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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DARLINGTON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Opinion No. 2018-UP-010 (S.C. Ct. App. filed January 10, 2018)

Ard Trucking Company..... Petitioner,

v.

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

APPENDIX TO THE
PETITION FOR WRIT OF CERTIORARI
VOLUME II OF II

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INDEX

Index to Record on Appeal ii

1. Record on Appeal0001 - 0648

 Supplemental Record0649 - 0657

2. Final Brief of Appellant/Proof of Service 0658 - 0697

3. Final Brief of Respondent/Proof of Service0698 - 0737

4. Final Reply Brief of Appellant0738 - 0766

5. Unpublished Opinion No. 2018-UP-0100767 - 0771
 Reversing Trial Court’s Decision Filed January 10, 2018

6. Petitioner’s Petition for Rehearing0772 - 0799

7. Appellant’s Return to Petition for Rehearing 0800 - 0803

8. Order of the South Carolina Court of Appeals
 Denying Petition for Rehearing Filed April 18, 20180804

INDEX

to Record on Appeal

1. Summary Judgment Order in Favor of Plaintiff dated February 5, 2015	001
2. Order Denying Motion for Reconsideration dated March 20, 2015, filed March 24, 2015	0015
3. Draft Proposed Order Granting Travelers' Motion for Summary Judgment and Judgment of \$160,908.20 in favor of Travelers	0016
4. Transcript of Record dated December 18, 2014	0029
5. Motion for Summary Judgment for Travelers filed September 16, 2014	0061
6. Travelers' Motion for Reconsideration pursuant to SCRCR Rules 52 and 59 of SCRCR dated March 2, 2015, filed March 5, 2015	0013
7. Travelers' Memorandum in Support of its Motion for Summary Judgment and accompanying exhibits/documents	00136
8. Affidavit of Roshani B. Ghayal	00152
9. Frederick J. Moylen	00264
10. Steve V. Evangelista, APA	00269
11. Affidavit of C. Allen Ard, with attachments of his Affidavit	00503
12. Affidavit of Harry Brown	00545
13. S.C. Department of Insurance Approved LSRP Plan, SCDOI 001-0040	00548
14. SCDOI's Basic Manual page SCDOI 00029, with D. Notice to Assigned Risk Policyholders	00587
15. Workers' Compensation Insurance Plan (WCIP) Rule 4 and Section 1 "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities."	00588
16. The Travelers Workers' Compensation Insurance policy issued December 1, 2003 to Ard Trucking Company, Inc.	00594
17. The Travelers Workers' Compensation Insurance policy issued March 1, 2004 to Ard Trucking Company, Inc.	00616
18. Appellant's policy Change Document WC 99 99 98 (00) issued 07-27-04	00647
19. Certificate of Appellant	00648
20. Supplemental Record	0649



National Council on Compensation Insurance

R.S.#33 South Carolina Item Filing

Government, Consumer and Industry Affairs

M. Miller R. Roy O. Wood Director

2/25/94

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STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE

February 25, 1994

Honorable John G. Richards V Chief Insurance Commissioner State of South Carolina Department of Insurance 1512 Marion Street Columbia, South Carolina 29201

98471003

APPELLANT

Re. Item 01-SC-94 - Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)

Dear Commissioner Richards:

STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE

In accordance with the applicable statutes and regulations of South Carolina, I am filing for your consideration and approval the above-captioned item filing. This item filing is proposed to become effective on March 1, 1994, applicable to new and renewal business in the Workers Compensation Insurance Plan. Once the filing is approved the program will apply, to eligible accounts, with effective dates on or after September 1, 1994.

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to provide large employers with added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP has the added advantage of encouraging the large employer to obtain coverage in the voluntary market by removing the potential financial advantage that guaranteed cost residual market coverage may currently provide.

Included as part of the filing package is a listing of employers from current records identified as potentially being eligible for the LSRP. Any existing WCIP employers identified as being eligible will receive a six month notice of the implementation of LSRP in order to be provided the opportunity to place coverage in the voluntary market. New eligible risks coming into the WCIP on or after the implementation date will be provided a 120 day window of opportunity, after effective date of coverage, to place coverage voluntarily thereby avoiding application of LSRP to the period for which coverage was in effect.

102 E. College Avenue, Suite 550, Tallahassee, FL 32301 Telephone: 904-224-7200

SCDOI 00011

APPELLANT ROA 00401

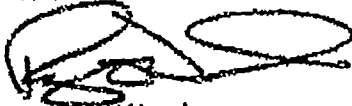
Page 2

Pursuant to the authority of the Plan, NCCI in its capacity as Plan Administrator, is making this filing on behalf of the participating insurers in the Workers' Compensation Insurance Plan in your jurisdiction.

Please contact me if you need additional information.

Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION INSURANCE



Roy O. Wood
Director
Government, Consumer and Industry Affairs

cc: Executive Director, Workers' Compensation Commission

APR 15 1994
STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE



National Council on Compensation Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994 SC-94-01 PLAN-SC-94-1 Page 1 of 1

Contact: James R. Nau, Director 407-997-4568
 Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4381

Copy to Paula Shields, Underwriting

SOUTH CAROLINA ITEM FILING

ITEM 01-SC-94--ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.125
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

No other factors for underwriting

* Retrospective Development Factors are not applicable in South Carolina.

(3)

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 281B.

Charlotte should advise

Letter plan @ \$200,000

760 Park of Commerce Drive, Boca Raton, FL 33487 Telephone: 407-997-1000

DIRM10.1

SCDOI 00013

APPELLANT ROA 00403

FILING MEMORANDUM

Item 01-SC-94 Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)
To be effective 12:01 A.M., March 1, 1994, applicable to New and Renewal Business

Purpose:

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to depopulate the residual market, to promote safety and loss-control, and to provide fairness.

Large employers would be encouraged to obtain coverage in the voluntary market since the potential financial advantage that guaranteed cost residual market coverage may currently provide for these employers would be removed. Therefore, the LSRP has the potential for depopulating the residual market and thus reducing the assigned risk burden.

The LSRP would also provide large employers with an added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP promotes fairness by rewarding those risks with good loss experience with lower premiums and penalizing those risks with poor loss experience with higher premiums.

Background:

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through the voluntary market. The residual market was not intended to compete with the voluntary market by allowing risks to avoid various loss sensitive rating offers for guaranteed cost policies.

In considering alternatives for the large employer, a loss-sensitive plan is the preferred rating method. Loss-sensitive rating is more equitable because those employers incurring the losses help pay them, and employers affected by the LSRP are large enough that they should have the means to effectively reduce losses.

Proposal:

It is proposed that the attached LSRP be implemented six months from the date of regulatory approval of this program. Upon approval, all LSRP-eligible accounts, the producers and current servicing carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. These large employers will be encouraged to obtain coverage in the voluntary market and the six month advance notice gives them sufficient time to do so.

Summary of the Plan:

To reduce losses, a plan should provide a positive, long-term financial incentive by rewarding excellent performance with reduced cost. However, as this is the residual market, such a plan had to provide this incentive without being competitive with voluntary market loss-sensitive pricing programs. Therefore, the LSRP must be mandatory and contain parameters that are less favorable than typical plans available in the voluntary market.

The following is a summary of LSRP which demonstrates that a mandatory loss sensitive rating plan is appropriate for this size risk and will be effective in reducing employer losses and depopulating the residual market.

Eligibility is established at \$200,000 in standard premium primarily because risks of this size are expected to have a sufficient number of claims to allow loss control programs to be effective. Loss-sensitive plans are also customarily available in the voluntary market for risks of this size.

The LSRP is a simple loss sensitive plan constructed to be uniformly applied to all eligible risks. The "one-set-of-parameters-fits-all" approach was designed to engender a basic premium factor whose impact increases with size of risk. This is appropriate since the larger the risk, the greater the opportunity for finding coverage in the voluntary market. These plan parameters are not negotiable for two reasons: "tailored" or designed plans are available in the voluntary market; and as the residual market assignment mechanism is random, the "luck of the draw" would determine the type of plan provided, thus reducing the chance of fairness.

A principal objective is to create a plan which is not competitive with balanced, voluntary market plans. With the selected 0.75 minimum (low enough to produce a reasonable return), the 1.75 maximum (appropriate for this size risk), and the 1.125 loss conversion factor (LCF), a basic factor for a balanced plan can be calculated. However, unlike traditional retrospective rating plans, LSRP is not intended to be balanced. Therefore, the basic factor was selected to be a fixed 0.30. This is consistent with the goal of the plan to encourage such insureds to find voluntary coverage.

The fixed 0.30 basic factor means the LSRP basic premium factor is higher than it would have been under a balanced plan, with the impact increasing with the size of risk. This occurs for two reasons. First, the expense portion of the basic doesn't take into account the effect of the premium discounts, and second, the fixed basic is in contrast to the fact that the insurance charge should decrease as the risk size increases.

The proposed state tax multiplier for South Carolina will be 1.123. It represents the currently approved tax multiplier exclusive of any assigned risk subsidy. Currently approved retrospective development factors (RDFs) will be used. These factors will change with subsequent changes in rates and rating values. These factors will be published in the state exception pages of the basic manual.

As mentioned above, the factors were selected because they "work" in combination. Some additional comments on the factors however, are appropriate:

- * The RDFs will be used with the first three (3) valuations to reflect loss development. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and final adjustment.
- * The decision not to offer loss caps was based on the desire to avoid any carrier/insured plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.76 maximum is relatively low for this book of business and it tends to serve as a loss cap.
- * Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.

The LSRP's success will ultimately be determined by the extent to which insureds obtain coverage in the voluntary market and the impact on the employer's losses. The essential elements are present for significant safety improvements and loss reduction to occur-employer motivation to lessen the bottom-line insurance costs and the availability of loss control programs.

Collection problems are to be anticipated, however, several steps have been taken to minimize uncollectibles:

- * An additional 20% LSRP deposit premium is required which will be held without interest until the first adjustment. This is a deviation from the traditional voluntary retro plan, which normally requires collateral to be based upon the difference between incurred losses and ultimate projection of those losses and for the collateral to be held until the retro plan is closed. This is generally a larger amount and held for an indefinite period.
- * The carrier will be required to retain the 20% additional LSRP deposit and any final audit return premium until the first valuation has been completed and billed.
- * Even though the LSRP deposit is preferred, to provide options to an employer, an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve and obtained at binding, is satisfactory.
- * The carrier will have the right to cancel the current assigned risk policy if the adjustments are not paid as required. It should be noted that the dispute resolution procedure in the WCIP applies to legitimate premium disputes.

Carriers must be consistent with both the voluntary customers and the LSRP customers in handling claims and collections as applied to cancellations and bankruptcies. In the event of cancellation or bankruptcy, the maximum premium generated under the original LSRP calculation will remain in effect. This will ensure that the reinsurance mechanism is protected for the maximum exposure should subsequent adjustments generate additional premiums.

It is recognized that many factors contribute to premium changes after policy inception, especially audit. To accommodate premium increase, while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days is considered reasonable to retroactively convert a guaranteed cost policy to the LSRP. If after the 120 days of the coverage term, it is determined that the employer qualifies for the LSRP, the current policy shall not be affected, but LSRP will apply at renewal. A provision has been included to convert the policy pro rata from inception to the LSRP, if at any time it is determined that misrepresentation or omission of pertinent information occurred by the insured, its agent, employees, officers or directors that caused the policy to be improperly written as guaranteed cost.

If the employer's premium falls below the \$200,000 threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below \$200,000, a retroactive conversion to guaranteed cost would result. Since depopulation is a major goal of LSRP, a "release" clause will be available. If voluntary coverage is obtained within 120 days of policy inception, premium would be calculated based on guaranteed cost.

The LSRP has been designed to accommodate the large assigned risk employer when that employer has operations in several states. The plan provides for a multi-state policy when the following conditions exist: 1) when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium; and 2) the assigned carrier is capable of providing service in all requested states. If multi-state coverage is applicable and includes states that have not approved the LSRP, then separate policies will be issued.

Example I:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$40,000 and the premium for State B is \$160,000. LSRP will apply to this account since the total policy premium meets the eligibility threshold for State B and State B has the largest premium.

Example II:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$160,000 and the premium for State B is \$40,000. LSRP will not apply to this account since the eligibility threshold for State A is \$250,000 and State A has the largest premium, which does not meet the eligibility requirements.

In order for LSRP to be successful, every employer in the residual market must understand the potential impact of the LSRP on its premium. The following notification methods were selected:

- * Every policy issued in the residual market will carry an endorsement advising that any policy exceeding the eligibility threshold will be eligible for the LSRP.
- * Assigned risk application instructions will be modified to include a statement containing potential applicability of the LSRP and details of the Plan.
- * The WCIP binder additional notice will include a statement regarding the applicability of the LSRP for employers meeting the premium eligibility requirement. Also, assigned carriers' renewal quotes will carry a similar statement.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SC-94

- * In addition, a brochure explaining the LSRP will be provided to carriers and producers, and will be made available to employers.

Producer fees are payable in accordance with the South Carolina Producer Fee Schedule subject to the following exceptions:

- * No additional producer fee is payable or return commission chargeable as a result of LSRP valuation activity.
- * Producer fees will not be paid on the LSRP Contingency Deposit Premium.

Impact:

Currently in South Carolina, there are approximately 36 risks with premium of \$200,000 or more. These risks comprise about 0.02% of the policies in the residual market, but make up about 8% of the total premium written.

In South Carolina, the total impact of LSRP on residual market premium is expected to be negligible. The ultimate impact of LSRP, however, will depend on the individual employer's losses over time, the extent to which employers obtain coverage in the voluntary market, and the adequacy of rates at the time LSRP goes into effect. With good loss experience, the employer's final premium is typically less than standard; it is more than standard with poor loss experience.

Implementation:

The attached exhibits illustrate the Basic Manual changes which will be required in order to implement LSRP, the endorsements which will be utilized and the financial reporting procedures required to track the program. Additionally, either the NCC application or ACORD 133 application, whichever is appropriate, shall be modified to contain a statement of applicant acknowledgement of the LSRP. Approval of this program constitutes approval of any necessary application or instruction changes.

Conclusion:

The LSRP is expected to provide large employers with the incentive to seek coverage in the voluntary market, to improve safety, and reduce losses.

The attached example illustrates the method of determining the retrospective premium for each of four adjustments for an average-size risk with losses determined by an average expected loss ratio.

LSRP CALCULATION EXAMPLE

$$\text{Retro Premium (RP)} = \text{Tax}[(\text{Base} \times \text{SP}) + (\text{RDF} \times \text{LCF} \times \text{SP}) + \text{LCF} \times \text{Insured Loss}]$$

Standard Premium (SP)	=	339,000
Expected Losses (SP x LR)	=	339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

Retrospective Development Factors (RDF)	1st Adjustment	0.31
	2nd Adjustment	0.21
	3rd Adjustment	0.15
	4th Adjustment	0.00

Base	=	0.30
Minimum	=	0.75 or \$254,250 (minimum premium)
Maximum	=	1.75 or \$593,250 (maximum premium)
Loss Conversion Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.125

1st Adjustment

$$\begin{aligned} \text{RP} &= 1.125[(.30 \times 339,000) + (.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)] \\ \text{RP} &= 1.125[101,700 + 118,226 + 286,031] \\ \text{RP} &= 1.125[605,957] \\ \text{RP} &= 687,708 \end{aligned}$$

2nd Adjustment

$$\begin{aligned} \text{RP} &= 1.125[(.30 \times 339,000) + (.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)] \\ \text{RP} &= 1.125[101,700 + 80,089 + 305,100] \\ \text{RP} &= 1.125[486,889] \\ \text{RP} &= 548,237 \end{aligned}$$

3rd Adjustment

$$\begin{aligned} \text{RP} &= 1.125[(.30 \times 339,000) + (.15 \times 1.125 \times 339,000) + (1.125 \times 305,100)] \\ \text{RP} &= 1.125[101,700 + 57,206 + 343,236] \\ \text{RP} &= 1.125[602,144] \\ \text{RP} &= 665,414 \end{aligned}$$

4th Adjustment

$$\begin{aligned} \text{RP} &= 1.125[(.30 \times 339,000) + (.0 \times 1.125 \times 339,000) + (1.125 \times 339,000)] \\ \text{RP} &= 1.125[101,700 + 0 + 381,375] \\ \text{RP} &= 1.125[483,075] \\ \text{RP} &= 534,942 \end{aligned}$$

STATE SPECIAL RATING PLANS AND PROGRAMS
ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)
SOUTH CAROLINA
BASIC MANUAL INSERT

PART ONE

DESCRIPTION OF THE PLAN

I. INTRODUCTION

The rules under this Plan are mandatory and apply only to Workers Compensation & Employers Liability Insurance that is written under a Workers Compensation Insurance Plan (WCIP) in those states that have adopted the Loss Sensitive Rating Plan (LSRP). The LSRP shall apply to all assigned risk employers qualifying for the Plan. The elements in the LSRP are fixed and premium is determined and defined below.

A. GENERAL EXPLANATIONS

1. Plan is Mandatory

The Assigned Risk LSRP is a mandatory Plan and shall apply to all assigned risk policies with total estimated annual Standard Premium or total audited Standard Premium which equals or exceeds \$200,000.

2. Object of the Plan

This Plan adjusts the premium for the insurance to which it applies on the basis of losses incurred during the period covered by that insurance. The intent is to charge a premium which reflects those losses. This Plan uses the losses incurred during the term of the policy to establish the cost of insurance and includes provisions for all expenses and taxes on premium.

3. Loss Control Incentive in Use of the Plan

The LSRP provides an incentive to the employer to control and reduce losses because the LSRP premium will be the result of losses during the policy period. To the extent the employer controls losses, there is a reward through lower premiums. To the extent the insured does not control losses, there is a penalty through higher premiums.

4. Experience Rating Plan Manual

Separate policies in the WCIP under common majority ownership as provided by the rules of the Experience Rating Plan which are assigned to the same assigned risk carrier shall be combined for computation of the LSRP premium.

SCDOI 00020

APPELLANT ROA 00410

5. Risks Operating in More Than One State

LSRP may be applied on an intrastate or interstate basis. Refer to Part Three for Multi-state procedures.

6. Premium Discount

In states where premium discount is allowed under a WCIP, the standard premium under this Plan is not subject to the premium discount as defined in Rule VII of the Basic Manual for Workers Compensation and Employers Liability Insurance.

7. Increased Limits for Employers Liability

If the policy provides increased limits for employers liability, such premium and incurred losses shall be subject to LSRP.

8. LSRP Expenses

The Plan does not include tables of expense ratios for use by stock and non-stock companies. The expenses are fixed and are included in the Basic Premium.

9. Aircraft Classifications

If the insurance subject to the Plan includes any of the aircraft classifications, the premium and losses for such classifications shall be included in the LSRP.

10. Exclusion of Statutory Medical Benefits - Ex-Medical Coverage

Policies written on an ex-medical basis are subject to this Plan in states where permitted.

11. Large Construction Projects

Large Construction Projects are subject to this Plan in states where permitted.

II. DEFINITIONS

A. Employer

Means any business organization or enterprise that is required by statute to maintain workers compensation insurance in a state or any state(s) under the WCIP. The term shall include any business organizations or enterprises that are affiliated as a result of common ownership.

B. Insured

Insured means the assigned risk employer designated in the Information Page of the policy or policies to which this Plan is applied by the assigned carrier that issues such insurance. An insured may be two or more legal entities if the same person, or group of persons, owns the majority interest in such entities. The Experience Rating Plan defines majority interest. It usually means:

1. Majority of voting stock, or
2. Majority of members or directors if there is no voting stock, or
3. Majority participation of general partners in profits of a partnership.

C. Risk

Risk means the insured to which this Plan is applied.

D. Rates

1. Authorized rate means those rates approved for use under a WCIP.
2. Manual rate means the rate shown after the classification code number on the state rate pages in Part Three of the Basic Manual for Workers Compensations and Employers Liability Insurance.

E. Standard Premium

For the purpose of this Plan, Standard Premium means the premium for the risk determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs other than LSRP, loss constants where applicable, and minimum premiums. Determination of Standard Premium shall exclude:

1. Premium Discount,
2. The Expense Constant,

3. Premium resulting from the Non-Ratable Element Codes listed in the Experience Rating Plan Manual, for Workers Compensations and Employers Liability Insurance,
4. Premium developed by the passenger seat surcharge under Code 7421—Aircraft Operation—flying crew, and
6. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

F. Deposit Premium

The deposit premium shall depend upon the schedule in effect in the state generating the most payroll at the time of application. Refer to the state WCIP or ACORD application for the applicable premium payment schedule.

In addition to the applicable state WCIP premium payment plan or deposit premium an additional LSRP deposit premium of 20%, or an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve, shall be required on all LSRP policies. Refer to Part Two of this Plan to calculate the appropriate deposits.

G. Incurred Losses

Incurred losses used in the rating formula for determining premium under this Plan are those reported under the rules of the Workers Compensation Unit Statistical Plan adopted by the rating organization. Generally, incurred losses are the actual losses paid and outstanding, interest on judgments, expenses incurred in obtaining third-party recoveries, and allocated loss adjustment expenses for employers liability losses.

Incurred losses resulting from an accident involving two or more persons under any classification code containing a non-ratable catastrophe element shall be limited to the total of the two most costly claims, subject to any further loss limitation applicable.

The rating formula shall not include losses involving passenger employees resulting from the crash of an aircraft under Classification Code 7421.

For detailed instructions regarding incurred losses, refer to the Workers Compensation Statistical Plan.

H. Rating Organization

Rating organization means the National Council on Compensation Insurance or any other licensed rating organization.

i. Anniversary Rating Date

1. Single Policy Risk

The anniversary rating date for application of this Plan shall be the effective month and day of the current policy in effect.

2. Multiple Policy Risk

If the risk subject to the Plan includes more than one policy with different effective dates, the anniversary rating date shall be determined by the rating organization.

PART TWO

OPERATION OF THE PLAN

I. HOW PREMIUM IS DETERMINED UNDER THE PLAN

LSRP premium is computed on the basis of the formula in Part A.1 of this section.

A. THE LOSS SENSITIVE RATING PLAN FORMULA (LSRP)

The premium for a risk subject to this program is determined by the following formula:

1. Loss Sensitive Rating Plan Premium =
 - a. Basic Premium (= standard premium x basic premium factor)
plus
 - b. Converted Losses (= incurred losses x loss conversion factor)
plus
 - c. LSRP Development Premium (= standard premium x LSRP
Development factor x loss
conversion factor)
 - d. Multiply the sum of (a + b + c) by the Tax Multiplier.

This formula produces a premium which shall not be less than the LSRP Minimum Premium or more than the LSRP Maximum Premium.

If the risk to which the Plan is applied includes more than one legal entity, a single LSRP premium is calculated on the basis of the premium and losses of the combined entities, not individually for each legal entity.

B. DEFINITION OF TERMS USED FOR THE FORMULA

1. Standard Premium

Standard Premium is defined in Part One, II.E of this Plan.

2. Basic Premium

The Basic Premium is a percentage of the Standard Premium. It is determined by multiplying the Standard Premium by a Basic Premium Factor.

The Basic Premium includes: insurance carrier expenses such as those for a servicing the insured's account, loss control services, premium audit and general administration of the insurance.

The Basic Premium does not cover premium taxes or claim adjustment expenses. These elements are usually provided for in the Tax Multiplier and the Loss Conversion Factor.

The Basic Premium Factor is .30.

3. Converted Losses

Converted Losses are based on the incurred losses of the risk during the policy or policies to which this Plan applies. A Loss Conversion Factor is applied to such losses to produce the Converted Losses.

4. Loss Conversion Factor

The Loss Conversion Factor (LCF) is a fixed factor at 1.125. It covers claim adjustment expenses and the cost of the insurance carrier's claim services such as investigation of claims and filing claim reports.

5. Tax Multiplier

The Tax Multiplier varies by state and covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium which it collects.

Refer to the state exception pages for the appropriate tax multiplier.

6. Minimum Premium

The Minimum Premium for this Plan is the least amount of premium to be paid by a risk subject to LSRP.

The Minimum Premium Factor is .75.

7. Maximum Premium

The Maximum Premium for this Plan is the greatest amount of premium to be paid by a risk subject to this Plan. It has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

The Maximum Premium Factor is 1.75.

8. Individual Loss Limitations

There are no individual loss limitations under the mandatory LSRP.

9. LSRP Development Premium

The purpose of this premium element is to stabilize premium adjustments for risks subject to this program. The LSRP Development Premium anticipates a pattern of increasing valuation of losses after the policy is expired. The LSRP Development Premium is included in only the first three adjustments of the LSRP premium and is not included in the fourth and final calculation.

Refer to the state exception pages for the LSRP development factors.

10. Deposit Premium

Is the premium required to be paid at the time of application or policy renewal and, under the Plan, is comprised of the WCIP deposit premium and the LSRP contingency deposit premium.

a. WCIP Deposit Premium

The WCIP deposit premium is the deposit premium as referenced on the WCIP or AGORD application in the state generating the most payroll. The WCIP deposit premium is calculated by multiplying the Estimated Annual Premium by the required premium percentage.

b. LSRP Contingency Deposit Premium

The LSRP Contingency Deposit Premium is calculated as an additional 20% of Standard Premium and is added to the WCIP deposit premium. The LSRP Contingency Deposit Premium is to be paid at the time of application, or policy renewal, to collateralize premium which may be due the assigned carrier at the first adjustment.

If an acceptable, clean, unconditional, Irrevocable Letter of Credit (LOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve is obtained in an amount at least sufficient to secure the dollar amount equal to the LSRP 20% Contingency deposit premium, an LSRP Contingency deposit premium will not be required and the deposit premium on such policy shall be equal to the WCIP deposit premium. The LOC shall be held as collateral until first adjustment.

PART THREE

ADMINISTRATION OF THE PLAN

I. ADMINISTRATIVE RULES

A. Eligibility

1. The Loss Sensitive Rating Plan (LSRP) shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or total audited Standard Premium equals or exceeds \$200,000.
2. A decrease in premium during the first 120 days of coverage which results in the employer falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be effected until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by Insured, its agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.

B. Multi-State Procedures

The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

If the assigned risk employer requests coverage in a state where LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one or more policies and issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide all requested states; additional applications may be necessary.

C. 120 Day Grace Period

The LSRP will not apply to an assigned risk policy subject to the Plan if the employer obtains workers compensation coverage outside the assigned risk market within 120 days of the effective date.

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy endorsement WC 00 04 18.

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP.

The ACORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the policy is bound a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

E. Bankruptcy/Insolvencies

The Insurer may make a special adjustment as of the date that an insured is declared bankrupt or insolvent; makes an assignment for the benefit of creditors; is involved in any reorganization, receivership, or liquidation; or disposes of all or substantially all of its assets. The insured shall be liable for any additional premium or credit due at the time of the special adjustment.

F. Administration

It is the responsibility of the assigned carrier to administer the program, provide proper notification and application of the LSRP impact to premium, make the required LSRP calculations following the normal valuations, and collect the premium.

II. CANCELATION OF POLICY

A. Explanation

While the Cancellation condition of the Standard Policy permits cancellation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancellation in the Basic Manual for Workers Compensation and Employers Liability Insurance.

B. Coverage Obtained on the Voluntary Market

The LSRP will not apply to any policy canceled by the insured, within the first 120 days of coverage, because coverage was placed in the voluntary market. Said policy will be treated as a guaranteed cost policy with final audited premium calculated according to the appropriate rating rules.

C. LSRP Premium, Determination Upon Cancellation

1. Cancellation By the Insurance Carrier, except for non-payment of premium.
2. Cancellation By the Insured When Retiring From Business provided:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. the employer retires from all business covered by the insurance;

Note: For the purpose of this rule, a change in ownership of a corporation which results in elimination of experience under the rules of the Experience Rating Plan Manual does not constitute retiring from the business insured by the policy.

3. If the reason for the cancellation is No.1 or 2 above, LSRP premium for the canceled policy shall be computed as follows:
 - a. Standard Premium: Determine the premium for the canceled policy on a pro rata basis in accordance with Basic Manual Rule X-B. The resulting premium shall be the Standard Premium.

- b. LSRP Premium: The LSRP premium for the canceled policy shall be determined by using the LSRP formula in Part Two of the Plan. Use the Standard Premium in a. above to establish the Basic Premium, and if applicable, Retrospective Development Premium for this formula.

EXCEPTION FOR NON-PAYMENT OF PREMIUM:

If the cancellation by the insurance carrier is because of non-payment of premium by the insured, the Maximum LSRP premium shall be based on a Standard Premium which shall be the premium for the canceled policy (under Basic Manual Rule X-B) extended pro rata to an annual basis.

Failure by an insured to pay all LSRP premiums, including premiums due as the result of adjustment, will result in cancellation of current coverage and disqualification from future assignments through the WCIP Plan.

The maximum premium payable on a canceled policy shall be based on the annual Standard Premium unless the employer has secured coverage outside the WCIP within 120 days of policy inception.

- 4. Cancellation By the Insured, Except When Retiring From Business For the Reasons Stated in II-B-2 above.

Determine the LSRP premium as follows:

- a. The premium for the canceled policy is to be calculated on a short rate basis under Basic Manual Rule X-D.
- b. Use the LSRP formula in this Part Two of the Plan to establish the LSRP premium as shown below:
 - i. Basic Premium and if applicable, Retrospective Development Premium shall be computed by using the short rate premium in 4a above as the Standard Premium.
 - ii. Minimum LSRP premium shall be the short rate premium in 4a above.
 - iii. Maximum LSRP premium shall be based on a Standard Premium which shall be calculated by using the actual payroll for the period of the policy in effect extending that payroll pro rata to an annual basis and then multiplying such extended payroll by the authorized rates and experience rating modification,

ARAP, and any applicable assigned risk surcharge program. The Maximum Premium Factor shall be applied to this Standard Premium.

EXAMPLE: CALCULATION OF MAXIMUM RETROSPECTIVE PREMIUM UNDER RULE 4b: ASSUME:

Policy In effect	185 days
Authorized Rate (per \$100 payroll)	5.00
Actual payroll for 185 days	\$555,000
* Experience Rating modification	1.00
Maximum Premium Factor	1.75

(a) Payroll extended to an annual basis:

$$\$555,000 \times \frac{365 \text{ days}}{185 \text{ days}} = \$1,095,000$$

(b) Annual Standard Premium =

$$\begin{aligned} & \$1,095,000 \times 5.00 \text{ (per } \$100) \times 1.00 \\ & = \$54,750 \end{aligned}$$

(c) Maximum Retrospective Premium:

$$\$54,750 \times 1.75 = \$95,813$$

*Note: In those states where ARAP or an assigned risk surcharge have been approved, these programs are to be included in the calculation of LSRP standard premium.

III.

REPORTS OF PREMIUM AND POLICY COUNTS UNDER THE LSRP

In addition to following the statistical reporting requirement in accordance with the Workers Compensation Statistical Plan, all residual market carriers will make quarterly reports to the Plan Administrator, with such reports to be filed within 45 calendar days of the dates of March 31, June 30, September 30, and December 31, for activity relating to calendar quarters ending on these dates. Reports to the Plan Administrator will include, but not necessarily be limited to, the following:

A. Premium

These reports will separately identify WCIP and Contingency deposit premiums, as well as LSRP premium adjustments resulting from incurred loss valuations. If a Letter of Credit is secured in lieu of the LSRP Contingency deposit premium, identification of such security must be included in the quarterly report.

The Standard Premium used for determining the LSRP premium is that reported in accordance with the Workers Compensation Statistical Plan.

B. Policy Counts

Reports must include a listing and count of LSRP policies issued, renewed, non-renewed and canceled during the calendar period. An in-force policy count must also be provided.

C. Verification of Data

All reports will include the required information on an individual policy level, in the format and manner prescribed by the Plan Administrator.

Data reported under the Workers Compensation Statistical Plan shall be accepted as verified data for computation of the LSRP premium.

IV.

COMPUTATION OF THE LSRP PREMIUM

- A. There will be four (4) adjustments computed to determine LSRP premium. The first, second and third calculations will be based on losses valued at the 18th, 30th, and 42nd month, respectively, after policy effective date and will include use of the LSRP Development Factors. A final adjustment, without an RDF, shall be calculated at the end of the 54th month.

