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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 1508997

NOTICE OF APPEAL

**RECEIVED**

DEC 14 2016

**SC Court of Appeals**

Mays Contracting Company, LLC and Builders Mutual Insurance Company, Appellants, appeal the decision of the Full Commission dated November 15, 2016. Appellants received a copy of this decision on November 15, 2016. The issues on appeal are:

1. Whether the Commission, as a matter of law, erred in finding that *Crews v. Crews*, 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010), was distinguishable from this claim, and therefore not controlling precedent on the issue of whether Riverport Insurance Company had to provide Jose M. Ortiz Mendoza d/b/a Ortiz Construction with an opportunity to cure before cancelling the company's policy for workers' compensation coverage under the Assigned Risk Plan.
2. Whether the Commission, as a matter of law, erred in failing to find that under *Crews v. Crews*, 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010) and the Assigned Risk Plan rules, Riverport Insurance Company was required to provide Jose M. Ortiz Mendoza d/b/a Ortiz Construction with an opportunity to cure before cancelling the company's policy for workers' compensation coverage.
3. Whether the Commission, as a matter of law, erred in finding that Riverport Insurance Company did not have the ability to give Jose M. Ortiz Mendoza d/b/a Ortiz Construction an opportunity to cure prior to cancelling the company's policy for workers' compensation coverage under the Assigned Risk Plan.
4. Whether the Commission, as a matter of law, erred in finding *Crews* as distinguishable from this claim based on the Court of Appeal's reliance on the lack of "rules with precise language in the record," further finding there was evidence in the record for the present claim with the precise language explaining the basis on which cancellation was made.
5. Whether the Commission's finding *Crews* as distinguishable from this claim based on the Court of Appeal's reliance on the lack of "rules with precise language in the

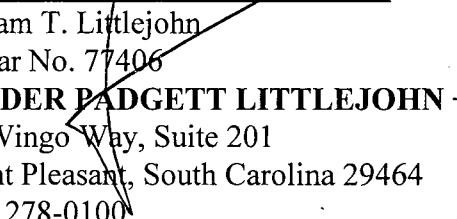
record,” further finding there was evidence in the record for the present claim with the precise language explaining the basis on which cancellation was made was supported by substantial evidence.

6. Whether the Commission, as a matter of law, erred in finding that a letter from NCCI to Riverport Insurance Company amounted to “rules with precise language in the record” within the meaning discussed in *Crews*, thereby providing the basis and/or authority for Riverport Insurance Company to cancel the workers’ compensation insurance policy insuring José M. Ortiz Mendoza d/b/a Ortiz Construction.
7. Whether the Commission’s finding that Riverport Insurance Company did not have the ability to give Jose M. Ortiz Mendoza d/b/a Ortiz Construction an opportunity to cure prior to cancelling the company’s policy for workers’ compensation coverage under the Assigned Risk Plan was supported by substantial evidence.
8. Whether the Commission, as a matter of law, erred in failing to find that Riverport Insurance Company did not properly follow the Assigned Risk Plan rules with respect to canceling the workers’ compensation insurance policy insuring José M. Ortiz Mendoza d/b/a Ortiz Construction.
9. Whether the Commission, as a matter of law, erred in finding that Riverport Insurance Company properly canceled the workers’ compensation insurance policy insuring José M. Ortiz Mendoza d/b/a Ortiz Construction with the effective date of cancellation being April 30, 2015, thereby dismissing Riverport Insurance Company from this claim.
10. Whether the Commission’s finding that Riverport Insurance Company properly canceled the workers’ compensation insurance policy insuring José M. Ortiz Mendoza d/b/a Ortiz Construction with the effective date of cancellation being April 30, 2015, thereby dismissing Riverport Insurance Company from this claim, was supported by substantial evidence.
11. Whether the Commission, as a matter of law, erred in finding that on the date of accident, June 30, 2015, José M. Ortiz Mendoza d/b/a Ortiz Construction did not have any workers’ compensation insurance coverage.
12. Whether the Commission’s finding that on the date of accident, June 30, 2015, José M. Ortiz Mendoza d/b/a Ortiz Construction did not have any workers’ compensation insurance coverage was supported by substantial evidence.
13. Whether the Commission erred, as a matter of law, in finding that based upon the analysis set forth in its findings of fact and the preponderance of the evidence in the record, that Builders Mutual Insurance Company, workers’ compensation carrier for Mays Contracting Company, LLC, is the liable workers’ compensation insurance carrier for the workers’ compensation benefits due Armando Fuentes as a result of

the injury by accident arising out of and in the course of his employment with José M. Ortiz Mendoza d/b/a Ortiz Construction on June 30, 2015?

14. Whether the Commission's finding, that based upon the analysis set forth in its findings of fact and the preponderance of the evidence in the record, that Builders Mutual Insurance Company, workers' compensation carrier for Mays Contracting Company, LLC, is the liable workers' compensation insurance carrier for the workers' compensation benefits due Armando Fuentes as a result of the injury by accident arising out of and in the course of his employment with José M. Ortiz Mendoza d/b/a Ortiz Construction on June 30, 2015, is supported by substantial evidence.
15. Whether the Commission, as a matter of law, erred in making a final decision regarding whether Riverport Insurance Company properly cancelled a workers' compensation insurance policy under the Assigned Risk Plan rules as discussed in *Crews* when the applicable rules were never made part of the record.

