

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DARLINGTON COUNTY
Paul M. Burch, Circuit Court Judge

Appellate Case No. 2015-000806

RECEIVED
FEB 07 2018
SC Court of Appeals

Ard Trucking Company Respondent,

v.

Travelers Property Casualty Company
of America d/b/a The Travelers Indemnity
Company of Illinois. Appellant.

RETURN TO RESPONDENT'S PETITION FOR REHEARING
AND SUGGESTION FOR *EN BANC* HEARING

Barnwell Whaley Patterson & Helms, LLC
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Attorney for Respondent

Travelers Property Casualty Company of America d/b/a The Travelers Indemnity Company of Illinois hereby respectfully files its Return to Respondent's Petition for Rehearing and Suggestion for *En Banc* Hearing. Respondent Ard Trucking Company's Petition lacks any merit based on the following uncontroverted grounds:

1. The Workers' Compensation Insurance Plan ("WCIP") applies to all assigned risk policies in South Carolina and the WCIP has the "force" of law.
2. Respondent Ard Trucking Company agreed to be bound by the WCIP.
3. The WCIP requires the LSRP to apply to Ard Trucking Company's assigned risk policy.
4. Pursuant to the WCIP, the LSRP Notice Documents (the Application, the Binder, the Policy, the Notice Endorsement, the Mandatory Endorsement, and the LSRP Brochure) provided notice to Respondent Ard Trucking Company that the LSRP applied to its assigned risk policy.
5. Pursuant to the WCIP, Ard Trucking Company's producer is Ard Trucking Company's agent and Ard Trucking Company's producer/agent admitted he had actual knowledge and knew that the LSRP plan applied to Ard Trucking Company's assigned risk policy before Ard Trucking Company issued its Irrevocable Letter of Credit to Travelers.

A simple review of the evidence in the Record and the applicable law reveals that Ard Trucking Company's argument that the Notice Endorsement constituted an "exclusion" of the LSRP from the assigned risk policy is contrary to the policy itself, the Mandatory Endorsement (which specifically states the LSRP applies to the policy (i.e., "to explain the rating plan and how the assigned risk [LSRP] premium will be determined") and the WCIP and South Carolina law.

Accordingly, Travelers respectfully requests that Respondent Ard Trucking Company's Petition be denied.

Respectfully submitted,

By: 

M. Dawes Cooke, Jr.

Phillip S. Ferderigos

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Dated: February 5, 2018

Counsel for the Appellant

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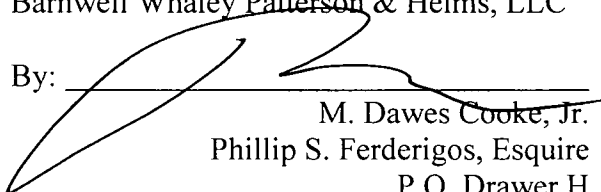
CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 5th day of February, 2018, I filed with the Clerk's Office of the South Carolina Court of Appeals, via U.S. Mail, the required number of copies of the RETURN TO RESPONDENT'S PETITION FOR REHEARING AND SUGGESTION FOR *EN BANC* HEARING, and I further certify that I served the required number of copies on counsel for the Respondent with sufficient postage, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
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Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: _____



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Attorneys for Appellant



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February 5, 2018

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The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Ard Trucking Company, Respondent
v.
Travelers Property Casualty Company of America d/b/a The Travelers Indemnity Company of Illinois, Appellant
Appellate Court Case No. 2015-000806

Dear Ms. Kitchings:

Please find enclosed the original and 17 copies of the Return to Respondent's Petition for Rehearing and Suggestion for *En Banc* Hearing. Please file the original and 16 copies and return one copy to me in the envelope provided herein.

By copy of this letter, and pursuant to the Certificate of Filing and Service, I am serving a copy of the same on counsel for the Respondent.

Thank you for your assistance.

With kind regards,

Phillip S. Ferderigos

Enc.
Cc w/enc.: Martin S. Driggers, Sr., Esquire
PSF/bbm

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REPRESENTING CLIENTS IN ALL COURTS IN SOUTH CAROLINA AND NORTH CAROLINA AND IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

**BARNWELL
WHALEY**

PATTERSON & HELMS LLC

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