Losses shall be valued in month 18, 30, 42, 54 and adjustments will be released as soon as practicable (i.e., month 21, 33, 45, and 57). The valuations and calculation of premiums are to be calculated by the assigned carrier, using premium and loss data which has been reported according to the Workers Compensation Statistical Plan.

1. First Computation of LSRP Premium

Under the Workers Compensation Statistical Plan, the reports of losses and premiums are submitted to the rating organization. As soon as practicable after data has been prepared in accordance with the Statistical Plan Manual, the first adjustment shall be made by the assigned carrier.

The assigned carrier shall notify the employer and return premium if the Plan premium is less than premium previously paid.

The insured shall promptly pay (within 30 days) any premium due. Failure to pay all premium, whether the premium is payable directly to the insurer or indirectly under a premium finance plan or extension of credit, shall constitute nonpayment of premium and be grounds for termination of any existing WCIP policy and resulting in disqualification from eligibility under the WCIP.

When a returned premium is generated by final audit, the assigned carrier shall hold any return premium until the first valuation. If returned premium is due the insured, the assigned carrier shall remit payment within 10 days after recording the LSRP adjustment.

Note: In certain cases, the assigned carrier may make an early calculation of LSRP premium. Such cases include bankruptcy, liquidation, reorganization, receivership, assignment for benefit of creditors, or other similar situations.

2. LSRP Adjustment After First Computation

a. Subsequent calculations and adjustments of premium subject to this Plan shall be made by the assigned carrier annually after the first valuation. The procedure for such subsequent calculations shall be the same as in Rule 1 above except that such premium calculations shall be based upon the latest Unit Statistical Reports required. The assigned carrier shall continue to make such additional adjustments at the end of each 12 months period until the

54th month.

- b. If a subsequent valuation results in no change from the previous calculation, the assigned carrier shall notify the employer that there is no change in the premium payment and that subsequent calculations of premium will be made in accordance with Rule 3.a. below.

3. Final Computation of LSRP Premium

- a. The fourth and final valuation, without LSRP Development Factors will be calculated at the 54th month.

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under a Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
2. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
6. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE

PREMIUM ELIGIBILITY

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program.

Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

Original Printing

Effective March 1, 1994

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Rating Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LLOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.

4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY . WC 00 04 18

Original Printing

Effective March 1, 1994

2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3 will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

SCHEDULE

1. Basic Premium Factor _____
2. Loss Conversion Factor _____
3. Tax Multiplier _____
4. Minimum Premium Factor _____
5. Maximum Premium Factor _____
6. LSRP Development Factors:
 - 1st Adjustment _____
 - 2nd Adjustment _____
 - 3rd Adjustment _____
 - Subsequent Adjustments 0.00

06-NOV-03 10:52AM

FROM-Michael I Jr & Assoc.

704 543 0384

T-251 P.002/007 F-633

ACORD

WORKERS COMPENSATION APPLICATION

11-6-03

PRODUCER PHONE (W/C, No, Ext): (704) 543-0381	COMPANY	UNDERWRITER
Michael P. Hair & Assoc. P O Box 472224 Charlotte NC 28247	APPLICANT NAME ARD'S TRUCKING COMPANY, INC.	
	MAILING ADDRESS (including Zip code) P. O. BOX 504 DARLINGTON SC 29540	
CODE: SUB CODE:	YRS IN BUS: 59 YRS SIC: <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Limited Corp. <input type="checkbox"/> Other	
AGENCY CUSTOMER ID:	FEDERAL EMPLOYED ID NUMBER	NCCL ID NUMBER
		OTHER RATING BUREAU ID OR STATE EMPLOYER REGISTRATION NUMBER

STATUS OF SUBMISSION		BILLING/AUDIT INFORMATION	
<input type="checkbox"/> Quote	<input type="checkbox"/> Bound (Give date and/or attach copy)	<input type="checkbox"/> Agency Bill	<input type="checkbox"/> Annual
<input checked="" type="checkbox"/> Assigned Risk (Attach Acord 133)	<input type="checkbox"/> Issue Policy	<input checked="" type="checkbox"/> Direct Bill	<input type="checkbox"/> Semi-Annual
			MONTHLY
			<input type="checkbox"/> Quarterly
			AUDIT
			<input checked="" type="checkbox"/> At expiration <input type="checkbox"/> Monthly
			<input type="checkbox"/> Semi-Annual <input type="checkbox"/> Other
			<input type="checkbox"/> Quarterly

LOCATIONS	
#	STREET, CITY, COUNTY, STATE, ZIP CODE
GARAGE	1702 N GOVERNOR WILLIAMS DARLINGTON SC 29540-7631
1	
2	

POLICY INFORMATION				
PROPOSED EFF DATE (MM/DD/YY) 11/7/03	PROPOSED EXP DATE (MM/DD/YY) 11-7-04	NORMAL ANNIVERSARY RATING DATE 11/1	<input type="checkbox"/> Participating	RETRO PLAN
			<input checked="" type="checkbox"/> Non-Participating	
PART 1 - WORKERS COMPENSATION (States) SC	PART 2 - EMPLOYER'S LIABILITY \$ 500,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 500,000 DISEASE-EACH EMPLOYEE	PART 3 - OTHER STATES INS ALL EXCEPT MONOPOLISTIC	DEDUCTIBLES <input type="checkbox"/> Medical <input type="checkbox"/> Indemnity <input type="checkbox"/> Per Claim	AMOUNT % OTHER COVERAGES <input type="checkbox"/> U.S.L.&H. <input type="checkbox"/> Voluntary Compensation

DIVIDEND PLAN/SAFETY GROUP	ADDITIONAL COMPANY INFORMATION
----------------------------	--------------------------------

RATING INFORMATION					# OF EMPLOYEES	ESTIMATED ANNUAL REMUNERATION	RATE	ESTIMATED ANNUAL PREMIUM
STATE	LOG	CLASS CODE	COM-PANY USE	CATEGORIES, DUTIES, CLASSIFICATIONS	FULLTIME	PARTTIME		
SC	1	7229		DRIVERS	70			2,100,000
SC	1	8810		CLERICAL	22			410,000
SC	1	8742		OUTSIDE SALES	1			16,000

SPECIFY ADDITIONAL COVERAGES/ENDORSEMENTS	TOTAL	FACTOR	FACTORED PREMIUM
	INCREASED LIMITS		
	DEDUCTIBLE		
	EXPERIENCE MODIFICATION	.731	
	LOSS CONSTANT		
	ASSIGNED RISK SURCHARGE		
	ARAP		
	PREMIUM DISCOUNT		
	EXPENSE CONSTANT		



157 333.00

MINIMUM PREMIUM \$	DEPOSIT PREMIUM	APPELLANT DOA 00431	TOTAL EST ANNUAL PREMIUM
ACORD 130 (10/96)	PLEASE COMPLETE REVERSE SIDE	ARD Trucking 0004	

PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED. (Representatives to be included must be included under the information section.)								
#	NAME	DATE OF BIRTH	TITLE/RELATIONSHIP	OWNERSHIP %	DUTIES	INTEXC	CLASS CODE	REMUNERATION
1	J WARD, SR		OWNER	48	OFFICE	Inc	8810	45,000
2	C ALLEN ARD		PRES	51	GEN. MGR	Inc	8810	45,000
3	MICHAEL HARLAN		VP		OFFICE	Inc	8810	45,000
4	GRACE STREETT		CTREA		OFFICE	Inc	8810	45,000
5								

PRIOR CARRIER INFORMATION/LOSS HISTORY

PROVIDE INFORMATION FOR THE PAST 4 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS								LOSS RUN ATTACHED <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE	REMARKS		
Current	CO: AMERICAN INTERSTATE POLY:			4	45,929	161,675			
1st Yr Prior	CO: CLARENDON NATIONAL POLY:			1	4,499	1,185			
2nd Yr Prior	CO: TRANS. EMP. SELF INSD T POLY:			0					
3rd Yr Prior	CO: TRANS. EMP. SELF INSD T POLY:			1	17,696				
4th Yr Prior	CO: POLY:			0					

NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS

GIVE COMMENTS AND DESCRIPTIONS OF BUSINESS, OPERATIONS AND PRODUCTS MANUFACTURING—RAW MATERIALS, PROCESSES, PRODUCT, EQUIPMENT, CONTRACTOR—TYPE OF WORK, SUB-CONTRACTS, MERCANTILE—MERCHANDISE, CUSTOMERS, BELIEVERS, SERVICE—TYPE, LOCATION, FARM—ACREAGE, ANIMALS, MACHINERY, SUB-CONTRACTS.

TRUCKER FOR HIRE

GENERAL INFORMATION

EXPLAIN ALL YES RESPONSES	Yes/No	EXPLAIN ALL YES RESPONSES	Yes/No
1. DOES APPLICANT OWN, OPERATE, OR LEASE AIRCRAFT (W/PILOT)?	No	15. ARE ATHLETIC TEAMS SPONSORED?	No
2. DO HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVING (D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL (E.G. RADIOS, WASTE, LIQUID, GAS)?	No	16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?	No
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 18 FEET?	No	17. ANY OTHER INSURANCE WITH THIS INSURANT?	No
4. ANY WORK PERFORMED ON MARSHES, VESSELS, DOCKS, BRIDGE OVER WATER?	No	18. ANY PRIOR COVERAGE DECLINED? CANCELLED/TERMINATED/REMOVED BY APPLICANT	No
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?	No	19. ARE EMPLOYEE HEALTH PLANS PROVIDED?	No
6. ARE SUB-CONTRACTORS USED? IF YES, # OF WORK.	No	20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY?	No
7. ANY WORK SUBLET WITHOUT CERTIFICATE OF INS-7?	No	21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?	No
8. IS A FORMAL SAFETY PROGRAM IN OPERATION?	No	22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME?	No
9. ANY GROUP TRANSPORTATION PROVIDED?	No	CONTACT INFORMATION	
10. ANY EMPLOYEES UNDER 18 OR OVER 65 YEARS OF AGE?	No	IN- SPECTION NAME: HARRY BROWN	PHONE: (843)393-5101
11. ANY PART TIME OR SEASONAL EMPLOYEES?	No	ACCING RECORD NAME: GRACE STREETT	PHONE: (843)393-5101
12. IS THERE ANY VOLUNTEER OR DONATED LABOR?	No	CLAIMS INFO NAME: HARRY BROWN	PHONE: (843)393-5101
13. ANY EMPLOYEES WITH PHYSICAL HANDICAP?	No		
14. DO EMPLOYEES TRAVEL OUT OF STATE?	Yes		

REMARKS

APPLICANT'S SIGNATURE

PRODUCER'S SIGNATURE

ACORDTM

**WORKERS COMPENSATION INSURANCE PLAN
ASSIGNED RISK SECTION**

DATE
10/30/2003

THIS FORM ALONG WITH AN ACORD 130 WORKERS COMPENSATION APPLICATION CONSTITUTE AN APPLICATION FOR WORKERS COMPENSATION INSURANCE PLAN (ASSIGNED RISK) COVERAGE. THIS FORM MUST BE ATTACHED TO AN ACORD 130 FOR SUBMISSION. PLEASE REFER TO THE STATE SPECIFIC INSTRUCTIONS PAGE FOR SPECIFIC REQUIREMENTS.

APPLICANT NAME

Ard Trucking Company, Inc.

PROPOSED EFF DATE

11/07/03

SUPPLEMENTAL INFORMATION

PAYROLL OFFICE NAME, ADDRESS AND TELEPHONE NUMBER
(A PO BOX ADDRESS ALONE IS NOT ACCEPTABLE. PLEASE PROVIDE DRIVING INSTRUCTIONS IF A ROUTE ADDRESS IS SHOWN.)

1702 North Governor Williams Highway
Darlington, SC 29540

EXPLAIN ALL "YES" RESPONSES IN THE REMARKS SECTION

YES NO

4. HAS THERE BEEN A NAME CHANGE, CONSOLIDATION, MERGER OR OWNERSHIP CHANGE DURING THE PAST FIVE YEARS? IF YES, GIVE PREVIOUS NAME AND DATE OF CHANGE. CONTACT THE PLAN ADMINISTRATOR ABOUT AN ERM-14.

X

5. IS APPLICANT RELATED THROUGH COMMON MANAGEMENT OR OWNERSHIP TO ANY ENTITY NOT LISTED HERE, WHETHER COVERAGE IS REQUIRED OR NOT? IF YES, GIVE DETAILED EXPLANATION.

X

STATE DEVELOPING HIGHEST PAYROLL:

EXPLAIN ALL "YES" RESPONSES IN THE REMARKS SECTION

YES NO

1. HAS THERE BEEN PREVIOUS WORKERS COMPENSATION COVERAGE:

IN THIS STATE?

X

IN ANY OTHER STATE?

X

- IF NO TO BOTH QUESTIONS, WAS THIS DUE TO:

NEW BUSINESS

SELF INSURED-GROUP

SELF INSURED-INDEP

EMPLOYEES

6. DO YOU LEASE WORKERS FROM A LABOR CONTRACTOR? IF YES, REFER TO WCIP INSTRUCTIONS.

X

7. DO YOU LEASE WORKERS TO A CLIENT COMPANY? IF YES, REFER TO WCIP INSTRUCTIONS.

X

8. ARE YOU SEEKING TO COVER THE LEASED WORKERS? IF YES, REFER TO WCIP INSTRUCTIONS.

X

9. DO YOU PROVIDE TEMPORARY LABOR SERVICES TO OTHER EMPLOYERS?

X

2. IS THERE ANY UNPAID WORKERS COMPENSATION PREMIUM DUE OR IN DISPUTE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? IF YES, EXPLAIN INCLUDING ENTITY NAME(S) AND POLICY NUMBER(S).

10. DO YOU HAVE A FRANCHISE OR LICENSING AGREEMENT? IF YES, PROVIDE DETAILS OF THE AGREEMENT.

X

3. YEAR APPLICANT'S BUSINESS BEGAN:

11. DO TRUCKING CLASSIFICATIONS APPLY? IF YES, COMPLETE QUESTIONS 12-14.

X

12. DO YOU OR YOUR EMPLOYEES REGULARLY OPERATE FROM A BASE TERMINAL(S) WHICH IS (ARE) USED TO LOAD, UNLOAD, STORE OR TRANSFER FREIGHT? IF YES, PLEASE PROVIDE A LIST OF TERMINAL ADDRESSES:

X

#	STREET	CITY	COUNTY	ST	ZIP CODE
1	1702 North Governor Williams Highway	Darlington	Darlington	SC	29540
2					
3					

13. CAN EACH DRIVER'S STATE OF MAJORITY DRIVING TIME BE ESTABLISHED THROUGH VERIFIABLE RECORDS OR LOGS?

X

14. PLEASE PROVIDE A LIST OF ALL DRIVERS/HELPERS AND THEIR STATE OF RESIDENCE:

	DRIVER NAME	TERMINAL # (SEE ABOVE)	MAJORITY DRIVING STATE	RESIDENCE STATE
1	List Attached			
2				
3				

INSURANCE COMPANIES WHO HAVE OFFERED/REFUSED INSURANCE

1. HAVE YOU RECEIVED ANY OFFERS OF VOLUNTARY COVERAGE? (INCLUDE MULTI-LINE OR RETROSPECTIVE RATING PLAN, IF APPLICABLE) IF YES, PROVIDE FULL DETAILS INCLUDING PLAN TERMS IN THE REMARKS SECTION.

YES NO

X

2. INDICATE THE NUMBER OF INSURANCE COMPANIES WHICH HAVE REFUSED THE APPLICANT COVERAGE IN THE LAST 60 DAYS (OR IN ACCORDANCE WITH STATE SPECIFIC GUIDELINES):

3

IN ACCORDANCE WITH PLAN RULES, THE APPLICANT OR ITS REPRESENTATIVE SHALL MAINTAIN ON RECORD FOR THIS POLICY PERIOD THE CARRIER NAME, CONTACT PERSON, ADDRESS, PHONE NUMBER AND DATE OF CONTACT OF THOSE CARRIERS REFUSING COVERAGE AND MAKE SUCH INFORMATION AVAILABLE TO THE PLAN ADMINISTRATOR OR ASSIGNED RISK CARRIER UPON REQUEST.

REMARKS

APPELLANT: ROA 00433

BWPH Ard Trucking 0006

PREMIUM PAYMENT (Refer to WCIP Instruction sheet for state requirements)

PAYMENT METHOD - SELECT ONE:

IS THE PREMIUM FINANCED? YES NO

1. VERBAL CHECK

BANK/ABA # ACCOUNT # CHECK # PREMIUM PAYMENT AMOUNT \$

2. ELECTRONIC FUNDS TRANSFER

BANK/ABA # ACCOUNT # PREMIUM PAYMENT AMOUNT \$

3. MAIL-IN CHECK

CHECK # PREMIUM PAYMENT AMOUNT \$

For submission methods 1 and 2:

- 1. Does the payor require a physical record of this transaction? YES NO
2. To ensure accuracy, a voided check or deposit slip (of the payor) should be faxed to NCCI, Inc. upon return of the signed ACORD applications.
3. The undersigned Producer or Applicant certifies that by signing this application he/she authorizes NCCI, Inc. to deduct or has obtained financial information and authorization from the payor to direct NCCI, Inc. to deduct the Premium Payment Amount, and any other monies required to bind coverage, from the bank and the account number as indicated above for purposes of securing workers compensation insurance pursuant to this application.

APPLICANT'S STATEMENT

The undersigned applicant hereby certifies that he/she has read and understands the statements in this application. As further consideration of policy issuance, the applicant also certifies that the responses provided in this application are true and furthermore agrees:

To maintain a complete record of all payroll transactions in such form as the insurance company may reasonably require and that such record will be available to the company at the designated address.

To comply substantially with all laws, orders, rules, and regulations in force and effect made by the public authorities relating to the welfare, health, and safety of employees.

To comply with all reasonable recommendations made by the insurance company relating to the welfare, health, and safety of employees.

To take no action in any form to evade the application of experience modification determined in accordance with the experience rating rules, as determined by the Plan Administrator.

The undersigned applicant also certifies he/she has had no difficulties with any producer or company in regard to: (a) payroll records; (b) the amount of premium charged; (c) the payment of premium; (d) the carrying out of any recommendation made for the purpose of safeguarding employees; (e) the handling of any claim or accident report except the following:

Violation of any of these agreements may result in cancellation of a policy of insurance issued under a Workers Compensation Insurance Plan.

The undersigned applicant understands also that coverage is NOT bound until the signed application is received with appropriate premium and eligibility is determined by the administrator. Provided that applicant is determined to be eligible and in good faith entitled to WCIP insurance, based upon the information provided herein or otherwise available, coverage will be bound in accordance with plan rules. See individual state plans for applicable binding rules.

The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

APPLICANT'S NAME AND TITLE (PRINT OR TYPE) DATE SIGNATURE (MUST BE AN OWNER OR AN OFFICER)

REMINDER: BOTH THE ACORD 130 AND 133 APPLICATIONS MUST BE SIGNED BY THE APPLICANT AND DESIGNATED PRODUCER.

PRODUCER'S CERTIFICATION THE PRODUCER ALSO CERTIFIES THAT HE/SHE HAS BEEN AUTHORIZED TO SUBMIT THE APPLICATION ON BEHALF OF THE APPLICANT AND THAT ALL INFORMATION PROVIDED ON THE ACORD 130 AND ACORD 133 IS TRUE AND ACCURATE TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

AGENCY PHONE NUMBER (A/C, No, Ext) AGENCY FAX NUMBER (A/C, No)

RESIDENT LICENSE NUMBER EXPIRATION DATE NON-RESIDENT LICENSE NUMBER EXPIRATION DATE

PRODUCER NAME (PRINT OR TYPE) DATE PRODUCER SIGNATURE

Travelers

SAFETY SERVICES



Notice to policy recipient: If you are not the person directly responsible for the activities for your company, please direct this Safety Services notice to the person that is directly responsible for them.

SAFETY IS OUR CONCERN

Thank you for purchasing your Workers' Compensation insurance. Along with your agent, we appreciate your business and welcome the opportunity to be of service.

An important part of that service concerns accident prevention and safety engineering. Our Loss Prevention & Engineering Division has the experience, resources and capabilities to provide a range of safety services including site surveys, phone consultations or the provision of selected safety material. The following are some examples of our available services:

Accident Prevention - Our staff can help you identify present and potential safety hazards in your operations, premises and equipment, recommending measures for reducing or eliminating these hazards.

Analysis of Accident Causes - Although you investigate and keep records of accidents, we're available to help if needed.

Safety Consultations - Our field staff, supported by Home Office and field specialists, can help you with special problems such as ergonomics.

Industrial Hygiene/Health Services - We have the facilities and resources to answer your questions concerning job related industrial hygiene/health issues and to measure exposure to industrial hygiene hazards.

Safety Videos and Literature - We can provide you with basic videos and literature to assist you in your loss control efforts. Also, we can put you in contact with several companies able to provide additional safety materials including brochures, pamphlets and videos.

Safety Training - We can help you improve your safety training programs.

Internet Website - Visit the Loss Prevention & Engineering website page for helpful safety information.

(<http://www.travelerspc.com/safety>). This website also has hot links to other safety-related Internet sites. **For all requests for loss control assistance ONLY, please directly contact your local office listed on the following pages**

The Travelers will provide these services upon request. Telephone consultation is also available if the nature of the operations and hazards warrant such service. See the rest of this document for the Loss Prevention & Engineering office nearest to you.

SAFETY IS YOUR CONCERN

U. S. employers spend billions of dollars each year on the direct and indirect costs of work-related accidents. Dollar figures can't begin to reflect the pain and suffering of an injured worker and his or her family. But they do give some indication of the multiple consequences of a job-related accident... loss of time, interrupted production, damaged materials and equipment, the expense of retraining or replacing an injured worker, possible legal action from government regulatory agencies, and increased insurance costs.

It makes good sense for both employers and their employees to actively participate in a sound accident prevention program. The success of such a program depends to a large extent on your commitment to safety procedures and accident prevention techniques. Safety is a management concern. Maybe we can help.

You may want to consider the following "Safety Checkpoints" as you evaluate your organization's safety activities:

SELF-INSPECTION PROGRAM:

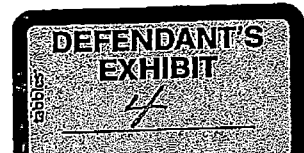
- * Do you conduct periodic surveys of premises?... equipment?... operations?
- * Do you analyze each job to find inherent hazards?
- * If you discover hazards, do you follow up with immediate corrective action?
- * Do you monitor such action to make sure it is implemented and effective?

ACCIDENT INVESTIGATION:

- * Do you investigate each accident?...determine the cause?
- * Do you take immediate steps to prevent a recurrence?
- * Do you keep records of accident investigations and follow-up measures?
- * Do you complete accident statistics and analyze trends?

EDUCATION AND TRAINING

- * Do you take the time to train each of your employees to perform tasks safely?
- * Do more-experienced employees receive training to correct bad habits that have developed over time?
- * Do all employees understand that safety is an important part of their jobs?

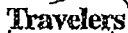


APPELLANT ROA 00435

WUNT1G03

8878

APPENDIX_00435



FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY

ALABAMA

Birmingham
3000 Riverchase Galleria,
Suite 600
Birmingham, AL 35244
(205) 982-4583

ALASKA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

ARIZONA

Phoenix
2401 W Peoria Ave., Suite 130
Phoenix, AZ 85029
(602) 861-8649

ARKANSAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

CALIFORNIA

Diamond Bar
21688 Gateway Center Drive
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

Glendale
700 N. Central Avenue, 8th Floor
P.O. Box 1840
Glendale, CA 91209
(818) 409-4220

Los Angeles
880 South Figueroa St., Suite 500
Los Angeles, CA 90017
(213) 533-3682

Sacramento
11090 White Rock Road
Rancho Cordova, CA 95670
(916) 638-6404

San Diego
9325 Sky Park Court, Suite 220
San Diego, CA 92123
(619) 616-6285

Walnut Creek
225 Lennon Lane, Suite 200
P.O. Box 8090
Walnut Creek, CA 94596-8090
(925) 945-4171

COLORADO

Denver
7600 E. Orchard Rd., Suite 380
Englewood, CO 80111
P.O. Box 173713
Greenwood Village, CO 80111
(303) 740-1691

CONNECTICUT

Hartford
300 Windsor Street
Hartford, CT 06120
(860) 277-5980

DELAWARE

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

DISTRICT OF COLUMBIA

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-6765

FLORIDA

Orlando
Gwy Ctr-1000 Legion Place,
10th Floor
P.O. Box 3555
Orlando, FL 32802-3555
(407) 649-2596

GEORGIA

Atlanta
4400 North Point Parkway
2nd Floor
Alpharetta, GA 30022
(770) 521-3020

HAWAII

Diamond Bar
21688 Gateway Center Drive,
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

IDAHO

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

ILLINOIS

Chicago
190 S. LaSalle Street Suite 960
Chicago, IL 60603
(312) 609-2936

Naperville
215 Shuman Boulevard
P.O. Box 3208
Naperville, IL 60566
(630) 961-8074

INDIANA

Indianapolis
6081 E. 82nd St.,
P.O. Box 50485
Indianapolis, IN 46250-0485
(317) 841-2966

IOWA

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KANSAS

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KENTUCKY

Louisville
305 North Hurstbourne Pkwy,
Suite 125
Louisville, KY 40222
(502) 423-5447

LOUISIANA

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MAINE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

MARYLAND

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

MASSACHUSETTS

Boston
100 Summer Street, Suite 201A
Boston, MA 02110
(617) 984-1284

Hudson
1 Cabot Road, Suite 200
Hudson, MA 01749
(617) 984-1284

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-1284

MICHIGAN

Grand Rapids
3777 Sparks Ave., SE, Suite 200
P.O. Box 3010
Grand Rapids, MI 49501-0323
(616) 942-4344

Southfield
26555 Evergreen Rd., Suite 1240
Southfield, MI 48076-4385
(248) 423-2299

Travelers

FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

MINNESOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

MISSISSIPPI

New Orleans
3900 N. Causeway, Suite 950
Métairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MISSOURI

St. Louis
One City Place Drive
Creve Coeur, MO 63141
P.O. Box 66852
St. Louis, MO 63166-6852
(314) 994-2374

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

**Missouri Workers'
Compensation Plan (MWCP)**

951 Homet Drive
P.O. Box 42021
Hazelwood, MO 63042-2309
(314) 551-3208

MONTANA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

NEBRASKA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

NEVADA

Las Vegas
1850 E Flamingo, Suite 202
Las Vegas, NV 89119
(702) 669-4718

NEW HAMPSHIRE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

NEW JERSEY

Morris Plains
1100 American Road, 2nd Floor
Morris Plains, NJ 07950
(973) 606-5245

Pennsauken
4350 Haddonfield Road
Pennsauken, NJ 08109
(856) 468-5942

NEW MEXICO

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

NEW YORK

Albany
900 Watervliet-Shaker Road
Albany, NY 12205
(315) 424-7231

Buffalo
60 Lakefront Blvd.
P.O. Box 242
Buffalo, NY 14240-0242
(315) 424-7231

East Meadow
90 Merrick Ave., 4th Floor
East Meadow, NY 11554-1593
(973) 606-5245

New York
One Whitehall Street
New York, NY 10004-2108
(973) 606-5245

Rochester
75 Town Centre Drive
P.O. Box 23235
Rochester, NY 14692-3235
(315) 424-7231

Syracuse
440 South Warren Street
P.O. Box 4963
Syracuse, NY 13221-4963
(315) 424-7231

NORTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

Raleigh
3733 National Drive, Suite 200
Raleigh, NC 27612
(919) 420-1873

NORTH DAKOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

OHIO

Cincinnati
895 Central Avenue, Suite 800
Cincinnati, OH 45202
(216) 348-7512

Cleveland
Skylight Office Tower
1660 W. 2nd St., Suite 500
Cleveland, OH 44113-1454
(216) 348-7512

OKLAHOMA

Tulsa
9820 East 41st Street, Suite 401
P.O. Box 3510
Tulsa, OK 74101
(913) 661-3679

OREGON

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

PENNSYLVANIA

Harrisburg
5001 Loulse Drive
Mechanicsburg, PA 17055
(717) 691-5101

Philadelphia
1500 Market Street
29th Floor W Tower
Philadelphia, PA 19102
(267) 675-3056

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

Reading
1105 Berkshire Blvd.
P.O. Box 13426
Wyomissing, PA 19612-3426
(610) 371-3809

RHODE ISLAND

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-12843

SOUTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

SOUTH DAKOTA

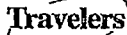
Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

APPELLANT ROA 00437

WUNT1G03

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APPENDIX_00437



FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

TENNESSEE

Memphis
6750 Poplar Ave., Suite 408
P.O. Box 171225
Memphis, TN 38187
(901) 756-3011

Nashville
9020 Overlook Blvd., Suite 150
Brentwood, TN 37027
(615) 372-7747

TEXAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

Houston
10800 Richmond Ave., Suite 120
P.O. Box 42928
Houston, TX 77242-2928
(713) 787-4031

UTAH

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691

VERMONT

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

VIRGINIA

Richmond
300 Arboretum Place
P.O. Box 26426
Richmond, VA 23260-6426
(804) 330-6060

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-6765

WASHINGTON

Seattle
1501 4th Avenue, Suite 400
Seattle, WA 98101
(206) 464-3474

WEST VIRGINIA

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

WISCONSIN

Milwaukee
445 S. Moorland Ave., 2nd Floor
Brookfield, WI 53005
P.O. Box 3032
Milwaukee, WI 53201-3032
(262) 797-3113

WYOMING

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

**ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540**

APPELLANT ROA 00439



Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03)

NEW-03

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured Is A CORPORATION

Other work places and Identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

DATE OF ISSUE: 12-01-03 TW

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC

ST. ASSIGN: -SC

APPELLANT ROA 00440

3878

APPENDIX_00440



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
-----------------	---------	--	---------------------------------------	--------------------------------

SEE EXTENSION OF INFORMATION PAGE -- SCHEDULE(S)

SIC-CODE: 4789

	STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	166946
PREMIUM DISCOUNT	NONE
0900-99 EXPENSE CONSTANT	280
TERRORISM RISK INS ACT 2002	812
TOTAL ESTIMATED PREMIUM	167988
DEPOSIT AMOUNT DUE	167988

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

OFFICE: ORLANDO

870

PRODUCER: MICHAEL P HAIR & ASSOC

APPELLANT ROA 00441
26XSD

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	2100000	10.47	219870
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	16000	.83	133
CLERICAL OFFICE EMPLOYEES NOC	8810	590000	.31	1829

1.70% EMPL. LIAB. INCREASED LIMITS(9807)	\$	3771
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION		225603
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM		166946
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		166946
0.00% ARAP MODIFICATION PROGRAM		NONE
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		812
TOTAL ESTIMATED PREMIUM		167988
DEPOSIT AMOUNT DUE		167988

DATE OF ISSUE: 12-01-03 TW

APPELLANT ROA 00442
ST ASSIGN: SC

SCHEDULE NO: 1 OF LAST

9880

APPENDIX_00442



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO-PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT



The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational dis-

ease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE -- WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law.

Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO - EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment,

claimed against you in a capacity other than as employer.

C. Exclusions.

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901, 942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60); any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws;

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid, if any insurance or self-insurance is ex-

hausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE—OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers-compensation law of that state if

we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR—YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses; and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE—PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your officers and employees engaged in work covered by this policy; and
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy

ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata, it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX—CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While

they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

APPELLANT ROA 00447

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 15 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)**

POLICY NUMBER: (6JUB-01 88B92-3-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance:

This endorsement applies in the states listed in the schedule below:

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC
APPELLANT ROA 00449

(Rev. 03-03)

POLICY NUMBER: (6JUB-01 88B92-3-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions:

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

- 1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (6JUB-01 88B92-3-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

State	Rate per \$100 of Remuneration	Schedule	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.080			

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective
Insured
Insurance Company

Policy No.

