) For the purposes of §42-1-415, the ACORD Form 25-S, Certificate of Insurance, as published by the ACORD Corporation, and as issued by the carrier for the insured, shall serve as documentation of insurance. The Certificate of Insurance must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.

Prior to the enactment of §42-1-415, it was long-established and well-settled that a statutory employer bore absolute liability to the injured workers of a subcontractor and a statutory employer and could not shift that liability to the Uninsured Employers' Fund, even if the subcontractor was uninsured. See, generally, Miller v. Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998); S.C. Code Ann. Section 42-1-400, Annotations 1 –6; and Section 42-1-410, Annotations 1 – 3. By enacting Section 42-1-415, the legislature carved out a narrow exception to a statutory employer's absolute liability. This exception creates a new liability on the State, and should be carefully applied. Unisys Corp. v. S.C. Budget and Control

Brd., 346 S.C. 158, 551 S.E.2d 263 (2001). It should be given a strict, narrow application, based on the wrong it attempts to relieve, but should not lead to an absurd result. Miller, supra.

South Carolina Law, in interpreting §42-1-415, has demonstrated that it was not the intent of the Legislature to create a liability for the state without requiring a statutory employer to exercise the minimally-reasonable steps of reading the certificate and reacting accordingly before liability can be transferred to the South Carolina Uninsured Employers' Fund. Interestingly, Kenneth Henson, principal of Henson & Associates, Inc., testified that he did nothing beyond mere receipt of the Certificate to verify that coverage existed for South Carolina (Edifice's APA's p. 69).

For example, in the recent case of Barton v. Higgs, 674 SE 2d 145 - SC: Supreme Court 2009, the upstream employer failed to recognize that the certificate of insurance presented to it lacked a signature from an authorized agent of the insurance company. The Court held "liability may be transferred from the higher tier contractor to defend only after the higher tier contractor has properly documented the subcontractor's claim that it retains workers' compensation insurance. This case further explains that the upstream contractor "could have easily investigated the absence of the signature and determined that the immediate employer did not have a valid policy."

In this case, the Certificate of Insurance shows only out-of-state entities, and Henderson & Associates, Inc. and Auto Owners Insurance Company have failed to show by a preponderance of the evidence that they accepted a Certificate showing coverage in South Carolina. See Hopper v. Terry Hunt Construction, 373 S.C. 475, 646 S.E.2d 162 (S.C. App. 2007); also see Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (S.C. 2009). In fact, as the Commissioner found, there was no coverage for Contreras Panels in South Carolina.

Single Commissioner's Order, p.19 (Findings of Fact 5 & 7). In light of such findings (which have not been appealed), it cannot be argued that a Description of Operations box that reads, "Project: York High School and Technical Center," with nothing further, indicates that the insured has insurance coverage in South Carolina. Nowhere on the certificate appears the name of the state of South Carolina. Clearly, as the Single Commissioner ruled, there was no South Carolina coverage for this employer, and this Certificate makes now showing to the contrary.

Because §42-1-416 allows an Employer to escape liability wherein it otherwise would fall, the statute does place some minimal burdens on the Statutory Employer. "In order to protect the privilege to transfer what would otherwise be the general contractor's responsibility, the statute [§ 42-1-415] requires the general contractor to take minimal steps to properly document that the subcontractor has workers' compensation insurance." Hopper v. Terry Hunt Construction, 680 S.E.2d 1, 4 (2009).

In order to transfer liability, Statutory Employers generally accept a Certificate of Insurance showing coverage that was in place at the time the Certificate was issued. This proof of coverage is acceptable to the Commission, but the commission has promulgated a regulation providing that a Certificate of Insurance 'shall serve as documentation of insurance' and that the Certificate "must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Reg. 67-415 (Supp. 2007) (emphasis added); Barton v. Higgs, 381 S.C. 367, 371, 674, S.E.2d 145, 147 (2009).

In this case there is no evidence that the subject Certificate of Insurance was signed or issued by an authorized representative of the insurance carrier for the insured. In fact, by finding that the insurance producer who signed the Certificate could not bind INSCOP, the Commissioner conclusively found that the Certificate was NOT signed or issued by an

authorized representative of the insurance carrier for the insured, and that the producer was acting outside of the scope of any authority he may have had, if any. However, the Commissioner found there to be no evidence of any authority, which is also a basis for her finding no coverage existed for the direct employer.

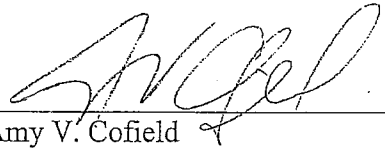
According to Finding of Fact Seven (7), "It appears Contreras Panels was paying Associates Benefits Agency for workers' compensation insurance, but I find there was no policy and no evidence regarding the authority of that agency to bind [INSCOP]." Single Commissioner's Order, p. 19. Accordingly that agency could not have been authorized by that Carrier to issue a Certificate showing that the Carrier insured an entity, Contreras Panels, to whom it never issued a policy.

Furthermore, the insured shown on the policy was Contreras Panels. As found, there was no INSCOP policy for Contreras Panels. Therefore, even if that Carrier authorized the agency to issue Certificates, in general, in this case, INSCOP was not the insurance carrier for the insured, and the requirements of the regulation were not met (INSCOP was never the carrier for Contreras Panels and Contreras Panels was never an "insured").

The right of a statutory employer to avoid liability under the statute, depends upon compliance with the specific terms and conditions imposed for transferring liability. Herein, Petitioner has failed to comply with statutory requirements and is not entitled to transfer liability to the Uninsured Employers' Fund. Cincinnati Ins. Co. v. South Carolina Second Injury Fund, 297 S.C. 372, 377 S.E.2d 130 (Ct. App. 1989)

WHEREFORE, for the foregoing reasons and those that may be set forth in the hearing of this matter, the SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND respectfully requests that the Petition to Transfer Liability be denied.

South Carolina Workers' Compensation
Uninsured Employers' Fund

BY: 

Amy V. Cofield
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072
Ph: (803) 951-0389
Email: amy@cofieldlaw.com

November 12, 2013
Lexington, South Carolina

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Rudy Almazan,

Employee,

vs.

Henderson & Associates, Inc.,

Employer,

and

Auto Owners Insurance Company

Carrier,

Defendants.

WCC File No: 0919909

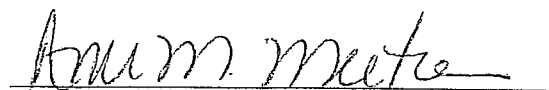
CERTIFICATE OF SERVICE

I, Ami M. Meetze, an employee of Cofield Law Firm, do hereby state that I have on this 12th day of November, 2013, served a copy of the within and foregoing **FUND'S RETURN TO CARRIER'S PETITION TO TRANSFER LIABILITY** upon the following individual(s), by depositing same in the United States Mail, first class, sufficient postage prepaid, with the return address clearly noted, addressed as follows:

SC Workers' Compensation Commission
Attn: Virginia Crocker, Judicial Director
PO Box 1715
Columbia, South Carolina 29202-1715

Trask & Howell
Roy A. Howell, III
PO Box 2167
Mt. Pleasant, SC 29465

Smith & Griffith, LLP
John P. Griffith, Esquire
PO Box 2866
Anderson, South Carolina 29622



Ami M. Meetze, Paralegal
Cofield Law Firm
809 South Lake Drive
Lexington, SC 29072
Telephone: (803) 951-0389

South Carolina Workers' Compensation Commission
1333 Marion Street, Suite 500
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5739



PRE-HEARING BRIEF
WCC FILE NO: 0919909

Rudy Almazan			Henson & Associates, Inc.		
Claimant's Name			Employer's Name		
2029 Dutchman Dr., Apt. G.			3219 Blairsville Highway		
Address			Address		
Rock Hill, SC 29732			Murphy, NC 28906		
City	State	Zip	City	State	Zip
Home Phone			Auto Owners Insurance Company		
Work Phone			Carrier		
Roy A. Howell, III			(843) 881-4228		
Preparer's Name			Phone #		

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

☒ Injury ☐ Illness ☐ Repetitive Trauma

1. Compensation Rate: \$273.47 2. AWW: \$ 410.00 Date of Injury: September 26, 2009
3. Type of injury and body part(s): back
4. Facts in controversy: See attached
5. Legal issues involved: Same as above
6. Unusual aspects:
7. Witnesses (designate if expert*): Wendy Henson & Kenneth Henson via deposition; Affidavits and prior hearing testimony, Gabriel Contreras via prior hearing testimony
8. Exhibits: See attached Notice of Submissions
9. Medical evidence: (Indicate report pursuant to R.67-612; deposition or appearance) See attached Notice of Submissions
10. Name, address, and specialty, if any, of the treating physician: Carolina Neurosurgery and Spine Associates- Dr. Paul Kim, 225 Baldwin Avenue, Charlotte, NC 28204
11. Impairment rating(s); body part(s); physician and date of opinion: Dr. Kim, 10% to back, 10/29/10
12. I am amending my Form 50/51 in the following manner:

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B
☐ b. Mediation is required pursuant to Reg. 67-1802
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse

Questions regarding mediation may be submitted to mediation@wcc.sc.gov

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

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to: John Griffith, Esq., 1102 North Main St., P.O. Box 2866, Anderson, SC 29622 and Amy V. Cofield, Esq., 809 South Lake Drive, Lexington, SC 29072

on the 15th day of April 2014

by ☒ first class postage ☐ certified mail ☐ personal service.

Signature: [Signature]

Email: rhowell@trask-howell.com

Date of hearing: April 24, 2014 @ 11:30 a.m.

Time needed for hearing: 1 hour

File this form and proof of service on the opposing party according to R.67-611 and R.67-212. Do not send medical reports.

* Commissioners reserve the right to admit expert witnesses at hearings.

4. FACTS IN CONTROVERSY: (CONTINUATION)

The only issue for the hearing is Employer/Carrier's Petition to Transfer Liability to the Uninsured Employers' Fund. The Employer/Carrier has clearly met all the requirements to transfer liability to the UEF under §42-1-415.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

BEFORE THE
SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Rudy Almazan,)

W.C.C. FILE NO. 0919909

Claimant,)

-vs-)

Henson & Associates, Inc.,)

NOTICE OF WITNESSES AND
WRITTEN MEDICAL REPORTS
TO BE INTRODUCED AS DIRECT
EVIDENCE

Employer,)

-and-)

Auto Owners Insurance Company,)

Carrier)

Defendants)

TO: South Carolina Workers' Compensation Commission, John Griffith, Esq. and Amy V.
Cofield, Esq., attorneys of record

YOU ARE HEREBY NOTIFIED THAT Roy A. Howell, III, pursuant to the provisions of the South Carolina Workers' Compensation Act, S. C. Code Ann. § 41-1-160, *et seq.* and the South Carolina Administrative Procedures Act, S. C. Code Ann. § 1-23-330, herewith submits the following evidence on behalf of the Defendants, to wit:

EXHIBITS #	DESCRIPTION	DATES	PAGES

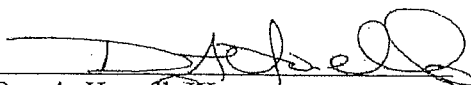
1	Declaration Page – Auto Owners' Policy with Henson & Associates	10/5/08 – 10/5/09	1-3
2	Certificate of Insurance – Henson & Associates, Inc.	2/10/09	4
3	Certificate of Insurance – Contreras Panels	4/23/09	5
4	Certificate of Insurance – Contreras Panels	5/8/09	6

5	Letter to Wayne Ducote, Jr. dated 3/5/10 from Services Resource & Attached Declaration Page for coverage Period 5/8/09 – 5/8/10	3/5/10	7-8
6	Letter from Franklin Guerrero, Esq. to SC Workers' Compensation Commission re: coverage investigation	6/11/10	9-10
7	Transcript of Record	4/25/11	11-14
8	Transcript of Kenneth Henson's Hearing testimony	4/25/11	15-51
9	Transcript of Gabriel Contreras' hearing testimony	4/25/11	52-75
10	Affidavit of Kenneth Henson	2/24/12	76-77
11	Affidavit of Wendy Henson	2/24/12	78-79
12	Decision & Order	8/3/12	80-102
13	Form 19	1/14/13	103
14	Certificate of Liability Insurance	3/18/13	104
15	Certificate of Liability Insurance	7/31/13	105
16	Wendy Henson's deposition transcript	8/9/13	106-115
17	Driver's License – Wendy Henson		116

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

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the Defendants:

Wendy Henson via deposition
Kenneth Henson via deposition



Roy A. Howell, III
Attorney for the Defendants

Date: April 15, 2014

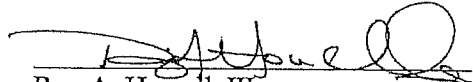
1262/328\nnotice

PROOF OF SERVICE

I hereby certify that on this 15th day of April 2014, I served the foregoing Claimant, Rudy Almazan, with copies of the attached Pre-Hearing Brief, Notice of Witnesses and Written Medical Reports and attached records which are being submitted to be made a part of the record in the case under the Administrative Procedures Act, by having mailed first class postage pre-paid, to the parties of record addressed as follows:

John Griffith, Esq.
1102 North Main St.
P.O. Box 2866
Anderson, SC 29622

Amy V. Cofield, Esq.
809 South Lake Drive
Lexington, SC 29072


Roy A. Howell, III
TRASK & HOWELL, L.L.C.
Attorneys for Defendants
Mt. Pleasant, South Carolina

1262/328\POS-PHB

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

RUDY BARREIRA ALMAZAN,) WCC FILE NO. 0919909
Employee/Respondent,)
)
v.) **MEMORANDUM OF LAW**
) **ON BEHALF OF HENSON & ASSOCIATES**
SERVICE RESOURCE, Employer, and) **AND AUTO OWNERS INSURANCE**
INSURANCE CO. OF THE STATE OF PA)
Carrier,)
and)
EDIFICE, INC., Employer, and)
AMERISURE INSURANCE, Carrier,)
and)
HENSON & ASSOCIATES, Employer, and)
AUTO OWNERS INSURANCE, Carrier,)
and)
CONTRERAS PANELS, Employer,)
and)
S.C. UNINSURED EMPLOYERS FUND.)
)

Henson & Associates and Auto Owners Insurance (“Petitioners”) seek to transfer liability for the above-referenced claim to the Uninsured Employers Fund (“UEF”) and reimbursement of all benefits paid to or on behalf of the Claimant pursuant to S.C. Code Ann. § 42-1-415. This statute provides that when a subcontractor “has represented himself...as having workers’ compensation insurance” to a higher tier contractor, the higher tier contractor “must be relieved of any and all liability under this title.” (emphasis added). In order to transfer liability under the statute, the Petitioners need only show that:

- Documentation of insurance was collected at the time the subcontractor “was engaged to perform work;”
- Documentation of insurance was “turned over to the Commission” at the time a claim is filed by the employee;

- Documentation of insurance was on a “standard form acceptable to the commission;” S.C. Code Ann. § 42-1-415.

Consistent with this statute, the Commission promulgated S.C. Code Reg. 67-415 to specify that a Certificate of Insurance “shall serve as documentation of insurance” and that the Certificate “must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.” S.C. Code Reg. 67-415 (Supp.2007).¹ Of course, the Regulation should not be interpreted to alter or add to the simple requirements of § 42-1-415, because the Commission had no authority to do so. Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995); Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496, 499 (1943); *see also* Society of Prof’l Journalists v. Sexton, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (holding that “[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute.”). Therefore, Regulation 67-415 does not and cannot do more than define what form qualifies as a “standard form acceptable to the commission.”

Because the Petitioners collected a Certificate of Insurance at the time the subcontractor, Contreras Panels, was engaged to perform work², because the Certificate was signed and dated,

¹ Note that S.C. Code Reg. 67-415 was amended after the accident in this case; therefore, the current version regulation is not applicable in the present case.

² The job on which the Claimant was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22) Prior beginning work, Contreras was required to provide a Certificate of Insurance to Henson and Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26) Contreras Paneling provided Henson with a Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38) The Certificate of Insurance dated April 23, 2009 was provided before the work began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13) Prior to the expiration of the first Certificate of Insurance, a second certificate was obtained and dated May 8, 2009. (H.T. p. 102, l. 21; APA #8, p. 88) The May 8, 2009 Certificate of

and because the Certificate was turned over to the Commission prior to the adjudication of the employee's claim, the Petitioners respectfully contend that they have met all of the statutory requirements of S.C. Code Ann. § 42-1-415 and are entitled to transfer liability to, and reimbursement from, the UEF. Unfortunately, the UEF has refused to accept liability, arguing that the Petitioners are required to meet additional requirements that are not contained in the statute.

The UEF suggests that the Petitioner was required to conduct an investigation into the identity of the person who signed the Certificate of Insurance as the "authorized representative" and whether he was "acting outside of the scope of any authority he may have had." However, S.C. Code Ann. § 42-1-415 does not require the Petitioner to investigate the authenticity of a fully-completed Certificate of Insurance. In this case, each and every section of the Certificate of Insurance was completed: the name of the producer, the name of the insured, the name of the insurance company, the date, the policy number, the policy dates, the policy limits, the description of operations, the name of the certificate holder, and an authorized representative's signature. The fact that the Certificate of Insurance was fully completed clearly distinguishes the present case from that of Barton v. Higgs, 674 S.E.2d 145 (2009), which is cited by the UEF. In Barton, the Certificate of Insurance had no signature whatsoever and the Court held that the upstream contractor could not reasonably rely on an unsigned Certificate of Insurance without

Insurance lists the Insurance Company of Pennsylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88) Kenneth Henson, President of Henson & Associates, believed that Contreras Paneling had workers' compensation coverage in South Carolina, as the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l.15) Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6).

investigating further. However, Barton does not support the UEF's contention that the Petitioners were required to investigate the authenticity of a fully completed Certificate, as such an interpretation would have been beyond the scope of the Court's authority when § 42-1-415 says nothing about investigating the authority of a subcontractor's representations or the authenticity of its documentation. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.").

If the Legislature had intended to require the Certificate holder to do more than "collect documentation," the Legislature would have explicitly included such a requirement in the statute. Therefore, because the Legislature mandated no such investigation requirement, it is not even within the authority of the Courts or the Commission – by regulation or otherwise – to impose additional requirements or to amend this clear and unambiguous statute. See Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (holding that "[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.") (internal citations omitted); see also City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language."); Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language).

The Petitioners respectfully contend that S.C. Code Ann. § 42-1-415 only requires proof

that the subcontractor (Contreras) *represented* itself as having workers' compensation insurance, ~~not that it actually~~ has such coverage. Similarly, nothing in § 42-1-415 requires that the producer or "authorized representative" have *actual* authority. Instead, the Petitioners were entitled to rely on the reasonable *representation* of authority. Nothing in § 42-1-415 or Reg. 67-415 would require the Petitioner to call the Insurance Company of the State of Pennsylvania to determine whether the Certificate's signatory had real authority to bind coverage or whether the coverage was valid, because the only relevant issue is the *representation* coverage. Therefore, to the extent that the Commission previously determined that the coverage represented on the Certificate of Insurance was not actually valid or that the signatory was not actually authorized, this finding is simply not germane to the issue of whether the Petitioners have satisfied the requirements of § 42-1-415.

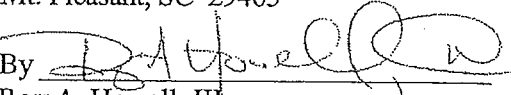
Therefore, based upon the greater weight of the evidence and the plain and unambiguous language of S.C. Code Ann. § 42-1-415, the Petitioners respectfully contend that they are entitled to transfer liability to, and are further entitled to reimbursement from, the Uninsured Employers Fund.

Respectfully submitted,

TRASK & HOWELL, L.L.C.

P. O. Box 2167

Mt. Pleasant, SC 29465

By 
Roy A. Howell, III

Kirsten L. Barr

Attorney for the Petitioners, Henson & Associates
and Auto Owners Insurance Company

April 24, 2014
Mt. Pleasant, South Carolina

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 0919909
Carrier File # 36-2229-10
Carrier Code #
Employer FEIN

Rudy Almazan

Claimant's Name

SSN

2029 Dutchman Dr., Apt. G. Rock Hill, SC 29732

Address

City

State

Zip

Home Phone

Work Phone

Henson & Associates, Inc.

Employer's Name

3219 Blairsville Highway Murphy, NC 28906

Address

City

State

Zip

Auto Owners Insurance Company

Insurance Carrier

Roy A. Howell, III

Preparer's Name

(843) 881-4228

Phone #

Request for Commission Review by ☐ claimant ☒ employer (check one)Date of injury: September 26, 2009

The undersigned makes application for review of the findings of the Commissioner in the above captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages, if necessary).

See attached.

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

I certify that I have served this document pursuant to R.67-211 by delivering a copy to S.C. Workers' Compensation
Name
Commission, Judicial Department, P.O. Box 1715, Columbia, SC 29202-1715 and John Griffith, Esq., 1102 North Main St., P.O. Box
2866, Anderson, SC 29622 and Amy V. Cofield, Esq., 8095 South Lake Drive, Lexington, SC 29072
Address

on the 18th day of July, 2014 by ☒ first class mail; ☐ personal service; ☐ certified mail.

Roy A. Howell, III
Preparer's SignatureAttorney for Defendanta
TitleJuly 18, 2014
DateCheck this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701 B. Otherwise, file the original and 4 copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.

Rudy Almazan v. Henson & Associates, Inc.
W.C.C. File No: 0919909
Carrier File No: 36-2229-10
Date of Accident: September 26, 2009

Attachment to Form 30

1. The single Commissioner erred as a matter of fact and as matter of law in finding that based on the case of Hopper v. Terry Hunt Construction, the employer should have been on notice to investigate to confirm whether or not there was coverage in South Carolina, the error being that Section 42-1-415 does not require the employer to investigate further once a certificate of insurance on the proper form has been presented by a lower tier sub-contractor;
2. The single Commissioner erred as a matter of fact and as matter of law in finding Fact No. 4 and finding that the carrier has failed to meet the requirements of Section 42-1-415 and related caselaw to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim, the error being that the carrier did meet its burden of proving all of the requirements of Section 42-1-415;
3. The single Commissioner erred as a matter of fact and as a matter of law in ruling that pursuant to Section 42-1-415, and Regulation 67-415 and relative caselaw, the Petitioner was denied its Motion to Transfer Liability to the SCUEF;
4. The single Commissioner erred as a matter of fact and as a matter of law in ruling that the Employer, Henson & Associates, through its carrier, Auto Owners Insurance, is denied its Petition to transfer liability to the SCUEF and therefore, remains liable for the claim, the error being that the carrier met all of the requirements to transfer liability under Section 42-1-415 and Regulation 67-415.
5. The single Commissioner erred in denying the carrier's Petition to Transfer Liability to the UEF, the error being that the Commissioner found that undisputed evidence in the record shows that the employer and therefore the carrier met all the requirements under the plain language of Section 42-1-415 and Regulation 67-415 and therefore the Petition to transfer liability should have been granted as a matter of law.

RUDY BARREIRA ALMAZAN,
Employee/Respondent,

y.

SERVICE RESOURCE, Employer, and)
INSURANCE CO. OF THE STATE OF PA)
Carrier,)

and

EDIFICE, INC., Employer, and
AMERISURE INSURANCE, Carrier,
and

HENSON & ASSOCIATES, Employer, and)
 AUTO OWNERS INSURANCE, Carrier,)
 and)

CONTRERAS PANELS, Employer,
and
S.C. UNINSURED EMPLOYERS FUND.

This is an appeal from Decision and Order of Commissioner Andrea Roche dated July 8, 2014. Commissioner Roche denied the Appellants' Petition to Transfer Liability to the Uninsured Employers Fund. Commissioner Roche found that Henson & Associates was required to investigate whether the workers compensation policy listed on the Certificate of Insurance truly existed and provided coverage for the lower tier subcontractor in South Carolina. The Appellants, Henson & Associates and Auto Owners Insurance, respectfully submit that Commissioner Roche erred in denying the Petition to Transfer Liability. The undisputed evidence in the record shows that the Appellants met all of the requirements to transfer liability to the Uninsured Fund pursuant to §42-1-415.

ARGUMENT

Henson & Associates and Auto Owners Insurance ("Appellants") seek to transfer liability for the above-referenced claim to the Uninsured Employers Fund ("UEF") and reimbursement of all benefits paid to or on behalf of the Claimant pursuant to S.C. Code Ann. § 42-1-415. This statute provides that when a subcontractor "has represented himself...as having workers' compensation insurance" to a higher tier contractor, the higher tier contractor "must be relieved of any and all liability under this title." (emphasis added). In order to transfer liability under the statute, the Appellants need only show that:

- Documentation of insurance was collected at the time the subcontractor "was engaged to perform work;"
 - Documentation of insurance was "turned over to the Commission" at the time a claim is filed by the employee;
 - Documentation of insurance was on a "standard form acceptable to the commission;"
- S.C. Code Ann. § 42-1-415.

Consistent with this statute, the Commission promulgated S.C. Code Reg. 67-415 to specify that a Certificate of Insurance "shall serve as documentation of insurance" and that the Certificate "must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured." S.C. Code Reg. 67-415 (Supp.2007).¹ Of course, the Regulation should not be interpreted to alter or add to the simple requirements of § 42-1-415, because the Commission had no authority to do so. Goodman v. City of Columbia, 318 S.C. 488, 490, 458 S.E.2d 531, 532 (1995); Banks v. Batesburg Hauling Co., 202 S.C. 273, 24 S.E.2d 496, 499 (1943);

¹ Note that S.C. Code Reg. 67-415 was amended after the accident in this case; therefore, the current version regulation is not applicable in the present case.

see also *Society of Prof'l Journalists v. Sexton*, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) (holding that "[a]lthough a regulation has the force of law, it must fall when it alters or adds to a statute."). Therefore, Regulation 67-415 does not and cannot do more than define what form qualifies as a "standard form acceptable to the commission."

Because the Appellants collected a Certificate of Insurance at the time the subcontractor, Contreras Panels, was engaged to perform work², because the Certificate was signed and dated, and because the Certificate was turned over to the Commission prior to the adjudication of the employee's claim, the Appellants respectfully contend that they have met all of the statutory requirements of S.C. Code Ann. § 42-1-415 and are entitled to transfer liability to, and reimbursement from, the UEF. Unfortunately, the UEF has refused to accept liability, arguing that the Appellants are required to meet additional requirements that are not contained in the statute.

The UEF suggests that the Appellants were required to conduct an investigation into the identity of the person who signed the Certificate of Insurance as the "authorized representative" and whether he was "acting outside of the scope of any authority he may have had." The UEF

² The job on which the Claimant was injured began in April 2009. (Smith APA #2, p. 35; H.T. p. 100, l. 22) Prior beginning work, Contreras was required to provide a Certificate of Insurance to Henson and Associates. (H.T. p. 100, l. 22; Killen APA #2, p. 20; Killen APA #2, p. 26) Contreras Paneling provided Henson with a Certificate of Insurance dated April 23, 2009. (Smith APA #3, p. 38) The Certificate of Insurance dated April 23, 2009 was provided before the work began and was issued directly by Associates Benefits to Henson. (H.T. p. 101, l. 13) Prior to the expiration of the first Certificate of Insurance, a second certificate was obtained and dated May 8, 2009. (H.T. p. 102, l. 21; APA #8, p. 88) The May 8, 2009 Certificate of Insurance lists the Insurance Company of Pennsylvania as the workers' compensation carrier. (H.T. p. 102, l. 21; APA #8, p. 88) Kenneth Henson, President of Henson & Associates, believed that Contreras Paneling had workers' compensation coverage in South Carolina, as the Certificate specifies the York High School project in the description of operations. (H.T. p. 103, l.15) Kenneth Henson also testified that he obtained a separate Certificate of Insurance for each job. (H.T. p. 99, l. 6).

also argues that Henson had an obligation to investigate whether the Certificate on Insurance was for a policy that provided coverage in South Carolina. Commissioner Roche specifically rejected the UEF's argument that Henson was required to investigate the authenticity of the signature on the Certificate of Insurance. Accordingly, the only issue is whether the plain language of Section 42-1-415 required the Henson's to do more to meet the requirements to transfer liability to the UEF.

S.C. Code Ann. § 42-1-415 does not require the Appellants to investigate the authenticity of a fully-completed Certificate of Insurance or to investigate whether the policy in question provides South Carolina coverage. In this case, each and every section of the Certificate of Insurance was completed: the name of the producer, the name of the insured, the name of the insurance company, the date, the policy number, the policy dates, the policy limits, the description of operations, the name of the certificate holder, and an authorized representative's signature. The fact that the Certificate of Insurance was fully completed clearly distinguishes the present case from that of Barton v. Higgs, 674 S.E.2d 145 (2009), which is cited by the UEF. In Barton, the Certificate of Insurance had no signature whatsoever and the Court held that the upstream contractor could not reasonably rely on an unsigned Certificate of Insurance without investigating further. However, Barton does not support the UEF's contention that the Appellants were required to investigate the authenticity of a fully completed Certificate or whether the policy provided coverage in South Carolina, as such an interpretation would have been beyond the scope of the Court's authority when § 42-1-415 says nothing about investigating the specific provisions of the workers compensation policy including whether the policy provided coverage in South Carolina. See City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997) (stating that "[w]here the language of the statute is clear and explicit, the court

cannot rewrite the statute and inject matters into it which are not in the legislature's language.”).

If the Legislature had intended to require the Certificate holder to do more than “collect documentation,” the Legislature would have explicitly included such a requirement in the statute. Therefore, because the Legislature mandated no such investigation requirement, it is not even within the authority of the Courts or the Commission – by regulation or otherwise – to impose additional requirements or to amend this clear and unambiguous statute. See Harris v. Anderson County Sheriff's Office, 381 S.C. 357, 362, 673 S.E.2d 423, 425 (2009) (holding that “[t]he Court will give words their plain and ordinary meaning, and will not resort to a subtle or forced construction that would limit or expand the statute's operation.”) (internal citations omitted); see also City of Camden v. Brassell, 326 S.C. 556, 561, 486 S.E.2d 492, 495 (Ct.App.1997)(stating that “[w]here the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it which are not in the legislature's language.”); Timmons v. S.C. Tricentennial Comm'n, 254 S.C. 378, 402, 175 S.E.2d 805, 817 (1970) (observing that where the language of the statute is clear and explicit, the court cannot rewrite the statute and inject matters into it that are not in the legislature's language).

The single commissioner also cited Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 2d 1, (2009) as authority for her finding that Henson & Associates were required to do more to satisfy the requirement of § 42-1-415. The Commissioner's reliance on Hopper is misplaced. In Hopper, the higher tier contractor, Kajima, hired Terry Hunt Construction (“Hunt”) as a subcontractor to install pipe at a jobsite in Greenwood, South Carolina. Hunt had worked for Kajima on a previous project and at that time presented an Acord Form 25-S Certificate of Insurance indicating that Hunt had a workers' compensation policy See Hopper at p. 2). The Certificate showed coverage for the period from May 2, 2002 through December 31,

2002. The Certificate included all of the appropriate information in the "Description of Operations/Locations" section including the project number, subcontract number, and the claim deductible. Id. at p. 2. Before beginning work on the Greenwood project, Hunt presented the Certificate to Kajima showing coverage for January 1, 2003 through December 31, 2003, but unlike the previous Certificate the "Description of Operations/Locations" was blank. The Claimant's accident occurred on February 19, 2004, and Hunt did not have workers' compensation insurance. Kajima and its carrier, Zurich, were required to pay the Claimant's award of workers' compensation benefits and petitioned the Commission under § 42-1-415 to transfer liability to the UEF.

The single commissioner ruled that Kajima and Zurich could not shift liability because the Certificate of Insurance did not indicate that Hunt had coverage in South Carolina. The Full Commission adopted the single commission's order in its entirety. The Circuit Court reviewed and found that there was no evidence that the Certificate of Insurance showed that there was coverage only in Georgia and no coverage in South Carolina. Id. at p. 3. The Court of Appeals held that there was substantial evidence to support the Commission's finding that Kajima did not comply with the requirements of § 42-1-415. The Supreme Court granted Certiorari. Id.

In affirming the Commission's decision, the Supreme Court ruled as follows:

"We find substantial evidence in the record to support the Commission's finding that Kajima failed to comply with the requirements of § 42-1-415(A). The Description of Operations box on the Certificate of Insurance was left blank and unlike the previous Certificate of Insurance that Kajima accepted, this Certificate contained no information regarding the coverage that the policy provided, the deductible amount, or the project to which the policy applied. In failing to fill out the entire Acord Form, Hunt essentially submitted an incomplete document purporting to show that it had a workers' compensation policy, which Kajima accepted. In our view, accepting an incomplete Acord Form does not constitute proper documentation." Id. at p 3.

The instant case is clearly distinguishable from Hopper. First, Hopper was a substantial evidence case. The Court found there was substantial evidence to support the commission's findings of fact. In addition, the facts of the current case are distinguishable from Hopper. Henson & Associates accepted a fully completed Certificate of Insurance. Every section of the Certificate of Insurance was completed and provided Henson & Associates with documentation purportedly showing that Gabriel Contreras had workers' compensation insurance. The Court in Hopper ruled that an "incomplete Acord Form does not constitute proper documentation." Here the Acord Form was fully completed and, therefore, the single commissioner's reliance on Hopper was misplaced.

The Uninsured Employers' Fund argues that the Acord Form had to contain information specifically showing that the policy provided coverage in South Carolina. This argument is also without merit. There was no statute or regulation requiring that the Certificate of Insurance state that the policy provided coverage in South Carolina. Regulation 67-415 was amended on February 26, 2010 to provide:

"For an out of state employer, the Acord Form 25-S is acceptable, provided the authorized representative of the insurance carrier for the insured affirms the following in an accompanying statement: South Carolina is a named state in section 3A or 3C of the declaration page of the insured's policy". See Reg. 67-415(A)(2).

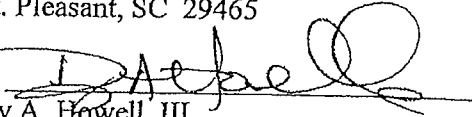
This clearly shows that no such information was required until February 26, 2010. There was no reason for Henson & Associates to request such information before accepting the Acord Form.

The Appellants respectfully contend that S.C. Code Ann. § 42-1-415 only requires proof that the subcontractor (Contreras) *represented* itself as having workers' compensation insurance, not that it *actually* has such coverage. Similarly, nothing in § 42-1-415 requires that the

producer or "authorized representative" have *actual* authority. Instead, the Appellants were entitled to rely on the reasonable *representation* of authority. The facts of the case show that the Certificate of Insurance provided to Henson & Associates was fraudulent. In other words, this was not a situation in which there was coverage in place and the policy lapsed prior to the accident. In the instant case, it appears the agency in Texas was issuing Certificates showing coverage when in fact there was no policy. However, the Certificate of Insurance was completely filled out with policy numbers, dates of coverage, the location of the job in York County, the amount of coverage, the name of the carrier, and the signature of an authorized representative of the carrier. The Act did not require Henson investigate whether there really was a policy and whether the policy provided coverage in South Carolina. The Act only required Henson to collect the documentation on the required forms as set forth in § 42-1-415(A) and Reg. 67-415(A). Henson & Associates satisfied this requirement.

Therefore, based upon the undisputed evidence and the plain and unambiguous language of S.C. Code Ann. § 42-1-415, the Appellants respectfully contend that they are entitled to transfer liability to, and are further entitled to reimbursement from, the Uninsured Employers Fund and ask that single commissioner's Decision & Order be reversed.

Respectfully submitted,
TRASK & HOWELL, L.L.C.
P. O. Box 2167
Mt. Pleasant, SC 29465

By 
Roy A. Howell, III
Kirsten L. Barr
Attorneys for the Appellants, Henson &
Associates and Auto Owners Insurance
Company

September 22, 2014
Mt. Pleasant, South Carolina

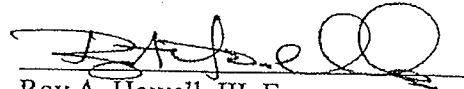
CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September 2014, I have caused a true and correct copy of the Brief to be mailed postage prepaid to the parties of record addressed as follows:

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Roy A. Howell, III, Esq.

