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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 2016-001380

David Pate, Employee, Claimant, Respondent,

v.

TAC Logging, Inc., Employer, Respondent, and Forestry Mutual Insurance Company,
Carrier, Appellant,

South Carolina Uninsured Employers' Fund, Defendant, Respondent.

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SC Court of Appeals

RECORD ON APPEAL

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**DECISION AND ORDER OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

W.C.C. FILE NO.: 1503345

DAVID PATE,	)	
	)	
	)	Employee/
	)	Claimant,
	)	
-vs-	)	
	)	
TAC LOGGING, INC.,	)	
	)	
	)	Employer,
	)	
and	)	
	)	
FORESTRY MUTUAL INSURANCE COMPANY,	)	
	)	
and	)	
	)	
SOUTH CAROLINA UNINSURED	)	
EMPLOYERS' FUND,	)	
	)	
	)	Carrier/
	)	Defendants.
	)	

HEARING: Held in Florence, South Carolina on September 29, 2015.

APPEARANCES: Claimant represented by Christopher G. Isgett, Esquire of Lee, Eadon, Isgett, Popwell & Owens, P.A., of Columbia, South Carolina.

S.C. Uninsured Employers' Fund represented by Samuel T. Brunson, Esquire of Florence, South Carolina.

Forestry Mutual Insurance Company represented by William T. Littlejohn, Esquire of Willson, Jones, Carter & Baxley, P.A. in Mt. Pleasant, South Carolina.

Employer, TAC Logging, Inc. failed to appear;

PURPOSE OF HEARING: To determine issues set forth in Forms 50 and 51.

DECISION AND ORDER: By Melody L. James, Commissioner.

DATE FILED: January 29, 2016

I. STIPULATIONS

All parties present at the Hearing stipulated to the following issues:

1. The purpose of the Hearing was to determine the issues set forth on Forms 50 and 51.
2. Notice of the Hearing was timely and properly served upon all parties of interest.
3. Venue, set in Florence County, is proper and agreed upon.
4. The Claimant alleges an average weekly wage of between Eight Hundred and One Thousand Dollars per week. The Employer was not present at the Hearing. The Claimant was unsure if all wage records had been properly forwarded to the Carrier or its Attorney. Thus, the issue regarding the Claimant's average weekly wage was held in abeyance.
5. The Claimant seeks benefits under the South Carolina Workers' Compensation Act as a result of an accidental injury occurring on March 3, 2015. On that date, the Claimant was employed by TAC Logging, Inc. when he was injured in a trucking accident. The Claimant alleges injuries to his head, chest, arms, back, and right shoulder. The Claimant has received limited medical treatment.

Following the filing of his Form 50, a dispute arose between the Employer and its Carrier regarding coverage. The Carrier, Forestry Mutual Insurance Company has denied coverage. Because of that denial medical care has been limited. Because of that denial, the Employer paid the Claimant a salary while he was out of work.

II. APA SUBMISSIONS

Pursuant to the Administrative Procedures Act (hereinafter "APA"), a submission of medical evidence and other documents were submitted by the parties.

Claimant's Submissions

<u>Name of Report(s) Physician Or Other Evidence</u>	<u>Date of Reports</u>	<u>Page(s)</u>
1. Dr. Alexander Cohen	3/9/15-2/18/15	1-11
2. McLeod Physicians Associates - Dr. Vinod Jona	4/2/15-6/9/15	12-40
3. McLeod Regional	4/6/15	41-64
4. Carolinas Hospital System	3/5/15-3/7/15	65-67

Carrier's Submissions

<u>Name of Report(s) Physician Or Other Evidence</u>	<u>Date of Reports</u>	<u>Page(s)</u>
1. Carolinas Medical Center	3/3/15-3/7/15	1-19
2. McLeod Health	3/19/15-6/6/15	20-29
3. McLeod Pulmonary and Critical Care	4/2/15-5/13/15	30-42
4. Alexander Cohen, M.D.	4/15/15	43-45

Exhibits

A. Policy Termination Notice	2/19/15	46
B. Insurance Coverage Verification	2/27/15	47
C. Insurance Coverage Verification	3/3/15	48
D. Proof of Coverage State Guide	11/7/14	49-50
E. NCCI		51-57

Uninsured Employers' Fund Submissions

<u>Name of Report(s) Physician Or Other Evidence</u>	<u>Date of Reports</u>	<u>Page(s)</u>
1. Documents forwarded by Compliance Division	7/21/15	1-2

On the day prior to the Hearing, the Carrier filed an amended Pre-Hearing Brief and Notice of Witnesses and Written Reports and offered into evidence additional exhibits. Those exhibits are listed above as Carrier's Exhibit E and include documents from NCCI numbered pages 51-57. Those documents were allowed into evidence without objection. In addition, the Uninsured Employers' Fund, upon receipt of Carrier's Exhibit E, forwarded those documents to the Compliance Division of the South Carolina Workers' Compensation Commission. In response, the Fund received an email from Wayne Ducote, Jr., Director of Coverage and Compliance. That email was offered into evidence at the call of the case without objection and identified as Fund's Exhibit Number 2.

Following the Hearing, this Commissioner requested briefs from the Carrier, Forestry Mutual Insurance Company and the South Carolina Uninsured Employers' Fund regarding the coverage issues in this case. In response to a brief filed by the South Carolina Uninsured Employers' Fund, the Carrier filed a Motion to Supplement the Record on October 26, 2015 to allow additional documents into evidence. Those documents included certified mail return receipts showing that the Notice of Cancellation was mailed by Forestry Mutual Insurance Company to the Employer on February 19, 2015 and signed for by Mary Carter on February 24, 2015. On November 30, 2015, a conference call was held with this Commissioner and the Attorneys for the Parties as well as Timothy Carter, owner of TAC Logging, Inc. During that telephone conference, the Motion to Supplement the Record was discussed. No party objected to the additional documents being offered into evidence.

III. STATEMENT OF THE CASE

This matter arises out of an accidental injury, which occurred on March 3, 2015 in Union County North Carolina. On that date, the Claimant was employed by TAC Logging, Inc., a logger with its principal place of business in Florence, South Carolina. The Claimant was involved in a trucking accident on that date and suffered numerous injuries. The parties did not dispute that the Claimant suffered a compensable injury by accident.

A Hearing was held before the undersigned Commissioner on September 29, 2015 in Florence, South Carolina. At the call of the case, the Claimant was present with his Attorney, Christopher G. Isgett. Attorney William T. Littlejohn represented the Alleged Carrier, Forestry Mutual Insurance Company. Attorney Samuel T. Brunson represented the South Carolina Uninsured Employers' Fund. No representative for the Employer, TAC Logging appeared. The Claimant is still employed by TAC Logging. The Claimant stated that his boss, Timothy Carter, was aware of the Hearing but did not plan to attend. No party had subpoenaed Mr. Carter to the Hearing.

The purpose of the Hearing was to determine the issues as set forth on Forms 50 and 51. It appears that on April 28, 2015, the Claimant filed a Form 50 listing Forestry Mutual Insurance Company as the Carrier for TAC Logging, Inc. on the date of the Claimant's accident. Since that time, Forestry Mutual Insurance Company has denied coverage on the date in question. Thus, the South Carolina Uninsured Employers' Fund has been added as a party to this matter. Forestry Mutual Insurance Company contends that its policy was properly cancelled as of March 1, 2015 due to non-payment of premiums by the Employer.

IV. EVIDENCE OF THE CASE (TESTIMONY)

The Claimant was the only witness to testify at the Hearing. At the time of the Hearing, the Claimant was fifty-six years of age. The Claimant is a truck driver. He continues to work for the Employer in this case TAC Logging, Inc.

The Claimant testified that on March 3, 2015 his truck overturned while returning from picking up a load of lumber in Marshville, North Carolina. The Claimant testified that he injured his head, chest, arms, back and right shoulder in that trucking accident.

The Claimant was taken to Carolinas Medical Center in Charlotte. There, he was treated for multiple lacerations and abrasions. There was a contusion of his chest wall. He incurred a head injury that also involved fractures of his right orbital wall. The Claimant also had significant swelling in his right eye. (Forestry Mutual's APA #2). The Claimant suffered shoulder pain. (Claimant's APA #6) with abrasions to the anterior of both shoulders (Claimant's APA #7). The Claimant also injured his left buttock region, including an abrasion that required wound care. After being released from Carolinas Medical Center, the Claimant followed up with his family physician, Dr. Alexander Cohen, McLeod Physician Associates, McLeod Regional Medical Center, and Carolinas Hospital System for his injuries.

The Claimant returned to work on June 9, 2015. He continues to have problems with his shoulders, legs and dizziness, and has requested that he be allowed to return for follow up care. The Claimant has also incurred out of pocket expenses for medical treatment and was forced to use his group insurance for the medical care he has received. He requested reimbursement of his out of pocket expenses as well as mileage to and from the doctor.

The Claimant also testified that he averaged between Eight Hundred and One Thousand Dollars per week in earnings while working for TAC Logging, Inc. This is his only job. Because full wage records were not available, the parties agree to calculate the average weekly wage and compensation rate at a later date. The Employer continued to pay the Claimant an estimated compensation rate following his accident up until the time he returned to work.

V. EVIDENCE ON THE CASE (DOCUMENTS)

The Alleged Carrier in this case, Forestry Mutual Insurance Company offered into evidence as its Exhibit 1, "confirmation of policy termination/cancellation/reinstatement notice." That document shows that Forestry Mutual issued a policy of insurance to TAC Logging, Inc. with effective dates of July 9, 2014 through July 9, 2015. The document shows that Forestry Mutual filed a termination/cancellation/ non-renewal with NCCI on February 19, 2015. It appears the document was prepared by Forestry Mutual Insurance Company. Forestry Mutual Insurance Company lists March 1, 2015 as the effective date of cancellation. The document also shows that Swamp Fox Insurance Agency, Inc produced the policy.

Forestry Mutual also offered into evidence screen shots from the Workers' Compensation Commission's NCCI database showing that TAC Logging, Inc. had coverage with Forestry Mutual on February 27, 2015 (Exhibit #2) but did not have coverage on March 3, 2015 (Exhibit #3) according to that database. Forestry Mutual also offered into evidence an affidavit dated September 28, 2015 from Esteban Ortiz of Boca Raton, Florida. Mr. Ortiz is an Employee of NCCI Holdings, Inc. Mr. Ortiz stated in his affidavit that based upon filings by Forestry Mutual with NCCI, Forestry Mutual Insurance Company cancelled its policy of insurance on February 19, 2015 with a cancellation effective date of March 1, 2015. Several screenshots were offered with Mr. Ortiz's affidavit. Those screenshots show that TAC Loggings policy had been cancelled almost monthly between August 20, 2014 and January 19, 2015 due to non-payment of

premium. Up until the time of the Claimant's accident, Forestry Mutual always reinstated the policy.

The South Carolina Uninsured Employers' Fund offered into evidence documents from the Coverage and Compliance Division of the South Carolina Workers' Compensation Commission. Those documents included correspondence from the Coverage and Compliance Division of the South Carolina Workers' Compensation Commission showing that Forestry Mutual insurance coverage company covered the Employer on the date of Mr. Pate's accident. In addition, upon receipt of the affidavit and documents from NCCI, those documents were forwarded to Wayne Ducote, Jr., the Director of Coverage and Compliance. Mr. Ducote, in an email, stated that those documents were the same documents reviewed by the Coverage Division of the Commission to determine coverage. Mr. Ducote was of the opinion pursuant to Commission Regulation 67-405(C)(1) termination of a Workers' Compensation Policy is not effective until thirty (30) days after receipt by the Commission's authorized agent (NCCI). Following that thirty-day rule, the cancellation of the policy in question would not be effective until on or about March 20, 2015 and coverage would be present on the date of the Claimant's accident. (Fund's Exhibit #2).

VI. DISCUSSION

The Compliance Division of the South Carolina Workers' Compensation Commission is of the opinion that Forestry Mutual Insurance Coverage had coverage on March 3, 2015, the date of the Claimant's accident. Forestry Mutual Insurance Company has denied coverage in this case. Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. On that notice, Forestry Mutual listed March 1, 2015, ten (10) days after the date of notification, as its effective date of cancellation.

As all are aware, the South Carolina Workers' Compensation Act was substantially modified effective July 1, 2007. Following that time, the Workers' Compensation Commission amended and added regulations to Chapter 67 to reflect the changes in Title 42. Those changes and amendments to those regulations as well as comments regarding those changes can be found in the *South Carolina State Register*, Volume 34, Issue 2 published February 26, 2010.

According to Forestry Mutual, up until 2010, Regulations 67-406 addressed the cancellation, renewal, and non-renewal of Workers' Compensation Insurance Policies. It appears that former regulation 67-406 was promulgated after July 1, 1989, when NCCI became the Commission's authorized agent for filing a report of coverage and Notice of Termination for Workers' Compensation Insurance Policies. According to Forestry Mutual, that regulation was repealed in 2010 and not replaced. Thus, the regulations no longer provide for termination, cancellation, or non-renewal of Workers' Compensation policies. However, the provisions of former Regulation 67-406 are now found under new Regulation 67-405 (C)(1).

Former Regulation 67-405 dealt with employers and insurance carriers proof of compliance. If you reviewed the former regulation in its entirety, it contains no provision regarding the effective date of termination or cancellation of an insurance policy. However, in 2010, that regulation was amended. Regulation 67-407 (C) (1) was added. That regulation required an insurance carrier to file a notice of termination with the Commission's authorized agent. It further states that such termination shall not be effective until thirty (30) days after the receipt by the Commission's authorized agent. The language is almost identical to the termination/cancellation language found in former Regulation 67-406. According to the comments found in the State Register dealing with Regulation 67-405 (C) (1), the regulation is amended to delete references to Regulation 67-406 and Regulation 67-407, to add a reference to 67-416, and to clarify termination date. References to NCCI were deleted. According to the comments, those deletions were made to "reflect the possibility NCCI might not continue to be

the Commission's agent."

The Legislature did not repeal Regulation 67-406 without replacing it. The Regulation was simply recodified under Regulation 67-405(C)(1). The purpose of the new regulation was to clarify the thirty (30) day termination date. Based upon that termination date, Forestry Mutual had insurance coverage on March 3, 2015 when the Claimant's accident occurred.

Forestry Mutual contends that because Regulation 67-406 was repealed in 2010, the Commission must look to other statutory provisions to determine the effective date of a policy cancellation. Forestry Mutual contends that Code Section 38-75-730 governs the effective date of cancellation of a Workers' Compensation Insurance Policy. Section 38-75-730 (A) reads "no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for one of the following reasons: 1. Non-payment of premium...". The statute goes on to say "cancellation for non-payment of premium is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation." South Carolina Code Section annotated §38-75-730 (B). Thus, Forestry Mutual argues that March 1st is the proper date of cancellation.

The Carrier, Forestry Mutual, contends that Regulation 67-405 is for compliance purposes only as evidenced by the title of the Regulation. The text contains no such limitation. Although the title and headings are part of the Statute, they may not be construed to limit the plain meaning of the text. Brotherhood of Railroad Trainmen v. Baltimore & O.R. CO., 331 U.S 519, 67 S.Ct. 1387, 9 L.Ed. 1646 (1947). For interpretative purposes, the title of a statute and heading of a section are of use only when they shed light on some ambiguous word or phrase and as tools available for resolution of doubt, but they cannot undo or limit what the text makes plain. Id.: See generally 2A Sutherland Statutory Construction §47-03(1992). Garner v. Houck The text of Regulation 67-405 is not limited to compliance and contains no ambiguity.

The Carrier, Forestry Mutual also contends that the Statute (§38-78-730) and the Regulation are inconsistent and irreconcilable with each other and thus, the Statute should be used to determine the proper date of cancellation. The Statute and the Regulation are not inconsistent or irreconcilable with each other. The Statute provides that the mailing be "not less" than ten days prior to the effective date of cancellation. The Commission's Regulation has expanded the effective date of cancellation to require a thirty day effective date after the filing with the Commission's agent. (In this case the Notice and filing are February 19, 2015). Had the Regulation sought to regulate and effective date less than ten days, it would have been inconsistent and irreconcilable. However, thirty days, as provided for in Regulation 67-405 (C) (1) is "not less" than ten days as provided for in the Statute and thus consistent with the Statute.

Forestry Mutual Insurance Company offered no witnesses but only documentary evidence at the Hearing held on September 29, 2015. According to those documents, Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. An affidavit was introduced into evidence by Forestry Mutual Insurance Company showing that NCCI received that Notice of Cancellation electronically. A certified mail return receipt was later entered into evidence showing that the insured, TAC Logging received the notice of cancellation of on February 24, 2015.

However, §38-75-730 (B) also requires that written Notice of Cancellation be delivered or mailed to the insured **and the Agent of Record** not less than ten days proposed effective date of cancellation. The Notice of cancellation shows Swamp Fox Agency, Inc. to be the producer of the policy. Forestry Mutual as offered no evidence to show that that agency was properly notified pursuant to the statute. Even assuming that Notice of Termination was properly filed with NCCI, the other requirements of the statute must be met for cancellation to be effective. In Larsons Workers' Compensation Law, the authors conclude the requirements for cancelling a Workers' Compensation Insurance Policy are exacting and strictly construed because of the

essential role of insurance in the compensation process and the serious potential effects of non insurance on both Employer and Employee....” Nine, Arthur Larson and Lex Larson, Larsons Workers’ Compensation Law Section 150.3 (2005). Insurers failure to strictly comply with the Statutes and Regulations renders a termination ineffective. Here, Forestry Mutual has not shown that Notice of Cancellation was mailed to the insurance agent. Thus, cancellation is not effective.

Based upon the evaluation of the evidence received, including the medical reports and testimony of the Claimant, as well upon the documents submitted into evidence regarding coverage issues and the Briefs subsequently filed by the parties, this Commissioner makes the following findings of fact:

VII. FINDINGS OF FACT:

1. The Parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers’ Compensation Act with TAC Logging Inc. as Employer and Forestry Mutual Insurance Company as Carrier.

2. Forestry Mutual Insurance Company had in place a policy of Workers’ Compensation Insurance covering Employees of TAC Logging, Inc. on March 3, 2015, the date of the Claimant’s accident. Forestry Mutual Insurance Company filed a Notice of Cancellation with NCCI on February 19, 2015. Pursuant to the South Carolina Code of Laws, including Regulation 67-405(C)(1), cancellation of that policy would not be effective until March 20, 2015. The legal and factual basis for this finding is fully detailed under the subsection entitled “Discussion.”

3. The Claimant, David Pate, was an Employee of the above named Employer on and prior to March 3, 2015, on which date he did sustain admitted injuries by accident to his head, chest, arms, back, and both shoulders arising out of and in the course of his employment.