Endorsement No.
Premium \$

Countersigned by _____

DATE OF ISSUE: 12-01-03

ST ASSIGN: ARBELLANT ROA 00451

Page 2 of 2

APPENDIX_00451

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)**

POLICY NUMBER: (GJUB-0188B92-3-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

SCHEDULE

STATE	MODIFICATION
SC	0.7400

DATE OF ISSUE: 12-01-03

ST ASSIGN: SCOPPELLANT ROA 00452

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 12-01-03

APPELLANT ROA 00453
ST ASSIGN: SC

APPENDIX_00453

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

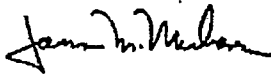
3. The policy period will end on the day and hour stated in the cancellation notice.

4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.


E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.



Secretary



President

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three—Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 12-01-03

ST ASSIGN: APPELLANT ROA 00455
SC

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)**

POLICY NUMBER: (6JUB-01 88B92-3-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

SCHEDULE

ANNIVERSARY RATING DATE (MONTH) (DAY) (YEAR)

REFER TO INFORMATION PAGE SCHEDULE(S)

DATE OF ISSUE: 12-01-03

ST ASSIGN: ~~SS~~ APPELLANT ROA 00456

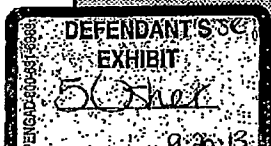
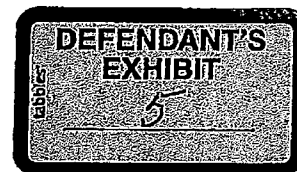
APPENDIX_00456



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540



APPENDIX_00457

APPELLANT ROA 00457 BWPH Ard Trucking 00065

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC

26XSD

APPELLANT ROA 00458

BWPH Ard Trucking 00066

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
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SEE EXTENSION OF INFORMATION PAGE -- SCHEDULE(S)

SIC-CODE: 4789

	STANDARD	EXCESS
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	260581 \$	NONE
PREMIUM DISCOUNT	TO BE DETERMINED	
OTHER CHARGES & CREDITS	NONE	52116
0900-39 EXPENSE CONSTANT		230
TERRORISM RISK INS ACT 2002	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT D	261870	52346

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 03-01-04 TW
OFFICE: ORLANDO 870
PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

ST ASSIGN: SC

APPELLANT ROA 00459 BWPH Ard Trucking 00067

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
RATING MODE: RMD LOSS SENSITIVE RATING PLANS
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	3456061	10.47	361850
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	14976	.83	124

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 1 OF MORE

APPELLANT ROA 00460

BWPH Ard Trucking 00068

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01 (CONT'D)				
CLERICAL OFFICE EMPLOYEES NOC	8810	824523	.31	2556

	STANDARD	EXCESS
1.70% EMPL. LIAB. INCREASED LIMITS (9807)	\$ 6197	NONE
5.10% DEDUCTIBLE CREDIT (9941)	18591	NONE
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION	352136	NONE
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM	260581	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	260581	NONE
0.00% ARAP MODIFICATION PROGRAM	NONE	NONE
LSRP CONTINGENT DEPOSIT (9700)	NONE	52116
EXPENSE CONSTANT (0900)	NONE	230
TERRORISM RISK INS ACT 2002 (9740)	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT DUE	261870	52346

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 2 OF LAST

APPELLANT ROA 00461

BWPH Ard Trucking 00069



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 06 03 00 - 001	BENEFITS DEDUCTIBLE ENDORSEMENT
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 18 00 - 001	MANDATORY A/R LSRP ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT

DATE OF ISSUE: 03-01-04

ST ASSIGN: sc

Page 1 of LAST

BWPH Ard Trucking 00070

APPELLANT ROA 00462

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 06 03 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

BENEFITS DEDUCTIBLE ENDORSEMENT

This endorsement applies only to the insurance provided by Part One (Workers Compensation Insurance) because the states listed in the Schedule below are shown in item 3.A. of the Information Page.

1. Part One (Workers Compensation Insurance) applies only to benefits in excess of the deductible amount shown in the Schedule below.
2. This deductible applies separately to each claim for bodily injury by accident or disease.
3. If the law requires payment on a per accident or per disease basis, this provision applies in place of paragraph 2 above. This deductible applies separately to each accident or disease, regardless of the number of people who sustain injury by such accident or disease.
4. We will pay the deductible amount for you, but you must reimburse us within 30 days after we send you notice that payment is due. If you fail to fully reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.
5. If the statute requires or allows you to pay the deductible amount, this provision applies in place of paragraph 4 above. You will pay the deductible amounts directly to the persons entitled to them. We will be your guarantor for those payments. If we pay the deductible amount as guarantor, you must reimburse us within 30 days after we send you notice that payment is due. If you fail to reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.

SCHEDULE

State	Indemnity and Medical Deductible Amount	Medical Deductible Amount	Indemnity Deductible Amount
SC	\$1000		

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

PAGE 1 OF LAST

BWPH Ard Trucking 00071

APPELLANT ROA 00463

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three—Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

APPELLANT ROA 00464 BWPH Ard Trucking 00072

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)

POLICY NUMBER: (R6EJOB-9560A28-5-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

	SCHEDULE		
ANNIVERSARY RATING DATE	(MONTH)	(DAY)	(YEAR)
REFER TO INFORMATION PAGE SCHEDULE(S)			

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

APPELLANT ROA 00465

BWPH Ard Trucking 00073

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

	SCHEDULE
STATE	MODIFICATION
SC	0.7400

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00074

APPELLANT ROA 00466

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00075

APPELLANT ROA 00467

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04.15 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of 1

APPELLANT ROA 00468

BWPH Ard Trucking 00076



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP);
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

(Rev. 03-03)

APPELLANT ROA 00469

BWPH Ard Trucking 00077

POLICY NUMBER: (R6EJUB-9560A28-5-03)

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program. Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.
2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of 3

BWPH Ard Trucking 00078

APPELLANT ROA 00470

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LLOC) containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.
We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.
4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.
2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 2 of 3

APPELLANT ROA 00471

BWPH Ard Trucking 00079

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)**

POLICY NUMBER: (R6EJTB-9560A28-5-03)

SCHEDULE

1. Basic Premium Factor .30
2. Loss Conversion Factor 1.19
3. Tax Multiplier 1.143
4. Minimum Premium Factor .75
5. Maximum Premium Factor 1.75
6. LSRP Development Factors:
 - 1st Adjustment 0.00
 - 2nd Adjustment 0.00
 - 3rd Adjustment 0.00
 - Subsequent Adjustments 0.00

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 3 of 3

BWPH Ard Trucking 00080

APPELLANT ROA 00472

APPENDIX_00472

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of 2

APPELLANT ROA 00473

BWPH Ard Trucking 00081

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (R6EJOB-9560A28-5-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

State	Rate per \$100 of Remuneration	Schedule	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030			

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective _____ Policy No. _____ Endorsement No. _____
Insured _____ Premium \$ _____
Insurance Company _____ Countersigned by _____

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 2 of 2

BWPH Ard Trucking 00082

APPELLANT ROA 00474

WORKSHEET FOR WORKERS' COMPENSATION TELEPHONE REPORTING

THINGS TO REMEMBER WHEN COMPLETING THE INFORMATION BELOW:
 Call the Telephone Reporting Center to quickly and easily report all Workers' Compensation injuries. We will be asking you the following questions, so please have the information handy. We will produce and submit the necessary state forms.
DO NOT DELAY IN CALLING IF YOU DO NOT HAVE ANSWERS TO ALL OF THE QUESTIONS

ACCOUNT INFORMATION

CALLER'S PHONE NUMBER/EXTENSION ()	CALLER'S NAME (FIRST, MI, LAST)	CALLER'S TITLE	BENEFIT STATE
EMPLOYER'S NAME	EMPLOYER'S ADDRESS (STREET, CITY, STATE & ZIP)	EMPLOYER'S MAILING ADDRESS (STREET, CITY, STATE & ZIP) <input type="checkbox"/> SAME	
PARENT COMPANY/INSURED'S NAME	LOCATION CODE	NATURE OF BUSINESS	POLICY FORM POLICY NUMBER (R6BJUB-9560A28-5-03)

EMPLOYEE INFORMATION

EMPLOYEE'S NAME (FIRST, MI, LAST)		GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	SOCIAL SECURITY NUMBER	
EMPLOYEE'S MAILING ADDRESS (STREET, CITY, STATE & ZIP)		IS EMPLOYEE'S HOME ADDRESS THE SAME? IF NO, STREET, CITY, STATE & ZIP <input type="checkbox"/> YES <input type="checkbox"/> NO		
MARITAL STATUS	EMPLOYMENT STATUS CODE <input type="checkbox"/> FULL-TIME <input type="checkbox"/> PART-TIME	NO. OF DEPENDENTS	CLASS CODE	DATE OF BIRTH
			WAGE PERIOD	HOME PHONE NUMBER ()

ACCIDENT INFORMATION

DATE OF INJURY	TIME OF INJURY A.M. P.M.	DATE CLAIM REPORTED TO EMPLOYER	WAS THE ACCIDENT ON THE EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO	
LOCATION OF ACCIDENT ADDRESS (STREET, CITY, STATE & ZIP)			COUNTY	
DID EMPLOYEE LOSE ANY TIME FROM WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO	IS THE EMPLOYEE BACK AT WORK? IF YES, DATE RETURNED <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE EMPLOYEE LAST WORKED	WAS EMPLOYEE PAID FOR DATE OF INJURY? <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE EMPLOYEE LAST PAID
DATE DISABILITY BEGAN	DATE DISABILITY ENDED	IS / WAS EMPLOYEE'S SALARY CONTINUED? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS EMPLOYEE'S INJURY RELATED TO A COMPANY-SPONSORED EVENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS ACCIDENT FATAL? IF YES, DATE OF DEATH <input type="checkbox"/> YES <input type="checkbox"/> NO
FULL DESCRIPTION OF ACCIDENT				

CAUSE OF ACCIDENT (E.G., SLIP/FALL, LIFTING, CHEMICAL)	IF MOTOR VEHICLE ACCIDENT, DRIVER'S LICENSE NUMBER STATE WHERE ISSUED
CONTRIBUTING FACTORS	EQUIPMENT, MATERIAL OR SUBSTANCE INVOLVED

IF OTHER PARTIES WERE INVOLVED NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER
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WERE SAFEGUARDS PROVIDED? <input type="checkbox"/> YES <input type="checkbox"/> NO	DESCRIPTION OF SAFEGUARDS	WERE SAFEGUARDS USED? <input type="checkbox"/> YES <input type="checkbox"/> NO
WITNESS INFORMATION NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER

INJURY INFORMATION

PART OF BODY INJURED (E.G. HEAD, NECK, ARM, LEG)	NATURE OF INJURY (E.G. FRACTURE, SPRAIN, LACERATION)	PREVIOUS RELATED CONDITION? <input type="checkbox"/> YES <input type="checkbox"/> NO	PRE-EXISTING MEDICAL CONDITION(S)
CUMULATIVE INJURY? IF YES, LENGTH OF EXPOSURE <input type="checkbox"/> YES <input type="checkbox"/> NO	NATURE OF DUTIES	LENGTH OF TIME DOING ACTIVITY	
TREATMENT NAME (FIRST, MI, LAST) <input type="checkbox"/> FIRST AID -	WHAT TYPE OF FIRST AID WAS ADMINISTERED?		1ST DAY OF TREATMENT
<input type="checkbox"/> HOSPITAL/ <input type="checkbox"/> CLINIC -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	TREATMENT	LENGTH OF STAY
<input type="checkbox"/> PHYSICIAN -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	PHONE NUMBER	TREATMENT SPECIALTY
		()	1ST DAY OF TREATMENT

WUNTCG98

APPELLANT ROA 00475

BWPB And Trucking 06600
 CONTINUED ON REVERSE SIDE

EMPLOYEE JOB INFORMATION

EMPLOYEE'S OCCUPATION WHEN INJURED:

IS THIS EMPLOYEE'S REGULAR OCCUPATION?

OCCUPATION IS: SEDENTARY LIGHT MEDIUM HEAVY

EMPLOYEE'S REGULAR WORK HOURS: HOURS/DAY DAYS/WEEK

EMPLOYEE'S PAY: \$ /HOUR; OR \$ /WEEK

DOES EMPLOYEE RECEIVE ADD'L BENEFITS (e.g. Overtime, Uniforms, Meals, etc.)?

EMPLOYEE'S DATE OF HIRE:

EMPLOYEE'S SUPERVISOR:

SUPERVISOR'S PHONE NUMBER: () SUPERVISOR'S REGULAR WORK HOURS:

STATE SPECIFIC INFORMATION

SEE WORKERS' COMPENSATION - FIRST REPORT OF INJURY - STATE SPECIFIC QUESTIONS FOR YOUR INDIVIDUAL STATE.

CUSTOMER SPECIFIC INFORMATION

ADDITIONAL COMMENTS & INFORMATION

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

ARD TRUCKING COMPANY INC

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

1) Substance Abuse Policy Statement: Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance-abuse-free environment.

2) Employee Notification: In order to protect the individual rights of each employee and to begin the employee education process necessary for a well-defined, well-managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important-to-the employee correspondence or benefits delivery.

3) Testing Program: The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

4) Test Results Confidentiality Protocols: Test results information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information;
(2) the purpose of the disclosure;
(3) the precise information to be disclosed;
(4) the duration of the consent; and
(5) the signature of a person authorizing release of the information.

Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

I certify that the above information is accurate and that I may be subject to an additional premium charge if it is determined that there is any misrepresentation of the established drug and alcohol free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name, Date, Officer/Owner Signature*, Title, Notary Public's Signature, Date, Exp. of Commission

POLICY NUMBER: (R6EJUB-9560A28-5-03)

EFFECTIVE DATE: 11-07-03

ARD TRUCKING COMPANY INC

GUNTHER OPERATOR:

**MANUALLY INSERT 1 COPIES OF CP-5952
SOUTH CAROLINA OVERSIZED POSTING NOTICES**

ATTACH STICKERS THAT MATCH DATA BELOW:

EMPLOYER—Name: ARD TRUCKING COMPANY INC

CARRIER—Name: THE TRAVELERS INSURANCE COMPANIES

Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

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APPELLANT ROA 00478 BWPB Ard Trucking 00086

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APPELLANT ROA 00479

BWPH Ard Trucking 00087

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**STICKER LABELS AND/OR POSTING NOTICES
FOR MANUAL INSERT**

FOR POLICY PRINTED IN JOB #: G664063

Named Insured: ARD TRUCKING COMPANY INC

Policy Number: (R6EJUB-9560A28-5-03)

Effective Date: 11-07-03

APPELLANT ROA 00480 BWPH Ard Trucking 00088

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APPELLANT ROA 00481

BWPH Ard Trucking 00089

EMPLOYER - Name: ARD TRUCKING COMPANY INC

CARRIER - Name: THE TRAVELERS INSURANCE COMPANIES
Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

APPELLANT ROA 00482

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

BWPH Ard Trucking 00090

EMPLOYER - Name:

CARRIER - Name:
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Telephone No.

POLICY NUMBER:

EMPLOYER - Name:

CARRIER - Name:
Address:

Telephone No.

POLICY NUMBER:

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

POLICY NUMBER: (R6EJUB-9560A28-5-03)

FOR PRODUCER ONLY, BILLING SCHEDULE BY COMMISSION RATE

INSTALLMENT DUE DATE	AMOUNT	COMMISSION RATE
11-07-03	\$ 53635	.0000
11-07-03	\$ 260581	.0243

THE AMOUNTS ABOVE WILL BE BILLED SEPARATELY.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

APPELLANT ROA 00483

BWPH Ard Trucking 00091



ORLANDO FL

32802

IMPORTANT NOTICE TO POLICYHOLDERS

NO COVERAGE IS PROVIDED BY THIS SUMMARY NOR CAN IT BE CONSTRUED TO REPLACE ANY PROVISIONS IN YOUR POLICY. YOU SHOULD READ YOUR POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. IF THERE IS ANY CONFLICT BETWEEN THE POLICY AND THIS SUMMARY, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

PLEASE READ THIS NOTICE CAREFULLY.

Terrorism Risk Insurance Act of 2002 Disclosure

On November 26, 2002, the President of the United States signed into law the Federal Terrorism Risk Insurance Act of 2002 (the "Act"). The Act establishes a short-term program under which the Federal Government will share in the payment of "Insured Losses" caused by certain "Acts of Terrorism" (each as defined in the Act).

In the event of an Insured Loss, your insurance carrier is responsible for a deductible of one percent (1%) of the carrier's "Direct Earned Premiums" (as used in the Act) for the calendar year 2001 for Insured Losses occurring from November 26, 2002, through December 31, 2002; seven percent (7%) of the carrier's Direct Earned Premiums for the calendar year 2002 for Insured Losses occurring during calendar year 2003; ten percent (10%) of the carrier's Direct Earned Premiums for the calendar year 2003 for Insured Losses occurring during calendar year 2004; or fifteen percent (15%) of the carrier's Direct Earned Premiums for the calendar year 2004 for Insured Losses occurring during calendar year 2005. The Federal Government's share of compensation for Insured Losses in each year is 90% of the amount of Insured Losses in excess of the carrier's deductible for that year. The carrier is responsible for the payment of the remaining 10% of Insured Losses. In no event, however, will the Federal Government or any "Insurer" (as defined in the Act) be required to pay any portion of the amount of aggregate Insured Losses occurring in any one year that exceeds \$100,000,000,000, provided that such Insurer has met its deductible.

As a requirement of the Act, Insurers must make available "Property and Casualty Insurance" (as defined in the Act) coverage for Insured Losses that does not differ materially from the terms, amounts and other coverage limitations that apply to losses arising from events other than Acts of Terrorism. In other words, a loss will not be excluded just because it was caused by an Act of Terrorism; conversely, a loss will not be covered just because it was caused by an Act of Terrorism. The Act also requires Insurers to disclose to policyholders premium charge for providing such terrorism coverage.

Please note that your policy being quoted does not contain an exclusion that specifically excludes coverage for Insured Losses. Your Workers' Compensation benefit obligations stemming from Acts of Terrorism as dictated by state law, will be covered.

Please note that your policy does not contain an exclusion that specifically excludes coverage for Insured Losses caused by Acts of Terrorism. Your Workers' Compensation benefit obligations stemming from Acts of Terrorism as dictated by state law, will be covered.

The rates used to develop your Residual Market premium were administered by the state. The passage of the Act results in a change in premium in accordance with the information listed below. The portion of your annual premium being quoted that is attributable to coverage for Acts of Terrorism is specifically identified on your quote schedule.

WIAQ5E04

Page 1 of 2

APPELLANT ROA 00484 BWPB Ard Trucking 00092

State
SOUTH CAROLINA

Rate per \$100 of Remuneration
0.030

NOTE - THE FOREGOING RATES ARE SUBJECT TO CHANGE AT ANY TIME BASED ON STATE REGULATORY ACTION.

Please contact your agent or broker if you have any questions on this notice, the Act or the impact of the Act on your policy.

WIAQSE04

Page 2 of 2

APPELLANT ROA 00485 BWPH Ard Trucking 00093

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

ARD TRUCKING COMPANY INC

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

1) Substance Abuse Policy Statement: Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance-abuse-free environment.

2) Employee Notification: In order to protect the individual rights of each employee and to begin the employee education process necessary for a well-defined, well-managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important-to-the employee correspondence or benefits delivery.

3) Testing Program: The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

4) Test Results Confidentially Protocols: Test results information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information;
(2) the purpose of the disclosure;
(3) the precise information to be disclosed;
(4) the duration of the consent; and
(5) the signature of a person authorizing release of the information.

Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

I certify that the above information is accurate and that I may be subject to an additional premium charge if it is determined that there is any misrepresentation of the established drug and alcohol free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name Date Officer/Owner Signature*

*Application must be signed by an officer or owner

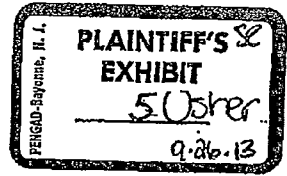
Title

Notary Public's Signature Date Exp. of Commission

Travelers

02147 G1

One Tower Square, Pol. Adm. 6CR
Hartford, CT 06183



JANUARY 26, 2004

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON

SC 29540-0504

Policy Number: UB 0188B923

Policy Effective Date: 11/07/03

Dear Policyholder:

Effective January 1, 2004, we are changing the name of two of our insurance companies. They are:

- 1) The Travelers Indemnity Company of Illinois to Travelers Property Casualty Company of America
- 2) Travelers Casualty and Surety Company of Illinois to Travelers Casualty Insurance Company of America

This change in company name does not affect your premium or coverage. These two companies continue to have the same A.M. Best claims paying and financial strength rating of A++ (superior) which is the highest rating that A.M. Best provides.

We are in the process of updating our systems and you may notice the old name on some policies, bills and other documents. Until this process is completed, please note the former names and new names of these companies.

Below the cut line is an endorsement to amend your policy. Please attach this endorsement to your policy. If you have any questions, please contact your agent or insurance representative.

This endorsement only changes the company name on your policy.

Insurer Amendment Endorsement

The name of your insurer is changed from the former name to the new name shown below:

<u>Former Name</u>	<u>New Name</u>
The Travelers Indemnity Company of Illinois	Travelers Property Casualty Company of America
Travelers Casualty and Surety Company of Illinois	Travelers Casualty Insurance Company of America

New Company Address: One Tower Square
Hartford, Connecticut 06183

This name change endorsement does not alter the coverage provided by this policy and has no effect on the premium for this policy. This endorsement changes only the name of insuring company.



Gateway Center
1000 Legion Place
P.O. Box 3556
Orlando FL 32802-3556
FAX: 407 649-3574

March 1, 2004

Insurer: Travelers Property Casualty Company of America

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

Policy No: R6EJUB 9560A28503
Effective Date: 11/07/03

Dear Insured:

The above referenced policy has been issued as part of the mandatory Loss Sensitive Rating Plan (LSRP). The purpose of the LSRP is to provide a retrospective rating plan for employers with assigned risk workers' compensation premium over a certain threshold. Retrospective rating programs determine the final premium for a policy after the policy period has ended and is based on actual losses incurred during the policy period.

Enclosed please find the explanatory booklet *The Loss Sensitive Rating Plan (LSRP): An employer's guide to the mandatory assigned risk retrospective rating program*. Please review the booklet carefully and discuss it with your producer.

Sincerely,

TONI WINTERS
Account Manager Underwriter
CL Alternative Markets Division
Orlando Service Center
1-800-443-4404, extension 3745

cc: MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE, NC 28247



BWPH Ard Trucking 00063

APPENDIX_00488



National
Council on
Compensation
Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

An employer's guide to
the mandatory assigned risk
retrospective rating program

BWP/H Ard Trucking 000243

APPELLANT ROA 00489

APPENDIX_00489

Retrospective rating is a method of pricing insurance which determines your final workers compensation premium after the policy period has ended, based on your actual losses during the policy period.

Pictorial, Inc.

This pamphlet has been created to help you understand the concept and details of the Loss Sensitive Rating Plan (LSRP). You are encouraged to read this material and discuss it with your producer, broker, assigned insurer or an NCCL, Inc. customer service representative. ■

Purpose

The purpose of the assigned risk mandatory Loss Sensitive Rating Plan (LSRP) is to provide a retrospective rating plan for those employers who have an assigned risk workers compensation insurance premium of \$200,000 or more. (Note: The premium threshold amount may vary by state.) The LSRP is designed to:

- **Promote Safety and Loss Control** by requiring you to accept greater financial responsibility for the losses that you incur.
- **Depopulate the Residual Market** by encouraging you to obtain coverage in the voluntary market.
- **Provide Fairness** by rewarding those of you with good loss experience with lower premiums while penalizing those employers with poor loss experience with higher premiums. ■

2

Background

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through other means. (Note: This would include such options as self-insurance.) The residual market is not intended to compete with the voluntary market by allowing employers to avoid various loss sensitive rating plan offers in exchange for guaranteed cost policies.

Among the rating alternatives for the large employer, loss-sensitive rating is the most equitable because it gives you the opportunity to have your insurance costs more directly related to your losses during the policy period. ■

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (Note: The implementation date may vary by state.) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. ■

Definition of Terms Used in the LSRP Program

Note: Any of the following definitions may vary by state.

Allocated Loss Adjustment Expense

ALAE includes costs associated with specific claims such as defense costs.

3.

BWPH Ard Trucking 000244

APPELLANT ROA 00490

APPENDIX_00490

Basic Premium

A percentage of the Standard Premium, determined by multiplying the Standard Premium by a Basic Premium Factor. The Basic Premium includes insurance carrier expenses such as acquisition, loss control services, premium audit, producer fees and other general administrative costs. The Basic Premium does not cover premium taxes or claim adjustment expenses. These costs are usually provided for in the Tax Multiplier and Loss Conversion Factor.

Converted Losses

The results of applying the Loss Conversion Factor (LCF) to your Incurred Losses.

Deposit Premium

The deposit you must pay at the time of application or policy renewal. It is comprised of the WCIP Deposit Premium and the LSRP Contingency Deposit Premium.

Incurred Losses

Your losses occurring during the policy period including:

- Losses which have been paid and reserves for losses which are outstanding. Reserves are established to anticipate the insurance company's obligation on claims that have been incurred but have not yet been settled. These reserves must be added to paid claims to establish total Incurred Losses.

Individual Loss Limitation (Loss Cap)

The maximum portion of any loss subject to retrospective rating. (There are no Individual Loss Limitations available in the LSRP program.)

Loss Conversion Factor (LCF)

A loading to incurred losses to cover Unallocated Loss Adjustment Expenses. In this plan, it is a fixed factor of 1.125.

LSRP Contingency Deposit Premium

It is calculated as 20 percent of your Standard Premium and collected *in addition to* the WCIP Deposit Premium. The LSRP Contingency Deposit Premium must be paid at time of application, or policy renewal, to collateralize any additional premium that may be due the assigned carrier as a result of LSRP valuation activities.

As an alternative to a cash contingency deposit, you may substitute an acceptable, clean, unconditional Irrevocable Letter of Credit (ILOC) containing an automatic renewal clause, drawn on a Federal Reserve bank. The ILOC must be for an amount at least equal to the LSRP 20 percent Contingency Deposit Premium. The cash deposit or ILOC shall be held as collateral until at least the first adjustment. (The retention period may vary by state.)

LSRP Development Premium Factors (RDFs)

This premium element is an additional loading that recognizes the probable increase in value over time of your losses and helps stabilize your premium adjustments. The LSRP Development Premium Factors anticipate a pattern of increasing valuation of your losses after the policy has expired. The factor is included only in the first three annual adjustments and is not included in the fourth and final calculation. The RDFs vary from state to state.

Maximum Premium (Max)

The most premium you will pay under the LSRP program, irrespective of your losses. The Maximum Premium has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

- *Maximum Premium Factor.* A factor that is multiplied by your Standard Premium to determine your Maximum Premium. The Maximum Premium Factor is a fixed factor of 1.75 of Standard Premium.

Minimum Premium (Mfn)

The least amount of premium you will pay even if you have no losses.

- **Minimum Premium Factor:** A factor that is multiplied by your Standard Premium to determine your Minimum Premium. The Minimum Premium Factor is a fixed factor of 0.75 of Standard Premium.

Standard Premium (SP)

For the purposes of this Plan, Standard Premium means your premium determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs where appropriate, loss constants where applicable, and Minimum Premiums. Determination of Standard Premium shall exclude:

Premium discount, expense constant (unless it is part of Minimum Premium), premium resulting from the non-ratable element codes in the *Experience Rating Plan Manual*, premium developed under Class Code 7421 (aircraft-related operations), and premium developed by the occupational disease rates for employers subject to the Federal Coal Mine Health and Safety Act.

Tax Multiplier (TM)

This covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium they collect. The TM varies from state to state.

Unallocated Loss Adjustment Expenses (ULAE)

General claim adjustment expenses which include the cost of the insurance carrier claim services such as investigation of claims and filing claim reports.

WCIP Deposit (or Initial) Premium

WCIP Deposit Premium is calculated by multiplying your Estimated Annual Premium by the required Deposit Premium percentage. The LOC option is not available for the WCIP Deposit Premium. ■

Summary of LSRP

> Objective

The principal objective is to create a plan that is appropriate for an employer of your size and will encourage you to seek coverage outside of the residual market and to control your losses.

> Parameters (Factors)

The LSRP is a simple loss sensitive rating plan constructed to be uniformly applied to all eligible employers. The plan parameters which form the basis of the LSRP are not negotiable for two reasons: individually "tailored" plans are available in the voluntary market; and, as the residual market assignment mechanism is random, the "luck of the draw" could determine the type of plan provided by the carrier, thus reducing the chance of fairness.

> Factors

The LSRP factors are:

• Basic Premium Factor (Basic)	0.30
• Loss Conversion Factor (LCF)	1.125
• Tax Multiplier (TM)	Varies by state*
• Retro Development Factors (RDFs)	Varies by state*
• Minimum Factor (Mfn)	0.75
• Maximum Factor (Max)	1.75

* The tax multiplier (TM) represents the currently approved tax multiplier in your state exclusive of any assigned risk subsidy. Current retrospective development factors (RDFs) are also used. These factors will change with subsequent changes in state rates and rating values. Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.

Some additional comments on the factors:

- Your policy premium will be adjusted, based on your losses, at intervals beginning six (6) months after the policy expires and at twelve (12) month intervals thereafter to a total of four (4) adjustments.

- The LSRP Development Factors (RDFs) will be used with the first three (3) valuations to reflect the actuarial probability that losses will develop (increase in value) over time. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and last adjustment.
- Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.
- The decision not to offer loss caps was based on the desire to avoid any plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low and tends to serve as a loss cap.

> Premium Payments

The following unique payment provisions apply:

LSRP Contingency Deposit Premium (Additional 20 percent)

- The carrier will be required to retain the 20 percent Contingency Deposit Premium and any final audit return premium without interest until the first valuation has been completed and billed. (The time held may vary by state.)

Irrevocable Letter of Credit

- In lieu of the additional 20 percent Contingency Deposit Premium in cash, an acceptable, clean, unconditional Irrevocable Letter of Credit containing an automatic renewal clause, drawn on a Federal Reserve bank can be provided at time of application or policy renewal.

Rating Plan Premium

- Your rating plan premium will be determined after the rating plan period ends (six months after policy expiration). Three additional annual premium adjustment calculations will be made.

Cancellation Provision

- The carrier will have the right to cancel the current assigned risk policy if any additional premiums on either current or prior assigned risk policies are not paid as required. The dispute resolution procedure in your state's Workers Compensation Insurance Plan (WCIP) applies to legitimate premium disputes. *Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.*

> Premium Variation

To accommodate premium increases while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days was established to retroactively convert a guaranteed cost policy to the LSRP and visa versa.

If after the first 120 days of the coverage term it is determined that you qualify for the LSRP, the current policy shall not be affected, but the LSRP will apply at renewal.

If your premium falls below the premium threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below the threshold, a retroactive conversion to guaranteed cost would result.

Since depopulation is a major goal of the LSRP, a release clause also applies. If you obtain coverage in the voluntary market within 120 days of policy inception, your premium would be calculated based on guaranteed cost.

120 DAYS FROM EFF DATE

>Multistate

The LSRP will apply to an employer with multistate operations when the total premium of all requested states that have approved LSRP meets the eligibility requirement for the LSRP state generating the largest premium. (This provision may vary by state.) ■

Impact on Your Workers Compensation Costs

The ultimate impact of the LSRP will depend on your losses over time. However, with good loss experience an individual employer's final premium is typically less than standard; it is more than standard with poor loss experience. ■

LSRP Calculation: Example

Illustrative Values

Standard Premium (SP)	=	\$339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

LSRP Factors

Basic	=	0.30
Minimum	=	0.75 or \$254,250 (\$339,000 × 0.75 = \$254,250 minimum premium)
Maximum	=	1.75 or \$593,250 (\$339,000 × 1.75 = \$593,250 maximum premium)

Loss Conversion

Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.126*

Retrospective

Development Factors (RDFs)	=	1st Adjustment	0.31*
	=	2nd Adjustment	0.21*
	=	3rd Adjustment	0.15*
	=	4th Adjustment	0.00

* Values shown here are for illustration only and are not necessarily the values in your state.