1262/328\Full Commission Brief

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC File No: 0919909

Rudy Almazan,)
)
Claimant,)
)
vs.)
)
Gabriel Contreras d/b/a Contreras Panels)
And Henson & Associates, Inc.)
)
Employers,)
)
and)
)
Auto Owners Insurance Co.,)
)
Carrier,)
)
and)
)
S.C. Uninsured Employers' Fund,)
)
Defendants.)
_____)

RESPONDENT'S BRIEF ON BEHALF
OF THE S.C. UNINSURED
EMPLOYERS' FUND

SCWCC
OCT 29 2014
JUDICIAL

STATEMENT OF THE CASE

This matter is before the South Carolina Workers' Compensation Commission pursuant to a Petition filed January 28, 2013 whereby the Employer/Carrier petitioned to transfer liability of this matter to the SCUEF pursuant to SC Code Section 42-1-415.

It was the Appellants position that the Employer/Carrier had met all the requirements of Section 42-1-415. It was argued that a Certificate of Insurance was properly collected from Contreras Paneling at the time Contreras Paneling was engaged to perform work at the worksite where the Claimant's accident occurred. A certificate was put into evidence and identified as a Form 25 Certificate of Insurance.

Appellants argued that the form was a standard form accepted and that it was completed properly. It was further asserted that the signature of Ray Villalovas as the authorized agent for the insurance company was satisfactory for meeting statutory requirements because the signature on the certificate of insurance rose no red flags regarding the authority of the person signing the certificate. It was argued to the undersigned Commissioner that this certificate differed from the certificate in the case of the Hopper case, (Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009) because Hopper had an incomplete certificate as it left a blank where there should have been a description of operations.

It was the position of the SCUEF that the Petitioner had not met the requirement of Section 42-1-4-5 and Regulation 67-415. The primary argument was based on the findings of the Hopper case. The facts there, it was argued, were similar to the case at bar as a certificate of insurance was presented to the employer that lacked information regarding any coverage in South Carolina. The certificate only had an out of state producer, holder, and insured. The employer should have been on notice to verify that there was or was not coverage in SC.

Commissioner Andrea Roche denied the Petition of Auto Owners Insurance Company to transfer liability to the SC Uninsured Employers' Fund finding that Auto Owners Insurance Company remained liable for this claim. This Order was based on the following findings of fact:

1. The certificate of insurance at issue does not indicate coverage in South Carolina anywhere on its face.
2. The producer, insured and certificate holder were all shown on the certificate to be out of state.
3. Based on the case of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E. 1, 2009) the employer should have been on notice to investigate to Confirm whether or not there

was coverage in South Carolina.

4. The carrier has failed to meet the requirements of Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Auto Owners Insurance, shall remain liable for this claim.

5. The undersigned does not agree with the argument made by the SCUEF that the request to transfer liability should be denied based on the lack of an authorized signature. The certificate was signed, and the employer had no further duty to investigate that signature.

ARGUMENT

To warrant the granting of a Petition to Transfer Liability, the Carrier must meet all statutory requirements. §42-1-415 provides:

(A) Notwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title except as specifically provided in this section. In the event that employer is uninsured, regardless of the number of employees that employer has, the higher tier subcontractor, contractor, project owner, or his insurance carrier shall in the first instance pay all benefits due under this title. The higher tier subcontractor, contractor, project owner, or his insurance carrier may petition the commission to transfer responsibility for continuing compensation and benefits to the Uninsured Employers' Fund...

(B) To qualify for reimbursement under this section, the higher tier subcontractor, contractor, or project owner must collect documentation of insurance as provided in subsection (A) on a standard form acceptable to the commission. The documentation must be collected at the time the contractor or subcontractor is engaged to perform work and must be turned over to the commission at the time a claim is filed by the injured employee.

(C) The knowing and willful falsifying of information contained in standard forms submitted pursuant to this section must be considered fraud as provided by law. Knowing and willful failure to notify, by certified mail, the higher tier subcontractor, contractor, or project owner who originally was provided documentation of workers' compensation coverage of a lapse in coverage within five days after the lapse is considered fraud and subject the contractor or subcontractor who represented himself as having workers' compensation insurance to the penalties for fraud by law. Additionally, a contractor or subcontractor who knowingly and willfully falsely documents workers' compensation insurance or knowing and willfully fails to provide notice of lapse in workers' compensation coverage as specified in this section, or any contractor or subcontractor who refuses to reimburse the Uninsured Employers' Fund for a claim paid on its behalf shall suffer the revocation of his license or certificate as a contractor or residential home builder under applicable provisions of Title 40; provided, however, notwithstanding any other provision of law, the license or certificate of a contractor or residential home builder shall be revoked for a period of two years when the contractor or subcontractor knowingly and willfully falsely documents workers' compensation coverage as specified in this section. Upon expiration of the two-year revocation period, or when the license or certificate of any contractor or subcontractor is revoked for refusal to reimburse the Uninsured Employers' Fund for a claim paid on its behalf, the licensing entity of the contractor or subcontractor may reissue the license or certificate of the contractor or residential home builder in the same manner as any other revoked license.

The Commission, by its own Regulation (R. 67-415 (A)) established that:

(A) For the purposes of §42-1-415, the ACORD Form 25-S, Certificate of Insurance, as published by the ACORD Corporation, and as issued by the carrier for the insured, shall serve as documentation of insurance. The Certificate of Insurance must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.

Before the enactment of Section 42-1-415, it was long-established and well-settled that a statutory employer bore absolute liability to the injured workers of a subcontractor and could not shift that liability to the Uninsured Employers' fund, even if the subcontractor was uninsured.

See, generally, Miller v. Robinson Trucking, 333 S.C. 576, 510 S.E.2d 431 (Ct. App. 1998); S.C. Code Ann. Section 42-1-400, Annotations 1 –6; and Section 42-1-410, Annotations 1 – 3. By enacting Section 42-1-415, the legislature carved out a narrow exception to a statutory employer's absolute liability.

In order to transfer liability, Statutory Employers generally accept a Certificate of Insurance showing coverage that was in place at the time the Certificate was issued. This proof of coverage is acceptable to the Commission. However, the Commission "has promulgated a regulation providing that a Certificate of Insurance 'shall serve as documentation of insurance' but the Certificate 'must be dated, signed, and issued by an authorized representative of the insurance carrier for the insured.' S.C. Code Reg. 67-415 (Supp. 2007) (emphasis added); Barton v. Higgs, 381 S.C. 367, 371, 674 S.E.2d 145, 147 (2009).

Appellants argue that the statute, in its' plain terms has been met, so therefore, liability should be transferred. However, Appellant has refused to acknowledge that this statute has been interpreted and clarified in recent case law.

Recent case law has defined the necessary steps to be taken by the upstream employer before liability can be transferred to the South Carolina Uninsured Employers' Fund. For example, in the recent case of Barton v. Higgs, 674 SE 2d 145 - SC: Supreme Court 2009, the upstream employer failed to recognize that the certificate of insurance presented to it lacked a signature from an authorized agent of the insurance company. The Court held "liability may be transferred from the higher tier contractor to defend only after the higher tier contractor has properly documented the subcontractor's claim that it retains workers' compensation insurance. This statutory scheme provides an ultimate safety for general contractors against the subcontractors act of fraud." This case further explains that the upstream contractor "could have

easily investigated the absence of the signature and determined that the immediate employer did not have a valid policy. **In our view, public funds should not be expended where Respondent could have discovered the mistake by acting in accordance with the Regulation.”**

“In order to protect the privilege to transfer what would otherwise be the general contractor’s responsibility, the statute (Section 42-1-415) requires the general contractor to **take minimal steps to properly document that the subcontractor has workers’ compensation insurance.**” Hopper v. Terry Hunt Construction, 680 S.E.2d 1, 4 (2009). In the Hopper case, there was nothing on the certificate to indicate coverage in South Carolina. The Producer, the Insured, and the Certificate Holder were all out of state. Even a cursory review of the certificate showed nothing to indicate coverage in South Carolina. The same is true in this case.

Kenneth Henson, principal of Henson & Associates, testified that he did nothing beyond mere receipt of the Certificate to verify that coverage existed for South Carolina (Edifice’s APA’s p. 69).

The Appellant’s arguments that the fact that because every blank had been filled in on the Certificate, that alone was sufficient to have met the requirements necessary to transfer liability. This reasoning defies common sense. Suppose, for example, the “Producer” was Mickey Mouse in Orlando, Florida, and the Certificate Holder was Santa Claus in the North Pole? IF the Contractor had taken the minimal step of reading the Certificate, he would have been on notice of a problem.

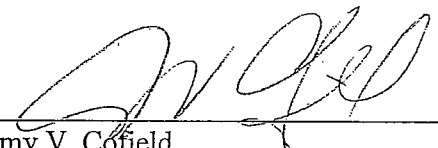
Just as presented in this matter, a simple review of the documents shown, just as in the Hopper case, that every party is located outside of South Carolina and nothing on the Certificate indicates coverage in South Carolina. Shouldn’t this lack of information be sufficient to put an

employer on notice that he should take further action to simply verify the existence of coverage?
As set forth in Hopper, "the Statute §42-1-415 requires the general contractor to take minimal steps to properly document that the subcontractor has Workers' Compensation Insurance."

WHEREFORE, for the foregoing reasons and those that may be set forth in the hearing of this matter, the SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED EMPLOYERS' FUND respectfully requests that the Order of the Single Commission be Affirmed.

COFIELD LAW FIRM

BY:



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October 27, 2014
Lexington, South Carolina

STATE OF SOUTH CAROLINA
BEFORE THE WORKERS' COMPENSATION COMMISSION
W.C.C. FILE NO.0919909

Rudy Almazan,
Employee

vs.

Gabriel Contreras d/b/a Contreras Panels,
and Henson & Associates, Inc., Services
Resource,

Employers

and

Auto Owners Insurance Co.,
Carriers,

and

S.C. Uninsured Employers' Fund,
Defendants

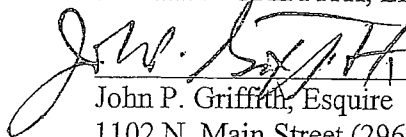
**RESPONDENT'S BRIEF ON BEHALF
OF THE CLAIMANT**

The above-entitled action is presently pending before the South Carolina Workers' Compensation Commission.

ARGUMENT

The Respondent Claimant hereby incorporates and merges herein by reference the Respondent's Brief of the S.C. Uninsured Employers' Fund. Further, Claimant requests that the Order of the Single Commissioner be affirmed.

Respectfully Submitted,
SMITH & GRIFFITH, LLP



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Anderson, South Carolina
November 4, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Gene McCaskill
Commissioner Melody L. James
Commissioner Aisha Taylor

RECEIVED
JUL 17 2015
SC Court of Appeals

SCWCC File No. 0919909

Rudy Barreira Almazan, ... Claimant

v.

Henson & Associates, Employer; and
Auto Owners Insurance Company, Carrier; and
South Carolina Uninsured Employers' Fund, ... Defendants

of whom Henson & Associates, Employer and
Auto Owners Insurance Company, Carrier
is the Respondent

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

NOTICE OF APPEAL

South Carolina Uninsured Employers' Fund appeals the Decision and Order of Commissioner Gene McCaskill, dated June 17, 2015. Appellant received written notice of entry of this order on June 17, 2015.

Attorney's Signature on Following Page

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PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

Commissioner Gene McCaskill
Commissioner Melody L. James
Commissioner Aisha Taylor

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JUL 17 2015

SC Court of Appeals

SCWCC File No. 0919909

Rudy Barreira Almazan, ... Claimant

v.

Henson & Associates, Employer; and
Auto Owners Insurance Company, Carrier; and
South Carolina Uninsured Employers' Fund, ... Defendants

of whom Henson & Associates, Employer and
Auto Owners Insurance Company, Carrier
is the Respondent

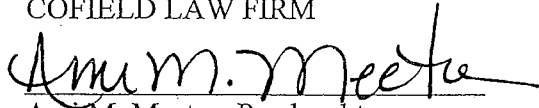
of whom the South Carolina Uninsured Employers'
Fund is the Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this 16th day of July, 2015, addressed to the following: South Carolina Workers' Compensation Commission, Attn: Amy Bracy, Judicial Director, Post Office Box 1715, Columbia, South Carolina 29202-1715, Smith & Griffith, LLP, John P. Griffith, Esquire, PO Box 2866, Anderson, South Carolina 29622, Trask & Howell, LLC, Roy A. Howell, III, Esq., PO Box 2167, Mt. Pleasant, South Carolina 29465.

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July 17, 2015

Lexington, South Carolina

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NUMBER: 0919909

RUDY B. ALMAZAN,
Employee/Claimant,

vs.

SERVICES RESOURCE,
Employer,
and
INSURANCE COMPANY OF THE STATE OF PA.,
Insurer,

DEPOSITION OF: KENNETH HENSON
DATE: July 26, 2010
TIME: 11:10 a.m.
LOCATION: WILSON JONES CARTER & BAXLEY
872 S. Pleasantburg Drive
Greenville, SC
TAKEN BY: Counsel for Claimant Almazan
REPORTED BY: KENNETH MCCLURE,
Registered Merit Reporter

A. WILLIAM ROBERTS, JR. & ASSOCIATES

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14

15

16

17

18

19

20

21

22

23

24

25

26

27

1 for identification.)

2 (Deposition Exhibit 5, consisting of two
3 pages, first page headed "Acord, Certificate of
4 Liability Insurance, was marked for identification.)

5 (Deposition Exhibit 6, AIA Document
6 A401-1997, Standard Form of Agreement between
7 Contractor and Subcontractor, Subcontract No.
8 SC2823-07-1012-S-25, was marked for identification.)

9 KENNETH HENSON,

10 Being first duly sworn, testified as follows:

11 EXAMINATION

12 BY MR. GRIFFITH:

13 Q. Mr. Henson, my name is John Griffin. I'm
14 an attorney for the claimant in this workers'
15 compensation case. The claimant is Rudy B. Almazan.

16 My purpose today is to ask you some
17 questions about what happened to him, about his
18 accident, and to get straight some of the issues
19 concerning who the employers are and what the chain
20 of subcontractors, contractors and insurance is.

21 A. Uh-huh.

22 Q. You need to say yes or no.

23 A. Yes.

24 Q. He is taking this down, and it is much
25 clearer to answer audibly.

1 A. Uh-huh.

2 Q. Don't say "uh-huh" if you can help it. I
3 am not getting on to you, it is just much easier to
4 interpret what is "yes" and what is "no" if you
5 answer audibly, say "yes" and "no," and then
6 whatever explanation you need.

7 Do you understand?

8 A. Yes.

9 Q. That is for the record. It is not some
10 personal issue with me. I will try to help you if
11 you do it the other way, so we know whether you mean
12 yes or no.

13 Sir, if you have any questions about my
14 questions, the Rules of Civil Procedure instruct me
15 to tell you to ask me those questions. For
16 instance, if you don't understand what I'm asking or
17 what issue I'm trying to cover, just tell me that
18 and I'll rephrase it until we reach an
19 understanding, so that you understand what I'm
20 asking and I understand what you are answering.

21 Okay, sir?

22 A. Yes.

23 Q. First, a little background about you. What
24 is your age, Mr. Henson?

25 A. Sixty-two.

1 Q. You are in the construction business; is
2 that correct?

3 A. That's correct.

4 Q. How long have you been doing that?

5 A. Well, I've been doing it since I was about
6 16, and we have been in business for ourselves since
7 1967.

8 Q. When you say "business for yourselves," is
9 that Henson & Associates?

10 A. Yes.

11 Q. Are you a sole proprietorship or a
12 corporation or --

13 A. It's a corporation.

14 Q. Is it an LLC?

15 A. No. It's a C corp.

16 Q. Is it incorporated in the State of North
17 Carolina?

18 A. Yes.

19 Q. What is the principal place business?

20 MR. DWORJANYN: Off the record.

21 (There was a discussion off the record.)

22 A. 3219 Blairsville Highway, Murphy, North
23 Carolina 28906..

24 Q. Now, Henson & Associates is a construction
25 company; is that correct?

1 A. That's correct.

2 Q. What kind of construction work does
3 Henson & Associates do?

4 A. We're a subcontractor for metal walls and
5 roofs.

6 Q. And does that mean that, normally, there
7 would be a large project wherein you are hired as a
8 sub to handle the roofing and wall panel work?

9 A. That's correct.

10 Q. Do you have direct employees who do that
11 type of work for your company?

12 A. We have some part-time employees anymore.
13 We used to have a lot of employees, about 60. But
14 we started subcontracting our work out a number of
15 years ago, and, basically, we have only three
16 full-time employees now.

17 Q. What do the three full-time employees for
18 Henson & Associates do?

19 A. I'm in charge of the construction, Wendy
20 Henson is the secretary, and Danny Henson does all
21 the estimating and is also a partner in the
22 business.

23 Q. Is Danny your son?

24 A. No, Danny is my brother.

25 Q. And Wendy is related to you, also?

1 A. She is my wife.

2 Q. Now, when you say you are in charge of the
3 construction, do you supervise the jobs that
4 Henson & Associates is on?

5 A. I basically go to the jobs, deliver the
6 materials, and see that the subcontractor has got
7 done what he has billed me for.

8 Q. All right. So you basically are sort of, I
9 guess, inspecting the work?

10 A. Correct.

11 Q. To make sure it is coming along as
12 expected?

13 A. That's correct.

14 Q. You physically bring the big metal panels
15 or whatever you use in the construction?

16 A. I bring the metal trim. Most of the panels
17 come on tractor-trailers.

18 Q. Do you order those?

19 A. We order them.

20 Q. So you supply those materials to your
21 subcontractors, who are actually putting the panels
22 up; is that correct?

23 A. That's correct.

24 Q. So there is both orders that come in on big
25 trucks that you have made for the large panels, I

1 guess, and then there is smaller pieces of work that
2 you bring; is that correct?

3 A. That's correct.

4 Q. Do you supply tools or equipment to the
5 subcontractors?

6 A. No.

7 Q. Now, do you have a subcontractor agreement
8 between you and Contreras Panels?

9 A. Yes.

10 Q. Have you had that for several years?

11 A. Well, it is job-specific. There is one for
12 each job that they do for us.

13 Q. Let me change that question a little bit.
14 Have you been working with them for several
15 years on various jobs?

16 A. Yes, on various jobs.

17 Q. Okay.

18 A. But there is a separate contract for each
19 job, as well as a separate certificate of insurance
20 before they ever start any work at all on the
21 project.

22 Q. When did you start working with Contreras
23 Panels?

24 A. I can't tell you an exact date. But we
25 probably have been subbing work to them now for six

1 or seven years.

2 Q. That would be over multiple projects; is
3 that right?

4 A. Yes.

5 Q. As you said, each project, you would have a
6 separate agreement for that particular project?

7 A. Separate agreement, separate certificate of
8 insurance, naming that project.

9 Q. Who did you deal with at Contreras Panels?
10 Did you deal with Gabriel Contreras or Juan Pablo
11 Contreras?

12 A. Both.

13 Q. Who do you understand is the principal or
14 owner of that business?

15 A. The registered owner, as I understand it,
16 is Gabriel Contreras.

17 Q. Okay.

18 A. His brother, Pablo, is co-owner. But on
19 record, from what they tell me, Gabriel is the
20 owner.

21 Q. Is Gabriel Contreras the one you have sign
22 the papers?

23 A. Either. They are both partners, so either
24 one of them can.

25 MR. GRIFFITH: I've got several things

1 marked previously as exhibits. Let me say this on
2 the record for Mr. Goudelock and Mr. Dworjanyn.

3 I have marked five exhibits.

4 Well, there is actually six. Sorry.

5 I will have him explain what each of these
6 is. Most of these, we have used in Gabriel's
7 deposition. There are a couple new ones, like the
8 certificate of insurance between Henson and Edifice,
9 and a contract between Henson and Edifice. One of
10 them is very thick. But I'll get that to you.

11 Q. Now let me show you, Mr. Henson, what has
12 been marked as Exhibit No. 2.

13 Do you recognize that document?

14 A. Yes.

15 Q. Is that a subcontract agreement between
16 Henson & Associates and Contreras Panels?

17 A. Yes, it is.

18 Q. And does that cover the project that was --
19 that I think you named as York Comprehensive High
20 School and Floyd D. Johnson Tech Center in York,
21 South Carolina?

22 A. That's correct.

23 Q. It looks like this was signed on April 7,
24 2009.

25 A. Whatever it says. We have so many

1 contracts, I don't know.

2 Q. It is dated on the front. So whatever the
3 date of this contract is, that should be accurate?

4 A. Yes, sir.

5 Q. Is that your signature on the last page of
6 this exhibit?

7 A. That's correct.

8 Q. Did Gabriel Contreras sign that in front of
9 you?

10 A. Yes, he did.

11 Q. And you know him personally; is that
12 correct?

13 A. Yes. Either Gabriel or Pablo always signs.
14 Pablo will sign Gabriel's name sometimes.

15 Q. Do you know whether Gabriel personally
16 signed this, or Pablo signed it as Gabriel?

17 A. I'm pretty sure Gabriel himself signed that
18 contract, sitting on the job site.

19 Q. Either way, there was definitely an
20 agreement?

21 A. That's correct.

22 Q. Between you and the Contrerases?

23 A. Yes.

24 Q. As Contreras Panels; is that correct?

25 A. That's correct.

1 Q. All right.

2 A. And an insurance certificate, at the same
3 time that contract was issued.

4 Q. Let me show you what is marked as
5 Exhibit 3, which are three different certificates of
6 insurance, it looks like, issued between Contreras
7 Panels and Henson & Associates.

8 Tell me if you recognize those.

9 A. Yes.

10 Q. Have you had a chance to look at those?

11 A. I don't personally go over those. My wife
12 does, and she makes sure the coverages are what we

13 ~~need~~ /

14 Q. It looks like one of them was given to you
15 on April 23, 2009. That's the date of one them?

16 A. I don't know. If that is what it says, it
17 is. I don't know.

18 Q. You know these were given to your company
19 or to you?

20 A. That's correct.

21 Q. From the Contrerases?

22 A. That's correct.

23 Q. All right.

24 A. Yes.

25 Q. Did you rely on these in having them start

1 the work?

2 A. Absolutely.

3 Q. Let me show you what is marked as
4 Exhibit No. 1. This looks like a W-9 form from
5 Gabriel Contreras.

6 A. Yes.

7 Q. D/b/a Contreras Panels?

8 A. Yes.

9 Q. Is that something you got from Gabriel
10 Contreras?

11 A. Yes.

12 Q. Is that, as far as you know, the social
13 security number and tax ID number that he uses?

14 A. That's correct.

15 Q. Is this a document that was in your files?

16 A. Yes.

17 Q. Are all these documents, these last
18 exhibits, 1, 2 and 3, are those documents you keep
19 in the regular and ordinary course of your business?

20 A. Yes.

21 Q. Let me show you what is marked as
22 Exhibit No. 4.

23 Do you recognize that document?

24 A. That is our coverage from Auto Owners.

25 Q. I think Auto Owners actually has, maybe, a

1 mutual company or some other company, that is
2 actually Owners Insurance Company? Is that correct?

3 A. Could be. I don't know.

4 Q. This is apparently a copy of your
5 declaration page from that policy?

6 A. Yes.

7 Q. This looks like it says this the policy was
8 in force between October 5, 2008, and November 5th,
9 2009; is that correct?

10 A. Whatever it says on there. And we'll have
11 new ones as we need them.

12 Q. Were you relying on this policy for the
13 coverage and certificate of insurance that you gave
14 to Edifice, that was the big general contractor on
15 that job?

16 A. Absolutely.

17 Q. When I say "that job," I mean the York
18 Comprehensive School job.

19 A. Absolutely.

20 Q. And Exhibit No. 5, is this a copy of the
21 certificate of insurance you gave to Edifice?

22 A. Yes, I would imagine so.

23 Q. And these two documents, both
24 Exhibit No. 4, the Auto Owners declaration pages,
25 and Exhibit 5, the certificate of insurance between

1 Henson, giving that to Edifice, are those documents
2 you keep in the ordinary and regular course of your
3 business?

4 A. Correct.

5 Q. All right. Now, how about Exhibit 6? What
6 is that document?

7 A. That is a standard AIA contract. It is our
8 contract between Henson & Associates and Edifice.

9 Q. Now, Edifice was the big general contractor
10 for that whole project?

11 A. They are the general contractor, that's
12 correct.

13 Q. In this contract and agreement you have
14 between them, are you to be their subcontractor?

15 A. That's correct.

16 Q. When I say "you," I mean
17 Henson & Associates.

18 A. That's correct.

19 Q. And what work were you to do on that job?
20 What was Henson & Associates to do on that job?

21 A. The metal roof.

22 Q. Okay.

23 A. And all related flashings and whatnot.

24 Q. That is, metal panels?

25 A. Correct.

1 Q. You subcontracted with Contreras Panels
2 to physically put that --

3 A. To do the labor portion, that's correct.

4 Q. Okay. Did you provide the materials that
5 we talked about sort of in general?

6 A. That's correct.

7 Q. Did you provide any equipment for them,
8 like scaffolding?

9 A. The only thing, occasionally, he will call
10 me. I have an agreement with Hertz and people like
11 that to get him a boom lift if he needs it. But
12 then he pays for that out of his contract.

13 Q. Okay.

14 A. But, no, I do not rent his equipment or
15 furnish it for him.

16 Q. Does Henson & Associates own any equipment
17 like lifts?

18 A. No.

19 Q. Do you do all that on a rental basis?

20 A. That's correct.

21 Q. You pretty much have the knowledge about
22 how these things are to be done?

23 A. Yes, sir.

24 Q. And the contacts, I guess, to get the work?

25 A. Well, it's a bidding process, but, yes.

1 Q. Do you recall Contreras Panels beginning
2 work on this York Comprehensive School project
3 sometime in May of 2009?

4 A. I'm not absolutely sure of the exact date
5 he started, but he bills us every 15 days, and his
6 first bill was dated -- what, Zach?

7 He billed us on the 15th of the month, it
8 looks like.

9 Q. Of which month?

10 MR. SMITH: It looks like June. June 15th,
11 2009.

12 A. June 15, 2009.

13 Q. What was the bill for?

14 A. For when he had started.

15 Q. How much did he bill you?

16 A. 18,537.

17 Q. It looks like -- was that for the roof?

18 A. No, that's for some insulation.

19 Q. Does that mean that was for roof work up
20 until that point?

21 A. Yes. Yes.

22 Q. All right.

23 A. We have it broke down into different
24 categories that he can bill for as to what he gets
25 done.

1 Q. I guess you or your brother had previously
2 estimated the job, and knew what it was going to
3 cost to do it?

4 A. That's correct.

5 Q. And you know what margin of profit you have
6 to have, and the subcontractor would have to have,
7 and so on; is that right?

8 A. We know what we hope for.

9 Q. That is what you are aiming for?

10 A. Yes.

11 Q. Do you know how many employees Contreras
12 Panels had working on that job --

13 A. No.

14 Q. -- during the summer of 2009?

15 A. No.

16 Q. Do you have an estimate, based on going out
17 there and seeing the work being done?

18 A. I have -- I don't really have a good idea
19 of that, but he turned in a safety report to
20 Edifice, and that should tell you exactly how many
21 people he had.

22 Q. Tell me what the safety report is. I'm not
23 familiar with that.

24 A. It is a safety report, that they have like
25 a talk with these people once a week. And he will

1 fill it out. Edifice required us to fill one out.

2 And he would fill it out and turn it into Edifice.

3 Q. This is like a standardized document?

4 A. Standard. "Toolbox talks," they call them.
5 A safety report.

6 Q. Would that indicate the number of employees
7 on the job?

8 A. It should.

9 Q. What other issues would be covered on that
10 sort of report?

11 A. Well, basically, it's a toolbox talk that
12 makes everyone aware of any dangers that are on that
13 job. And what to do. Like, one week, you may talk
14 about fall protection, one week, you may talk about
15 this or that, or electric shocks.

16 Q. Okay. Like requiring use of hard hats or
17 protective glasses?

18 A. That's correct.

19 Q. That type of thing?

20 A. That's correct.

21 Q. Do you recall one of the Contreras Panels
22 employees being injured during September of 2009?

23 A. The first note I had of it was, Edifice
24 called me, wanting Gabriel to fill out an accident
25 report.

1 Q: Do you know approximately when that was?

2 A. It was a week or so after it had happened.

3 Q. So this would have been in, let's say,
4 October of 2009? Does that sound about right?

5 A. I'm not sure.

6 Q. Okay. Do you know whether Gabriel filled
7 out an accident report?

8 A. Yes, I know he did, because I made him get
9 me a copy of it.

10 Q. Do you have a copy of it?

11 A. Yes, I do.

12 Q. Did it indicate that Rudy Almazan had
13 fallen, I guess, from one roof to another while on
14 the job?

15 A. I'm pretty sure it did.

16 Q. Did you know anything about his injuries
17 or how bad he was hurt?

18 A. I asked Gabriel. Gabriel said that he had
19 taken him to the hospital, that he was going to be
20 in the hospital two or three days, and then he was
21 going to be off and he was paying him.

22 Q. Now, prior to this accident and this
23 project, you had worked with Contreras Panels. Had
24 there been any prior injuries or workers'
25 compensation claims?

1 A. Never.

2 Q. Any since this accident, that you know of?

3 A. No.

4 Q. So whatever date that accident report is
5 dated, you would have known about the fall or injury
6 prior to that; is that correct?

7 A. That's correct.

8 MR. GRIFFITH: There are a bunch of
9 attorneys involved in this. They will probably have
10 questions for you. Those are mine for right now. I
11 may or may not ask any more.

12 EXAMINATION

13 BY MR. KILLEN:

14 Q. I'm Tim Killen. I'm with the Uninsured
15 Employees Fund. We met awhile ago.

16 MR. KILLEN: Can everybody hear me?

17 MR. DWORJANYN: Yes. Thank you.

18 Q. Mr. Henson, you testified a little while
19 ago that you had seen Pablo Contreras sign Gabriel
20 Contreras's name on some contracts or other
21 documents?

22 A. I have. He has signed them before for
23 Gabriel. They are partners.

24 Q. This particular contract between your
25 company and Contreras Panels is dated April 7, 2009.

1 Do you have any independent recollection of actually
2 signing this document?

3 A. Yeah.

4 Q. So you remember --

5 A. Yes.

6 Q. -- being on the job site?

7 A. Yes. Yes. I think we met on that job
8 site, or we might have -- I might have had him sign
9 it on one he was doing, finishing up. But, yes, I
10 was there when that document was signed.

11 Q. I'm not sure I understand what you're
12 saying.

13 A. I said, he might have been on a job that he
14 was finishing up. And he was going to do this job
15 at York, when I actually took him that contract.
16 I'm not sure if we did it at York or if we did it at
17 one of the other jobs he was on.

18 Q. Okay. Why would he --

19 A. But one of those boys will sign the
20 document. I'm always there and I make damn sure
21 they do.

22 Q. And Gabriel has represented to you that
23 Pablo is his partner?

24 A. Yes.

25 Q. Why would Gabriel have been on the York

1 site if he hadn't entered into this contract with
2 you yet?

3 A. He might have met me over there, you know,
4 waiting to do something, or looking at the job to
5 see how near it was ready, or whatever.

6 Q. And you testified that, as soon as you had
7 this contract signed, you had a certificate of
8 insurance?

9 A. That's correct.

10 Q. So right at the moment he signed this
11 contract, he gave you a certificate of insurance?

12 A. No. No. I told him to get it to me. And
13 he did, within a day or two. Whatever that
14 certificate says is when they sent it to us. But
15 prior to him going to work, I always make sure we
16 have a certificate in our file.

17 Q. This certificate is dated April 23rd, 2009.
18 That is a couple weeks after the contract was
19 signed.

20 A. That's possible.

21 Q. Okay. So that wasn't unusual?

22 A. No.

23 Q. So it wasn't necessarily within a day or
24 two?

25 A. No. We just need to make sure that we have

1 that certificate before he performs any work on that
2 site.

3 Q. Okay. Let me go back to this contract
4 which has been marked as Exhibit 2. On page 6,
5 there is a note at the bottom of this contract. Can
6 you see that note, underneath the signatures?

7 A. That's correct.

8 Q. And that says that the subcontractor won't
9 be paid until they give you a certificate of
10 insurance, doesn't it?

11 A. It says that, yes.

12 Q. Okay. Why doesn't it say that the
13 subcontractor can't start work until they give you a
14 certificate?

15 A. Well, I make sure he don't go to work
16 before I have his certificate. I can tell you that.

17 Q. Was this note on this --

18 A. That is something my wife put on there to
19 make sure to get him on the ball to get that
20 certificate to me.

21 Q. Okay. And that note was written there on
22 the contract before these people signed it?

23 A. Yes.

24 Q. And your wife is in charge of getting the
25 certificates?

1 A. Yes.

2 Q. How does she receive the certificates?

3 A. She gets them -- they fax them to her.
4 Then they, I'm assuming, mail her a hard copy.

5 Q. Who faxes the certificates to her?

6 A. Whoever is the insurer.

7 Q. You are talking about the producer, up
8 here?

9 A. I'm assuming that's correct.

10 Q. Okay. And do you have a copy of the
11 original certificate you received from this
12 Associates Benefits Agency? Do you have a copy of
13 that?

14 A. The original?

15 Q. The one they actually sent to you.

16 A. Yes. I'm sure we do, somewhere.

17 Q. Do you know whether it was faxed or mailed
18 to you?

19 A. I do not know.

20 Q. Do you have it with you?

21 A. I don't know if I do or I don't, to be
22 honest with you.

23 Q. Okay. This certificate of insurance
24 says -- it has some fax tracks at the top, this
25 particular one that we have. One of them is McAngus

1 Goudelock, and that says page 16 of that
2 transmission.

3 And then there is another page number down
4 below, page 16. It is page 9. Do you know if this
5 particular certificate of insurance was faxed to you
6 with other documents?

7 A. I do not know, no.

8 Q. Can you find that out?

9 A. I'm assuming that I can.

10 Q. Who would know that?

11 A. My wife probably would know.

12 Q. Okay.

13 A. But I doubt that she got over that one
14 certificate for that job at the time.

15 Q. You really don't have any idea when you
16 received these documents, do you? Your wife would
17 know that, right?

18 A. Yes, she would know. And it should be on
19 it.

20 Q. So you are relying on the date of the
21 certificate?

22 A. That's correct.

23 Q. To represent the date you actually received
24 the document; is that correct?

25 A. That's correct.

1 Q. You have no independent knowledge of when
2 you actually received the document, do you?

3 A. No. I'm out in the field; my wife is in
4 the office. So I don't know when it's there. But
5 when she gets that certificate, she calls and let's
6 me know she has it in her hand before they go to
7 work.

8 Q. Is that generally what you do, or can you
9 actually recall doing that on this particular
10 occasion?

11 A. I generally do it on every job.

12 Q. But do you have any knowledge of such a
13 phone call in April or May of 2009 regarding the
14 Contrerases and this York High School project?

15 A. Yeah. I called her to make sure she had
16 the certificate.

17 Q. When did you call her?

18 A. Probably a day or two after they got
19 that -- after I got the contract signed.

20 Q. Okay. But the contract is signed
21 April 7th.

22 A. Uh-huh.

23 Q. And if you called her a day or two after --

24 A. Well, I'm not absolutely sure.

25 Q. -- the certificate wouldn't have been in

1 existence yet, would it?

2 A. At the time the contract was signed, maybe
3 not. But before they went to work, it was.

4 Q. Okay.

5 A. I will not allow them to go to work without
6 a certificate. Plain and simple.

7 Q. On this particular certificate of
8 insurance, it says the producer is out of Texas,
9 correct?

10 A. That's what it says.

11 Q. And it says Contreras Panels is a
12 Texas-based company as well, doesn't it?

13 A. Well, he has worked in Texas before he came
14 to South Carolina.

15 Q. But it says it is a Texas company, correct?

16 A. I do not know.

17 Q. This document shows the address for
18 Contreras Panels as being in Texas, correct?

19 A. That's correct, it is showing it there.

20 Q. And your company's address is in North
21 Carolina, correct?

22 A. That's correct.

23 And that certificate also states it is York
24 High School and Tech Center in York, South Carolina.

25 Q. Well, it doesn't actually say South

1 Carolina, but that is correct.

2 A. Yes.

3 Q. And it is your understanding that your wife
4 would receive this directly from the producer, and
5 not through either of the Contreras brothers,
6 correct?

