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JUN 23 2017

THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

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Unpublished Opinion No.: 2017-UP-124

Rudy Barreira Almazan, Claimant,

v.

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

and

S.C. Uninsured Employers' Fund, Petitioner.

PETITION FOR WRIT OF CERTIORARI

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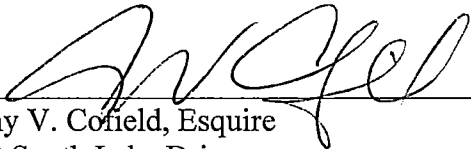
and

S.C. Uninsured Employers' Fund, Petitioner.

CERTIFICATE OF COUNSEL

Counsel for Petitioner, S.C. Uninsured Employers' Fund, certifies that the Petition for Rehearing was made and finally ruled on by the Court of Appeals on May 24, 2017.

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QUESTION PRESENTED

1. DID THE COURT OF APPEALS ERR IN ITS' INTERPRETATION AND APPLICATION OF S.C. CODE ANN. SECTION 42-1-415, S.C. CODE REGULATION 67-415, AND RELEVANT CASE LAW, WHEN IT ORDERED "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"?"

STATEMENT OF THE CASE

This is a workers' compensation appeal. The issue is whether the Statutory Employer should be relieved of any and all liability under the Workers' Compensation Act. It involves the proper construction and application of both statute and regulation. The claimant is unaffected by this appeal. It does not affect what benefits he shall receive, only which party shall provide them.

This appeal follows the filing of a workers' compensation claim by Rudy Almazan, "Claimant". One issue in his claim was the determination of proper employer and carrier. At a hearing before the single commissioner on April 25, 2011, it was held by Order dated January 17, 2012, among other things, that the claim was compensable. This Order also held that Contreras Panels was the immediate employer, but uninsured, Henson & Associates was the Statutory Employer, and Henson & Associates was properly insured by Auto Owners, "Respondent" on the date of accident.

This Order of the single commissioner was appealed to the Full Commission. On August 3, 2012, the Full Commission affirmed that Respondent was liable for the claim, but that the issue as to whether or not Respondent could transfer liability to the South Carolina Workers' Compensation Uninsured Employers' Fund "SCUEF" was not properly before the Commission.

On October 30, 2103, Respondent filed a Petition to transfer liability of Almazan's claim to the SCUEF pursuant to S.C. Code Ann. Section 42-1-415.

It was the Respondent's position that the Employer/Carrier had met all the requirements of S.C. Code Ann. 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.

Respondents argued that the form was an acceptable standard 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.

It was the position of the Appellant that the Respondent's had not met the requirement of S.C. Code Ann. Section 42-1-415 and S. C. Code Regulation 67-415 and supportive case law.

Commissioner Andrea Roche denied the Respondent's Petition to transfer liability to the SCUEF finding that Respondent 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.2d 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 S.C. Code Ann. Section 42-1-415 and related case law to enable it to transfer liability to the SCUEF. Therefore, Henson & Associates, through its carrier, Respondent, shall remain liable for this claim.

Respondent appealed this Order to the Full Commission. An Order was issued by the Full Commission on June 17, 2015, reversing the Single Commissioner and holding that Respondent was relieved of all liability which was transferred to the Petitioner. The Petitioner timely appealed to this Court by Notice of Appeal on July 17, 2015. The Court of Appeals Affirmed by Unpublished Opinion No. 2017-UP-124 filed March 15, 2017, and a Petition for Rehearing was denied on May 24, 2017.

ARGUMENT

The Court of Appeals has erroneously held that “in 2009, when Almazan sustained his injury, S.C. Code Regulation 67-415 only required that a Certificate of Insurance be dated, signed and issued by an authorized representative of the insurance carrier for the insured.”

Almazan’s date of injury was September 26, 2009.

In February, 2009 this Court issued its’ Order in the matter of Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009). This Order explained that where the higher tiered Contractor (Statutory Employer) is liable there exists “a narrow exception” in which it can transfer liability to the State. It held specifically that the Certificate of Insurance was not sufficient to meet the documentary requirements simply because the certificate was not signed.