Formula

LSRP Premium (LSRP) =
Tax [(Basic × SP) + (RDF × LCF × SP) + (LCF × Incurred Losses)]

LSRP PREMIUM CALCULATIONS:

1st Adjustment

LSRP = 1.126 [(0.30 × 339,000) + (0.31 × 1.125 × 339,000) + (1.125 × 254,250)]

LSRP = 1.126 [101,700 + 118,226 + 286,031]

LSRP = 1.126 [505,957]

LSRP = 569,708

Additional Premium (AP) = \$162,908 [569,708 - 339,000 - 20% LSRP Contingency Deposit Premium]

2nd Adjustment

LSRP = 1.126 [(0.30 × 339,000) + (0.21 × 1.125 × 339,000) + (1.125 × 271,200)]

LSRP = 1.126 [101,700 + 80,089 + 305,100]

LSRP = 1.126 [486,889]

LSRP = 548,237

Return Premium (RP) = \$21,471 [569,708 - 548,237]

3rd Adjustment

LSRP = 1.126 [(0.30 × 339,000) + (0.21 × 1.125 × 339,000) + (1.125 × 305,100)]

LSRP = 1.126 [101,700 + 57,206 + 343,238]

LSRP = 1.126 [502,144]

LSRP = 565,414

Additional Premium (AP) = \$17,177 [565,414 - 548,237]

4th Adjustment

LSRP = 1.126 [(0.30 × 339,000) + (0 × 1.125 × 339,000) + (1.125 × 339,000)]

LSRP = 1.126 [101,700 + 0 + 381,375]

LSRP = 1.126 [483,075]

LSRP = 534,942

Return Premium (RP) = \$30,472 [565,414 - 534,942]

Questions & Answers

Q How will I know that I am eligible for the LSRP?

A If you are a new applicant to the assigned risk plan, the application will have the following language in the "Employer Signature Section":

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the binder is issued, the following language will be noted advising you that this is a mandatory program and it will be applicable to your policy:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

If you are already insured in an assigned risk plan, similar language will be on renewal quotes with estimated annual premium of \$150,000 or greater, advising you that the program may be applicable.

In addition, the assigned carrier will perform a preliminary audit within 120 days of inception for all renewal policies and new applications whose estimated annual premium exceeds \$150,000.

Q If I have operations in more than one state, will LSRP apply?

A The LSRP has been designed to accommodate the large assigned risk employer who has operations in several states. The plan provides for a multistate policy when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

Q What loss control services will carriers be required to offer under the LSRP?

A Although it may vary by state, under the current performance standards, servicing carriers are required to notify the policyholder and producer, in writing, within 90 calendar days of receipt of assignment, of available loss control services and safety information, including instructions on how to obtain these services and information.

Service carriers are required to provide a minimum of one consulting survey annually for each single location to any policyholder with an estimated annual premium greater than \$25,000.

Direct assignment carriers must adhere to any and all requirements as set forth by the state in which they are writing assigned risk business.

Contact your carrier or insurance advisor for more information or to arrange for loss control services.

Q If I am determined to be eligible for the LSRP during the first 120 days of the policy term, how much time am I given to provide the additional deposit/LOC?

A The carrier will usually give an insured 30 days to obtain any additional premium or appropriate LOC needed to continue the policy in force. This will also be true for any additional premium resulting from any of the four annual adjustments.

Q Do premium discounts apply when determining eligibility?

A By definition, Standard Premium does not include the premium discount; therefore, no discounts would be used in determining LSRP eligibility.

Q Is the 20 percent Contingency Deposit Premium for LSRP calculated from the total Standard Premium only in those states that approved the LSRP, or from the entire policy premium, regardless of the LSRP approvals? Will this require more than one policy?

A The 20 percent LSRP Contingency Deposit premium is calculated from the Standard Premium from those states that have approved LSRP. If the assigned risk employer requests coverage in a state where the LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one policy and then issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide coverages for all requested states; additional applications will then be necessary.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Ard Trucking Company,)
)
 Plaintiff,)
)
 vs.)
)
 Travelers Property Casualty Company)
 Of America d/b/a The Travelers Indemnity)
 Company of Illinois,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 C/A NO. 2010-CP-16-435

AFFIDAVIT OF FREDERICK J.
 MOYLEN

FILED
 2014 DEC 17 PM 2:28
 SCOTT B. SUGGS
 CLERK OF COURT/ROD,
 DARLINGTON COUNTY, S.C.

The undersigned, Frederick J. Moylen, having been duly sworn, hereby deposes and says that:

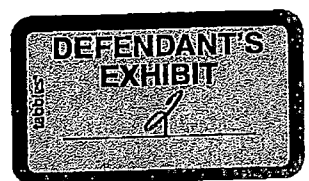
1. I am the Travelers' underwriter representative who is an expert in the areas of South Carolina assigned risk policy underwriting, the Workers' Compensation Insurance Plan WCIP, and the Loss Sensitive Rating Plan (LSRP) and all aspects related thereto, including LSRP calculations and billings.
2. Attached as Exhibit 1 is my résumé setting forth my training and qualifications.
3. I am over the age of eighteen, I am not a party in this action, and I am competent to testify concerning the matters contained in this Affidavit, and I submit this Affidavit with information based on my personal knowledge, and, if called as a witness, could or would testify to the truth of the facts stated here. Further, my expert opinions set forth herein are to a reasonable degree of certainty, more likely than not, within the field of my expertise set forth above.
4. I have reviewed Travelers' documentation kept in the ordinary course and scope of its business, as well as the South Carolina Department of Insurance documentation [SCDOI 0001-0040] evidencing that South Carolina Workers' Compensation Insurance (SCWCIP) mandates that the LSRP is applicable to South Carolina Assigned Risk policies on or after November 1, 2003.
5. Having reviewed Travelers' records and the LSRP calculations and determinations, I hereby verify that the LSRP charges were correctly and appropriately assessed to the Plaintiff pursuant to the WCIP and LSRP requirements, and I hereby verify that Travelers is entitled to an additional \$122,948.00.

FURTHER, AFFIANT SAYETH NOT.

[Signatures on following page]

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APPELLANT ROA 00497



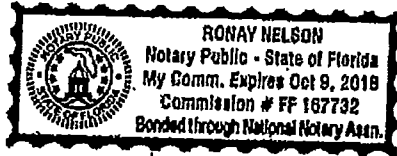
[Signature]
Witness

[Signature]
Frederick J. Moylen

[Signature]
Witness

Sworn to and subscribed before me
This 16th day of December, 2014.

[Signature] **Ronay Nelson**
Notary Public for the State of Florida
My Commission expires: Oct 9, 2018



Frederick J. Moylen

Professional Experience

Travelers Insurance Company/BI-Residual Markets – Orlando, FL Sr Financial Consultant (July 2011 to Present)

- Monitor, review and report on department financials by providing metrics and reports
- Provide guidance on trends and results
- Calculate Loss Sensitive Rating Plan (LSRP) Valuations
- Complete quarterly Sarbanes Oxley (SOX) Reporting
- Monitor, review and adjust office productivity

Assistant Operations Manager (April 2005 to June 2011)

- Supervise and mentor a team of underwriters to ensure quality and accuracy of Workers Compensation policy issuance, receivables management & customer service.
- Build and maintain excellent working relationships with client companies and business partners.
- Complete monthly reports and underwriting file reviews to help ensure that the underwriters achieve their goals.
- Respond to State Complaints through verbal and written communication.

Senior Account Manager Underwriter (May 2002 to April 2005)

- Assist and mentor underwriters with complex accounts.
- Assist coordinator with monthly reports and file reviews.

Account Manager Underwriter (May 1992 to May 2002)

- Performed tasks in an accurate and timely manner to insure compliance with applicable rules and regulations.
- Underwriting of insurance applications, policy endorsements and renewals for Workers' Compensation assigned risk clients to maximize profits and minimize loss exposure.
- Handled the in-house collections for Florida and Wisconsin assigned risk policies.
- Provided customer assistance through verbal and written communication.
- Provided assistance to other team members, teams and departments.
- Assisted the claims department to determine eligibility of benefits for Workers Compensation claims.

Travelers Insurance Company – Quincy, MA

Accounting Analyst (October 1989 to May 1992)

- Responsibilities included daily reconciliation of customer accounts.
- Evaluated and processed account collections, billing and accounts receivable.
- Provided technical and operational training to new employees.
- Prepared and monitored customer financial reports for Workers' Compensation policies.

Quirk Auto Companies – Braintree, MA

Receiving Manager (September 1986 to October 1989)

- Responsible for managing a group of 8 to 10 employees.



APPELLANT ROA 00499

- Provided inspection of all incoming vehicles from transport to ensure quality.
- Arranged for storage, transportation and security of new automobiles.
- Maintained inventory records on all vehicles for four dealerships.

EDUCATION

- May 1988 graduated Weymouth North High School, Weymouth, MA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DARLINGTON)
)
 Ard Trucking Company,)
)
 Plaintiff,)
)
 vs.)
)
 Travelers Property Casualty Company)
 Of America d/b/a The Travelers Indemnity)
 Company of Illinois,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 C/A NO. 2010-CP-16-435

AFFIDAVIT OF STEVEN V.
 EVANGELISTA, APA

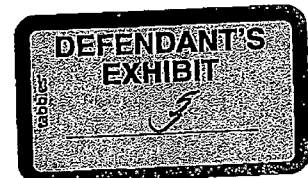
FILED
 2014 DEC 17 PM 2:28
 SCOTT B. SUGGS
 CLERK OF COURT/R.D.
 DARLINGTON COUNTY, S.C.

The undersigned, Steven V. Evangelista, APA, having been duly sworn, hereby deposes and says that:

1. I am the Travelers representative/auditor who is an expert in the areas of South Carolina Assigned Risk Policy auditing and the Workers' Compensation Insurance Plan (WCIP) auditing process and all aspects related thereto.
2. Attached as Exhibit 1 is my résumé setting forth my training and qualifications.
3. I am over the age of eighteen, I am not a party in this action, and I am competent to testify concerning the matters contained in this Affidavit, and I submit this Affidavit with information based on my personal knowledge, and, if called as a witness, could or would testify to the truth of the facts stated here. Further, my expert opinions set forth herein are to a reasonable degree of certainty, more likely than not, within the field of my expertise set forth above.
4. I have reviewed Travelers' documentation kept in the ordinary course and scope of its business, as well as the South Carolina Department of Insurance documentation [SCDOI 0001-0040], evidencing that South Carolina Workers' Compensation Insurance Plan (SCWCIP) mandates that the Loss Sensitive Rating Plan (LSRP) is applicable to South Carolina Assigned Risk policies on or after November 1, 2003.
5. Based on a thorough review of the preliminary audit survey, physical audit and accompanying audit documents of the Plaintiff, Travelers' audit determinations were based on the correct and appropriate auditing determinations in accordance with the WCIP.

FURTHER AFFIANT SAYETH NOT.

[Signatures on following page]



[Signature]
Witness

[Signature]
Steven V. Evangelista, AFA

[Signature]
Witness

Sworn to and Subscribed before me
this 15th day of December, 2014.

[Signature]
Notary Public for the State of: South Carolina
My Commission expires: 3/30/21

6. Each year, ATC attempts to obtain the most economical value available for liability and workers compensation insurance coverage for the coming insurance year. ATC's 12 month workers compensation insurance year begins in early November. In the fall of 2003, ATC was contacted by Michael P. Hair & Associates (Hair Agency) in Charlotte, NC with an offer to secure ATC's workers compensation insurance for the upcoming insurance year. The agent at the Hair Agency with whom we dealt was Gary T. Usher.

7. Mr. Usher secured a quote from St. Paul-Travelers Insurance Company (Travelers) for workers compensation coverage beginning on November 7, 2003 for an estimated premium of \$157,333. The offer was accepted by ATC and Mr. Usher sent me an application which I signed and returned to Mr. Usher on November 6, 2013. (Exhibit A.) The "Applicant's Statement" on the Travelers' application, in the last paragraph, stated:

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit meets or exceeds the premium eligibility requirement.

8. On November 6, 2003, I had no knowledge of what a Loss Sensitive Rating Plan (LSRP) was and no one told me that LSRP provisions would apply to the Travelers insurance I applied for. No one, including Mr. Usher or anyone from Travelers, informed ATC what LSRP meant and no one informed ATC that the Travelers policy contained LSRP requirements which could or would result in extraordinary additional premiums for ATC to pay. I have since learned that LSRP is a program permitted in some states which require the insured party to pay extraordinary premiums based on losses and claims. However, no one informed, notified or disclosed to anyone at ATC that the Travelers workers compensation insurance policy being applied for contained LSRP provisions that applied to ATC.

CAA
9. These facts (that no one attempted to explain how the LSRP provisions operated and no one informed or notified ATC LSRP provisions were applicable to the Travelers policy to be issued to ATC) are fully corroborated by the testimony of Mr. Usher in his September 26, 2013 deposition. Mr. Usher testified he was never informed by anyone at Travelers that the policy applied for included LSRP provisions requiring ATC to pay extraordinary premiums. Mr. Usher testified that he never discussed LSRP provisions with Travelers and never discussed LSRP provisions with anyone at ATC. Moreover, Mr. Usher testified that he could not possibly have discussed the LSRP provisions with anyone in November of 2003 since he had knew nothing about LSRP.

10. After a careful review of the application that I signed on November 6, 2003, the only mention of LSRP in the application is contained under the above paragraph which stated that the LSRP provisions were "only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use." No one informed me that the LSRP was ever been approved for use in South Carolina.

11. Travelers issued ATC the policy on December 1, 2003 (effective for the year beginning November 7, 2003) and delivered it to the Hair Agency, which delivered it to ATC. (Exhibit B.) The Travelers policy stated that the estimated premium for the coverage year (November 7, 2003 - November 6, 2004) was \$167,988. Under **PART FIVE - PREMIUM**, the policy explained how the "final premium" would be determined:

E. Final Premium

The premium shown on the Information Page, schedules and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated premium basis and the proper classification and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. (Balance of provision omitted.)

The policy also states:

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contacts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. . . . Information developed by audit will be used to determine final premium. (Balance of provision omitted.)

12. Included within the Travelers policy issued on December 1, 2003 were several endorsements. One endorsement (numbered ENDORSEMENT WC 00 04 15 (00) and entitled ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT), states that the Travelers policy issued to ATC was an "assigned risk" policy and explained that a surcharge could be added to the premium under the "Assigned Risk Adjustment Program" approved for use in South Carolina. There is no mention in this endorsement of LSRP.

CAA

13. Another endorsement within the Travelers policy issued on December 1, 2003 (numbered ENDORSEMENT WC 00 06 17 (00) and entitled ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT) addresses whether the Loss Sensitive Rating Plan (LSRP) applies to the policy issued to ATC. The last sentence in the endorsement specifically states:

This endorsement applies in the states listed in the schedule below:

SCHEDULE	
STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000

Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

The endorsement excludes and omits South Carolina from the list of states where LSRP applies. Therefore, LSRP did not apply to the policy issued to ATC which is, and always has been, located in South Carolina.

14. Based on the term of the policy issued to ATC, the only method by which premiums could be adjusted was the results of the specified audits to determine the premiums estimates and the final premium.

15. After the Travelers policy was issued, Travelers asserted that it sent ATC a brochure purporting to explain how LSRP was intended to operate. (Exhibit C.) However, the LSRP endorsement excluded South Carolina insured. As a result, the brochure was not applicable to the Travelers policy issued to ATC. Additionally, page 3 of the LSRP brochure prominently displays the following language:

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (*Note: The implementation date may vary by state.*) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters.

CAA

No one at Travelers or Hair Agency ever advised ATC that the "proposed implementation" of LSRP in South Carolina had been approved. Moreover, no one "advised (ATC) of the approval and implementation dates (for LSRP in South Carolina), as well as the LSRP parameters." As stated, the Travelers policy issued to ATP omitted the LSRP provisions from the ATC's South Carolina policy and Travelers never amended the LSRP endorsement negating application of LSRP under the policy issued to ATC.

16. In early 2004, Travelers Insurance Company went through a reorganization. Thereafter, a new policy was issued to ATC by Travelers dated March 1, 2004. The reissued policy contained the identical LSRP endorsement as the original policy: the March 1, 2004 LSRP endorsement on the reissued policy listed all states wherein the LSRP applied and South Carolina was not listed. (Exhibit D.)

17. In early 2004, Travelers requested ATC to provide additional data from ATC regarding ATC's work force. After ATC submitted all the requested data, Travelers required ATC to issue Travelers a "Letter of Credit" for \$52,116 to cover additional premiums Travelers might determine were due at the end of the policy year. ATC complied and the LOC was issued by Carolina Bank on May 17, 2004. Thereafter, Travelers issued a "Change Document" dated July 27, 2003 regarding the \$52,116 as a "Return Premium." (Exhibit E.) It was my understanding that the LOC would be rescinded by Travelers as soon as final audit was complete and the Final Premium paid by ATC.

18. After the Travelers policy year ended on November 7, 2003, Travelers sent its CPA James Burnett to ATC in December of 2004 to conduct an on-site audit at ATC to determine what "Final Premium" was due to Travelers. On February 9, 2005, Travelers sent ATC a Final Premium Bill for \$29,245, which ATC paid on February 22, 2005. (Exhibit F.)

19. On July 21, 2005, Travelers informed ATC for the first time that the LSRP provisions under the Travelers policy issued to ATC required the payment of an additional LSRP premium totaling \$175,064. (Exhibit G.) Our attorney investigated the background and wrote Travelers on September 9, 2005 protesting the claim for LSRP premiums and demanding Travelers to release the \$52,116 LOC. Our attorney's letter specifically stated:

I have been retained by Ard Trucking Company regarding your company's request for an additional premium for workers' compensation insurance for the above period. On my review of my client's workers compensation documents, it appears that my client was informed in February of 2005 that it owed a "final audit" premium balance of \$29,245 for the stated policy period; and, my client promptly paid that sum on February 22, 2005. My client was not made aware that any additional premium charges would be due.

In sum, the insurer, following the "final audit" it completed on January 6, 2005 after the policy period had ended, specifically informed the insured that the final premium was \$29,245. The insured timely paid the "final audit" premium of \$29,245 on February 22, 2005. At no time was the insured informed that an additional premium would thereafter be due. Moreover, personnel from the insurer stated that there would be no reason for the insurer to hold the May 17, 2004 "Irrevocable Standby Letter of Credit" (LOC) any longer than the end of June of 2005.

Under the foregoing circumstances, the insurance company is estopped to seek any additional premium following the insurer's January 6, 2005 final audit. By this letter, I am specifically requesting that St Paul Travelers immediately release the LOC as being no longer necessary. Your failure to promptly release the LOC will cause damage to Ard Trucking Company, Inc. and force my client to seek a judicial remedy.

Thereafter, Travelers called on Carolina Bank to pay Travelers the LOC. Carolina Bank then paid Travelers the LOC under protest from ATC. Thereafter, this lawsuit was filed by ATC to recover the LOC funds from Travelers.

20. I am not an attorney and only have a high school education. However, I have dealt with written contracts on behalf of ATC for many decades. I always understood that it is not possible for one contracting party to impose any contract terms upon the other party that were not contained in the contract they entered. ATC was never informed by Travelers that the workers compensation insurance contract it sold and issued to ATC included LSRP provisions or requirements. In fact, LSRP provisions Travelers relies on for extraordinary premiums from ATC never applied to ATC because the specific list of states where LSRP was applicable are listed in Travelers own LSRP endorsement which fails to list South Carolina. Travelers should not be allowed to assert LSRP premium charges against ATC when the contract provisions relied on by Travelers specifically omit South Carolina as being a state where LSRP applies.

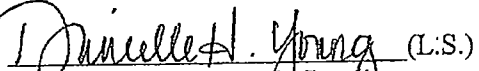
21. I believe that ATC has paid all that is due to Travelers under the policy issued to ATC when ATC paid Travelers the Final Premium of \$29,245 on February 22, 2005 following the Final Audit by Travelers' CPA. I believe that ATC is entitled to receive payment from Travelers of the \$52,116 LOC funds it obtained from Carolina Bank in October of 2005, plus interest at the legal rate.

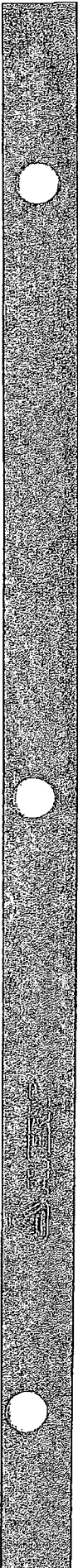
22. I have read the foregoing affidavit, as well as the documents attached. Upon information and belief, all information stated herein is true and correct to the best of my knowledge, information and belief.



C. Allen Ard, President
Ards Trucking Company

SWORN TO and subscribed before me
this 12th day of December, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 11-07-2021



APPELLANT ROA 00509

PREMIUM PAYMENT (Refer to WCIP Instruction sheet for state requirements)

PAYMENT METHOD - SELECT ONE:

IS THE PREMIUM FINANCED? YES NO

1. VERBAL CHECK

BANK/ABA #	ACCOUNT #	CHECK #	PREMIUM PAYMENT AMOUNT
			\$.00

2. ELECTRONIC FUNDS TRANSFER

BANK/ABA #	ACCOUNT #	PREMIUM PAYMENT AMOUNT
		\$.00

3. MAIL-IN CHECK

CHECK #	PREMIUM PAYMENT AMOUNT
18506	\$ 157333.00

For submission methods 1 and 2:

- Does the payor require a physical record of this transaction? YES NO
- To ensure accuracy, a voided check or deposit slip (of the payor) should be faxed to NCCI, Inc. upon return of the signed ACORD applications.
- The undersigned Producer or Applicant certifies that by signing this application he/she authorizes NCCI, Inc. to deduct or has obtained financial information and authorization from the payor to direct NCCI, Inc. to deduct the Premium Payment Amount, and any other monies required to bind coverage, from the bank and the account number as indicated above for purposes of securing workers compensation insurance pursuant to this application.

APPLICANT'S STATEMENT

The undersigned applicant hereby certifies that he/she has read and understands the statements in this application. As further consideration of policy issuance, the applicant also certifies that the responses provided in this application are true and furthermore agrees:

- To maintain a complete record of all payroll transactions in such form as the insurance company may reasonably require and that such record will be available to the company at the designated address.
- To comply substantially with all laws, orders, rules, and regulations in force and effect made by the public authorities relating to the welfare, health, and safety of employees.
- To comply with all reasonable recommendations made by the insurance company relating to the welfare, health, and safety of employees.
- To take no action in any form to evade the application of experience modification determined in accordance with the experience rating rules, as determined by the Plan Administrator.

The undersigned applicant also certifies he/she has had no difficulties with any producer or company in regard to: (a) payroll records; (b) the amount of premium charged; (c) the payment of premium; (d) the carrying out of any recommendation made for the purpose of safeguarding employees; (e) the handling of any claim or accident report except the following:


Violation of any of these agreements may result in cancelation of a policy of insurance issued under a Workers Compensation Insurance Plan.

The undersigned applicant understands also that coverage is NOT bound until the signed application is received with appropriate premium and eligibility is determined by the administrator. Provided that applicant is determined to be eligible and in good faith entitled to WCIP insurance, based upon the information provided herein or otherwise available, coverage will be bound in accordance with plan rules. See individual state plans for applicable binding rules.

The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

By signing below I acknowledge that the NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

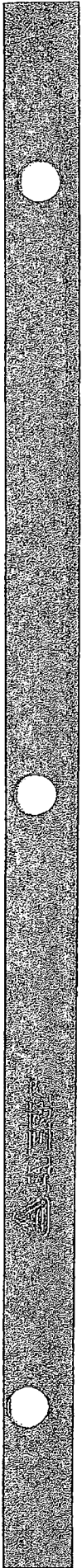
APPLICANT'S NAME AND TITLE (PRINT OR TYPE)	DATE	SIGNATURE (MUST BE AN OWNER OR AN OFFICER)
C. ALLEN ARD PRESIDENT		

REMINDER: BOTH THE ACORD 130 AND 133 APPLICATIONS MUST BE SIGNED BY THE APPLICANT AND DESIGNATED PRODUCER.

PRODUCER'S CERTIFICATION

THE PRODUCER ALSO CERTIFIES THAT HE/SHE HAS BEEN AUTHORIZED TO SUBMIT THE APPLICATION ON BEHALF OF THE APPLICANT AND THAT ALL INFORMATION PROVIDED ON THE ACORD 130 AND ACORD 133 IS TRUE AND ACCURATE TO THE BEST OF HIS/HER KNOWLEDGE AND BELIEF.

AGENCY FEIN	AGENCY PHONE NUMBER (A/C, No, Ext)	AGENCY FAX NUMBER (A/C, No)
RESIDENT LICENSE NUMBER	EXPIRATION DATE	NON-RESIDENT LICENSE NUMBER
PRODUCER NAME (PRINT OR TYPE)	DATE	PRODUCER SIGNATURE
Frank McCravy		



APPELLANT ROA 00511

APPENDIX_00511

APPELLANT ROA 00512

APPENDIX_00512

SAFETY SERVICES

Notice to policy recipient: If you are not the person directly responsible for the accident prevention activities for your company, please direct this Safety Services notice to the person that is directly responsible for them.

SAFETY IS OUR CONCERN

Thank you for purchasing your Workers' Compensation insurance. Along with your agent, we appreciate your business and welcome the opportunity to be of service.

An important part of that service concerns accident prevention and safety engineering. Our Loss Prevention & Engineering Division has the experience, resources and capabilities to provide a range of safety services including site surveys, phone consultations or the provision of selected safety material. The following are some examples of our available services:

Accident Prevention - Our staff can help you identify present and potential safety hazards in your operations, premises and equipment, recommending measures for reducing or eliminating these hazards.

Analysis of Accident Causes - Although you investigate and keep records of accidents, we're available to help if needed.

Safety Consultations - Our field staff, supported by Home Office and field specialists, can help you with special problems such as ergonomics.

Industrial Hygiene/Health Services - We have the facilities and resources to answer your questions concerning job related industrial hygiene/health issues and to measure exposure to industrial hygiene hazards.

Safety Videos and Literature - We can provide you with basic videos and literature to assist you in your loss control efforts. Also, we can put you in contact with several companies able to provide additional safety materials including brochures, pamphlets and videos.

Safety Training - We can help you improve your safety training programs.

Internet Website - Visit the Loss Prevention & Engineering website page for helpful safety information. (<http://www.travelerspc.com/safety>). This website also has hot links to other safety-related Internet sites. For all requests for loss control assistance ONLY, please directly contact your local office listed on the following pages

The Travelers will provide these services upon request. Telephone consultation is also available if the nature of the operations and hazards warrant such service. See the rest of this document for the Loss Prevention & Engineering office nearest to you.

SAFETY IS YOUR CONCERN

U. S. employers spend billions of dollars each year on the direct and indirect costs of work-related accidents. Dollar figures can't begin to reflect the pain and suffering of an injured worker and his or her family. But they do give some indication of the multiple consequences of a job-related accident... loss of time, interrupted production, damaged materials and equipment, the expense of retraining or replacing an injured worker, possible legal action from government regulatory agencies, and increased insurance costs.

It makes good sense for both employers and their employees to actively participate in a sound accident prevention program. The success of such a program depends to a large extent on your commitment to safety procedures and accident prevention techniques. Safety is a management concern. Maybe we can help.

You may want to consider the following "Safety Checkpoints" as you evaluate your organization's safety activities:

SELF-INSPECTION PROGRAM:

- * Do you conduct periodic surveys of premises?... equipment?... operations?
- * Do you analyze each job to find inherent hazards?
- * If you discover hazards, do you follow up with immediate corrective action?
- * Do you monitor such action to make sure it is implemented and effective?

ACCIDENT INVESTIGATION:

- * Do you investigate each accident?...determine the cause?
- * Do you take immediate steps to prevent a recurrence?
- * Do you keep records of accident investigations and follow-up measures?
- * Do you complete accident statistics and analyze trends?

EDUCATION AND TRAINING

- * Do you take the time to train each of your employees to perform tasks safely?
- * Do more-experienced employees receive training to correct bad habits that have developed over time?
- * Do all employees understand that safety is an important part of their jobs?



FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

MINNESOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

MISSISSIPPI

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MISSOURI

St. Louis
One City Place Drive
Creve Coeur, MO 63141
P.O. Box 66852
St. Louis, MO 63166-6852
(314) 994-2374

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

Missouri Workers' Compensation Plan (MWCP)

951 Homet Drive
P.O. Box 42021
Hazelwood, MO 63042-2309
(314) 551-3208

MONTANA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

NEBRASKA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

NEVADA

Las Vegas
1850 E Flamingo, Suite 202
Las Vegas, NV 89119
(702) 669-4718

NEW HAMPSHIRE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

NEW JERSEY

Morris Plains
1100 American Road, 2nd Floor
Morris Plains, NJ 07950
(973) 606-5245

Pennsauken
4350 Haddonfield Road
Pennsauken, NJ 08109
(856) 488-5942

NEW MEXICO

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

NEW YORK

Albany
900 Watervliet-Shaker Road
Albany, NY 12205
(315) 424-7231

Buffalo
80 Lakefront Blvd.
P.O. Box 242
Buffalo, NY 14240-0242
(315) 424-7231

East Meadow
90 Merrick Ave., 4th Floor
East Meadow, NY 11554-1593
(973) 606-5245

New York
One Whitehall Street
New York, NY 10004-2108
(973) 606-5245

Rochester
75 Town Centre Drive
P.O. Box 23235
Rochester, NY 14692-3235
(315) 424-7231

Syracuse
440 South Warren Street
P.O. Box 4963
Syracuse, NY 13221-4963
(315) 424-7231

NORTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

Raleigh
3733 National Drive, Suite 200
Raleigh, NC 27612
(919) 420-1873

NORTH DAKOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

OHIO

Cincinnati
895 Central Avenue, Suite 800
Cincinnati, OH 45202
(216) 348-7512

Cleveland
Skylight Office Tower
1660 W. 2nd St., Suite 500
Cleveland, OH 44113-1454
(216) 348-7512

OKLAHOMA

Tulsa
9820 East 41st Street, Suite 401
P.O. Box 3510
Tulsa, OK 74101
(913) 661-3679

OREGON

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

PENNSYLVANIA

Harrisburg
5001 Louise Drive
Mechanicsburg, PA 17055
(717) 691-5101

Philadelphia
1500 Market Street
29th Floor W Tower
Philadelphia, PA 19102
(267) 675-3056

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

Reading
1105 Berkshire Blvd.
P.O. Box 13426
Wyomissing, PA 19612-3426
(610) 371-3809

RHODE ISLAND

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-12843

SOUTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

SOUTH DAKOTA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679





**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

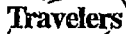
ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540



APPELLANT ROA 00515

008678

APPENDIX_00515



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03) NEW-03

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC PO BOX 504 DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC 7422 CARMEL EXECUTIVE PK #204 PD BOX 472224 CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the Insured's mailing address.

3. A. WORKERS COMPENSATION INSURANCE: Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. EMPLOYERS LIABILITY INSURANCE: Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident: \$ 500000 Each Accident
Bodily Injury by Disease: \$ 500000 Policy Limit
Bodily Injury by Disease: \$ 500000 Each Employee

C. OTHER STATES INSURANCE: Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.



DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC APPELLANT ROA 00516

008679



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
-----------------	---------	--	---------------------------------------	--------------------------------

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4789

	STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	166946
PREMIUM DISCOUNT	NONE
0900-39 EXPENSE CONSTANT	230
TERRORISM RISK INS ACT 2002	812
TOTAL ESTIMATED PREMIUM	167988
DEPOSIT AMOUNT DUE	167988

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC

26XSD

APPELLANT ROA 00517



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	2100000	10.47	219870
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	16000	.83	133
CLERICAL OFFICE EMPLOYEES NDC	8810	590000	.31	1829



1.70% EMPL. LIAB. INCREASED LIMITS(9807)	\$	3771
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION		225603
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM		166946
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		166946
0.00% ARAP MODIFICATION PROGRAM		NONE
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		812
TOTAL ESTIMATED PREMIUM		167988
DEPOSIT AMOUNT DUE		167988

DATE OF ISSUE: 12-01-03 TW

ST APPENDANT SCROA 00518 SCHEDULE NO: 1 OF LAST

008680

APPENDIX_00518



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT



The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational dis-

ease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE—WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.