7 A. That is my understanding of how that works,
8 is that the producer faxes it, and then mails us a
9 hard copy, I'm assuming. I do not know that for a
10 fact.

11 Q. Did you ever see a copy of the policy that
12 this certificate of insurance shows to be in effect
13 for Contreras Panels?

14 A. I have not. I have seen the ACORD forms,
15 and that's what I'm supposed to rely on.

16 Q. You had workers' compensation coverage,
17 didn't you?

18 A. Yes.

19 Q. Has your workers' compensation insurance
20 company made any appearance in this action?

21 A. They have been notified by us.

22 Q. And that is the owners policy the dec page
23 shows as Exhibit 4, correct?

24 A. I would guess.

25 Q. And it was your understanding that this

1 policy was valid in South Carolina?

2 A. Well, it is. It names the school and the
3 state.

4 Q. Your policy names the school?

5 A. The ACORD form does.

6 Q. I am just talking about the policy. I'm
7 not talking about the certificate at this point in
8 time.

9 A. I have no idea, on the policy, what it
10 names, but the ACORD form has to name the specific
11 site.

12 Q. I'm talking about your particular insurance
13 policy, and I'm not talking about the certificate of
14 insurance you gave to Edifice. I'm just talking
15 about your policy. It was your understanding that
16 this policy is valid in South Carolina?

17 A. Absolutely.

18 Q. As shown right here in item 3C, where it
19 says "other state's insurance," South Carolina is
20 shown right there; is that correct?

21 A. Yes, that's correct.

22 Q. When did you enter into this contract with
23 Edifice that is shown as Exhibit 6?

24 A. Well, I'm not sure. I mean, our contract
25 with the general, it could be months, even up to a

1 year, before we actually start work, so I'm not
2 absolutely sure.

3 Q. Is there a date shown anywhere on that
4 contract?

5 A. I'm sure there is one on the original.
6 Right here. September the 24th, 2008.

7 Q. Okay. Let me show you page 17 of the
8 contract.

9 Can you tell me when you signed it?

10 A. That's Danny's signature, it is not mine.

11 Q. Can you tell me when your brother signed
12 it?

13 A. He signed it, 1/19/09.

14 Q. And your brother was authorized to bind
15 your company?

16 A. That's correct. He's a full partner in the
17 company.

18 Q. You gave a certificate of insurance to
19 Edifice, correct?

20 A. That's correct.

21 Q. How did you cause that to be given to
22 Edifice?

23 A. We call our insurer and have them send the
24 certificate to the general contractor prior to doing
25 any work on the project.

1 Q. So a couple of weeks after you signed the
2 contract, you had your insurance company create
3 this?

4 A. I would imagine so.

5 Q. Okay.

6 A. If that's what the date says.

7 Q. Did you actually do that, or did your wife
8 do that?

9 A. My wife does it.

10 Q. This one is dated February 10, 2009, and
11 that is before you did any work on the job?

12 A. That's correct.

13 MR. KILLEN: That's all I have.

14 EXAMINATION

15 BY MR. MONTGOMERY:

16 Q. My name is Ryan Montgomery. I represent
17 Edifice in this. I am one of the attorneys involved
18 here, and I'm just taking my turn asking you
19 questions.

20 A. Okay.

21 Q. By virtue of going third in line, I may
22 have to jump around a bit. So if you don't know
23 what I'm talking about, you just let me know.

24 Okay?

25 A. Yes.

1 Q. As I look at the Exhibit 5, which is the
2 certificate of insurance between you and Edifice, in
3 the description line, it references: Edifice, Inc.,
4 is included as additional insured regarding general
5 liability per rate of contract.

6 Did you fax a copy of the written contract
7 to your agent before they entered it into the
8 description line?

9 A. I do not know.

10 Q. That would be your wife?

11 A. Yes.

12 Q. When Edifice takes in your certificate of
13 insurance, do they take in any other documentation?

14 A. Not that I know of.

15 Q. Okay. Do they ever ask you for your
16 subcontractors' certificates of insurance?

17 A. No.

18 Q. Did you ever supply Contreras Panels'
19 certificate to Edifice?

20 A. No.

21 Q. Did you ever make Edifice aware of the fact
22 that Contreras had supplied you with a certificate?

23 A. Yes.

24 Q. Again, when you issued or had the
25 certificate of insurance issued from you to Edifice,

1 that would be your wife calling?

2 A. Yes.

3 Q. Have you ever called?

4 A. No.

5 Q. So you don't know whether she specified the
6 job location or the state in which the work was to
7 be performed?

8 A. I'm sure she would have.

9 Q. Is the general procedure that you call up
10 and say, hey, we've gotten a job in this particular
11 state?

12 A. That's correct.

13 Q. And do you know if that was done -- this is
14 dated -- the certificate of insurance is dated, on
15 Exhibit 5, February 10, 2009. And the contract
16 between you and Edifice was dated -- do you remember
17 the date?

18 A. No, it is right here on the front when they
19 sent it to us.

20 Q. I have it as September 24th of 2008. Is
21 that right?

22 MR. KILLEN: He signed it on the 19th, on
23 page 17.

24 Q. So the agreement was presented or
25 constructed on September 24, 2008, and it looks like

1 your brother signed it on January 19, 2009?

2 A. Correct.

3 Q. And then, at that point, the certificate of
4 insurance was requested, and, according to this date
5 on the top right-hand corner of Exhibit 5, was
6 provided on February 10, 2009?

7 A. That's correct.

8 Q. Do you remember your first day on the job
9 there?

10 A. No, not really. It was probably sometime
11 in June to July that we was actually started. I had
12 been on the project a few times, looking and talking
13 to the people about when they thought they would be
14 ready.

15 Q. Was it your understanding that, within 30
16 days before Mr. Almazan's injury, your insurance
17 carrier was on notice of you performing work in the
18 State of South Carolina?

19 A. Yes.

20 Q. Have you ever had any previous workers'
21 compensation claims in this state?

22 A. No.

23 Q. And you say Contreras had not, under your
24 watch, right?

25 A. Not under our watch.

1 Q. Once you received the Contreras certificate
2 of insurance, did you do anything beyond receiving
3 it and filing it away, meaning, did you call up to
4 verify --

5 A. No.

6 Q. In the six to seven years you have dealt
7 with Contreras Panels, have you ever dealt with a
8 woman by the name of Lynn Wooten?

9 A. I don't get those certificates. Wendy
10 does. She may have. I don't know who it is she
11 deals with, personally.

12 Q. In terms of your understanding of the --

13 A. He actually -- Pablo calls them and has
14 them send us our certificate.

15 Q. Okay.

16 A. Yeah.

17 Q. Calls "them," meaning his agent?

18 A. His agent, correct.

19 Q. Does Contreras Panels have any other
20 partners other than Gabriel and Pablo?

21 A. Not that I know of.

22 Q. Are there any other Contreras folks on site
23 other than their employees, including the two
24 partners?

25 A. Well, they've got some other brothers that

1 work for them part-time, but sometimes they're
2 there, and sometimes they're not. They run crews
3 for them.

4 Q. Does Edifice ever audit you and your
5 insurance or your subcontractors' insurance through
6 a particular project?

7 A. No.

8 Q. So once you supply the certificate of
9 insurance, you have supplied it, and you move on
10 with your work?

11 A. We have to supply it before we can go to
12 work, yes.

13 Q. But nothing in terms of anything else
14 beyond that?

15 A. Well, if our coverage happens to lapse,
16 then we have to send them a new certificate in the
17 duration of the project.

18 Q. Is that something they monitor or you
19 monitor?

20 A. We monitor it and they monitor it. And our
21 insurance company also monitors it. Because we
22 can't afford for them to let that lapse for one day,
23 because they'll shut us down.

24 Q. Have you ever had any other workers'
25 compensation claims in any other states where this

1 particular carrier did not step in and defend the
2 claim?

3 A. No.

4 Q. Have you had other claims in the past?

5 A. No.

6 Q. So you have never had any; this is the
7 first?

8 A. This is the first.

9 Q. Do you know what your premium is?

10 A. No, I don't. It's all wrapped into one we
11 do, our auto, general liability and workers'
12 compensation, all in one package deal.

13 Q. And do you know how much that premium is?

14 A. It will run us somewhere around 20 grand a
15 year, probably, 25. Depends on what we're doing,
16 what it is, how many vehicles we are insuring.

17 Q. Bear with me just one second.

18 A. Yes.

19 Q. I'm showing you what is marked as
20 Exhibit 4. Have you ever seen this document before
21 today?

22 A. Yes.

23 Q. Do you have a copy of that in your file?

24 A. Yes.

25 Q. Do you have the complete policy that goes

1 with that document?

2 A. Yes. In our files at the office, I'm sure
3 we do.

4 Q. Does your wife maintain that?

5 A. Yes.

6 MR. MONTGOMERY: I don't have any other
7 questions.

8 MR. SMITH: Rusty, I think that leaves you
9 and Pete.

10 MR. GOUDELOCK: This is Rusty, and I don't
11 have any questions.

12 EXAMINATION

13 BY MR. DWORJANYN:

14 Q. Mr. Henson, my name is Pete Dworjanyn,
15 representing the Insurance Company of the State of
16 Pennsylvania.

17 Have you ever met a woman named Lynn
18 Wooten?

19 A. Personally, no.

20 Q. When you say "personally," what do you
21 mean?

22 A. I mean, I don't know who Wendy talks to
23 with that insurance company. But, no, I do not know
24 Lynn Wooten.

25 Q. Have you ever heard of a company named

1 Services Resource?

2 A. That is what is on the documents, yes.

3 Q. What documents?

4 A. On the ACORD forms that they send us.

5 Isn't it?

6 Q. Looking at the ACORD forms you have in this
7 case, all I see is a company named Contreras Panel.
8 With the certificate of insurance you have there, do
9 you have a certificate of insurance in front of you
10 that says -- let me back up a minute.

11 When you say you see that, do you mean
12 Associate Benefits Agency, up in the producer line?

13 A. No, I probably saw it on some of this other
14 paperwork I've got here.

15 Q. Something that has been given to you as
16 part of your preparation for this deposition?

17 A. Yes. Right here, it says Associates
18 Benefits Agency, Houston, Texas.

19 Q. Okay. Did anybody participate in the
20 bidding process between you and Contreras Panels, or
21 either of the Contreras brothers, other than you and
22 the Contrerases?

23 A. Did anybody -- rephrase that for me.

24 Q. Did you sub this job directly to the
25 Contreras brothers or Contreras Panels?

1 A. That's correct.

2 Q. You didn't go through a company named
3 Services Resources in Texas?

4 A. No, sir.

5 Q. Have you ever heard of a company named
6 Management Services from Alvin, Texas?

7 A. No, sir.

8 Q. To your knowledge, have you ever done
9 business with them?

10 A. To my knowledge, not. But I'm not the one
11 that does the insurance. That's my wife. So,
12 probably, you need to call her. She will tell you.

13 Q. I understand.

14 You are the one that supplied all the
15 material for this job?

16 A. That's correct.

17 Q. No one else supplied any material?

18 A. That's correct.

19 Q. Who was doing the supervising for this job?

20 A. Gabriel Contreras.

21 MR. DWORJANYN: Thank you.

22 I don't have any other questions.

23 EXAMINATION

24 BY MR. SMITH:

25

1 Q. This is Zach Smith. I just have a couple
2 of questions.

3 It appears that, in January of 2009, you
4 entered into this agreement with Edifice, and it was
5 for the York High School?

6 A. Yes.

7 Q. What was Henson & Associates responsible
8 for on the York High School job?

9 A. To furnish the material and the labor for
10 the metal walls and roofs on the job.

11 Q. And then, on April 7th, 2009, you entered
12 into an agreement with Contreras Panels?

13 A. That's correct.

14 Q. And based off of this document, it looks
15 like Gabriel Contreras signed this document?

16 A. That's correct.

17 Q. And, under this agreement, what was
18 Contreras Panels responsible for?

19 A. For all of the erection of the metal
20 panels, walls and roofs.

21 Q. Now, as a part of this contract, did
22 Contreras Panels have to provide you with proof of
23 insurance?

24 A. That's correct.

25 Q. And was this contract contingent on them

1 providing you with proof of insurance?

2 A. Yes.

3 Q. So you wouldn't let them start working on
4 the job until you received a certificate of
5 insurance?

6 A. Absolutely not.

7 Q. Prior to Contreras Panels starting on the
8 York High School job, did you receive a certificate
9 of insurance?

10 A. Yes.

11 Q. Now, let's take a look at this first
12 certificate of insurance. It is dated April 23,
13 2009?

14 A. That's correct.

15 Q. And this would have been before they
16 started work?

17 A. Yes, that would have been before.

18 Q. It lists Contreras Panels as the insured?

19 A. That's correct.

20 Q. And under workers' compensation liability,
21 it lists the New Hampshire Insurance Company?

22 A. That's correct.

23 Q. What project does it specifically state?

24 A. It specifically states York High School and
25 Tech Center.

1 Q. And this was delivered to
2 Henson & Associates?

3 A. That's correct.

4 Q. This coverage is provided from May 10,
5 2008, through May 10, 2009; is that correct?

6 A. That's correct.

7 Q. It appears that, two days before this
8 policy expired, you received a second certificate of
9 insurance from Contreras Panels on May 8, 2009?

10 A. That's correct.

11 Q. And this one also came from Associates
12 Benefits Agency in Texas?

13 A. That's correct.

14 Q. Who is listed as the insured?

15 A. Contreras Panels.

16 Q. And the workers' compensation policy lists
17 the Insurance Company of the State of Pennsylvania
18 as the insurance carrier?

19 A. That's correct.

20 Q. What project is this for?

21 A. York High School and Tech Center.

22 Q. And this was delivered to
23 Henson & Associates?

24 A. That's correct.

25 Q. What are the dates of this coverage?

1 A. That covers from 5/08/09 to 5/08/10.

2 Q. Okay. And based on these two certificates
3 of insurance, was it your belief that Contreras
4 Panels had workers' compensation coverage in South
5 Carolina?

6 A. Absolutely.

7 Q. Is part of that reason because it
8 specifically states the project?

9 A. Yes.

10 Q. Did you have any reason to doubt that
11 Contreras Panels had workers' compensation insurance
12 in South Carolina?

13 A. No. We have done numerous projects with
14 them before.

15 Q. You were asked a couple times about you
16 providing or Henson & Associates providing
17 materials, but you only provided the metal to be
18 installed on the roof; is that correct?

19 A. That's correct.

20 Q. They provided all the tools to install the
21 metal on the roof?

22 A. Absolutely.

23 Q. And you were asked earlier about providing
24 equipment. Now, you would rent the equipment; is
25 that correct?

1 A. I would rent a piece of equipment if he
2 needed it, and take it out of his contract.

3 Q. So the price for the equipment was deducted
4 from what you paid him in the contract?

5 A. Absolutely. That's correct.

6 Q. This bill right here is from Contreras
7 Panels?

8 A. That's correct.

9 Q. To Henson & Associates?

10 A. That's correct.

11 Q. Dated June 15th, 2009?

12 A. That's correct.

13 Q. Is this the first bill you received from
14 Contreras Panels?

15 A. That is the first bill on that job, that's
16 correct.

17 Q. Under the subcontract agreement with
18 Contreras Panels, they could bill you on the 15th
19 and 30th of each month?

20 A. That's correct, every 15 days.

21 Q. So is it your belief they started work
22 sometime in the beginning of June, given that the
23 first bill you received from them is June 15th?

24 A. Yes.

25 MR. SMITH: That's all the questions that I

1 have.

2 FURTHER EXAMINATION

3 BY MR. KILLEN:

4 Q. Mr. Henson, I just have a couple.

5 The second certificate of insurance, you
6 don't know when your company received it, do you?

7 A. I don't know. It should have a date on it.

8 Q. It has a date on it, but you don't know
9 when your company received it, do you?

10 A. Do I know? No, I don't know.

11 Q. Okay. You testified earlier that Pablo is
12 the one who would always call for the certificates
13 of insurance; is that correct?

14 A. That's correct.

15 Q. You don't know who Pablo was calling, do
16 you?

17 A. No, but Wendy has talked to them several
18 times, the people, whoever sent the certificate.

19 Q. Wendy has talked to Associates Benefits
20 Agency?

21 A. Yes.

22 Q. That's your understanding?

23 A. Yes, that's my understanding, correct.

24 Q. Is it your understanding that Lynn Wooten
25 is somehow connected with Associates Benefits

1 Agency?

2 A. I don't know.

3 Q. Do you have any idea who Lynn Wooten is?

4 A. No.

5 Q. Have you ever heard of Lynn Wooten before
6 all this started?

7 A. No.

8 Q. Okay.

9 A. I'm sure Wendy can tell you who it is she
10 talks to out there, when she talks to them, when she
11 sends the certificate. And that may be her name or
12 it may not. I don't know.

13 Q. Are you still working with Contreras?

14 A. Yes.

15 Q. You understand that this insurance company,
16 Insurance Company of The State of Pennsylvania, is
17 denying that they provide workers' compensation
18 coverage to Contreras Panels?

19 A. No, I did not know that. But that don't
20 surprise me.

21 Q. Well, that is my understanding of the case
22 here.

23 MR. KILLEN: That's all I have.

24 FURTHER EXAMINATION

25 BY MR. MONTGOMERY:

1 Q. Why doesn't it surprise you?

2 A. Why doesn't it surprise me? Well, most
3 insurance companies, anymore, will deny any claim
4 that they get.

5 Q. I thought that might be the answer, but I
6 had to ask.

7 A. That's how you attorneys make a living.

8 MR. MONTGOMERY: I don't have any further
9 questions.

10 MR. SMITH: Off the record.

11 (There was a discussion off the record.)

12 (Deposition Exhibit 7, handwritten
13 document, 06/15/09 from Contreras Panels to Henson,
14 \$18,537, was marked for identification.)

15 (The deposition concluded at 12:00 p.m.)
16
17
18
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25

1 CERTIFICATE OF REPORTER

2

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I, Kenneth McClure, Registered Merit
Reporter and Notary Public for the State of South
Carolina at large, do hereby certify that the
foregoing transcript is a true, accurate and
complete record.

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

WITNESS MY HAND, I have hereunto
affixed my official seal this 7th day of
August, 2010, at Pickens County, South Carolina.

KENNETH MCCLURE

REGISTERED MERIT REPORTER

MY COMMISSION EXPIRES

SEPTEMBER 24, 2013

1

I N D E X

Page

2

WITNESS/EXAMINATION

3

KENNETH HENSON

4

EXAMINATION

5

BY MR. GRIFFITH..... 5

6

BY MR. KILLEN..... 23

7

BY MR. MONTGOMERY..... 34

8

BY MR. DVORJANYN..... 41

9

BY MR. SMITH..... 43

10

BY MR. KILLEN..... 49

11

BY MR. MONTGOMERY..... 50

12

CERTIFICATE OF REPORTER..... 52

13

REQUESTED INFORMATION INDEX

14

(No information was requested.)

15

16

E X H I B I T S

PAGE/LINE

17

1 IRS Form W-9, Request for Taxpayer
 18 Identification Number and
 Certification for Gabriel Contreras.... 4 11

19

2 Consisting of six pages, Terms and
 20 Conditions of Agreement between
 Henson & Associates, Inc., and
 21 Subcontractor, 4/7/2009..... 4 15

22

3 Consisting of three pages, Acord form,
 Producer, Associates Benefits Agency,
 23 Insured, Contreras Panels..... 4 19

24

4 Consisting of three pages, headed
 "Owners Insurance Company, Workers'
 25 Compensation and Employers' Liability". 4 23

1	5	Consisting of two pages, first page		
		headed "Acord, Certificate of Liability		
2		Insurance.....	5	2
3	6	AIA Document A401-1997, Standard Form		
		of Agreement between Contractor and		
4		Subcontractor, Subcontract No.		
		SC2823-07-1012-S-25.....	5	5
5				
	7	Handwritten document, 06/15/09 from		
6		Contreras Panels to Henson, \$18,537.....	51	12
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
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BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

RUDY ALMAZAN, Employee,
Claimant,

vs.

HENSON & ASSOCIATES and/or CONTRERAS)
PANELS and/or EDIFICE, INC. and/or
SERVICES RESOURCES, Employer,

and

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND and/or INSURANCE
COMPANY OF THE STATE OF
PENNSYLVANIA and/or AMERISURE
INSURANCE COMPANY and/or OWNERS
INSURANCE COMPANY, Carrier,

Defendants,

TRANSCRIPT OF
RECORD

WCC NO. 0919909

COPY

Hearing held on April 25, 2011, in Columbia, South Carolina, before
COMMISSIONER ANDREA C. ROCHE.

APPEARANCES

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PURPOSE

To determine issues as set forth on Forms 50 and 51.

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INDEX

WITNESSES:	PAGE NO.
 <u>RUDY ALMAZAN:</u>	
Direct Examination by Mr. Griffith.....	10
Cross-Examination by Mr. Elliott.....	22
Cross-Examination by Mr. Smith.....	24
Cross-Examination by Mr. Howell.....	25
Cross-Examination by Mr. Montgomery.....	28
Cross-Examination by Mr. Killen.....	29
Redirect Examination by Mr. Griffith.....	30
 <u>PABLO ALCALA:</u>	
Direct Examination by Mr. Elliott.....	33
Cross-Examination by Mr. Griffith.....	40
Cross-Examination by Mr. Dworjany.....	42
Cross-Examination by Mr. Smith.....	44
Cross-Examination by Mr. Howell.....	47
Cross-Examination by Mr. Montgomery.....	49
Cross-Examination by Mr. Goudelock.....	51
Cross-Examination by Mr. Killen.....	52
ReDirect Examination by Mr. Elliott.....	56
ReCross-Examination by Mr. Dworjany.....	57
 <u>GABRIEL CONTRERAS:</u>	
Direct Examination by Mr. Elliott.....	59
Cross-Examination by Mr. Griffith.....	64
Cross-Examination by Mr. Dworjany.....	65
Cross-Examination by Mr. Smith.....	67
Cross-Examination by Mr. Howell.....	72
Cross-Examination by Mr. Killen.....	73
ReDirect Examination by Mr. Elliott.....	78
ReCross-Examination by Mr. Smith.....	79
Cross-Examination by Mr. Montgomery.....	80
 <u>MAGGIE CONTRERAS:</u>	
Direct Examination by Mr. Elliott.....	82
Cross-Examination by Mr. Griffith.....	87
Cross-Examination by Mr. Dworjany.....	88
Cross-Examination by Mr. Goudelock.....	93
ReDirect Examination by Mr. Elliott.....	94

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Lexington, South Carolina 29072

KENNETH HENSON:

Direct Examination by Mr. Smith.....	97
Cross-Examination by Mr. Elliott.....	110
Cross-Examination by Mr. Howell.....	112
Cross-Examination by Mr. Montgomery.....	120
Cross-Examination by Mr. Killen.....	123
Redirect Examination by Mr. Smith.....	129
ReCross-Examination by Mr. Howell.....	131

GARRY SMITH:

Direct Examination by Mr. Smith.....	132
Cross-Examination by Mr. Howell.....	134
Cross-Examination by Mr. Montgomery.....	138
Cross-Examination by Mr. Killen.....	139
ReDirect Examination by Mr. Smith.....	140

MICHAEL ROSS:

Direct Examination by Mr. Howell.....	142
Cross-Examination by Mr. Smith.....	146
Cross-Examination by Mr. Killen.....	151

EXHIBITS:

None.

CERTIFICATE:

156

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1 **MR. ELLIOTT:** IF WE GET TO A POINT WHERE WE HAVE TO DO SOMETHING
2 ABOUT IT, THEN WE CAN ADDRESS IT THEN.

3 **THE COURT:** RAISE YOUR RIGHT HAND?
4 WHEREUPON,

5 **JUAN PABLO CONTRERAS ALCALA,**
6 HAVING BEEN FIRST DULY SWORN, DID DEPOSE AND TESTIFY AS FOLLOWS:

7 **THE COURT:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

8 **THE WITNESS:** MA'AM?

9 **THE COURT:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

10 **THE WITNESS:** JUAN PABLO CONTRERAS ALCALA.

11 **THE COURT:** SPELL THAT FOR THE COURT REPORTER PLEASE.

12 **THE WITNESS:** J-U-A-N P-A-B-L-O C-O-N-T-R-E-R-A-S A-L-C-A-L-A.

13 **THE COURT:** MR. ELLIOTT?

14 **DIRECT EXAMINATION**

15 **BY MR. ELLIOTT:**

16 Q OKAY, MR. CONTRERAS, TELL ME WHO YOU WORK FOR.

17 A I WORK FOR CONTRERAS PANELS.

18 Q OKAY, WHO OWNS THE COMPANY?

19 A GABRIEL CONTRERAS.

20 Q OKAY, DO YOU HAVE ANY OWNERSHIP INTEREST IN THE COMPANY?

21 A NO, I JUST HELP.

22 Q OKAY, HOW LONG HAVE YOU ALL BEEN WORKING TOGETHER?

23 A FOR ABOUT SIX YEARS, EIGHT YEARS.

24 Q OKAY, ON THIS PROJECT THAT HAPPENED IN YORK, OKAY, MR. ALMAZAN WAS
25 WORKING ON THAT PROJECT; IS THAT CORRECT?

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1 Q HAVE YOU EVER TRIED TO FILE IT ON WORKMAN'S' COMP?

2 A NO.

3 MR. MONTGOMERY: OKAY, THAT'S ALL.

4 THE COURT: MR. GOUDELOCK?

5 MR. GOUDELOCK: THANK YOU, YOUR HONOR.

6 CROSS-EXAMINATION

7 BY MR. GOUDELOCK:

8 Q MR. CONTRERAS, THIS JOB AT THE YORK TECHNICAL CENTER WAS A 300 - ALMOST
9 \$300,000 JOB WITH HENSON, CORRECT, FOR CONTRERAS PANELS?

10 A I'M NOT REALLY SURE, NOT REALLY SURE.

11 Q IT WAS IN THAT RANGE?

12 A I THINK IT'S - I DON'T REMEMBER EXACTLY WHAT, BUT IT WAS I THINK OVER TWO
13 HUNDRED.

14 Q OKAY, SO IT WAS OVER TWO HUNDRED THOUSAND DOLLARS?

15 A YEAH.

16 Q ALL RIGHT, AND YOU ARE NOT AWARE OF ANY KIND OF PAYMENT BEING MADE TO
17 LYNN WOOTEN OR SERVICES RESOURCES IN ANY WAY, ARE YOU?

18 A NO.

19 Q OKAY, EITHER FROM YOU OR FROM YOUR BROTHER OR IN ANY MATTER RELATED
20 TO THIS JOB?

21 A NO.

22 MR. GOUDELOCK: OKAY.

23 THE COURT: MR. KILLEN?

24 MR. KILLEN: THANK YOU, COMMISSIONER.

25 CROSS-EXAMINATION

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- 1 BY MR. KILLEN:
- 2 Q ARE YOU SURPRISED THAT LYNN WOOTEN TESTIFIED THAT SHE HAD KNOWN YOU
- 3 FOR YEARS AND HAD WORKED WITH YOU IN TEXAS?
- 4 A NO, BECAUSE I DON'T HIM OR I DON'T HER.
- 5 Q OKAY, WHAT IS YOUR BROTHER'S FULL NAME?
- 6 A GABRIEL CONTRERAS ALCALA.
- 7 Q HOW DID YOU GET PAID?
- 8 A PER WEEK.
- 9 Q PARDON ME?
- 10 A PER WEEK, PER WEEK.
- 11 Q HOW MUCH PER WEEK?
- 12 A HE PAID ME, IT ALL DEPENDS ON HOW MUCH HE MADE OR HOW MUCH HOURS I
- 13 WORKED. HE PAID ME HUNDREDS -- SEVEN HUNDRED IS WHAT HE PAID ME.
- 14 Q OKAY, DID THAT DEPEND ON THE HOURS OR DID THAT DEPEND ON THE---
- 15 A YEAH, IT DEPENDS ON THE HOURS, IT DEPENDS ON THE HOURS.
- 16 Q OKAY, WELL, YOU JUST ALSO TESTIFIED THAT IT DEPENDED ON HOW MUCH HE
- 17 MADE?
- 18 A YEAH, BECAUSE IF I WORK, I MEAN LET'S SAY, I WORK ON THE JOB SITE SO WE
- 19 WORK 40 HOURS SOMETIMES AND IF PRODUCTION IS GOOD, HE CAN GIVE ME SOME
- 20 MORE MONEY, IF NOT, HE JUST CAN PAY ME JUST, YOU KNOW, SOMETIMES WHAT
- 21 HE HAS GOT.
- 22 Q DOES HE GIVE THE OTHER EMPLOYEES BONUSES LIKE THAT?
- 23 A SOMETIMES WHEN THEY GET GOOD PRODUCTION, WHEN THEY MAKE GOOD
- 24 PRODUCTION.
- 25 Q OKAY, HOW ABOUT WHEN HE JUST MAKES A LITTLE BIT MORE, DOES HE

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- 1 DISTRIBUTE THOSE PROFITS AMONGST OTHER PEOPLE---
- 2 A YEAH, SOMETIMES HE DOES.
- 3 Q ---OR JUST TO YOU?
- 4 A SOMETIMES HE DOES.
- 5 Q HE DOES?
- 6 A YEAH.
- 7 Q OKAY, AND YOU ARE IN CHARGE OF GETTING THE JOBS?
- 8 A YEAH.
- 9 Q SOMETIMES---
- 10 A YES.
- 11 Q ---HE GETS THE JOBS OTHER TIMES; IS THAT CORRECT?
- 12 A YEAH.
- 13 Q OKAY, AND YOU'RE INVOLVED IN A LOT OF THIS PAPERWORK; IS THAT CORRECT?
- 14 A MOSTLY, BECAUSE I THINK I'M BETTER THAN HIM.
- 15 Q OKAY, SO YOU MADE THAT CHOICE?
- 16 A NO, WE TALK ABOUT AND WE DECIDE, HE LIKE IT AND HE GO FOR IT, HE IS THE
- 17 ONE WHO MADE THE CHOICE.
- 18 Q OKAY, DID THE OTHER EMPLOYEES ALWAYS GET PAID THROUGH YOU?
- 19 A NO, MY BROTHER DOES.
- 20 Q NO, YOUR BROTHER DOES?
- 21 A MY BROTHER DOES - MY BROTHER DID.
- 22 Q HE PAYS WHAT?
- 23 A HE PAID THE EMPLOYEES.
- 24 Q OKAY, HE PAID THEM DIRECTLY---
- 25 A YES.

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- 1 Q ---SOMETIMES?
- 2 A YEAH.
- 3 Q HOW FREQUENTLY WOULD YOU DO IT?
- 4 A NO, THAT'S NOT RIGHT -- YOU ARE SAYING THE EMPLOYEES GET PAID FROM ME OR
- 5 FROM HIM?
- 6 Q THROUGH YOU, YOUR BROTHER WOULD PAY YOU, THEN YOU WOULD PAY THE
- 7 EMPLOYEES, CORRECT?
- 8 A NO, I PAID THE EMPLOYEES. IT WAS LIKE HE GIVE ME THE MONEY AND I PAY
- 9 THEM.
- 10 Q YOUR BROTHER WOULD GIVE YOU THE MONEY---
- 11 A UH-HUH.
- 12 Q ---AND YOU WOULD DISTRIBUTE THAT MONEY OUT?
- 13 A YES.
- 14 Q OKAY, DID IT HAPPEN THAT WAY ALL THE TIME?
- 15 A YES, ALWAYS ALL THE TIME.
- 16 Q OKAY, WHO DECIDED HOW MUCH YOU WOULD GET PAID?
- 17 A HE DECIDE EVERYTHING.
- 18 Q OKAY, DID HE TELL YOU HOW HE WOULD DECIDE?
- 19 A YES.
- 20 Q OKAY, WHAT METHOD DID HE USE?
- 21 A HE DECIDE WHAT HE LIKE AND WHAT HE DOESN'T LIKE, USUALLY WHAT HE DOES.
- 22 Q OKAY, COULD YOU HAVE FIRED ANY OF THESE EMPLOYEES?
- 23 A NO, I NEED TO TALK TO HIM FIRST.
- 24 Q OKAY, HOW MANY EMPLOYEES DID YOU ALL HAVE IN SOUTH CAROLINA?
- 25 A PROBABLY NINE, POSSIBLY NINE.

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- 1 Q OKAY, DO THOSE NINE GUYS WORK FOR YOU PRETTY MUCH ALL THE TIME?
- 2 A YEAH, YEAH, SOMETIMES SIX, SOMETIMES FIVE, IT ALL DEPENDS HOW BIG IS THE
- 3 WORK.
- 4 Q YOU WERE ASKED ABOUT THIS CERTIFICATE OF INSURANCE AND YOU SAID THE
- 5 ADDRESS 13416 CHAMPAGNE IN HOUSTON, TEXAS WAS YOUR BROTHER'S
- 6 ADDRESS?
- 7 A YEAH, WE LIVED THERE BEFORE.
- 8 Q YOU LIVED THERE AS WELL?
- 9 A YES, WE LIVED TOGETHER BEFORE.
- 10 Q WELL, WHY DIDN'T YOU SAY IT WAS ALSO YOUR ADDRESS THE FIRST TIME?
- 11 A BECAUSE WE LIVED TOGETHER.
- 12 Q OKAY.
- 13 A YEAH, WE WERE LIVING TOGETHER THEN.
- 14 Q BUT YOU JUST DECIDED TO SAY IT WAS FOR YOUR BROTHER?
- 15 A YEAH, BECAUSE IT WAS MY BROTHER'S ADDRESS ALSO.
- 16 Q DO YOU OWN ANY REAL ESTATE IN SOUTH CAROLINA?
- 17 A NO.
- 18 Q NO? DOES YOUR BROTHER?
- 19 A MY BROTHER? HIS HOUSE.
- 20 Q OKAY, DO YOU OWN ANY REAL ESTATE IN TEXAS?
- 21 A NO.
- 22 Q OKAY, WHO OWNS THAT HOUSE ON CHAMPAGNE STREET?
- 23 A THIS LADY OVER THERE.
- 24 Q A LADY IN TEXAS?
- 25 A UH-HUH.

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1 Q OKAY, IS THAT A "YES"?