4. The Claimant has received some medical care but because of the insurance dispute which arose following his accident, that care has been limited. The Claimant has requested additional medical care for the evaluation and treatment of his injuries and I find that that request is reasonable as he has not received ongoing care and the extent of his injuries are unknown.

5. The Claimant shall be provided an evaluation with a neurologist or other appropriate specialist for his complaints of dizziness.

6. The Claimant shall be provided follow-up evaluations for the wound to his left buttock, as well as an orthopedic evaluation for the pain in his shoulders, which were substantiated by the bilateral abrasions listed in the medical records.

7. As a result of his accident, the Claimant has received medical treatment at Carolinas Medical Center in Charlotte, at McLeod Health in Florence, at McLeod Pulmonary and Critical Care in Florence, and from Dr. Alexander Cohen and possibly others. The Carrier shall be responsible for the payment of charges associated with that care pursuant to the fee schedule of the South Carolina Workers' Compensation Act. The Claimant shall be reimbursed any out of pocket expenses he has incurred for medical care and also shall be entitled to mileage reimbursement as well. Carrier shall reimburse Claimant's group insurance for benefits it has paid on Claimant's behalf.

8. The Claimant's average weekly wage is to be held in abeyance pending calculation by the parties.

9. As a result of his injuries and accident, the Claimant was temporary totally disabled following his accident. Because of the disputed insurance coverage, his Employer paid the Claimant a salary until he was able to return to work. Upon calculation of the correct average weekly wage, the Employer shall be reimbursed for those wages paid following the Claimant's accident.

VIII. CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws (1976, as amended), §42-17-40, it is the determination of this Commissioner:

1. Under §42-1-40, the Defendant/Employer was a covered Employer under the Act. As a result of the Defendant/Employer being subject to the South Carolina Workers' Compensation Act, the Defendant/Employer was covered by a policy of insurance issued by Forestry Mutual Insurance Company on and before the date of the Claimant's accident. Although Forestry Mutual Insurance Company filed a Notice of Cancellation of that policy on February 19, 2015, the effective date of cancellation of that policy would be on or about March 20, 2015 pursuant to South Carolina Statutory Law and Regulation 67-405 (C) (1) of the South Carolina Workers' Compensation Act. The legal and factual basis for this conclusion is fully detailed under the subsection entitled "Discussion."

2. Under §42-1-130, the Claimant was a covered Employee at the time in question.

3. Under §42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment on March 3, 2015. March 3, 2015 was within the period of time covered under the policy issued by Forestry Mutual Insurance Company.

4. Under §42-15-60, the Claimant has been furnished adequate and proper medical care. The Carrier, Forestry Mutual Insurance Company is responsible for charges associated with that medical care pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed any out of pocket expenses incurred by Forestry Mutual Insurance Company. In addition, the Claimant shall be entitled to mileage reimbursement. Claimant's group health insurance should be reimbursed.

The Claimant is also entitled to referrals to specialists to further evaluate the extent of his injuries and to provide treatment, which may tend to lessen the Claimant's period of disability.

5. Under §42-9-10 and §42-1-150, the Claimant was temporary totally disabled from March 3, 2015 through June 3, 2015 when the Claimant returned to work. During that period of time, his Employer paid the Claimant a salary. Upon calculation of the correct average weekly wage, the Employer is entitled to be reimbursed for those monies paid.

VIII. ORDER

IT IS HEREBY ORDERED, that the Carrier, Forestry Mutual Insurance Company make the following payments:

1. Charges for medical care incurred by the Claimant causally related to his injury and accident pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed for his out of pocket medical expenses including copays, prescription, and mileage. The Carrier shall also reimburse the Claimant's group insurance carrier for payments made to providers.

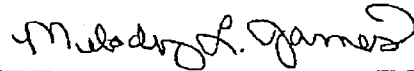
2. The Carrier shall also provide the Claimant with evaluation and treatment by appropriate specialist for his injuries as testified to at the Hearing.

3. Upon calculation of the Claimant's correct average weekly wage, the Carrier shall reimburse the Employer at the Claimant's compensation rate for monies paid to the Claimant as temporary total benefits by the Employer following the Claimant's accident.

The South Carolina Uninsured Employers' Fund is not a necessary party to this action as the Employer was covered by a policy of Workers' Compensation Insurance on the date of the Claimant's accident. Thus, the South Carolina Uninsured Employers' Fund is dismissed with prejudice.

No hearing costs are assessed in this instance.

AND IT IS SO ORDERED,



Commissioner Melody L. James

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid, in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

January 29, 2016

By: Tamara Morris, Administrative Assistant to Commissioner James

**APPELLATE PANEL DECISION AND ORDER
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION**

SCWCC FILE NO.: 1503345

DAVID PATE,

Employee, Claimant/Respondent,

-VS-

TAC LOGGING, INC.,

Employer/Respondent

FORESTRY MUTUAL INSURANCE COMPANY,

Carrier/Appellant,

SOUTH CAROLINA UNINSURED
EMPLOYERS' FUND,

Defendant/Respondent.

Appellant Panel Review Held in
Columbia, South Carolina on April 8, 2016.

Appellant Panel Decision and Order
Filed on June 3rd, 2016.

APPEARANCES:

Claimant/Respondent represented by Christopher G. Isgett, Esquire
of Columbia, South Carolina.

Employer/Respondent TAC Logging failed to appear.

Defendant/Respondent South Carolina Workers' Compensation
Uninsured Employers' Fund represented by Samuel T. Brunson,
Esquire of Florence South Carolina.

Carrier/Appellant, Forestry Mutual Insurance Company
represented by William T. Littlejohn, Esquire of Charleston, South
Carolina.

STATEMENT OF THE CASE

This matter arises out of an accidental injury, which occurred on March 3, 2015 in Union County, North Carolina. On that date, the Claimant was employed by TAC Logging, Inc., a logger with its principal place of business in Florence, South Carolina. The Claimant was involved in a truck accident and suffered numerous injuries. Shortly thereafter, the Claimant filed a Form 50 listing Forestry Mutual Insurance Company as the Carrier for TAC Logging, Inc. on the date of the accident.

The Compliance Division of the South Carolina Workers' Compensation Commission is of the opinion that Forestry Mutual Insurance Company had coverage on March 3, 2015 when the Claimant was injured. However, Forestry Mutual Insurance Company has denied coverage in this case. Forestry Mutual Insurance Company filed a Notice of Cancellation with NCCI on February 19, 2015. On that notice, Forestry Mutual listed March 1, 2015, ten (10) days after the date of notification, as its effective date of cancellation. Because Forestry Mutual Insurance Company denied coverage, the South Carolina Uninsured Employers' Fund was made a party to this matter.

A Hearing was held before Commissioner Melody L. James on September 29, 2015. Appearances were made by and on behalf of the Claimant, the South Carolina Uninsured Employers' Fund and Forestry Mutual Insurance Company. The Employer, TAC Logging Inc., failed to appear. Commissioner James heard arguments of the parties, accepted documents and exhibits and heard testimony from the Claimant. Following the Hearing, Commissioner James requested that Forestry Mutual and the South Carolina Uninsured Employers' Fund present Memoranda on the question of coverage.

On January 29, 2016, Commissioner James issued a Decision and Order finding that

Forestry Mutual Insurance Company had in place a policy of Workers' Compensation covering Employees of TAC Logging on March 3, 2015, the date of the Claimant's accident. In Part VI of her Order, Commissioner James fully discussed the legal and factual basis for reaching that conclusion.

In her Order, Commissioners James made the following Findings of Fact:

FINDINGS OF FACT:

1. The Parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act with TAC Logging Inc. as Employer and Forestry Mutual Insurance Company as Carrier.

2. Forestry Mutual Insurance Company had in place a policy of Workers' Compensation Insurance covering Employees of TAC Logging, Inc. on March 3, 2015, the date of the Claimant's accident. Forestry Mutual Insurance Company filed a Notice of Cancellation with NCCI on February 19, 2015. Pursuant to the South Carolina Code of Laws, including Regulation 67-405(C)(1), cancellation of that policy would not be effective until March 20, 2015. The legal and factual basis for this finding is fully detailed under the subsection entitled "Discussion."

3. The Claimant, David Pate, was an Employee of the above named Employer on and prior to March 3, 2015, on which date he did sustain admitted injuries by accident to his head, chest, arms, back, and both shoulders arising out of and in the course of his employment.

4. The Claimant has received some medical care but because of the insurance dispute which arose following his accident, that care has been limited. The Claimant has requested additional medical care for the evaluation and treatment of his injuries and I find that that request is reasonable as he has not received ongoing care and the extent of his injuries are

unknown.

5. The Claimant shall be provided an evaluation with a neurologist or other appropriate specialist for his complaints of dizziness.

6. The Claimant shall be provided follow-up evaluations for the wound to his left buttock, as well as an orthopedic evaluation for the pain in his shoulders, which were substantiated by the bilateral abrasions listed in the medical records.

7. As a result of his accident, the Claimant has received medical treatment at Carolinas Medical Center in Charlotte, at McLeod Health in Florence, at McLeod Pulmonary and Critical Care in Florence, and from Dr. Alexander Cohen and possibly others. The Carrier shall be responsible for the payment of charges associated with that care pursuant to the fee schedule of the South Carolina Workers' Compensation Act. The Claimant shall be reimbursed any out of pocket expenses he has incurred for medical care and also shall be entitled to mileage reimbursement as well. Carrier shall reimburse Claimant's group insurance for benefits it has paid on Claimant's behalf.

8. The Claimant's average weekly wage is to be held in abeyance pending calculation by the parties.

9. As a result of his injuries and accident, the Claimant was temporary totally disabled following his accident. Because of the disputed insurance coverage, his Employer paid the Claimant a salary until he was able to return to work. Upon calculation of the correct average weekly wage, the Employer shall be reimbursed for those wages paid following the Claimant's accident.

In addition, Commissioner James also made the following Conclusions of Law:

CONCLUSIONS OF LAW

1. Under §42-1-40, the Defendant/Employer was a covered Employer under the Act. As a result of the Defendant/Employer being subject to the South Carolina Workers' Compensation Act, the Defendant/Employer was covered by a policy of insurance issued by Forestry Mutual Insurance Company on and before the date of the Claimant's accident. Although Forestry Mutual Insurance Company filed a Notice of Cancellation of that policy on February 19, 2015, the effective date of cancellation of that policy would be on or about March 20, 2015 pursuant to South Carolina Statutory Law and Regulation 67-405 (C) (1) of the South Carolina Workers' Compensation Act. The legal and factual basis for this conclusion is fully detailed under the subsection entitled "Discussion."

2. Under §42-1-130, the Claimant was a covered Employee at the time in question.

3. Under §42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment on March 3, 2015. March 3, 2015 was within the period of time covered under the policy issued by Forestry Mutual Insurance Company.

4. Under §42-15-60, the Claimant has been furnished adequate and proper medical care. The Carrier, Forestry Mutual Insurance Company is responsible for charges associated with that medical care pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed any out of pocket expenses incurred by Forestry Mutual Insurance Company. In addition, the Claimant shall be entitled to mileage reimbursement. Claimant's group health insurance should be reimbursed.

The Claimant is also entitled to referrals to specialists to further evaluate the extent of his injuries and to provide treatment, which may tend to lessen the Claimant's period of disability.

5. Under §42-9-10 and §42-1-150, the Claimant was temporary totally disabled from March 3, 2015 through June 3, 2015 when the Claimant returned to work. During that period of time, his Employer paid the Claimant a salary. Upon calculation of the correct average weekly wage, the Employer is entitled to be reimbursed for those monies paid.

In her findings, Commissioner James found that Forestry Mutual was responsible for providing Workers' Compensation Benefits to the Claimant in this case. Commissioner James specifically ordered that the Carrier, Forestry Mutual Insurance Company, make the following payments:

1. Charges for medical care incurred by the Claimant causally related to his injury and accident pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed for his out of pocket medical expenses including copays, prescription, and mileage. The Carrier shall also reimburse the Claimant's group insurance carrier for payments made to providers.

2. The Carrier shall also provide the Claimant with evaluation and treatment by appropriate specialist for his injuries as testified to at the Hearing.

3. Upon calculation of the Claimant's correct average weekly wage, the Carrier shall reimburse the Employer at the Claimant's compensation rate for monies paid to the Claimant as temporary total benefits by the Employer following the Claimant's accident.

Within the Statutory period, the Appellant, Forestry Mutual Insurance Company, filed an application for review in the case setting forth its assignments of errors, copies of which were furnished to all interested parties prior to the matter being heard by the Appellant Panel. In that application, Forestry Mutual respectfully submitted to the Appellant Panel that the Single Commissioner erred as follows:

1. Whether the Single Commissioner erred in finding Forestry Mutual Insurance Company had an active policy of Workers' Compensation Insurance coverage TAC logging, Inc., on March 3, 2015?

2. Whether the Single Commissioner erred in failing to find where an Employer fails to pay premiums on a Workers' Compensation Policy that the policy can be terminated within ten (10) days of Notice of Cancellation under S.C. Code Section 38-75-730?

3. Whether the Single Commissioner erred in failing to find Regulation 67-405 is limited to an Employer's Compliance with maintaining Workers' Compensation Insurance rather than the authority governing proper cancellation of a Workers' Compensation Policy.

4. Whether the Single Commissioner erred in finding Forestry Mutual Insurance Company failed to notify the Employer's Agent of Record?

In an Appellant Review, the Panel shall, pursuant to Code Section 42-17-50, review the award, weight the evidence as presented at the initial Hearing and, if good grounds be shown thereof, make its own Findings of Fact and reach its own Conclusions of Law consistent with or inconsistent with those of the Hearing Commissioner. Pursuant to the Workers' Compensation Act, all parties filed Briefs. Oral argument was scheduled and delivered to the Panel on April 18, 2016. Since that time, the matter has been under study and consideration.

DISCUSSION

The Compliance Division of the South Carolina Workers' Compensation Commission is of the opinion that Forestry Mutual Insurance Coverage had coverage on March 3, 2015, the date

of the Claimant's accident. Forestry Mutual Insurance Company has denied coverage in this case. Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. On that notice, Forestry Mutual listed March 1, 2015, ten (10) days after the date of notification, as its effective date of cancellation.

As all are aware, the South Carolina Workers' Compensation Act was substantially modified effective July 1, 2007. Following that time, the Workers' Compensation Commission amended and added regulations to Chapter 67 to reflect the changes in Title 42. Those changes and amendments to those regulations as well as comments regarding those changes can be found in the *South Carolina State Register*, Volume 34, Issue 2 published February 26, 2010.

According to Forestry Mutual, up until 2010, Regulations 67-406 addressed the cancellation, renewal, and non-renewal of Workers' Compensation Insurance Policies. It appears that former regulation 67-406 was promulgated after July 1, 1989, when NCCI became the Commission's authorized agent for filing a report of coverage and Notice of Termination for Workers' Compensation Insurance Policies. According to Forestry Mutual, that regulation was repealed in 2010 and not replaced. Thus, the regulations no longer provide for termination, cancellation, or non-renewal of Workers' Compensation policies. However, the provisions of former Regulation 67-406 are now found under new Regulation 67-405 (C)(1).

Former Regulation 67-405 dealt with employers and insurance carriers proof of compliance. If you reviewed the former regulation in its entirety, it contains no provision regarding the effective date of termination or cancellation of an insurance policy. However, in 2010, that regulation was amended. Regulation 67-407 (C) (1) was added. That regulation required an insurance carrier to file a notice of termination with the Commission's authorized agent. It further states that such termination shall not be effective until thirty (30) days after the

receipt by the Commission's authorized agent. The language is almost identical to the termination/cancellation language found in former Regulation 67-406. According to the comments found in the State Register dealing with Regulation 67-405 (C) (1), the regulation is amended to delete references to Regulation 67-406 and Regulation 67-407, to add a reference to 67-416, and to clarify termination date. References to NCCI were deleted. According to the comments, those deletions were made to "reflect the possibility NCCI might not continue to be the Commission's agent."

The Legislature did not repeal Regulation 67-406 without replacing it. The Regulation was simply recodified under Regulation 67-405(C)(1). The purpose of the new regulation was to clarify the thirty (30) day termination date. Based upon that termination date, Forestry Mutual had insurance coverage on March 3, 2015 when the Claimant's accident occurred.

Forestry Mutual contends that because Regulation 67-406 was repealed in 2010, the Commission must look to other statutory provisions to determine the effective date of a policy cancellation. Forestry Mutual contends that Code Section 38-75-730 governs the effective date of cancellation of a Workers' Compensation Insurance Policy. Section 38-75-730 (A) reads "no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for one of the following reasons: 1. Non-payment of premium...". The statute goes on to say "cancellation for non-payment of premium is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation." South Carolina Code Section annotated §38-75-730 (B). Thus, Forestry Mutual argues that March 1st is the proper date of cancellation.

The Carrier, Forestry Mutual, contends that Regulation 67-405 is for compliance

purposes only as evidenced by the title of the Regulation. The text contains no such limitation. Although the title and headings are part of the Statute, they may not be construed to limit the plain meaning of the text. Brotherhood of Railroad Trainmen v. Baltimore & O.R. CO., 331 U.S. 519, 67 S.Ct. 1387, 9 L.Ed. 1646 (1947). For interpretative purposes, the title of a statute and heading of a section are of use only when they shed light on some ambiguous word or phrase and as tools available for resolution of doubt, but they cannot undo or limit what the text makes plain. Id.: See generally 2A Sutherland Statutory Construction §47-03(1992). Garner v. Houck. The text of Regulation 67-405 is not limited to compliance and contains no ambiguity.

The Carrier, Forestry Mutual also contends that the Statute (§38-78-730) and the Regulation are inconsistent and irreconcilable with each other and thus, the Statute should be used to determine the proper date of cancellation. The Statute and the Regulation are not inconsistent or irreconcilable with each other. The Statute provides that the mailing be "not less" than ten days prior to the effective date of cancellation. The Commission's Regulation has expanded the effective date of cancellation to require a thirty day effective date after the filing with the Commission's agent. (In this case the Notice and filing are February 19, 2015). Had the Regulation sought to regulate and effective date less than ten days, it would have been inconsistent and irreconcilable. However, thirty days, as provided for in Regulation 67-405 (C) (1) is "not less" than ten days as provided for in the Statute and thus consistent with the Statute.

Forestry Mutual Insurance Company offered no witnesses but only documentary evidence at the Hearing held on September 29, 2015. According to those documents, Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. An affidavit was introduced into evidence by Forestry Mutual Insurance Company showing that NCCI received that Notice of Cancellation electronically. A certified mail return receipt was later entered into

evidence showing that the insured, TAC Logging received the notice of cancellation of on February 24, 2015.