G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law.

Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment,

claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws.
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is ex-

hausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE — OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if

we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.



PART FOUR – YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE – PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your officers and employees engaged in work covered by this policy; and
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy

ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX – CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While

they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 15 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia





**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

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(Rev. 03-03)

APPELLANT ROA 00525



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-01 88B92-3-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

- 1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule			
State	Rate per \$100 of Remuneration	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030		

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective	Policy No.	Endorsement No.
Insured		Premium \$
Insurance Company	Countersigned by _____	

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC
APPELLANT ROA 00527

Page 2 of 2



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

SCHEDULE

STATE	MODIFICATION
SC	0.7400



DATE OF ISSUE: 12-01-03

ST ASSIGN: APPELLANT ROA 00528

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APPENDIX_00528

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 12-01-03

ST ASSIGN: APPELLANT ROA 00529

APPENDIX_00529

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

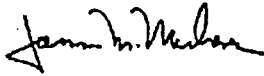
3. The policy period will end on the day and hour stated in the cancellation notice.

4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.



Secretary



President



WC 00 00 00 (A)

CP-3349 Edition 2-92 Printed in U.S.A. (2-92)

APPELLANT ROA 00530

Page 5 of 5

008884

APPENDIX_00530

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)**

POLICY NUMBER: (6JUB-01 88B92-3-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three--Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 12-01-03

ST ASSIGNMENT/PPELLANT ROA 00531

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APPENDIX_00531





**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

	SCHEDULE		
ANNIVERSARY RATING DATE	(MONTH)	(DAY)	(YEAR)
REFER TO INFORMATION PAGE SCHEDULE(S)			

DATE OF ISSUE: 12-01-03

ST ASSIGN, 66 APPELLANT ROA 00532

APPENDIX_00532

PLAINTIFF'S
EXHIBIT
12
ENLARGED DIVISION



National
Council on
Compensation
Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

An employer's guide to
the mandatory assigned risk
retrospective rating program

BWPH Ard Trucking 000243

APPELLANT ROA 00533

APPENDIX_00533

Retrospective rating is a method of pricing insurance which determines your final workers compensation premium after the policy period has ended, based on your actual losses during the policy period.

Pictorial, Inc.

This pamphlet has been created to help you understand the concept and details of the Loss Sensitive Rating Plan (LSRP). You are encouraged to read this material and discuss it with your producer, broker, assigned insurer or an NCCL, Inc. customer service representative. ■

Purpose

The purpose of the assigned risk mandatory Loss Sensitive Rating Plan (LSRP) is to provide a retrospective rating plan for those employers who have an assigned risk workers compensation insurance premium of \$200,000 or more. (Note: The premium threshold amount may vary by state.) The LSRP is designed to:

- **Promote Safety and Loss Control** by requiring you to accept greater financial responsibility for the losses that you incur.
- **Depopulate the Residual Market** by encouraging you to obtain coverage in the voluntary market.
- **Provide Fairness** by rewarding those of you with good loss experience with lower premiums while penalizing those employers with poor loss experience with higher premiums. ■

Background

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through other means. (Note: This would include such options as self-insurance.) The residual market is not intended to compete with the voluntary market by allowing employers to avoid various loss sensitive rating plan offers in exchange for guaranteed cost policies.

Among the rating alternatives for the large employer, loss-sensitive rating is the most equitable because it gives you the opportunity to have your insurance costs more directly related to your losses during the policy period. ■

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (Note: The implementation date may vary by state.) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. ■

Definition of Terms Used in the LSRP Program

Note: Any of the following definitions may vary by state.

Allocated Loss Adjustment Expense

ALAE includes costs associated with specific claims such as defense costs.

Basic Premium

A percentage of the Standard Premium, determined by multiplying the Standard Premium by a Basic Premium Factor. The Basic Premium includes insurance carrier expenses such as acquisition, loss control services, premium audit, producer fees and other general administrative costs. The Basic Premium does not cover premium taxes or claim adjustment expenses. These costs are usually provided for in the Tax Multiplier and Loss Conversion Factor.

Converted Losses

The results of applying the Loss Conversion Factor (LCF) to your Incurred Losses.

Deposit Premium

The deposit you must pay at the time of application or policy renewal. It is comprised of the WCIP Deposit Premium and the LSRP Contingency Deposit Premium.

Incurred Losses

Your losses occurring during the policy period including:

- Losses which have been paid and reserves for losses which are outstanding. Reserves are established to anticipate the insurance company's obligation on claims that have been incurred but have not yet been settled. These reserves must be added to paid claims to establish total Incurred Losses.

Individual Loss Limitation (Loss Cap)

The maximum portion of any loss subject to retrospective rating. There are no Individual Loss Limitations available in the LSRP program.

Loss Conversion Factor (LCF)

A loading to incurred losses to cover Unallocated Loss Adjustment Expenses. In this plan, it is a fixed factor of 1.125.

LSRP Contingency Deposit Premium

It is calculated as 20 percent of your Standard Premium and collected *in addition to* the WCIP Deposit Premium. The LSRP Contingency Deposit Premium must be paid at time of application, or policy renewal, to collateralize any additional premium that may be due the assigned carrier as a result of LSRP valuation activities.

As an alternative to a cash contingency deposit, you may substitute an acceptable, clean, unconditional irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a Federal Reserve bank. The LOC must be for an amount at least equal to the LSRP 20 percent Contingency Deposit Premium. The cash deposit or LOC shall be held as collateral until at least the first adjustment. (The retention period may vary by state.)

LSRP Development Premium Factors (RDFs)

This premium element is an additional loading that recognizes the probable increase in value over time of your losses and helps stabilize your premium adjustments. The LSRP Development Premium Factors anticipate a pattern of increasing valuation of your losses after the policy has expired. The factor is included only in the first three annual adjustments and is not included in the fourth and final calculation. The RDFs vary from state to state.

Maximum Premium (Max)

The most premium you will pay under the LSRP program, irrespective of your losses. The Maximum Premium has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

- *Maximum Premium Factor.* A factor that is multiplied by your Standard Premium to determine your Maximum Premium. The Maximum Premium Factor is a fixed factor of 1.75 of Standard Premium.

Minimum Premium (Min)

The least amount of premium you will pay even if you have no losses.

- **Minimum Premium Factor.** A factor that is multiplied by your Standard Premium to determine your Minimum Premium. The Minimum Premium Factor is a fixed factor of 0.75 of Standard Premium.

Standard Premium (SP)

For the purposes of this Plan, Standard Premium means your premium determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs where appropriate, loss constants where applicable, and Minimum Premiums. Determination of Standard Premium shall exclude:

Premium discount, expense constant (unless it is part of Minimum Premium), premium resulting from the non-ratable element codes in the *Experience Rating Plan Manual*, premium developed under Class Code 7421 (aircraft-related operations), and premium developed by the occupational disease rates for employers subject to the Federal Coal Mine Health and Safety Act.

Tax Multiplier (TM)

This covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium they collect. The TM varies from state to state.

Unallocated Loss Adjustment Expenses (ULAE)

General claim adjustment expenses which include the cost of the insurance carrier claim services such as investigation of claims and filing claim reports.

WCIP Deposit (or Initial) Premium

WCIP Deposit Premium is calculated by multiplying your Estimated Annual Premium by the required Deposit Premium percentage. The LOC option is not available for the WCIP Deposit Premium. ■

Summary of LSRP

> Objective

The principal objective is to create a plan that is appropriate for an employer of your size and will encourage you to seek coverage outside of the residual market and to control your losses.

> Parameters (Factors)

The LSRP is a simple loss sensitive rating plan constructed to be uniformly applied to all eligible employers. The plan parameters which form the basis of the LSRP are not negotiable for two reasons: individually "tailored" plans are available in the voluntary market; and, as the residual market assignment mechanism is random, the "luck of the draw" could determine the type of plan provided by the carrier, thus reducing the chance of fairness.

> Factors

The LSRP factors are:

• Basic Premium Factor (Basic)	0.30
• Loss Conversion Factor (LCF)	1.125
• Tax Multiplier (TM)	Varies by state*
• Retro Development Factors (RDFs)	Varies by state*
• Minimum Factor (Min)	0.75
• Maximum Factor (Max)	1.75

* The tax multiplier (TM) represents the currently approved tax multiplier in your state exclusive of any assigned risk subsidy. Current retrospective development factors (RDFs) are also used. These factors will change with subsequent changes in state rates and rating values. Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.

Some additional comments on the factors:

- Your policy premium will be adjusted, based on your losses, at intervals beginning six (6) months after the policy expires and at twelve (12) month intervals thereafter to a total of four (4) adjustments.

- The LSRP Development Factors (RDFs) will be used with the first three (3) valuations to reflect the actuarial probability that losses will develop (increase in value) over time. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and last adjustment.
- Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.
- The decision not to offer loss caps was based on the desire to avoid any plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low and tends to serve as a loss cap.

>Premium Payments

The following unique payment provisions apply:

LSRP Contingency Deposit Premium (Additional 20 percent)

- The carrier will be required to retain the 20 percent Contingency Deposit Premium and any final audit return premium without interest until the first valuation has been completed and billed. (The time held may vary by state.)

Irrevocable Letter of Credit

- In lieu of the additional 20 percent Contingency Deposit Premium in cash, an acceptable, clean, unconditional Irrevocable Letter of Credit containing an automatic renewal clause, drawn on a Federal Reserve bank can be provided at time of application or policy renewal.

Rating Plan Premium

- Your rating plan premium will be determined after the rating plan period ends (six months after policy expiration). Three additional annual premium adjustment calculations will be made.

Cancellation Provision

- The carrier will have the right to cancel the current assigned risk policy if any additional premiums on either current or prior assigned risk policies are not paid as required. The dispute resolution procedure in your state's Workers Compensation Insurance Plan (WCIP) applies to legitimate premium disputes. *Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.*

>Premium Variation

To accommodate premium increases while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days was established to retroactively convert a guaranteed cost policy to the LSRP and visa versa.

If after the first 120 days of the coverage term it is determined that you qualify for the LSRP, the current policy shall not be affected, but the LSRP will apply at renewal.

If your premium falls below the premium threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below the threshold, a retroactive conversion to guaranteed cost would result.

Since depopulation is a major goal of the LSRP, a release clause also applies. If you obtain coverage in the voluntary market within 120 days of policy inception, your premium would be calculated based on guaranteed cost.

120 DAYS FROM EFF DATE

>Multistate

The LSRP will apply to an employer with multistate operations when the total premium of all requested states that have approved LSRP meets the eligibility requirement for the LSRP state generating the largest premium. (This provision may vary by state.) ■

Impact on Your Workers Compensation Costs

The ultimate impact of the LSRP will depend on your losses over time. However, with good loss experience an individual employer's final premium is typically less than standard; it is more than standard with poor loss experience. ■

LSRP Calculation: Example

Illustrative Values

Standard Premium (SP)	=	\$339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

LSRP Factors

Basic	=	0.30
Minimum	=	0.75 or \$254,250 (\$339,000 × 0.75 = \$254,250 minimum premium)
Maximum	=	1.75 or \$593,250 (\$339,000 × 1.75 = \$593,250 maximum premium)

Loss Conversion

Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.126*

Retrospective

Development Factors (RDFs)	=	1st Adjustment	0.31*
	=	2nd Adjustment	0.21*
	=	3rd Adjustment	0.15*
	=	4th Adjustment	0.00

* Values shown here are for illustration only and are not necessarily the values in your state.

Formula

LSRP Premium (LSRP) =
 Tax [(Basic × SP) + (RDF × LCF × SP) + (LCF × Incurred Losses)]

LSRP PREMIUM CALCULATIONS:

1st Adjustment

LSRP = 1.126 [(30 × 339,000) + (31 × 1.125 × 339,000) + (1.125 × 254,250)]

LSRP = 1.126 [101,700 + 118,226 + 286,031]

LSRP = 1.126 [505,957]

LSRP = 569,708

Additional Premium (AP) = \$162,908 [569,708 - 339,000 - 20% LSRP Contingency Deposit Premium]

2nd Adjustment

LSRP = 1.126 [(30 × 339,000) + (21 × 1.125 × 339,000) + (1.125 × 271,200)]

LSRP = 1.126 [101,700 + 80,089 + 305,100]

LSRP = 1.126 [486,889]

LSRP = 548,237

Return Premium (RP) = \$21,471 [569,708 - 548,237]

3rd Adjustment

LSRP = 1.126 [(30 × 339,000) + (21 × 1.125 × 339,000) + (1.125 × 305,100)]

LSRP = 1.126 [101,700 + 57,206 + 343,238]

LSRP = 1.126 [502,144]

LSRP = 565,414

Additional Premium (AP) = \$17,177 [565,414 - 548,237]

4th Adjustment

LSRP = 1.126 [(30 × 339,000) + (0 × 1.125 × 339,000) + (1.125 × 339,000)]

LSRP = 1.126 [101,700 + 0 + 381,375]

LSRP = 1.126 [483,075]

LSRP = 534,942

Return Premium (RP) = \$30,472 [565,414 - 534,942]

Questions & Answers

Q How will I know that I am eligible for the LSRP?

A If you are a new applicant to the assigned risk plan, the application will have the following language in the "Employer Signature Section":

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the binder is issued, the following language will be noted advising you that this is a mandatory program and it will be applicable to your policy:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

If you are already insured in an assigned risk plan, similar language will be on renewal quotes with estimated annual premium of \$150,000 or greater, advising you that the program may be applicable.

In addition, the assigned carrier will perform a preliminary audit within 120 days of inception for all renewal policies and new applications whose estimated annual premium exceeds \$150,000.

Q If I have operations in more than one state, will LSRP apply?

A The LSRP has been designed to accommodate the large assigned risk employer who has operations in several states. The plan provides for a multistate policy when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

Q What loss control services will carriers be required to offer under the LSRP?

A Although it may vary by state, under the current performance standards, servicing carriers are required to notify the policyholder and producer, in writing, within 90 calendar days of receipt of assignment, of available loss control services and safety information, including instructions on how to obtain these services and information.

Servicing carriers are required to provide a minimum of one consulting survey annually for each single location to any policyholder with an estimated annual premium greater than \$25,000.

Direct assignment carriers must adhere to any and all requirements as set forth by the state in which they are writing assigned risk business.

Contact your carrier or insurance advisor for more information or to arrange for loss control services.

Q If I am determined to be eligible for the LSRP during the first 120 days of the policy term, how much time am I given to provide the additional deposit/LOC?

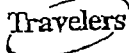
A The carrier will usually give an insured 30 days to obtain any additional premium or appropriate LOC needed to continue the policy in force. This will also be true for any additional premium resulting from any of the four annual adjustments.

Q Do premium discounts apply when determining eligibility?

A By definition, Standard Premium does not include the premium discount; therefore, no discounts would be used in determining LSRP eligibility.

Q Is the 20 percent Contingency Deposit Premium for LSRP calculated from the total Standard Premium only in those states that approved the LSRP, or from the entire policy premium, regardless of the LSRP approvals? Will this require more than one policy?

A The 20 percent LSRP Contingency Deposit premium is calculated from the Standard Premium from those states that have approved LSRP. If the assigned risk employer requests coverage in a state where the LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one policy and then issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide coverages for all requested states; additional applications will then be necessary.



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 03-01-04 ST ASSIGN: SC APPELLANT ROA 00541

(Rev. 03-03)



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

CHANGE DOCUMENT WC 99 99 98 (00)

POLICY NUMBER: (R6EJUB-9560A2B-5-03)

CHANGE EFFECTIVE DATE: 11-07-03

NCCI CO CODE: 13579

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

INSURED'S NAME: ARD TRUCKING COMPANY INC

This change is issued by that member of The Travelers Insurance Companies which issued the policy and forms a part of the policy. It is agreed that the policy is amended as follows:

An absence of an entry in the premium spaces below means that the premium adjustment, if any, will be made at time of audit.

ADDITIONAL PREMIUM	\$ NIL	RETURN PREMIUM	\$ 52116
ADDITIONAL NON-PREMIUM	\$ NIL	RETURN NON-PREMIUM	\$ NIL

THE POLICY CHANGE DESCRIPTION IS AS FOLLOWS:
APPROVED LETTER OF CREDIT RECEIVED

THE FOLLOWING ENDORSEMENT(S) IS ADDED:
WC89061400-01 POLICY INFORMATION PAGE ENDORSEMENT
WC99999800-01 CHANGE DOCUMENT

THE INFO PAGE SCHEDULE(S) ATTACHED REPLACE THOSE ON THE POLICY.



DATE OF ISSUE: 07-27-04	GS CHANGE NO: 002	PAGE 001 OF LAST
POL. EFF. DATE: 11-07-03	POL. EXP. DATE: 11-07-04	
OFFICE: ORLANDO	870	
PRODUCER: MICHAEL P HAIR & ASSOC	26XSD	

APPELLANT ROA 00542

COUNTERSIGNED AGENT

008819

ST PAUL TRAVELERS
THE TRAVELERS
P.O. BOX 96359
CHICAGO IL 60693-6359

00444

FINAL PREMIUM BILL

ASSIGNED RISK-WORKERS' COMPENSATION INSURANCE

Date of Bill: 02/09/05

Policy Number: 9560A285

DIRECT INQUIRIES TO:

THE TRAVELERS
P.O. BOX 3556
ORLANDO FL 32802-3556

1-800-443-4404
1-800-247-7218 (FL)

*pd
2-22-05
55995*

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

Amount Due	\$29,245.00
Date Due	02/24/05

THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

PRODUCER: MICHAEL P HAIR & ASSOC

PAGE 1 OF 1

DESCRIPTION			PREMIUM
POLICY PERIOD	EFFECTIVE DATE 11/07/03	EXPIRATION DATE 11/07/04	
FINAL AUDIT	VOUCHER DATE 01/06/05		\$29,245.00
	TOTAL AMOUNT DUE		\$29,245.00

** PLEASE PAY BY THE "DATE DUE" OR THIS ACCOUNT MAY BE REFERRED TO COLLECTIONS. **

SEE REVERSE SIDE FOR MORE INFORMATION
TO ENSURE YOUR PAYMENT IS PROPERLY APPLIED, detach the return payment stub and mail to the return address below.

APPELLANT ROA 00543



Baldwin Park
2420 Lakemont Ave
Orlando, Florida 32814

Peggy Sterling
Residual Markets Division
(800) 443-4404 Ext. 83006
(877) 634-3710

July 21, 2005

Ard's Trucking Company Inc.
Allen Ard
P O Box 504
Darlington, SC 29540

**WORKERS COMPENSATION
LOSS SENSITIVE RATING PLAN CALCULATION**

Policy Number: R6EJUB 9560A285
Policy Period: 11/07/2003 - 11/07/2004

Valuation Adjustment #: 1

Dear Mr. Ard:

Per our conversation I am forwarding you a second request bill for the amount owed of \$175,064 which was due on August 17, 2005. I have documented your dispute as to the additional LSRP premium being billed. The billing process will continue until we receive notification from the state of South Carolina to discontinue or revise our billing or LSRP process.

Please remit \$175,064 on or before August 31, 2005 to:

St. Paul Travelers
P O Box 3556
Orlando, FL 32802

In addition, when coverage was bound, a Letter of Credit was established in the amount of \$52,116. If you choose not to make this payment, we will draw the entire amount of the Letter of Credit which would result in a reduction in the amount owed to \$122,948.

If you have questions regarding these calculations, please contact me or your producer.

Sincerely,

Peggy Sterling
Financial Specialist III

cc: Michael P Hair & Associates
7422 Carmel Executive Park # 204
Charlotte, NC 28247

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOR THE
COUNTY OF DARLINGTON)	FOURTH JUDICIAL CIRCUIT
<hr/>		
ARD TRUCKING COMPANY, INC.)	C/A 2010-CP-16-0435
)	
PLAINTIFF,)	
VERSUS)	AFFIDAVIT OF HARRY BROWN
)	IN SUPPORT OF PLAINTIFF'S
TRAVELERS PROPERTY CASUALTY)	MOTION FOR
COMPANY OF AMERICA, D/B/A THE)	SUMMARY JUDGMENT
TRAVELERS INDEMNITY COMPANY OF)	
ILLINOIS.)	
DEFENDANT.)	
)	
<hr/>		

Personally appeared before me, Harry Brown, who after first being duly sworn and states as follows:

1. My name is Harry Brown and I am currently 66 years old. I became employed with Ard Trucking Company (ATC) in 1994 and I retired from there earlier this year. While employed at ATC, I held various positions including Safety Director, General Manager and Vice President. I am currently employed at Florence/Darlington Technical College as Truck Driver Trainer instructor.
2. In 2003, I was ATC's Safety Director. One responsibility of this position was to coordinate liability and workers compensation insurance compliance. ATC's President Allen Ard and I worked closely together to secure required corporate insurance coverage. Securing required insurance is very important task due to the high cost of insurance in the trucking industry, which is considered a high risk and involves the "assigned risk" insurance market. As a result, insurance rates are significantly higher up for the trucking industry.
3. I recall many discussions with Allen Ard, during the fall of 2003 and at other times, concerning ATC's effort to secure the best and most economical insurance for ATC for upcoming year.
4. In late 2003, ATC was contacted by Michael Hair & Associates (Hair Agency) located in Charlotte about ATC's workers compensation coverage for the upcoming coverage year beginning November 7, 2003. The Hair Agency agent we talked to was Gary Usher. At that time, I had never heard of Loss Sensitive Rating Plan (LSRP) provisions in workers compensation insurance, and LSRP was not discussed at any time with Mr. Usher to my recollection. In fact, I only recently became aware of what LSRP is about.
5. Mr. Usher was able to secure workers compensation insurance for ATC beginning November 7, 2003 through Travelers Insurance Company (Travelers). The original Travelers policy dated December 1, 2003 was delivered to our Safety Department. I always reviewed ATC's insurance policies to assure that the coverage included was what ATC required and I filed all policies in the Safety Department office. Travelers reorganized in early 2004 and issued a replacement policy dated March 1, 2004, which I also reviewed and filed.

APPELLANT ROA 00545

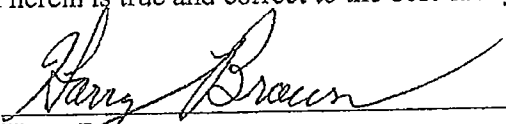
6. I have carefully reviewed the original Travelers policy issued on December 1, 2003, as well as the Travelers replacement policy issued on March 1, 2004. Neither of these policies includes LSRP provisions which would have applied to ATC. In fact, the LSRP coverage endorsement under both of these policies specifically omits South Carolina from the list of states where LSRP provisions were applicable.

7. During my deposition on April 26, 2014, I was informed that after Travelers insured ATC in November of 2003, Travelers mailed ATC a brochure entitled "Loss Sensitive Rating Plan." I cannot recall receiving and reviewing this document, however, I have no reason to doubt that Travelers sent it ATC. This document would have been forwarded to me, ATC's Safety Director to review. In looking over the brochure during my deposition, the brochure appears to have been intended to explain how the LSRP provisions operate whenever a policy includes LSRP requirements. However, since the original and replacement Travelers insurance policies on file in the ATC's Safety Department excluded South Carolina from compliance with LSRP. As a result, the brochure regarding LSRP was not applicable to ATC and I would have discarded it as being inapplicable to ATC and, therefore, unnecessary to review or maintain.

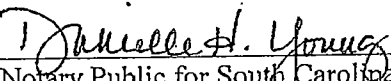
8. I do not recall anyone ever informing ATC that the "proposed implementation" of LSRP in South Carolina, which is indicated in the LSRP brochure, was ever approved. Also, no one ever "advised" ATC of any "approval and implementation dates (for LSRP in South Carolina), as well as the LSRP parameters."

9. During the entire time Travelers workers compensation coverage was in force (November 7, 2003 - November 7, 2004), I do not recall being informed by anyone from the Hair Agency or from Travelers that LSRP applied to the Travelers insurance policy or that the policy issued to ATC had been amended to include LSRP provisions. To the contrary, the original and replacement Travelers policy clearly state that LSRP did not apply to South Carolina insureds such as ATC.

10. I have read the foregoing affidavit, as well as the documents attached. Upon information and belief, all information stated herein is true and correct to the best of my knowledge, information and belief.


Harry Brown

SWORN TO and subscribed before me
this 12 day of December, 2014.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: 11-07-2021



South Carolina
Department of Insurance

Capitol Center
1201 Main Street, Suite 1000
Columbia, South Carolina 29201

Mailing Address:
P.O. Box 100105, Columbia, S.C. 29202-3105
Telephone: (803) 737-6160

June 24, 2014

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

Phillip Ferderigos
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

To Whom It May Concern:

This letter is provided in response to your inquiry as to the history of the Loss Sensitive Rating Program (LSRP). Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI did not administer the assigned risk mechanism and it is unclear if the LSRP was mandated during that period. The NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached NCCI brochure and the attached approved item filing (including plan documents) provided by the NCCI.

Willie L. Davis, Jr., FCAS: MAAA

P&C Actuary



APPELLANT

SCDOI 0001



National
Council on
Compensation
Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

An employer's guide to
the mandatory assigned risk
retrospective rating program

SCDOI 0002

APPELLANT ROA 00548

APPENDIX_00548

Retrospective rating is a method of pricing insurance which determines your final workers compensation premium after the policy period has ended, based on your actual losses during the policy period.

Pictorial, Inc.

This pamphlet has been created to help you understand the concept and details of the Loss Sensitive Rating Plan (LSRP). You are encouraged to read this material and discuss it with your producer, broker, assigned insurer or an NCCI, Inc. customer service representative. ■

Purpose

The purpose of the assigned risk mandatory Loss Sensitive Rating Plan (LSRP) is to provide a retrospective rating plan for those employers who have an assigned risk workers compensation insurance premium of \$200,000 or more. (Note: The premium threshold amount may vary by state.) The LSRP is designed to:

- Promote Safety and Loss Control by requiring you to accept greater financial responsibility for the losses that you incur.
- Depopulate the Residual Market by encouraging you to obtain coverage in the voluntary market.
- Provide Fairness by rewarding those of you with good loss experience with lower premiums while penalizing those employers with poor loss experience with higher premiums. ■

2

Background

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through other means. (Note: This would include such options as self-insurance.) The residual market is not intended to compete with the voluntary market by allowing employers to avoid various loss sensitive rating plan offers in exchange for guaranteed cost policies.

Among the rating alternatives for the large employer, loss-sensitive rating is the most equitable because it gives you the opportunity to have your insurance costs more directly related to your losses during the policy period. ■

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (Note: The implementation date may vary by state.) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. ■

Definition of Terms Used in the LSRP Program

Note: Any of the following definitions may vary by state.

Allocated Loss Adjustment Expense

ALAE includes costs associated with specific claims such as defense costs.

3.

SCDOI 0003

APPELLANT ROA 00549

APPENDIX_00549

Basic Premium

A percentage of the Standard Premium, determined by multiplying the Standard Premium by a Basic Premium Factor. The Basic Premium includes insurance carrier expenses such as acquisition, loss control services, premium audit, producer fees and other general administrative costs. The Basic Premium does not cover premium taxes or claim adjustment expenses. These costs are usually provided for in the Tax Multiplier and Loss Conversion Factor.

Converted Losses

The results of applying the Loss Conversion Factor (LCF) to your Incurred Losses.

Deposit Premium

The deposit you must pay at the time of application or policy renewal. It is comprised of the WCIP Deposit Premium and the LSRP Contingency Deposit Premium.

Incurred Losses

Your losses occurring during the policy period including:

- Losses which have been paid and reserves for losses which are outstanding. Reserves are established to anticipate the insurance company's obligation on claims that have been incurred but have not yet been settled. These reserves must be added to paid claims to establish total Incurred Losses.

Individual Loss Limitation (Loss Cap)

The maximum portion of any loss subject to retrospective rating. There are no Individual Loss Limitations available in the LSRP program.

Loss Conversion Factor (LCF)

A loading to incurred losses to cover Unallocated Loss Adjustment Expenses. In this plan, it is a fixed factor of 1.125.

LSRP Contingency Deposit Premium

It is calculated as 20 percent of your Standard Premium and collected in addition to the WCIP Deposit Premium. The LSRP Contingency Deposit Premium must be paid at time of application, or policy renewal, to collateralize any additional premium that may be due the assigned carrier as a result of LSRP valuation activities.

As an alternative to a cash contingency deposit, you may substitute an acceptable, clean, unconditional irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a Federal Reserve bank. The LOC must be for an amount at least equal to the LSRP 20 percent Contingency Deposit Premium. The cash deposit or LOC shall be held as collateral until at least the first adjustment. (The retention period may vary by state.)

LSRP Development Premium Factors (RDFs)

This premium element is an additional loading that recognizes the probable increase in value over time of your losses and helps stabilize your premium adjustments. The LSRP Development Premium Factors anticipate a pattern of increasing valuation of your losses after the policy has expired. The factor is included only in the first three annual adjustments and is not included in the fourth and final calculation. The RDFs vary from state to state.

Maximum Premium (Max)

The most premium you will pay under the LSRP program, irrespective of your losses. The Maximum Premium has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

- *Maximum Premium Factor.* A factor that is multiplied by your Standard Premium to determine your Maximum Premium. The Maximum Premium Factor is a fixed factor of 1.75 of Standard Premium.

Minimum Premium (Min)

The least amount of premium you will pay even if you have no losses.

- **Minimum Premium Factor.** A factor that is multiplied by your Standard Premium to determine your Minimum Premium. The Minimum Premium Factor is a fixed factor of 0.75 of Standard Premium.

Standard Premium (SP)

For the purposes of this Plan, Standard Premium means your premium determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs where appropriate, loss constants where applicable, and Minimum Premiums. Determination of Standard Premium shall exclude:

Premium discount, expense constant (unless it is part of Minimum Premium), premium resulting from the non-ratable element codes in the *Experience Rating Plan Manual*, premium developed under Class Code 7421 (aircraft-related operations), and premium developed by the occupational disease rates for employers subject to the Federal Coal Mine Health and Safety Act.

Tax Multiplier (TM)

This covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium they collect. The TM varies from state to state.

Unallocated Loss Adjustment Expenses (ULAE)

General claim adjustment expenses which include the cost of the insurance carrier claim services such as investigation of claims and filing claim reports.

WCIP Deposit (or Initial) Premium

WCIP Deposit Premium is calculated by multiplying your Estimated Annual Premium by the required Deposit Premium percentage. The HLOC option is not available for the WCIP Deposit Premium. ■

Summary of LSRP

> Objective

The principal objective is to create a plan that is appropriate for an employer of your size and will encourage you to seek coverage outside of the residual market and to control your losses.

> Parameters (Factors)

The LSRP is a simple loss sensitive rating plan constructed to be uniformly applied to all eligible employers. The plan parameters which form the basis of the LSRP are not negotiable for two reasons: individually "tailored" plans are available in the voluntary market; and, as the residual market assignment mechanism is random, the "luck of the draw" could determine the type of plan provided by the carrier, thus reducing the chance of fairness.

> Factors

The LSRP factors are:

• Basic Premium Factor (Basic)	0.50
• Loss Conversion Factor (LCF)	1.125
• Tax Multiplier (TM)	Varies by state*
• Retro Development Factors (RDFs)	Varies by state*
• Minimum Factor (Min)	0.75
• Maximum Factor (Max)	1.75

* The tax multiplier (TM) represents the currently approved tax multiplier in your state exclusive of any assigned risk subsidy. Current retrospective development factors (RDFs) are also used. These factors will change with subsequent changes in state rates and rating values. Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.

Some additional comments on the factors:

- Your policy premium will be adjusted, based on your losses, at intervals beginning six (6) months after the policy expires and at twelve (12) month intervals thereafter to a total of four (4) adjustments.

- The LSRP Development Factors (RDFs) will be used with the first three (3) valuations to reflect the actuarial probability that losses will develop (increase in value) over time. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and last adjustment.
- Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.
- The decision not to offer loss caps was based on the desire to avoid any plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low and tends to serve as a loss cap.