Of importance is the reasoning of this Court in explaining that the Statutory Employer “could have easily investigated the absence of the signature and determined Iyanel did not have a valid policy”.

Hence, the Statutory Employer, in order to invoke the privilege of transferring liability to the State, must take minimal steps to review or read the Certificate of Insurance.

Then, on June 15, 2009, this Court issued its' Order in the matter of Hopper vs. Terry Hunt Construction, 383 SC 310, 680 S.E.2d 1 (2009). This case reiterated the requirement of the Statutory Employer to "take minimal steps to properly document that the subcontractor has workers' compensation insurance" in order to overcome the "very narrow exception" and privilege to transfer liability to the State. Specifically, this Court held, "an incomplete Acord form does not constitute proper documentation and that a general contractor may not rely upon a Certificate showing an expired workers' compensation policy to show "documentation.""

Again, this Court has interpreted the Statute (S.C. Code Ann. Section 42-1-415 and S.C. Regulation 67-415) to be more than "dated, signed, and issued by an authorized representative".

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]) (emphasis added)

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

This Court further mandated that the Contractor could not rely on an expired policy. Requiring a general contractor to "take minimal steps" to review/read the certificate to verify policy coverage. Otherwise, as this Court explained, "to interpret the language in the statute otherwise would allow a general contractor to turn a blind eye to information which is readily evident upon a cursory inspection of the Certificate. Such an interpretation would lead to an

absurd result not possibly intended by legislature”. (citing Kiriakides v. United Artists Communications, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

Therefore, this Court has held, PRIOR to Almazan’s date of accident, that the general contractor must do more than collect an Acord Form that is dated, signed and issued by an authorized agent as the Court of Appeals has erroneously ruled in this case. That simply could not have been the legislative intent. The General Contractor should take minimal steps to review/read the Certificate of Insurance to invoke the privilege to transfer liability.

In the case at bar, IF the Statutory Contractor had taken the minimal steps to review/read the Certificate of Insurance he could have easily discerned that there was no workers’ compensation coverage in the State of South Carolina.

A cursory review of this Certificate of Insurance indicates clearly that the Producer was located in Houston, Texas, the Insured was located in Houston, Texas and the Certificate Holder (employer) was located in Murphy, North Carolina. There was nothing on this Certificate to indicate coverage in the state of South Carolina. As a matter of fact, if one were to take a cursory view of this Certificate it would seem that the coverage is only in Texas since that is the location of the Producer and the Insured.

The Statutory Employer testified that he never even read the Certificate. The Employer’s wife, Wendy Henson stated that she would “record that it had been received. We record the dates of the coverage, the coverage period and put it in a project file” (Tr. Depo. P. 18 L. 15-18). Mrs. Henson made a very interesting remark in her deposition when asked, “Do you see anything on this Certificate that indicates to anybody that work is being done in South Carolina” to which she responded, “...I guess that’s a valid point”. (Tr. Depo. P. 21 L. 23-25 and P. 22 L 1). 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

This is a significant matter of law. The Court of Appeals has acted contrary to prior rulings and case law and has introduced uncertainty not only in the construction and application of S.C. Code Ann. Section 42-1-415, but throughout the field of administrative law.

For the reasons stated, the Supreme Court of South Carolina should grant the Petition for a Writ of Certiorari.

Respectfully submitted,

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June 23, 2017
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PROOF OF SERVICE

I, Ami M. Meetze, certify that I have served a copy of the **PETITION FOR WRIT OF CERTIORARI** by depositing a copy of same in the United States Mail, postage prepaid, on this 23rd day of June, 2017, addressed to as follows:

VIA HAND DELIVERY

Jenny Abbott Kitchings, Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

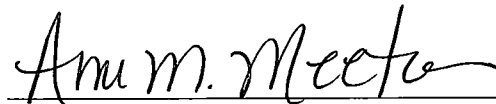
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Lexington, South Carolina