December 12, 2016



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William T. Littlejohn  
SC Bar No. 77406  
**HOLDER PADGETT LITTLEJOHN + PRICKETT**  
210 Wingo Way, Suite 201  
Mount Pleasant, South Carolina 29464  
(843) 278-0100  
Attorney for Appellant

Other Counsel of Record:  
Joseph DuBois, Esquire  
Zach Naert, Esquire  
Michael Bennett, Esquire  
Post Office Box 7228  
Hilton Head Island, SC 29938  
Attorney for Respondent Armando Fuentes

Michael Farry, Esquire  
307 Pettigru Street  
Greenville, SC 29601  
Attorney for Respondent Riverport Insurance

Other Parties of Record:  
José M. Ortiz Mendoza d/b/a Ortiz Construction (**via certified mail**)  
2026 Montgomery Street  
Newberry, SC 29108

**FORM 7**  
**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Full Commission Decision

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Case No. 1508997

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DEC 14 2016

SC Court of Appeals

Armando Fuentes,

Employee, Claimant,  
Respondent,

v.

Mays Contracting Company,  
LLC,

Defendant, Employer,  
Appellant,

Builders Mutual Ins. Co.,

Defendant, Carrier,  
Appellant,

José M. Ortiz Mendoza d/b/a  
Ortiz Construction,

Defendant, Employer,  
Respondent,

Riverport Ins. Co.,

Defendant, Carrier,  
Respondent.

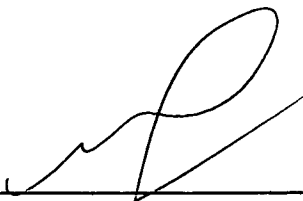
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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Armando Fuentes by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2016, addressed to his attorneys of record, Joseph DuBois, Zach Naert, and Michael Bennett, Post Office Box 7228, Hilton Head Island, South Carolina 29938, to Riverport Insurance Company by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2016, addressed to the attorney of record, Michael Farry, 307 Pettigru Street, Greenville, South Carolina 29601, to José M. Ortiz Mendoza d/b/a Ortiz Construction by depositing a copy of it in the United States Mail, via certified mail, postage prepaid, on December 12, 2016 addressed to 2026 Montgomery Street, Newberry, SC 29108, to the South Carolina Workers' Compensation Commission, by depositing a copy of it in the United States Mail, postage prepaid, on December 12, 2016, addressed to the Judicial Director, Amy Bracy, Post Office Box 1715, Columbia, South Carolina 29202-1715.

December 12, 2016



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William T. Littlejohn  
**HOLDER PADGETT LITTLEJOHN + PRICKETT**  
210 Wingo Way, Suite 201  
Mount Pleasant, South Carolina 29464  
(843) 278-0100  
Attorney for Appellant

December 12, 2016

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

Re: Armando Fuentes, Respondent, v. Mays Contracting Company, Appellant, Builders Mutual Insurance Company, Appellant, José M. Ortiz Mendoza d/b/a Ortiz Construction, Respondent, Riverport Insurance Company, Respondent, Case No. 1508997


Dear Ms. Kitchings:

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

- (1) Proof of service of the notice of appeal on the Respondents and the Workers' Compensation Commission.
- (2) A copy of the Order which is to be challenged on appeal.
- (3) A filing fee of \$100.00.

A copy of the transcript of the proceedings below has already been ordered and received.

Sincerely,

  
\_\_\_\_\_  
William T. Littlejohn  
**HOLDER PADGETT LITTLEJOHN + PRICKETT**  
210 Wingo Way, Suite 201  
Mount Pleasant, South Carolina 29464  
(843) 278-0100  
Attorney for Appellant

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**SC Court of Appeals**

cc: Joseph DuBois, Esquire  
Zach Naert, Esquire  
Michael Bennett, Esquire  
Post Office Box 7228  
Hilton Head Island, SC 29938  
Attorney for Respondent Armando Fuentes

Michael Farry, Esquire

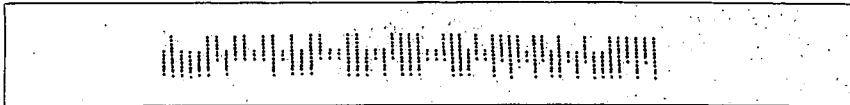


307 Pettigru Street  
Greenville, SC 29601  
Attorney for Respondent Riverport Insurance

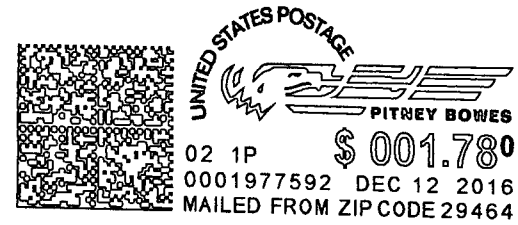
José M. Ortiz Mendoza d/b/a Ortiz Construction (**via certified mail**)  
2026 Montgomery Street  
Newberry, SC 29108

Ms. Amy Bracy, Judicial Director  
South Carolina Workers' Compensation Commission  
Post Office Box 1715  
Columbia, South Carolina 29202-1715

Ms. Leigh Ann Stroud (via email)



HPLP Attorneys at Law  
210 Wingo Way, Suite 201  
Mt. Pleasant, SC 29464



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