> Premium Payments

The following unique payment provisions apply:

LSRP Contingency Deposit Premium (Additional 20 percent)

- The carrier will be required to retain the 20 percent Contingency Deposit Premium and any final audit return premium without interest until the first valuation has been completed and billed. (The time held may vary by state.)

Irrevocable Letter of Credit

- In lieu of the additional 20 percent Contingency Deposit Premium in cash, an acceptable, clean, unconditional Irrevocable Letter of Credit containing an automatic renewal clause, drawn on a Federal Reserve bank can be provided at time of application or policy renewal.

Rating Plan Premium

- Your rating plan premium will be determined after the rating plan period ends (six months after policy expiration). Three additional annual premium adjustment calculations will be made.

Cancellation Provision

- The carrier will have the right to cancel the current assigned risk policy if any additional premiums on either current or prior assigned risk policies are not paid as required. The dispute resolution procedure in your state's Workers Compensation Insurance Plan (WCIP) applies to legitimate premium disputes. *Your insurance advisor, producer, or insurance carrier can provide you with the current information for your state.*

> Premium Variation

To accommodate premium increases while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days was established to retroactively convert a guaranteed cost policy to the LSRP and visa versa.

If after the first 120 days of the coverage term it is determined that you qualify for the LSRP, the current policy shall not be affected, but the LSRP will apply at renewal.

If your premium falls below the premium threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below the threshold, a retroactive conversion to guaranteed cost would result.

Since depopulation is a major goal of the LSRP, a release clause also applies. If you obtain coverage in the voluntary market within 120 days of policy inception, your premium would be calculated based on guaranteed cost.

120 DAYS FROM EFF DATE

> Multistate

The LSRP will apply to an employer with multistate operations when the total premium of all requested states that have approved LSRP meets the eligibility requirement for the LSRP state generating the largest premium. (This provision may vary by state.)

Impact on Your Workers Compensation Costs

The ultimate impact of the LSRP will depend on your losses over time. However, with good loss experience an individual employer's final premium is typically less than standard; it is more than standard with poor loss experience.

LSRP Calculation: Example

Illustrative Values

Standard Premium (SP)	=	\$339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

LSRP Factors

Basic	=	0.30
Minimum	=	0.75 or \$254,250 (\$339,000 × 0.75 = \$254,250 minimum premium)
Maximum	=	1.75 or \$593,250 (\$339,000 × 1.75 = \$593,250 maximum premium)

Loss Conversion

Factor (LCF)	=	1.125
Tax (Tax Multiplier)	=	1.126*

Retrospective Development

Factors (RDFs)	=	1st Adjustment	0.31*
	=	2nd Adjustment	0.21*
	=	3rd Adjustment	0.15*
	=	4th Adjustment	0.00

* Values shown here are for illustration only and are not necessarily the values in your state.

Formula

LSRP Premium (LSRP) =

$$\text{Tax} [(Basic \times SP) + (RDF \times LCF \times SP) + (LCF \times \text{Incurred Losses})]$$

LSRP PREMIUM CALCULATIONS:

1st Adjustment

$$LSRP = 1.126 [(0.30 \times 339,000) + (0.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)]$$

$$LSRP = 1.126 [101,700 + 118,226 + 286,031]$$

$$LSRP = 1.126 [505,957]$$

$$LSRP = 569,708$$

$$\text{Additional Premium (AP)} = \$162,908 [569,708 - 339,000 - 20\% \text{ LSRP Contingency Deposit Premium}]$$

2nd Adjustment

$$LSRP = 1.126 [(0.30 \times 339,000) + (0.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)]$$

$$LSRP = 1.126 [101,700 + 80,089 + 305,100]$$

$$LSRP = 1.126 [486,889]$$

$$LSRP = 548,237$$

$$\text{Return Premium (RP)} = \$21,471 [569,708 - 548,237]$$

3rd Adjustment

$$LSRP = 1.126 [(0.30 \times 339,000) + (0.15 \times 1.125 \times 339,000) + (1.125 \times 305,100)]$$

$$LSRP = 1.126 [101,700 + 57,206 + 343,238]$$

$$LSRP = 1.126 [502,144]$$

$$LSRP = 565,414$$

$$\text{Additional Premium (AP)} = \$17,177 [565,414 - 548,237]$$

4th Adjustment

$$LSRP = 1.126 [(0.30 \times 339,000) + (0 \times 1.125 \times 339,000) + (1.125 \times 339,000)]$$

$$LSRP = 1.126 [101,700 + 0 + 381,375]$$

$$LSRP = 1.126 [483,075]$$

$$LSRP = 534,942$$

$$\text{Return Premium (RP)} = \$30,472 [565,414 - 534,942]$$

Questions & Answers

Q How will I know that I am eligible for the LSRP?

A If you are a new applicant to the assigned risk plan, the application will have the following language in the "Employer Signature Section":

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the binder is issued, the following language will be noted advising you that this is a mandatory program and it will be applicable to your policy:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

If you are already insured in an assigned risk plan, similar language will be on renewal quotes with estimated annual premium of \$150,000 or greater, advising you that the program may be applicable.

In addition, the assigned carrier will perform a preliminary audit within 120 days of inception for all renewal policies and new applications whose estimated annual premium exceeds \$150,000.

Q If I have operations in more than one state, will LSRP apply?

A The LSRP has been designed to accommodate the large assigned risk employer who has operations in several states. The plan provides for a multistate policy when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

Q What loss control services will carriers be required to offer under the LSRP?

A Although it may vary by state, under the current performance standards, servicing carriers are required to notify the policyholder and producer, in writing, within 90 calendar days of receipt of assignment, of available loss control services and safety information, including instructions on how to obtain these services and information.

Servicing carriers are required to provide a minimum of one consulting survey annually for each single location to any policyholder with an estimated annual premium greater than \$25,000.

Direct assignment carriers must adhere to any and all requirements as set forth by the state in which they are writing assigned risk business.

Contact your carrier or insurance advisor for more information or to arrange for loss control services.

Q If I am determined to be eligible for the LSRP during the first 120 days of the policy term, how much time am I given to provide the additional deposit/LOC?

A The carrier will usually give an insured 30 days to obtain any additional premium or appropriate LOC needed to continue the policy in force. This will also be true for any additional premium resulting from any of the four annual adjustments.

Q Do premium discounts apply when determining eligibility?

A By definition, Standard Premium does not include the premium discount; therefore, no discounts would be used in determining LSRP eligibility.

Q Is the 20 percent Contingency Deposit Premium for LSRP calculated from the total Standard Premium only in those states that approved the LSRP, or from the entire policy premium, regardless of the LSRP approvals? Will this require more than one policy?

A The 20 percent LSRP Contingency Deposit premium is calculated from the Standard Premium from those states that have approved LSRP. If the assigned risk employer requests coverage in a state where the LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one policy and then issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide coverages for all requested states; additional applications will then be necessary.



National
Council on
Compensation
Insurance, Inc.

Residual Markets

Industry Relations and Services

May 8, 1994

SC-94-01

FLAN-SC-94-1

Page 1 of 1

Contact: James P. Nau, Director 407-697-4563

Technical Contact: Paula Shiska, Residual Market Underwriting 407-697-4331

SOUTH CAROLINA ITEM FILING

~~SC-94-01~~ ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.123
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.

750 Park of Commerce Drive, Boca Raton, FL 33487 • Telephone: 407-697-1000

APPELLANT ROA 00556

SCDOI 00010 CPW10.1



National Council on Compensation Insurance

P.S.# 33 South Carolina Item Filing

Government, Consumer and Industry Affairs

File - M. Miller R. A. Cohen Roy D. Wood Director

P/C 2/25/94

RECEIVED P & C

MAR 7 1994

STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE

February 25, 1994

Honorable John G. Richards V Chief Insurance Commissioner State of South Carolina Department of Insurance 1612 Marion Street Columbia, South Carolina 29201

98471003

APPELLANT

Re. Item 01-SC-94 - Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)

Dear Commissioner Richards:

STATE OF SOUTH CAROLINA DEPARTMENT OF INSURANCE

In accordance with the applicable statutes and regulations of South Carolina, I am filing for your consideration and approval the above-captioned item filing. This item filing is proposed to become effective on March 1, 1994, applicable to new and renewal business in the Workers Compensation Insurance Plan. Once the filing is approved the program will apply, to eligible accounts, with effective dates on or after September 1, 1994.

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to provide large employers with added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP has the added advantage of encouraging the large employer to obtain coverage in the voluntary market by removing the potential financial advantage that guaranteed cost residual market coverage may currently provide.

Included as part of the filing package is a listing of employers from current records identified as potentially being eligible for the LSRP. Any existing WCIP employers identified as being eligible will receive a six month notice of the implementation of LSRP in order to be provided the opportunity to place coverage in the voluntary market. New eligible risks coming into the WCIP on or after the implementation date will be provided a 120 day window of opportunity, after effective date of coverage, to place coverage voluntarily thereby avoiding application of LSRP to the period for which coverage was in effect.

105 E. College Avenue, Suite 650, Tallahassee, FL 32301 Telephone: 904-224-7200

APPELLANT ROA 00557

SCDOI 00011

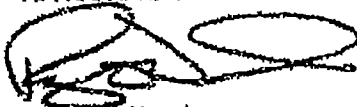
Page 2

Pursuant to the authority of the Plan, NCCI in its capacity as Plan Administrator, is making this filing on behalf of the participating insurers in the Workers' Compensation Insurance Plan in your jurisdiction.

Please contact me if you need additional information.

Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION INSURANCE



Roy O. Wood
Director
Government, Consumer and Industry Affairs

cc: Executive Director, Workers' Compensation Commission

APR 15 1994
STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE



National Council on Compensation Insurance, Inc.

Residual Markets

Industry Relations and Services

May 6, 1994 SG-94-01 PLAN-SG-94-1 Page 1 of 1

Contact: James H. Nau, Director 407-997-4563
 Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4981

*Copy to Paula Shields
 for file*

SOUTH CAROLINA ITEM FILING

ITEM 01-SG-94--ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

The South Carolina Department of Insurance has approved the above-captioned item filing which became effective March 1, 1994, with implementation September 1, 1994, applicable to new and renewal assigned risk business. The assigned risk Loss Sensitive Rating Plan (LSRP) will be mandatory for all assigned risk insureds with standard premium equal to or exceeding \$200,000. The purpose of this plan is to depopulate the residual market, to promote safety and loss control and to provide fairness.

A copy of the filing memorandum and exhibits are attached for your reference.

The following are the factors to be used in the calculation of the LSRP:

Minimum Premium Factor	0.75
Maximum Premium Factor	1.75
Loss Conversion Factor	1.125
Tax Multiplier	1.123
LSRP Development Factors*	
1st Adjustment	.00
2nd Adjustment	.00
3rd Adjustment	.00
4th Adjustment	.00

No other fees for handling

* Retrospective Development Factors are not applicable in South Carolina.

The assigned carrier will be required to enclose a pamphlet with the new and renewal assigned risk policies of the employers whose premium exceeds \$150,000. The pamphlet provides a technical overview of the program, how it is applicable to the policy and how it affects premium.

The pamphlet, *The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program*, can be purchased by contacting NCCI's Order Processing Department at 800-NCCI 1-2-3. Please mention Product Code 2818.

Charlotte should read

Retros plan @ \$200,000

760 Park of Commerce Drive, Boca Raton, FL 33487 Telephone: 407-997-1000

01R310.1

SCDOI 00013

APPELLANT ROA 00559

FILING MEMORANDUM

Item 01-SC-94 Assigned Risk Mandatory Loss Sensitive Rating Plan (LSRP)
To be effective 12:01 A.M., March 1, 1994, applicable to New and Renewal Business

Purpose:

The purpose of this filing is to create a mandatory assigned risk retrospective rating program for employers having residual market premium equal to or exceeding \$200,000. This rating program, the Loss Sensitive Rating Plan (LSRP), is designed to depopulate the residual market, to promote safety and loss-control, and to provide fairness.

Large employers would be encouraged to obtain coverage in the voluntary market since the potential financial advantage that guaranteed cost residual market coverage may currently provide for these employers would be removed. Therefore, the LSRP has the potential for depopulating the residual market and thus reducing the assigned risk burden.

The LSRP would also provide large employers with an added financial incentive to promote safety and reduce losses by requiring them to accept greater financial responsibility for the losses they incur. To the extent an assigned risk employer controls losses, there will be a reward through lower premiums.

The LSRP promotes fairness by rewarding those risks with good loss experience with lower premiums and penalizing those risks with poor loss experience with higher premiums.

Background:

The residual market is intended to serve as the market of last resort. This market ensures the availability of workers compensation and employers liability insurance to all eligible employers required by law to secure this coverage but who are unable to obtain it through the voluntary market. The residual market was not intended to compete with the voluntary market by allowing risks to avoid various loss sensitive rating offers for guaranteed cost policies.

In considering alternatives for the large employer, a loss-sensitive plan is the preferred rating method. Loss-sensitive rating is more equitable because those employers incurring the losses help pay them, and employers affected by the LSRP are large enough that they should have the means to effectively reduce losses.

Proposal:

It is proposed that the attached LSRP be implemented six months from the date of regulatory approval of this program. Upon approval, all LSRP-eligible accounts, the producers and current servicing carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. These large employers will be encouraged to obtain coverage in the voluntary market and the six month advance notice gives them sufficient time to do so.

Summary of the Plan:

To reduce losses, a plan should provide a positive, long-term financial incentive by rewarding excellent performance with reduced cost. However, as this is the residual market, such a plan had to provide this incentive without being competitive with voluntary market loss-sensitive pricing programs. Therefore, the LSRP must be mandatory and contain parameters that are less favorable than typical plans available in the voluntary market.

The following is a summary of LSRP which demonstrates that a mandatory loss sensitive rating plan is appropriate for this size risk and will be effective in reducing employer losses and depopulating the residual market.

Eligibility is established at \$200,000 in standard premium primarily because risks of this size are expected to have a sufficient number of claims to allow loss control programs to be effective. Loss-sensitive plans are also customarily available in the voluntary market for risks of this size.

The LSRP is a simple loss sensitive plan constructed to be uniformly applied to all eligible risks. The "one-set-of-parameters-fits-all" approach was designed to engender a basic premium factor whose impact increases with size of risk. This is appropriate since the larger the risk, the greater the opportunity for finding coverage in the voluntary market. These plan parameters are not negotiable for two reasons: "tailored" or designed plans are available in the voluntary market; and as the residual market assignment mechanism is random, the "luck of the draw" would determine the type of plan provided, thus reducing the chance of fairness.

A principal objective is to create a plan which is not competitive with balanced, voluntary market plans. With the selected 0.75 minimum (low enough to produce a reasonable return), the 1.75 maximum (appropriate for this size risk), and the 1.125 loss conversion factor (LCF), a basic factor for a balanced plan can be calculated. However, unlike traditional retrospective rating plans, LSRP is not intended to be balanced. Therefore, the basic factor was selected to be a fixed 0.30. This is consistent with the goal of the plan to encourage such insureds to find voluntary coverage.

The fixed 0.30 basic factor means the LSRP basic premium factor is higher than it would have been under a balanced plan, with the impact increasing with the size of risk. This occurs for two reasons. First, the expense portion of the basic doesn't take into account the effect of the premium discounts, and second, the fixed basic is in contrast to the fact that the insurance charge should decrease as the risk size increases.

The proposed state tax multiplier for South Carolina will be 1.123. It represents the currently approved tax multiplier exclusive of any assigned risk subsidy. Currently approved retrospective development factors (RDFs) will be used. These factors will change with subsequent changes in rates and rating values. These factors will be published in the state exception pages of the basic manual.

As mentioned above, the factors were selected because they "work" in combination. Some additional comments on the factors however, are appropriate:

- * The RDFs will be used with the first three (3) valuations to reflect loss development. These factors have a proven track record for accuracy and should reduce the likelihood of first valuation return premiums followed by subsequent valuations calling for additional premiums as the losses mature. As is customary in retrospective rating, the RDFs will be applied to premium, thus relieving any additional pressure on loss reserving. The RDFs will not be applied to the fourth and final adjustment.
- * The decision not to offer loss caps was based on the desire to avoid any carrier/insured plan negotiations that will, by nature, differ from carrier to carrier. In addition, the 1.75 maximum is relatively low for this book of business and it tends to serve as a loss cap.
- * Four (4) valuations were selected to allow losses to mature. Removing the RDFs at the fourth adjustment provides a fair and reasonable means of closing out the LSRP for a given policy year.

The LSRP's success will ultimately be determined by the extent to which insureds obtain coverage in the voluntary market and the impact on the employer's losses. The essential elements are present for significant safety improvements and loss reduction to occur-employer motivation to lessen the bottom-line insurance costs and the availability of loss control programs.

Collection problems are to be anticipated, however, several steps have been taken to minimize uncollectibles:

- * An additional 20% LSRP deposit premium is required which will be held without interest until the first adjustment. This is a deviation from the traditional voluntary retro plan, which normally requires collateral to be based upon the difference between incurred losses and ultimate projection of those losses and for the collateral to be held until the retro plan is closed. This is generally a larger amount and held for an indefinite period.
- * The carrier will be required to retain the 20% additional LSRP deposit and any final audit return premium until the first valuation has been completed and billed.
- * Even though the LSRP deposit is preferred, to provide options to an employer, an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC) containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve and obtained at binding, is satisfactory.
- * The carrier will have the right to cancel the current assigned risk policy if the adjustments are not paid as required. It should be noted that the dispute resolution procedure in the WCIP applies to legitimate premium disputes.

Carriers must be consistent with both the voluntary customers and the LSRP customers in handling claims and collections as applied to cancellations and bankruptcies. In the event of cancellation or bankruptcy, the maximum premium generated under the original LSRP calculation will remain in effect. This will ensure that the reinsurance mechanism is protected for the maximum exposure should subsequent adjustments generate additional premiums.

It is recognized that many factors contribute to premium changes after policy inception, especially audit. To accommodate premium increase, while avoiding costly cancellations and rewrites within the policy period, a time frame of 120 days is considered reasonable to retroactively convert a guaranteed cost policy to the LSRP. If after the 120 days of the coverage term, it is determined that the employer qualifies for the LSRP, the current policy shall not be affected, but LSRP will apply at renewal. A provision has been included to convert the policy pro rata from inception to the LSRP, if at any time it is determined that misrepresentation or omission of pertinent information occurred by the insured, its agent, employees, officers or directors that caused the policy to be improperly written as guaranteed cost.

If the employer's premium falls below the \$200,000 threshold during the policy period, the same 120-day determination period applies. In this instance, when the premium falls below \$200,000, a retroactive conversion to guaranteed cost would result. Since depopulation is a major goal of LSRP, a "release" clause will be available. If voluntary coverage is obtained within 120 days of policy inception, premium would be calculated based on guaranteed cost.

The LSRP has been designed to accommodate the large assigned risk employer when that employer has operations in several states. The plan provides for a multi-state policy when the following conditions exist: 1) when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium; and 2) the assigned carrier is capable of providing service in all requested states. If multi-state coverage is applicable and includes states that have not approved the LSRP, then separate policies will be issued.

Example I:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$40,000 and the premium for State B is \$160,000. LSRP will apply to this account since the total policy premium meets the eligibility threshold for State B and State B has the largest premium.

Example II:

State A has a premium eligibility threshold of \$250,000.
State B has a premium eligibility threshold of \$200,000.

The application requests coverage in State A and State B. The premium for State A is \$160,000 and the premium for State B is \$40,000. LSRP will not apply to this account since the eligibility threshold for State A is \$250,000 and State A has the largest premium, which does not meet the eligibility requirements.

In order for LSRP to be successful, every employer in the residual market must understand the potential impact of the LSRP on its premium. The following notification methods were selected:

- * Every policy issued in the residual market will carry an endorsement advising that any policy exceeding the eligibility threshold will be eligible for the LSRP.
- * Assigned risk application instructions will be modified to include a statement containing potential applicability of the LSRP and details of the Plan.
- * The WCIP binder additional notice will include a statement regarding the applicability of the LSRP for employers meeting the premium eligibility requirement. Also, assigned carriers' renewal quotes will carry a similar statement.

NATIONAL COUNCIL ON COMPENSATION INSURANCE

ITEM 01-SC-94

- * In addition, a brochure explaining the LSRP will be provided to carriers and producers, and will be made available to employers.

Producer fees are payable in accordance with the South Carolina Producer Fee Schedule subject to the following exceptions:

- * No additional producer fee is payable or return commission chargeable as a result of LSRP valuation activity.
- * Producer fees will not be paid on the LSRP Contingency Deposit Premium.

Impact:

Currently in South Carolina, there are approximately 36 risks with premium of \$200,000 or more. These risks comprise about 0.02% of the policies in the residual market, but make up about 8% of the total premium written.

In South Carolina, the total impact of LSRP on residual market premium is expected to be negligible. The ultimate impact of LSRP, however, will depend on the individual employer's losses over time, the extent to which employers obtain coverage in the voluntary market, and the adequacy of rates at the time LSRP goes into effect. With good loss experience, the employer's final premium is typically less than standard; it is more than standard with poor loss experience.

Implementation:

The attached exhibits illustrate the Basic Manual changes which will be required in order to implement LSRP, the endorsements which will be utilized and the financial reporting procedures required to track the program. Additionally, either the NCCJ application or ACORD 133 application, whichever is appropriate, shall be modified to contain a statement of applicant acknowledgement of the LSRP. Approval of this program constitutes approval of any necessary application or instruction changes.

Conclusion:

The LSRP is expected to provide large employers with the incentive to seek coverage in the voluntary market, to improve safety, and reduce losses.

The attached example illustrates the method of determining the retrospective premium for each of four adjustments for an average-size risk with losses determined by an average expected loss ratio.

LSRP CALCULATION EXAMPLE

$$\text{Retro Premium (RP)} = \text{Tax}[(\text{Base} \times \text{SP}) + (\text{RDF} \times \text{LCF} \times \text{SP}) + \text{LCF} \times \text{Insured Loss}]$$

Standard Premium (SP)	=	339,000
Expected Losses (SP x LR)	=	339,000
Incurred Loss 1st Valuation	=	254,250
Incurred Loss 2nd Valuation	=	271,200
Incurred Loss 3rd Valuation	=	305,100
Incurred Loss 4th Valuation	=	339,000

Retrospective Development Factors (RDF)	1st Adjustment	0.31
	2nd Adjustment	0.21
	3rd Adjustment	0.15
	4th Adjustment	0.00

Base	=	0.30	
Minimum	=	0.75	or \$254,250 (minimum premium)
Maximum	=	1.75	or \$593,250 (maximum premium)
Loss Conversion Factor (LCF)	=	1.125	
Tax (Tax Multiplier)	=	1.126	

1st Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.31 \times 1.125 \times 339,000) + (1.125 \times 254,250)] \\ \text{RP} &= 1.126[101,700 + 118,226 + 286,031] \\ \text{RP} &= 1.126[505,957] \\ \text{RP} &= 567,708 \end{aligned}$$

2nd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.21 \times 1.125 \times 339,000) + (1.125 \times 271,200)] \\ \text{RP} &= 1.126[101,700 + 80,089 + 305,100] \\ \text{RP} &= 1.126[486,889] \\ \text{RP} &= 548,237 \end{aligned}$$

3rd Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.15 \times 1.125 \times 339,000) + (1.125 \times 305,100)] \\ \text{RP} &= 1.126[101,700 + 57,206 + 343,238] \\ \text{RP} &= 1.126[502,144] \\ \text{RP} &= 565,414 \end{aligned}$$

4th Adjustment

$$\begin{aligned} \text{RP} &= 1.126[(.30 \times 339,000) + (.0 \times 1.125 \times 339,000) + (1.125 \times 339,000)] \\ \text{RP} &= 1.126[101,700 + 0 + 381,375] \\ \text{RP} &= 1.126[483,075] \\ \text{RP} &= 534,942 \end{aligned}$$

STATE SPECIAL RATING PLANS AND PROGRAMS
ASSIGNED RISK MANDATORY LOSS SENSITIVE RATING PLAN (LSRP)

SOUTH CAROLINA

BASIC MANUAL INSERT

PART ONE

DESCRIPTION OF THE PLAN

I. INTRODUCTION

The rules under this Plan are mandatory and apply only to Workers Compensation & Employers Liability Insurance that is written under a Workers Compensation Insurance Plan (WCIP) in those states that have adopted the Loss Sensitive Rating Plan (LSRP). The LSRP shall apply to all assigned risk employers qualifying for the Plan. The elements in the LSRP are fixed and premium is determined and defined below.

A. GENERAL EXPLANATIONS

1. Plan is Mandatory

The Assigned Risk LSRP is a mandatory Plan and shall apply to all assigned risk policies with total estimated annual Standard Premium or total audited Standard Premium which equals or exceeds \$200,000.

2. Object of the Plan

This Plan adjusts the premium for the insurance to which it applies on the basis of losses incurred during the period covered by that insurance. The intent is to charge a premium which reflects those losses. This Plan uses the losses incurred during the term of the policy to establish the cost of insurance and includes provisions for all expenses and taxes on premium.

3. Loss Control Incentive in Use of the Plan

The LSRP provides an incentive to the employer to control and reduce losses because the LSRP premium will be the result of losses during the policy period. To the extent the employer controls losses, there is a reward through lower premiums. To the extent the insured does not control losses, there is a penalty through higher premiums.

4. Experience Rating Plan Manual

Separate policies in the WCIP under common majority ownership as provided by the rules of the Experience Rating Plan which are assigned to the same assigned risk carrier shall be combined for computation of the LSRP premium.

5. Risks Operating in More Than One State

LSRP may be applied on an intrastate or interstate basis. Refer to Part Three for Multi-state procedures.

6. Premium Discount

In states where premium discount is allowed under a WCIP, the standard premium under this Plan is not subject to the premium discount as defined in Rule VII of the Basic Manual for Workers Compensation and Employers Liability Insurance.

7. Increased Limits for Employers Liability

If the policy provides increased limits for employers liability, such premium and incurred losses shall be subject to LSRP.

8. LSRP Expenses

The Plan does not include tables of expense ratios for use by stock and non-stock companies. The expenses are fixed and are included in the Basic Premium.

9. Aircraft Classifications

If the insurance subject to the Plan includes any of the aircraft classifications, the premium and losses for such classifications shall be included in the LSRP.

10. Exclusion of Statutory Medical Benefits - Ex-Medical Coverage

Policies written on an ex-medical basis are subject to this Plan in states where permitted.

11. Large Construction Projects

Large Construction Projects are subject to this Plan in states where permitted.

II. DEFINITIONS

A. Employer

Means any business organization or enterprise that is required by statute to maintain workers compensation insurance in a state or any state(s) under the WCIP. The term shall include any business organizations or enterprises that are affiliated as a result of common ownership.

B. Insured

Insured means the assigned risk employer designated in the Information Page of the policy or policies to which this Plan is applied by the assigned carrier that issues such insurance. An insured may be two or more legal entities if the same person, or group of persons, owns the majority interest in such entities. The Experience Rating Plan defines majority interest. It usually means:

1. Majority of voting stock, or
2. Majority of members or directors if there is no voting stock, or
3. Majority participation of general partners in profits of a partnership.

C. Risk

Risk means the insured to which this Plan is applied.

D. Rates

1. Authorized rate means those rates approved for use under a WCIP.
2. Manual rate means the rate shown after the classification code number on the state rate pages in Part Three of the Basic Manual for Workers Compensations and Employers Liability Insurance.

E. Standard Premium

For the purpose of this Plan, Standard Premium means the premium for the risk determined on the basis of authorized rates, any experience rating modification, ARAP, assigned risk surcharge programs other than LSRP, loss constants where applicable, and minimum premiums. Determination of Standard Premium shall exclude:

1. Premium Discount,
2. The Expense Constant,

3. Premium resulting from the Non-Ratable Element Codes listed in the Experience Rating Plan Manual, for Workers Compensations and Employers Liability Insurance,
4. Premium developed by the passenger seat surcharge under Code 7421—Aircraft Operation—flying crew, and
5. Premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

F. Deposit Premium

The deposit premium shall depend upon the schedule in effect in the state generating the most payroll at the time of application. Refer to the state WCIP or ACORD application for the applicable premium payment schedule.

In addition to the applicable state WCIP premium payment plan or deposit premium an additional LSRP deposit premium of 20%, or an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve, shall be required on all LSRP policies. Refer to Part Two of this Plan to calculate the appropriate deposits.

G. Incurred Losses

Incurred losses used in the rating formula for determining premium under this Plan are those reported under the rules of the Workers Compensation Unit Statistical Plan adopted by the rating organization. Generally, incurred losses are the actual losses paid and outstanding, interest on judgments, expenses incurred in obtaining third-party recoveries, and allocated loss adjustment expenses for employers liability losses.

Incurred losses resulting from an accident involving two or more persons under any classification code containing a non-ratable catastrophe element shall be limited to the total of the two most costly claims, subject to any further loss limitation applicable.

The rating formula shall not include losses involving passenger employees resulting from the crash of an aircraft under Classification Code 7421.

For detailed instructions regarding incurred losses, refer to the Workers Compensation Statistical Plan.

H. Rating Organization

Rating organization means the National Council on Compensation Insurance or any other licensed rating organization.

i. Anniversary Rating Date

1. Single Policy Risk

The anniversary rating date for application of this Plan shall be the effective month and day of the current policy in effect.

2. Multiple Policy Risk

If the risk subject to the Plan includes more than one policy with different effective dates, the anniversary rating date shall be determined by the rating organization.

PART TWO

OPERATION OF THE PLAN

I. HOW PREMIUM IS DETERMINED UNDER THE PLAN

LSRP premium is computed on the basis of the formula in Part A.1 of this section.

A. THE LOSS SENSITIVE RATING PLAN FORMULA (LSRP)

The premium for a risk subject to this program is determined by the following formula:

1. Loss Sensitive Rating Plan Premium =
 - a. Basic Premium (= standard premium x basic premium factor)
plus
 - b. Converted Losses (= incurred losses x loss conversion factor)
plus
 - c. LSRP Development Premium (= standard premium x LSRP
Development factor x loss
conversion factor)
 - d. Multiply the sum of (a + b + c) by the Tax Multiplier.

This formula produces a premium which shall not be less than the LSRP Minimum Premium or more than the LSRP Maximum Premium.

If the risk to which the Plan is applied includes more than one legal entity, a single LSRP premium is calculated on the basis of the premium and losses of the combined entities, not individually for each legal entity.

B. DEFINITION OF TERMS USED FOR THE FORMULA

1. Standard Premium

Standard Premium is defined in Part One, II.E of this Plan.

2. Basic Premium

The Basic Premium is a percentage of the Standard Premium. It is determined by multiplying the Standard Premium by a Basic Premium Factor.

The Basic Premium includes: insurance carrier expenses such as those for a servicing the insured's account, loss control services, premium audit and general administration of the insurance.

The Basic Premium does not cover premium taxes or claim adjustment expenses. These elements are usually provided for in the Tax Multiplier and the Loss Conversion Factor.

The Basic Premium Factor is .30.

3. Converted Losses

Converted Losses are based on the incurred losses of the risk during the policy or policies to which this Plan applies. A Loss Conversion Factor is applied to such losses to produce the Converted Losses.

4. Loss Conversion Factor

The Loss Conversion Factor (LCF) is a fixed factor at 1.125. It covers claim adjustment expenses and the cost of the insurance carrier's claim services such as investigation of claims and filing claim reports.

5. Tax Multiplier

The Tax Multiplier varies by state and covers licenses, fees, assessments, and taxes that the insurance carrier must pay on the premium which it collects.

Refer to the state exception pages for the appropriate tax multiplier.

6. Minimum Premium

The Minimum Premium for this Plan is the least amount of premium to be paid by a risk subject to LSRP.

The Minimum Premium Factor is .75.

7. Maximum Premium

The Maximum Premium for this Plan is the greatest amount of premium to be paid by a risk subject to this Plan. It has the effect of placing a limit on the impact of incurred losses on the LSRP premium.

The Maximum Premium Factor is 1.75.