2 A YES.

3 Q OKAY, DO YOU EVER SPLIT THE PROFITS WITH YOUR BROTHER?

4 A HAVE TO WHAT?

5 Q HAVE YOU EVER SPLIT THE PROFITS WITH YOUR BROTHER?

6 A NO, NO.

7 MR. KILLEN: THAT'S ALL I HAVE, COMMISSIONER.

8 THE COURT: MR. ELLIOTT, ANY REDIRECT?

9 MR. ELLIOTT: JUST ONE QUICK QUESTION.

10 REDIRECT EXAMINATION

11 BY MR. ELLIOTT:

12 Q WHEN THERE'S AN OPPORTUNITY TO TAKE ON A PROJECT OR A JOB, WHO HAS THE
13 LAST WORD IN DECIDING WHETHER TO TAKE IT?

14 A MY BROTHER.

15 Q OKAY, HAVE THERE BEEN INSTANCES WHERE YOU WANTED TO TAKE A JOB AND
16 HE DID NOT?

17 A YEAH, WHATEVER HE SAY IS WHAT WE HAVE TO DO.

18 Q OKAY.

19 A IF HE SAY NO, HE DON'T GO, IF HE SAY YES, WE HAVE TO DO IT.

20 MR. ELLIOTT: OKAY.

21 THE COURT: ANY RECROSS, MR. DWORJANYN - I'M SORRY, MR. GRIFFITH?

22 MR. GRIFFITH: NO, MA'AM.

23 THE COURT: MR. DWORJANYAN?

24 MR. DWORJANYAN: YES, COMMISSIONER.

25 RECROSS-EXAMINATION

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- 1 BY MR. DWORJANYN:
- 2 Q WHEN DID YOU LIVE AT 13416 CHAMPAGNE IN HOUSTON, TEXAS?
- 3 A IT WAS SEVEN YEARS AGO, EIGHT.
- 4 Q DO YOU KNOW WHEN YOUR BROTHER SOLD THE HOUSE?
- 5 A IT WASN'T A HOUSE.
- 6 Q IT WAS JUST A RENTAL HOUSE?
- 7 A YES.
- 8 Q WAS SEVEN YEARS AGO, WAS THAT THE LAST TIME YOUR BROTHER LIVED AT
- 9 THAT HOUSE TOO?
- 10 A YEAH, BECAUSE WE MOVED TOGETHER AGAIN.
- 11 Q YOU MOVED TO SOUTH CAROLINA ABOUT SEVEN YEARS AGO?
- 12 A YEAH.
- 13 Q AND THAT WAS JUST A HOUSE YOU ALL WERE RENTING?
- 14 A YES.
- 15 MR. DWORJANYN: OKAY, THANK YOU. NOTHING FURTHER.
- 16 THE COURT: MR. SMITH?
- 17 MR. SMITH: NO, COMMISSIONER.
- 18 THE COURT: MR. HOWELL?
- 19 MR. HOWELL: NOTHING.
- 20 THE COURT: MR. MONTGOMERY?
- 21 MR. MONTGOMERY: NO, COMMISSIONER.
- 22 THE COURT: MR. GOUDELOCK?
- 23 MR. GOUDELOCK: NO QUESTIONS, YOUR HONOR.
- 24 THE COURT: MR. KILLEN?
- 25 MR. KILLEN: NOTHING FURTHER, YOUR HONOR.

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Lexington, South Carolina 29072

1 **THE COURT:** ANY OTHER QUESTIONS FOR THIS WITNESS?

2 **MR. ELLIOTT:** NO, MA'AM.

3 **THE COURT:** ALL RIGHT, SIR, YOU CAN STEP DOWN.

4 **MR. ELLIOTT:** ANY OTHER WITNESSES FOR CONTRERAS PANELS?

5 **MR. ELLIOTT:** YES, MA'AM, WE WOULD CALL GABRIEL CONTRERAS.

6 **THE COURT:** PLEASE RAISE YOUR RIGHT HAND.

7 WHEREUPON,

8 **GABRIEL CONTERAS,**

9 HAVING BEEN FIRST DULY SWORN, DID DEPOSE AND TESTIFY THROUGH AN
10 INTERPRETER AS FOLLOWS:

11 **THE COURT:** PLEASE STATE YOUR FULL NAME FOR THE RECORD.

12 **THE WITNESS:** GABRIEL CONTRERAS.

13 **THE COURT:** IS HE GOING TO DO IT IN ENGLISH?

14 **MR. ELLIOTT:** BEFORE WE START, ARE YOU COMFORTABLE DOING THIS IN
15 ENGLISH OR WOULD YOU RATHER HAVE SOMEONE INTERPRET IT?

16 **THE WITNESS:** I WOULD LIKE TO HAVE SOMEONE TO INTERPRET IT
17 BECAUSE I DON'T SPEAK ENGLISH VERY GOOD.

18 **THE COURT:** ALL RIGHT, MR. HUNT, WOULD YOU MIND DOING THAT?

19 **MR. HUNT:** NO, YOUR HONOR.

20 **MR. ELLIOTT:** AND IF IT IS AN ISSUE OF USING THE MAN YOU PAY, I
21 BROUGHT SOMEONE FROM MY OFFICE I DON'T KNOW IF SOMEONE OBJECTS TO
22 IT---

23 **THE COURT:** WE DON'T LET ANY EMPLOYEES---

24 **MR. ELLIOTT:** OKAY.

25 **THE COURT:** ---OF YOUR OFFICE DO THAT SO...

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1 MR. ELLIOTT: OKAY, WELL, WE WILL WORK THAT OUT.

2 MR. GRIFFITH: YEAH, THAT'S FINE.

3 DO YOU NEED THESE TO USE?

4 MR. HUNT: I THINK I DO.

5 MR. GRIFFITH: ALL RIGHT, 11:30 IS ON YOUR DOLLAR.

6 MR. ELLIOTT: SEND ME THE BILL.

7 THE COURT: NOW, MR. CONTRERAS, BECAUSE YOU SPEAK ENGLISH IT IS
8 GOING TO BE VERY IMPORTANT THAT WHEN A LAWYER ASKS YOU A QUESTION IF
9 YOU ALREADY UNDERSTAND IT, YOU WAIT UNTIL THE INTERPRETER HAS
10 FINISHED INTERPRETING IT BEFORE YOU ATTEMPT TO ANSWER, OTHERWISE WE
11 ARE GOING TO GET ALL SCREWED UP ON THE RECORD, OKAY?

12 THE WITNESS: OKAY, THAT'S GOOD.

13 THE COURT: OKAY, MR. ELLIOTT?

14 DIRECT EXAMINATION

15 BY MR. ELLIOTT:

16 Q MR. CONTRERAS, ARE YOU THE OWNER OF CONTRERAS PANELS?

17 A YES.

18 Q DOES YOUR BROTHER PABLO HAVE ANY OWNERSHIP INTEREST IN THE COMPANY
19 OR IS IT JUST YOU?

20 A JUST ME.

21 Q OKAY, HOW LONG HAVE YOU BEEN IN THE CONSTRUCTION BUSINESS IN THE
22 UNITED STATES?

23 A SINCE '97.

24 Q OKAY, HOW MANY PROJECTS HAVE YOU DONE AS CONTRERAS PANELS IN SOUTH
25 CAROLINA?

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- 1 A IT IS DIFFICULT TO REMEMBER, BUT I HAVE ONLY WORKED IN SOUTH CAROLINA,
2 NORTH CAROLINA AND GEORGIA.
- 3 Q IF YOU HAD TO GUESS HOW MANY PROJECTS YOU HAVE DONE IN SOUTH
4 CAROLINA, HOW MANY HAVE YOU DONE?
- 5 A AROUND 30, I BELIEVE.
- 6 Q OKAY, THIS PARTICULAR PROJECT IN YORK, IN ROCK HILL, YOU WORKED UNDER
7 HENSON AND ASSOCIATES; IS THAT CORRECT?
- 8 A THAT'S CORRECT.
- 9 Q OKAY, HAVE YOU WORKED UNDER ANY OTHER CONTRACTOR THAN HENSON AND
10 ASSOCIATES?
- 11 A YES.
- 12 Q OKAY, HOW MANY PROJECTS HAVE YOU WORKED UNDER HENSON AND
13 ASSOCIATES?
- 14 A ALMOST ALL OF THEM, AROUND 90 PERCENT WAS FOR HENSON.
- 15 Q OKAY, WOULD YOU CONSIDER HENSON A REPUTABLE OR RESPECTABLE
16 COMPANY?
- 17 A OF COURSE.
- 18 Q WHY DID YOU EVER CONSIDER GETTING WORKERS' COMPENSATION INSURANCE?
- 19 A WHEN I FIRST STARTED WORKING IN THIS BUSINESS THAT'S THE VERY FIRST
20 THING THAT THEY SAID I NEED TO GET, WORKERS' COMP.
- 21 Q OKAY, DID HENSON AND ASSOCIATES LET YOU WORK UNDER THEM UNLESS YOU
22 HAD WORKERS' COMP INSURANCE?
- 23 A NO.
- 24 Q ALL RIGHT, DID THEY EVER -- DID THEY MAKE YOU PROVIDE THEM PROOF OF
25 INSURANCE EVERY TIME YOU WORKED FOR THEM?

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- 1 A YES, EVERY TIME THEY WOULD BEGIN A JOB, THEY ASKED ME FOR THE POLICY.
- 2 Q OKAY, HOW DID YOU GET HOOKED UP WITH ASSOCIATES BENEFITS AGENCY?
- 3 A THE PERSON WHO I WORKED FOR BEFORE, HE HAD THAT SAME INSURANCE AND
- 4 HE ALSO HAD WORKED FOR HENSON.
- 5 Q OKAY, WAS THAT LYNN WOOTEN?
- 6 A NO.
- 7 Q DO YOU KNOW WHO LYNN WOOTEN IS?
- 8 A NO.
- 9 Q DO YOU KNOW WHAT SERVICE RESOURCES IS?
- 10 A NO.
- 11 Q DID YOU PAY LYNN WOOTEN \$1,500 TO GET WORKERS' COMP INSURANCE?
- 12 A NO.
- 13 Q DO YOU RECALL THE NAME OF THE GUY OR THE COMPANY THAT REFERRED YOU
- 14 TO THE ASSOCIATES BENEFITS AGENCY?
- 15 A YES, SIR.
- 16 Q OKAY, WHO WAS IT?
- 17 A HIS NAME WAS JOHN CAMPBELL AND HIS COMPANY WAS CAROLINA PREFAB. HE
- 18 GAVE ME A BILL WITH A NAME AND A PHONE NUMBER AND ALL THE
- 19 INFORMATION FOR THE INSURANCE.
- 20 Q OKAY, WHO MADE THE ADDITIONAL CALL TO ASSOCIATES BENEFITS AGENCY TO
- 21 GET THE INSURANCE?
- 22 A MY WIFE DID, AS YOU KNOW, I DON'T SPEAK VERY GOOD ENGLISH AND MY WIFE
- 23 SPEAKS VERY GOOD ENGLISH.
- 24 Q OKAY, DID YOU EVER HANDLE OR PARTAKE IN PAYING THE PREMIUMS FOR THIS
- 25 WORKERS' COMPENSATION INSURANCE?

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- 1 A YES, EVERY MONTH SINCE THE DAY WE GOT THIS POLICY, WE'VE BEEN PAYING ON
2 IT.
- 3 Q OKAY, WHERE WERE YOU MAKING THE PAYMENTS FROM?
- 4 A FROM THE HOUSE, WHERE WE SENT CHECKS BY MAIL.
- 5 Q OKAY, WHERE IS YOUR HOUSE?
- 6 A IN SUMTER, SOUTH CAROLINA.
- 7 Q OKAY, WOULD THE CHECKS THAT YOU WROTE HAVE YOUR SUMTER ADDRESS ON
8 THEM?
- 9 A OF COURSE.
- 10 Q WHERE WOULD THEY MAIL YOU THE BILL?
- 11 A THE ADDRESS OF THE INSURANCE COMPANY IS IN HOUSTON, I BELIEVE THAT'S
12 NASA ROAD, I DON'T REMEMBER EXACTLY.
- 13 Q OKAY, WHEN THEY SENT YOU A BILL, WHERE DID THEY SEND IT?
- 14 A SUMTER, SOUTH CAROLINA.
- 15 Q OKAY, WHEN YOU WERE REQUIRED TO SEND - TO PROVIDE PROOF OF INSURANCE
16 TO HENSON AND ASSOCIATES, HOW WOULD YOU GO ABOUT DOING THAT?
- 17 A MY WIFE WOULD CALL MARY, MARY IS THE ONE WHO HANDLED OUR POLICY. SHE
18 WOULD SEND A COPY OF THE POLICY TO HENSON.
- 19 Q NOW, WOULD THEY SEND HIM A COPY OF THE POLICY OR WOULD THEY SEND HIM
20 PROOF OF INSURANCE?
- 21 A THE PROOF OF INSURANCE, IT IS A CERTIFICATE.
- 22 Q WOULD YOU OR YOUR WIFE OR YOUR BROTHER EVER DIRECTLY SEND PROOF OF
23 INSURANCE FROM YOU TO HENSON AND ASSOCIATES OR WOULD IT COME FROM
24 ASSOCIATES BENEFITS AGENCY IN TEXAS?
- 25 A EVERYTHING CAME FROM ASSOCIATES BENEFITS.

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- 1 Q DID YOU EVER HAVE ANY CONTACT WITH ANYBODY FROM ASSOCIATES BENEFITS
2 OTHER THAN MARY FELDER?
- 3 A NO, MARY WAS THE ONE IN CHARGE OF OUR CASE SO WE ONLY SPOKE WITH
4 MARY. ON HER DAYS OFF WHICH I BELIEVE WERE MONDAYS, THEY WOULD TELL
5 US TO CALL BACK WHEN SHE WAS THERE.
- 6 Q DID YOU EVER -- DURING THIS TIME WORKING AT THE YORK PROJECT, DID YOU
7 EVER HAVE ANY REASON TO THINK THAT YOU WERE NOT COVERED WITH
8 WORKERS' COMPENSATION INSURANCE?
- 9 A OF COURSE NOT.
- 10 Q DID YOU EVER LIVE AT 13416 CHAMPAGNE STREET IN HOUSTON, TEXAS?
- 11 A YES, BEFORE WE CAME TO WORK HERE, WE LIVED THERE.
- 12 Q OKAY, ROUGHLY HOW LONG DID YOU LIVE THERE?
- 13 A I THINK A YEAR PROBABLY.
- 14 Q OKAY, HAVE YOU EVER DONE ANY CONSTRUCTION PROJECTS IN TEXAS?
- 15 A NO.
- 16 Q OKAY, OTHER THAN SOUTH CAROLINA, WHAT STATES HAVE YOU DONE PROJECTS
17 IN?
- 18 A SOUTH CAROLINA AND NORTH CAROLINA, ALMOST ALL.
- 19 Q OKAY, DO YOU OWN THAT HOUSE AT 13416 CHAMPAGNE?
- 20 A YES.
- 21 Q YOU OWN IT?
- 22 A YES, ACTUALLY IT BURNED DOWN SO WE DON'T HAVE A HOUSE.
- 23 Q OKAY, DO YOU OWN THE HOUSE IN SUMTER?
- 24 A WE DON'T HAVE A HOUSE RIGHT NOW, BUT THE LOT IS MINE.
- 25 Q OKAY, AND YOU AND YOUR WIFE AND YOUR BROTHER LIVE ON THE LOT?

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1 A NOT RIGHT NOW, WE LIVE IN ANOTHER PLACE SINCE THERE IS NO HOUSE.

2 Q DID YOU LIVE IN TEXAS WHEN YOU FIRST CONTACTED ASSOCIATES BENEFITS
3 AGENCY?

4 A NO, WE LIVED IN TEXAS AND WE HAD THE HOUSE, BUT WE WERE NOT LIVING
5 HERE.

6 Q OKAY, HOW DID THEY KNOW TO SEND THE BILLS TO SUMTER?

7 A WHEN I BOUGHT THE LOT HERE, THE HOUSE OR THE LOT, I GAVE THEM THAT
8 ADDRESS TO SEND THE BILL.

9 MR. ELLIOTT: I DON'T HAVE ANY FURTHER QUESTIONS.

10 THE COURT: MR. GRIFFITH?

11 CROSS- EXAMINATION

12 BY MR. GRIFFITH:

13 Q MR. CONTRERAS, ARE YOU LEGALLY IN THE UNITED STATES?

14 A YES.

15 Q OKAY, DO YOU HAVE A WORK VISA?

16 A NO.

17 Q YOU ARE A RESIDENT ALIEN?

18 A YES.

19 Q OKAY, DO YOU HAVE A CARD TO THAT EFFECT?

20 A NOT RIGHT NOW.

21 MR. GRIFFITH: OKAY, NO FURTHER QUESTIONS.

22 THE COURT: MR. DWORJANYAN?

23 MR. DWORJANYAN: IF IT PLEASE THE COMMISSION?

24 CROSS-EXAMINATION

25 BY MR. DWORJANYN:

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- 1 Q WHEN DID YOU LAST LIVE IN TEXAS?
- 2 A AROUND 2000.
- 3 Q AND DID YOU MOVE TO SOUTH CAROLINA IN 2000?
- 4 A SINCE '97, I HAVE BEEN WORKING OUTSIDE OF TEXAS.
- 5 Q WHEN DID YOU MOVE TO SOUTH CAROLINA?
- 6 A 2004 - 2003, IF I REMEMBER.
- 7 Q WHEN DID THE HOUSE BURN?
- 8 A SEVEN MONTHS AGO.
- 9 Q WHO WAS LIVING IN THE HOUSE BETWEEN 2003 AND SEVEN MONTHS AGO?
- 10 A IN SUMTER?
- 11 Q NO, IN TEXAS.
- 12 A OH, BROTHER-IN-LAW.
- 13 Q YOUR BROTHER-IN-LAW?
- 14 A NO.
- 15 THE INTERPRETER: INTERPRETER ERROR, I APOLOGIZE. "MY SISTER-IN-
- 16 LAW".
- 17 BY MR. DWORJANYN:
- 18 Q YOUR BROTHER SAID THAT YOU GUYS RENTED THAT HOUSE; IS THAT TRUE?
- 19 A IT WAS RENTED DURING THE TIME WE WERE HERE, BUT NOW MY SISTER-IN-LAW IS
- 20 LIVING THERE. SINCE ALL THE WORK WAS HERE, YOU KNOW, WE STAYED HERE.
- 21 Q WHY DID YOUR INSURANCE AGENT USE YOUR TEXAS ADDRESS ON THE
- 22 CERTIFICATES OF INSURANCE?
- 23 A WHEN WE GOT IT, WE HAD NO OTHER RESIDENCE OTHER THAN THE HOUSE IN
- 24 HOUSTON.
- 25 Q BUT YOU WEREN'T LIVING IN HOUSTON, WERE YOU?

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- 1 A NO.
- 2 Q SO YOU MUST HAVE HAD AN ADDRESS BECAUSE YOU WERE LIVING SOUTH
- 3 CAROLINA WHEN YOU GOT THE INSURANCE POLICY, RIGHT?
- 4 A NO, BECAUSE THAT WAS WHERE THEY SENT THE BILL, THE THING IS WE WOULD
- 5 WORK SEVEN MONTHS HERE, SEVEN MONTHS THERE, A FEW MONTHS THERE.
- 6 Q WHY DID THEY SEND THE BILLS TO SOUTH CAROLINA AND LIST A HOUSTON
- 7 ADDRESS AS YOUR MAILING ADDRESS?
- 8 A IN 2004 WHEN I BOUGHT MY HOUSE, THEY SENT EVERYTHING TO MY HOUSE.
- 9 Q YOUR HOUSE WHERE?
- 10 A IN SOUTH CAROLINA, SUMTER.
- 11 Q OKAY, WELL, WHO TOLD THE INSURANCE AGENT THAT YOU HAD A HOUSTON
- 12 ADDRESS?
- 13 A WHEN YOU GET THE INSURANCE FOR THE FIRST TIME THEY ASK YOU THE
- 14 ADDRESS AND THAT'S WHERE - SINCE THAT WAS THE ONLY HOUSE WE HAD,
- 15 THAT'S WHERE THE MAILING ADDRESS WAS.
- 16 Q BUT YOU WERE LIVING IN SOUTH CAROLINA WHEN YOU GOT THE INSURANCE?
- 17 A YES.
- 18 Q AND YOU WERE RECEIVING MAIL FROM PEOPLE, RIGHT?
- 19 A HERE IN SOUTH CAROLINA?
- 20 Q YES.
- 21 A WHEN I HAD MY HOUSE, YES.
- 22 Q OKAY, YOU HAD A BANK ACCOUNT HERE IN SOUTH CAROLINA, RIGHT?
- 23 A I THINK AT THAT TIME, I HAD GOTTEN IT TAKEN OUT OF NORTH CAROLINA.
- 24 Q OKAY, BUT YOU USED A SOUTH CAROLINA ADDRESS FOR YOUR BANK, DIDN'T
- 25 YOU?

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- 1 A NO.
- 2 Q WHAT ADDRESS DID YOU USE?
- 3 A HOUSTON.
- 4 Q AND IS IT STILL HOUSTON, TEXAS?
- 5 A NO.
- 6 Q WHEN DID YOU CHANGE IT?
- 7 A IT IS DIFFICULT TO REMEMBER, BUT WHEN I GOT MY NEW RESIDENCE, I MOVED
- 8 EVERYTHING TO MY HOUSE.
- 9 Q DID YOUR INSURANCE AGENT EVER SEND YOU A COPY OF YOUR GENERAL
- 10 LIABILITY POLICY?
- 11 A MY WIFE SAID, SINCE SHE'S IN CHARGE, THAT THEY SENT IT, BUT WE ARE UNABLE
- 12 TO FIND THE PAPERS.
- 13 Q YOU COULDN'T FIND ANY OF YOUR INSURANCE POLICIES, COULD YOU?
- 14 A NOT UP TO THIS POINT SINCE WE HAVE BEEN LOOKING.

15 MR. DWORJANYN: NO FURTHER QUESTIONS.

16 THE COURT: MR. SMITH?

17 CROSS-EXAMINATION

18 BY MR. SMITH:

- 19 Q CONTRERAS PANELS HAS PERFORMED A VARIETY OF SUBCONTRACT WORK FOR
- 20 HENSON AND ASSOCIATES, CORRECT?
- 21 A YES.
- 22 Q AND I BELIEVE YOU TESTIFIED EARLIER THAT THE MAJORITY OF THAT WORK HAS
- 23 BEEN IN NORTH CAROLINA AND SOUTH CAROLINA?
- 24 A YES.
- 25 Q NOW, AS A PART OF ALL THE CONTRACTS THAT YOU ENTERED INTO WITH HENSON

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- 1 AND ASSOCIATES, YOU WERE REQUIRED TO PROVIDE A CERTIFICATE OF
2 INSURANCE?
- 3 A YES.
- 4 Q AND YOU HAD TO PROVIDE THAT FOR EACH JOB?
- 5 A FOR EACH JOB.
- 6 Q OKAY, NOW, AT SOME POINT YOU GOT IN TOUCH WITH MR. HENSON ABOUT THE
7 YORK HIGH SCHOOL PROJECT IN YORK, SOUTH CAROLINA?
- 8 A YES.
- 9 Q AND THEN IN APRIL OF 2009, YOU AND MR. HENSON NEGOTIATED -- OR CONTRERAS
10 PANELS AND HENSON AND ASSOCIATES ENTERED INTO A CONTRACT FOR
11 CONTRERAS PANELS TO INSTALL THE METAL ROOFING AT THE YORK HIGH
12 SCHOOL?
- 13 A YES.
- 14 Q AND AS A PART OF THAT CONTRACT, CONTRERAS PANELS HAD TO PROVIDE
15 HENSON AND ASSOCIATES WITH A CERTIFICATE OF INSURANCE?
- 16 A YES.
- 17 Q AND THAT WAS FOR GENERAL LIABILITY INSURANCE AND WORKERS'
18 COMPENSATION INSURANCE?
- 19 A YES.
- 20 Q AND THIS CONTRACT WAS CONTINGENT ON CONTRERAS PANELS PROVIDING
21 HENSON AND ASSOCIATES WITH A CERTIFICATE OF INSURANCE, CORRECT?
- 22 A YES.
- 23 Q SO BEFORE CONTRERAS PANELS COULD START ANY WORK ON THE PROJECT, THEY
24 HAD TO GIVE A CERTIFICATE TO HENSON AND ASSOCIATES?
- 25 A YES, EACH JOB WE SENT ONE.

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- 1 Q OKAY, AND I WANT TO SHOW YOU THIS CERTIFICATE. I GOT ON PAGE 38, APA
2 NUMBER THREE, TAKE A LOOK AT THAT. THAT CERTIFICATE IS DATED APRIL 23RD,
3 2009, CORRECT?
- 4 A CORRECT.
- 5 Q AND THIS WOULD HAVE BEEN PRIOR TO CONTRERAS PANELS STARTING WORK ON
6 THE YORK HIGH SCHOOL PROJECT?
- 7 A YES, CORRECT.
- 8 Q AND THE PRODUCER OF THAT INSURANCE IS ASSOCIATES BENEFITS AGENCY,
9 CORRECT?
- 10 A YES, CORRECT.
- 11 Q AND THAT'S THE INSURANCE AGENT THAT CONTRERAS PANELS OBTAINED
12 WORKERS' COMPENSATION COVERAGE THROUGH?
- 13 A YES.
- 14 Q OKAY, AND YOU MADE MONTHLY PAYMENTS TO ASSOCIATES BENEFITS AGENCY
15 FOR THIS INSURANCE, CORRECT?
- 16 A YES, CORRECT.
- 17 Q AND THAT CERTIFICATE DATED APRIL 23RD, 2009 INDICATES THAT YOU HAD
18 WORKERS' COMPENSATION COVERAGE FROM MAY 10TH, 2008 THROUGH MAY 10TH,
19 2009; IS THAT CORRECT?
- 20 A YES, THAT'S CORRECT.
- 21 Q AND HENSON AND ASSOCIATES IS LISTED AS THE CERTIFICATE HOLDER?
- 22 A YES, THAT'S CORRECT.
- 23 Q AND WHAT JOB SITE IS THAT SPECIFICALLY FOR?
- 24 A IT IS FOR THE JOB, YORK HIGH SCHOOL.
- 25 Q SO THE YORK HIGH SCHOOL AND TECH CENTER PROJECT?

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- 1 A YES.
- 2 Q AND THAT JOB WAS IN SOUTH CAROLINA?
- 3 A YES, SOUTH CAROLINA.
- 4 Q OKAY. NOW, DO YOU HAVE ANY REASON TO DOUBT THAT CONTRERAS PANELS
- 5 HAD WORKERS' COMPENSATION COVERAGE FOR THAT PERIOD OF TIME?
- 6 A NO.
- 7 Q AND SPECIFICALLY ON THE YORK HIGH SCHOOL PROJECT?
- 8 A NO.
- 9 Q AND IS THAT BECAUSE YOU MADE MONTHLY PAYMENTS TO YOUR INSURANCE
- 10 AGENT AND YOUR INSURANCE AGENT ISSUED THAT CERTIFICATE OF INSURANCE?
- 11 A YES.
- 12 Q NOW, IF YOU FLIP THE PAGE, PAGE 39, IT APPEARS THAT YOU OBTAINED A SECOND
- 13 CERTIFICATE OF INSURANCE ON MAY 8TH, 2009; IS THAT CORRECT?
- 14 A THAT'S CORRECT.
- 15 Q AND THAT'S TWO DAYS BEFORE THAT FIRST CERTIFICATE OF INSURANCE EXPIRED
- 16 ON MAY 10TH, 2009, CORRECT?
- 17 A THAT'S CORRECT.
- 18 Q AND YOU HAD TO OBTAIN THIS SECOND CERTIFICATE OF INSURANCE BECAUSE
- 19 THE FIRST ONE WAS ABOUT TO EXPIRE, CORRECT?
- 20 A THAT'S CORRECT.
- 21 Q AND THIS CERTIFICATE WAS ALSO FROM ASSOCIATES BENEFITS AGENCY?
- 22 A CORRECT.
- 23 Q AND CONTRERAS PANELS IS LISTED AS THE INSURED?
- 24 A YES.
- 25 Q AND I BELIEVE THAT CERTIFICATE INDICATES THAT THE INSURANCE COMPANY OF

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- 1 THE STATE OF PENNSYLVANIA WAS TO PROVIDE WORKERS' COMPENSATION
2 COVERAGE?
- 3 A YES.
- 4 Q AND THE COVERAGE PERIOD WAS FROM MAY 8TH, 2009 THROUGH MAY 8TH, 2010?
- 5 A YES.
- 6 Q AND THIS CERTIFICATE WAS ALSO GIVEN TO HENSON AND ASSOCIATES?
- 7 A OF COURSE, YES.
- 8 Q AND ONCE AGAIN, THIS MAY OF 2009 CERTIFICATE OF INSURANCE SPECIFICALLY
9 STATES THAT IT IS FOR THE YORK HIGH SCHOOL AND TECH CENTER PROJECT?
- 10 A YES, OF COURSE.
- 11 Q AND MR. ALMAZAN'S WORK ACCIDENT FALLS WITHIN THE PERIOD OF COVERAGE
12 ON THIS CERTIFICATE?
- 13 A OF COURSE, YES.
- 14 Q OKAY, WAS IT YOUR BELIEF THAT CONTRERAS PANELS HAD WORKERS'
15 COMPENSATION COVERAGE FROM MAY 8TH, 2009 THROUGH MAY 8TH, 2010 ON THE
16 YORK HIGH SCHOOL PROJECT?
- 17 A WE WERE PAYING MONTH BY MONTH, YEAR BY YEAR, I BELIEVE SO.
- 18 Q AND YOUR INSURANCE AGENT WAS ISSUING CERTIFICATES TO THE CONTRACTORS
19 ABOVE YOU?
- 20 A YES.
- 21 Q NOW, IF YOU TURN THE PAGE TO PAGE 40, THE NEXT PAGE. ON FEBRUARY 8TH,
22 2010, APPROXIMATELY FOUR AND A HALF MONTHS AFTER MR. ALMAZAN'S WORK
23 ACCIDENT, YOU PROVIDED ANOTHER CERTIFICATE TO HENSON AND ASSOCIATES;
24 IS THAT CORRECT?
- 25 A YES.

KELLIE C. LINDLER, CERTIFIED COURT REPORTER

242 Catawba Trail
Lexington, South Carolina 29072

1 Q OKAY, AND THIS CERTIFICATE CAME FROM ASSOCIATES BENEFITS AGENCY AS
2 WELL?

3 A YES.

4 Q AND IT INDICATES THAT CONTRERAS PANELS HAD WORKERS' COMPENSATION
5 COVERAGE ON THE YORK HIGH SCHOOL AND TECH CENTER PROJECT?

6 A YES, OF COURSE, WE NEVER THOUGHT THAT THERE WAS ANY CHANGE IN THAT OR
7 WE WEREN'T AUTHORIZED FOR WORK IN SOUTH CAROLINA.

8 Q AND YOU WERE CONTINUING TO MAKE MONTHLY PAYMENTS FOR WORKERS'
9 COMPENSATION INSURANCE?

10 A YES.

11 Q AND IN FACT, TWO AND A HALF MONTHS AFTER HIS WORK ACCIDENT, YOUR
12 AGENT CONTINUED TO INDICATE THAT THE INSURANCE COMPANY OF
13 PENNSYLVANIA WAS PROVIDING YOU WITH WORKERS' COMPENSATION
14 COVERAGE?

15 A YES.

16 MR. SMITH: NO FURTHER QUESTIONS.

17 THE COURT: MR. HOWELL?

18 CROSS-EXAMINATION

19 BY MR. HOWELL:

20 Q MR. CONTRERAS, YOU INDICATED THAT YOU HAD DONE - THAT ABOUT 90
21 PERCENT OF YOUR WORK WAS WITH HENSON AND ASSOCIATES; IS THAT
22 CORRECT?

23 A CORRECT.

24 Q AND HOW LONG HAD YOU BEEN DOING BUSINESS WITH HENSON AND ASSOCIATES?

25 A SINCE 2004.

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1 Q OKAY, AND WOULD IT BE FAIR TO SAY THAT SINCE THAT TIME, HENSON HAS HAD
2 REGULAR AND ONGOING OPERATIONS IN SOUTH CAROLINA DURING THAT PERIOD
3 OF TIME?

4 A YES.

5 Q NOW, THE CERTIFICATE OF INSURANCE THAT YOU PROVIDED HENSON FOR THE
6 YORK COUNTY PROJECT, YOU INTENDED FOR MR. HENSON TO RELY ON THAT IN
7 ALLOWING YOU TO WORK ON THIS JOB?

8 A YES, WE SPOKE TO MARY AT THE INSURANCE COMPANY AND MARY SENT IT TO
9 HIM.

10 Q OKAY, BUT YOU KNEW HE WAS GOING TO RELY ON IT IN ALLOWING YOU TO WORK
11 ON THIS JOB, CORRECT?

12 A YES.

13 MR. HOWELL: THANK YOU.

14 THE COURT: MR. MONTGOMERY?

15 MR. MONTGOMERY: NOTHING, THANK YOU.

16 THE COURT: MR. GOUDELOCK?

17 MR. GOUDELOCK: NO QUESTIONS, YOUR HONOR.

18 THE COURT: MR. KILLEN?

19 MR. KILLEN: THANK YOU, YOUR HONOR.

20 CROSS-EXAMINATION

21 BY MR. KILLEN:

22 Q MR. ALMAZAN, YOU WERE ASKED SOME QUESTIONS ABOUT THIS CONTRACT YOU
23 ENTERED INTO - EXCUSE ME, MR. CONTRERAS, WITH HENSON AND ASSOCIATES.
24 DID YOU HAVE A LOOK AT THIS CONTRACT BEFORE IT WAS SIGNED?