However, §38-75-730 (B) also requires that written Notice of Cancellation be delivered or mailed to the insured **and the Agent of Record** not less than ten days proposed effective date of cancellation. The Notice of cancellation shows Swamp Fox Agency, Inc. to be the producer of the policy. Forestry Mutual as offered no evidence to show that that agency was properly notified pursuant to the statute. Even assuming that Notice of Termination was properly filed with NCCI, the other requirements of the statute must be met for cancellation to be effective. In Larsons Workers' Compensation Law, the authors conclude the requirements for cancelling a Workers' Compensation Insurance Policy are exacting and strictly construed because of the essential role of insurance in the compensation process and the serious potential effects of non insurance on both Employer and Employee...." Nine, Arthur Larson and Lex Larson, Larsons Workers' Compensation Law Section 150.3 (2005). Insurers failure to strictly comply with the Statutes and Regulations renders a termination ineffective. Here, Forestry Mutual has not shown that Notice of Cancellation was mailed to the insurance agent. Thus, cancellation is not effective.

Forestry Mutual contends that Commissioner James concluded that the language contained in Regulation 67-405 C(1) controlled the cancellation of a Workers' Compensation Insurance Policy as opposed to South Carolina Section Code Section 38-75-730 found in the Code Section relating to insurance coverage in general. Commissioner James made no such finding or reached any such conclusion. Instead, Commissioner James determined that the Statute (§38-78-730) and the Regulation 67-405 C(1) are not inconsistent or irreconcilable with each other. The Statute provides that the mailing or notification be "not less" than ten (10) days

prior to the effective date of cancellation. The Commissions Regulation has expanded the effective date of cancellation to require a thirty (30) day effective date after the filing with the Commissions Agent. Had the Regulation sought to regulate an effective date less than ten (10) days, it would have been inconsistent and irreconcilable. However, thirty (30) days, as provided in Regulation 67-405 C(1) is not less than ten (10) days as provided for in the Statute and thus consistent with the Statute.

This issue was raised back in 2010 following the proposed promulgation of Regulation 67-405 C (1). A Proposed Change to the Regulation was made at that time. A Public Hearing was held and an Opportunity for Public Comment was allowed. Following the above, the Commission concluded that there was no conflict between the language of Code Section 38-75-703 and Regulation 67-405 C(1). Thus, no change was made to the Regulation and the promulgation process for the proposed regulation change was terminated. (See Attachment A Report of Chairman, T. Scott Beck.)

It is clear from the above that Regulation 67-405 C (1) governs the cancellation of a Workers' Compensation Insurance Policy consistent with the provisions of §38-75-703. Pursuant to that Regulation, Forestry Mutual's Effective date of cancellation would be thirty (30) days after February 19, 2015 or March 20, 2015. Thus, Forestry Mutual had in place a policy of insurance on the date of the Claimant's accident.

The Appellant Panel, by unanimous vote, has determined all of the Hearing Commissioners Findings of Fact and Conclusions of Law are correct as stated. Accordingly, they shall become, and hereby are, the Law of the Case and: and therefore, the Order is sustained in its entirety.

The Appellant Panel hereby finds:

FINDINGS OF FACT:

1. The Parties to this proceeding are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act with TAC Logging Inc. as Employer and Forestry Mutual Insurance Company as Carrier.

2. Forestry Mutual Insurance Company had in place a policy of Workers' Compensation Insurance covering Employees of TAC Logging, Inc. on March 3, 2015, the date of the Claimant's accident. Forestry Mutual Insurance Company filed a Notice of Cancellation with NCCI on February 19, 2015. Pursuant to the South Carolina Code of Laws, including Regulation 67-405(C)(1), cancellation of that policy would not be effective until March 20, 2015. The legal and factual basis for this finding is fully detailed under the subsection entitled "Discussion."

3. The Claimant, David Pate, was an Employee of the above named Employer on and prior to March 3, 2015, on which date he did sustain admitted injuries by accident to his head, chest, arms, back, and both shoulders arising out of and in the course of his employment.

4. The Claimant has received some medical care but because of the insurance dispute which arose following his accident, that care has been limited. The Claimant has requested additional medical care for the evaluation and treatment of his injuries and we find that that request is reasonable as he has not received ongoing care and the extent of his injuries are unknown.

5. The Claimant shall be provided an evaluation with a neurologist or other appropriate specialist for his complaints of dizziness.

6. The Claimant shall be provided follow-up evaluations for the wound to his left

buttock, as well as an orthopedic evaluation for the pain in his shoulders, which were substantiated by the bilateral abrasions listed in the medical records.

7. As a result of his accident, the Claimant has received medical treatment at Carolinas Medical Center in Charlotte, at McLeod Health in Florence, at McLeod Pulmonary and Critical Care in Florence, and from Dr. Alexander Cohen and possibly others. The Carrier shall be responsible for the payment of charges associated with that care pursuant to the fee schedule of the South Carolina Workers' Compensation Act. The Claimant shall be reimbursed any out of pocket expenses he has incurred for medical care and also shall be entitled to mileage reimbursement as well. Carrier shall reimburse Claimant's group insurance for benefits it has paid on Claimant's behalf.

8. The Claimant's average weekly wage is to be held in abeyance pending calculation by the parties.

9. As a result of his injuries and accident, the Claimant was temporary totally disabled following his accident. Because of the disputed insurance coverage, his Employer paid the Claimant a salary until he was able to return to work. Upon calculation of the correct average weekly wage, the Employer shall be reimbursed for those wages paid following the Claimant's accident.

The Appellant Panel hereby concludes:

CONCLUSIONS OF LAW

Accordingly, as provided in the South Carolina Code of Laws (1976, as amended), §42-17-40, it is the determination of this Commissioner:

5. Under §42-1-40, the Defendant/Employer was a covered Employer under the Act. As a result of the Defendant/Employer being subject to the South Carolina Workers'

Compensation Act, the Defendant/Employer was covered by a policy of insurance issued by Forestry Mutual Insurance Company on and before the date of the Claimant's accident. Although Forestry Mutual Insurance Company filed a Notice of Cancellation of that policy on February 19, 2015, the effective date of cancellation of that policy would be on or about March 20, 2015 pursuant to South Carolina Statutory Law and Regulation 67-405 (C) (1) of the South Carolina Workers' Compensation Act. The legal and factual basis for this conclusion is fully detailed under the subsection entitled "Discussion."

6. Under §42-1-130, the Claimant was a covered Employee at the time in question.

7. Under §42-1-160, the Claimant did sustain an injury by accident arising out of and in the course of his employment on March 3, 2015. March 3, 2015 was within the period of time covered under the policy issued by Forestry Mutual Insurance Company.

8. Under §42-15-60, the Claimant has been furnished adequate and proper medical care. The Carrier, Forestry Mutual Insurance Company is responsible for charges associated with that medical care pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed any out of pocket expenses incurred by Forestry Mutual Insurance Company. In addition, the Claimant shall be entitled to mileage reimbursement. Claimant's group health insurance should be reimbursed.

The Claimant is also entitled to referrals to specialists to further evaluate the extent of his injuries and to provide treatment, which may tend to lessen the Claimant's period of disability.

5. Under §42-9-10 and §42-1-150, the Claimant was temporary totally disabled from March 3, 2015 through June 3, 2015 when the Claimant returned to work. During that period of time, his Employer paid the Claimant a salary. Upon calculation of the correct average weekly wage, the Employer is entitled to be reimbursed for those monies paid.

ORDER

IT IS THEREFORE ORDERED, that the Order of the Single Commissioner filed in the above caption matter on January 29, 2016 is affirmed in its entirety and shall constitute an Order of the Panel of the South Carolina Workers' Compensation Commission.

The Carrier, Forestry Mutual Insurance Company shall make the following payments:

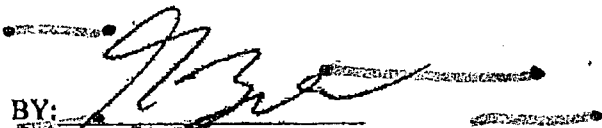
1. Charges for medical care incurred by the Claimant causally related to his injury and accident pursuant to the fee schedule of the South Carolina Workers' Compensation Commission. The Claimant shall be reimbursed for his out of pocket medical expenses including copays, prescription, and mileage. The Carrier shall also reimburse the Claimant's group insurance carrier for payments made to providers.

2. The Carrier shall also provide the Claimant with evaluation and treatment by appropriate specialist for his injuries as testified to at the Hearing.

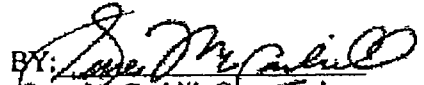
3. Upon calculation of the Claimant's correct average weekly wage, the Carrier shall reimburse the Employer at the Claimant's compensation rate for monies paid to the Claimant as temporary total benefits by the Employer following the Claimant's accident.

The South Carolina Uninsured Employers' Fund is not a necessary party to this action as the Employer was covered by a policy of Workers' Compensation Insurance on the date of the Claimant's accident. Thus, the South Carolina Uninsured Employers' Fund is dismissed with prejudice.

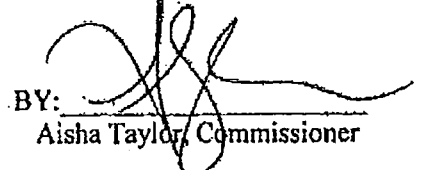
AND IT IS SO ORDERED,

BY: 

T. Scott Beck, Commissioner

BY: 

Gene McCaskill, Commissioner

BY: 

Aisha Taylor, Commissioner

Columbia, South Carolina

6/1, 2016

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Kim Falls on June 3, 2016

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500 • Post Office Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5723 www.wcc.sc.gov



WCC File #: 1503345
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: David Pate SSN: 250-17-1507 Employer's Name: TAC Logging, Inc
Address: 505 Confederate Street Address: 1807 Osprey Drive
City: Charleston State: SC Zip: 29510 City: Florence State: SC Zip: 29501
Home Phone: _____ Work Phone: () _____ Insurance Carrier: Forestry Mutual Insurance Company
Preparer's Name: Christopher G. Isgett Law Firm: Attys. Lee, Eadon, Isgett, Popwell and Reardon Preparer's Phone #: (803) 799 - 9811

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness:
☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to ribs, bruised lungs, head, arms, chest, back, right shoulder on 03/15 in Union County, state of N.C.
2. Body part(s) affected are: chest, arms, back, right shoulder, head.
Briefly describe how the accident occurred. Claimant's truck had too much weight on it and overturned.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/3/15 in the following manner:
Called in to dispatch
- ☒ 7. Due to injury, the claimant is in need of (check one):
☐ (a) medical examination and treatment for: _____
☒ (b) additional medical examination and treatment for: See above
- ☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
3-3-15 and continuing
- ☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):
☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss
- 9a. XA determination of permanent disability is premature at this time.
- ☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:
- 10a. At the time of the injury, the Claimant was paid weekly wages of \$10 to be determined, and demands accounting of days worked and wages earned as provided by law.
- 10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
NA
11. Further grounds or unusual aspects of claim:
Coverage and compliance; medical treatment; temporary total benefits and all benefits due under the Act.
- 11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached
- 11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____
12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.
- ☐ 13a. I am filing a claim. I am not requesting a hearing at this time.
14. Estimated time needed for hearing: 30 minutes
- ☒ 13b. I am requesting a hearing. A \$25 fee is required.
- ☐ Mediation
☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.
I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Forestry Mutual Insurance, P.O. Box 19467, Raleigh, NC 27619 and UFF, P.O. Box 102100, Columbia, S.C. 29221 on the _____ day of _____, 2014, by ☐ first class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: Chris Lee Title: Atty for Claimant Email: chris@leiplaw.com Date: 28 April 2015

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

RECEIVED
MAY 04 2015

50

Employee's Notice of Claim and/or
Request for Hearing

List of Medical Providers
Re: David Pate

1. Carolinas Medical Center
PO, Box 32861
Charlotte, N.C. 28232
2. Dr. Alexander Cohen
Pee Dee Health Care
201 Cashua Street
Darlington, S.C. 29532
3. McLeod Regional Medical Center
555 E. Cheves Street
Florence, S.C.
4. McLeod Pulmonary and Critical Care
401 E. Cheves Street, Suite 202
Florence, S.C. 29506-2651



WCC File #: **1503345**
Carrier File #: _____
Carrier Code #: _____
Employer FEIN #: _____

AMENDED

Claimant's Name: David Pate SSN: [REDACTED] Employer's Name: TAC Logging, Inc
Address: [REDACTED] Address: 1807 Osprey Drive
City: [REDACTED] State: SC Zip: 295
Home Phone: _____ Work Phone: () - Insurance Carrier: Forestry Mutual Insurance Company and UEF
Preparer's Name: Christopher G. Isgett Law Firm: Attys. Lee, Eadon, Isgett, Popwell and Reardon Preparer's Phone #: (803) 799 - 9811

A claim for workers' compensation benefits is made based on the following grounds: Date of Injury or Illness:

☒ Injury ☐ Illness ☐ Repetitive Trauma ☐ Occupational Disease ☐ Physical Brain Injury ☐ Concurrent Jurisdiction

1. The claimant sustained an injury to ribs, bruised lungs, head, arms, chest, back, right shoulder on 03/3/15 in Union County, state of N.C.
2. Body part(s) affected are: chest, arms, back, right shoulder, head.
Briefly describe how the accident occurred. Claimant's truck had too much weight on it and overturned.
3. Both the claimant and the employer were subject to the South Carolina Workers' Compensation Act at the time of injury.
4. The relationship of employer and employee existed at the time of injury.
5. At the time of the injury the claimant was performing services arising out of and in the course of employment.
6. Notice of the accidental injury was given to the Employer on 3/3/15 in the following manner:
Called in to dispatch

☒ 7. Due to injury, the claimant is in need of (check one):

☐ (a) medical examination and treatment for: _____

☒ (b) additional medical examination and treatment for: See above

☒ 8. Due to injury, the claimant requests temporary total disability benefits because of lost compensable time from work and wages for the period of:
3-3-15 and continuing

☐ 9. Due to the injury, the Claimant has permanent disability of the following nature and extent (check one):

☐ (1) General Disability: ☐ Total ☐ Partial ☐ (2) Specific Disability: ☐ Total ☐ Partial ☐ (3) Wage Loss

9a. XA determination of permanent disability is premature at this time.

☐ 10. Due to the injury, the Claimant has a serious bodily disfigurement consisting of:

10a. At the time of the injury, the Claimant was paid weekly wages of \$to be determined, and demands accounting of days worked and wages earned as provided by law.

10b. Give names and addresses of all employers for whom the Claimant has worked since the date of the accident:
NA

11. Further grounds or unusual aspects of claim:

Coverage and compliance; medical treatment; temporary total benefits and all benefits due under the Act.

11a. List names and addresses of all physicians or other medical specialists who have seen or treated the Claimant as a result of the accident:
See attached

11b. To the best of your knowledge, did you have any prior permanent disability? _____
If yes, describe: _____

12. Appropriate benefits as provided in the Act for the above grounds and other relief as the Workers' Compensation Commission may direct as just and proper.

☐ 13a. I am filing a claim. I am not requesting a hearing at this time.

14. Estimated time needed for hearing: 30 minutes

☒ 13b. I am requesting a hearing. A \$25 fee is required.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to William T. Littlejohn, Esquire, Willson, Jones, Carter, & Baxley, 421 Wando Park Boulevard, Suite 100, Mt. Pleasant, S.C. 29464 and UEF, P.O. Box 102100, Columbia, S.C. 29221 on the 21 day of May, 2014, by X

first-class postage ☐ certified mail ☐ personal service.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature: [Signature] Title: Atty for Claimant Email: chris@leiplay.com

Date: 21 May 2015

Questions about the use of this form should be directed to the Claims Department at 803.737.5723. Refer to Regulations 67-204 through 67-211 and Regulations 67-601 through 67-615 as well as Reg. 67-1801.

WCC Form # 50
Revised 7/13

50

Employee's Notice of Claim and/or Request for Hearing

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. Box 1715
Columbia, SC 29202-1715
(803) 737-5675 www.wcc.sc.gov



WCC File #: 1503345
Carrier File #: 114-22861
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: David Pate SSN: 950-11-097 Date of Injury or Illness: TAC Logging
Address: 135 Confederate Street Address: 1807 Osprey Drive
City: Darlington State: SC Zip: 29540 City: Florence State: SC Zip: 29502
Home Phone: _____ Work Phone: _____ Insurance Carrier: Forestry Mutual Insurance Company (Alleged)
Preparer's Name: William T. Littlejohn Law Firm: Wilson Jones Carter & Baxley, P.A. Preparer's Phone #: (843) 284-1084

Complete each information blank. Specify clearly when contentions are admitted in part and denied in part. The employer/carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
Carrier Defendant denies coverage on alleged date of accident.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
See No. 1
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
See No. 1
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
See No. 1
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
See No. 1
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☒ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
See No. 1
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
See No. 1
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
See No. 1
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ 814.06 applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
Defendants reserve the right to amend and to assert defenses as they become aware of them.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
☐ b. Mediation is required pursuant to Reg. 67-1802.
☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

certify that I have served this document pursuant to R.67-212 by delivering a copy to: Christopher G. Isgett, Esquire, 1314 Lincoln Street, PO Box 1505, Columbia, SC 29202; TAC Logging, 1807 Osprey Drive, Florence, SC 29501; and Judicial Director, SC WCC, P.O. Box 1715, Columbia, SC 29202 on the 28th day of May, 2015 by
☒ first class mail ☐ personal service ☐ certified mail.

verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature

Attorney for the Carrier
Title

wtlittlejohn@wjlaw.net
Email

05/28/2015
Date

Teresa B. Williams
Certifier, Teresa B. Williams

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or jud@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-605, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.



WCC File #: 1503345
Carrier File #: SAF No. 2015-001546
Carrier Code #:
Employer FEIN #:

Claimant's Name: David Pale SSN: [REDACTED] Employer's Name: TAC Logging, Inc.
Address: [REDACTED] Address: 1807 Osprey Drive
City: [REDACTED] State: [REDACTED] Zip: [REDACTED] City: Florence State: SC Zip: 29501
Home Phone: Work Phone:
Date of Injury: 3-3-2015 Insurance Carrier: Forestry Mutual Insurance Co.; SCUEF
Preparer's Name: Ellen Goodwin Law Firm: SC Uninsured Employers' Fund Preparer's Phone #: (803) 896-5891

Date of Injury or Illness: 3/3/2015

Estimated time for hearing:

Complete each information blank. Clearly specify when contentions are admitted in part and denied in part. The Employer/Carrier in answer to the claim, respectfully shows:

1. It is ☐ Admitted ☒ Denied the employee sustained an injury or illness on or about the date set forth in the Form 50. The reasons for denial are:
General; there has been no proof.
2. It is ☐ Admitted ☒ Denied both the employer and employee were subject to the Workers' Compensation Act at the time in question. The reasons for denial are:
3. It is ☐ Admitted ☒ Denied the relationship of employer and employee existed at the time in question. The reasons for denial are:
4. It is ☐ Admitted ☒ Denied at the time in question the employee was performing services arising out of and in the course of employment. The reasons for denial are:
5. It is ☐ Admitted ☒ Denied notice of injury was given the employer. The reasons for denial are:
6. It is ☐ Admitted ☒ Denied the employee ☐ Needs ☐ Is Entitled to Additional medical care as a result of injury or illness. The reasons for denial are:
7. It is ☐ Admitted ☒ Denied the employee is entitled to temporary total disability for the period(s) of:
8. It is ☐ Admitted ☒ Denied the employee is permanently disabled. The reasons for denial are:
9. It is ☐ Admitted ☒ Denied the employee has serious disfigurement.
10. It is contended that an average weekly wage of \$ _____ applies, according to attached Form 20 as provided by law.
11. Further contentions, grounds of defense, or unusual aspects are:
See attachment.