8. Individual Loss Limitations

There are no individual loss limitations under the mandatory LSRP.

9. LSRP Development Premium

The purpose of this premium element is to stabilize premium adjustments for risks subject to this program. The LSRP Development Premium anticipates a pattern of increasing valuation of losses after the policy is expired. The LSRP Development Premium is included in only the first three adjustments of the LSRP premium and is not included in the fourth and final calculation.

Refer to the state exception pages for the LSRP development factors.

10. Deposit Premium

Is the premium required to be paid at the time of application or policy renewal and, under the Plan, is comprised of the WCIP deposit premium and the LSRP contingency deposit premium.

a. WCIP Deposit Premium

The WCIP deposit premium is the deposit premium as referenced on the WCIP or ACORD application in the state generating the most payroll. The WCIP deposit premium is calculated by multiplying the Estimated Annual Premium by the required premium percentage.

b. LSRP Contingency Deposit Premium

The LSRP Contingency Deposit Premium is calculated as an additional 20% of Standard Premium and is added to the WCIP deposit premium. The LSRP Contingency Deposit Premium is to be paid at the time of application, or policy renewal, to collateralize premium which may be due the assigned carrier at the first adjustment.

If an acceptable, clean, unconditional, irrevocable Letter of Credit (LOC), containing an automatic renewal clause, drawn on a bank that is a member of the Federal Reserve is obtained in an amount at least sufficient to secure the dollar amount equal to the LSRP 20% Contingency deposit premium, an LSRP Contingency deposit premium will not be required and the deposit premium on such policy shall be equal to the WCIP deposit premium. The LOC shall be held as collateral until first adjustment.

PART THREE

ADMINISTRATION OF THE PLAN

I. ADMINISTRATIVE RULES

A. Eligibility

1. The Loss Sensitive Rating Plan (LSRP) shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or total audited Standard Premium equals or exceeds \$200,000.
2. A decrease in premium during the first 120 days of coverage which results in the employer falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be effected until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by insured, its agent, employees, officers or directors shall result in the pro-rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.

B. Multi-State Procedures

The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

If the assigned risk employer requests coverage in a state where LSRP has been approved and requires coverage in one or more states where LSRP has not been approved, the assigned carrier shall combine the LSRP states on one or more policies and issue a guaranteed cost policy for those states where LSRP has not been approved, in accordance with all WCIP rules and regulations. It may not always be possible for a single carrier to provide all requested states; additional applications may be necessary.

C. 120 Day Grace Period

The LSRP will not apply to an assigned risk policy subject to the Plan if the employer obtains workers compensation coverage outside the assigned risk market within 120 days of the effective date.

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy endorsement WC 00 04 18.

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP.

The AGORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the policy is bound a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

E. Bankruptcy/Insolvencies

The insurer may make a special adjustment as of the date that an insured is declared bankrupt or insolvent; makes an assignment for the benefit of creditors; is involved in any reorganization, receivership, or liquidation; or disposes of all or substantially all of its assets. The insured shall be liable for any additional premium or credit due at the time of the special adjustment.

F. Administration

It is the responsibility of the assigned carrier to administer the program, provide proper notification and application of the LSRP impact to premium, make the required LSRP calculations following the normal valuations, and collect the premium.

II. CANCELATION OF POLICY

A. Explanation

While the Cancellation condition of the Standard Policy permits cancellation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancellation in the Basic Manual for Workers Compensation and Employers Liability Insurance.

B. Coverage Obtained on the Voluntary Market

The LSRP will not apply to any policy canceled by the insured, within the first 120 days of coverage, because coverage was placed in the voluntary market. Said policy will be treated as a guaranteed cost policy with final audited premium calculated according to the appropriate rating rules.

C. LSRP Premium Determination Upon Cancellation

1. Cancellation By the Insurance Carrier, except for non-payment of premium.
2. Cancellation By the Insured When Retiring From Business provided:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. the employer retires from all business covered by the insurance;

Note: For the purpose of this rule, a change in ownership of a corporation which results in elimination of experience under the rules of the Experience Rating Plan Manual does not constitute retiring from the business insured by the policy.

3. If the reason for the cancellation is No. 1 or 2 above, LSRP premium for the canceled policy shall be computed as follows:
 - a. Standard Premium: Determine the premium for the canceled policy on a pro rata basis in accordance with Basic Manual Rule X-B. The resulting premium shall be the Standard Premium.

- b. LSRP Premium: The LSRP premium for the canceled policy shall be determined by using the LSRP formula in Part Two of the Plan. Use the Standard Premium in a. above to establish the Basic Premium, and if applicable, Retrospective Development Premium for this formula.

EXCEPTION FOR NON-PAYMENT OF PREMIUM:

If the cancellation by the insurance carrier is because of non-payment of premium by the insured, the Maximum LSRP premium shall be based on a Standard Premium which shall be the premium for the canceled policy (under Basic Manual Rule X-B) extended pro rata to an annual basis.

Failure by an insured to pay all LSRP premiums, including premiums due as the result of adjustment, will result in cancellation of current coverage and disqualification from future assignments through the WCIP Plan.

The maximum premium payable on a canceled policy shall be based on the annual Standard Premium unless the employer has secured coverage outside the WCIP within 120 days of policy inception.

4. Cancellation By the Insured, Except When Retiring From Business For the Reasons Stated in II-B-2 above,

Determine the LSRP premium as follows:

- a. The premium for the canceled policy is to be calculated on a short rate basis under Basic Manual Rule X-D.
- b. Use the LSRP formula in this Part Two of the Plan to establish the LSRP premium as shown below:
 - i. Basic Premium and if applicable, Retrospective Development Premium shall be computed by using the short rate premium in 4a above as the Standard Premium.
 - ii. Minimum LSRP premium shall be the short rate premium in 4a above.
 - iii. Maximum LSRP premium shall be based on a Standard Premium which shall be calculated by using the actual payroll for the period of the policy in effect extending that payroll pro rata to an annual basis and then multiplying such extended payroll by the authorized rates and experience rating modification,

ARAP, and any applicable assigned risk surcharge program. The Maximum Premium Factor shall be applied to this Standard Premium.

EXAMPLE: CALCULATION OF MAXIMUM RETROSPECTIVE PREMIUM UNDER RULE 4b: ASSUME:

Policy In effect	185 days
Authorized Rate (per \$100 payroll)	5.00
Actual payroll for 185 days	\$555,000
* Experience Rating modification	1.00
Maximum Premium Factor	1.75

(a) Payroll extended to an annual basis:

$$\$555,000 \times \frac{365 \text{ days}}{185 \text{ days}} = \$1,095,000$$

(b) Annual Standard Premium =

$$\begin{aligned} & \$1,095,000 \times 5.00 \text{ (per } \$100) \times 1.00 \\ & = \$54,750 \end{aligned}$$

(c) Maximum Retrospective Premium:

$$\$54,750 \times 1.75 = \$95,813$$

***Note:** In those states where ARAP or an assigned risk surcharge have been approved, these programs are to be included in the calculation of LSRP standard premium.

III. REPORTS OF PREMIUM AND POLICY COUNTS UNDER THE LSRP

In addition to following the statistical reporting requirement in accordance with the Workers Compensation Statistical Plan, all residual market carriers will make quarterly reports to the Plan Administrator, with such reports to be filed within 45 calendar days of the dates of March 31, June 30, September 30, and December 31, for activity relating to calendar quarters ending on these dates. Reports to the Plan Administrator will include, but not necessarily be limited to, the following:

A. Premium

These reports will separately identify WCIP and Contingency deposit premiums, as well as LSRP premium adjustments resulting from incurred loss valuations. If a Letter of Credit is secured in lieu of the LSRP Contingency deposit premium, identification of such security must be included in the quarterly report.

The Standard Premium used for determining the LSRP premium is that reported in accordance with the Workers Compensation Statistical Plan.

B. Policy Counts

Reports must include a listing and count of LSRP policies issued, renewed, non-renewed and canceled during the calendar period. An in-force policy count must also be provided.

C. Verification of Data

All reports will include the required information on an individual policy level, in the format and manner prescribed by the Plan Administrator.

Data reported under the Workers Compensation Statistical Plan shall be accepted as verified data for computation of the LSRP premium.

IV. COMPUTATION OF THE LSRP PREMIUM

- A. There will be four (4) adjustments computed to determine LSRP premium. The first, second and third calculations will be based on losses valued at the 18th, 30th, and 42nd month, respectively, after policy effective date and will include use of the LSRP Development Factors. A final adjustment, without an RDF, shall be calculated at the end of the 54th month.

Losses shall be valued in month 18, 30, 42, 54 and adjustments will be released as soon as practicable (i.e., month 21, 33, 45, and 57). The valuations and calculation of premiums are to be calculated by the assigned carrier, using premium and loss data which has been reported according to the Workers Compensation Statistical Plan.

1. First Computation of LSRP Premium

Under the Workers Compensation Statistical Plan, the reports of losses and premiums are submitted to the rating organization. As soon as practicable after data has been prepared in accordance with the Statistical Plan Manual, the first adjustment shall be made by the assigned carrier.

The assigned carrier shall notify the employer and return premium if the Plan premium is less than premium previously paid.

The insured shall promptly pay (within 30 days) any premium due. Failure to pay all premium, whether the premium is payable directly to the insurer or indirectly under a premium finance plan or extension of credit, shall constitute nonpayment of premium and be grounds for termination of any existing WCIP policy and resulting in disqualification from eligibility under the WCIP.

When a returned premium is generated by final audit, the assigned carrier shall hold any return premium until the first valuation. If returned premium is due the insured, the assigned carrier shall remit payment within 10 days after recording the LSRP adjustment.

Note: In certain cases, the assigned carrier may make an early calculation of LSRP premium. Such cases include bankruptcy, liquidation, reorganization, receivership, assignment for benefit of creditors, or other similar situations.

2. LSRP Adjustment After First Computation

- a. Subsequent calculations and adjustments of premium subject to this Plan shall be made by the assigned carrier annually after the first valuation. The procedure for such subsequent calculations shall be the same as in Rule 1 above except that such premium calculations shall be based upon the latest Unit Statistical Reports required. The assigned carrier shall continue to make such additional adjustments at the end of each 12 months period until the

54th month.

- b. If a subsequent valuation results in no change from the previous calculation, the assigned carrier shall notify the employer that there is no change in the premium payment and that subsequent calculations of premium will be made in accordance with Rule 3.a. below.

3. Final Computation of LSRP Premium

- a. The fourth and final valuation, without LSRP Development Factors will be calculated at the 54th month.

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under a Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
2. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
3. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
4. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
5. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
6. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE

PREMIUM ELIGIBILITY

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program.

Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.

2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

Original Printing

Effective March 1, 1994

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Rating Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (ILOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.

4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY . WC 00 04 18

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2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3 will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

SCHEDULE

- 1. Basic Premium Factor _____
- 2. Loss Conversion Factor _____
- 3. Tax Multiplier _____
- 4. Minimum Premium Factor _____
- 5. Maximum Premium Factor _____
- 6. LSRP Development Factors:
 - 1st Adjustment _____
 - 2nd Adjustment _____
 - 3rd Adjustment _____
 - Subsequent Adjustments 0.00

C. 120 Day Grace Period

The LSRP will not apply to an assigned risk policy subject to the Plan if the employer obtains workers compensation coverage outside the assigned risk market within 120 days of the effective date.

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy endorsement WC 00 04 18.

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP.

The ACORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

When the policy is bound a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

E. Bankruptcy/Insolvencies

The Insurer may make a special adjustment as of the date that an insured is declared bankrupt or insolvent; makes an assignment for the benefit of creditors; is involved in any reorganization, receivership, or liquidation; or disposes of all or substantially all of its assets. The insured shall be liable for any additional premium or credit due at the time of the special adjustment.

Basic Manual—2001 Edition

Part One—Rules

Rule 4—Workers Compensation Insurance Plan Rules

Applicable To Assigned Risk Policies Only

Effective 01 Jan 2013 12:00:01

A. Workers Compensation Insurance Plan (WCIP)

10. Dispute Resolution Procedure

a. Procedure

The dispute resolution procedure can be categorized as either Assigned Risk Employer/Producer related disputes or WCIP related disputes.

b. Assigned Risk Employer/Producer Disputes

Any assigned risk policyholders and their producers affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances.

(1) Employer Disputes

The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned risk pricing programs

The Plan Administrator may intervene in disputes involving other matters arising under this Plan as determined by the Plan Administrator in its discretion.

The Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a written response within thirty (30) days.

(a) Interstate Appeals

When an employer dispute concerns any of the above matters, (other than the application

of NCCI's *Experience Rating Plan Manual* rules), in more than one state, the Plan Administrator will determine the appropriate jurisdiction in which the dispute will be heard, based upon the following factors:

- Governing state (state generating the greatest payroll)
- The state covered by the assigned carrier with the greatest exposure
- The state where the operations are best represented

Interstate Employer-Related Dispute Jurisdiction Table

If . . .	Then . . .
As determined by the Plan Administrator, the governing state is an NCCI Plan administered state that best represents the operations of the business	The governing state's dispute resolution process will apply
The governing state is an NCCI Plan administered state, but the Plan Administrator determines that the governing state does not best represent the operations of the business	The Plan Administrator will review the dispute and determine the appropriate jurisdiction in which the dispute will be heard
The dispute involves NCCI Plan administered states and non-NCCI Plan administered states	The jurisdiction selected and resulting decision will apply only to the NCCI Plan administered states
The governing state is not an NCCI Plan administered state	The employer must follow the appropriate dispute resolution process for the governing state

When a dispute concerns the application of NCCI's *Experience Rating Plan Manual* rules for interstate rated risks, the Plan Administrator will determine the appropriate jurisdiction for the dispute to be heard.

Unless state-specific rules apply, the ruling of the state appeals mechanism (as determined by the Plan Administrator to have jurisdiction over the dispute) will apply to all assigned risk policies whether written by one or more assigned carriers.

For a general overview of the employer dispute resolution process, refer to NCCI's *Assigned Risk Supplement*.

(2) Producer Disputes

For disputes relating to the calculation and/or payment of producer fees and producer of record changes, the Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a written decision within thirty (30) days.

c. WCIP Disputes

Any Plan participants (Association members and/or assigned carriers) who have a dispute with respect to any aspect of the Plan or Reinsurance Agreement(s) (including any dispute arising out of the Association Bylaws) must first seek a review of the matter under this section by providing the following to Plan Administrator:

- Written documentation detailing specific areas of the dispute
- Specific request for a review of all documentation
- Appropriate actions of areas to resolve the dispute

The Plan Administrator may request additional information, as it deems necessary to make a decision. All disputes submitted to the Plan Administrator will be governed as follows:

(1) Plan-Related Disputes

For disputes relating to the general operation of the Plan, including but not limited to, standards for assigned carrier performance, compensation and incentives and application assignment determination, the Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a detailed written decision within thirty (30) days.

Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a *de novo* review by the regulatory authority, by requesting such binding arbitration or *de novo* review in writing and at its own expense, within thirty (30) days after the date of such decision.

For disputes relating to the servicing carrier selection process, refer to the Bid Protest Procedures contained in the applicable Servicing Carrier Request for Proposal (RFP).

(2) Reinsurance Agreement-Related Disputes

If the dispute arises under the Association Bylaws or Reinsurance Agreement(s), the Administrator designated under the Association Bylaws will after receipt of all necessary information regarding the dispute, review the matter and provide a detailed written decision within thirty (30) days. Any party affected by the decision may seek a review by the Board of Directors established under the Association Bylaws by requesting such review, in writing, within thirty (30) days of the date of the decision by the Administrator under the Association Bylaws. The Board of Directors may (a) consider the matter and render its written decision pursuant to the procedures set forth in the Association Bylaws, or (b) waive its decision and offer the aggrieved party the option of appealing directly to the regulatory authority or submitting the dispute to arbitration in accordance with the terms and conditions established by the Board of Directors. Any party affected by a decision of the Board of Directors may seek a *de novo* review by an impartial arbitrator selected by mutual consent of the parties by requesting such a review, in writing, within thirty (30) days of the date of the Board of Directors' decision.

tabbles
**DEFENDANT'S
EXHIBIT**
16

DEFENDANT'S
EXHIBIT
20/10/13
1-26-13

APPELLANT ROA 00591

SECTION I INTRODUCTORY INFORMATION

THE PLAN—PURPOSE AND OVERVIEW OF RULES AND PROCEDURES

Purpose of Plan

The Plan has been approved by the South Carolina Department of Insurance to provide workers compensation insurance to an employer who is unable to obtain such coverage in the "voluntary" market; that is, one who has no outstanding offer of any rating plan approved in South Carolina. The Department exercises general regulatory authority over the Plan, but has designated the National Council on Compensation Insurance—Atlantic Division to administer the actual operation of the Plan.

Several private insurance companies in South Carolina have been designated as servicing carriers. As such, these companies write policies in their own names and provide claims, loss control, auditing and other services, just as they would for their voluntarily written policyholders.

Operation of Plan—Overview

The procedures you are to follow are given in detail in Section II of this handbook. Refer to the Index if you have a question or problem. The following will give you, however, a "bird's-eye view" of the Plan. In going over this, you should also get a good idea of the role of the producer.

The Plan operates this way: when an employer is unable to secure coverage in a regular manner, he may apply for coverage under the Plan. The offer of any rating plan approved for use in South Carolina constitutes an offer of insurance in a regular manner, and such offer renders an applicant ineligible for coverage under the Plan. Working with or without a producer, this employer completes an application form and computes a deposit premium. The producer or applicant forwards the application and deposit to NCCI—Atlantic Division. If the applicant appears eligible, the divisional office binds coverage, selects a servicing carrier and forwards the application and deposit to this servicing carrier. This servicing carrier, to whom the employer is "assigned," issues a policy in its own name and provides the same type of service which it would for a policyholder written on a voluntary basis. The employer remains assigned to this servicing carrier until the coverage is canceled or not renewed.

Each year, prior to the policy expiration date, the servicing carrier computes a new deposit premium and notifies the employer and producer that it will renew the policy upon receipt of the deposit. If this deposit premium is paid prior to expiration, the policy is renewed without interruption of coverage.

The producer or insured should immediately notify the servicing carrier of changes to the policy during the year, and the producer should otherwise assist the employer

in matters relating to his insurance.

The employer may be removed from the Plan at any time, without penalty, by an insurance company willing to provide the coverage on a voluntary basis.

The policy may be canceled by the servicing carrier for non-payment of premium and for certain other specified reasons. See Page P-8.

There is a procedure which permits the employer to request a different servicing carrier and another procedure which allows the servicing carrier to request reassignment of the employer to another company. There is no selection of assignment by the producer, insured or servicing carrier. See Page P-8.

The employer is subject to the same classifications, rates, experience modifications and rules set forth in the Basic Manual with a few exceptions. If a producer is assisting, for services provided, that producer shall receive a producer fee based on the amount of state standard premium. That is, a graduated producer fee scale exists whereby the amount of fee received by the producer depends on the amount of the premium. See Page P-10 for a full explanation of the producer fee procedure including a breakdown of the percentages of producer fee.

Coverages available under the Plan are identical to those available outside the Plan, with a few restrictions.

The Plan has responsibility for workers compensation in the State of South Carolina only. Each state has arrangements, however, for providing workers compensation insurance through a plan, pool or fund of some type. Your questions about the Plan and its operations should be addressed to the Atlantic Division.

DUTIES AND RESPONSIBILITIES UNDER THE PLAN

The Producer's and Agency's Duties and Responsibilities

1. To assist the employer in meeting his obligations under the South Carolina Workers' Compensation Law, preferably by securing coverage in the voluntary market. Failing to obtain such coverage, the producer then has the responsibility to assist the employer in obtaining coverage under the Plan in a prompt and efficient manner. Even if coverage must be placed under the Plan, the producer has the continuing responsibility to try to place the coverage in the voluntary market. The producer must explain to the employer the necessity for securing coverage under the Plan.
2. To assist the employer needing coverage under the Plan in completing thoroughly and accurately an application and any other documents that may be required, and in forwarding these promptly to the Atlantic Division.

SOUTH CAROLINA—Section 1 Introductory Information
Effective July 1990

Report immediately to the servicing carrier all changes in the employer's name, operations, exposures, locations, financial condition or other changes which may affect the policy or the services being provided. To keep the policy up to date by promptly requesting endorsements as required.

4. To see that adequate deposit and advance premiums are maintained and encourage the employer to realistically estimate payrolls.
5. To determine what coverages the employer needs for both South Carolina and out-of-state operations. To secure such coverages, as available, from the servicing carrier or other pools or funds, if necessary.
6. To forward promptly all premium payments received from the employer to the servicing carrier to avoid credit cancellations and lapses in coverage. To encourage the employer to meet all premium payments, and, if any, finance company obligations in a timely manner.
7. To advise the employer in all matters relating to his workers compensation insurance. To request information on his behalf, as needed, from the servicing carrier or the Atlantic Division.
8. To refund promptly any excess producer fees paid you by the servicing carrier when requested to do so.

Important note to the producer: Remember, although you have a very important role under the Plan, you are not a contract agent or agency of the servicing carrier. You have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship. Unless a legal finance agreement exists which assigns cancellation or premium refund collection rights to a third party, all premium transactions are strictly between the servicing carrier and the employer as a policyholder and you are not a party to that contract. A servicing carrier may give you certain authority, such as permission to issue certificates of insurance, but such rights are not to be routinely assumed by a producer. Read this handbook carefully, and if you still have a question about your authority, then contact the Atlantic Division or the servicing carrier.

The Employer's Duties and Responsibilities

1. Before applying for coverage under the Plan, the employer must be eligible, and in good faith, be entitled to workers compensation insurance. In general, an eligible applicant has no outstanding voluntary offers (as evidenced by the required declinations) and must have no outstanding premium obligations. See Page X-12, the Plan, for information on good faith.
2. To comply with all provisions of the Plan, including accurately and fully completing the application form and any supporting documents which may be required.
3. To keep the producer, if one is assisting, fully ad-

vised of changes in name or ownership, operations, locations or exposures which may affect coverage, classifications, rates, premium estimates or other aspects of the coverage being provided under the Plan; to keep the carrier advised of these things, if no producer is assisting.

4. To cooperate fully with the servicing carrier in implementing all reasonable safety recommendations. (Failure to do so may be a valid reason for cancellation under the Plan.)
5. To report all claims promptly and cooperate with the servicing carrier in the investigation and settlement of claims.
6. To comply strictly with all terms and conditions of the policy.

The Servicing Carrier's Duties and Responsibilities

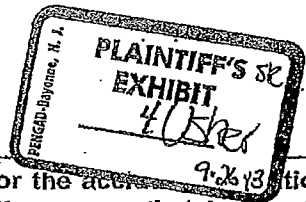
1. To provide coverage to all employers who are assigned to the company and who, upon investigation, are eligible and entitled "in good faith" to coverage under the Plan.
2. To issue the necessary policy and provide underwriting, claims, loss control, auditing and other services in a prompt and efficient manner. To meet the performance standards which have been established for servicing carriers in the state of South Carolina.
3. To work with and assist the producer, employer and Atlantic Division on problems relating to coverage and service under the Plan.
4. To maintain adequate deposits and advance premiums on policies. Refund promptly any excess premiums as determined by final audits. To pay producer fees promptly when due.
5. To make filings with the Workers' Compensation Commission and other governmental agencies, as necessary, to provide them with a current and accurate record of coverage.
6. To comply strictly with all terms and conditions of the policy contract.

The Atlantic Division's Duties and Responsibilities

1. To review immediately all applications as received. To issue binders promptly to all employers who appear to be qualified for coverage under the Plan.
2. To make assignments to servicing carriers on an equitable basis, keeping in mind the employer's coverage and servicing requirements and determining which servicing carriers can best meet these requirements.
3. To maintain the necessary files and records on each employer so that proper experience modifications and rates are used. To review policy contracts to determine adherence to rules, rates and modifications by the servicing carrier.
4. To respond promptly to complaints, questions and problems from producers, servicing carriers and employers.

Travelers

SAFETY SERVICES



Notice to policy recipient: If you are not the person directly responsible for the activities for your company, please direct this Safety Services notice to the person that is directly responsible for them.

SAFETY IS OUR CONCERN

Thank you for purchasing your Workers' Compensation Insurance. Along with your agent, we appreciate your business and welcome the opportunity to be of service.

An important part of that service concerns accident prevention and safety engineering. Our Loss Prevention & Engineering Division has the experience, resources and capabilities to provide a range of safety services including site surveys, phone consultations or the provision of selected safety material. The following are some examples of our available services:

Accident Prevention - Our staff can help you identify present and potential safety hazards in your operations, premises and equipment, recommending measures for reducing or eliminating these hazards.

Analysis of Accident Causes - Although you investigate and keep records of accidents, we're available to help if needed.

Safety Consultations - Our field staff, supported by Home Office and field specialists, can help you with special problems such as ergonomics.

Industrial Hygiene/Health Services - We have the facilities and resources to answer your questions concerning job related industrial hygiene/health issues and to measure exposure to industrial hygiene hazards.

Safety Videos and Literature - We can provide you with basic videos and literature to assist you in your loss control efforts. Also, we can put you in contact with several companies able to provide additional safety materials including brochures, pamphlets and videos.

Safety Training - We can help you improve your safety training programs.

Internet Website - Visit the Loss Prevention & Engineering website page for helpful safety information. (<http://www.travelerspc.com/safety>). This website also has hot links to other safety-related Internet sites. For all requests for loss control assistance ONLY, please directly contact your local office listed on the following pages

The Travelers will provide these services upon request. Telephone consultation is also available if the nature of the operations and hazards warrant such service. See the rest of this document for the Loss Prevention & Engineering office nearest to you.

SAFETY IS YOUR CONCERN

U. S. employers spend billions of dollars each year on the direct and indirect costs of work-related accidents. Dollar figures can't begin to reflect the pain and suffering of an injured worker and his or her family. But they do give some indication of the multiple consequences of a job-related accident... loss of time, interrupted production, damaged materials and equipment, the expense of retraining or replacing an injured worker, possible legal action from government regulatory agencies, and increased insurance costs.

It makes good sense for both employers and their employees to actively participate in a sound accident prevention program. The success of such a program depends to a large extent on your commitment to safety procedures and accident prevention techniques. Safety is a management concern. Maybe we can help.

You may want to consider the following "Safety Checkpoints" as you evaluate your organization's safety activities:

SELF-INSPECTION PROGRAM:

- * Do you conduct periodic surveys of premises?... equipment?... operations?
- * Do you analyze each job to find inherent hazards?
- * If you discover hazards, do you follow up with immediate corrective action?
- * Do you monitor such action to make sure it is implemented and effective?

ACCIDENT INVESTIGATION:

- * Do you investigate each accident?...determine the cause?
- * Do you take immediate steps to prevent a recurrence?
- * Do you keep records of accident investigations and follow-up measures?
- * Do you complete accident statistics and analyze trends?

EDUCATION AND TRAINING

- * Do you take the time to train each of your employees to perform tasks safely?
- * Do more-experienced employees receive training to correct bad habits that have developed over time?
- * Do all employees understand that safety is an important part of their jobs?



Travelers

FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY

ALABAMA

Birmingham
3000 Riverchase Galleria,
Suite 600
Birmingham, AL 35244
(205) 982-4583

ALASKA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(603) 534-4276

ARIZONA

Phoenix
2401 W Peoria Ave., Suite 130
Phoenix, AZ 85029
(602) 861-8649

ARKANSAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

CALIFORNIA

Diamond Bar
21688 Gateway Center Drive
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

Glendale
700 N. Central Avenue, 8th Floor
P.O. Box 1840
Glendale, CA 91209
(818) 409-4220

Los Angeles
880 South Figueroa St., Suite 500
Los Angeles, CA 90017
(213) 533-3682

Sacramento
11090 White Rock Road
Rancho Cordova, CA 95670
(916) 638-6404

San Diego
9325 Sky Park Court, Suite 220
San Diego, CA 92123
(858) 616-6285

Walnut Creek
225 Lennon Lane, Suite 200
P.O. Box 8090
Walnut Creek, CA 94596-8090
(925) 945-4171

COLORADO

Denver
7600 E. Orchard Rd., Suite 380
Englewood, CO 80111
P.O. Box 173713
Greenwood Village, CO 80111
(303) 740-1691

CONNECTICUT

Hartford
300 Windsor Street
Hartford, CT 06120
(860) 277-5980

DELAWARE

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

DISTRICT OF COLUMBIA

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-6765

FLORIDA

Orlando
Stuy Ctr-1000 Legion Place,
16th Floor
P.O. Box 3555
Orlando, FL 32802-3555
(407) 649-2598

GEORGIA

Atlanta
4400 North Point Parkway
2nd Floor
Alpharetta, GA 30022
(770) 521-3020

HAWAII

Diamond Bar
21688 Gateway Center Drive
P.O. Box 6512
Diamond Bar, CA 91765-8512
(909) 612-3500

IDAHO

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

ILLINOIS

Chicago
190 S. LaSalle Street Suite 960
Chicago, IL 60603
(312) 609-2938

Naperville
215 Shuman Boulevard
P.O. Box 3208
Naperville, IL 60566
(630) 961-8074

INDIANA

Indianapolis
6081 E. 82nd St.,
P.O. Box 50485
Indianapolis, IN 46250-0485
(317) 841-2966

IOWA

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KANSAS

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

KENTUCKY

Louisville
305 North Hurstbourne Pkwy,
Suite 125
Louisville, KY 40222
(502) 423-5447

LOUISIANA

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MAINE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

MARYLAND

Baltimore
8013 Corporate Drive
White Marsh, MD 21236-4975
(410) 931-5159

MASSACHUSETTS

Boston
100 Summer Street, Suite 201A
Boston, MA 02110
(617) 984-1284

Hudson
1 Cabot Road, Suite 200
Hudson, MA 01749
(617) 984-1284

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-1284

MICHIGAN

Grand Rapids
3777 Sparks Ave., SE, Suite 200
P.O. Box 3010
Grand Rapids, MI 49501-0323
(616) 942-4344

Southfield
26555 Evergreen Rd., Suite 1240
Southfield, MI 48076-4385
(248) 423-2299

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APPELLANT ROA 00595

APPENDIX_00595



FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

MINNESOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

MISSISSIPPI

New Orleans
3900 N. Causeway, Suite 950
Metairie, LA 70002
P.O. Box 61479
New Orleans, LA 70161-1479
(504) 832-7560

MISSOURI

St. Louis
One City Place Drive
Creve Coeur, MO 63141
P.O. Box 66852
St. Louis, MO 63166-6852
(314) 994-2374

Kansas City
7600 College Blvd.
Overland Park, KS 66210
(913) 661-3679

**Missouri Workers'
Compensation Plan (MWCP)**

951 Hornet Drive
P.O. Box 42021
Hazelwood, MO 63042-2309
(314) 551-3208

MONTANA

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

NEBRASKA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

NEVADA

Las Vegas
1850 E Flamingo, Suite 202
Las Vegas, NV 89119
(702) 669-4718

NEW HAMPSHIRE

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

NEW JERSEY

Morris Plains
1100 American Road, 2nd Floor
Morris Plains, NJ 07950
(973) 606-5245

Pennsauken
4350 Haddonfield Road
Pennsauken, NJ 08109
(856) 488-5942

NEW MEXICO

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-6194

NEW YORK

Albany
900 Watervliet-Shaker Road
Albany, NY 12205
(315) 424-7231

Buffalo
60 Lakefront Blvd.
P.O. Box 242
Buffalo, NY 14240-0242
(315) 424-7231

East Meadow
90 Merrick Ave., 4th Floor
East Meadow, NY 11554-1593
(973) 606-5245

New York
One Whitehall Street
New York, NY 10004-2108
(973) 606-5245

Rochester
75 Town Centre Drive
P.O. Box 23235
Rochester, NY 14692-3235
(315) 424-7231

Syracuse
440 South Warren Street
P.O. Box 4963
Syracuse, NY 13221-4963
(315) 424-7231

NORTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473600
Charlotte, NC 28247-3500
(704) 540-3216

Raleigh
3733 National Drive, Suite 200
Raleigh, NC 27612
(919) 420-1873

NORTH DAKOTA

Minneapolis
6465 Wayzata Blvd., 5th Floor
P.O. Box 35
Minneapolis, MN 55440-0035
(952) 541-4265

OHIO

Cincinnati
895 Central Avenue, Suite 800
Cincinnati, OH 45202
(216) 348-7512

Cleveland
Skylight Office Tower
1660 W. 2nd St., Suite 500
Cleveland, OH 44113-1454
(216) 348-7512

OKLAHOMA

Tulsa
9820 East 41st Street, Suite 401
P.O. Box 3510
Tulsa, OK 74101
(913) 661-3679

OREGON

Portland, OR
4000 SW Kruse Place, Suite 100
Lake Oswego, OR 97035
(503) 534-4276

PENNSYLVANIA

Harrisburg
5001 Louise Drive
Mechanicsburg, PA 17055
(717) 691-5101

Philadelphia
1500 Market Street
29th Floor W Tower
Philadelphia, PA 19102
(267) 675-3056

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

Reading
1105 Berkshire Blvd.
P.O. Box 13426
Wyomissing, PA 19612-3426
(610) 371-3809

RHODE ISLAND

Quincy
300 Crown Colony Drive
Quincy, MA 02169
P.O. Box 943
Boston, MA 02103-0943
(617) 984-12843

SOUTH CAROLINA

Charlotte
11440 Carmel Commons Blvd.
P.O. Box 473500
Charlotte, NC 28247-3500
(704) 540-3216

SOUTH DAKOTA

Omaha
11422 Miracle Hills Drive, Suite 110
Omaha, NE 68154
(913) 661-3679

Travelers

FIELD OFFICE INFORMATION FOR SAFETY SERVICES ONLY (Cont'd)

TENNESSEE

Memphis
6750 Poplar Ave., Suite 408
P.O. Box 171225
Memphis, TN 38187
(901) 756-3011

Nashville
9020 Overlook Blvd., Suite 150
Brentwood, TN 37027
(615) 372-7747

TEXAS

Dallas
1301 E Collins Blvd., Suite 300
Richardson, TX 75081
(214) 570-8194

Houston
10800 Richmond Ave., Suite 120
P.O. Box 42928
Houston, TX 77242-2928
(713) 787-4031

UTAH

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691

VERMONT

Portland, ME
207 Larrabee Road, Suite 3
Westbrook, ME 04092
(207) 857-2021

VIRGINIA

Richmond
300 Arboretum Place
P.O. Box 26426
Richmond, VA 23260-6426
(804) 330-8060

Washington, DC
14048 Park East Circle
Chantilly, VA 20151
(703) 818-8765

WASHINGTON

Seattle
1501 4th Avenue, Suite 400
Seattle, WA 98101
(206) 464-3471

WEST VIRGINIA

Pittsburgh
800 Two Chatham Center
Pittsburgh, PA 15219-2502
(412) 338-3082

WISCONSIN

Milwaukee
445 S. Moorland Ave., 2nd Floor
Brookfield, WI 53005
P.O. Box 3032
Milwaukee, WI 53201-3032
(262) 797-3113

WYOMING

Denver
7600 E. Orchard Rd., Suite 380
Greenwood Village, CO 80111
P.O. Box 173713
Denver, CO 80217
(303) 740-1691



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540



Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

NEW-03

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the Insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

DATE OF ISSUE: 12-01-03 TW

ST. ASSIGN: .SC

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC

26XSD

APPELLANT ROA 00599

878

APPENDIX_00599

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
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SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4789

TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	\$	STANDARD
PREMIUM DISCOUNT		166946
0900-39 EXPENSE CONSTANT		NONE
TERRORISM RISK INS ACT 2002		280
TOTAL ESTIMATED PREMIUM		812
DEPOSIT AMOUNT DUE		167988
		167988

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

OFFICE: ORLANDO 870

PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

APPELLANT ROA 00600

APPENDIX_00600

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY. INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	2100000	10.47	219870
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	16000	.83	133
CLERICAL OFFICE EMPLOYEES NOC	8810	590000	.31	1829

1.70% EMPL. LIAB. INCREASED LIMITS(9807)	\$	3771
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION		225603
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM		166946
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		166946
0.00% ARAP MODIFICATION PROGRAM		NONE
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		812
TOTAL ESTIMATED PREMIUM		167988
DEPOSIT AMOUNT DUE		167988

DATE OF ISSUE: 12-01-03 TW

ST ASSIGN: SC

SCHEDULE NO: 1 OF LAST
APPELLANT ROA 00601

1680

APPENDIX_00601

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-0188B92-3-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT

The Travelers Insurance Companies
(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

ease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational dis-

PART ONE - WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but net loss of earnings;

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law.