25 A YES.

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- 1 Q DID YOU ACTUALLY SIGN THAT YOURSELF?
- 2 MR. ELLIOTT: OBJECTION, IF HE IS GOING TO REFER TO THE DOCUMENT,
- 3 HE OUGHT TO AT LEAST LET HIM LOOK AT IT.
- 4 MR. KILLEN: MAY I APPROACH, COMMISSIONER?
- 5 THE COURT: YES.
- 6 BY MR. KILLEN:
- 7 Q I AM GOING TO SHOW YOU WHAT HAS BEEN MARKED AS PAGE 35 IN MR. SMITH'S
- 8 APA SUBMISSIONS. IS THAT YOUR SIGNATURE APPEARING ON THAT PAGE?
- 9 A YES.
- 10 Q OKAY, YOU ACTUALLY READ AND SIGNED THAT DOCUMENT BEFORE YOU SIGNED
- 11 IT PERSONALLY?
- 12 A YES.
- 13 Q THAT IS NOT YOUR BROTHER'S SIGNATURE SIGNING YOUR NAME?
- 14 A HE HAS THE POWER TO SIGN MY NAME, BUT I CAN'T REMEMBER.
- 15 Q SO YOU DON'T KNOW WHETHER OR NOT YOU SIGNED IT OR YOUR BROTHER DID; IS
- 16 THAT CORRECT?
- 17 A THAT'S CORRECT.
- 18 Q OKAY, AND YOU WERE EVEN ASKED WHETHER OR NOT THIS CONTRACT WAS
- 19 CONTINGENT UPON YOU OBTAINING INSURANCE; DO YOU RECALL THAT?
- 20 A YES, THAT'S LIKE ALL THE OTHER JOBS WE HAVE HAD.
- 21 Q OKAY, DO YOU KNOW WHAT "CONTINGENT" MEANS?
- 22 A NO.
- 23 Q OKAY, SO THIS CONTRACT SPEAKS FOR ITSELF; DOES IT NOT?
- 24 A I BELIEVE SO.
- 25 Q OKAY, AND YOU WERE ASKED ABOUT THE CERTIFICATES OF INSURANCE. WHAT

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- 1 WAS YOUR ROLE IN GETTING THESE CERTIFICATES?
- 2 A I TALK TO MY BROTHER OR MY WIFE TO SPEAK WITH THEM TO GET THEM.
- 3 Q SO YOUR BROTHER OR YOUR WIFE DID ALL THE COMMUNICATION WITH ALL THE
- 4 OTHER PARTIES; IS THAT CORRECT?
- 5 A WITH THE INSURANCE COMPANY?
- 6 Q FOR ONE.
- 7 A YES.
- 8 Q OKAY, SO YOUR BROTHER OR YOUR WIFE SPOKE WITH THE INSURANCE COMPANY,
- 9 WHICH IS ASSOCIATES BENEFITS AGENCY?
- 10 A YES.
- 11 Q OKAY, DID YOU EVER SPEAK WITH ANYONE FROM ASSOCIATES BENEFITS
- 12 AGENCY?
- 13 A WHO IS THERE?
- 14 Q YOU SPOKE WITH MARY FIELDER?
- 15 A YES.
- 16 Q OKAY, WHEN WOULD YOU SPEAK WITH HER?
- 17 A I DON'T REMEMBER, BUT SOMETIMES MY BROTHER OR WIFE DIDN'T HAVE A
- 18 CHANCE TO.
- 19 Q OKAY, BUT YOU DIDN'T SPEAK WITH HER AS PART OF THE EFFORTS TO GENERATE
- 20 THESE CERTIFICATES OF INSURANCE HERE, DID YOU?
- 21 A NO, I HAVEN'T SPOKEN WITH MARY LATELY.
- 22 Q OKAY, AND I AM GOING TO SHOW YOU PAGES 38 AND 39 IN MR. SMITH'S APA
- 23 SUBMISSIONS, THOSE ARE THE TWO CERTIFICATES OF INSURANCE IN QUESTION.
- 24 CAN YOU HAVE A LOOK AT THOSE, PLEASE?
- 25 A (WITNESS COMPLIES)

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- 1 Q CAN YOU TELL ME WHERE IT SAYS SOUTH CAROLINA ON THOSE DOCUMENTS?
- 2 A WE DIDN'T EVER GET A CERTIFICATE THAT CAME DIRECTLY TO HENSON.
- 3 Q OKAY, SO YOU HAVE NEVER EVEN SEEN THOSE DOCUMENTS PRIOR TO THIS
- 4 ACTION; IS THAT CORRECT?
- 5 A WE ALWAYS JUST SAW -- MET THE CONDITIONS OF THE COMPANY LIKE ONE
- 6 MILLION OR TWO MILLION OR WHATEVER THE FIRST TIME.
- 7 Q YOU NEVER SAW THOSE DOCUMENTS BEFORE MR. ALMAZAN WAS HURT; IS THAT
- 8 CORRECT?
- 9 A NO, THEY WENT DIRECTLY TO THE EMPLOYER.
- 10 Q SO YOU CAN'T SPEAK AS TO WHEN HENSON AND ASSOCIATES MAY HAVE
- 11 RECEIVED THOSE DOCUMENTS, CAN YOU?
- 12 A NO, THEY JUST LET US KNOW THAT THEY HAD RECEIVED THEM AND EVERYTHING
- 13 WAS OKAY.
- 14 Q IT DOESN'T SAY SOUTH CAROLINA ANYWHERE ON EITHER OF THOSE DOCUMENTS,
- 15 DOES IT?
- 16 A NO, JUST ON THE BILLS THAT THEY SENT.
- 17 Q CAN YOU TELL ME WHO SIGNED THOSE DOCUMENTS?
- 18 A HERE (INDICATING)?
- 19 MR. ELLIOTT: COMMISSIONER, I OBJECT, THE DOCUMENTS SPEAK FOR
- 20 THEMSELVES AND HE'S NEVER SEEN THEM BEFORE THIS ACTION SO...
- 21 THE COURT: HE CAN JUST TESTIFY WHETHER OR NOT HE KNOWS WHO
- 22 SIGNED THEM OR IF HE DOESN'T.
- 23 THE WITNESS: YES, THAT'S RAY VILLALOVAS.
- 24 BY MR. KILLEN:
- 25 Q AND DO YOU KNOW WHETHER RAY VILLALOVAS IS AN AUTHORIZED

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- 1 REPRESENTATIVE OF EITHER OF THESE INSURANCE CARRIERS AND I AM TALKING
2 ABOUT THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA AND/OR THE
3 NEW HAMPSHIRE INSURANCE COMPANY?
- 4 A I HAVE NO IDEA.
- 5 Q THANK YOU. DID YOU EVER WORK IN VIRGINIA?
- 6 A VIRGINIA? I BELIEVE I DID, YES.
- 7 Q WHAT'S YOUR BROTHER'S POSITION WITH THE COMPANY?
- 8 A HOW SHALL I SAY IT, MY FIRST HELPER.
- 9 Q OKAY, NOW, THIS CHAMPAGNE STREET ADDRESS THAT'S ON THESE CERTIFICATES
10 WHERE YOU TESTIFIED YOU USED TO LIVE AND STILL OWN A HOUSE?
- 11 A NO.
- 12 Q OKAY, LET ME ASK YOU ABOUT THIS CHAMPAGNE STREET ADDRESS. OKAY, IT
13 WAS YOUR UNDERSTANDING THAT THIS WORKERS' COMPENSATION POLICY
14 WOULD ONLY COVER EMPLOYEES WHO WERE BASED OUT OF TEXAS; ISN'T THAT
15 CORRECT?
- 16 A NO, BECAUSE THEY HAD ANOTHER EMPLOYEE WHO WAS HURT UNDER THE SAME
17 EMPLOYER AND IT WAS COVERED.
- 18 Q IN?
- 19 A HERE IN SUMTER, IN SOUTH CAROLINA.
- 20 Q WHEN WAS THAT?
- 21 A AROUND 2004 OR '05.
- 22 Q AND WAS YOUR INSURANCE WITH THE INSURANCE COMPANY OF THE STATE OF
23 PENNSYLVANIA AT THAT TIME?
- 24 A I CAN'T REMEMBER, I JUST REMEMBER THE CHECKS THAT ARRIVED FOR THAT
25 PERSON WERE FROM AGI.

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1 Q SO IT IS YOUR TESTIMONY HERE TODAY THAT YOU DIDN'T THINK YOU HAD TO
2 HAVE A TEXAS ADDRESS ON THERE BECAUSE IT ONLY COVERED TEXAS-BASED
3 EMPLOYEES?

4 A NO, WE GAVE THE ADDRESS, LIKE THE RESIDENTIAL ADDRESS FOR EACH JOB.

5 Q WHICH SISTER-IN-LAW LIVES IN THE HOUSE IN TEXAS?

6 A IT IS LIKE AN EX.

7 Q OKAY, YOUR EX-WIFE, NOT YOUR SISTER-IN-LAW, RIGHT?

8 A MY EX-SISTER-IN-LAW.

9 Q YOUR EX-SISTER-IN-LAW. WHO WAS SHE MARRIED TO?

10 A MY BROTHER.

11 Q PABLO?

12 A YES.

13 Q PABLO THAT TESTIFIED HERE TODAY EARLIER THAT---

14 A YES.

15 MR. KILLEN: OKAY, THAT'S ALL THE QUESTIONS I HAVE.

16 THE COURT: ANY REDIRECT, MR. ELLIOTT?

17 MR. ELLIOTT: JUST BRIEFLY.

18 REDIRECT EXAMINATION

19 BY MR. ELLIOTT:

20 Q THE CHAMPAGNE ADDRESS, WHAT WAS THE LENGTH OF TIME FROM WHEN YOU
21 MOVED OUT OF THE CHAMPAGNE HOUSE AND MOVED INTO THE SUMTER HOUSE?

22 A (NO RESPONSE)

23 Q JUST ESTIMATE.

24 A THREE YEARS I THINK.

25 Q OKAY, WHERE DID YOU LIVE?

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- 1 A WE RENT APARTMENTS ALL OVER SOUTH CAROLINA WHEREVER WE WERE.
- 2 Q SO YOU DIDN'T HAVE A STEADY ADDRESS OR A CONSTANT ADDRESS UNTIL THREE
- 3 YEARS AFTER YOU MOVED FROM CHAMPAGNE IN TEXAS?
- 4 A NO, I ALWAYS HAD THE ADDRESS OF MY BROTHER'S HOUSE.
- 5 Q WHAT — I'M CONFUSED, WHAT ADDRESS ARE YOU TALKING ABOUT?
- 6 A CHAMPAGNE.
- 7 Q OKAY, WHEN YOU APPLIED FOR THE INSURANCE OR WHEN YOU REQUESTED THE
- 8 INSURANCE, YOU HAD TO GIVE THEM AN ADDRESS; IS THAT CORRECT?
- 9 A THAT'S CORRECT.
- 10 Q AND YOU DIDN'T HAVE A STEADY ADDRESS AT THAT TIME; IS THAT RIGHT?
- 11 A THAT'S CORRECT.
- 12 Q BECAUSE YOU WERE GOING FROM JOB TO JOB IN SOUTH CAROLINA?
- 13 A THAT'S CORRECT.
- 14 Q SO THE ONLY ADDRESS YOU HAD TO GIVE THEM WAS THE ONE IN TEXAS?
- 15 A THAT'S CORRECT.
- 16 MR. ELLIOTT: I DON'T HAVE ANY OTHER QUESTIONS.
- 17 THE COURT: MR. GRIFFITH, ANY RECROSS??
- 18 MR. GRIFFITH: NOTHING, YOUR HONOR.
- 19 THE COURT: MR. DWORJANYN?
- 20 MR. DWORJANYN: NO, COMMISSIONER.
- 21 THE COURT: MR. SMITH?
- 22 MR. SMITH: JUST BRIEFLY.

23 RECROSS-EXAMINATION

24 BY MR. SMITH:

- 25 Q MR. CONTRERAS, DID MR. HENSON AND HENSON AND ASSOCIATES ALLOW

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1 CONTRERAS PANELS TO START WORK ON A PROJECT PRIOR TO GETTING PROOF OF
2 INSURANCE?

3 A NO, I WAS ASKED FOR IT BEFORE, I DON'T IF THEY GOT IT THE DAY BEFORE OR
4 AROUND---

5 Q OKAY.

6 A ---THE MIDDLE OF THE DAY, THAT DAY. THEY ALWAYS ASKED FOR IT BEFORE.

7 Q NOW, WHERE IS THE YORK HIGH SCHOOL AND TECH CENTER PROJECT? WHERE
8 WAS THAT?

9 A IT IS IN YORK COUNTY, SOUTH CAROLINA.

10 Q IN SOUTH CAROLINA? DO YOU KNOW OF ANY OTHER YORK HIGH SCHOOL?

11 A NO.

12 MR. SMITH: NO FURTHER QUESTIONS.

13 THE COURT: MR. HOWELL?

14 MR. HOWELL: NOTHING FURTHER.

15 THE COURT: MR. MONTGOMERY?

16 MR. MONTGOMERY: YES.

17 CROSS-EXAMINATION

18 BY MR. MONTGOMERY:

19 Q MR. CONTRERAS, THIS PREVIOUS EMPLOYEE THAT WAS INJURED IN 2004 OR 2005;
20 DO YOU REMEMBER HIS NAME?

21 A YES.

22 Q WHAT WAS IT?

23 A DANIEL CALDILLO.

24 Q DANIEL? SPELL THE LAST NAME, PLEASE.

25 A C-A-L-D-I-L-L-O.

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- 1 Q AND THAT WAS IN SUMTER, SOUTH CAROLINA?
- 2 A I REALLY DON'T KNOW THE JOB, BUT THE CHECKS ARRIVED IN MY OFFICE.
- 3 Q DO YOU REMEMBER WHAT STATE YOU WERE WORKING IN WHEN THAT EMPLOYEE
- 4 WAS INJURED?
- 5 A SOUTH CAROLINA.
- 6 Q AND YOU SAID YOU DO NOT REMEMBER THE JOB SITE WHERE HE WAS INJURED?
- 7 A NO, HE WASN'T MY EMPLOYEE, ANOTHER EMPLOYEE, MY FORMER, BUT WE HAD
- 8 THE SAME INSURANCE.
- 9 Q AND WHO WAS YOUR FORMER EMPLOYER?
- 10 A JOHN CAMPBELL.
- 11 Q THAT'S ALSO THE PERSON THAT REFERRED YOU TO THE INSURANCE AGENT IN
- 12 TEXAS?
- 13 A YES.
- 14 Q DOES JOHN CAMPBELL HAVE ANY STAKE IN YOUR CURRENT BUSINESS?
- 15 A NO.
- 16 MR. MONTGOMERY: NOTHING ELSE, THANK YOU.
- 17 THE COURT: MR. GOUDELOCK?
- 18 MR. GOUDELOCK: NO QUESTIONS, YOUR HONOR.
- 19 THE COURT: ANY OTHER QUESTIONS OF THIS WITNESS?
- 20 MR. ELLIOTT: NO.
- 21 THE COURT: ALL RIGHT, YOU CAN STEP DOWN.
- 22 MR. ELLIOTT, DO YOU HAVE ANY MORE WITNESSES? YOU DO, RIGHT?
- 23 MR. ELLIOTT: JUST ONE MORE, HIS WIFE.
- 24 THE COURT: WE ARE GOING TO TAKE A BREAK.
- 25 (WHEREUPON, A BREAK WAS TAKEN)

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1 THE COURT: MR. ELLIOTT, IF YOU WOULD PLEASE CALL YOUR NEXT
2 WITNESS?

3 MR. ELLIOTT: I CALL MAGGIE CONTRERAS.

4 THE COURT: ALL RIGHT, MS. CONTRERAS, PLEASE RAISE YOUR
5 RIGHT HAND.

6 WHEREUPON,

7 MAGGIE CONTRERAS,

8 HAVING BEEN FIRST DULY SWORN, DID DEPOSE AND TESTIFY AS FOLLOWS:

9 THE COURT: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

10 THE WITNESS: MAGGIE CONTRERAS.

11 THE COURT: OKAY, MR. ELLIOTT?

12 DIRECT EXAMINATION

13 BY MR. ELLIOTT:

14 Q MS. CONTRERAS, WHO IS YOUR HUSBAND?

15 A GABRIEL CONTRERAS.

16 Q OKAY, HOW LONG HAVE YOU ALL BEEN MARRIED?

17 A TEN YEARS.

18 Q OKAY, DO YOU HELP HIM WITH HIS BUSINESS?

19 A YEAH.

20 Q OKAY, HOW DO YOU HELP HIM?

21 A LIKE ANY OTHER HOUSEWIFE, I WOULD PAY THE BILLS AND I WOULD PAY
22 INSURANCE, WHATEVER I HAVE TO PAY.

23 Q DO YOU WORK ON THE JOB ON THE CONSTRUCTION SITE?

24 A NO.

25 Q DOES HIS BROTHER HELP PAY THE BILLS AS WELL?

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- 1 A YES, I'M NOT TAKING CARE OF IT NO MORE SO HIS BROTHER IS THE ONE THAT'S
2 DOING IT NOW.
- 3 Q OKAY, OUT OF THE THREE OF YOU, WHO SPEAKS ENGLISH THE BEST?
- 4 A HIS BROTHER -- OUT OF ALL US THREE?
- 5 Q YES.
- 6 A MYSELF AND PABLO.
- 7 Q OKAY, WHEN YOU ORIGINALLY -- WHEN WERE YOU FIRST ASKED BY YOUR
8 HUSBAND TO HELP WITH THE WORKERS' COMP INSURANCE?
- 9 A IN HOUSTON.
- 10 Q OKAY, WHEN?
- 11 A 2004.
- 12 Q OKAY, TELL ME WHAT HE ASKED YOU TO DO.
- 13 A CALL THE INSURANCE AND THEN MARY CALLED -- WELL, ACTUALLY I DIDN'T
14 KNOW MARY WAS THE ONE THAT WAS GOING TO TAKE CARE OF US, BUT JUST TO
15 GET INFORMATION ABOUT WORKERS' COMP AND LIABILITY.
- 16 Q OKAY, AND YOU CALLED ASSOCIATES---
- 17 A ASSOCIATES, YES, ASSOCIATES BENEFITS.
- 18 Q OKAY, AND WHO DID YOU TALK WITH?
- 19 A WHEN WE FIRST CALLED, OF COURSE SOMEBODY ANSWERS THE PHONE, BUT THEY
20 ASSIGNED MARY TO THE INSURANCE, THAT'S THE ONLY PERSON THAT I ALWAYS
21 SPOKE TO.
- 22 Q OKAY, WHEN DID YOU MOVE TO SUMTER?
- 23 A WE STARTED HERE ABOUT 2004.
- 24 Q OKAY, HOW DID MARY KNOW TO SEND BILLS FOR WORKERS' COMP INSURANCE
25 PREMIUMS TO SUMTER?

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- 1 A WHEN WE GOT THE HOME IN SUMTER -- WHEN WE GOT THE HOME HERE, WE
2 NOTIFIED HER AND THAT'S HOW THE BILLS CAME TO SUMTER AND ALL THE JOB
3 SITES ARE HERE IN SUMTER.
- 4 Q OKAY, WHERE WOULD THEY GO TO BEFORE YOU GOT THE PLACE IN SUMTER,
5 WHERE WOULD THE BILLS GO?
- 6 A IN HOUSTON.
- 7 Q OKAY.
- 8 A BECAUSE WE DIDN'T HAVE NO HOME THERE SO WE USED THAT AS THE MAILING
9 ADDRESS.
- 10 Q OKAY, THIS IS A COPY OF ONE OF THE INVOICES THAT WERE SENT, I'M TRYING TO
11 READ MY---
- 12 A I NEED MY GLASSES.
- 13 Q ---PAGE STAMP, I THINK IT IS SEVEN -- DO YOU HAVE YOUR GLASSES?
- 14 A YEAH.
- 15 Q OKAY, WILL YOU TAKE A LOOK AT THAT?
- 16 A YES.
- 17 Q OKAY, WHERE WAS THAT BILL BEING MAILED TO?
- 18 A TO BROAD STREET, 1171.
- 19 Q BROAD STREET WHERE?
- 20 A THE STORE.
- 21 Q WHAT CITY?
- 22 A OH, HERE IN SOUTH CAROLINA.
- 23 Q WHAT CITY?
- 24 A IN SUMTER.
- 25 Q OKAY, WHEN IT BREAKS DOWN THE DESCRIPTION OF THE CHARGES, WHAT IS IT

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- 1 SAYING?
- 2 A WORKERS' COMP AND---
- 3 Q HOW MUCH FOR THE WORKERS' COMP?
- 4 A THREE HUNDRED.
- 5 Q OKAY, AND WHAT ELSE DOES IT SAY YOU ARE PAYING FOR?
- 6 A GENERAL LIABILITY.
- 7 Q HOW MUCH ARE YOU PAYING FOR THAT?
- 8 A A HUNDRED AND THIRTEEN WITH SIXTEEN CENTS.
- 9 Q OKAY, WHEN YOU RECEIVED THIS BILL, WHAT WOULD YOU DO?
- 10 A I WOULD MAKE TWO CHECKS, ONE FOR WORKERS' COMP AND ONE FOR LIABILITY.
- 11 Q OKAY, WOULD YOU EVER INCLUDE BOTH AMOUNTS IN ONE CHECK?
- 12 A NO, THAT WAS AT THE BEGINNING, BUT THEN THEY SEPARATED THE WORKERS'
- 13 WITH THE LIABILITY.
- 14 Q OKAY, WHEN YOU NEEDED TO PROVIDE PROOF OF INSURANCE, WHAT WOULD YOU
- 15 DO?
- 16 A OKAY, USUALLY, MY HUSBAND WOULD CALL ME OR PABLO AND THEY WOULD
- 17 ASK ME -- WHEN THEY GOT A NEW JOB, THEY WOULD ASK ME TO REQUEST FOR -- I
- 18 REALLY DON'T KNOW HOW TO CALL IT, THE CONTRACT. I WOULD CALL MARY
- 19 AND MARY WILL FAX IT TO THE CONTRACTOR OR THE PEOPLE THAT WE WERE
- 20 GOING TO WORK WITH. I NEVER FAXED IT, MARY WILL FAX IT DIRECTLY TO THE
- 21 JOB SITE TO THE PERSON THAT IS REQUESTING THE INSURANCE INFORMATION.
- 22 Q OKAY, WHEN YOU ORIGINALLY GOT THIS INSURANCE, DID THEY EVER SEND YOU A
- 23 POLICY?
- 24 A YES, THEY DID.
- 25 Q OKAY, WHAT KIND OF POLICY DID THEY SEND YOU?

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- 1 A I DON'T REMEMBER THAT MUCH, IT WAS LIKE A LITTLE BOOKLET AND I DON'T
2 REMEMBER IF IT IS FOR LIABILITY OR WORKERS' COMP.
- 3 Q DO YOU KNOW WHO LYNN WOOTEN IS?
- 4 A NOPE.
- 5 Q HAVE YOU EVER HEARD OF LYNN WOOTEN?
- 6 A I HEARD OF HER WHEN THEY DID THE FIRST - HOW DO YOU CALL LIKE THIS? THE
7 FIRST TIME---
- 8 Q DEPOSITION?
- 9 A DEPOSITION, THAT'S WHEN THEY BROUGHT HER NAME UP.
- 10 Q OKAY, WHEN DOES - WELL, LET ME ASK YOU THIS, HAVE YOU EVER HEARD OF
11 SERVICES RESOURCES?
- 12 A NO.
- 13 Q HAVE YOU EVER HAD ANY DEALINGS WITH SERVICES RESOURCES?
- 14 A NO.
- 15 Q OKAY, ARE YOU ALWAYS IN TOWN TO HELP YOUR HUSBAND WITH YOUR BUSINESS
16 - OR WITH HIS BUSINESS?
- 17 A NO.
- 18 Q OKAY, WHEN YOU ARE GONE, WHO HELPS HIM?
- 19 A PABLO.
- 20 Q OKAY, THIS ACCIDENT HAPPENED SEPTEMBER OF 2009, WERE YOU IN THE
21 COUNTRY AND HELPING WITH THE BUSINESS AT THAT TIME?
- 22 A NO.
- 23 Q OKAY, WERE THE PREMIUMS THAT WERE PAID AROUND THAT TIME, WERE YOU
24 HELPING WITH PAYING THOSE PARTICULAR PREMIUMS?
- 25 A NO.

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- 1 Q OKAY, WHO WAS DOING IT?
- 2 A PABLO.
- 3 Q OKAY. DO YOU HELP YOUR HUSBAND KEEP UP WITH BALANCING THE CHECKING
- 4 ACCOUNT?
- 5 A NO.
- 6 Q IN ADDITION TO CHECKS, WOULD YOU ALSO SEND MONEY ORDERS TO THIS
- 7 ASSOCIATES BENEFITS AGENCY?
- 8 A NO, NOT THAT I RECALL.
- 9 Q OKAY, YOU HAVEN'T?
- 10 A I HAVEN'T.
- 11 Q OKAY, YOU WOULD JUST WRITE CHECKS?
- 12 A YES.

13 MR. ELLIOTT: OKAY, I DON'T HAVE ANY OTHER QUESTIONS.

14 THE COURT: MR. GRIFFITH?

15 CROSS-EXAMINATION

16 BY MR. GRIFFITH:

- 17 Q MRS. CONTRERAS, HOW LONG HAVE YOU ALL BEEN MARRIED?
- 18 A TEN YEARS.
- 19 Q AND DID YOU GROW UP IN MEXICO?
- 20 A NO, I'M FROM SOUTH AMERICA.
- 21 Q OKAY, DID YOU - HAD YOU LIVED IN MEXICO BEFORE YOU CAME TO THE UNITED
- 22 STATES?
- 23 A NO.
- 24 Q OKAY, WHAT KIND OF WORK DID YOU DO IN SOUTH AMERICA?
- 25 A I CAME TO THE UNITED STATES WHEN I WAS NINE YEARS OLD.

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- 1 Q OKAY, AND WHERE DID YOU LIVE FROM THEN?
- 2 A WITH MY PARENTS IN NEW YORK AND THEN I MOVED WITH MY PARENTS TO
- 3 HOUSTON.
- 4 Q CAN YOU TELL ME WHAT - LET ME SHOW YOU ONE OF THESE CHECKS, IT LOOKS
- 5 LIKE IT IS WRITTEN TO ASSOCIATES CONSTRUCTION LABOR, INC. THIS IS MR. -
- 6 THIS IS THE CONTRERAS PANEL'S APA PAGE 4, I GUESS. LET ME SEE WHAT - CAN
- 7 YOU TELL WHAT WORD THAT IS? IN THE "FOR" ON THAT CHECK TO ASSOCIATES?
- 8 A I THINK IT SAYS ASEGURAMIENTO.
- 9 Q AND WHAT DOES THAT MEAN?
- 10 A INSURANCE.
- 11 Q OKAY, THAT'S A SPANISH WORD FOR INSURANCE?
- 12 A YES.
- 13 Q OKAY.
- 14 A I CAN'T REALLY SEE IT THAT CLEARLY, BUT WHAT I CAN SEE, THAT'S WHAT IT IS.
- 15 MR. GRIFFITH: OKAY, THAT'S ALL MY QUESTIONS.
- 16 THE COURT: MR. DWORJANYN?
- 17 MR. DWORJANYN: IF IT PLEASE THE COMMISSION?
- 18 CROSS-EXAMINATION
- 19 BY MR. DWORJANYN:
- 20 Q I AM LOOKING AT SOME OF THESE CHECKS AND IT LOOKS LIKE IT IS HARD FOR ME
- 21 TO READ TOO, BUT IT LOOKS LIKE THE ADDRESS ON THESE CHECKS IS STERN
- 22 DRIVE?
- 23 A THAT'S MY HOME ADDRESS---
- 24 Q YOUR---
- 25 A ---2645 STERN DRIVE.

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- 1 Q THAT'S YOUR HOME ADDRESS?
- 2 A IN SUMTER.
- 3 Q AND GABRIEL'S?
- 4 A YES.
- 5 Q HOW LONG HAS THAT BEEN YOUR HOME ADDRESS?
- 6 A 2004 AND UNTIL SEPTEMBER BECAUSE THE HOUSE BURNED.
- 7 Q THIS HOUSE BURNED IN SEPTEMBER OF—
- 8 A JUST HAPPENED SEVEN MONTHS -- SIX, SEVEN MONTHS AGO, SEPTEMBER 1ST.
- 9 Q OKAY, WHEN DID YOU START LIVING AT THAT STERN DRIVE ADDRESS IN SUMTER?
- 10 A I DON'T REMEMBER EXACTLY THE MONTH, BUT IT WAS ABOUT 2004.
- 11 Q AS SOON AS YOU MOVED HERE?
- 12 A YES.
- 13 Q YOU HAVE BEEN USING THAT AS YOUR MAILING ADDRESS EVER SINCE THEN?
- 14 A AND WE ARE STILL USING THAT AS THE MAILING ADDRESS.
- 15 Q OKAY. NOW, THERE'S BEEN SOME CERTIFICATES OF INSURANCE THAT HAVE BEEN
- 16 GIVEN TO THE COMMISSION AND THEY LIST CONTRERAS PANELS' STREET
- 17 ADDRESS AS -- IT IS LIKE CHAMPAGNE IN HOUSTON TEXAS, WHAT IS THAT
- 18 ADDRESS?
- 19 A THAT'S MY BROTHER-IN-LAW, HE USED TO LEASE THAT HOME, HE IS THE ONE
- 20 THAT USED TO LIVE THERE AND WE JUST USE IT AS A MAILING ADDRESS.
- 21 Q DID YOU EVER LIVE THERE?
- 22 A NO.
- 23 Q DID YOU KNOW IF GABRIEL EVER LIVED THERE?
- 24 A NO.
- 25 Q HE DID NOT?

KELLIE C. LINDLER, CERTIFIED COURT REPORTER
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- 1 A (SHAKES HEAD)
- 2 Q IS YOUR ANSWER HE DID NOT LIVE THERE?
- 3 A MY HUSBAND?
- 4 Q CORRECT.
- 5 A WITH HIS BROTHER, YES.
- 6 Q HE DID LIVE THERE?
- 7 A YEAH.
- 8 Q DID YOU EVER LIVE THERE?
- 9 A NO.
- 10 Q OKAY. NOW, WHY DID YOU CONTINUE TO USE THAT AS A MAILING ADDRESS IN
- 11 2009 WHEN YOU WERE GETTING INSURANCE POLICES AND INSURANCE
- 12 CERTIFICATES?
- 13 A I DON'T RECALL ANY MAIL GOING TO THAT ADDRESS IN 2009.
- 14 Q OKAY, DO YOU KNOW WHY THE INSURANCE CERTIFICATES THAT WERE ISSUED BY
- 15 ASSOCIATES BENEFITS AGENCY LIST THAT AS THE ADDRESS FOR CONTRERAS
- 16 PANELS?
- 17 A I CANNOT ANSWER YOU THAT QUESTION BECAUSE I NEVER SAW THE---
- 18 Q THE CERTIFICATE?
- 19 A ---THE CERTIFICATES SO, YOU KNOW, MARY WAS SAYING THAT, MAYBE SHE---
- 20 Q BUT DO YOU KNOW WHY SHE WOULD USE THAT ADDRESS?
- 21 A I CANNOT ANSWER FOR HER, SIR, BUT AS FAR AS I KNOW, I NEVER SEEN THE
- 22 CERTIFICATES BECAUSE SHE MAILES IT STRAIGHT TO THE PERSON THAT IS ASKING
- 23 FOR IT.
- 24 Q WELL, I KNOW YOU NEVER SAW THE CERTIFICATES, I UNDERSTAND THAT, BUT DO
- 25 YOU KNOW HOW SHE WOULD HAVE EVEN KNOWN ABOUT THAT ADDRESS?

KELLIE C. LINDLER, CERTIFIED COURT REPORTER

242 Catawba Trail
Lexington, South Carolina 29072

- 1 A BECAUSE WHEN WE GOT THE INSURANCE, WE USED THE HOUSTON ADDRESS FOR
2 THE MAILING ADDRESS SO AT THE BEGINNING THE MAIL DID GO THERE, BUT ONCE
3 WE GOT THE HOME HERE IN SUMTER, WE STARTED GETTING OUR MAIL HERE IN
4 SUMTER.
- 5 Q AND WHERE WERE YOU LIVING WHEN YOU GOT IN TOUCH WITH THAT ASSOCIATES
6 BENEFITS AGENCY?
- 7 A WE WERE IN DIFFERENT PLACES.
- 8 Q WERE YOU IN TEXAS?
- 9 A I BEEN IN MISSISSIPPI AND DIFFERENT STATES.
- 10 Q DO YOU REMEMBER WHEN YOU FIRST SPOKE TO SOMEONE AT THAT AGENCY?
- 11 A WITH MARY?
- 12 Q YES.
- 13 A ABOUT 2004, I DON'T RECALL EXACTLY THE MONTH.
- 14 Q OKAY, IN 2004 WHEN YOU SPOKE WITH HER, WERE YOU IN TEXAS OR WERE YOU IN
15 SOUTH CAROLINA?
- 16 A NO.
- 17 Q NO WHAT?
- 18 A WHEN I---
- 19 Q I'M SORRY.
- 20 A I'M SORRY, WHEN I SPOKE---
- 21 Q THAT'S OKAY---
- 22 A ---WHEN I SPOKE TO MARY, I SPOKE TO HER WHEN I WAS IN HOUSTON, YES.
- 23 Q OKAY, DO YOU KNOW HOW YOU FOUND OUT TO TALK TO HER, TO MARY?
- 24 A BY JOHN CAMPBELL.
- 25 Q JOHN CAMPBELL?

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- 1 A YES.
- 2 Q AND WHERE IS JOHN CAMPBELL?
- 3 A HE LIVES IN SUMTER.
- 4 Q SUMTER, SOUTH CAROLINA?
- 5 A YES.
- 6 Q OKAY, THE CHECKS, THESE INVOICES THAT WERE SUBMITTED, THEY HAVE A
- 7 NUMBER, \$413.16 AS THE AMOUNT OF THE INSURANCE THAT YOU WERE PAYING
- 8 THAT WERE SENDING TO ASSOCIATES BENEFITS AGENCY; IS THAT RIGHT? DOES
- 9 THAT NUMBER SEEM FAMILIAR?
- 10 A IT DEPENDS FOR WHAT TIME YOU TALKING ABOUT.
- 11 Q OKAY, WELL, HOW ABOUT IN 2009 – AND I WILL SHOW IT TO YOU AND SEE IF YOU
- 12 RECOGNIZE IT.
- 13 A YES.
- 14 Q FOUR HUNDRED THIRTEEN---
- 15 A YES.
- 16 Q ---DOLLARS AND SIXTEEN CENTS?
- 17 A THREE HUNDRED WAS FOR THE WORKERS' COMP AND A \$113.16 FOR LIABILITY.
- 18 Q IN OTHER WORDS, DID YOU WRITE -- DOES THIS LOOK LIKE ANY OF YOUR – LET ME
- 19 GRAB THE PAGE, DOES THIS LOOK LIKE YOUR SIGNATURE ON ANY OF THESE
- 20 CHECKS? I KNOW THEY ARE REAL SMALL.
- 21 A I NEVER SIGNED THE CHECKS.
- 22 Q OKAY, YOU NEVER PAID ANY PREMIUMS?
- 23 A THE AMOUNT OF – LET ME EXPLAIN MYSELF.
- 24 Q SURE.
- 25 A MY HUSBAND WOULD SIGN THE CHECKS FOR THE BILLS AND I WILL SEND THE

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1 AMOUNT THAT WAS OWED, BUT I NEVER SIGNED THE CHECKS OR ANYTHING LIKE
2 THAT.

3 Q WELL, TELL ME IF YOU KNOW THE ANSWER TO THIS BECAUSE SOME OF THESE
4 CHECKS LOOK LIKE THEY ALL SAY \$412.58?

5 A YES, SIR, BECAUSE AT THE BEGINNING WHAT I SAY, WE WOULD PAY IT
6 TOGETHER----

7 Q UH-HUH.

8 A ---AND THEN MARY SHE SAY, YOU KNOW, "FROM NOW OWN, WORKERS' COMP IS
9 PAID DIFFERENT AND LIABILITY DIFFERENT". YOU UNDERSTAND WHAT I AM
10 SAYING? SO IT WAS NOT TOGETHER NO MORE.

11 Q OKAY, THANK YOU.

12 A UH-HUH.

13 THE COURT: MR. SMITH?

14 MR. SMITH: NO, QUESTIONS, YOUR HONOR.

15 THE COURT: OKAY, MR. HOWELL?

16 MR. HOWELL: NO QUESTIONS.

17 THE COURT: MR. MONTGOMERY:

18 MR. MONTGOMERY: NO QUESTIONS.

19 THE COURT: MR. GOUDELOCK?

20 MR. GOUDELOCK: BRIEFLY, YOUR HONOR.

21 CROSS-EXAMINATION

22 BY MR. GOUDELOCK:

23 Q MRS. CONTRERAS, ALL THE CHECKS THAT WERE MADE OUT FOR INSURANCE WENT
24 TO ASSOCIATES BENEFITS?

25 A YES.

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1 Q AND NO CHECKS WERE EVER MADE OUT TO SERVICE RESOURCES THAT YOU ARE
2 AWARE OF, WERE THEY?

3 A I NEVER MAILED A CHECK. THE ONLY PLACE THAT I SENT IT TO WAS ASSOCIATES
4 AND THE LADY THAT ALWAYS TOOK CARE OF ME WAS MARY, FROM THAT I DON'T
5 KNOW ANYBODY ELSE.

6 MR. GOUDELOCK: THANK YOU.

7 THE COURT: MR. KILLEN?

8 MR. KILLEN: NO QUESTIONS, YOUR HONOR.

9 THE COURT: MR. ELLIOTT, ANY REDIRECT?

10 MR. ELLIOTT: JUST ONE REAL BRIEFLY JUST TO CLEAR SOMETHING UP.

11 REDIRECT EXAMINATION

12 BY MR. ELLIOTT:

13 Q I AM GOING TO SHOW YOU THESE CHECKS THAT ARE ALL COPIES OF CHECK THAT
14 ARE IN THE SUBMISSIONS. I NOTICE THAT SOME OF THESE CHECKS LIKE THIS ONE
15 ON THE FIRST PAGE OF THE ONES WE SUBMITTED IT SAYS "PAY TO THE ORDER OF
16 ASSOCIATES CONSTRUCTION AND LABOR, INC.". OKAY, THAT'S NOT ASSOCIATES
17 BENEFITS AGENCY SO WHAT IS THAT? WHY DID YOU WRITE IT OR WHY WAS IT
18 WRITTEN TO THAT COMPANY?