☐ Mediation

- ☐ a. Mediation is requested to be ordered pursuant to Reg. 67-1801 B.
- ☐ b. Mediation is required pursuant to Reg. 67-1802.
- ☐ c. Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.
- ☐ d. Mediation has been conducted by a duly qualified mediator and resulted in an impasse.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I verify the contents of this form are accurate and true to the best of my knowledge.

Preparer's Signature:

Legal Counsel
Title

egoodwin@saf.sc.gov
Email

6/30/2015
Date

Refer to R.67-204 through R.67-210 and R.67-601 through R.67-615. Refer to R. 67-1801 for mediation. Questions about the use of this form may be directed to the Commission's Judicial Department at 803-737-5675 or judicial@wcc.sc.gov or mediation@wcc.sc.gov. Pursuant to R.67-606, a Form 20 must be filed with the Claims Department at least 30 days from the date of filing this form.

11. The Uninsured Employers' Fund is informed and believes that no capitulation or other order has been issued by the South Carolina Workers' Compensation Commission finding that the employer is subject to Title 42 and is operating without insurance or as an unqualified self-insurer. The Uninsured Employers' Fund is not a proper party to this action and is not subject to the jurisdiction of the South Carolina Workers' Compensation Commission in this case.

All affirmative and specific defenses (see Reg. 67-603), including but not limited to Section 42-9-60, Section 42-15-20, Section 42-15-40, Section 42-17-90; and fraud in the application for employment; fraud in the inducement to sign Form 15; fraud in the initiation of the claim for benefits; pre-existing disability to allegedly injured members; election of remedies; intervening trauma; no compensable injury by accident under Section 42-1-160; degree of disability, if any, attributable to this injury speculative; claimant's problems personal in nature and not work related.

Fund reserves the right to amend this Answer and plead additional defenses. This form is filed to comply with the South Carolina Workers' Compensation Commission regulations.

Fund files this Answer in response to Claimant's Form 50, Requests for Hearing dated 4-28-2015, served on the Fund with Order adding it dated 6-24-2015, issued by Commissioner Melody James.

Further, the Uninsured Employers' Fund does not represent the uninsured employer, is not an agent for the uninsured employer, nor a carrier for the uninsured employer.

South Carolina Workers' Compensation Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
803-737-5675 www.wcc.sc.gov



WCC File #: 1503345
Carrier File #: 114-22861
Carrier Code #: _____
Employer FEIN #: _____

Claimant's Name: David Pate SSN: 230-17-1507 Employer's Name: TAC Logging
Address: 3425 Confederate Street Address: 1627 Gregg Avenue
City: Darlington State: SC Zip: 29540 City: Florence State: SC Zip: 29501
Home Phone: () - Work Phone: () - Insurance Carrier: Forestry Mutual Insurance Company
Preparer's Name: William T. Littlejohn Law Firm: HPLP Preparer's Phone #: (843) 278-0488

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☐ Claimant ☒ ^{CARRIER} Employer (check one) Date of Injury or Illness: (03/03/2015)

The undersigned makes application for review of the findings of the Commissioner in the above-captioned case. The request for review is based on the following grounds: (State the grounds of your appeal in the form of questions presented. Each question presented must contain a concise statement of one proposition of law or fact. Refer to evidence by title and exhibit number. Use additional pages if necessary).

Whether the Commissioner erred in finding Forestry Mutual Insurance Company had an active policy of workers' compensation insurance covering TAC Logging Inc. on March 3, 2015?

Whether the Commissioner erred in failing to find where an employer fails to pay premiums on a workers' compensation policy, that policy can be terminated within 10 days of notice of cancellation?

Whether the Commissioner erred in failing to find Regulation 67-405 is limited to an employer's compliance with maintaining workers' compensation insurance rather than the authority governing proper cancellation of a workers' compensation policy?

Whether the Commissioner erred in failing to find § 38-75-730 governs proper cancellation of a workers' compensation policy for nonpayment of premiums?

Whether the Commissioner erred in finding Forestry Mutual Insurance Company failed to notify the employer's agent of record?

Whether the Commissioner erred in failing to find the SC Uninsured Employers' Fund responsible for this claim?

(Check one) Oral argument ☒ is ☐ is not requested. Appellant's request for oral argument is waived if not indicated on this form.

☐ Mediation

☐ Mediation is requested by consent of the Parties pursuant to Reg. 67-1803.

Questions regarding mediation may be submitted to mediation@wcc.sc.gov.

I certify I have served this document pursuant to Reg. 67-211 by delivering a copy to Christopher Isgett, Esquire, Post Office Box 1505, Columbia, SC 29202; Samuel Brunson, Esquire (for SCUEF), 521 W. Evans Street, Florence, SC 29501; TAC Logging, 1627 Gregg Avenue, Florence, SC 29501 (certified); and Amy Bracy, Judicial Director, SCWCC, Post Office Box 1715, Columbia, SC 29202-1715 on the 5th day of February 2016, by X first class postage X (TAC Logging) certified mail personal service.

Preparer's Signature: [Signature] Title: Esquire Email: wlittlejohn@hplplaw.com Date: 02/05/2016
Check this box if you are not represented by an attorney ☐

Questions about the use of this form should be directed to the Judicial Department at 803.737.5675 or appeals@wcc.sc.gov.

If the claimant appeals and is not represented by counsel, the Judicial Department will properly serve this form pursuant to Reg. 67-607 C. Pursuant to Reg. 67-205 and Reg. 701, the appeal must be postmarked no later than 14 days from the date of service of the Decision and Order of the Hearing Commissioner along with the filing fee. Attach a Form 32, if you are unable to pay the filing fee. Refer to Reg. 67-211 and Reg. 67-701 through 711.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 1503345

David Pate, Respondent,

v.

TAC Logging, Inc., Respondent,

Forestry Mutual Ins. Co., Appellant,

South Carolina Uninsured
Employers' Fund, Respondent.

NOTICE OF APPEAL

Forestry Mutual Insurance Company, Appellant, appeals the decision of the Full Commission dated June 3, 2016. Appellant received a copy of this decision on June 3, 2016. The issues on appeal are:

1. Whether the Commission erred in finding Forestry Mutual Insurance Company had an active policy of workers' compensation insurance covering TAC Logging, Inc. on March 3, 2015.
2. Whether the Commission erred in failing to find where an employer fails to pay premiums on a workers' compensation policy that policy can be terminated within 10 days of Notice of Cancellation under S.C. Code Section 38-75-730.
3. Whether the Commission erred in failing to find Regulation 67-405 is limited to determining an employer's compliance with maintaining workers' compensation insurance rather than the authority governing proper cancellation of a workers' compensation policy.
4. Whether the Commission erred in finding Forestry Mutual Insurance Company failed to notify the employer's agent of record.

June 27, 2016



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

Other Counsel of Record:
Christopher Isgett, Esq.
PO Box 1505
Columbia, SC 29202
(803) 799-9801
Attorney for Respondent David Pate

Samuel Brunson, Esq.
521 West Evan Street
Florence, SC 29501
(843) 669-8111
Attorney for Respondent South Carolina Uninsured Employers' Fund

Other Parties of Record:
TAC Logging, Inc. (via certified mail)
1627 Gregg Avenue
Florence, SC 29501
(843) 669-3153
Respondent

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
COLUMBIA, SOUTH CAROLINA
WCC FILE NO. 1503345

EMPLOYEE/CLAIMANT: DAVID PATE
EMPLOYER: TAC LOGGING, INC.
INSURER: FORESTRY MUTUAL INSURANCE COMPANY

SOUTH CAROLINA WORKERS' COMPENSATION HEARING

PURSUANT TO NOTICE OF WORKERS' COMPENSATION
HEARING, THE WITHIN HEARING WAS TAKEN ON THE 29TH DAY OF
SEPTEMBER, 2015, COMMENCING AT THE HOUR OF 11:05 A.M., IN
FLORENCE, SOUTH CAROLINA, BEFORE THE HONORABLE MELODY L. JAMES,
ATTENDED BY COUNSEL AS FOLLOWS:

HOLLY K. GLEASON
VERBATIM REPORTER

 COPY

JAN L. WHITWORTH
COURT REPORTING SERVICES
POST OFFICE BOX 551
ROEBUCK, S.C. 29376

APPEARANCES

CHRISTOPHER G. ISGETT, ESQUIRE, OF THE FIRM
LEE, EADON, POPWELL, AND OWENS, P.A.
1314 LINCOLN STREET
COLUMBIA, SOUTH CAROLINA 29201

ATTORNEY FOR THE EMPLOYEE/CLAIMANT,

SAMUEL T. BRUNSON, ESQUIRE, OF THE FIRM
SAMUEL T. BRUNSON LAW FIRM
511 WEST EVANS STREET
FLORENCE, SOUTH CAROLINA 29501

ATTORNEY FOR THE SOUTH CAROLINA WORKERS'
COMPENSATION U.E.F.,

WILLIAM T. LITTLEJOHN, ESQUIRE, OF THE FIRM
HOLDER, PADGETT, LITTLEJOHN + PRICKETT, L.L.C.
210 WINGO WAY, SUITE 201
MOUNT PLEASANT, SOUTH CAROLINA 29464

ATTORNEY FOR FORESTRY MUTUAL INSURANCE COMPANY.

I N D E X

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DAVID PATE:

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CROSS-EXAMINATION BY MR. BRUNSON.....	24
CERTIFICATE OF NOTARY PUBLIC.....	27

1 PURSUANT TO NOTICE OF HEARING, THE WITHIN HEARING
2 WAS TAKEN BY THE ABOVE-NAMED COURT REPORTER, A NOTARY
3 PUBLIC FOR THE STATE OF SOUTH CAROLINA, IN FLORENCE,
4 SOUTH CAROLINA.

5 * * * * * * * * * * * * * * * *

6 BY COMMISSIONER JAMES:

7 TODAY IS SEPTEMBER THE 29TH, 2015. WE'RE HERE
8 ON W.C.C. FILE NUMBER 1503345. THIS IS THE MATTER
9 OF DAVID PATE VERSUS TAC -- T-A-C, THAT'S THE
10 SPELLING OF TAC, TAC LOGGING INCORPORATED, FORESTRY
11 MUTUAL INSURANCE COMPANY, AND SOUTH CAROLINA
12 WORKERS' COMPENSATION UNINSURED FUND.

13 PRESENT ON BEHALF OF MR. PATE IS MR.
14 CHRISTOPHER ISGETT. TAC LOGGING INCORPORATED HAS
15 BEEN DUTIFULLY NOTIFIED BY MAIL, AND THERE IS NO ONE
16 HERE ON THERE BEHALF. PRESENT ON BEHALF OF THE
17 SOUTH CAROLINA WORKERS' COMPENSATION UNINSURED
18 EMPLOYER'S FUND IS MR. SAMUEL BRUNSON. PRESENT ON
19 BEHALF OF FORESTRY MUTUAL IS MR. WILLIAM LITTLEJOHN.

20 THE DATE OF THE ALLEGED ACCIDENT IS MARCH THE
21 3RD, 2015. WE DO NOT HAVE AN AGREEMENT ON THE
22 AVERAGE WEEKLY WAGE AND COMPENSATION RATE. THAT
23 WILL BE DETERMINED. THERE IS A 20 IN THE FILE, BUT
24 THERE ALSO WILL BE SOME TESTIMONY TO THAT EFFECT.
25 ALSO, I'VE AGREED TO LEAVE THE RECORD OPEN FOR A

1 SHORT DURATION, IN ORDER IF SOMEONE HAD OBTAINED THE
2 ACTUAL INFORMATION AS TO THE MISSING QUARTER, AS I
3 UNDERSTAND IT, THEN THAT CAN BE SUBMITTED, OR THE
4 ACTUAL PAYROLL RECORDS, WHATEVER IS OBTAINED. AND,
5 WILL, I WON'T LEAVE THE RECORD OPEN FOR AN
6 INDETERMINATE AMOUNT OF TIME FOR THAT, BUT DURING
7 THE PERIOD OF TIME WHERE THE LEGAL ISSUES AND THE
8 FACTUAL ISSUES ARE BEING CONSIDERED, IF THAT
9 INFORMATION DOES COME IN, THAT THAT COULD GIVE US A
10 MORE EXACT FIGURE.

11 NONETHELESS, IT IS THE CLAIMANT'S CONTENTION
12 THAT HE WILL PRESENT TESTIMONY AND THAT THROUGH THE
13 TESTIMONY, HIS AVERAGE WEEKLY WAGE, WHICH WILL
14 CORRESPOND TO A MAXIMUM COMPENSATION RATE. WE ARE
15 HERE TO DETERMINE THE ISSUES ON HIS FORM 50 AND 51.

16 I HAVE RECEIVED SUBMISSIONS FROM THE PARTIES.
17 THE CLAIMANT HAS SUBMITTED PAGES 1 THROUGH 67. THE
18 U.E.F. HAS SUBMITTED PAGES 1 THROUGH 4. FORESTRY
19 MUTUAL HAS SUBMITTED 1 THROUGH 57. THERE IS A LATE
20 SUBMISSION ON BEHALF OF FORESTRY MUTUAL IN EXHIBIT
21 E, WHICH IS BEING SUBMITTED. IN RESPONSE, THE FUND
22 HAS REQUESTED, AND IT HAS BEEN ADDED INTO THEIR
23 BRIEF, TWO ADDITIONAL PAGES, PAGES 3 AND 4.

24 AS THERE ARE LATE SUBMISSIONS, THE PARTIES HAVE
25 A WEEK IN ORDER TO MAKE A DECISION AS TO WHETHER

1 THERE IS ANYONE IN REGARDS TO THE LATE SUBMISSIONS
2 THAT THEY WISH TO DEPOSE. THEY WILL LET MY OFFICE
3 KNOW THEIR DECISION, AND SHOULD THEY DECIDE THOSE
4 DEPOSITIONS -- A DEPOSITION NEEDS TO BE HELD, THEN I
5 WILL MAKE A DETERMINATION AS TO THE TIME FRAME FROM
6 THAT POINT FORWARD.

7 ARE THERE ANY OBJECTIONS TO THE APAS,
8 JURISDICTION, VENUE, OR ANY OTHER ITEMS ON BEHALF OF
9 THE CLAIMANT?

10 BY MR. ISGETT:

11 NO, MA'AM.

12 BY COMMISSIONER JAMES:

13 ON BEHALF OF THE DEFENDANT, FORESTRY MUTUAL?

14 BY MR. LITTLEJOHN:

15 NONE, COMMISSIONER.

16 BY COMMISSIONER JAMES:

17 ON BEHALF OF THE DEFENDANT, THE U.E.F.?

18 BY MR. BRUNSON:

19 NO.

20 BY COMMISSIONER JAMES:

21 ALL RIGHT. WITHOUT OBJECTION, THE COMMISSION
22 FILE BECOMES PART OF THE RECORD WITH THE EXCEPTION
23 OF ANY SELF-SERVING DECLARATIONS AND UNSTIPULATED
24 MEDICAL REPORTS.

25 THE CLAIMANT IS PRESENT TODAY AND REQUESTING

1 PAYMENT OF PAST MEDICAL TREATMENT FOR WHAT HE
2 INDICATES WAS SUSTAINED IN A WRECK WHILE ON THE JOB
3 AND AN ON-THE-JOB INJURY, AND HE IS ALSO REQUESTING
4 FOR HIS MILEAGE ON THE PERIPHERAL COST WITH REGARDS
5 TO PHARMACY BILLS AND ALL OF THOSE PRIOR MEDICALS TO
6 BE ORDERED PAID BY THE COMMISSIONER.

7 HE IS NOT REQUESTING TEMPORARY TOTAL, AS HE
8 INDICATES THAT THAT WAS PAID BY THE EMPLOYER WHILE
9 HE WAS OUT OF WORK. HE INDICATES THAT HE HAS
10 ADDITIONAL PROBLEMS AND WISHES TO BE EVALUATED FOR
11 DIZZINESS BY A NEUROLOGIST OR ANOTHER APPROPRIATE
12 SPECIALIST FOR THAT CONDITION, AND, ALSO, CONTINUED
13 PROBLEMS WITH HIS RIGHT SHOULDER AND LEFT LEG, THAT
14 HE WISHES TO SEEK AN OPINION AND EVALUATION OF AN
15 ORTHOPAEDIST.

16 THERE IS AN ADDITIONAL ISSUE IN THIS CASE, THE
17 DEFENDANTS HAVE INDICATED, THE U.E.F. AND FORESTRY
18 MUTUAL IS HERE. THERE ARE NO STIPULATIONS WITH
19 REGARDS TO THE EVENT BECAUSE TAC LOGGING IS NOT
20 HERE, BUT THE MAJOR ISSUE WITH REGARDS TO THE
21 DEFENDANTS IS -- IF THIS IS A COMPENSABLE INJURY, IS
22 TO WHO IS RESPONSIBLE PRIMARILY; IS IT FORESTRY
23 MUTUAL ON BEHALF OF THE EMPLOYER AS THE INSURER OR
24 IS THE EMPLOYER UNINSURED AS TO THE DATE OF THE
25 EVENT, AND IS THE RESPONSIBILITY WITH THE U.E.F.

1 WITH THE RIGHT TO SEEK REIMBURSEMENT.

2 THE PARTIES HAVE HANDED UP -- THOSE TWO PARTIES
3 HAVE HANDED UP CASE LAW. THE DEFENDANTS HAVE HANDED
4 UP CASE LAW. IT IS SECTION 38-75-710, AND, ALSO,
5 SOME RELATED DEFINITION SECTIONS IN 38-120, AND
6 FURTHER SECTION IN 38-75-730. THE DEFENDANT,
7 U.E.F., HAS HANDED UP A MEMORANDUM IN SUPPORT OF
8 THEIR POSITION.

