

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

APPEAL FROM  
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 2017-001422

Rey Perez, Claimant, ..... Respondent,

v.

The Lamar Group, LLC, and/or Green Valley Country Club, Employer, and Bridgefield Casualty  
Insurance Company, Carrier, ..... Respondents,

and

SC Uninsured Employers Fund, ..... Appellant.

REPLY BRIEF OF APPELLANT

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SC Court of Appeals

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES.....ii

ISSUES.....1

    I.    STANDARD OF REVIEW

    II.   WHETHER THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE  
          DETERMINATION OF THE COMMISSION THAT GREEN VALLEY  
          COUNTRY CLUB WAS NOT IN THE TRADE BUSINESS OR OCCUPATION  
          OF CONSTRUCTION

    III.  WHETHER THE POLICY ISSUES RAISED BY THE UEF ARE  
          “IRRELEVANT”

CONCLUSION.....3

**TABLE OF AUTHORITIES**

CASES

Glass v. Dow Chemical Co., 325 S.C. 198, 482 S.E. 2d 49 (1997).....1  
Hall v. Desert Aire, Inc., 376 S.C. 338, 651 S.E. 2d 753 (Ct. App 2007).....3  
Shealy v. Aiken County, 341 S.C. 448, 555 S.E. 2d 438 (2000).....3

STATUTES

S.C. Code Ann. § 42-1-400 (Supp. 2017).....2

## ISSUE I

### THE STANDARD OF REVIEW

The Brief of Respondent, Green Valley Country Club, and their Carrier, Bridgefield Casualty Insurance Company is quite confusing on this point. The beginning of the Brief states “The Appellant Court’s review of these Findings of Fact is limited to determining whether the findings are *clearly* supported by the substantial evidence in the record.” (Respondent’s Brief pg. 6). This is clearly *NOT* the standard of review.

However, it appears Respondent is conceding that the standard of review is based on the Court’s own view of the evidence as to whether the “preponderance of the evidence” supports the findings of the Commission. (Respondent’s Brief pg. 7) Since their argument is couched in terms of whether the preponderance of the evidence supports the Commission’s finding, the Appellant, South Carolina Uninsured Employers Fund (UEF), is assuming that Respondent concedes the standard of review is based on the Court’s own view of the preponderance of the evidence, since this issue involves subject matter jurisdiction, Glass v. Dow Chemical Co., 325 S.C. 198, 482 S.E. 2d 49 (1997).

## ISSUE II

### WHETHER THE PREPONDERANCE OF THE EVIDENCE SUPPORTS THE DETERMINATION OF THE COMMISSION THAT GREEN VALLEY COUNTRY CLUB WAS NOT IN THE TRADE BUSINESS OR OCCUPATION OF CONSTRUCTION

The issue in this case is *NOT* whether Green Valley Country Club previously was in the trade business or occupation of construction. The issue *IS* whether Green Valley Country Club, by taking on all the indicia of a construction company, became a construction company for

purposes of this claim. The UEF has previously cited all of the factual evidence in this case concerning why and how Green Valley Country Club voluntarily undertook the trade business and occupation of construction. Without going into great detail as this is covered in our Brief-in-Chief, Greenville Valley Country Club: (1) Obtained a contractor's license; (2) Used the contractor's license to obtain building permits; (3) Hired a construction manager; (4) Established procedures for a construction process; (5) Let contracts to subcontractors for various portions of a construction project; (5) Maintained personal control over the ultimate decisions of the construction process.

Common sense, alone, should make it clear what Green Valley Country Club is attempting to do. Green Valley Country Club is attempting to shift liability, which is properly theirs, to the taxpayer funded South Carolina Uninsured Employers Fund. If the argument of Green Valley Country Club is followed to its most logical conclusion, someone who has never been in the construction business previously can do all of the things necessary to become a construction company, hire a subcontractor whose employees are subject to The Act pursuant to § 42-1-400 et. seq. but get "one free bite of the apple" because they have never been in the trade, business, or occupation of construction prior to the first accident occurring. This is, beyond a doubt, an illogical result and certainly not the result that could have been intended by the Legislature. If the reasoning of Green Valley is bought into by this Court, the claimant in this case would have had absolutely no remedy from the passage of the Workers' Compensation Act in 1935 until 1987 when the Uninsured Employers Fund was established. Such a result clearly cannot be what was intended by the statutory employment sections in Title 42.

### ISSUE III

#### WHETHER THE POLICY ISSUES RAISED BY THE UEF ARE “IRRELEVANT”

As noted above, Respondent states “Appellant clumsily attempts to sway this Court from the legitimate legal analysis by arguing that it should not be responsible for the claim because it is a public entity and Respondent Bridgefield Casualty is an Insurance Company.”

(Respondent’s Brief Pg. 17) In actuality, the Respondent is attempting to divert the Court from what the issue in this case really is. The real issue in this case is whether Green Valley Country Club made itself a construction company and is now trying to dodge the responsibility placed upon it by the statutory employment sections in order to avoid paying a legitimate claim for which it should be responsible. Respondent also states that the Legislature obviously created the Uninsured Employers Fund for situations like this. In actuality the Legislature created the statutory employment sections for situations like this and the UEF was established so that individual workers, like Rey Perez, are not without a remedy when their employer fails to obtain workers’ compensation insurance; a situation which does not exist here.

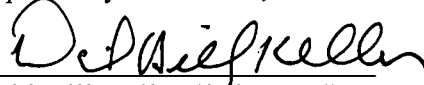
This Court, when weighing the evidence in cases like this, *always*, liberally construes The Act in favor of coverage of injured workers. Shealy v. Aiken County, 341 S.C. 448, 555 S.E. 2d 438 (2000); Hall v. Desert Aire, Inc., 376 S.C. 338, 651 S.E. 2d 753 (Ct. App 2007).

His direct employer, The Lamar Group, did not have workers’ compensation insurance coverage. His statutory employer, Green Valley Country Club, did have workers’ compensation insurance coverage.

## CONCLUSION

It is therefore respectfully submitted that the Order of the Full South Carolina Workers' Compensation Commission should be reversed and Green Valley Country Club and its Carrier, Bridgefield Casualty Insurance Company should be legitimately responsible for this claim.

Respectfully Submitted,



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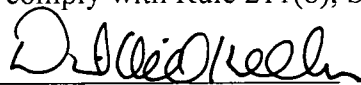
and

South Carolina Uninsured Employers Fund,.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Briefs comply with Rule 211(b), SCACR.

November 8, 2017

  
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