19 A BECAUSE THEY CHANGED THE NAME.

20 Q OKAY, HOW DID YOU KNOW TO DO THAT.

21 A SHE SENT A LETTER.

22 Q WHO IS SHE?

23 A MARY.

24 Q OKAY, AND WHAT DID THE LETTER SAY?

25 A IT SAID THAT THEY HAD CHANGED THE NAME AND FROM NOW ON TO MAKE THE

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- 1 CHECKS PAYABLE TO WHATEVER NAME THEY CHANGED IT TO WHICH IS---
- 2 Q WHAT IS THAT NAME?
- 3 A ASSOCIATES - HOW YOU SAY THIS?
- 4 Q I CAN'T.
- 5 A I CAN'T READ IT, I'M SORRY, I CAN'T SEE IT.
- 6 Q WELL, LET ME ASK YOU THIS, NEXT TO THAT CHECK IS THE BACK OF THE CHECK
- 7 WHERE SOMEONE HAS ENDORSED THE CHECK?
- 8 A YES.
- 9 Q WHAT IS THE NAME OF THE PERSON WHO SIGNED AND ENDORSED THE CHECK?
- 10 CAN YOU READ THAT SIGNATURE OR AT LEAST THE FIRST NAME?
- 11 A MARY.
- 12 Q OKAY, THANK YOU.
- 13 A YES.
- 14 THE COURT: ALL RIGHT, MR. GRIFFITH, ANY RECROSS?
- 15 MR. GRIFFITH: NO, MA'AM.
- 16 THE COURT: DOES ANYBODY HAVE ANY RE-CROSS?
- 17 MR. DWORJANYN: NO, COMMISSIONER.
- 18 THE COURT: ALL RIGHT, MR. ELLIOTT, ANY OTHER WITNESSES FOR
- 19 THE CLAIMANT?
- 20 MR. ELLIOTT: NO, MA'AM.
- 21 THE COURT: I MEANT FOR THE DEFENDANT, CONTRERAS.
- 22 MR. DWORJANYN, ANY WITNESSES FOR THE INSURANCE COMPANY OF THE
- 23 STATE OF PENNSYLVANIA?
- 24 MR. DWORJANYN: NO, COMMISSIONER.
- 25 THE COURT: MR. SMITH, ANY WITNESSES FOR HENSON AND ASSOCIATES?

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1 MR. SMITH: YES, COMMISSIONER, I DO.

2 THE COURT: OKAY, YOU CAN STEP DOWN, THANK YOU.

3 MRS. CONTRERAS: THANK YOU.

4 MR. ELLIOTT: COMMISSIONER, DO THEY NEED TO STAY FOR THE
5 REMAINDER OF THE HEARING OR CAN THEY LEAVE? DOES ANYBODY PLAN ON
6 NEEDING---

7 THE COURT: NOT UNLESS ANYBODY PLANS ON NEEDING THEM.

8 MR. ELLIOTT: ---THEM AS A REBUTTAL WITNESS?

9 MR. GRIFFITH: (SHAKES HEAD)

10 MR. DWORJANYN: (SHAKES HEAD)

11 MR. SMITH: (SHAKES HEAD)

12 MR. HOWELL: (SHAKES HEAD)

13 MR. MONTGOMERY: (SHAKES HEAD)

14 MR. KILLEN: (SHAKES HEAD)

15 THE COURT: MR. SMITH?

16 MR. SMITH: I AM GOING TO FIRST CALL KENNETH HENSON.

17 THE COURT: OKAY. ALL RIGHT, MR. HENSON, HAVE A SEAT RIGHT THERE
18 PLEASE, SIR.

19 PLEASE RAISE YOUR RIGHT HAND.

20 WHEREUPON,

21 KENNETH HENSON,

22 HAVING BEEN FIRST DULY SWORN, DID DEPOSE AND TESTIFY AS FOLLOWS:

23 THE COURT: PLEASE STATE YOUR FULL NAME FOR THE RECORD.

24 THE WITNESS: KENNETH E. HENSON.

25 THE COURT: OKAY, MR. SMITH, YOUR WITNESS.

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DIRECT EXAMINATION

BY MR. SMITH:

Q MR. HENSON, WHAT IS YOUR POSITION WITH HENSON AND ASSOCIATES?

A WELL, EVERYTHING FROM PRESIDENT TO TRASH MAN, WHATEVER YOU WANT TO CALL ME I GUESS.

Q AND WHAT KIND OF BUSINESS IS HENSON AND ASSOCIATES?

A WE FURNISH METAL PRODUCTS, METAL ROOFS, METAL WALLS AND WE DO F&E, WHAT THEY CALL F&E, FURNISH AND ERECT WORK.

Q OKAY, AND IS HENSON AND ASSOCIATES A CORPORATION?

A IT IS A CORPORATION, IT IS A NORTH CAROLINA CORPORATION.

Q AND WHERE IS YOUR PRINCIPAL PLACE OF BUSINESS?

A IN MURPHY, NORTH CAROLINA.

Q AND WHAT KIND OF CONSTRUCTION WORK DOES HENSON AND ASSOCIATES PERFORM?

A WE DO METAL WALLS AND METAL ROOFS.

Q AND HOW MANY FULL TIME EMPLOYEES DOES HENSON AND ASSOCIATES HAVE?

A WE ONLY HAVE THREE AS OF NOW. WE USED TO USE OUR OWN LABOR, BUT WE HAVE STARTED SUBBING THE LABOR IN RECENT YEARS.

Q AND WHEN DID YOU START SUBBING THE LABOR?

A PROBABLY, TOTALLY SUBBING ALL OF IT WAS AROUND '88 - I MEAN '98.

Q OKAY, AND WHEN---

A ---TO '99.

Q WHEN HENSON AND ASSOCIATES ENTERS INTO AN AGREEMENT WITH THE SUBCONTRACTOR, DO THEY ENTER INTO JUST ONE AGREEMENT PER JOB, IS THAT HOW IT WORKS?

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1 A WE HAVE A CONTRACT PER JOB.

2 Q SO EACH JOB HAS ITS OWN SEPARATE CONTRACT?

3 A THAT'S CORRECT.

4 Q SO IF YOU WANTED A SUBCONTRACTOR TO PERFORM WORK ON THREE DIFFERENT
5 JOB SITES, THEY WOULD---

6 A THEY WOULD HAVE---

7 Q ---HAVE THREE DIFFERENT CONTRACTS?

8 A ---THREE SEPARATE CONTRACTS, ABSOLUTELY.

9 Q OKAY, AND DOES HENSON AND ASSOCIATES OBTAIN A CERTIFICATE OF
10 INSURANCE FOR EACH JOB SITE THAT A SUBCONTRACTOR---

11 A YES.

12 Q --WORKS ON?

13 A BEFORE ANY WORK IS DONE.

14 THE COURT: AND MR. HENSON, I AM GOING TO GIVE YOU THE SAME - IT IS
15 EASY WHEN YOU ARE NORMALLY TALKING THAT YOU KIND OF TALK OVER EACH
16 OTHER---

17 THE WITNESS: OKAY.

18 THE COURT: --BUT BECAUSE MADAM COURT REPORTER HERE IS TRYING
19 TO GET EVERYTHING DOWN--

20 THE WITNESS: OKAY.

21 THE COURT: --IT IS REAL IMPORTANT TO LET MR. SMITH FINISH---

22 THE WITNESS: OKAY.

23 THE COURT: --WHAT HE IS SAYING BEFORE YOU ANSWER.

24 THE WITNESS: OKAY, ALL RIGHT, SORRY.

25 THE COURT: EVERYBODY DOES IT SO...

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1 THE WITNESS: UH-HUH.

2 THE COURT: OKAY.

3 BY MR. SMITH:

4 Q NOW, WITH REGARDS TO CONTRERAS PANELS, HOW LONG HAS HENSON AND
5 ASSOCIATES BEEN SUBCONTRACTING WORK WITH CONTRERAS PANELS?

6 A MY GUESS IS '05, '06 SOMEWHERE ALONG IN THERE.

7 Q SO FOR SEVERAL YEARS?

8 A UH-HUH.

9 Q AND HAS CONTRERAS PANELS WORKED MULTIPLE PROJECTS FOR HENSON AND
10 ASSOCIATES?

11 A YES.

12 Q AND DOES HENSON AND ASSOCIATES OBTAIN A SEPARATE CERTIFICATE OF
13 INSURANCE FROM CONTRERAS PANELS FOR EACH PROJECT?

14 A YES, NAMING THE PROJECT AND THE STATE.

15 MR. SMITH: OKAY, AND COMMISSIONER THAT'S EXHIBIT NUMBER FOUR IN
16 HENSON AND ASSOCIATES APA'S.

17 BY MR. SMITH:

18 Q NOW, WHO DO YOU NEGOTIATE WITH CONTRERAS PANELS?

19 A GENERALLY SPEAKING, PABLO OR GABRIEL EITHER ONE, BUT MAINLY PABLO
20 DOES---

21 Q SO BOTH GABRIEL AND PABLO CAN NEGOTIATE---

22 A WELL, THEY ARE BOTH INVOLVED---

23 Q ---A CONTRACT?

24 A ---IN IT, BUT MAINLY WE DO OUR NEGOTIATING WITH PABLO.

25 Q OKAY, NOW, WITH REGARDS TO THE YORK COMPREHENSIVE HIGH SCHOOL JOB---

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- 1 A UH-HUH.
- 2 Q ---IN ROCK HILL, DID HENSON AND ASSOCIATES ENTER INTO A CONTRACT WHERE
- 3 THEY WOULD PROVIDE THE ROOFING AND THE MATERIAL AND CONTRERAS
- 4 PANELS WOULD PROVIDE THE LABOR FOR THE JOB?
- 5 A THAT'S CORRECT.
- 6 Q AND UNDER THE CONTRACT, CONTRERAS PANELS WAS A SUBCONTRACTOR WITH
- 7 HENSON AND ASSOCIATES, CORRECT?
- 8 A CORRECT.
- 9 Q AND THIS CONTRACT WAS DATED IN APRIL OF 2009?
- 10 A I'M---
- 11 Q AND I WILL SHOW---
- 12 A WHATEVER YOU SAY---
- 13 Q ---YOU A COPY---
- 14 A ---YOU HAVE GOT IT.
- 15 Q I WILL SHOW YOU A---
- 16 A YEAH, I DON'T REMEMBER THE EXACT DATE, BUT I AM SURE IT ---
- 17 Q AND YOU CAN KEEP THAT (INDICATING).
- 18 A YEAH. YES, IT WAS APRIL 7TH.
- 19 Q AND I BELIEVE THE CONTRACT YOU ARE LOOKING AT IS SIGNED BY BOTH YOU
- 20 AND---
- 21 A THAT'S---
- 22 Q ---GABRIEL CONTRERAS?
- 23 A THAT'S CORRECT.
- 24 Q AND DID YOU REQUIRE CONTRERAS PANELS TO PROVIDE A CERTIFICATE OF
- 25 INSURANCE FOR THE YORK HIGH SCHOOL JOB BEFORE THEY COULD START

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- 1 WORKING?
- 2 A YES.
- 3 Q AND WOULD YOU EVER LET A SUBCONTRACTOR START WORKING WITHOUT
- 4 RECEIVING A CERTIFICATE OF INSURANCE?
- 5 A NEVER.
- 6 Q SO IN ORDER FOR CONTRERAS PANELS TO WORK ON THE YORK HIGH SCHOOL JOB,
- 7 THEY HAD TO PROVIDE HENSON AND ASSOCIATES WITH A CERTIFICATE OF
- 8 INSURANCE?
- 9 A THAT'S CORRECT.
- 10 Q OKAY. NOW, I WANT YOU TO LOOK AT EXHIBIT NUMBER THREE, PAGE 38 AND THIS
- 11 IS THE FIRST CERTIFICATE OF INSURANCE FROM CONTRERAS PANELS.
- 12 A UH-HUH.
- 13 Q AND IT IS DATED APRIL 23RD, 2009; IS THAT CORRECT?
- 14 A UH-HUH.
- 15 Q AND THIS CERTIFICATE WAS GIVEN TO HENSON PRIOR TO CONTRERAS PANELS
- 16 STARTING WORK ON THE YORK PROJECT?
- 17 A THAT'S CORRECT.
- 18 Q AND CONTRERAS PANELS IS LISTED AS THE INSURED?
- 19 A YES, SIR.
- 20 Q AND WITH REGARDS TO WORKERS' COMPENSATION LIABILITY, IT LISTS "NEW
- 21 HAMPSHIRE INSURANCE COMPANY"; IS THAT CORRECT?
- 22 A YES.
- 23 Q OKAY, AND WHAT PROJECT IS SPECIFICALLY LISTED ON THE CERTIFICATE?
- 24 A "YORK HIGH SCHOOL AND TECH CENTER".
- 25 Q OKAY, AND WHERE IS THAT PROJECT LOCATED?

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- 1 A IN YORK COUNTY, SOUTH CAROLINA.
- 2 Q DO YOU KNOW OF ANY OTHER YORK HIGH SCHOOL---
- 3 A NO.
- 4 Q ---OR TECH CENTER?
- 5 A NO.
- 6 Q SO THE ONLY ONE YOU KNOW OF IS IN ROCK HILL, SOUTH CAROLINA?
- 7 A THAT'S CORRECT.
- 8 Q AND THE DATES OF WORKERS' COMPENSATION COVERAGE, IS IT MAY 10TH, 2008
- 9 THROUGH MAY 10TH, 2009 ON THAT SAME CERTIFICATE?
- 10 A YES.
- 11 Q AND THAT CERTIFICATE IS FROM ASSOCIATES BENEFITS AGENCY, CORRECT?
- 12 A THAT'S CORRECT.
- 13 Q DID THEY SEND THAT DIRECTLY TO HENSON AND ASSOCIATES?
- 14 A YES.
- 15 Q OKAY. NOW, THE SECOND CERTIFICATE IS DATED MAY 8TH, 2009, CORRECT?
- 16 A YES, SIR.
- 17 Q AND THAT'S TWO DAYS BEFORE THE FIRST ONE EXPIRES?
- 18 A YES.
- 19 Q AND DID YOU MAKE CONTRERAS PANELS GET THAT SECOND ONE BECAUSE THE
- 20 FIRST ONE WAS ABOUT TO EXPIRE?
- 21 A ABSOLUTELY.
- 22 Q SO YOU JUST WANTED TO HAVE A CURRENT---
- 23 A YES.
- 24 Q ---CERTIFICATE OF INSURANCE?
- 25 A WE HAVE TO HAVE IT OR THEY WILL SHUT US DOWN.

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- 1 Q OKAY, AND NOW, UNDER THE WORKERS' COMPENSATION PORTION OF THAT
2 SECOND CERTIFICATE, WHO IS LISTED AS THE CARRIER?
3 A "INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA".
4 Q AND WHAT ARE THE DATES OF COVERAGE FOR THE WORKERS' COMPENSATION
5 PORTION?
6 A 8/23/08 TO 8/23/09.
7 Q BUT IF YOU GO DOWN A LITTLE FURTHER---
8 A OKAY.
9 Q ---I THINK WHERE IT SAYS---
10 A 5/08/09 THROUGH 5/08/10.
11 Q NOW, BASED ON THESE CERTIFICATES OF INSURANCE THAT YOU RECEIVED FROM
12 CONTRERAS PANELS AND FROM ASSOCIATES BENEFITS AGENCY, DID YOU - WAS IT
13 YOUR BELIEF THAT CONTRERAS PANELS HAD WORKERS' COMPENSATION
14 COVERAGE IN SOUTH CAROLINA?
15 A YES, ABSOLUTELY.
16 Q AND SPECIFICALLY WAS IT YOUR BELIEF THAT THEY HAD WORKERS'
17 COMPENSATION COVERAGE ON THE YORK HIGH SCHOOL AND TECH PROJECT?
18 A YES, OR I WOULDN'T HAVE LET THEM GO TO WORK THERE.
19 Q AND IS THE REASON YOU BELIEVED THEY HAD COVERAGE IS BECAUSE THEY ARE
20 LISTED ON THESE CERTIFICATES---
21 A YES.
22 Q --- AS HAVING COVERAGE?
23 A YES.
24 Q AND DID THESE CERTIFICATES INDICATE THAT AN AGENT OF THE INSURANCE
25 COMPANY SAYS THAT THEY HAVE COVERAGE, CORRECT?

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1 MR. KILLEN: OBJECTION, YOUR HONOR.

2 THE WITNESS: CORRECT.

3 MR. DWORJANYN: I OBJECT AS WELL TO THE CHARACTERIZATION OF THE
4 "AGENT OF THE INSURANCE COMPANY".

5 BY MR. SMITH:

6 Q FROM WHAT YOU HAVE IN FRONT OF YOU BASED ON THE CERTIFICATES, DOES IT
7 APPEAR THAT THE INSURANCE COMPANY REPRESENTATIVE ISSUED THOSE
8 CERTIFICATES?

9 MR. DWORJANYN: OBJECTION, SAME QUESTION--

10 THE WITNESS: YES.

11 MR. DWORJANYN: ---THE DOCUMENT SPEAKS FOR ITSELF.

12 THE COURT: YEAH, THE DOCUMENTS DO SPEAK FOR THEMSELVES.

13 BY MR. SMITH:

14 Q NOW, I WANT TO ASK YOU A FEW QUESTIONS ABOUT THE CONTRACT BETWEEN
15 HENSON AND ASSOCIATES AND EDIFICE. IT APPEARS THAT IN JANUARY OF 2009,
16 YOU ENTERED INTO A CONTRACT WITH EDIFICE FOR THE YORK HIGH SCHOOL
17 PROJECT; IS THAT CORRECT?

18 A UH-HUH.

19 Q AND AS PART OF THAT AGREEMENT, DID YOU HAVE TO OBTAIN PROOF OF
20 WORKERS' COMPENSATION COVERAGE---

21 A YES.

22 Q ---TO GIVE THAT TO EDIFICE---

23 A YES.

24 Q ---BEFORE YOU STARTED WORKING?

25 A ABSOLUTELY.

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- 1 Q AND IS YOUR INSURANCE AGENT FIRST CHARTER INSURANCE IN CHARLOTTE,
2 NORTH CAROLINA?
- 3 A IT CHANGED FROM SMITH AND ASSOCIATES TO FIRST CHARTER AND THEN TO
4 SOMETHING ELSE, I THINK, BUT ANYWAY YES.
- 5 Q OKAY, SO DID YOU CONTACT YOUR INSURANCE AGENT AND SAY, "HEY, I NEED
6 A"—
- 7 A YES.
- 8 Q ---"A CERTIFICATE OF INSURANCE"?
- 9 A YES.
- 10 Q AND AS A RESULT OF YOU CONTRACTING THEM, DID THEY SEND -- IF YOU LOOK AT
11 THE EXHIBIT NUMBER SIX, PAGE 70.
- 12 A (WITNESS COMPLIES)
- 13 Q IS THAT A CERTIFICATE OF INSURANCE TO EDIFICE?
- 14 A YES, IT IS.
- 15 Q AND IS THAT FROM YOUR INSURANCE AGENT?
- 16 A YES, IT IS.
- 17 Q AND IT IS SAYING THAT YOU HAVE WORKERS' COMPENSATION COVERAGE?
- 18 A THAT'S CORRECT.
- 19 Q NOW, WHO -- WHAT IS THE INSURANCE COMPANY LISTED ON THAT CERTIFICATE
20 OF INSURANCE?
- 21 A "EDIFICE INC., CHARLOTTE, NORTH CAROLINA".
- 22 Q AND IF YOU LOOK FOR THE WORKERS' COMPENSATION PORTION, IT HAS GOT THE
23 LETTER "A" BESIDE IT AND WHO IS INSURER "A"?
- 24 A "OWNERS INSURANCE COMPANY".
- 25 Q IS THAT THE INSURANCE COMPANY THAT PROVIDED YOU WORKERS'

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- 1 COMPENSATION---
- 2 A YES.
- 3 Q ---INSURANCE?
- 4 A YES.
- 5 Q AND I BELIEVE IF YOU LOOK AT EXHIBIT NUMBER ONE IN THAT PACKET, THAT'S
- 6 THE POLICY THAT YOU RECEIVED? THE FIRST EXHIBIT IN HERE. IS THIS THE
- 7 POLICY THAT YOU RECEIVED---
- 8 A YES.
- 9 Q ---FROM AUTO-OWNERS?
- 10 A YES.
- 11 Q OKAY. NOW, EVERY YEAR YOU HAVE TO RENEGOTIATE YOUR WORKERS'
- 12 COMPENSATION POLICY, CORRECT?
- 13 A THAT'S CORRECT.
- 14 Q AND WHAT DO YOU DO WHEN IT COMES UP, DO YOU JUST GO TO THE SAME AGENT
- 15 AND ASK FOR A QUOTE FROM DIFFERENT COMPANIES?
- 16 A WE GET QUOTES FROM TWO OR THREE QUALIFIED INSURANCE CARRIERS AND
- 17 THEY WILL GIVE US QUOTES ON IT AND THEN WHOEVER HAS GOT THE BEST PRICE
- 18 IS WHAT WE USUALLY TAKE.
- 19 Q OKAY. NOW, BASED OFF OF THE FACT THAT YOUR INSURANCE -- THAT AUTO-
- 20 OWNERS WAS ISSUING THIS CERTIFICATE OF INSURANCE SAYING THAT YOU HAD
- 21 COVERAGE TO EDIFICE---
- 22 A YES.
- 23 MR. HOWELL: OBJECTION, THERE'S NO TESTIMONY THAT AUTO-OWNERS
- 24 ISSUED A CERTIFICATE OF INSURANCE.
- 25 BY MR. SMITH:

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- 1 Q BASED ON THE FACT THAT YOUR INSURANCE AGENT ISSUED A CERTIFICATE
2 INDICATING THAT AUTO-OWNERS PROVIDED YOU WORKERS' COMPENSATION
3 COVERAGE TO EDIFICE, WAS IT YOUR BELIEF THAT YOU WERE COVERED ON THE
4 YORK HIGH SCHOOL PROJECT?
- 5 A ABSOLUTELY.
- 6 Q OKAY. NOW, WHEN YOU GO AND ASK FOR A QUOTE, DO YOU GO FILL OUT AN
7 APPLICATION OR HOW DOES THAT PROCESS WORK?
- 8 A WELL, NOT EVERY YEAR, NO.
- 9 Q DO YOU CALL THEM AND ASK---
- 10 A WE JUST CALL THEM AND THEN THEY GO OVER OUR COVERAGES AND THEN THEY
11 SEND US A QUOTE.
- 12 Q OKAY, AND IS THAT WHAT YOU DID WITH -- WHEN YOU TRIED TO GET THAT
13 POLICY FROM AUTO-OWNERS?
- 14 A I'M SURE THAT'S WHAT WENDY DID, WENDY IS THE ONE THAT ACTUALLY -- MY
15 WIFE IS THE ONE THAT ACTUALLY HANDLES THE INSURANCE END OF IT, YES.
- 16 Q OKAY, BUT YOU WEREN'T TRYING TO HIDE THAT YOU WERE WORKING IN SOUTH
17 CAROLINA?
- 18 A OH, ABSOLUTELY -- THEY HAVE KNOWN IT FOR YEARS.
- 19 Q AND IN FACT, THEY WERE ISSUING CERTIFICATES---
- 20 A YES.
- 21 Q ---OF INSURANCE---
- 22 A YES.
- 23 Q ---AND THEIR AGENT WAS ISSUING---
- 24 A YES.
- 25 Q ---CERTIFICATES OF INSURANCE---

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- 1 A ABSOLUTELY.
- 2 Q ---SHOWING THAT YOU WERE WORKING IN SOUTH CAROLINA?
- 3 A ABSOLUTELY.
- 4 MR. HOWELL: OBJECTION, LEADING.
- 5 THE COURT: JUST WATCH THE LEADING.
- 6 BY MR. SMITH:
- 7 Q WAS AUTO-OWNERS' AGENT OR AN AGENT PROPOSING TO BE AN AGENT OF AUTO-
- 8 OWNERS ISSUING CERTIFICATES OF INSURANCE?
- 9 MR. HOWELL: OBJECTION, HE ALREADY TESTIFIED HE---
- 10 THE WITNESS: YES.
- 11 MR. HOWELL: ---HAD AN AGENT.
- 12 BY MR. SMITH:
- 13 Q WAS YOUR AGENT ISSUING CERTIFICATES OF INSURANCE SAYING THAT AUTO-
- 14 OWNERS WOULD PROVIDE THE COVERAGE?
- 15 A YES.
- 16 Q AND THEY ISSUED IT TO EDIFICE FOR---
- 17 A YES.
- 18 Q ---THE YORK HIGH SCHOOL JOB?
- 19 A YES.
- 20 Q OKAY, AND THEY HAVE ALSO ISSUED OTHER CERTIFICATES SAYING THAT THERE
- 21 WAS COVERAGE IN SOUTH CAROLINA, CORRECT?
- 22 A YES.
- 23 Q AND YOU SAID YOUR AGENT CHANGED NAMES, SO YOU DEALT WITH THE SAME
- 24 AGENT -- THE SAME LOCATION AGENT, SAME LOCATION?
- 25 A I THINK SHE DID FOR ANOTHER YEAR OR TWO AND NOW WE HAVE SWITCHED TO

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- 1 ONE THAT'S LOCAL.
- 2 Q OKAY, SO BEFORE YOU GOT THAT POLICY AT AUTO-OWNERS, YOU WERE DEALING
- 3 WITH THE SAME AGENT?
- 4 A YES.
- 5 Q AND THEY CHANGED NAMES?
- 6 A THEY CHANGED NAMES ONCE OR---
- 7 Q AND---
- 8 A ---TWICE I'M NOT SURE WHICH---
- 9 Q AND THEY WERE---
- 10 A ---BUT WE HAD YEARS WITH THEM.
- 11 Q THEY WERE AWARE - THE PRIOR AGENT WAS AWARE THAT YOU WERE DOING---
- 12 A YES.
- 13 Q ---PROJECTS IN SOUTH---
- 14 A YES.
- 15 Q ---CAROLINA?
- 16 A YES.
- 17 MR. HOWELL: OBJECTION.
- 18 MR. SMITH: OKAY.
- 19 MR. HOWELL: THAT CALLS FOR SPECULATION, HOW DOES HE KNOW
- 20 THAT? HE HAS ALREADY TESTIFIED HIS WIFE HANDLED ALL THE INSURANCE.
- 21 MR. SMITH: OKAY, NO FURTHER QUESTIONS.
- 22 THE COURT: I SUSTAIN THE OBJECTION ON THAT ONE.
- 23 OKAY, MR. GRIFFITH?
- 24 MR. GRIFFITH: NO QUESTIONS.
- 25 THE COURT: MR. ELLIOTT?

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CROSS-EXAMINATION

- 1
2 BY MR. ELLIOTT:
3 Q WHO IS MR. KENNY?
4 A I GUESS THAT WOULD BE ME.
5 Q SO THIS CERTIFICATE OF INSURANCE I AM LOOKING AT SAYS, "ATTENTION, MR.
6 KENNY"---
7 A UH-HUH.
8 Q ---HOW WOULD THEY KNOW TO SEND IT TO YOU?
9 A WELL, THEY SEND IT TO OUR OFFICE.
10 Q OKAY, WELL, HOW WOULD THEY KNOW - HOW WOULD THIS ASSOCIATES
11 BENEFITS AGENCY KNOW TO SEND IT TO YOU PERSONALLY BECAUSE IT SAYS,
12 "ATTENTION MR. KENNY"?
13 A BECAUSE I AM THE ONE THAT DEMANDED IT.
14 Q SO DID YOU HAVE ANY CONVERSATIONS OR CONTACT WITH ASSOCIATES
15 BENEFITS AGENCY AS IT RELATES---
16 A NO.
17 Q ---TO GETTING THIS? WELL, HOW DID THEY KNOW TO GET IT TO YOU?
18 A PABLO.
19 Q OKAY, DID THEY MAIL IT, DID THEY FAX IT, HOW DID THEY GET IT TO YOU?
20 A WELL, AT FIRST THEY FAX IT THEN THEY MAIL A HARD COPY.
21 Q OKAY, HOW MANY TIMES HAVE YOU HIRED CONTRERAS PANELS TO HELP YOU?
22 A BUDDY, I DON'T KNOW.
23 Q IF YOU HAD TO GUESS.
24 A WE PROBABLY -- THEY HAVE PROBABLY DONE 12, 15 JOBS FOR US, SOMETHING
25 LIKE THAT.

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- 1 Q DO THEY STILL DO JOBS FOR YOU NOW?
- 2 A YES, THEY ARE STILL WORKING FOR US NOW.
- 3 Q TO DO SEVERAL JOBS, DO THEY DO A GOOD JOB?
- 4 A THEY DO A GOOD JOB.
- 5 Q ARE THEY A GOOD GROUP TO WORK WITH?
- 6 A WELL, FOR THE MOST PART YES, WE HAVE HAD VERY LITTLE TROUBLE WITH
- 7 THEM. WE HAVE A COUPLE OTHER SUBS, BUT WE TRY TO KIND OF -- WE DON'T PUT
- 8 ALL OUR EGGS IN ONE BASKET.
- 9 Q OKAY, WHEN YOU RECEIVE CERTIFICATES OF INSURANCE FROM OTHER SUBS---
- 10 A UH-HUH.
- 11 Q ---OTHER THAN RECEIVING IT, DO YOU DO ANY OTHER DUE DILIGENCE IN
- 12 FOLLOWING UP WITH WHERE THE CERTIFICATE IS COMING FROM?
- 13 A WE WOULDN'T NECESSARILY KNOW---
- 14 Q ANY---
- 15 A ---BECAUSE THAT CERTIFICATE IS SUPPOSED TO BE HIS BOND THAT HE HAS GOT
- 16 THE INSURANCE.
- 17 Q OKAY, SO FOR ANY OTHER SUB THAT YOU MIGHT HAVE, YOU NEVER DO ANY
- 18 OTHER FOLLOW UP WITH THE -- FROM WHERE IT IS COMING FROM?
- 19 A WELL, WE KNOW IT IS COMING FROM HIS INSURANCE COMPANY, I MEAN WHERE
- 20 ELSE WOULD YOU GET IT FROM?
- 21 Q OKAY, IS THAT THE SAME FOR CONTRERAS PANELS? DID YOU EVER DO ANY
- 22 EXTRA -- TAKE AN EXTRA STEP TO MAKE SURE THAT THIS CERTIFICATE WAS
- 23 GENUINE?
- 24 A NO, WE HAD NO IDEA IT WASN'T.
- 25 Q AND IS YOUR STANDARD PRACTICE THAT YOU NEVER DO THAT?

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1 A NO, WE HAVEN'T. I DIDN'T KNOW WE WERE SUPPOSED TO.

2 Q YOU HAD NO REASON TO DO THAT?

3 A NO.

4 THE COURT: OKAY, MR. DWORJANYN?

5 MR. DWORJANYN: I DON'T HAVE ANY QUESTIONS.

6 THE COURT: MR. HOWELL?

7 CROSS-EXAMINATION

8 BY MR. HOWELL:

9 Q MR. HENSON, IF I UNDERSTAND YOUR TESTIMONY HERE TODAY AS WELL AS YOUR
10 TESTIMONY IN YOUR DEPOSITION, IT IS YOUR WIFE THAT HANDLES ALL
11 INSURANCE?

12 A SHE HANDLES MOST OF WHAT IS DONE, BUT I OVERLOOK AND I HAVE THE FINAL
13 DECISION ON WHO WE TAKE INSURANCE WITH.

14 Q OKAY, BUT SHE IS THE ONE THAT SUBMITS THE APPLICATIONS; IS THAT CORRECT?

15 A YES, SHE WOULD BE.

16 Q SHE IS THE ONE THAT HAS THE CONVERSATIONS WITH THE INSURANCE AGENT; IS
17 THAT CORRECT?

18 A YES, GENERALLY SPEAKING.

19 Q SO YOU HAVE NO FIRSTHAND KNOWLEDGE OF ANY CONVERSATIONS THAT WENT
20 ON BETWEEN HER AND THE INSURANCE AGENT?

21 A NO.

22 Q OKAY, SO ALL OF YOUR TESTIMONY HERE TODAY HAS BEEN HEARSAY?

23 A WELL, NO, I WOULDN'T SAY THAT.

24 Q WELL, IF YOU DIDN'T HAVE ANY CONVERSATIONS WITH THE INSURANCE AGENT
25 DIRECTLY, YOU DON'T KNOW WHAT THOSE CONVERSATIONS WERE, CORRECT?

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- 1 A WELL, I KNOW WHAT THOSE CERTIFICATES SAY AND MOST OF THEM NAME THE
2 STATE AND THE JOB SITE.
- 3 Q ALL RIGHT, AND ON THE CERTIFICATES THAT -- THE CERTIFICATE THAT YOU GAVE
4 EDIFICE, THE STATE LISTED -- YOU ARE LISTED AS HAVING COVERAGE IN NORTH
5 CAROLINA, CORRECT?
- 6 A WE ARE LISTED AS HAVING COVERAGE IN NORTH CAROLINA, SOUTH CAROLINA --
7 WELL, I DON'T KNOW ABOUT LISTED, BUT THEY KNOW WE ARE DOING IT BECAUSE
8 THEY ARE ISSUING THE CERTIFICATES---
- 9 Q HAVE YOU LOOKED---
- 10 A ---YOU ARE TAKING OUR MONEY FOR IT.
- 11 Q HAVE YOU LOOKED AT THE APPLICATION THAT YOUR WIFE COMPLETED---
- 12 A IF YOU ARE---
- 13 Q ---REGARDING THE WORKERS' COMPENSATION INSURANCE IN OCTOBER OF 2008?
- 14 A NO, I HAVE NOT.
- 15 Q OKAY, ARE YOU AWARE THAT ON THAT APPLICATION IN RESPONSE TO THE
16 QUESTION AS TO WHETHER OR NOT YOU USE SUBCONTRACTORS, THE ANSWER
17 WAS "NO"?
- 18 A NO, I AM NOT AWARE OF THAT.
- 19 Q WHY WOULD YOUR WIFE TELL THE INSURANCE AGENT, YOUR INSURANCE AGENT
20 AS YOU IDENTIFIED IT, THAT YOU DID NOT USE SUBCONTRACTORS?
- 21 A I DON'T KNOW, SHE MIGHT HAVE JUST SLIPPED UP AND DONE IT, BUT SHE KNEW IT,
22 I MEAN, WE ARE---
- 23 Q OKAY, ARE YOU ALSO AWARE THAT THEY INDICATED THAT YOU DON'T DO WORK
24 OUT OF STATE?
- 25 A NO, WE WORK OUT OF STATE, THEY KNOW IT.

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- 1 Q OKAY.
- 2 A LOOK AT YOUR CERTIFICATES, THEY WILL TELL YOU WHERE THAT---
- 3 Q I'M TALKING ABOUT---
- 4 A ---WHERE THAT JOB IS.
- 5 Q ---THE APPLICATION FOR INSURANCE THAT YOU APPLIED FOR IN OCTOBER OF 2008,
- 6 YOU INDICATED, OR YOUR WIFE INDICATED, THAT YOU DIDN'T DO ANY---
- 7 A I DON'T KNOW WHAT---
- 8 Q ---ANY WORK---
- 9 A ---I DON'T KNOW WHAT---
- 10 Q LISTEN TO MY QUESTION---
- 11 A ---SHE DID THEN, BUT HERE'S WHAT I DO KNOW.
- 12 Q LISTEN TO MY QUESTION---
- 13 A UH-HUH.
- 14 Q ---THEN YOU CAN ANSWER. THE APPLICATION FOR INSURANCE THAT YOU
- 15 SUBMITTED INDICATED THAT YOU DID NOT USE SUBCONTRACTORS; ISN'T THAT
- 16 RIGHT?
- 17 A I DO NOT KNOW, I DID NOT SEE THE APPLICATION.
- 18 MR. SMITH: OBJECTION, HE HAS ALREADY SAID THAT THE WIFE WAS THE
- 19 ONE SUBMITTING THE APPLICATION. HOW WOULD HE KNOW?
- 20 THE COURT: HE SAID HE DIDN'T KNOW SO...
- 21 BY MR. HOWELL:
- 22 Q ALL RIGHT, WERE YOU AWARE THAT SHE ALSO INDICATED ON THE APPLICATION
- 23 THAT YOU DIDN'T DO WORK OUT OF STATE?
- 24 A NO.
- 25 Q THE INSURANCE POLICY THAT YOU SAID -- THAT COUNSEL REFERRED TO EARLIER,

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1 DID YOU READ THAT INSURANCE POLICY?