9 I WILL NOT GET INTO THE ENTIRE ISSUE AS BRIEFED
10 BY THE PARTIES, BUT THE ISSUE IS WHETHER THE
11 EFFECTIVE DATE OF CANCELLATION ESSENTIALLY CAN BE
12 UNDER 38-75-730, AS TEN DAYS, AND THAT THE EFFECTIVE
13 DATE OF CANCELLATION OF THIS POLICY WAS MARCH 1ST,
14 AS IT WAS MAILED OUT ON FEBRUARY THE 19TH, 2015, OR
15 THE FUND'S POSITION THAT PURSUANT TO THE COMMISSION
16 REGULATIONS, THAT THERE IS A 30-DAY REQUIREMENT WITH
17 REGARDS TO CANCELLATION, AND, THEREFORE, THE POLICY
18 WOULD HAVE BEEN EFFECTIVE ON THAT DATE AND TIME.
19 AND I WILL WELCOME ANY COMMENT FROM ANY OF YOU ON
20 THE RECORD WITH REGARDS TO THAT ISSUE, BUT, FIRST,
21 LET ME ASK THE CLAIMANT IF THAT'S THE CLAIMANT'S
22 POSITION?

23 BY MR. ISGETT:

24 YES.

25 BY COMMISSIONER JAMES:

1 AND DOES THE DEFENDANT, FORESTRY MUTUAL
2 INSURANCE COMPANY, WISH TO ADD ANYTHING ELSE? AND,
3 ALSO, LET ME STATE, FOR THE RECORD, I'VE GIVEN THE
4 PARTIES AN OPPORTUNITY IF THEY WISH TO PRESENT ANY
5 FURTHER MEMORANDUM, CASE LAW, OR ANY TYPE OF
6 BRIEFING, THAT THEY CAN DO SO. ANYTHING FURTHER ON
7 BEHALF OF FORESTRY MUTUAL?

8 BY MR. LITTLEJOHN:

9 COMMISSIONER, WE HAD AN EXTENSIVE PREHEARING
10 CONFERENCE WHERE WE WENT THROUGH THE LEGAL ISSUES.
11 YOU'VE PERMITTED THE SUBMISSION OF A LEGAL
12 MEMORANDUM TO SUMMARIZE THOSE ISSUES, WHICH WE'LL
13 FOLLOW UP, SO WE HAVE NOTHING FURTHER AT THIS TIME.

14 BY COMMISSIONER JAMES:

15 OKAY. AND, MR. BRUNSON, ON BEHALF OF THE FUND,
16 DO YOU HAVE ANYTHING FURTHER?

17 BY MR. BRUNSON:

18 NOTHING THAT I DIDN'T PUT IN MY MEMORANDUM BUT
19 MAY PREPARE AN ADDITIONAL MEMORANDA.

20 BY COMMISSIONER JAMES:

21 SIR, IF YOU'LL RAISE YOUR RIGHT HAND FOR ME,
22 PLEASE.

23 DAVID PATE

24 BEING FIRST DULY SWORN, TESTIFIED ON HIS OATH AS FOLLOWS:

25 BY COMMISSIONER JAMES:

1 YOUR WITNESS.

2 BY MR. ISGETT:

3 THANK YOU, MA'AM.

4 DIRECT EXAMINATION BY MR. ISGETT:

5 Q. COULD YOU GIVE THE COMMISSIONER YOUR FULL NAME,
6 PLEASE, SIR.

7 A. DAVID EUGENE PATE.

8 Q. DAVID, WHERE DO YOU LIVE?

9 A. 3425 CONFEDERATE STREET, DARLINGTON.

10 Q. AND HOW OLD ARE YOU?

11 A. FIFTY-SIX.

12 Q. ARE YOU MARRIED?

13 A. YES.

14 Q. DO YOU HAVE KIDS?

15 A. ONE GROWN AND GONE.

16 Q. OKAY. WE'RE HERE TODAY ABOUT AN ON-THE-JOB ACCIDENT
17 THAT HAPPENED ON MARCH THE 3RD OF THIS YEAR, 2015;
18 IS THAT RIGHT?

19 A. YES, SIR.

20 Q. AND YOU WERE A TRUCK DRIVER FOR A TIMBER COMPANY
21 CALLED TAC LOGGING; IS THAT RIGHT?

22 A. CORRECT.

23 Q. T-A-C?

24 A. CORRECT.

25 Q. ALL RIGHT. AND YOU'D BEEN WORKING FOR THEM SINCE

STATE OF SOUTH CAROLINA
BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC No. 1503345

David Pate,)
)
Claimant,)
)
v.)
)
TAC Logging,)
)
Employer,)
)
and)
)
Forestry Mutual and)
South Carolina Uninsured)
Employers Fund,)
)
Carrier/Defendants.)
)

COPY

FULL COMMISSION HEARING

Monday, April 18, 2016
1:33 p.m. - 1:46 p.m.

The Full Commission Hearing was heard before Commissioners T. Scott Beck, Gene McCaskill, and Aisha Taylor, at the Workers' Compensation Commission, 1333 Main Street, Suite 500, Columbia, South Carolina, on the 18th day of April, 2016, before Cortney N. Glover, Court Reporter and Notary Public in and for the State of South Carolina.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

William T. Littlejohn, Esquire
Holder Padgett Littlejohn & Prickett, L.L.C.
210 Wingo Way, Suite 201
Mt. Pleasant, South Carolina 29464
Attorney for the Claimant

Samuel T. Brunson, Esquire
Attorney at Law
Post Office Drawer 431
Greenville, South Carolina 29503
Attorney for the Respondent South Carolina
Uninsured Employers Fund

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.
1230 Richland Street / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

APPEARANCES

William T. Littlejohn, Esquire
 Holder Padgett Littlejohn + Prickett, L.L.C.
 210 Wingo Way, Suite 201 J
 Mt. Pleasant, South Carolina 29464
 Attorney for the Claimant

Samuel T. Brunson, Esquire
 Attorney at Law
 Post Office Drawer 431
 Greenville, South Carolina 29503
 Attorney for the Respondent South Carolina
 Uninsured Employers Fund

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EXHIBITS

(There were no exhibits marked during the hearing.)

STIPULATIONS

It is stipulated and agreed that this deposition is being taken pursuant to the Administrative Procedures Act and the South Carolina Rules of Civil Procedure.



CREEL COURT REPORTING, INC.
 1230 Richland Street / Columbia, SC 29201
 (803) 252-3445 / (800) 822-0896

1 COURT REPORTER: Today is April 18th, 2016. This
2 is South Carolina Workers' Compensation Case
3 Number 1503345. This is the case of David
4 Pate Claimant, versus TAC Logging Employer,
5 and Forestry Mutual and South Carolina
6 Uninsured Employers Fund, Carrier.

7 Each side is allowed ten minutes for oral
8 argument and the Appellant three minutes in
9 reply. You are requested to argue the
10 grounds of exception and stay within the
11 record.

12 COMMISSIONER BECK: Mr. Littlejohn.

13 MR. LITTLEJOHN: May it please the commission. On
14 February 19th, 2015, Forestry Mutual sent its
15 employer, TAC Logging, a notice of
16 cancellation for nonpayment of premiums.
17 Effective date in that cancellation was ten
18 days thereafter, March 1st, 2015. On March
19 3rd, two days after that cancellation, the
20 claimant had an accident that no one
21 disputes. Forestry Mutual inserts that it
22 did not have coverage on that day, having
23 effectively canceled the policy two days
24 before. The Commissioner found regulation
25 67-405 control, providing for a 30-day window



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1 for the effective cancellation, and she found
2 alternatively that if you were going to use
3 the general insurance provision, that the
4 agent wasn't notified of the accident. For a
5 couple reasons, we assert that the single
6 Commissioner was incorrect in that finding.

7 We'll start with the general insurance
8 provision. It says -- and this is for
9 dealing with renewal and nonrenewal of the
10 cancellation of a policy. It says the
11 general insurance provisions will govern
12 unless this specific area of insurance,
13 whether it be property insurance or workers'
14 comp insurance, if the Workers' Compensation
15 Act has a statute, statutory provision
16 specifically addressing cancellation
17 renewal/nonrenewal then that will control. In
18 this case, we all agree there's no statute.
19 The statutory provisions specifically states
20 the renewal/nonrenewal and cancellation of a
21 policy. So because the Workers' Compensation
22 Act doesn't have that provision, the general
23 insurance provision controls. When we look
24 at the general insurance provision it does
25 provide for cancellation for nonpayment of



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1 premium within ten days, and I'll read
2 specifically what that states.

3 It states for nonpayment, it's not effective
4 unless written notice of cancellation has been
5 delivered or mailed to the insured, an agent
6 of record, if any, not less than ten days
7 prior to the proposed effective date of
8 cancellation.

9 So the carrier sent the employer a notice of
10 cancellation with a 10-day effective date,
11 copied or notified the agent, we would argue
12 is NCCI, of that cancellation and had an
13 effective cancellation for March 1st, 2015,
14 and the accident was March 3rd.

15 Now, to take on the arguments that have been
16 presented in the Commissioner's finding,
17 Regulation 67-405, let's talk about it.
18 First off, we need to put it in context
19 because I believe the commissioner is taking
20 it out of context. In context, regulation
21 67-405, I'll just tell you what it says
22 first.

23 For Section C dealing the 30 days, if an
24 employer fails to renew its insurance order,
25 the insurer cancels it, such termination shall



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1 not be effective until 30 days after receipt
2 by the commission's agent.

3 So that's your 30-day window. It's our
4 position in context this is talking about
5 compliance, an employer's compliance with the
6 insurance provisions. That they have to have
7 insurance if they have four or more
8 employees. So let's make sure we have that
9 context correct. 67-405 the title is:
10 Employers and Insurance Carriers Proof of
11 Compliance. Section A states every employer
12 operating under the act shall follow with the
13 commission proof of compliance.

14 Section B for basically self-insureds, is the
15 self-insured needs to file proof of
16 compliance, and then skipping over to C down
17 to section D, the employers represented in
18 the State accident fund shall file on the
19 behalf of the employer with the commission or
20 reports and documents required by the chapter
21 and the act. In other words, they will file;
22 they will be in compliance. It's the State
23 accident fund that will file for its
24 employers to be in compliance.

25 Now, let's now look at C using that context.



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1 An employer who's policy is canceled has 30
2 days to maintain to be in compliance with the
3 requirement that they have insurance in this
4 state. So they have a window of 30 days to
5 be in compliance.

6 So for two reasons, 67-405 isn't applicable.
7 One, because the statute says you need
8 another statutory provision in the Workers'
9 Compensation Act that's not there to govern.
10 So that's why the general insurance provision
11 controls. But even if it didn't, there is no
12 provision because this regulation, which it is
13 a regulation, deals with compliance, not the
14 renewal or nonrenewal of a policy.

15 In the section to deal with -- specifically
16 dealing with the nonrenewal for nonpayment of
17 a policy is 38-75-730, and that's where it
18 states that not less than ten days unless
19 written notice.

20 One of the arguments raised by the UE Act was
21 that it wasn't delivered or mailed to the
22 insured. The Commissioner felt that the
23 actual notice of cancellation having the
24 date -- having an actual notice and with --
25 dated, demonstrated proof of mailing. There



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1 was no need for someone from the mailroom to
2 demonstrate it went out in the mail. And
3 there is a certificate of receipt, so we know
4 it was mailed because it was received with
5 that certificate.

6 Any questions?

7 COMMISSIONER TAYLOR: Part of your argument, you
8 just limited -- you limited Section C to that
9 of compliance, but that's really just based
10 on the title of that section; isn't that
11 right? And I think the Hearing Commissioner
12 addressed, I guess, her disagreement with that
13 argument in that when you read the text of
14 that section, it actually encompasses more
15 than just compliance.

16 MR. LITTLEJOHN: The reason I say it doesn't is
17 because of the -- those other sections. I
18 agree. If it was just said compliance in the
19 title and then had a lot of things that did
20 not deal with compliance listed below, it's
21 kind of like A, B, C, and then number 4.

22 COMMISSIONER TAYLOR: Right.

23 MR. LITTLEJOHN: It's kind of what I see, because
24 Section A deals with, just generally,
25 everybody needs to be-- every employer need



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1 to file proof of compliance. Section B, that
2 includes self-insureds, you need to file
3 compliance. And then D the state accident
4 fund will find in the end inclusive of
5 compliance. So, C, I think you'd been taking
6 it out of context to say, it's not really
7 dealing with compliance. It's dealing with
8 insurance policies throughout workers' comp
9 for renewal/nonrenewal and cancellation of a
10 policy. So it's not dealing with compliance.
11 That -- it's the albatross in the list of
12 four ---

13 COMMISSIONER TAYLOR: Right.

14 MR. LITTLEJOHN: --- here. It's the crux of that
15 argument.

16 COMMISSIONER BECK: Thank you, sir.

17 Mr. Brunson.

18 MR. BRUNSON: May it please the Commission. Y'all
19 know me. I'm Bubba Brunson, I'm here on
20 behalf of the Uninsured Fund, and I've been
21 representing Uninsured Fund for 20-something
22 years, probably 25 years or so. Throughout
23 those years, I've had a few of these coverage
24 issues. But what I was thinking about on the
25 way up here was what I did before I defended



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1 workers' comp, and I worked for a circuit
2 judge for a few years. And toward the end of
3 that clerkship, we were trying a grand
4 larceny case in Chesterfield County. And it
5 was a brand new solicitor had been elected,
6 and he had new assistants that really didn't
7 have any experience. And at the end of that
8 grand larceny case, the public defender, a
9 guy named Steve Wallace who wore a patch over
10 one eye, he stood up and said, Your Honor, I
11 have a motion. And the judge said, What is
12 it Mr. Wallace? He said, I move to dismiss
13 this case for lack of jurisdiction. And he
14 said, why is that. And he said the solicitor
15 didn't prove that it happened in Chesterfield
16 County.

17 And we kind of had some jaws drop, and the
18 judge said, Well, he said it happened. He
19 lived in the city of Chesterfield, so I think
20 the jury can conclude that it was in
21 Chesterfield county.

22 And after that he said, Well, I have a second
23 motion. And he said, What's that? And he
24 said, I'll move that this case be remanded to
25 a Magistrate's Court because he didn't prove



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1 that the value of the -- and you may know
2 this, Commissioner Beck, I don't know -- of
3 the value of the goods stolen were over \$200.
4 And we looked through the record, and nobody
5 had ever put a value on the goods. By the
6 end of the day, a couple of boys who had
7 stolen a real nice stereo ended up pleading
8 guilty to something and getting time served,
9 but that's what sort of reminded me there is
10 that in this case -- and I cite a case in the
11 brief. And I've done three briefs in the
12 case. Some of them probably in the file, and
13 you've probably read them -- but there's a
14 insurance case out there, and it quotes
15 Larsons. And what it says, it says to cancel
16 a policy, the insurance company has to
17 strictly comply with the provisions of the
18 law.

19 And that's not for the UEF's sake. That's
20 for the empty chair here today, the insured,
21 who's not here, who was not given a defense
22 in this case. He has to prove that he's
23 complied with the law. And if you look at
24 the last sentence or the next of the last
25 paragraph of his appellant's brief, he says,



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1 Forestry Mutual has complied or substantially
2 complied with the sections that he quotes as
3 being. But substantially complied doesn't
4 make it. Just like in Chesterfield county
5 that day, if he didn't prove it was worth
6 \$200, he didn't prove grand larceny.

7 And that's sort of where I start here today.
8 I mean, this case we didn't have any live
9 witnesses here. He put in a lot of
10 documents. Some of them came in the day
11 before the hearing, and some of them came in
12 after the hearing. A bunch of them are
13 screenshots from the computer. One of them
14 is a affidavit from some guy in Florida with
15 the NCCI that says, yeah, we had marked this
16 thing as canceled ten days because that's
17 what it said on the thing, but it didn't
18 really say that he had any authority to make
19 that decision.

20 And after the fact, he put in a return
21 service receipt. I didn't even think of this
22 until after the hearing was heard. But that
23 return service receipt doesn't say when
24 anything was mailed. All it says is when it
25 was delivered to the insured. And if you



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1 look at the code section he quotes, it says
2 that the proof of cancellation must be mailed
3 or delivered within -- and it's not effective
4 until ten days later. That was delivered on
5 February 24th. And all of these happened in
6 February because it's a messed up month with
7 a short number of days. So the cancellation,
8 if you go by date of delivery, would be March
9 the 6th, two days after this guy's accident.
10 But anyway I think the Commission has ruled.
11 Commissioner Beck, y'all held a public hearing
12 on this issue back in 2010 when the
13 regulations were being redrawn. Y'all ruled
14 there was no conflict here, the same way
15 Commissioner James ruled. She's discussed it
16 fully. A lot of her discussion is from some
17 of those briefs I wrote, because I wrote the
18 order in this case too. And she asked me to
19 include and all of that.
20 But we've shown what the State register says,
21 the purpose of y'all redoing that regulation
22 was to clarify the cancellation date. And I
23 put that in dark letters in certain briefs
24 and such and maybe in the order. And he's
25 saying, no, it doesn't have to do anything



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1 with cancellation. But the purpose was to
2 clarify the cancellation. And that's what
3 the State register said y'all did. I.
4 Think y'all have the authority. There's no
5 conflict. She didn't find that the
6 regulation controlled over the statute. She
7 just ruled, just like y'all did at the public
8 hearing in 2010, that not less than ten days
9 that 30 days is not less than ten days, so
10 there was no conflict with the statute.
11 There's coverage in the case, and the
12 uninsured fund end needs to be dismissed.

13 Thank you. Any questions?

14 COMMISSIONER BECK: Mr. Littlejohn?

15 MR. LITTLEJOHN: Nothing further, Commissioner.

16 COMMISSIONER BECK: That concludes the proceeding.

17 Thank y'all very much.

18 (There being no further questions, the hearing
19 concluded at 1:46 p.m.)
20
21
22
23
24
25



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**CONFIRMATION OF
POLICY TERMINATION/CANCELLATION/REINSTATEMENT NOTICE**

Carrier Name/Carrier Code: FORESTRY MUTUAL INSURANCE COMPANY / 37729

TAC LOGGING, INC.
1807 OSPREY DRIVE
FLORENCE, SC 29501

FID# 570940133

Carrier Policy Number	Policy Effective Date	Policy Expiration Date
<u>001000003696114</u>	<u>7/09/2014</u>	<u>7/09/2015</u>

X Termination/Cancellation/Nonrenewal

The coverage provided by the policy number shown above is being ___ nonrenewed, or
X terminated/canceled, ___ flat, X pro rata, or ___ short rate, effective
3/01/2015 12:01 a.m. standard time at the insured's mailing address for the
following reason(s):

NON-PAYMENT OF PREMIUM
NON PAYMENT OF JANUARY SELF REPORTING PREMIUM

Missing payroll report for: 1/2015

___ Reinstatement

The coverage provided by the policy number shown above and previously nonrenewed, canceled, or
scheduled for cancellation is being reinstated effective _____ 12:01 a.m.
standard time at the insured's mailing address.

