

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA COURT OF APPEALS

Judge Paul E. Shortt, Jr.
Judge H. Bruce Williams
Judge Aphrodite K. Konduros

Appellate Case No.: 2015-001546

Unpublished Opinion No.: 2017-UP-124

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MAR 30 2017

SC Court of Appeals

Rudy Barreira Almazan, Employee,

v.

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

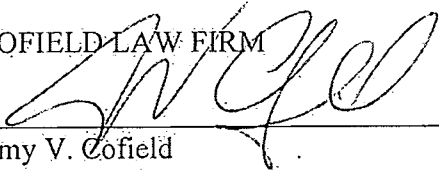
and

S.C. Uninsured Employers' Fund, Appellant.

PETITION FOR REHEARING

COFIELD LAW FIRM

BY:



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Uninsured Employers' Fund*

March 30, 2017
Lexington, South Carolina

PETITION FOR REHEARING

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, the South Carolina Uninsured Employers' Fund (the Fund), Appellant, requests rehearing of this case decided in Unpublished Opinion No. 2017-UP-124, filed March 15, 2017.

ISSUES

In this appeal from the Order of SC Workers' Compensation Commission, the Court of Appeals has erred by:

1. Incorrectly interpreting and applying S.C. Code Ann. Section 42-1-415 and S.C. Code Regulation 67-415 and relevant case law in stating that "Regulation 67-415 only required the Certificate of Insurance to be "dated, signed, and issued by an authorized representative of the insurance carrier for the insured.""
2. Failing to fully apply the case of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009) when making a determination of whether or not the Certificate of Insurance in this case met the requirements to transfer liability from a statutory "upstream" employer to the SC Uninsured Employers' Fund.

ARGUMENT

At dispute in the matter of Hopper v. Terry Hunt Construction, 383 S.C. 310, 680 S.E.2d 1 (2009) was what type of documentation was required to transfer liability. The Order of the Court of Appeals, 373 S.C. 475 (2007) and affirmed by Order of the Supreme Court, 383 S.C. 310 (2009) provided a description of the positions taken. The employer argued that "as long as a subcontractor provides a general contractor with proof of workers' compensation insurance in any state, the general contractor is relieved of its duty, irrespective of whether the subcontractor has coverage in South Carolina". The South Carolina Uninsured Employers' Fund argued that,

“there must be coverage in South Carolina for S.C. Code Ann. Section 42-1-415 to apply”.
(Hopper Ct. App., p. 481)

The Court of Appeals decision in Hopper specifically states that even though “on the surface, it would appear Regulation 67-415 sets out the definition of “documentation.” However, our recent decision in Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009) is illustrative on this point.” (Id., p. 482) The Court explained that the cardinal rule of statutory construction is to determine the intent of legislature, and Kajima’s interpretation of the statute, “would lead to a conclusion that the legislature did not intend.” Additionally, it would create costs from the State of South Carolina not intended by the legislature when the Statute (and corresponding Regulation) were created. (Id.)

The Court of Appeals decision stated:

“Our ruling today does not put an extra duty upon the general contractor to inquire into the validity of the subcontractor’s cover. However, a general contractor cannot expect to turn a blind eye to the subcontractor’s obvious lack of coverage in South Carolina and have the State shoulder that burden. A determination of what type of conduct constitutes an obvious lack of coverage in South Carolina will have to be settled on a case-by-case basis”. (Id., p. 485 [1])

The Court of Appeals decision was affirmed by the Supreme Court.

The Supreme Court Order stated (383 S.C. 310) 2009, “In order to protect the privilege to transfer what would otherwise be the general contractor’s responsibility, the Statute (S.C. Code Ann. Section 42-1-415) requires the general contractor to **take minimal steps to properly document that the subcontractor has workers’ compensation insurance.**” (Id., p. 316)

The Certificate of Insurance presented in Hopper also lacked a description in “Description of Work” box. The Court in Hopper was clear in stating that the blank space on the Certificate presented was only one reason that liability would not transfer to the SC Uninsured

Employers' Fund. The policy period listed on the Certificate had also expired. The Court stated a general contractor may not rely upon a Certificate reflecting an expired policy as documentation of workers' compensation insurance. If the Certificate Holder had simply read the Certificate (emphasis added) it would have known the insurance had expired.

The Court reasoned that the Certificate indicated that the policy period had expired. A General Contractor can not "turn a blind eye to information that is readily evident upon a cursory inspection of the Certificate." (Id., p. 316)

Just as in this case, if the Statutory Employer had bothered to read the Certificate, which he testified in his deposition that he did not (ROA p. 156) (Tr. Depo. P. 14) he would have seen nothing to indicate any coverage within the state of South Carolina. Instead, he "turned a blind eye" to information that was "readily evident upon a cursory inspection of the Certificate."

When the Hopper case is examined in its' entirety the resemblances to the case at bar are very clear. The Certificate of Insurance in the case at bar has a producer and the insured that were both in Texas, the Certificate Holder was in North Carolina and the "Description of Operations/Locations" box only listed "York High School and Tech Center" (ROA p. 77). Nowhere on the certificate was there any indication of coverage in South Carolina. The Statutory Employer never even read the Certificate. The Statutory Employer should not be allowed to escape liability that will be placed on the State of South Carolina when he failed to "take minimal steps to confirm coverage in South Carolina".


CONCLUSION

For the reasons set forth herein, Appellant respectfully request that the Court reconsider its' decision in this case, rehear the matter with oral argument, review all the evidence, argument, and authorities relied upon in Appellant's submissions, and issue an Order on the issues presented in the appeal.

Respectfully submitted,

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Carrier, Respondents,

and

S.C. Uninsured Employers' Fund, Appellant

PROOF OF SERVICE

I, Ami M. Meetze, certify that I have served the **PETITION FOR REHEARING** by depositing a copy of same in the United States Mail, postage prepaid, on this 30th day of March, 2017, addressed to as follows:

VIA EMAIL – jkitchings@sccourts.org and
VIA REGULAR US MAIL

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

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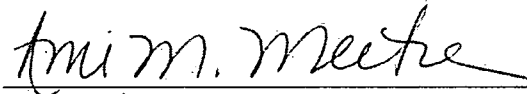
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SC Court of Appeals



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C. Thomas Cofield III (1933 - 1994) March 30, 2017

VIA EMAIL - jkitchings@sccourts.org and
VIA REGULAR US MAIL

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

Re: Rudy Barreira Almazan v. Henson & Associates and Auto Owners Insurance
Company and South Carolina Uninsured Employers' Fund
Appellate Case No.: 2015-001546
Our File No.: 42.17

Dear Mrs. Kitchings:

Please find enclosed herewith the original and six (6) copies of the Appellant's Petition for Rehearing and Certificate of Service for filing in the above-referenced matter. A filing fee is not enclosed as the Appellants are a State Agency and are exempt from paying the same.

By copy of this letter to Roy Allen Howell, III, John Preston Griffith and Kirsten Leslie Barr, I am hereby serving a copy of the Appellant's Petition for Rehearing and notifying them of our communication with you.

Thank you in advance for your assistance in this matter. If you have any questions regarding the enclosures or need additional information, please don't hesitate contacting me.

Sincerely,

Ami M. Meetze,
Paralegal to Amy V. Cofield

/amm
Enclosures

cc: John P. Griffith, Esquire (with copy of enclosures)
Roy A. Howell, Esquire (with copy of enclosures)
Kirsten Leslie Barr, Esquire (with copy of enclosures)

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