2 A I HAVE NOT, NO.

3 Q OKAY, ARE YOU AWARE THAT THE POLICY SHOWS THAT YOU HAVE COVERAGE IN
4 NORTH CAROLINA ONLY?

5 A WELL, THEN WHY WOULD YOU ISSUE A CERTIFICATE SAYING I HAVE GOT IT IN
6 SOUTH CAROLINA, VIRGINIA AND EVERYWHERE ELSE AND TAKE MY MONEY FOR
7 IT?

8 Q DID YOU READ THE POLICY SHOWING THAT YOU---

9 A NO, I DID NOT.

10 Q ---ONLY HAD COVERAGE IN NORTH CAROLINA?

11 A NO, I DID NOT, BUT YOU TOOK MY MONEY.

12 Q HOW LONG -- YOU SAID THAT YOU HAD BEEN DOING WORK IN SOUTH CAROLINA,
13 NORTH CAROLINA, VIRGINIA, WHERE ELSE HAVE YOU BEEN DOING BUSINESS?

14 A WE DO WORK IN -- MAINLY IN NORTH CAROLINA, SOUTH CAROLINA AND VIRGINIA.
15 WE HAVE DONE SOME WORK IN TENNESSEE, WE HAVE DONE SOME IN MISSISSIPPI.

16 Q OKAY, AND WOULD IT BE FAIR TO SAY THAT YOU HAVE HAD REGULAR AND
17 ONGOING OPERATIONS IN SOUTH CAROLINA FOR A NUMBER OF YEARS?

18 A WELL, NOT REGULAR, WE HAVE THEM PERIODICALLY. I MEAN IF YOU LOOK AT
19 OUR JOB SITE CONTRACTS THEY -- WE MAY GO SIX MONTHS WITHOUT A JOB DOWN
20 HERE AND WE MAY HAVE ANOTHER ONE THAT FOLLOWS RIGHT UP.

21 Q LET ME SHOW YOU A DOCUMENT THAT YOUR WIFE -- THIS IS PAGE 95 OF OUR APA'S
22 COMMISSIONER.

23 BY MR. HOWELL:

24 Q IT IS A DOCUMENT THAT YOUR WIFE PROVIDED YOUR ATTORNEY. HAVE YOU
25 EVER SEEN THAT DOCUMENT?

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- 1 A NO.
- 2 Q OKAY, ON THIS DOCUMENT, IT LISTS THE LOCATIONS AND THE JOBS YOU HAD IN
- 3 2008 AND 2009.
- 4 A UH-HUH.
- 5 Q OKAY, DID YOU HAVE A JOB IN MONCKS CORNER, SOUTH CAROLINA IN 2008?
- 6 A WE DID.
- 7 Q OKAY, DID YOU HAVE A JOB IN GREENWOOD, SOUTH CAROLINA IN 2008?
- 8 A YEAH, WE DID.
- 9 Q DID YOU HAVE A JOB IN WOODFIELD ELEMENTARY SCHOOL IN 2008?
- 10 A NO, THAT'S GREENWOOD.
- 11 Q I'M SORRY?
- 12 A THAT'S GREENWOOD.
- 13 Q GREENWOOD? OKAY, AND THEN IT SAYS, "DUNCAN, SOUTH CAROLINA; LUGOFF,
- 14 SOUTH CAROLINA; CAMDEN, SOUTH CAROLINA; SUMMERVILLE, SOUTH CAROLINA;
- 15 SWANSEA, SOUTH CAROLINA; CHARLESTON, COLUMBIA, CHESNEE".
- 16 A OKAY.
- 17 Q THAT'S 12 JOBS IN SOUTH CAROLINA IN 2008 AND 2009----
- 18 A UH-HUH.
- 19 Q ---YOU ARE TELLING ME YOU DIDN'T HAVE REGULAR AND ONGOING
- 20 OPERATIONS---
- 21 A NO, I'M TELLING YOU---
- 22 Q ---IN SOUTH CAROLINA?
- 23 A ---THAT IN CONSTRUCTION THAT WILL VARY FROM YEAR TO YEAR, MISTER.
- 24 SOUTH CAROLINA PUMPED, I FORGET HOW MANY BILLION DOLLARS INTO THEIR
- 25 SCHOOL SYSTEMS AND THAT IS WHY WE HAVE HAD SO MUCH WORK DOWN HERE.

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- 1 Q NO QUESTION THAT WHEN THIS POLICY THAT'S IN QUESTION HERE, THE POLICY
2 THAT WAS EFFECTIVE OCTOBER 5, 2008 UNTIL OCTOBER 5, 2009, NO QUESTION
3 THAT AT THE TIME THIS POLICY CAME INTO EFFECT THAT YOU HAD WORK GOING
4 ON IN SOUTH CAROLINA, DIDN'T YOU?
- 5 A NO, WE HAD WORK GOING ON IN SOUTH CAROLINA AND THEY KNEW IT.
- 6 Q YOU HAD - OKAY, AND IT IS YOUR TESTIMONY THAT THEY KNEW IT BECAUSE
7 YOUR WIFE---
- 8 A NO, BECAUSE THEY PUT IT ON THE CERTIFICATES.
- 9 Q THEY PUT WHAT ON THE CERTIFICATES?
- 10 A THE LOCATION.
- 11 Q YOUR WIFE IS THE ONLY ONE THAT HAD COMMUNICATION WITH THE INSURANCE
12 AGENT, CORRECT?
- 13 A THAT'S CORRECT.
- 14 Q OKAY, YOU NEVER HAD ANY COMMUNICATIONS WITH THEM TELLING HIM WHERE
15 YOU WERE DOING WORK, DID YOU?
- 16 A NO, BUT SHE DOES.
- 17 Q AND YOU HAVE NEVER ONCE HAD ANY COMMUNICATIONS WITH AUTO-OWNERS
18 DIRECTLY, DIRECTLY NOTIFYING THEM THAT YOU HAD WORK IN SOUTH
19 CAROLINA ON A REGULAR AND ONGOING BASIS?
- 20 A WE DID NOT, WE ARE A NORTH CAROLINA CORPORATION.
- 21 Q YOU ARE A NORTH CAROLINA CORPORATION---
- 22 A WE HAVE BEEN DOING SEVERAL JOBS IN SOUTH CAROLINA.
- 23 Q FOR MANY, MANY YEARS?
- 24 A NO, NOT FOR MANY, MANY YEARS, FOR THE LAST FEW YEARS SINCE THEY
25 STARTED PUMPING THAT MONEY INTO THE SCHOOL SYSTEM.

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- 1 Q IS IT FAIR TO SAY THAT IF YOU GOT SOUTH CAROLINA COVERAGE, YOUR
2 PREMIUMS WOULD GO UP?
- 3 A NO, I DON'T KNOW.
- 4 Q YOU DON'T KNOW?
- 5 A I WOULDN'T THINK SO. OUR PREMIUMS SHOULD BE BASED ON OUR LOSS RATE
6 RUNS AND WE DON'T HAVE ANY TO AMOUNT TO ANYTHING.
- 7 Q NOW, ARE YOU FAMILIAR WITH AN AUDIT THAT WAS DONE ON YOUR COMPANY
8 BY AUTO-OWNERS IN OCTOBER OF 2009?
- 9 A I AM NOT FAMILIAR WITH THE AUDIT, SHE DOES THE AUDITS.
- 10 Q OKAY, SO YOUR WIFE HANDLES ALL INSURANCE AND THE AUDITS AS WELL; IS
11 THAT CORRECT?
- 12 A SHE HANDLES THE AUDITS, YES, WITH THE AUDITOR.
- 13 Q AND YOU HAVE NOTHING TO DO WITH THE AUDIT?
- 14 A NO.
- 15 Q WHERE DID SHE GET THE INFORMATION TO PROVIDE THE AUDITOR?
- 16 A SHE GETS IT OFF OUR CONTRACTS AND OFF OUR INSURANCE.
- 17 Q OKAY.
- 18 A HE COMES IN, HE CHECKS WHAT WE PAID OUT TO WHICH SUBCONTRACTORS AND
19 WHERE---
- 20 Q OKAY.
- 21 A ---AND THEN HE BASES---
- 22 Q IS IT FAIR---
- 23 A WE PAY UP FRONT SO---
- 24 Q OKAY, IS IT FAIR TO SAY THAT BETWEEN OCTOBER, 2008 AND OCTOBER, 2009 THAT
25 YOU DID A FAIR AMOUNT OF WORK WITH SUBCONTRACTORS IN SOUTH CAROLINA,

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- 1 CORRECT?
- 2 A YES.
- 3 Q OKAY, WHY DIDN'T YOUR WIFE PUT THAT INFORMATION ON THE AUDIT?
- 4 A SHE DOESN'T GIVE THEM THE INFORMATION, THEY TAKE THE INFORMATION---
- 5 MR. SMITH. OBJECTION, HE PROBABLY DOESN'T KNOW WHY THE WIFE---
- 6 BY MR. HOWELL:
- 7 Q OKAY, YOUR WIFE WAS SUBPOENAED TO BE HERE TODAY, DO YOU KNOW WHY.
- 8 SHE'S NOT HERE?
- 9 A NO, SHE DIDN'T, SHE WAS NOT SUBPOENAED.
- 10 Q OKAY, WELL, SHE'S THE ONE - AND YOU ARE TESTIFYING HERE, OBVIOUSLY YOU
- 11 KNOW THAT YOU HAVE TO PROVE THAT YOU HAVE COVERAGE, CORRECT?
- 12 A I DON'T KNOW ANYTHING, I JUST KNOW I WAS SUBPOENAED---
- 13 Q YOU DON'T KNOW---
- 14 A -----TO BE HERE.
- 15 Q ---YOU DON'T KNOW THAT IT IS YOUR BURDEN HERE TODAY---
- 16 A NO.
- 17 Q ---TO PROVE THAT YOU HAD COVERAGE?
- 18 A NO.
- 19 Q OKAY, AND IT IS YOUR TESTIMONY THAT YOUR WIFE IS THE ONE THAT HANDLED
- 20 ALL THE INSURANCE STUFF---
- 21 A YES.
- 22 Q ---CORRECT?
- 23 A UH-HUH.
- 24 Q YET SHE IS NOT HERE TODAY TO PRESENT TESTIMONY ON BEHALF OF YOUR
- 25 COMPANY TO PROVE COVERAGE; IS THAT CORRECT?

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1 A WELL, I WOULD THINK I WOULD BE ABLE TO FROM THE INSURANCE CERTIFICATES
2 THAT YOU HAVE THERE THAT WERE SENT TO EACH ONE OF THESE JOB SITES.

3 Q OKAY, DO YOU KNOW A COMPANY BY THE NAME OF OLYMPIC CONSTRUCTION
4 COMPANY?

5 A THAT DON'T RING A BELL - OH, OH, OH, YEAH, I DO.

6 Q OKAY, THEY ARE A SUBCONTRACTOR---

7 A YEAH---

8 Q ---YOU USE---

9 A ---OUT OF CHARLOTTE, NORTH CAROLINA, I USED HIM ABOUT ONE TIME, ONE JOB.

10 Q ALL RIGHT, ARE YOU AWARE THAT'S THE ONLY SUBCONTRACTOR LISTED ON THE
11 AUDIT THAT WAS DONE IN OCTOBER OF 2009?

12 A I DON'T KNOW IF IT WAS OR NOT, BUT WE HAVE ANOTHER ONE.

13 MR. HOWELL: THANK YOU.

14 THE WITNESS: LIKE I SAID, THE AUDITOR COMES IN, HE TAKES
15 INFORMATION, WE DON'T NECESSARILY GIVE - WE LET HIM HAVE THE BOOKS TO
16 DO WHAT HE NEEDS TO DO, THAT'S ALL THAT IS DONE.

17 THE COURT: ALL RIGHT, MR. MONTGOMERY?

18 MR. MONTGOMERY: THANK YOU, COMMISSIONER.

19 CROSS-EXAMINATION

20 BY MR. MONTGOMERY:

21 Q MR. HENSON, DID YOU HAVE DIRECT DEALINGS PERSONALLY WITH THE FOLKS AT
22 EDIFICE?

23 A YES.

24 Q OKAY, AND IN YOUR COMMUNICATIONS OR DEALING WITH EDIFICE, DID THEY
25 HAVE A SIMILAR POLICY TO YOU THAT THEY REQUIRED A CERTIFICATE OF

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1 INSURANCE BEFORE LETTING YOU BEGIN WORK ON THE JOB?

2 A ABSOLUTELY.

3 Q OKAY, AND DID YOU PROVIDE, OR AT LEAST CALL YOUR AGENT TO GET THAT
4 CERTIFICATE OF INSURANCE SENT TO EDIFICE?

5 A YES, WENDY WOULD HAVE DONE THAT, YES.

6 MR. HOWELL: HE HAS ALREADY TESTIFIED THAT HE HAD NO
7 COMMUNICATION WITH THE INSURANCE COMPANY.

8 THE COURT: YEAH, I SUSTAIN IT.

9 MR. MONTGOMERY: MY OPINION OF HIS TESTIMONY WAS DEALING WITH
10 WHETHER HE HAD SOUTH CAROLINA COVERAGE, I'M ASKING ABOUT EDIFICE.
11 GETTING THE ACTUAL CERTIFICATE SENT FROM THEM TO EDIFICE, IT WAS
12 UNDERSTANDING WAS THAT WAS NOT COVERED, I APOLOGIZE IF IT WAS.

13 BY MR. MONTGOMERY:

14 Q LET ME REPHRASE IT AND CLARIFY.

15 A OKAY.

16 Q DID YOU EVER PERSONALLY REQUEST A CERTIFICATE OF INSURANCE BE SENT
17 FROM YOUR AGENT TO EDIFICE?

18 A NO.

19 Q THAT WOULD BE YOUR WIFE?

20 A YES.

21 Q OKAY, DID SOMEONE FROM EDIFICE SPEAK TO YOU DIRECTLY TO TELL YOU TO
22 GET THAT FOR THEM AT SOME POINT?

23 A WELL, I'M SURE THEY SPOKE TO DANNY WHO IS ESTIMATOR OR WENDY TO GET IT,
24 YOU ARE NOT GOING TO WORK UNTIL HAVE YOU GOT IT.

25 Q AT SOME POINT, DID YOU BEGIN WORK ON THE EDIFICE PROJECT AT THAT SCHOOL

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- 1 OR AT THAT TECH CENTER?
- 2 A DID WE?
- 3 Q YES, SIR. DID YOU DO ANY WORK ON THAT SITE YOURSELF?
- 4 A NO.
- 5 Q OKAY, SO YOU ARE JUST A SUBCONTRACTOR WHO THEN---
- 6 A THAT'S RIGHT.
- 7 Q ---SUBS IT OUT?
- 8 A THAT'S CORRECT.
- 9 Q OKAY, WERE YOU PERSONALLY UNDER THE IMPRESSION THAT YOU HAD VALID
- 10 SOUTH CAROLINA WORKERS' COMPENSATION INSURANCE?
- 11 A ABSOLUTELY.
- 12 Q OKAY, AND DID YOU PERSONALLY MAKE ANY REPRESENTATIONS TO EDIFICE IN
- 13 THAT REGARD?
- 14 A I DIDN'T.
- 15 Q OKAY, THESE CERTIFICATES OF INSURANCE YOU KEEP REFERRING TO MR. HOWELL
- 16 WAS ASKING YOU ABOUT, ARE YOU TALKING ABOUT THE ACTUAL CERTIFICATES
- 17 OR ARE YOU TALKING ABOUT AN OWNERS PIECE OF PAPER -- COMMISSIONER,
- 18 PERMISSION TO APPROACH?
- 19 THE COURT: (NODS HEAD)
- 20 THE WITNESS: WHAT I CALL THE CORE FORMS WHICH LISTS -- YEAH.
- 21 BY MR. MONTGOMERY:
- 22 Q LET ME SHOW YOU WHAT I HAVE PUT IN---
- 23 A YEAH.
- 24 Q ---AS MY APA PAGE 20 AND 29 AND ASK IF YOU HAVE EVER SEEN THIS DOCUMENT?
- 25 A (NO RESPONSE)

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- 1 Q HAVE YOU EVER PERSONALLY SEEN THAT DOCUMENT?
- 2 A I HAVE NOT SEEN IT, BUT I AM SURE WENDY HAS.
- 3 Q OKAY, DID YOU ALSO ENTER INTO AN INDEMNIFICATION AND SUBCONTRACT
- 4 AGREEMENT WITH EDIFICE? MEANING SOMETHING ELSE---
- 5 A YES.
- 6 Q OKAY.
- 7 A YES, WE HAD A CONTRACT WITH EDIFICE, YES.
- 8 Q I'M SORRY?
- 9 A WE HAD A CONTRACT WITH EDIFICE, YES.
- 10 Q AND IS IT YOUR UNDERSTANDING THAT IF, IN FACT, THEY ULTIMATELY HAD A
- 11 WORKERS' COMPENSATION INJURY BY ONE OF YOUR EMPLOYEES THAT YOU ARE
- 12 THEN RESPONSIBLE TO INDEMNIFY THEM AGAINST THAT LOSS?
- 13 A WE -- IF THAT IS IN THAT CONTRACT, YES.
- 14 MR. MONTGOMERY: OKAY, NOTHING ELSE. THANK YOU.
- 15 THE COURT: MR. GOUDELOCK?
- 16 MR. GOUDELOCK: NO QUESTIONS, YOUR HONOR.
- 17 THE COURT: MR. KILLEN?
- 18 MR. KILLEN: THANK YOU, COMMISSIONER.

19 CROSS-EXAMINATION

20 BY MR. KILLEN:

- 21 Q MR. HENSON, HAVE YOU OR YOUR COMPANY PAID ANY BENEFITS TO MR.
- 22 ALMAZAN?
- 23 A NO.
- 24 Q TO YOUR KNOWLEDGE, HAS YOUR INSURANCE COMPANY PAID ANY BENEFITS TO
- 25 MR. ALMAZAN?

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Lexington, South Carolina 29072

- 1 A NO.
- 2 Q OKAY, I AM TALKING ABOUT AUTO-OWNERS, THEY HAVEN'T PAID ANYTHING,
- 3 HAVE THEY?
- 4 A NOT THAT I KNOW OF.
- 5 Q OKAY,
- 6 A AND WE DON'T HAVE AUTO-OWNERS COVERAGE ANYMORE.
- 7 Q I AM LOOKING AT THIS CONTRACT BETWEEN YOUR COMPANY AND MR.
- 8 CONTRERAS---
- 9 A UH-HUH.
- 10 Q ---AND ON PAGE 35 OF YOUR ATTORNEY'S APA SUBMISSIONS, IT IS A SIGNATURE
- 11 PAGE.
- 12 A UH-HUH.
- 13 Q CAN YOU TELL ME WHAT IT SAYS DOWN HERE AT THE BOTTOM OF THE PAGE?
- 14 A "BEFORE THE FIRST PAYMENT IS RELEASED BY SUBCONTRACTOR, HENSON AND
- 15 ASSOCIATION - ASSOCIATES MUST HAVE ON FILE A VALID OF CERTIFICATE OF
- 16 INSURANCE AND A COMPLETED W-9 FORM ATTACHED".
- 17 Q SO ON THE CONTRACT YOU JUST WOULDN'T RELEASE A PAYMENT UNTIL THEY
- 18 GOT YOU---
- 19 A NO, NO,
- 20 Q ---A CERTIFICATE, CORRECT?
- 21 A NO, NO, WE WILL NOT ALLOW THEM TO GO TO WORK PERIOD.
- 22 Q OKAY, THIS CONTRACT BEARS THE DATE OF APRIL 7TH, 2009. DO YOU KNOW WHEN
- 23 YOU RECEIVED A CERTIFICATE OF INSURANCE FROM CONTRERAS PANELS?
- 24 A I THINK IT WAS ABOUT THE SAME DATE THAT CONTRACT WAS SIGNED OR RIGHT
- 25 ABOUTS THERE AND THEN THEY MUST HAVE WENT TO WORK ALONG IN JUNE

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242 Catawba Trail
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- 1 BECAUSE WE GOT THE FIRST PAY REQUEST JUNE 15TH OR SOMETHING LIKE THAT, I
2 CAN'T REMEMBER.
- 3 Q SO AROUND APRIL 7TH?
4 A UH-HUH.
- 5 Q HOW DID YOU KNOW THAT?
6 A BECAUSE THAT'S WHAT IT SAYS ON THE CONTRACT.
- 7 Q THAT'S WHAT - BUT THAT'S THE DATE ON THE CONTRACT---
8 A YEAH.
- 9 Q ---WHAT IS THE DATE ON THE CERTIFICATE YOU RECEIVED?
10 A YOU ARE GOING TO HAVE TO SHOW ME---
- 11 Q I WILL SHOW IT TO YOU---
12 A ALL RIGHT.
- 13 Q ---IT IS PAGE 38---
14 A UH-HUH.
- 15 Q ---OF YOUR ATTORNEY'S APA SUBMISSIONS.
16 A WHERE IS THE DATE AT ON IT?
- 17 Q YOU DON'T KNOW WHERE THE DATE IS?
18 A NO, I KNOW WHERE IT SAYS THE COVERAGE FROM YEAR TO YEAR.
- 19 Q YOU ACTUALLY DON'T DEAL WITH THESE, DO YOU?
20 A NOT A LOT.
- 21 Q SO YOU DON'T---
22 A RIGHT HERE IT IS "4/23/09".
- 23 Q SO THAT'S APRIL 23RD, 2009 THAT'S TWO WEEKS, A COUPLE WEEKS, AFTER THE
24 CONTRACT WAS ENTERED INTO---
25 A UH-HUH.

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- 1 Q ---IS THAT CORRECT?
- 2 A THAT'S PROBABLY CORRECT.
- 3 Q OKAY, AND CAN YOU TELL ME WHEN YOU RECEIVED THIS CERTIFICATE OF
- 4 INSURANCE?
- 5 A IT WOULD HAVE BEEN WHENEVER THE DATE IS ON IT THERE.
- 6 Q WHY DO YOU SAY THAT?
- 7 A WELL, BECAUSE, I MEAN THAT'S PRETTY OBVIOUS.
- 8 Q SO NECESSARILY AROUND THE DATE THIS DOCUMENT WAS CREATED YOU ALSO
- 9 RECEIVED IT?
- 10 A I'M SURE SHE DID.
- 11 Q OKAY, YOU ARE TALKING ABOUT YOUR WIFE?
- 12 A UH-HUH.
- 13 Q YOU WIFE ACTUALLY RECEIVES THESE DOCUMENTS, DOESN'T SHE?
- 14 A YES.
- 15 Q YOU DON'T KNOW WHEN YOU RECEIVED IT, DO YOU?
- 16 A NOT POSITIVELY.
- 17 Q YOU ARE GUESSING---
- 18 A WELL, I---
- 19 Q ---CORRECT?
- 20 A ---DO KNOW THIS, THEY DIDN'T START THE WORK -- I WILL NOT ALLOW THEM TO
- 21 GO TO WORK UNTIL I HAVE -- UNTIL I KNOW THAT IS IN AND THE CONTRACT IS
- 22 SIGNED.
- 23 Q BUT YOU ARE GUESSING AS TO WHAT THE DATE YOU COLLECTED THIS
- 24 DOCUMENT, AREN'T YOU?
- 25 A WELL, I AM ASSUMING, I MEAN LOOK AT THE DATE ON IT.

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- 1 Q YOU'RE ASSUMING? YOU ARE ASSUMING, ARE YOU GUESSING OR DO YOU KNOW
2 WHAT YOU ARE TESTIFYING ABOUT?
- 3 A WELL, I KNOW MY WIFE WELL ENOUGH TO KNOW SHE IS NOT GOING TO DO
4 SOMETHING WITH A DATE ON A CERTIFICATE.
- 5 Q YOU HAVE NO KNOWLEDGE WHATSOEVER WHEN YOU ACTUALLY -- OR YOUR
6 COMPANY ACTUALLY RECEIVED THIS DOCUMENT; ISN'T THAT CORRECT?
- 7 A WELL, I WILL SAY IT IS 4/23 OR FOUR WHATEVER THAT SAYS.
- 8 Q SIMPLY BECAUSE THAT'S THE DATE WRITTEN ON TOP OF THE DOCUMENT?
- 9 A UH-HUH.
- 10 Q THAT'S A "YES"?
- 11 A YES.
- 12 Q NO OTHER REASON?
- 13 A NO OTHER REASON.
- 14 Q OKAY, YOU TESTIFIED EARLIER AND I WROTE IT DOWN BECAUSE YOU SAID MOST
15 OF THE CERTIFICATES WE RECEIVE ARE CERTIFICATES -- ARE QUOTE "NAMING THE
16 PROJECT AND THE STATE"---
- 17 A AND ALSO THE MONTH IT IS.
- 18 Q I AM GOING TO SHOW YOU THESE CERTIFICATES ON PAGE 38---
- 19 A WELL, THERE MAY BE SOME THAT AREN'T, BUT I'M TELLING YOU MOST OF THEM
20 ARE.
- 21 Q OKAY, CAN YOU SHOW ME WHERE IT SAYS "SOUTH CAROLINA" ON PAGE 38 AND
22 39?
- 23 A IT SAYS, "YORK HIGH SCHOOL AND TECH CENTER".
- 24 Q ALL RIGHT, CAN YOU SHOW ME WHERE IT SAYS "SOUTH CAROLINA" ON PAGES 38
25 AND 39?

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- 1 A NO.
- 2 Q WHY IS THAT?
- 3 A BECAUSE IT DOESN'T SAY IT ON THAT.
- 4 Q IT DOESN'T SAY "SOUTH CAROLINA" ANYWHERE ON EITHER OF THOSE
- 5 DOCUMENTS, CORRECT?
- 6 A NOT ON THOSE TWO.
- 7 Q OKAY, BUT IT SAYS "YORK"?
- 8 A UH-HUH.
- 9 Q BUT IT DOESN'T SAY "SOUTH CAROLINA"?
- 10 A HOW MANY OTHER YORKS WOULD YOU HAVE CLOSE TO CHARLOTTE?
- 11 Q I DON'T KNOW HOW MANY MAY BE CLOSE TO CHARLOTTE AND I DON'T KNOW
- 12 THAT THERE IS ANYTHING ON THIS CERTIFICATE THAT INDICATES THE JOB IS
- 13 CLOSE TO CHARLOTTE, DO YOU, OTHER THAN "YORK"?
- 14 A WELL, I WOULD THINK THE AGENT---
- 15 Q IS THERE ANYTHING ELSE THERE?
- 16 A I WOULD THINK OUR AGENT KNOWS THAT.
- 17 Q OKAY, DO YOU KNOW HOW MANY YORKS THERE ARE IN THE UNITED STATES?
- 18 A I GOT NO IDEA.
- 19 Q DO YOU KNOW HOW MANY OTHER YORK HIGH SCHOOLS THERE ARE IN THE
- 20 UNITED STATES?
- 21 A NO, I GOT NO IDEA.
- 22 Q YOU ALSO TESTIFIED EARLIER AND I WROTE THIS DOWN AS WELL, YOU SAID --
- 23 YOU WERE TALKING ABOUT THE CERTIFICATES AND YOU SAID, QUOTE, "MOST OF
- 24 THEM NAME THE STATE AND THE JOB SITE"?
- 25 A THE JOB SITE AND THE STATE, YES, SIR.

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1 Q BUT IT DOESN'T NAME THE STATE ON THESE, DOES IT?

2 A UNT-UH, THAT ONE DIDN'T, BUT I AM NOT SURE WHAT SHE HAS GOT.

3 Q DO YOU KNOW WHO RAY VILLALOVAS IS?

4 A NO.

5 MR. KILLEN: OKAY, THAT'S ALL THE QUESTIONS I HAVE.

6 THE COURT: OKAY, MR. SMITH, ANY REDIRECT?

7 MR. SMITH: JUST A FEW.

8 REDIRECT EXAMINATION

9 BY MR. SMITH:

10 Q MR. HENSON, WOULD YOU HAVE LET CONTRERAS PANELS GO TO WORK ON THE
11 YORK HIGH SCHOOL PROJECT PRIOR TO RECEIVING THEIR CERTIFICATE OF
12 INSURANCE?

13 A NO, SIR.

14 Q SO NO MATTER -- EVEN IF THIS FIRST CERTIFICATE IS DATED APRIL 23RD, 2009, NO
15 MATTER WHAT THE DATE IS, YOU RECEIVED THAT PRIOR TO LETTING THEM GO TO
16 WORK?

17 A I GET THAT INFORMATION FROM WENDY BEFORE I ALLOW THEM TO GO TO WORK.
18 SHE LETS ME KNOW SHE HAS GOT THEIR STUFF IN THE FILE.

19 Q OKAY, AND WERE YOU TRYING TO HIDE FROM AUTO-OWNERS, THE FACT THAT
20 YOU WERE DOING WORK IN SOUTH CAROLINA?

21 A ABSOLUTELY NOT.

22 Q IN FACT, YOU REQUESTED SEVERAL CERTIFICATES OF INSURANCE FROM AUTO-
23 OWNERS INDICATING -- FOR PROJECTS IN SOUTH CAROLINA?

24 MR. HOWELL: OBJECTION, THERE'S NO TESTIMONY---

25 THE WITNESS: THAT'S CORRECT.

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1 **MR. HOWELL:** ---ANYWHERE THAT HE EVER REQUESTED CERTIFICATE OF
2 INSURANCES FROM AUTO-OWNERS.

3 **BY MR. SMITH:**

4 Q HENSON AND ASSOCIATES REQUESTED CERTIFICATES OF INSURANCE FROM THEIR
5 INSURANCE AGENT---

6 A THAT'S CORRECT.

7 Q ---SHOWING THAT THEY -- INDICATING THAT THEY HAD COVERAGE IN SOUTH
8 CAROLINA?

9 A THAT'S CORRECT.

10 Q AND YOUR AGENT PROVIDED THESE CERTIFICATES---

11 A ABSOLUTELY.

12 Q ---FOR THESE JOBS IN SOUTH CAROLINA?

13 A YES.

14 Q DO YOU KNOW WHAT THE INSURANCE AGENT ASKED YOUR WIFE DURING THE
15 APPLICATION PROCESS?

16 A NO, I DO NOT.

17 Q DO YOU KNOW WHAT QUESTIONS AUTO-OWNERS' AGENT ASKED DURING THE
18 AUDIT?

19 A NO, I DO NOT.

20 **MR. SMITH:** OKAY, NO FURTHER QUESTIONS.

21 **THE COURT:** MR. GRIFFITH?

22 **MR. GRIFFITH:** NO QUESTIONS.

23 **THE COURT:** MR. ELLIOTT?

24 **MR. ELLIOTT:** NOTHING

25 **THE COURT:** MR. DWORJANYN?

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1 MR. DWORJANYN: NO, COMMISSIONER.

2 THE COURT: MR. HOWELL?

3 RE CROSS-EXAMINATION

4 BY MR. HOWELL:

5 Q IS THIS THE CERTIFICATE OF INSURANCE THAT YOU PROVIDED TO EDIFICE THAT'S
6 ON PAGE 83 OF OUR APA'S?

7 A I ASSUME IT IS.

8 Q OKAY, AND WHO - AND IT LISTS THE CERTIFICATE HOLDER AS "EDIFICE INC."?

9 A THAT'S CORRECT.

10 Q AND WHAT'S THE ADDRESS ON THAT?

11 A "CHARLOTTE, NORTH CAROLINA".

12 Q IS THERE ANYWHERE ON THERE WHERE IT LISTS THAT THIS JOB IS BEING DONE IN
13 SOUTH CAROLINA?

14 A NO, BUT THAT GOES DIRECTLY TO EDIFICE, THAT'S NOT - THAT DON'T REALLY
15 HAVE A BEARING ON IT.

16 MR. HOWELL: THAT'S ALL I HAVE, COMMISSIONER.

17 THE COURT: MR. MONTGOMERY?

18 MR. MONTGOMERY: NO QUESTIONS.

19 THE COURT: MR. GOUDELOCK?

20 MR. GOUDELOCK: NO QUESTIONS, YOUR HONOR.

21 THE COURT: MR. KILLEN?

22 MR. KILLEN: NOTHING FURTHER, YOUR HONOR.

23 THE COURT: MR. SMITH, ANY OTHER WITNESSES FOR HENSON AND
24 ASSOCIATES?

25 MR. SMITH: GARRY SMITH, BUT I AM GOING TO HAVE TO GO AROUND THE

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STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 0919909

Rudy Almazan,)
)
Claimant,)
)
v.)
)
Henson & Associates,)
)
Employer,)
)
and)
)
SCUEF,)
)
Carrier/Defendants.)
-----)

COPY

FULL COMMISSION PANEL HEARING

Monday, February 23, 2015
3:02 p.m. - 3:22 p.m.

The full commission panel hearing was held before the South Carolina Workers' Compensation Commission, 1333 Main Street, 5th Floor, Columbia, South Carolina, on the 23rd day of February, 2015 before Jill H. Vickers, Certified Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

COMMISSION PANEL:
Aisha Taylor, Chair
Melody James
Gene McCaskill

Roy A. Howell, Esquire
 Trask & Howell, LLC
 763 Johnnie Dodds Boulevard, Suite 2
 Mt. Pleasant, South Carolina 29464
 Attorney for the Appellant/Defendants, Henson &
 Associates

Amy V. Cofield, Esquire
 Cofield Law Firm
 809 South Lake Drive
 Lexington, South Carolina 29072
 Attorney for the Respondent/Defendant, SCUFE

INDEX

	<u>PAGE</u>
Certificate	19



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1 **COURT REPORTER:** Today is February 23, 2015. This
2 is South Carolina Workers' Compensation Case
3 Number 0919909. This is the case of Rudy
4 Almazan, Claimant, versus Henson & Associates,
5 Employer, and the South Carolina Uninsured
6 Employers Fund is the Carrier. The Appellant
7 is the Defendant represented by Roy A. Howell.
8 The Respondent is represented by Amy V.
9 Cofield. Each side is allowed ten minutes for
10 oral argument and the Appellant three minutes
11 in reply. You are requested to argue the
12 grounds of exception and stay within the
13 record.