Issue Date 2/19/2015

Issuing Office FORESTRY MUTUAL INSURANCE COMPANY, 1600 GLENWOOD AVENUE 1ST FLOOR, RALEIGH, NC, 27608

Producer's Name SWAMP FOX AGENCY, INC. / 00590
(843) 761-3999

Date Stamp
(For NCCI use only):

WC 89 06 09 C

Rating State: SC

South Carolina Workers Compensation Commission

Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date

Default = Today's Date

Employer Name ☒ Contains ☐ Starts With

OR

Federal Employer Identification Number [Click here for claim processing information \(and register for mid-term cancellation notice\).](#)

Worker's Compensation Insurance Coverage Provider: FORESTRY MUTUAL INS CO

Policy Number: 001000003686114

Coverage Date: 02/27/15

[Return to Policy Results](#)

Employer Name	Street Address	City	State	Zip
TAC LOGGING INC	1807 OSPREY DR	FLORENCE	SC	29501-8132

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South Carolina Workers Compensation Commission

Employers' Workers' Compensation Insurance Coverage Verification

Select Coverage Date

Default = Today's Date

Employer Name ☒ Contains ☐ Starts With

OR

Federal Employer Identification Number

There were no records found matching your search criteria, which was employer name of 'TAC Logging, Inc' and coverage/injury/illness date of 03/03/2015.

Search Tips

- Confirm the spelling of the Insured Name.
- Certain words are ignored, such as 'an','or','the' in the "contains" search only.
- Special characters (hyphens, commas, slashes, and other punctuation marks) are ignored.
- "Contains" search will only perform a search on the last 7 years of data. If searching on older data please use the "Starts With" search.

If you still are unable to find the information required, please contact our Coverage Division at email the [Coverage Division](#).

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Proof of Coverage State Guide—South Carolina

Posted Date: November 07, 2014

All information is subject to change and dependent on notification from the state. Please refer to applicable Workers Compensation Statutes or Rules for additional information.	
NCCI POC Service Start Date	July 1, 1989
POC Contact Information	
South Carolina Workers Compensation Commission 1333 Main St., Suite 500 PO Box 1715 Columbia, SC 29202-1715 Contact Name: Wayne Ducote, Jr. Tel: 803-737-6203 Fax: 803-737-1258 Email: wducote@wcc.sc.gov or coverage@wcc.sc.gov Web: http://www.wcc.sc.gov	
How NCCI Provides POC Data to State	• IAIABC POC 2.1 Format • <i>Proof of Coverage Inquiry</i> Please see attached <u>South Carolina Bulletin</u>  for carrier compliance information.
POC Timeliness Reporting Requirements	
Transaction Received Date	NCCI's received date is used to determine timeliness on POC transactions accepted by the state.
Policies	Must be filed within 30 days after the Policy Effective Date. POC Notices may be submitted if the policy will not be issued within 30 days after the Policy Effective Date. This does not eliminate the need to submit the policy.
Cancellations	Cancellations are not effective until 30 days after the Cancellation Notice is received by NCCI or 10 days after notification for non-payment.

Reinstatements	Due within 30 days after the Reinstatement Effective Date.
Nonrenewals	South Carolina is a continuous coverage state. Nonrenewals are required to be reported 30 days prior to the cancellation date.
POC Exceptions	
Prefers out-of-state address in lieu of Employer Names linked to Address Type 6—No Physical Location.	
POC Penalties & Appeals	
POC Fines	South Carolina fines \$200 for late reporting of data. A fine of \$100 per day and not more than \$250 per day may be assessed for each day data is late.
Appeals	Appeals must be filed with the state within two weeks from the date of the fine notice.
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SOUTH CAROLINA WORKERS COMPENSATION COMMISSION

David Pate
Claimant's Name

WCC FILE #: 1503345

V.

TAC Logging
Employer's Name

CERTIFICATION

I, Esteban Ortiz, do hereby affirm and state as follows:

1. My name is Esteban Ortiz. I am over the age of 21, and employed by NCCI Holdings, Inc. in Boca Raton, Florida the parent corporation of National Council on Compensation Insurance, Inc. (NCCI Holdings, Inc. and National Council on Compensation Insurance, Inc. hereafter referred to collectively as "NCCI") as Proof of Coverage Analyst.
2. I have personal knowledge of the facts contained in this certification and they are true and correct to the best of my knowledge and belief.
3. The South Carolina Workers' Compensation Commission has designated NCCI as its agent for the purpose of collecting proof of coverage information on South Carolina employers who have purchased workers' compensation insurance from carriers. NCCI collects information as to the issuance, non-renewal termination/cancellation and reinstatement of workers' compensation insurance policies.
4. Based upon research conducted by NCCI on September 28, 2015, and based upon information reported to and maintained by NCCI in its electronic database as of this time, said records do show policy information was filed showing proof of workers' compensation insurance for TAC Logging, effective 07/09/2014 and expiring 07/09/2015; policy number: 001000003696114; carrier: Forestry Mutual Ins. Co. Said records also show a policy cancellation was filed for policy number: 001000003696114; carrier: Forestry Mutual Ins. Co., with a cancellation effective date of March 1, 2015. True and correct copies of said records are attached hereto.



Esteban Ortiz

9/28/15

Date



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Policy Nbr 001000003696114 Carrier Code 37729 Policy Eff Dt 07/09/2014 Primary Insured Name TAC LOGGING INC Policy Exp Dt 07/09/2015																								
Primary Insured Information																								
Name TAC LOGGING INC Name Type 2 - COMMERCIAL NAME PEO/Client Code FEIN 570940133 Street 1807 OSPREY DR City FLORENCE State SC Zip Code 29501-8132																								
Carrier Information																								
Name 37729 - FORESTRY MUTUAL INS CO FEIN 562098364 Street PO BOX 19467 City RALEIGH State NC Zip Code 27619 Group Code 37729 Branch 001																								
Agent Information																								
Name SWAMP FOX AGENCY, INC. Street PO BOX 522 City PINOPOLIS State SC Zip Code 29469-0522																								
Policy Information																								
<table border="0"> <tr> <td>Prior Policy Nbr 001000003696113</td> <td>State Carrier</td> </tr> <tr> <td>Policy Type Plan 01 - VOLUNTARY POLICY</td> <td>State Eff Dt 07/09/2014</td> </tr> <tr> <td>Assignment Date</td> <td>State Exp Dt</td> </tr> <tr> <td>Policy Type Cvr 01 - STANDARD WORKERS' COMPENSATION POLICY</td> <td>Reason State Added 0 - FIELD DOES NOT APPLY</td> </tr> <tr> <td>Wrap-Up Code 2 - NON-WRAP-UP POLICY</td> <td>Gov Class Code 2709</td> </tr> <tr> <td>Legal Nature of Insured 03 - CORPORATION</td> <td>State Premium (\$) 57,834</td> </tr> <tr> <td>Employee Leasing Code 1 - NON-EMPLOYEE LEASING POLICY</td> <td>Orig POC Rcvd Dt</td> </tr> <tr> <td>Deductible Losses Code</td> <td>Orig Policy Rcvd Dt 07/18/2014</td> </tr> <tr> <td>Deductible Calc Code</td> <td>Last Rcvd Dt 02/19/2015</td> </tr> </table>							Prior Policy Nbr 001000003696113	State Carrier	Policy Type Plan 01 - VOLUNTARY POLICY	State Eff Dt 07/09/2014	Assignment Date	State Exp Dt	Policy Type Cvr 01 - STANDARD WORKERS' COMPENSATION POLICY	Reason State Added 0 - FIELD DOES NOT APPLY	Wrap-Up Code 2 - NON-WRAP-UP POLICY	Gov Class Code 2709	Legal Nature of Insured 03 - CORPORATION	State Premium (\$) 57,834	Employee Leasing Code 1 - NON-EMPLOYEE LEASING POLICY	Orig POC Rcvd Dt	Deductible Losses Code	Orig Policy Rcvd Dt 07/18/2014	Deductible Calc Code	Last Rcvd Dt 02/19/2015
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Primary Insured Name TAC LOGGING INC		Employer Search Criteria ☐												
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Employer Name	Name Type	PEO/Client Code	Emp. Legal Status	FEIN	Street	City	State	Zip Code	Unemployment ID	Rptd Industry Code	NAICS Code	Employee Count	Name Eff Dt	Address Eff Dt
TAC LOGGING INC	2		03	570940133	1807 OSPREY DR	FLORENCE	SC	29501-8132		113310		1	07/09/2014	07/09/2014
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0 items in 1 pages <table border="1"> <thead> <tr> <th>Employer Name</th> <th>Name Type</th> <th>PEO/Client Code</th> <th>Emp Legal Status</th> <th>FEIN</th> <th>Unemployment ID</th> <th>Name Effective Date</th> <th>Name Expiration Date</th> </tr> </thead> <tbody> <tr> <td colspan="8">NO UNLINKED AND/OR DELETED NAMES FOUND</td> </tr> </tbody> </table> 0 items in 1 pages							Employer Name	Name Type	PEO/Client Code	Emp Legal Status	FEIN	Unemployment ID	Name Effective Date	Name Expiration Date	NO UNLINKED AND/OR DELETED NAMES FOUND							
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Primary Insured Name TAC LOGGING INC				Policy Exp Dt 07/09/2015		
13 items in 1 pages						
C/R/N Received Date	C/R/N Effective Date	Cancellation Notice Mail Date	Reason for Reinstatement	Transaction Code	Cancel Type	Cancel Reason
☐	☐	☐	☐	☐	☐	☐
02/19/2015	03/01/2015	02/19/2015		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
01/30/2015	01/29/2015	01/27/2015	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
01/19/2015	01/29/2015	01/19/2015		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
12/22/2014	12/26/2014	12/22/2014	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
12/16/2014	12/26/2014	12/16/2014		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
11/26/2014	11/28/2014	11/26/2014	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
11/18/2014	11/28/2014	11/18/2014		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
10/24/2014	10/31/2014	10/24/2014	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
10/23/2014	10/31/2014	10/21/2014		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
09/24/2014	09/27/2014	09/23/2014	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
09/17/2014	09/27/2014	09/17/2014		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
08/28/2014	08/29/2014	08/27/2014	01 - REINSTATEMENT REGULAR	02 - REINSTATEMENT		
08/20/2014	08/29/2014	08/19/2014		01 - CANCELLATION	02 - CANCELLED PRO-RATA	05 - NONPAYMENT OF PREMIUM
13 items in 1 pages						

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Proof of Coverage Inquiry

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Policy Carrier Reports

Transaction History

SOUTH CAROLINA

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Policy & Carrier	Names & Addresses	Names	Addresses	State Exposure	Capc/Reinst/Non-Renew	Trans History
Policy Nbr 001000003696114		Carrier Code 37729		Policy Eff Dt 07/09/2014		
Primary Insured Name TAC LOGGING INC				Policy Exp Dt 07/09/2015		
Items in 1 pages						
Received Date	Policy Trans Code	Last Activity Date	Trans Media	Doc ID	User ID	
02/19/2015	05-CANCELLATION / REINSTATEMENT	02/19/2015	ELECTRONIC		MAGTAP	
01/30/2015	05-CANCELLATION / REINSTATEMENT	01/30/2015	ELECTRONIC		MAGTAP	
01/19/2015	CANCELLATION / REINSTATEMENT	01/19/2015	ELECTRONIC		MAGTAP	
12/22/2014	CANCELLATION / REINSTATEMENT	12/22/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	12/16/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	11/26/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	11/18/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	10/24/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	10/23/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	09/24/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	09/17/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	08/28/2014	ELECTRONIC		MAGTAP	
	CANCELLATION / REINSTATEMENT	08/20/2014	ELECTRONIC		MAGTAP	
07/18/2014	02-RENEWAL POLICY	07/18/2014	ELECTRONIC		MAGTAP	
Items in 1 pages						

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TO: SOUTH CAROLINA
STATE ACCIDENT FUND

RECEIVED OF 2015-1546

JUL 09 2015

HARRY B. GREGORY, JR., Director

LEGAL DEPT.

Uninsured Employers' Fund

June 3, 2015

SCWCC

JUN 08 2015

INSURANCE &
MEDICAL SERVICES

Coverage Compliance Department
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, SC 29202

RE: David Pate v. TAC Logging
SCWCC Number: Unknown
SCUEF Number: 2015-1546
Date of Accident: 3/3/2015
SS Number: 250-17-1507

RECEIVED

JUN 19 2015

DEPT.

Uninsured Employers' Fund

Dear Coverage Compliance Department:

I am in the process of investigating this claim. If a
Capitulation Agreement or a Show Cause Order has been completed,
please indicate below and forward it to me for evaluation.

Capitulation Signed?

Yes _____ No _____

Show Cause Order?

Yes _____ No _____

Is an Insurance Carrier providing coverage for this accident?

Yes _____ No _____

If so, which carrier?

WCC#1503345
Forestry Mutual Ins Co

Also, please forward a copy of the complete file, whether or not
an Agreement or an Order has been completed.

Thank you for your assistance in this matter.

Sincerely,

James D. Lindler
Claims Representative

Workers' Compensation Uninsured Employers' Fund

Post Office Box 210039 Columbia, South Carolina 29221-0039 (803) 896-1761 FAX (803) 612-2762

www.saf.sc.gov

RECEIVED

JUN 15 2015

LEGAL DEPT.
Uninsured Employers' Fund

Case File Maintenance - Carrier

WCC# 1503345 # JAR is Open # Employee: DAVID PATE Year of Injury: 0000
 FEIN 570940133 D/t: 03/03/2015 Employer: TAC LOGGING, INC. Cur Loc: Accident Rept -
 Carrier 01084 Forestry Mutual Insurance Co. CFF: 0340011140022861 Notes Prev Loc:

Details | Employer | Carrier | Attorney | Loc/Status | Awards | Close | Judicial | Dependent/Guardian | Form 20

U

Carrier Code	CFF	Name	Active	Empl Id	Employer	Self Ins
01084	0340011140022861	Forestry Mutual Insurance Co.	Yes	456558	TAC LOGGING, INC.	No

Carrier
 Employer: TAC LOGGING, INC.
 Carrier Code 01084 Forestry Mutual Insurance Co.
 CFF: 0340011140022861
 Address Type: Claim Address
 Address P.O. Box 19467
 City: Raleigh NC 27619
 Date Inocl Ltr Sent: Date Case List Ltr Sent: Date Inactive: Reason:

Policy ID: 12A Fine Type: NRCF
 12A Fine Created: 05/19/2015
 B Letter Sent: 04/16/2015
 Last Form 18 Recd: Form 18 Due: 09/09/2015
 WCC#: 1503345

Type	Phone/Fax/Email	Ext	Primary
Business Phone	919-755-5790		no
Email For Serv	claims@forestmutoal.com		no

Notes
Form 18

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO: 1503345

David Pate)
Employee,)
Claimant,)
vs)
TAC Logging, Inc.,)
Employer,)
and)
SC UEF,)
Defendants.)

SC UEF's
SUPPLEMENTAL MEMORANDUM IN
SUPPORT

STATEMENT OF THE CASE

This matter arises out of an accidental injury, which occurred on March 3, 2015 in Union County, North Carolina. On that date, the Claimant was employed by TAC Logging, Inc., a logger with its principal place of business in Florence, South Carolina. The Claimant was involved in a truck accident and suffered numerous injuries.

Shortly thereafter, the Claimant filed a Form 50 listing Forestry Mutual Insurance Company as the Carrier for TAC Logging, Inc. on the date of the Claimant's accident. The Compliance Division of the South Carolina Workers' Compensation Commission is of the opinion that Forestry Mutual Insurance Coverage had coverage on March 3, 2015. Forestry Mutual Insurance Company has denied coverage in this case. Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. On that notice, Forestry Mutual listed March 1, 2015, ten (10) days after the date of notification as its effective date of cancellation.

As all are aware, the South Carolina Workers' Compensation Act was substantially modified effective July 1, 2007. Following that time, the Workers' Compensation Commission amended and added regulations to Chapter 67 to reflect the changes in Title 42. The changes

and amendments to those regulations as well as comments regarding those changes can be found in the *South Carolina State Register, Volume 34, Issue 2*, published February 26, 2010.

According to Forestry Mutual, Regulation 67-406 addressed the cancellation, renewal, and non-renewal of Workers' Compensation Insurance Policies up until 2010. It appears that former regulation 67-406 became effective after July 1, 1989 when NCCI became the Commission's authorized agent for filing a Report of Coverage and Notice of Termination for Workers' Compensation Insurance Policies. According to Forestry Mutual, that regulation was repealed in 2010 but not replaced. However, the provisions of former Regulation 67-406 regarding the cancellation of insurance policies are now found in Regulation 67-405 (c)(1).

Former Regulation 67-405 (a copy of which is attached numbered Exhibit 1) dealt with Employers and Insurance Carriers proof of compliance. If you review the former regulation in its entirety, it contains no provision regarding the effective date of termination or cancellation of an insurance policy. However, in 2010, that regulation was amended. Regulation 67-407 (c) (1) was added (Exhibit 2). That regulation requires an insurance carrier to file a notice of termination with the Commission's authorized agent. It further states that such termination shall not be effective until thirty (30) days after the receipt by the Commission's authorized agent. The language is almost identical to the termination/cancellation language found in former Regulation 67-406 (Exhibit 3). According to the comments found in the State Register (Exhibit 4) dealing with Regulation 67-405 (C) (1), the regulation is amended to delete references to Regulation 67-406 and Regulation 67-407, to add a reference to 67-416 and to clarify termination date. References to NCCI were deleted. According to comments, those deletions were made to "reflect the possibility NCCI might not continue to be the Commission's agent." (See highlighted comments on Exhibit 4)

The Legislature did not repeal Regulation 67-406 without replacing it. The Regulation was simply recodified under Regulation 67-405(C)(1). The purpose of the new regulation was to clarify the thirty (30) day termination date. Based upon that termination date, Forestry Mutual had insurance coverage on March 3, 2015 when the Claimant's accident occurred.

Forestry Mutual contends that because Regulation 67-406 was repealed in 2010, the Commission must look to other statutory provisions to determine the effective date of a policy cancellation. Forestry Mutual contends that Code Section 38-75-730 governs the effective date of cancellation of a Workers' Compensation Insurance Policy. Section 38-75-730 (a) reads "no insurance policy or renewal thereof may be cancelled by the insurer prior to the expiration of the term stated in the policy except for one of the following reasons: 1. Non-payment of premium...". The statute goes on to say "cancellation for non-payment of premium is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation." *South Carolina Code Annotated* §38-75-730 (b). Thus, Forestry Mutual argues that March 1st is the proper date of cancellation.

Forestry Mutual Insurance Company offered no witnesses but only documentary evidence at the Hearing held on September 29, 2015. According to those documents, Forestry Mutual filed a Notice of Cancellation with NCCI on February 19, 2015. Forestry Mutual Insurance Company introduced an affidavit into evidence showing that NCCI received that Notice of Cancellation electronically.

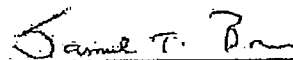
However, §38-75-730 (B) also requires that written Notice of Cancellation be delivered or mailed to the insured and the Agent of Record not less than ten days proposed effective date of cancellation. Forestry Mutual has offered no evidence to show that those requirements were

met. Even assuming that Notice of Termination was properly filed with NCCI, the other requirements of the statute must be met for cancellation to be effective. In *Larson's Workers' Compensation Law*, the authors conclude the requirements for cancelling a Workers' Compensation Insurance Policy are exacting and strictly construed because of the essential role of insurance in the compensation process and the serious potential effects of non insurance on both Employer and Employee...." Arthur Larson and Lex Larson, *Larson's Workers' Compensation Law*, Section 150.3 (2005). An Insurer's failure to strictly comply with the Regulations renders a termination ineffective. Here, Forestry Mutual has not shown that Notice of Cancellation was mailed to the insured or to his agent. Thus, cancellation is not effective.

CONCLUSION

Pursuant to Regulation 67-405 (c) (1), cancellation of Forestry Mutual's insurance policy would be effective on March 20, 2015, several weeks after the Claimant's accident. Thus, coverage was in force on the date of his accident and Forestry Mutual is responsible for benefits. Furthermore, even if §38-75-730 (a) of the *South Carolina Code of Laws* applies in this situation, Forestry Mutual failed to show that it completely complied with the requirements of that Section and thus, cancellation is ineffective.

Respectfully Submitted,


Samuel T. Brunson, SCUEF

Florence, South Carolina

October 21, 2015

REPORTS REQUIRED

R. 67-406

(a) A Form 38 approved according to this Regulation creates a rebuttable presumption of exemption from the Act.

(b) An exemption established by a Form 38 shall not prevent the department from investigating and, if necessary, requesting prosecution of the employer.

(5) The Commission may impose the maximum penalty and fine available against the employer who, although previously exempt from the Act, then operates subject to the Act and fails to comply with the insurance provisions of this Chapter and the Act.

67-405. Employers and Insurance Carriers, Proof of Compliance.

A. Every employer operating under the Act shall file with the Commission proof of its compliance with the insurance provisions of this Chapter and the Act.

B. When an employer insures its liability under the Act, the insurer shall file a report of coverage within thirty days of the inception date of the policy with the Commission as proof of the employer's compliance with the insurance provisions of this Chapter and the Act and as provided herein.

(1) A worker's compensation insurance carrier shall file a report of coverage as provided in R.67-406.

(2) The State Fund shall file a report of coverage as provided in R. 67-408.

(3) A self-insurance fund shall comply with the insurance reporting requirements in Article 15 of this Chapter.

C. A report of coverage must state the effective date of insurance coverage, the correct name and address of the insured, and the insured's FEIN.

D. The report of coverage must in the space provided for an expiration date state the word "Continuous".

E. If the employer fails to renew its insurance, or the insurer cancels the policy, the employer's insurer shall immediately notify the Commission that it no longer insures the employer by filing a notice of termination with the Commission.

(1) A worker's compensation insurance carrier shall file a notice of termination as provided in R.67-406 or R.67-407.

(2) The State Fund shall file a notice of termination as provided in R.67-408.

(3) A self-insurance fund shall file notice of termination of a fund member's self-insurance privileges as provided in Article 15 of this Chapter.

F. A report of coverage and membership in a self-insurance fund shall not expire nor shall termination or cancellation be effective until after thirty days from the date a notice of termination, or notice of cancellation of a employer's membership in a self-insurance fund, is filed with the Commission.

G. The employer's representative, and the State Fund shall on behalf of the employer file with the Commission all reports and documents required by this Chapter and the Act.

67-406. Reporting Insurance Policies with Effective Dates on or after July 1, 1989.

A. The National Council on Compensation Insurance (NCCI) is the authorized agent of the Commission for filing a report of coverage and notice of termination required in R.67-405 and the Act for workers' compensation insurance policies effective on or after July 1, 1989 and issued by an insurance carrier providing workers' compensation insurance in this State. This regulation does not apply to self-insured employers, a self-insurance fund, or the State Fund.

B. The insurance carrier shall file a report of coverage and notice of termination directly with the NCCI. The date of receipt by the NCCI is deemed the date of filing with the Commission.

C. The designated forms insurance carriers shall use to comply with R. 67-405, this Chapter, and the Act are:

(1) The NCCI standard Workers' Compensation and Employers' Liability Insurance Policy Information Page, hereinafter NCCI Form WC 00 00 01A; and

(2) The NCCI Policy Termination/Cancellation/Reinstatement Notice, hereinafter NCCI Form WC 89 06 09 A; and

(3) The NCCI Immediate Policy Coverage/Cancellation Notice, hereinafter NCCI Form WC 89 06 20 A.

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Exhibit

1

Form R 67-405

B. An employer shall withdraw from the Act by filing a Form 38 with the Coverage and Compliance Department as in subsection B(1), or, by notifying its insurance carrier as in subsection B(2) below.

(1) The employer shall complete and file with the Coverage and Compliance Department the original and one copy of a Form 38.

(a) Upon receipt of a completed, signed, and notarized Form 38, the Coverage and Compliance Department will return to the employer an approved Form 38.

(b) The effective date of withdrawal, sixty days from the date of filing, will appear on the form.

(c) The employer shall provide notice to its employees before the effective date of withdrawal by posting the approved Form 38 conspicuously in the place of employment or by giving each employee, personally, a copy of the approved Form 38.

(2) If the employer elects to withdraw from the Act by notifying in writing its workers' compensation insurance carrier, the employer's representative shall provide notice to the Commission by taking the following action:

(a) Before the effective date of the employer's insurance policy's cancellation, the insurance carrier shall complete and file with the Coverage and Compliance Department the original and one copy of a Form 38 signed by the employer.

(b) Upon receipt of a completed, signed, and notarized Form 38, the Coverage and Compliance Department will return to the insurance carrier an approved Form 38. The insurance carrier shall give the approved Form 38 to the employer.

(c) The effective date of withdrawal, sixty days from the date of filing, will appear on the form.

(d) The employer shall provide notice to its employees as in B(1)(c) above.

C. The insurance carrier's filing a policy cancellation or termination notice with the Coverage and Compliance Department or the National Council on Compensation Insurance shall not operate as notice of withdrawal from the Act. The insurance carrier shall file the Form 38 in addition to a notice of termination required in R.67-405.

D. A nonexempt employer, becoming exempt from the insurance provisions of this Chapter and the Act, may file an exemption with the Coverage and Compliance Department as provided below:

(1) File a Form 38, an attached affidavit, and supporting documentation with the Coverage and Compliance Department.

(2) The affidavit and supporting documentation must establish the employment and the employer are exempt from the insurance provisions of the Act.

(3) The form is subject to approval by the department if the supporting documentation establishes an exemption under the Act.

(4) It is the employer's responsibility to assure compliance with the insurance provisions of the Act.

(a) A Form 38 approved according to this Regulation creates a rebuttable presumption of exemption from the Act.

(b) An exemption established by a Form 38 shall not prevent the department from investigating and, if necessary, requesting prosecution of the employer.

(5) The Commission may impose the maximum penalty and fine available against the employer who, although previously exempt from the Act, then operates subject to the Act and fails to comply with the insurance provisions of this Chapter and the Act.

67-405. Employers and Insurance Carriers, Proof of Compliance.

A. Every employer operating under the Act shall file with the Commission proof of its compliance with the insurance provisions of this Chapter and the Act.

B. When an employer insures its liability under the Act, the insurer shall file a report of coverage within thirty days of the inception date of the policy with the Commission's authorized agent as proof of the employer's compliance with the insurance provisions of this Chapter and the Act and as provided herein.

(1) A workers' compensation insurance carrier shall file a report of coverage in accordance with R.67-416.

(2) The State Accident Fund shall file a report of coverage in accordance with R.67-416.

(3) A self-insurance fund shall comply with the insurance reporting requirements in Article 15 of this Chapter.

C. If the employer fails to renew its insurance, or the insurer cancels the policy, the employer's insurer shall immediately notify the Commission's authorized agent that it no longer insures the employer.

(1) A worker's compensation insurance carrier shall file a notice of termination in accordance with R.67-416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent.

(2) The State Accident Fund shall file a notice of termination in accordance with R.67-416. Such termination shall not be effective until thirty days after receipt by the Commission's authorized agent.

(3) A self-insurance fund shall file notice of termination of a fund member's self-insurance privileges as provided in Article 15 of this Chapter.

D. The employer's representative and the State Accident Fund shall on behalf of the employer file with the Commission all reports and documents required by this Chapter and the Act.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

67-409. Duplicate or Dual Insurance Coverage.

A. When duplicate or dual coverage exists by reason of two different insurance carriers issuing two policies to the same employer securing the same liability, the Commission shall presume the policy with the later effective date is in force and the earlier policy terminated on the effective date of the later policy.

B. When both policies carry the same effective date, one policy may be cancelled by filing a notice of termination retroactive to the date of the policy's inception.

(1) Cancellation must be reported as provided in R.67-405.

(2) The insurance carrier issuing the notice of termination shall provide the employer notice of termination.

HISTORY: Amended by State Register Volume 34, Issue No. 2, eff February 26, 2010.

Notes of Decisions

In general 1

1. In general

The last injurious exposure rule, which placed full liability upon insurer covering the risk at the time of the most recent injury that bore a causal relation to the disability, applied to determine which insurer was responsible to pay workers' compensation claimant's benefits for second injury; statute favored placing sole liability on a single insurer, and regulations instructed the Workers' Compensation Commission to presume that the policy with a later effective date was in force when duplicate or dual coverage existed. *Geathers v. 3V, Inc.* (S.C. 2007) 641 S.E.2d 29, 371 S.C. 570. Workers' Compensation ¶ 865.3

Under Workers Compensation Assigned Risk Plan, assigned risk workers' compensation insurance policy issued to employer never became effective, such that there was no dual coverage triggering workers' compensation regulation setting forth presumption that policy with later effective date was in force, where another carrier had previously issued a voluntary workers' compensation policy to employer and that voluntary policy had not been cancelled at time the assigned risk policy was

issued. *Rodriguez v. Romero* (S.C. 2005) 510 S.E.2d 488, 363 S.C. 80, rehearing denied. Workers' Compensation ¶ 1065.

Provision of the Workers' Compensation Insurance Plan (WCIP), rather than Workers' Compensation Commission regulation, governed effect of coverage for employer under a voluntary policy during period of assigned risk policy, and, thus, the assigned risk policy terminated as of the effective date of the voluntary policy; the WCIP addressed the specific situation and required cancellation of an assigned risk policy upon the effective date of voluntary coverage, whereas the regulation terminating policy on effective date of later policy generally addressed duplicate policies issued by, rather than assigned to, multiple carriers. *Avant v. Willowglen Academy* (S.C.App. 2003) 588 S.E.2d 125, 356 S.C. 181, rehearing denied, affirmed 626 S.E.2d 797, 367 S.C. 315. Workers' Compensation ¶ 1068.

Regulatory presumption that the workers' compensation policy with the later effective date is in force and the earlier policy terminated on the effective date of the later policy, when duplicate or dual coverage exists by reason of two different policies, applies only where two carriers have issued policies and dual voluntary coverage is in effect at the time of the claim. *Avant v. Willowglen Academy* (S.C.App. 2003) 588 S.E.2d 125, 356 S.C. 181, rehearing denied, affirmed 626 S.E.2d 797, 367 S.C. 315. Workers' Compensation ¶ 1068.

67-411. Employer's Report of Injury, Form 12A.

A. Each employer shall keep a record of all injuries, fatal or otherwise, received by its employees in the course of their employment.

(1) The record must be made on the Form 12A and retained or filed according to section B below.

(2) The Commission shall not construe the filing of a Form 12A as an admission of liability on the part of the employer or the employer's representative.

REPORTS REQUIRED

R 67-406

(a) A Form 38 approved according to this Regulation creates a rebuttable presumption of exemption from the Act.

(b) An exemption established by a Form 38 shall not prevent the department from investigating and, if necessary, requesting prosecution of the employer.

(5) The Commission may impose the maximum penalty and fine available against the employer who, although previously exempt from the Act, then operates subject to the Act and fails to comply with the insurance provisions of this Chapter and the Act.

67-405. Employers and Insurance Carriers, Proof of Compliance.

A. Every employer operating under the Act shall file with the Commission proof of its compliance with the insurance provisions of this Chapter and the Act.

B. When an employer insures its liability under the Act, the insurer shall file a report of coverage within thirty days of the inception date of the policy with the Commission as proof of the employer's compliance with the insurance provisions of this Chapter and the Act and as provided herein.

(1) A worker's compensation insurance carrier shall file a report of coverage as provided in R.67-405.

(2) The State Fund shall file a report of coverage as provided in R. 67-408.

(3) A self-insurance fund shall comply with the insurance reporting requirements in Article 15 of this Chapter.

C. A report of coverage must state the effective date of insurance coverage, the correct name and address of the insured, and the insured's FEIN.

D. The report of coverage must in the space provided for an expiration date state the word "Continuous".

E. If the employer fails to renew its insurance, or the insurer cancels the policy, the employer's insurer shall immediately notify the Commission that it no longer insures the employer by filing a notice of termination with the Commission.

(1) A worker's compensation insurance carrier shall file a notice of termination as provided in R.67-406 or R.67-407.

(2) The State Fund shall file a notice of termination as provided in R.67-408.

(3) A self-insurance fund shall file notice of termination of a fund member's self-insurance privileges as provided in Article 15 of this Chapter.

F. A report of coverage and membership in a self-insurance fund shall not expire nor shall termination or cancellation be effective until after thirty days from the date a notice of termination, or notice of cancellation of a employer's membership in a self-insurance fund, is filed with the Commission.

G. The employer's representative, and the State Fund shall on behalf of the employer file with the Commission all reports and documents required by this Chapter and the Act.

67-406. Reporting Insurance Policies with Effective Dates on or after July 1, 1989.

A. The National Council on Compensation Insurance (NCCI) is the authorized agent of the Commission for filing a report of coverage and notice of termination required in R.67-405 and the Act for workers' compensation insurance policies effective on or after July 1, 1989 and issued by an insurance carrier providing workers' compensation insurance in this State. This regulation does not apply to self-insured employers, a self-insurance fund, or the State Fund.

B. The insurance carrier shall file a report of coverage and notice of termination directly with the NCCI. The date of receipt by the NCCI is deemed the date of filing with the Commission.

C. The designated forms insurance carriers shall use to comply with R. 67-405, this Chapter, and the Act are:

(1) The NCCI standard Workers' Compensation and Employers' Liability Insurance Policy Information Page, hereinafter NCCI Form WC 00 00 01A; and

(2) The NCCI Policy Termination/Cancellation/Reinstatement Notice, hereinafter NCCI Form WC 89 06 09 A; and

(3) The NCCI Immediate Policy Coverage/Cancellation Notice, hereinafter NCCI Form WC 89 06 20 A.

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Form R 67-406 and 407

Exhibit
3

D. To issue a workers' compensation insurance policy and file a report of coverage with the Commission, the insurance carrier shall file with the NCCI the NCCI Form WC 00 00 01A, required endorsements and schedules, if any, within thirty days of the policy's effective date.

(1) An insurance carrier may file the NCCI Form, WC 89 06 20 A, to meet the thirty day filing requirement if the NCCI Form, WC 00 00 01A, is filed with the NCCI within thirty days from the date the policy is issued.

(2) The NCCI Form WC 89 06 20 A does not substitute for the NCCI Form WC 00 00 01A.

(3) Failure to file with the NCCI timely may result in the assessment of a fine against the insurance carrier.

E. Workers' compensation insurance is deemed continuous until notice of termination is filed according to R.67-405 and as provided in F below.

F. To cancel workers' compensation insurance coverage, not to renew workers' compensation insurance coverage, or to reinstate a workers' compensation insurance policy, the insurance carrier shall file with the NCCI an NCCI Form WC 89 06 09 A.

(1) The insurance carrier may file this notice with the NCCI thirty or more days before the effective date.

(2) Insurance expiration, termination or cancellation shall not be effective until after thirty days from the date of receipt by NCCI of the NCCI Form WC 89 06 09 A.

G. Electronic equivalents to the above-mentioned forms, as specified by NCCI, must provide all name and address information in a field-formatted manner consistent with the International Association of Industrial Accident Boards & Commissions Proof of Coverage Standard.

HISTORY: Amended by State Register Volume 22, Issue No. 6, Part 3, eff June 26, 1998.

Effect of Amendment

The 1998 amendment added (G).

Notes of Decisions

In general 1

1. In general

Insurance company was liable to provide workers' compensation insurance coverage to employer, even though company had terminated employer's coverage, where company had electronically submitted employer's policy to the National Council on Compensation Insurance (NCCI), company then mailed a hard copy of the policy to NCCI, both filings contained the

same policy number, however the hard copy also contained a three-letter prefix in the policy number, NCCI's system registered employer as having two policies, company filed a notice of termination of employer's coverage with NCCI and listed the policy number to be terminated; and company did not notify NCCI of termination of coverage for the policy that contained a three-letter prefix in the policy number. *Earl v. HTH Associates, Inc./Ace Usa Ins. Co. of North America* (S.C.App. 2006) 627 S.E.2d 760, 368 S.C. 76. Workers' Compensation = 1069

67-407. Insurance Policies with Effective Dates before July 1, 1989.

A. All insurance carriers other than a self-insurance fund or the State Fund providing workers' compensation insurance effective before July 1, 1989, shall file the reports and notices required in R.67-405 and the Act directly with the Commission's Coverage and Compliance Department until the next policy period.

B. The designated forms insurance carriers shall use to comply with R. 67-405, this Chapter, and the Act are:

- (1) RB25, Report of Coverage —Form "A", hereinafter RB25; and
- (2) RB26, Report of Cancellation —Form "B", hereinafter RB26; and
- (3) RB27, Report of Endorsement —Form "C", hereinafter RB27.

C. To file a notice of termination in R.67-405, the insurance carrier shall file an RB26 with the Coverage and Compliance Department.

(1) The insurance carrier may file the RB26 thirty days or more before the effective date of termination.

(2) Insurance expiration, termination, or cancellation shall not be effective until after thirty days from the date of filing the RB26 with the Coverage and Compliance Department.

D. To amend a previously filed RB25, the insurance carrier shall file an RB27 with the Coverage and Compliance Department.

(1) Reinstatement of insurance coverage effective before July 1, 1989, but which has lapsed after July 1, 1989, shall be filed according to R.67-406.

(2) An RB27 attempting to cancel insurance shall not substitute for an RB26.