14 **MR. HOWELL:** If it may please the commission. I'm
15 here on behalf of Auto Owners Insurance and
16 Henson & Associates, an appeal from an order
17 from former Commissioner Roche, denying the
18 employee carrier's petition to transfer
19 liability to the uninsured employer's fund, and
20 I think it's important in these cases to
21 understand the underlying purpose of 42-1-415,
22 and the underlying purpose, as you know, before
23 its inception, higher tier contractors had no
24 remedy if somebody gave them a false
25 Certificate of Insurance. They were just sort



1 of out of luck. So, the legislature created a
2 way in which, if certain criteria were met,
3 they could transfer liability to the Uninsured
4 Employers Fund, and then the Uninsured
5 Employers Fund would then have a lien against
6 the direct employer and could go back and get
7 their money. 42-1-415 provides that when a
8 subcontractor has represented himself as having
9 in Workers' Compensation Insurance to a higher
10 tier contractor, the higher tier contractor,
11 quote, "must be relieved of any and all
12 liability under this title". It is mandatory.
13 Now, in this case, it's important to
14 understand, you know, a lot of these transfer
15 liability cases, the policy, when it was
16 initially provided, there was good insurance,
17 and either the policy was not renewed, and they
18 didn't get a new certificate, or the policy
19 lapses and the lower tier subcontractor doesn't
20 tell anybody about it. Well, in this case,
21 this involved real and actual fraud. In this
22 particular case, Henson subcontracted the
23 Contrayer Panels to do part of their work, and
24 frankly met all the requirements to get the
25 documentation of insurance prior to the time



1 the work was engaged. There's no dispute as to
2 that. There's no dispute that the
3 documentation of insurance was on a standard
4 form expected by the commission, and there's no
5 dispute that the documentation of insurance was
6 turned over to the commission at the time the
7 claim was filed. What happened was is that Mr.
8 Almazan got hurt, and it turned out that there
9 was no coverage, and by no coverage, I mean
10 there was no policy period. There was no
11 policy ever issued. It was out and out fraud
12 either by Contrayer Panels directly or by this
13 agency in Texas who presumably was issuing
14 false certificates that looked as good as gold.
15 So, again, this is what 42-1-415 was enacted to
16 remedy. I mean, this is the exact scenario
17 that they were looking for. And in this case,
18 Henson & Associates did exactly what they were
19 required to do, and I'm going to show you a
20 copy of -- there were actually two
21 certificates, but this is the one that really
22 applied, because this is the policy that was
23 supposedly in effect when the claimant's
24 accident occurred, and what's important to
25 note, and again, what distinguishes this case



1 from the Barton case and the Hopper case which
2 is cited by the Uninsured Fund, when you look
3 at this, every single line on this certificate
4 is complete. It has the name of the insurance
5 company. It has the policy periods. It has
6 the coverage amounts. It has the coverage
7 period. It has the description of operations.
8 It has Henson & Associates listed as the
9 certificate holder, and it is signed by an
10 authorized agent. Every single thing on this
11 Certificate of Insurance is completed. But the
12 Uninsured Fund argues that that's not enough.
13 It's not enough that they did everything that
14 the plain language of the statute requires.
15 Their argument is that, because the employer
16 didn't call the agency in Texas and ask them
17 any questions about the certificate, that
18 somehow this is not proper documentation of
19 insurance, but there's nothing in the plain
20 language of the statute or in the regulations
21 at the time that requires that. Again, the
22 Uninsured Fund relies upon the Barton case and
23 the Hopper case for their position that more
24 was required. Again, the Barton case is
25 distinguishable in that the certificate in that



1 particular case didn't even have a signature on
2 it. So, the Court said, "This is not proper
3 documentation of insurance". You can't have an
4 unassigned Certificate of Insurance and say
5 that that's proper documentation. In the
6 Hopper case, the single commissioner -- in the
7 Hopper case, the higher tier contractor,
8 Kajima, hired Terry Hunt Construction as a
9 subcontractor to install pipe at a job site in
10 Greenwood. Hunt had worked for Kajima on a
11 previous project and at the time presented a
12 Certificate of Insurance indicating that Hunt
13 had a Workers' Comp. Policy. The certificate
14 at that time was a coverage period of May of
15 2002 to December 31 of 2002. The certificate
16 included all the appropriate information in the
17 description of operations, location, the
18 project number, the subcontract number, the
19 claim deductible. Before beginning work on the
20 project, Hunt presented a second certificate
21 showing coverage from January 1, 2003 to
22 December 1 -- December 31, 2003, but unlike the
23 the first certificate, the description of
24 operations was blank, unlike our case where the
25 description of operations is completely filled



1 in. The claimant's accident occurred on
2 February 19th, 2004. Well, guess what, that's
3 after the policy period had expired. He had a
4 certificate that showed coverage through
5 December 31, 2003. The date of accident was
6 January 19th, 2004, and Hunt did not have
7 Workers' Compensation insurance. And this
8 carrier was required to pay the award and
9 petitioned the Commission under 42-1-415 to
10 transfer liability. The single commissioner
11 ruled in that case that Zurich could not shift
12 liability because the certificate did not
13 indicate that Hunt had coverage in South
14 Carolina. The full commission adopted to the
15 single commissioner's order in its entirety for
16 the Supreme Court review and found that there
17 was no evidence -- the certificate showed that
18 there was coverage only in Georgia and no
19 coverage in South Carolina. The Court of
20 Appeals -- and this is important -- held that
21 there was substantial evidence -- this was a is
22 substantial evidence case, and that's one of
23 the important things to support the single
24 commissioner's finding that Kajima did not
25 comply with the requirements. And court said,



1 and I quote, "We find substantial evidence in
2 the records to support the commissioner's
3 findings that Kajima failed to comply with the
4 requirements of 42-1-415(a). The description
5 of operations box on the certificate was left
6 blank, and unlike the previous certificate that
7 Kajima accepted, the certificate contained no
8 information regarding the coverage that the
9 policy provide, the deductible amount or the
10 project to which the policy applied. In
11 failing to fill out the ACORD Form, Hunt
12 essentially submitted an incomplete document
13 purporting to show that it had a Workers'
14 Compensation policy which Kajima accepted. In
15 our view, accepting an incomplete ACORD does
16 not constitute proper documentation. In the
17 instant case, the Certificate of insurance in
18 this case is completely filled out, every
19 single line, all the insurance information.
20 It's signed by an authorized agent. Everything
21 is completed. It's distinguishable in that the
22 Court found that there was substantial evidence
23 to support what the commission found, which was
24 there was not proper documentation of
25 insurance. The Uninsured Fund also argues that



1 the ACORD Form had to contain information
2 specifically showing that the policy provided
3 coverage in south Carolina. This argument is
4 also without merit. There was no statute or
5 regulation requiring that the certificate state
6 that the policy provide coverage in South
7 Carolina. Regulation 67-415 was amended in
8 February of 2010 to provide, quote, "For an out
9 of state employer, the ACORD Form is acceptable
10 provided the authorized representative of the
11 insurance carrier for the insured affirms the
12 following and accompanying statement: South
13 Carolina is a named state in Section 3-A or 3-C
14 of the Declaration Page of the insured's
15 policy". The fact that the legislature --
16 excuse me -- the fact that the regulation was
17 amended in 2010 shows that that was not a
18 requirement before February of 2010. So,
19 again, the commission erred as a matter of law
20 in finding that that was the basis to deny
21 transfer of liability.

22 **COMMISSIONER JAMES:** Let me ask this. I know your
23 time has run, but as far as listing South
24 Carolina, the project says "York High School
25 and Tech. Center" on the Certificate of

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1 Insurance, and is that -- and I'm looking at
2 the transcript. Is that not indeed where the
3 job where the injury happened, York High School
4 and Technology Center?

5 **MR. HOWELL:** That is indeed the place where the
6 accident occurred. Everything on the form was
7 completed properly. I don't know why the
8 petition was denied.

9 **COMMISSIONER MCCASKILL:** Ms. Cofield, how was this
10 sufficient?

11 **MS. COFIELD:** There are a lot of reasons why that's
12 sufficient, Your Honor. First of all, Roy is
13 correct that the purpose of the statute in
14 carving out 42-1-415 was to assist in cases of
15 fraud, but it has been limited, and you must
16 follow the exact rules that have been
17 promulgated, not only by the statute, but the
18 Supreme Court has addressed and clarified this
19 on several occasions. The Barton case that he
20 refers to is my case. I know it very well. I
21 lost it all the way up until I got up to the
22 Supreme Court, and at the Supreme Court, they
23 did say that they didn't like that there was no
24 signature at all on the form. There was a
25 blank, but when you read the entire decision,



1 it makes it clear that an employer cannot just
2 sit back, accept a form, stick it in a file and
3 say there's coverage. They have the last clear
4 opportunity to read and verify that their sub
5 had coverage. They must take, quote, "minimal
6 action" to verify that. In the Barton versus
7 Hicks that he discussed, the Court said that
8 the upstream contractor could have easily
9 investigated the absence of the signature and
10 determined that the immediate employer had no
11 coverage, just by looking and reading the
12 certificate. There's something that should put
13 you on notice that something is wrong. In the
14 next case, also my case, the Terry Hopper case,
15 in this case, that certificate was almost
16 identical to this one, had an out of state
17 producer, an out of state holder. Everything
18 on there was out of state. There was no other
19 state's endorsement on it, and it did have one
20 blank that the description was not filled in.
21 So, in that case, the Supreme Court, who
22 apparently Mr. Howell wants to ignore, did say
23 in one sentence that they didn't like that
24 there was a blank on that form, but they made
25 other findings in that order that are very



1 important, specifically, "The general
2 contractor must take minimal steps to properly
3 document that the subcontractor has insurance.
4 It has to protect the privilege to transfer
5 what would otherwise be their liability. In
6 this case here, Kenneth Henson testified he
7 didn't check it. He didn't read it. His wife
8 testified that she accepted it and put it in
9 the file. She didn't read all the blanks on
10 there. So, to accept Mr. Howell's proposition
11 that all they have to do is accept the fully
12 filled out form and that nothing else matters
13 is absurd. What if it said "Santa Claus" up in
14 the corner or the holder was Mickey Mouse, or
15 everybody was located in Montana, is there
16 something on the certificate that you should
17 say, "Wow, I don't see anything about South
18 Carolina here. There's nothing on here that
19 indicates coverage in South Carolina, and
20 there's nothing on this certificate that
21 indicates anything about coverage in South
22 Carolina."

23 **COMMISSIONER JAMES:** So, you're saying the wife just
24 stuck it in the file in this particular case?

25 **MS. COFIELD:** Yes, I'll find that testimony.



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1 **COMMISSIONER JAMES:** So, does that beg the question
2 of whether you can have reliance if you just
3 don't look at it at all and put it in a file?

4 **MS. COFIELD:** Right. She testified that she did
5 nothing to verify coverage, which I find
6 humorous. When you look at this certificate,
7 when right here in the very first blank is
8 Houston, Texas. We're talking about whether
9 there's coverage in South Carolina. And
10 there's a phone number and FAX. How hard would
11 it have been to pick up phone and say, "This
12 says Houston. Do we really have coverage in
13 South Carolina? There's no all-states
14 endorsement on here or anything." I mean, it
15 was there. It was clear to put somebody on
16 notice, "Hey, maybe, I should check on that".
17 If there is fraud, which has not been
18 established. There has never been a finding of
19 fact that there was fraud. As a matter of
20 fact, these Henson people testified they've
21 been using this guy for like five or six years
22 to do their work, and they didn't know where he
23 lived or where he was from. He could have been
24 from Texas or Alaska. They didn't know. But
25 in the same breath, they say now they have



1 certificates that show he lives here in South
2 Carolina. So, you know, no fraud was ever
3 established there, and I would offer that all
4 they had to do was look at it and read it to be
5 on notice that "Hey, I should take minimum
6 steps to check and see if this is fine", just
7 like is required by the Supreme Court. I do
8 not think that either case stands for the
9 proposition that just because there's a blank,
10 it means it's not a good certificate. Like I
11 said, you have to read the blanks. It goes
12 against common sense to think -- and also,
13 right here, York High School and Tech.
14 Center -- well, there could be a hundred York
15 high Schools. That doesn't indicate South
16 Carolina. That doesn't indicate any coverage
17 in South Carolina. That's just where they're
18 going to work. So, again, the fact that that
19 blank is filled in does not make this a good
20 certificate or that there should liability
21 transferred to the UEF. Thank you.

22 **MR. HOWELL:** Again, counsel argues that what the
23 court said is that, if there's something on the
24 face of this certificate that would give you
25 pause to think that there's no good coverage,



1 then you should take minimal steps. Well,
2 Ms. Henson testified in her deposition that
3 when she looked at the certificate -- we went
4 over every single line. She said that there
5 was nothing on the certificate that gave her
6 any pause to think that it was not a good
7 certificate.

8 **COMMISSIONER JAMES:** So, she said she looked at it?

9 **MR. HOWELL:** She did say that she looked at it. She
10 said that there was nothing that gave her pause
11 to think it was anything but a valid and good
12 certificate. What the Court said is, if
13 there's something, by looking at the
14 certificate that's left blank, as was the case
15 in Hopper. There were things left blank. The
16 coverage period had expired. The Court said,
17 "In those situations, you have to take minimal
18 steps". You can't just turn a blind eye to an
19 incomplete certificate and say that it's
20 documentation of insurance. In this case, they
21 didn't turn a blind eye. In this case, the
22 certificate had every single thing that was
23 required by the law at the time to document
24 insurance. Mr. Henson was the one who got the
25 certificate. He's fully aware of where York



1 High School and the Technology Center -- to
2 argue that there could be -- I mean, that's
3 just ridiculous on its face to make that
4 argument. Again, there was nothing on the face
5 of this document that would lead a reasonable
6 person to believe it was anything other than a
7 good certificate. The statute is very plain.
8 All you have to do is get documentation of
9 insurance in the proper form, which is what
10 they did. The regulation at the time said it
11 had to be signed and dated by the authorized
12 agent. It was. It was provided to the
13 commission in the proper manner, and there's
14 absolutely nothing on the face of the document
15 that would lead any reasonable person to
16 believe that there wasn't good coverage. Thank
17 you.

18 **MS. COFIELD:** Your Honors, since I didn't use all my
19 time, can I address the testimony of
20 Ms. Henson.

21 **COMMISSIONER TAYLOR:** We'll look at it. We're going
22 to read the whole thing.

23 **MS. COFIELD:** Okay. I would direct you Pages 18
24 through 22 where she discussed what she did and
25 didn't do with the certificate.



1 MR. HOWELL: And I would direct you to read the
2 whole deposition.

3 COMMISSIONER MCCASKILL: But no finding of fraud?

4 MS. COFIELD: No, sir

5 COMMISSIONER TAYLOR: That concludes this hearing.

6 (Whereupon, the hearing concluded at 3:22 p.m.)
7
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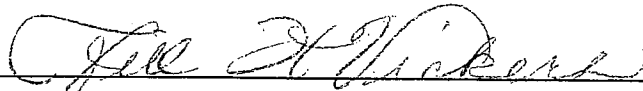
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CERTIFICATE

This is to certify that the within hearing consisting of eighteen (18) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenotype with Backup.

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

IN WITNESS WHEREOF I have hereunto set my hand and seal on March 20, 2015.



Jill H. Vickers
Certified Court Reporter

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



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***Terms and Conditions of Agreement
Between Henson & Associates, Inc.
and Subcontractor***

SUBCONTRACT NO. 09-YORK

Agreement made this 7 day of April 2009
by and between HENSON & ASSOCIATES, INC. 3219 Blairsville Hwy, Murphy, NC 28906
(hereinafter called HENSON) and:

Contreras Panels

1171 Broad St.

Sumter, SC 29150

Hereinafter called the Subcontractor.

HENSON has made a contract with:

Edifice Inc.

PO Box 36349

Charlotte, NC 28236

For the following project: York Comprehensive High School and Floyd D Johnson
Tech Center York, SC

Which contract consists of the aforementioned contract between HENSON and the Contractor, the contract between the Contractor and the Owner (The Prime Contract) and all other documents identified in either of those contracts or this contract as the contract documents, all of which provides for the furnishing of labor, materials, equipment and services in connection with a portion of the construction of the project.

HENSON and the Subcontractor agree as hereafter set forth:

PAGE 1 of 6

ARTICLE 1 THE SUBCONTRACT DOCUMENTS

1.1 The Subcontract Documents consist of (1) this agreement; (2) the Contract, between HENSON and the Contractor; (3) the Prime Contract, consisting of the Agreement between the Owner and Contractor and all of the other Contract Documents, including whether or not a part of the Contract Document, but not limited to, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement between HENSON and the Subcontractor; and (4) Modifications to this Subcontract issued after execution of this Agreement. These form the Subcontract, and are as fully a part of the Subcontract as if attached to this Agreement or repeated herein. The Subcontract represents the entire agreement between the parties, is a fully integrated agreement between the parties and supercedes all prior negotiations, representations or other agreements, either written or oral.

1.2 The Subcontractor shall be furnished copies of the Contract Documents upon request.

ARTICLE 2 MUTUAL RIGHTS AND RESPONSIBILITIES

2.1 HENSON and Subcontractor shall be bound by the terms of this Agreement and by the provisions of the Contract Documents. To the extent that provisions of the Prime Contract and the Contract Documents apply to the Work of the Subcontractor, HENSON shall assume toward the Subcontractor all obligations and responsibilities that the Contractor, under the Contract Documents and which HENSON, under the Prime Contract and the Contract Documents assumes toward HENSON all obligations and responsibilities benefit of all rights, remedies and redress against the Subcontractor which the Contractor, under the Prime Contract and Contract Documents, has against HENSON, and the Subcontractor shall have the benefit of all rights, remedies and redress against HENSON, which HENSON, under the Prime Contract and the Contract Documents, has against the Contractor, insofar as applicable to this Subcontract. Where a provision of the Contract Documents or the Prime Contracts are inconsistent with a provision of this Agreement, this Agreement shall govern.

ARTICLE 3 CONTRACTOR

3.1 SERVICES PROVIDED BY HENSON

3.1.1 HENSON and the Subcontractor shall cooperate in scheduling and performing their Work to minimize conflicts or interference with each other's Work and HENSON shall provide written responses to submittal made by the Subcontractor in accordance with Article 4 and Article 5 hereof. As soon as practicable after execution of this Agreement, HENSON shall provide the Subcontractor copies of the Contractor's construction schedule with such additional scheduling details as are available to aid the Subcontractor to plan and perform the Subcontractor's Work timely and appropriately. The Subcontractor shall be notified of subsequent changes in the construction schedule and additional scheduling details as and when such become available.

3.1.2 The following equipment and/or services will be made available to the Subcontractor for the execution of the work defined in this Agreement:

All Subcontractor's equipment will be provided by the Subcontractor

3.2 COMMUNICATIONS

3.2.1 HENSON shall make available to the Subcontractor information which affects this Subcontract as and when it becomes available to HENSON subsequent to execution of this Subcontract.

3.2.2 HENSON shall not give instructions or orders directly to employees or workmen of the Subcontractor, except to persons designated as authorized representatives of the Subcontractor.

3.3 CLAIMS BY HENSON

3.3.1 Liquidated damages for delay, if provided for in the Contract Documents or elsewhere shall be assessed against the Subcontractor to the extent caused by the Subcontractor, the Subcontractor's employees and agents, Sub-Subcontractors, suppliers or any person or entity for whose acts the Subcontractor may be liable.

3.4 HENSON'S REMEDIES

3.4.1 If the Subcontractor defaults or neglects to carry out the Work in accordance with this Agreement and fails within three working days after notice from HENSON to commence and continue appropriate correction of such default or neglect with diligence and promptness, HENSON may, after three days following HENSON's written notice, and without prejudice to any other remedy HENSON may have, made good such deficiencies in any manner it, at its sole discretion, deems appropriate and may deduct the cost thereof from payments then or thereafter due the Subcontractor.

ARTICLE 4 SUBCONTRACTOR

4.1 EXECUTION AND PROGRESS OF THE WORK

4.1.1 The Subcontractor shall cooperate with HENSON and the Contractor in scheduling and performing the Subcontractor's Work to avoid conflicts, delay in or interference with the Work of the Contractor, other subcontractors or HENSON, or Owner's own forces.

4.1.2 The Subcontractor agrees that the Architect will have the authority to reject Work which does not conform to the Main or Prime Contract or the Contract Documents. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

4.1.3 The Subcontractor shall arrange and pay for Crane, Forklift and any other equipment related to unloading, distribution and installation of metal roofing and/or siding. Subcontractor shall arrange and pay for any equipment needed to perform the labor in connection with the performance of this Subcontract through the period covered by previous payments received from HENSON and shall furnish evidence satisfactory to HENSON when requested by HENSON, to verify compliance with the above requirements.

4.1.4 The Subcontractor shall take necessary precautions to properly protect the Work of the Contractor, HENSON, other subcontractors and the Owner from damage caused by operations under this Subcontract.

4.1.5 The Subcontractor shall take necessary precautions to protect materials installed under this Agreement from damage caused by other trades.

4.1.6 The Subcontractor shall cooperate with the Contractor, other subcontractors, HENSON and the Owner's own forces whose Work might interfere with the Subcontractor's Work.

4.2 LAWS, PERMITS, FEES AND NOTICES

4.2.1 The Subcontractor shall give all pertinent notices and comply with all laws, ordinances, rules, regulations and orders of public authorities bearing on performance of the Work of this Subcontract. The Subcontractor shall secure and pay for all permits, licenses and inspections necessary for proper execution and completion of the Subcontractor's Work.

4.2.2 The Subcontractor shall comply with federal, state and local tax laws, Social Security acts, applicable wage rates, unemployment compensation acts, workers' or workmen's compensation acts and all other such laws in the performance of this Subcontract.

4.3 SAFETY PRECAUTIONS AND PROCEDURES

4.3.1 The Subcontractor shall take reasonable safety precautions with respect to performance of this Subcontract, shall comply with safety measures initiated by the Contractor and HENSON and with applicable laws, ordinances, rules, regulations and orders of public authorities for the safety of persons or property in accordance with the requirements of the Main and Prime Contracts. The Subcontractors shall report to HENSON within 24 hours any injury to an employee or agent of the Subcontractor and any injury to others caused by Subcontractor or its agent which occurs at the site.

4.4 CLEANING UP

4.4.1 The subcontractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations performed under this Subcontract. Clean-up of work area shall be performed on daily basis. The Subcontractor shall not be held responsible for unclean conditions caused by other contractors or subcontractors. To the extent contractor or Owner charges HENSON for expenses related to clean-up, Subcontractor shall be charged its share of said expenses.

4.5 WARRANTY

4.5.1 The Subcontractor warrants to HENSON, the Owner, Architect and Contractor that the installation of all materials, and services rendered under this Agreement will be provided in accordance with the drawings, the Subcontract and the Contract Documents, that the work will be free from defects not inherent in the materials, and that no omissions of materials will occur. Work not conforming to these requirements may be considered defective.

4.6 INDEMNIFICATION

4.6.1 To the fullest extent permitted by law, the Subcontractor shall defend, indemnify and hold harmless the Owner, HENSON, Contractor, Architect, Architect's consultants, and agents and employees or any or them from and against claims, damages, losses and expenses, including but not limited to attorney's fees, whenever raised, arising out of, or resulting from or connected with performance of the Subcontractor's Work under this Subcontract, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of the Subcontractor, the Subcontractor's Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce other rights or obligations, including, but not limited to, rights or obligations of indemnity which would otherwise exist as to a party or person described in this Paragraph 4.6

4.6.2 In claims against any person or entity indemnified under this paragraph 4.6 by an employee of the Subcontractor, the Subcontractor's Subcontractors, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under this Paragraph 4.6 shall not be limited as to amount or type of damages, compensation or benefits payable by or for the Subcontractor or the Subcontractor's Sub-Subcontractors under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts.

4.6.3 The obligations of the Subcontractor under this Paragraph 4.6 shall not extend to the liability of the Architect, the Architect's consultant, and agents and employees of any of them arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, Change Orders, designs, or specifications or (2) the giving of or the failure to give directions or instructions by the Architect, the Architect's consultants, and agents and employees of any of them provided such giving or failure to give is the primary cause of the injury or damage.

ARTICLE 5 CHANGES IN THE WORK

5.1 The Subcontractor may be ordered by HENSON, without invalidating this Subcontract, to make changes in the Work within the general scope of this Subcontract consisting of additions, deletions or other revisions, including those required by Modifications to the Contract Documents and Prime Contracts issued prior to or subsequent to the execution of this Agreement, the Subcontract Sum and the Subcontract Time being adjusted accordingly. The Subcontractor, prior to the commencement of such changed or revised Work, shall submit promptly to HENSON a claim for adjustment to the Subcontract Sum and Subcontract Time for such revised Work in a manner consistent with requirements of the Subcontract Documents.

5.2 The Subcontractor shall make claims promptly to HENSON for additional cost, extensions of time and damages for delays or other causes in accordance with the Subcontract Documents. A claim which will affect or become part of a claim which HENSON is required to make under the Prime Contract within a specified time period or in a specified manner shall be made in sufficient time to permit HENSON to satisfy the requirements of the Prime Contract. Such claims shall be provided to HENSON no less than two working days preceding the time by which HENSON's claim must be made. Failure of the Subcontractor to make such a timely claim shall bind the Subcontractor to the same consequences as those to which HENSON is bound.

ARTICLE 6 TERMINATION, SUSPENSION OR ASSIGNMENT OF THE SUBCONTRACT

6.1 TERMINATION BY THE SUBCONTRACTOR

6.1.1 The Subcontractor may terminate the Subcontract for the same reasons and under the same circumstances and procedures with respect to HENSON as HENSON may terminate with respect to the Contractor under the Contract Documents. In the event of such termination by the Subcontractor for any reason which is not the fault of the Subcontractor, Sub-Subcontractors or their agents or employees or other persons performing portions of the Work under contract with Subcontractor, the Subcontractor shall only be entitled to recover from HENSON payment for Work executed and construction equipment and machinery, including reasonable overhead, profit and damages.

6.2 TERMINATION BY HENSON

6.2.1 If the Subcontractor persistently or repeatedly fails or neglects to carry out the Work in accordance with the Subcontractor or the Contract Documents or otherwise to perform in accordance with this Agreement and fails within five days after notice to commence and continue correction of such default or neglect with diligence and promptness, HENSON may, after three days following receipt by the Subcontractor of written notice and without prejudice to any other remedy HENSON may have, terminate the Subcontract and complete the Subcontractor's Work by whatever method HENSON may, in its sole discretion, deem expedient. If the unpaid balance of the Subcontract Sum exceeds the expense of finishing the Subcontractor's Work, such excess shall be paid to the Subcontractor, but if such expense exceeds such unpaid balance, the Subcontractor shall pay the difference to HENSON.

ARTICLE 7 THE WORK OF THIS SUBCONTRACT

7.1 The Subcontractor shall execute the following portion of the Work described in the Subcontract Documents, including all labor, equipment, services and other items required to complete such portion of the Work, except to the extent specifically indicated in the Subcontract Documents to be the responsibility of others:

Installation of the Metal Roofing and Accessories, Wall Panels, Roof Curbs,
Pipe Boots as shown on Henson's shop drawings or Architectural drawings. (Includes Hat Channel,
Insulation, Underlayment, Flashing & Trim related to the work, Gutters, Downspouts)
* Any work shown on Henson's shop drawings or Architectural drawings (which were previously
provided to subcontractor) is included in the scope of this contract.

ARTICLE 8**DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION**

8.1 The Subcontractor's date of commencement is the date from which the Contract Time of Paragraph 9.2 is measured; It shall be the date of this Agreement, as first written above, unless a different date is stated below or provision is made for the date to be fixed in a notice to proceed issued by HENSON.

8.2 The Work of this Subcontract shall be performed promptly as requested by the Contractor. The Subcontractor agrees to complete his work in sufficient time and in such a manner to enable HENSON to complete the work in its contract with the General Contractor and the Owner as provided in the Subcontract and the Contract Documents. Should through his own acts of negligence or failure to perform, this Subcontractor fail to complete his work in sufficient time to allow HENSON to meet the completion date, then this Subcontractor agrees to reimburse HENSON in whole for any liquidated damages and penalties by the Contractor or such other damages that HENSON shall suffer, if any.

8.3 Completion date is 180 days from Jan 1, 2007.

8.4 Time is of the essence of this Subcontract.

ARTICLE 9**SUBCONTRACT SUM**

9.1 HENSON shall pay the Subcontractor in current funds for performance of the Subcontract the Subcontract Sum of Two Hundred Twenty Eight Thousand, One Hundred Twenty Dollars and 00/100 (\$ 228,120.)

subject to additions and deductions as provided in the Subcontract Documents, at the time and in the manner set forth herein.

9.2 The Subcontract Sum is based upon the following alternates, if any, which are described in the Subcontract Documents and have been accepted by the Owner and the Contractors:

N/A

9.3 Unit prices, if any, are as follows:

N/A

ARTICLE 10**PAYMENTS**

10.1 The Subcontractor shall invoice HENSON a maximum of TWICE per month on the 15th & 30th of each month. Payment will be made within 2 weeks after Payment Request for the Subcontractor's Work is received and work has been approved. Under no circumstances will the Subcontractor invoice more than actual work completed.

ARTICLE 11**RETAINAGE**

11.1 Retainage of 10% will be withheld from progress payments until the completion of subcontractor's work as outlined herein. Final payment shall be as follows: 50% upon acceptance of the Subcontractor's Work (only if all punch list items have been corrected and approved by the Architects and all bonds, warranties and guarantees have been provided to HENSON and HENSON shall have received payment for Subcontractor's Work) by the Architect. Remaining 60% of retainage will be paid when HENSON receives payment of retainage.

ARTICLE 12**INSURANCE AND BONDS**

12.1 The Subcontractor shall purchase and maintain insurance of the following types of coverage and limits of liability. Unless included as indicated in ARTICLE 3.1.2 Workmen's Compensation and Employers' Liability Insurance providing coverage for statutory benefits of the Workmen's Compensation Law of the State in which the work is performed and Employers' Liability Insurance with a limit of liability as required in Contract Documents or at least \$1,000,000.00 Comprehensive Liability Insurance (including automobile liability) for all operations, including coverage for operations of individual contractors. Products/Completed Operations, liability assumed under the contracts entered into with respect to this job, all on an "occurrence" basis. Broad Form Property Damage and explosion, collapse and underground coverages, where applicable.

Products/Completed Operations coverage must be provided for a two year period following completion of all operations under each contract. Limits shall not be less than \$500,000.00 each person, \$500,000.00 each occurrence, and \$500,000.00 Property Damage.

Certification of Insurance shall be furnished to HENSON prior to any work being performed under this Subcontract and shall contain an agreement on the part of the insurer to give not less than thirty (30) days written notice to the Contractor of cancellation.

12.2 Coverages shall be maintained without interruption from date of commencement of the Subcontractor's Work until date of final payment and termination of any coverage required to be maintained after final payment.

12.3 Waivers of Subrogation. HENSON and Subcontractor waive all rights against (1) each other and any of their Subcontractors, Sub-Subcontractors, agents and employees, each of the other, and (2) the Owner, the Architect, the Architect's consultants, separate contractor, and any other of their Subcontractors, Sub-Subcontractors, agents and employees for damages caused by fire or other perils to the extent covered by property insurance provided under the Contract Documents or other property insurance applicable to the Work, except such rights as they may have proceeds of such insurance held by the Owner as fiduciary. The Subcontractor shall require of the Subcontractor's Sub-Subcontractors, agents and employees, by appropriate agreements written where legally required for validity, similar waivers in favor of other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

ARTICLE 13

TEMPORARY FACILITIES AND WORKING CONDITIONS

13.1 HENSON shall furnish and make available to the Subcontractor temporary facilities, equipment and services to the extent made available to HENSON by the Contract Documents.

The Subcontractor shall under no circumstances enter any of the buildings on the project site.

This Agreement entered into as of the day and year first written above.

HENSON & ASSOCIATES, INC.

(Signature) KENNETH E. HENSON

PRESIDENT

(Printed Name and Title)

SUBCONTRACTOR

(Signature)

(Printed Name and Title)

NOTE: Before first payment is released to the Subcontractor, Henson & Associates must have on file a valid Certificate of Insurance and Completed W-9 Form (attached).

Form W-9
(Rev. January 2003)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2.

Name Gabriel Contreras	
Business name, if different from above Contreras PAPER	
Check appropriate box ☒ Individual ☐ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other ☐ Exempt from backup withholding	
Address (number, street, apt. or suite no.) 2645 Soren Dr	
City, state, and ZIP code Sumter SC 29150	
List account number(s) here (optional)	
Requester's name and address (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number [REDACTED]
or Employer identification number [REDACTED]

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification Instructions: You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the Instructions on page 4.)

Sign Here Signature of U.S. person

Date

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued).
- Certify that you are not subject to backup withholding.
- Claim exemption from backup withholding if you are a U.S. exempt payee.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Foreign person. If you are a foreign person, use the appropriate Form W-8 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Form **W-9**
(Rev. January 2003)
Department of the Treasury
Internal Revenue Service

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

Print or type
See Specific Instructions on page 2

Name Gabriel Contreras	Requester's name and address (optional)
Business name, if different from above Contreras PANELS	
Check appropriate box: ☒ Individual/ Sole proprietor ☐ Corporation ☐ Partnership ☐ Other	☐ Exempt from backup withholding
Address (number, street, apt. or suite no.) 2645 Saxon Dr	
City, state, and ZIP code Sumter SC 29150	
List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see How to get a TIN on page 3.

Note: If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Social security number [REDACTED]
OR
Employer identification number [REDACTED]

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the instructions on page 4.)

Sign
Here

Signature of
U.S. person

Date

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

- Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
- Certify that you are not subject to backup withholding, or
- Claim exemption from backup withholding if you are a U.S. exempt payee.

Note: If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

Foreign person. If you are a foreign person, use the appropriate Form W-8 (see Pub. 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien. Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement that specifies the following five items:

- The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
- The treaty article addressing the income.
- The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
- The type and amount of income that qualifies for the exemption from tax.
- Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Cat. No. 10231X

Form W-9 (Rev. 1-2003)

BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Rudy Almazan,

Employee/Claimant,

-vs-

Henson & Associates, Inc.,

Employer,

and

Auto Owners Insurance Company,

Carrier,

Defendants.

W.C.C. FILE NO. 0919909

AFFIDAVIT OF
KENNETH HENSON

I, Kenneth Henson, hereby swear and affirm the following to be true to the best of my knowledge:

1. I am the owner of Henson & Associates, Inc., a C corporation incorporated in North Carolina.
2. Henson & Associates, Inc. uses subcontractors to perform installation of metal walls and roofing on construction projects.
3. Henson & Associates, Inc. has worked on construction projects located in North Carolina, South Carolina, and Virginia.
4. Henson & Associates, Inc. requests and obtains a separate certificate of insurance for each job site that a subcontractor works on before any work is performed.
5. Henson & Associates, Inc. had a subcontractor agreement with Contreras Panels to complete the metal roofing at the York County Technical Center in 2009.

6. Prior to beginning work on the York jobsite in 2009, I requested Certificate of Insurance from Contreras Panels.
7. Prior to beginning work on the York jobsite, I received a Certificate of Insurance from Contreras Panels, which showed they had workers' compensation insurance coverage.
8. Based on the certificates of insurance obtained from Contreras Panels, I believed that Contreras Panels had workers' compensation coverage in South Carolina prior to and at the time of the Claimant's accident on September 26, 2009.

Respectfully submitted,

Kenneth Henson Pres,
 Kenneth Henson
Danny Henson *Mary Henson* K.H.

SWORN TO AND SUBSCRIBED BEFORE ME

This 24 day of Feb, 2012.

Deanna Webster
 Notary Public for South Carolina-Georgia
 My Commission expires 1-31-2014

1262/328 Affidavit



BEFORE THE

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Rudy Almazan,

W.C.C. FILE NO. 0919909

Employee/Claimant,

-vs-

AFFIDAVIT OF
WENDY HENSON

Henson & Associates, Inc.,

Employer,

and

Auto Owners Insurance Company,

Carrier,

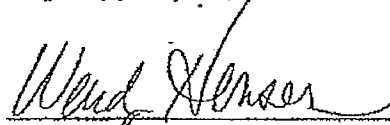
Defendants.

I, Wendy Henson, hereby swear and affirm the following to be true to the best of my knowledge:

1. My husband, Kenneth Henson, is the owner of Henson & Associates, Inc., a C corporation incorporated in North Carolina.
2. Henson & Associates, Inc. uses subcontractors to perform installation of metal walls and roofing on construction projects.
3. Henson & Associates, Inc. has worked on construction projects located in North Carolina, South Carolina, and Virginia.
4. I assist Henson & Associates, Inc. with office work, including obtaining certificates of insurance from subcontractors used to complete projects.
5. Henson & Associates, Inc. requests and obtains a separate certificate of insurance for each job site that a subcontractor works on before any work is performed.

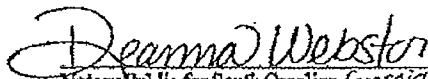
6. Henson & Associates, Inc. had a subcontractor agreement with Contreras Panels to complete the metal roofing at the York County Technical Center in 2009.
7. Prior to beginning work on the York jobsite in 2009, I received a Certificate of Insurance which showed Contreras Panels had workers' compensation insurance coverage.

Respectfully submitted,


Wendy Henson

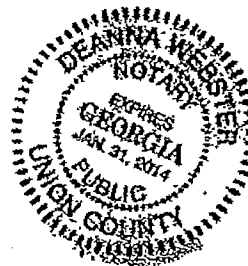
SWORN TO AND SUBSCRIBED BEFORE ME

This 24 day of Feb, 2012.


Notary Public for South Carolina Georgia

My Commission expires 1-31-2014

1262328 Affidavit



RECEIVED
NOV 04 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION

Commissioner Gene McCaskill

Appellate Case No.: 2015-001546
WCC File No.: 0919909

Rudy Barreira Almazan, ... Employee,

v.

Henson & Associates, Employer and Auto Owners Insurance,
Carrier, ... Respondents,

and

S.C. Uninsured Employers' Fund, ... Appellant.

CERTIFICATE OF COUNSEL

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

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