E. When the policy period expires for policies issued before July 1, 1989, the insurer shall file a notice of termination as in R.67-407C above and report a new policy period as provided in R.67-406.

67-408. The State Workers' Compensation Fund, Proof of Compliance.

A. The State Workers' Compensation Fund shall file a report of coverage and notice of termination as required in R.67-405 directly with the Commission's Coverage and Compliance Department as provided below.

B. The State Fund shall file the Forms RB25, RB26, and RB27 as in R.67-407 to comply with R.67-405, this Chapter and the Act.

C. To report insurance coverage, file with the Coverage and Compliance Department an RB25.

(1) The RB25 must be filed within thirty days of the policy's effective date.

(2) The insurance is deemed continuous as in R.67-405 until notice of termination is filed according to section D below.

(3) Failure to file an RB25 within thirty days of the policy's effective date may result in the assessment of a fine against the State Fund.

D. To terminate insurance, file an RB26 with the Coverage and Compliance Department.

(1) The RB26 may be filed thirty days or more before the date of termination.

(2) Insurance expiration, termination, or cancellation shall not be effective until after thirty days from the date of filing an RB26 with the Coverage and Compliance Department.

E. To amend a previously filed RB25 or to reinstate insurance coverage, file an RB27 with the Coverage and Compliance Department.

(1) An RB27 does not substitute for an RB26.

(2) Insurance may be terminated according to section D above.

67-409. Duplicate or Dual Insurance Coverage.

A. When duplicate or dual coverage exists by reason of two different insurance carriers issuing two policies to the same employer securing the same liability, the Commission shall presume the policy with the later effective date is in force and the earlier policy terminated on the effective date of the later policy.

B. When both policies carry the same effective date, one policy may be cancelled by filing a notice of termination retroactive to the date of the policy's inception.

(1) Cancellation must be reported as provided in R.67-405, R.67-406, R.67-407, or R.67-408, as applicable.

(2) The insurance carrier issuing the notice of termination shall provide the employer notice of termination.

Notes of Decisions

In general 1

1. In general

The last injurious exposure rule, which placed full liability upon insurer covering the risk at the time of the most recent injury that bore a causal relation to the disability, applied to determine which insurer was responsible to pay workers' compensation claimant's benefits for second injury; statute favored placing sole liability on a single insurer, and regulations instructed the Workers' Compensation Commission to presume that the policy with a later effective date was in force when duplicate or dual coverage existed. *Geathers v. SV, Inc.* (S.C. 2007) 611 S.E.2d 29, 371 S.C. 570. *Workers' Compensation* 1074

Under Workers Compensation Assigned Risk Plan, assigned risk workers' compensation insurance policy issued to employ-

er never became effective, such that there was no dual coverage triggering workers' compensation regulation setting forth presumption that policy with later effective date was in force, where another carrier had previously issued a voluntary workers' compensation policy to employer and that voluntary policy had not been cancelled at time the assigned risk policy was issued. *Rodriguez v. Romero* (S.C. 2005) 610 S.E.2d 488, 363 S.C. 80, rehearing denied. *Workers' Compensation* 1065

Provision of the Workers' Compensation Insurance Plan (WCIP), rather than Workers' Compensation Commission regulation, governed effect of coverage for employer under a voluntary policy during period of assigned risk policy, and, thus, the assigned risk policy terminated as of the effective date of the voluntary policy; the WCIP addressed the specific situation and required cancellation of an assigned risk policy upon the effective date of voluntary coverage, whereas the regulation terminating policy on effective date of later policy generally

Document No. 4115
STATE BOARD OF EDUCATION
CHAPTER 43

Statutory Authority: 1976 Code Sections 59-5-60 and 59-53-1810

43-233. South Carolina Four-Year State Plan for Career and Technology Education, Fiscal Years 2001-2004

Synopsis:

The State Board of Education proposes to repeal R.43-233: The South Carolina Four-Year State Plan for Career and Technology Education, and the subsequent updates and extensions authorized by the U.S. Department of Education under the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), expired on June 30, 2007. The Carl D. Perkins Career and Technical Education Act of 2006 (Perkins IV) created the need for a one-year transition plan and a subsequent five-year plan for approval to receive the federal funds from the U.S. Department of Education. The state plan must be updated periodically according to guidelines issued by the U.S. Department of Education. There is no requirement that the state plan approved by the U.S. Department of Education be incorporated into a State Board of Education Regulation.

The Notice of Drafting was published in the *State Register* on July 24, 2009.

Instructions: The entire Regulation 43-233 is being repealed.

Text:

Repeal Regulation 43-233.

Document No. 4043
WORKERS' COMPENSATION COMMISSION
CHAPTER 67
 Statutory Authority: 1976 Code Section 42-3-30

- 67-202. Words and Phrases, Defined.
- 67-203. Official Forms and Documents.
- 67-205. Filing with the Commission, Defined.
- 67-206. Filing a Claim.
- 67-207. Requesting a Hearing, Claimant.
- 67-211. Service of Forms and Documents.
- 67-213. Service of Orders, Hearing Notices, and Review Hearing Notices.
- 67-401. Designation of Authorized Recipient of Service and Other Demands.
- 67-405. Employers and Insurance Carriers, Proof of Compliance.
- 67-406. Reporting Insurance Policies with Effective Dates on or after July 1, 1989.
- 67-407. Insurance Policies with Effective Dates before July 1, 1989.
- 67-408. The State Workers' Compensation Fund, Proof of Compliance.
- 67-409. Duplicate or Dual Insurance Coverage.
- 67-410. Information Required When Filing Proof of Compliance.
- 67-411. Employer's Report of Injury, Form 12A.
- 67-412. Employer's Report of Injury, Form 12M.
- 67-415. Documentation of Insurance.
- 67-416. Electronic Data Interface.
- 67-603. Employer's Answer to a Request for Hearing, Time for Filing and Service.
- 67-607. Hearing Notice.
- 67-609. Withdrawing a Request for Hearing.

South Carolina State Register Vol. 34, Issue 2
 February 26, 2010

Exhibit
 4

24 FINAL REGULATIONS

- 67-701. Requesting Commission Review of the Hearing Commissioner's Decision.
- 67-709. Commission Review, Procedure.
- 67-712. Requesting Higher Court Review.
- 67-801. Settlement of the Claim, General.
- 67-802. Settlement, Form 16.
- 67-803. Settlement by Agreement and Final Release.
- 67-804. Informal Conference.
- 67-805. Third Party Settlements.
- 67-1001. Parties, General.
- 67-1101. Total or Partial Loss or Loss of Use of a Member, Organ, or Part of the Body.
- 67-1204. Reporting Attorneys Fees for approval.
- 67-1301. Medical Reports.
- 67-1307. Rehabilitation Professionals.
- 67-1308. Communication Between Parties And Health Care Providers.
- 67-1402. Unqualified Self-Insured Employer, Prosecution.

Synopsis:

The Commission amends and adds regulations to Chapter 67 to reflect changes in Title 42 necessitated by the approval of Act 111 on June 25, 2007. The amendments, deletions, and additions further reflect grammatical changes, the ability to receive and to serve forms and documents electronically, changes in electronic data interchange procedures, and additions in attorney fee petition procedures.

The Notice of Drafting was published in the *State Register* on September 26, 2008.

Instructions:

Section-by-Section Discussions:

R.67-202A(1) is amended to more accurately describe the Accident Reporting Division.

R.67-202A(4) is amended to make a grammatical change.

R.67-202A(5) is amended to describe only the Compliance Division and its duties.

A new R.67-202A(6) is added to describe the Coverage Division and its duties.

R.67-202A(6), R.67-202A(7), R.67-202A(8), R.67-202A(9), R.67-202A(10), R.67-202A(11), R.67-202A(12), and R.67-202A(13) will be renumbered accordingly.

Newly renumbered R.67-202A(11) is amended to reflect the proper name of the Medical Services Division and the correct names of the provider manuals used.

Newly renumbered R.67-202A(12) is amended to reflect a change in the name of the Public Assistance Division to the Public Affairs Division and a grammatical correction.

The original R.67-202A(14) is deleted in its entirety.

R.67-202A(18) is added.

R.67-203A is amended to reflect changes in duplication of forms:

R.67-203B is amended to reflect the availability of the Commission's forms on the web site.

FINAL REGULATIONS 25

A new form, Form 14B, becomes R.67-203B(22) and current R.67-203B(22) becomes R.67-203B(23). The current subparagraph (23) becomes (24) and current (24) is renumbered to (25).

A new form, Form 16A becomes R.67-203B(26). Current R.67-203B(26) is renumbered as R.67-203B(28). The subsequent subparagraphs are renumbered through R.67-203B(38).

New Form 39 is inserted as R.67-203B(39). All subsequent subparagraphs through R.67-203B(45) are renumbered.

Current R.67-203B(46) and R.67-203B(48) are deleted.

Current R.67-203B(46) through R.67-203B(52) are renumbered.

R.67-203(53) R.67-203B(54), and R.67-203B(55) are deleted.

R.67-205B is amended to allow forms and documents to be delivered to the Commission electronically.

R.67-206B(2) is amended to reflect a change in filing a claim.

R.67-206B(3) is deleted.

R.67-206B(4) is renumbered as R.67-206B(3).

R.67-206C is amended to reflect the number of items listed.

Punctuation is corrected in R.67-206C(12).

A new R.67-206C(13) is added.

Current R.67-206C(13) is amended to become R.67-206D and to delete reference to the Claims Department.

Current R.67-206C(14) is amended to become R.67-206E and to delete reference to the Claims Department.

R.67-207A(5) is added as an additional requirement for requesting a hearing.

R.67-211A(1), R.67-211A(2), R.67-211B(1), and R.67-211C(1) are amended to allow electronic service of forms and documents.

R.67-211C(3) has been added.

R.67-213A is amended to permit service of orders electronically.

R.67-213B is amended to allow Hearing Notices to be served electronically. It is further amended to state all unrepresented claimants and uninsured employers shall be served by first class mail.

R.67-401A is amended to require the designation of one address and one electronic address in underwriting matters.

A new R.67-401B is added.

Current R.67-401B is renumbered R.67-401C.

26 FINAL REGULATIONS

Newly renumbered R.67-401C is amended to require insurance carriers, self-insured employers, and self-insurance funds to designate an electronic address and deletes reference to the Coverage and Compliance Department.

Current R.67-401C is renumbered R.67-401D.

Newly renumbered R.67-401D is amended to delete the designation date and reference to the Coverage and Compliance Department.

New R.67-401E, R.67-401F, and R.67-401G are added.

R.67-405B is amended to add the Commission's "authorized agent." This is added to reflect the possibility NCCI might not continue to be the Commission's agent.

R.67-405B(1) is amended correct a grammatical error, to delete the reference to R.67-406, and to add a reference to R.67-416.

R.67-405B(2) is amended to add Accident to State Fund, to delete the reference to R.67-408, and to add a reference to R.67-416.

R.67-405C is deleted in its entirety.

R.67-405D is deleted in its entirety.

R.67-405F is deleted in its entirety.

Current R.67-405E and R.67-405G become R.67-405C and R.67-405D.

Newly renumbered R.67-405C is amended to add "authorized agent" and changes regarding cancellation of or failure to renew insurance notification.

Newly renumbered R.67-405C(1) is amended to delete references to R.67-406 and R.67-407, to add a reference to R.67-416, and to clarify termination date.

Newly renumbered R.67-405C(2) is amended to add Accident to State Fund, to delete reference to R.67-408, to add a reference to R.67-416, and to clarify termination date.

Newly renumbered R.67-405D is amended to make a grammatical correction and to add Accident to State Fund.

R.67-406 is deleted in its entirety.

R.67-407 is deleted in its entirety.

R.67-408 is deleted in its entirety.

R.67-409B(1) is amended to delete reference to R.67-406, R.67-407, and R.67-408.

R.67-410 is deleted in its entirety.

R.67-411A(1) is amended by deleting "in writing."

R.67-411C(1) is amended by deleting "annually."

From: Ducote, Wayne wducote@wcc.sc.gov
Subject: RE: Daavid Pate vs. TAC Logging, Inc. WCC File No. 1503345; Date of Accident
Date: September 29, 2015 at 8:58 AM
To: Bubba Brunson bublaw@earthlink.net

Mr. Brunson,

The documents from NCCI that are provided in your attachment are the same documents that the Coverage Division of the Commission reviews when determining coverage. As you will notice, the notice of cancellation was received by NCCI on 2/19/15. Pursuant to R. 67-405C(1), a termination of a workers comp policy shall not be effective until 30-days after receipt by the Commission's authorized agent (NCCI). Following that 30-day rule, the cancellation would not be effective until on or about 3/20/15. However, the final decision would be determined by a Commissioner at a hearing.

Thank you.

Wayne Ducote, Jr.

Director of Coverage & Compliance
SC Workers' Compensation Commission

From: Bubba Brunson [mailto:bublaw@earthlink.net]
Sent: Monday, September 28, 2015 3:45 PM
To: Ducote, Wayne
Subject: Daavid Pate vs. TAC Logging, Inc. WCC File No. 1503345; Date of Accident

Wayne: as you may remember, you and I discussed Compliance Issues in the above claim last week. The carrier in this case filed a cancellation notice with NCCI on 2/19/2015 placing an effected date of cancellation of 3/01/15 on that Notice. NCCI cancelled the policy on that date per that Notice. It is my understanding that Compliance at the WCC is of the opinion that the policy was still in effect on that date as WCC Regulation 67-405(C) 1 requires a 30 day Notice of cancellation. Could you please take a look at the documents faxed by Atty Will Littlejohn and give me a call. 843-669-8111

Bubba Brunson
bublaw@earthlink.net
www.flatfeewc.com
843-669-8111

Begin forwarded message:

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1503345

David Pate,	)	
Employee,	)	
Claimant,	)	
vs.	)	
TAC Logging,	)	
Employer,	)	MOTION TO SUPPLEMENT THE
and	)	RECORD and RESPONSE TO UEF'S
Forestry Mutual Insurance Company,	)	SUPPLEMENTAL BRIEF
Carrier,	)	
Defendants.	)	

TO: Commissioner Melody James;
Christopher G. Isgett, Esquire, Attorney for Claimant;
Samuel T. Brunson, Uninsured Employers' Fund
TAC Logging, Inc.

YOU WILL PLEASE TAKE NOTICE that on the tenth day of service hereof or as soon thereafter as the matter can be heard, Forestry Mutual Insurance Company, will move before the jurisdictional Commissioner for an order supplementing the record. Grounds for this motion are as follows:

Notice of Cancellation

The Uninsured Employers' Fund (UEF) raised for the first time in their supplemental brief that Forestry Mutual provided no evidence that TAC Logging, Inc., received written notice of the policy cancellation. This is factually incorrect as the record contains substantial evidence of written notice of the cancellation; however, given this is the first time the UEF has raised the argument, Forestry Mutual moves to Supplement the Record with the "Certified Mail" receipt from TAC Logging, Inc. (Exhibit A).

Section 38-75-730(B) of the South Carolina Code provides, "Cancellation . . . is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than ten days prior to the proposed effective date of cancellation. Cancellation under items (2) through (5) of subsection (a) of this section is not effective unless written notice of cancellation has been delivered or mailed to the insured and the agent of record, if any, not less than thirty days prior to the proposed effective date of cancellation. The notice must be given or mailed to the insured and the agent at their addresses shown in the policy or, if not reflected therein, at their last known addresses. Any notice of cancellation shall state the precise reason for cancellation. Proof of mailing is sufficient proof of notice."

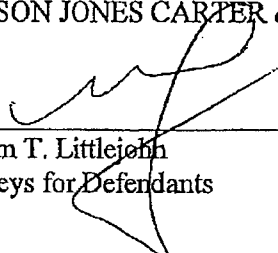
At the hearing, Forestry Mutual submitted the actual written Notice of Cancellation, titled "Confirmation of Policy Termination/Cancellation/Reinstatement Notice" (Defendant Forestry Mutual's APA p. 46). This document is clearly addressed to "TAC LOGGING, INC. 1807 OSPREY DRIVE, FLORENCE, SC 29501," and unmistakably states the precise ground for the cancellation: non-payment of premium. The document provides proof of mailing on February 19, 2015, as it clearly identifies February 19, 2015, as the date the Notice of Cancellation was issued to TAC Logging, Inc. The Certified Mail receipt is not only evidence of mailing, but evidence of receipt of the notice. Furthermore, at the hearing, it was uncontroverted that Forestry Mutual provided written notice of the policy cancellation on February 19, 2015. Accordingly, there is ample evidence in the record demonstrating Forestry Mutual issued written notice of cancellation of TAC Logging Inc.'s policy on February 19, 2015.

Conclusion

Forestry Mutual provided written notice of cancellation on February 19, 2015, when it issued the Notice of Cancellation to TAC Logging, Inc. Given the UEF only raised the issue of

ineffective cancellation in their supplemental brief, Forestry Mutual moves for an order supplementing the record with the "Certified Mail" receipt. Pursuant to § 38-75-730(b) of the South Carolina Code, the effective date of cancellation would be not less than ten days after February 19, 2015. The tenth day after cancellation was March 1, 2015. Accordingly, Forestry Mutual effectively canceled TAC Logging Inc.'s workers' compensation insurance policy on March 1, 2015 and, as a result, Forestry Mutual did not insure TAC Logging on March 3, 2015, the date of the accident.

WILLSON JONES CARTER & BAXLEY, P.A.



William T. Littlejohn
Attorneys for Defendants

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS, FOLD TO OPEN LINE

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. - Print your name and address on the reverse so that we can return the card to you. - Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature X <i>Mary Carter</i> ☐ Agent ☐ Addressee B. Received by (Print Name) <i>Mary Carter</i> C. Date of Delivery <i>2/24/13</i> D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
1. Article Addressed to: TAC LOGGING, INC. 1807 OSPREY DRIVE FLORENCE, SC 29501		3. Service Type ☒ Certified Mail® ☐ Priority Mail Express™ ☐ Registered ☒ Return Receipt for Merchandise ☐ Insured Mail ☐ Collect on Delivery	
2. Article Number (Transfer from service label) 7014 0150 0000 7811 7705		4. Restricted Delivery? (Extra Fee) ☐ Yes	
PS Form 3811, July 2013		Domestic Return Receipt	

U.S. Postal ServiceTM
CERTIFIED MAILSM RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Rt (Eon)	
To	TAC LOGGING, INC. 1807 OSPREY DRIVE FLORENCE, SC 29501
Sent	
Street, or PO box no.	
City, State, ZIP+4	

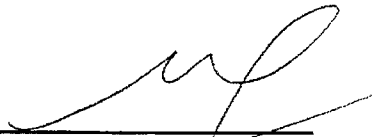
PS Form 3800, August 2006 See Reverse for Instructions

Ex: A

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 9, 2016



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

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NOV 17 2016
SC Court of Appeals