Enforcement may be against us or against you and us.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a. benefits payable by this insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO — EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment,

claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901, 942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60); any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is ex-

hausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE—OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if

we are not permitted to pay the benefits directly to persons entitled to them.

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.



PART FOUR — YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses; and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

PART FIVE — PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your officers and employees engaged in work covered by this policy; and
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy

ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX — CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While

they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 15 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (6JUB-01 88B92-3-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below:

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

(Rev. 03-03)

APPELLANT ROA 00608

POLICY NUMBER: (6JUB-01 88B92-3-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

- 1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (6JUB-01 88B92-3-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

State	Rate per \$100 of Remuneration	Schedule	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030			

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective

Policy No.

Endorsement No.

Insured

Premium \$

Insurance Company

Countersigned by _____

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

Page 2 of 2

APPELLANT ROA 00610

APPENDIX_00610

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (GJUB-0188B92-3-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

SCHEDULE

STATE	MODIFICATION
SC	0.7400

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

APPELLANT ROA 00611

386

APPENDIX_00611

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

APPELLANT ROA 00612

APPENDIX_00612

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancellation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.

2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

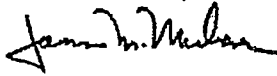
3. The policy period will end on the day and hour stated in the cancellation notice.

4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

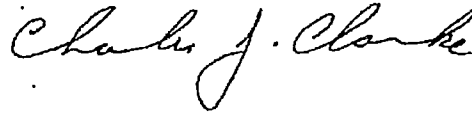
E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.



Secretary



President



Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-01 88B92-3-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three—Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 12-01-03

ST ASSIGN: SC

APPELLANT ROA 00614

8685

APPENDIX_00614

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)**

POLICY NUMBER: (6JUB-0188B92-3-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

SCHEDULE

ANNIVERSARY RATING DATE (MONTH) (DAY) (YEAR)

REFER TO INFORMATION PAGE SCHEDULE(S)

DATE OF ISSUE: 12-01-03.

ST ASSIGN: SC

APPELLANT ROA 00615

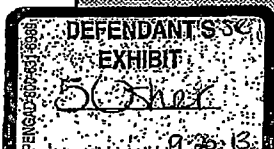
APPENDIX_00615



**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540



BWPH Ard Trucking 00065

APPELLANT ROA 00616

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

PRODUCER:

MICHAEL P HAIR & ASSOC
7422 CARMEL EXECUTIVE PK #204
PO BOX 472224
CHARLOTTE NC 28247

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 11-07-03 to 11-07-04 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	\$	500000	Each Accident
Bodily Injury by Disease:	\$	500000	Policy Limit
Bodily Injury by Disease:	\$	500000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE
ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

DATE OF ISSUE: 03-01-04 TW
OFFICE: ORLANDO 870
PRODUCER: MICHAEL P HAIR & ASSOC

26XSD

ST ASSIGN: SC

BWPH Ard Trucking 00066

APPELLANT ROA 00617

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (R67JUB-9560A28-5-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
-----------------	---------	--	---------------------------------------	--------------------------------

SEE EXTENSION OF INFORMATION PAGE -- SCHEDULE(S)

SIC-CODE: 4789

	STANDARD	EXCESS
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM \$	260581 \$	NONE
PREMIUM DISCOUNT	TO BE DETERMINED	
OTHER CHARGES & CREDITS	NONE	52116
0900-39 EXPENSE CONSTANT		230
TERRORISM RISK INS ACT 2002	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT D	261870	52346

A/R (WCIP) #

Minimum Premium: \$ 750

EMPLOYERS LIABILITY MINIMUM: \$ 100

DATE OF ISSUE: 03-01-04 TW
OFFICE: ORLANDO 870
PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

ST ASSIGN: SC

BWPH Ard Trucking 00067

APPELLANT ROA 00618

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

13579-SC

INSURED'S NAME: ARD TRUCKING COMPANY INC
RATING MODE: RMD LOSS SENSITIVE RATING PLANS
ANNIVERSARY RATING DATE: 11-01-04
EXP. MOD. EFFECTIVE DATE: 11-01-03

RATE BUREAU ID: 390236328

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 570604441 ENTITY CD 001				
ARD TRUCKING COMPANY INC				
1702 N GOVERNOR WILLIAMS DARLINGTON, SC 29540				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	3456061	10.47	361850
SALESPERSONS, COLLECTORS OR MESSENGERS-OUTSIDE	8742	14976	.83	124

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 1 OF MORE

BWPH Ard Trucking 00068

APPELLANT ROA 00619

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01 (CONT'D)				
CLERICAL OFFICE EMPLOYEES NOC	8810	824523	.31	2556

	STANDARD	EXCESS
1.70% EMPL. LIAB. INCREASED LIMITS (9807)	\$ 6197	\$ NONE
5.10% DEDUCTIBLE CREDIT (9941)	18591	NONE
TOTAL PREMIUM SUBJECT TO EXPERIENCE MODIFICATION	352136	NONE
CONTINGENT EXP MOD: .74 MODIFIED PREMIUM	260581	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	260581	NONE
0.00% ARAP MODIFICATION PROGRAM	NONE	NONE
LSRP CONTINGENT DEPOSIT (9700)	NONE	52116
EXPENSE CONSTANT (0900)	NONE	230
TERRORISM RISK INS ACT 2002 (9740)	1289	NONE
TOTAL ESTIMATED PREMIUM	261870	52346
DEPOSIT AMOUNT DUE	261870	52346

DATE OF ISSUE: 03-01-04 TW

ST ASSIGN: SC

SCHEDULE NO: 2 OF LAST

BWPH Ard Trucking 00069

APPELLANT.ROA 00620

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 06 03 00 - 001	BENEFITS DEDUCTIBLE ENDORSEMENT
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 02 00 - 001	ANNIVERSARY RATING DATE ENDORSEMENT
WC 00 04 12 00 - 001	CONTINGENT EXPERIENCE RATING MOD FACTOR
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 15 00 - 001	ASSIGNED RISK ADJUSTMENT PROGRAM ENDT.
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 18 00 - 001	MANDATORY A/R LSRP ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT

DATE OF ISSUE: 03-01-04

ST ASSIGN: sc

Page 1 of LAST

BWPH Ard Trucking 00070

APPELLANT ROA 00621

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 06 03 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

BENEFITS DEDUCTIBLE ENDORSEMENT

This endorsement applies only to the insurance provided by Part One (Workers Compensation Insurance) because the states listed in the Schedule below are shown in item 3.A. of the Information Page.

1. Part One (Workers Compensation Insurance) applies only to benefits in excess of the deductible amount shown in the Schedule below.
2. This deductible applies separately to each claim for bodily injury by accident or disease.
3. If the law requires payment on a per accident or per disease basis, this provision applies in place of paragraph 2 above. This deductible applies separately to each accident or disease, regardless of the number of people who sustain injury by such accident or disease.
4. We will pay the deductible amount for you, but you must reimburse us within 30 days after we send you notice that payment is due. If you fail to fully reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.
5. If the statute requires or allows you to pay the deductible amount, this provision applies in place of paragraph 4 above. You will pay the deductible amounts directly to the persons entitled to them. We will be your guarantor for those payments. If we pay the deductible amount as guarantor, you must reimburse us within 30 days after we send you notice that payment is due. If you fail to reimburse us, we may cancel the policy as provided in Part Six (Conditions), Section D. Cancellation, of the policy. We may keep the amount of unearned premium that will reimburse us for the payments we made. These rights are in addition to other rights we have to be reimbursed.

SCHEDULE

State	Indemnity and Medical Deductible Amount	Medical Deductible Amount	Indemnity Deductible Amount
SC	\$1000		

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

PAGE 1 OF LAST

BWPH Ard Trucking 00071

APPELLANT ROA 00622

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT**

"Part Three—Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
 - a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
 - b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
 - c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00072

APPELLANT ROA 00623

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 02 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ANNIVERSARY RATING DATE ENDORSEMENT

The premium and rates for this policy, and the experience rating modification factor, if any, may change on your anniversary rating date shown in the Schedule(s).

	SCHEDULE		
ANNIVERSARY RATING DATE	(MONTH)	(DAY)	(YEAR)
REFER TO INFORMATION PAGE SCHEDULE(S)			

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00073

APPELLANT ROA 00624

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (R6BJUB-9560A28-5-03)

**CONTINGENT EXPERIENCE
RATING MODIFICATION FACTOR ENDORSEMENT**

The premium for this policy will be adjusted by an experience rating modification factor. The factor shown in the schedule is a Contingent Experience Rating Modification factor based on the appropriate experience data available and supersedes any prior experience modification factor. We will issue an endorsement to show a revised factor if appropriate additional experience data becomes available. The Contingent factor will apply unless a revised factor is subsequently issued.

	SCHEDULE
STATE	MODIFICATION
SC	0.7400

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00074

APPELLANT ROA 00625

Travelers

WORKERS COMPENSATION
AND
EMPLOYER'S LIABILITY POLICY
ENDORSEMENT WC 00 04 14 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00075

APPELLANT ROA 00626

APPENDIX_00626



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04.15 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

ASSIGNED RISK ADJUSTMENT PROGRAM ENDORSEMENT

This endorsement is added to Part Five (Premium) because one or more of the states shown in the Item 3.A of the Information Page have approved the Assigned Risk Adjustment Program. The program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the Program.

A. Eligibility

1. You are eligible for the Assigned Risk Adjustment Program if you are eligible for an experience rating modification. The application of this program is mandatory for all eligible insureds and shall apply to all assigned risk policies written for such insureds.
2. The adjustment program period is the one year period beginning with the effective date of the policy. If during the adjustment program period your experience rated modification changes, the Assigned Risk Adjustment Program surcharge factor may also change.

B. Surcharge Application

You must pay a surcharge if your actual losses exceed your modified expected losses, as determined using values from the experience rating modification calculation. The surcharge factor will be applied to your manual premium multiplied by the experience rating modification.

C. Interstate Risks

Experience rated risks with multi-state operations shall be subject to the Assigned Risk Adjustment Program in states that have approved it. See the Schedule below.

D. Cancellation

1. If you cancel, the standard premium for the adjustment plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Adjustment Program surcharge.
2. Section D. 1. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. coverage is obtained through the voluntary market.

SCHEDULE

STATE

Alabama, Connecticut, Iowa, Kansas, Missouri, North Carolina, Oregon, South Carolina, Vermont, Virginia

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of 1

BWPH Ard Trucking 00076

APPELLANT ROA 00627



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

**ASSIGNED RISK LOSS SENSITIVE RATING PLAN
NOTIFICATION ENDORSEMENT**

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

DATE OF ISSUE: 03-01-04 ST ASSIGN: SC

(Rev. 03-03)

BWPH Ard Trucking 00077

APPELLANT ROA 00628

POLICY NUMBER: (R6EJUB-9560A28-5-03)

MANDATORY ASSIGNED RISK LOSS SENSITIVE RATING PLAN ENDORSEMENT

This endorsement is added to Part Five (Premium) to explain the rating plan and how the Assigned Risk Loss Sensitive Rating Plan premium will be determined.

This endorsement applies where the LSRP has been approved. It determines the Assigned Risk Loss Sensitive Rating Plan premium for the insurance provided during the rating plan period of this policy. The rating plan period is the one-year period beginning with the effective date of the policy.

A. Assigned Risk Loss Sensitive Rating Plan Premium Elements

The amount of Assigned Risk Loss Sensitive Rating Plan premium depends on the six standard elements which are explained below:

1. Standard premium is the premium we would charge during the rating plan period if the insurance was not subject to this endorsement. We determine your standard premium based upon authorized rates, any experience rating modification and minimum premiums, including the effect of any other residual market rating plan or program. Standard premium does not include the expense constant charge, the premium discount credit, premium developed by the passenger seat surcharge under Code 7421 - Aircraft Operation - Flying Crew, or premium developed by the occupational disease rates for risks subject to the Federal Coal Mine Health and Safety Act.
2. Basic premium is calculated by multiplying the standard premium by a basic premium factor. The basic premium factor is shown in the Schedule.
3. Incurred losses are all amounts we will pay or estimate we will pay for losses, interest on judgments, expenses to recover against third parties and employers liability loss adjustment expenses.
4. A converted loss is an incurred loss multiplied by a percentage called the loss conversion factor. The Assigned Risk Loss Sensitive Rating Plan loss conversion factor is shown in the Schedule.
5. Taxes are a part of the premium we collect. Taxes are determined as a percentage of expense and development premium and converted losses. The percentage is called the tax multiplier. The tax multiplier covers assessments, fees, licenses, and taxes which we must pay on the premium we collect. It varies by Federal and non-Federal classifications. The tax multiplier(s) for each state are shown in the Schedule.
6. Development premium is calculated by multiplying the standard premium by the product of the appropriate premium development factor, the loss conversion factor and the tax multiplier. The premium development factors are shown in the Schedule.

B. Assigned Risk Loss Sensitive Rating Plan Formula

1. Assigned Risk Loss Sensitive Plan premium is the sum of the basic premium, development premium and converted losses, multiplied by the tax multiplier. The payment, if any, attributable to the four items excluded from standard premium in A.1. above, is a separate obligation of yours in addition to the Assigned Risk Loss Sensitive Rating Plan premium.
2. The Assigned Risk Loss Sensitive Rating Plan premium is subject to a minimum premium and a maximum premium. The minimum premium is determined by multiplying the total audited standard premium by the minimum premium factor. The maximum premium is determined by multiplying the total audited standard premium for the qualifying states by the applicable maximum premium factor. The minimum premium factor and maximum premium factor for each state are shown in the Schedule.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 1 of 3

BWPH Ard Trucking 00078

APPELLANT ROA 00629



WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

C. Premium Calculation and Payments

1. You will pay a premium which amounts to 120% of the estimated annual premium. If you obtain an acceptable clean, unconditional, irrevocable letter of credit (LOC), containing an automatic renewal clause, to secure the 20% additional deposit premium, the premium will be 100% of the estimated annual premium.
2. Your rating plan premium will be determined after the rating plan period ends. We will issue an endorsement to show any change in the premium for your insurance if your annual audited standard premium equals or exceeds the premium eligibility level in one or more states where this plan has been approved.
3. The first calculation of Assigned Risk Loss Sensitive Rating Plan premium shall be determined using all loss information valued as of 18 months after the month in which the rating plan period became effective. Three additional annual premium adjustment calculations shall be made based on loss information valued as of 30, 42, and 54 months after the month in which the rating plan period became effective.

We may make a special valuation of the Assigned Risk Loss Sensitive Rating Plan premium as of any date that you become bankrupt or insolvent, make an assignment for the benefit of creditors, are involved in reorganization, receivership or liquidation, or dispose of all your interest in work covered by the insurance. You will pay the amount due us if the Assigned Risk Loss Sensitive Rating Plan premium is more than the total standard premium as of the special valuation date.
4. After each valuation, you shall promptly pay to us the amount due, or we will refund the amount due you. If you fail to pay any premium due under this plan, your current policy will be canceled and you will be disqualified from future assignments through the assigned risk plan.

D. Cancellation

1. If the policy is canceled by you or by us, a determination shall be made as to whether this program shall apply. The Assigned Risk Loss Sensitive Rating Plan shall apply only to those policies where the payroll extended to an annual basis and multiplied by the manual rates and experience modification, equals or exceeds the premium eligibility level in any of the states where this program has been approved.
2. The Assigned Risk Loss Sensitive Rating Plan will not apply if you obtain coverage outside the residual market within 120 days after the effective date of the policy.
3. If you cancel, the standard premium for the rating plan period will be based on our short rate table and procedure. This short rate premium will be used to determine the Assigned Risk Loss Sensitive Rating Plan premium.
4. Section D.3. will not apply if you cancel because:
 - a. all work covered by the insurance is completed;
 - b. all interest in the business covered by the insurance is sold;
 - c. you retire from all business covered by the insurance; or
 - d. you obtain coverage in the voluntary market.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 2 of 3

BWPH Ard Trucking 00079

APPELLANT ROA 00630

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 18 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

SCHEDULE

1. Basic Premium Factor .30
2. Loss Conversion Factor 1.19
3. Tax Multiplier 1.143
4. Minimum Premium Factor .75
5. Maximum Premium Factor 1.75
6. LSRP Development Factors:
 - 1st Adjustment 0.00
 - 2nd Adjustment 0.00
 - 3rd Adjustment 0.00
 - Subsequent Adjustments 0.00

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 3 of 3

BWPH Ard Trucking 00080

APPELLANT ROA 00631

APPENDIX_00631

POLICY NUMBER: (R6EJUB-9560A28-5-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

DATE OF ISSUE: 03-01-04

ST ASSIGN: sc

Page 1 of 2

BWPH Ard Trucking 00081

APPELLANT ROA 00632

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (00)**

POLICY NUMBER: (R6EJUB-9560A28-5-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

State	Rate per \$100 of Remuneration	Schedule	State	Rate per \$100 of Remuneration
SOUTH CAROLINA	0.030			

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective _____ Policy No. _____ Endorsement No. _____
Insured _____ Premium \$ _____
Insurance Company _____ Countersigned by _____

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

Page 2 of 2

BWPH Ard Trucking 00082

APPELLANT ROA 00633

WORKSHEET FOR WORKERS' COMPENSATION TELEPHONE REPORTING

THINGS TO REMEMBER WHEN COMPLETING THE INFORMATION BELOW:

Call the Telephone Reporting Center to quickly and easily report all Workers' Compensation injuries. We will be asking you the following questions, so please have the information handy. We will produce and submit the necessary state forms.

DO NOT DELAY IN CALLING IF YOU DO NOT HAVE ANSWERS TO ALL OF THE QUESTIONS

ACCOUNT INFORMATION

CALLER'S PHONE NUMBER/EXTENSION ()	CALLER'S NAME (FIRST, MI., LAST)	CALLER'S TITLE	BENEFIT STATE
EMPLOYER'S NAME	EMPLOYER'S ADDRESS (STREET, CITY, STATE & ZIP)	EMPLOYER'S MAILING ADDRESS (STREET, CITY, STATE & ZIP) <input type="checkbox"/> SAME	
PARENT COMPANY/INSURED'S NAME	LOCATION CODE	NATURE OF BUSINESS	POLICY FORM (R6BJTB-9560A28-5-03)

EMPLOYEE INFORMATION

EMPLOYEE'S NAME (FIRST, MI, LAST)		GENDER <input type="checkbox"/> MALE <input type="checkbox"/> FEMALE	SOCIAL SECURITY NUMBER	
EMPLOYEE'S MAILING ADDRESS (STREET, CITY, STATE & ZIP)		IS EMPLOYEE'S HOME ADDRESS THE SAME? IF NO, STREET, CITY, STATE & ZIP <input type="checkbox"/> YES <input type="checkbox"/> NO		
MARITAL STATUS	EMPLOYMENT STATUS CODE <input type="checkbox"/> FULL-TIME <input type="checkbox"/> PART-TIME	NO. OF DEPENDENTS	CLASS CODE	DATE OF BIRTH
		WAGE PERIOD	HOME PHONE NUMBER ()	

ACCIDENT INFORMATION

DATE OF INJURY	TIME OF INJURY A.M. P.M.	DATE CLAIM REPORTED TO EMPLOYER	WAS THE ACCIDENT ON THE EMPLOYER'S PREMISES? <input type="checkbox"/> YES <input type="checkbox"/> NO	
LOCATION OF ACCIDENT ADDRESS (STREET, CITY, STATE & ZIP)			COUNTY	
DID EMPLOYEE LOSE ANY TIME FROM WORK? <input type="checkbox"/> YES <input type="checkbox"/> NO	IS THE EMPLOYEE BACK AT WORK? IF YES, DATE RETURNED <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE EMPLOYEE LAST WORKED	WAS EMPLOYEE PAID FOR DATE OF INJURY? <input type="checkbox"/> YES <input type="checkbox"/> NO	DATE EMPLOYEE LAST PAID
DATE DISABILITY BEGAN	DATE DISABILITY ENDED	IS / WAS EMPLOYEE'S SALARY CONTINUED? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS EMPLOYEE'S INJURY RELATED TO A COMPANY-SPONSORED EVENT? <input type="checkbox"/> YES <input type="checkbox"/> NO	WAS ACCIDENT FATAL? IF YES, DATE OF DEATH <input type="checkbox"/> YES <input type="checkbox"/> NO
FULL DESCRIPTION OF ACCIDENT				

CAUSE OF ACCIDENT (E.G., SLIP/FALL, LIFTING, CHEMICAL)	IF MOTOR VEHICLE ACCIDENT, DRIVER'S LICENSE NUMBER	STATE WHERE ISSUED
CONTRIBUTING FACTORS	EQUIPMENT, MATERIAL OR SUBSTANCE INVOLVED	

IF OTHER PARTIES WERE INVOLVED NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER
--	---------	--------------

WERE SAFEGUARDS PROVIDED? <input type="checkbox"/> YES <input type="checkbox"/> NO	DESCRIPTION OF SAFEGUARDS	WERE SAFEGUARDS USED? <input type="checkbox"/> YES <input type="checkbox"/> NO
WITNESS INFORMATION NAME (FIRST, MI, LAST)	ADDRESS	PHONE NUMBER

INJURY INFORMATION

PART OF BODY INJURED (E.G. HEAD, NECK, ARM, LEG)	NATURE OF INJURY (E.G. FRACTURE, SPRAIN, LACERATION)	PREVIOUS RELATED CONDITION? <input type="checkbox"/> YES <input type="checkbox"/> NO	PRE-EXISTING MEDICAL CONDITION(S)
CUMULATIVE INJURY? IF YES, LENGTH OF EXPOSURE <input type="checkbox"/> YES <input type="checkbox"/> NO	NATURE OF DUTIES	LENGTH OF TIME DOING ACTIVITY	
TREATMENT (*X* ALL THAT APPLY)	NAME (FIRST, MI, LAST)	WHAT TYPE OF FIRST AID WAS ADMINISTERED? .	1ST DAY OF TREATMENT
<input type="checkbox"/> FIRST AID -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	TREATMENT	LENGTH OF STAY
<input type="checkbox"/> HOSPITAL/ <input type="checkbox"/> CLINIC -	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	PHONE NUMBER	SPECIALTY
<input type="checkbox"/> PHYSICIAN -	()	TREATMENT	1ST DAY OF TREATMENT

WUNTCG98

BWP CONTINUED ON REVERSE SIDE

APPELLANT ROA 00634

EMPLOYEE JOB INFORMATION

EMPLOYEE'S OCCUPATION WHEN INJURED:

IS THIS EMPLOYEE'S REGULAR OCCUPATION?

OCCUPATION IS: SEDENTARY LIGHT MEDIUM HEAVY

EMPLOYEE'S REGULAR WORK HOURS: HOURS/DAY DAYS/WEEK

EMPLOYEE'S PAY: \$ /HOUR; OR \$ /WEEK

DOES EMPLOYEE RECEIVE ADD'L BENEFITS (e.g. Overtime, Uniforms, Meals, etc.)?

EMPLOYEE'S DATE OF HIRE:

EMPLOYEE'S SUPERVISOR:

SUPERVISOR'S PHONE NUMBER: () SUPERVISOR'S REGULAR WORK HOURS:

STATE SPECIFIC INFORMATION

SEE WORKERS' COMPENSATION - FIRST REPORT OF INJURY - STATE SPECIFIC QUESTIONS FOR YOUR INDIVIDUAL STATE.

CUSTOMER SPECIFIC INFORMATION

ADDITIONAL COMMENTS & INFORMATION

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

ARD TRUCKING COMPANY INC

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

1) Substance Abuse Policy Statement: Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance-abuse-free environment.

2) Employee Notification: In order to protect the individual rights of each employee and to begin the employee education process necessary for a well-defined, well-managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important-to-the employee correspondence or benefits delivery.

3) Testing Program: The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

4) Test Results Confidentiality Protocols: Test results information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information;
(2) the purpose of the disclosure;
(3) the precise information to be disclosed;
(4) the duration of the consent; and
(5) the signature of a person authorizing release of the information.

Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

I certify that the above information is accurate and that I may be subject to an additional premium charge if it is determined that there is any misrepresentation of the established drug and alcohol free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name, Date, Officer/Owner Signature*, Title, Notary Public's Signature, Date, Exp. of Commission

POLICY NUMBER: (R6EJUB-9560A28-5-03)

EFFECTIVE DATE: 11-07-03

ARD TRUCKING COMPANY INC

GUNTHER OPERATOR:

**MANUALLY INSERT 1 COPIES OF CP-5952
SOUTH CAROLINA OVERSIZED POSTING NOTICES**

ATTACH STICKERS THAT MATCH DATA BELOW:

EMPLOYER--Name: ARD TRUCKING COMPANY INC

CARRIER--Name: THE TRAVELERS INSURANCE COMPANIES
Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

W39P1H95

BWPH Ard Trucking 00086

APPELLANT ROA 00637

APPENDIX_00637

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See instructions on other side.

BWPH Ard Trucking 00087

APPELLANT ROA 00638

**STICKER LABELS AND/OR POSTING NOTICES
FOR MANUAL INSERT**

FOR POLICY PRINTED IN JOB #: G664063

Named Insured: ARD TRUCKING COMPANY INC

Policy Number: (R6EJUB-9560A28-5-03)

Effective Date: 11-07-03

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BWPH Ard Trucking 00088

APPELLANT ROA 00639

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BWPH Ard Trucking 00089

APPELLANT ROA 00640

EMPLOYER -- Name: ARD TRUCKING COMPANY INC

CARRIER -- Name: THE TRAVELERS INSURANCE COMPANIES
Address: STE 201 220 EXECUTIVE CTR DR PO BOX 8779
COLUMBIA, SC 29202-8779

Telephone No. (800) 238-6225

POLICY NUMBER: 9560A285

EMPLOYER -- Name:

CARRIER -- Name:
Address:

Telephone No.

POLICY NUMBER:

EMPLOYER -- Name:

CARRIER -- Name:
Address:

Telephone No.

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EMPLOYER -- Name:

CARRIER -- Name:
Address:

Telephone No.

POLICY NUMBER:

APPELLANT ROA 00641

BWPH Ard Trucking 00090

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

POLICY NUMBER: (R6EJUB-9560A28-5-03)

FOR PRODUCER ONLY, BILLING SCHEDULE BY COMMISSION RATE

INSTALLMENT DUE DATE	AMOUNT	COMMISSION RATE
11-07-03	\$ 53635	.0000
11-07-03	\$ 260581	.0243

THE AMOUNTS ABOVE WILL BE BILLED SEPARATELY.

DATE OF ISSUE: 03-01-04

ST ASSIGN: SC

BWPH Ard Trucking 00091

APPELLANT ROA 00642



ORLANDO FL

32802

IMPORTANT NOTICE TO POLICYHOLDERS

NO COVERAGE IS PROVIDED BY THIS SUMMARY NOR CAN IT BE CONSTRUED TO REPLACE ANY PROVISIONS IN YOUR POLICY. YOU SHOULD READ YOUR POLICY CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES AND WHAT IS AND IS NOT COVERED. IF THERE IS ANY CONFLICT BETWEEN THE POLICY AND THIS SUMMARY, THE PROVISIONS OF THE POLICY SHALL PREVAIL.

PLEASE READ THIS NOTICE CAREFULLY.

Terrorism Risk Insurance Act of 2002 Disclosure

On November 26, 2002, the President of the United States signed into law the Federal Terrorism Risk Insurance Act of 2002 (the "Act"). The Act establishes a short-term program under which the Federal Government will share in the payment of "Insured Losses" caused by certain "Acts of Terrorism" (each as defined in the Act).

In the event of an Insured Loss, your insurance carrier is responsible for a deductible of one percent (1%) of the carrier's "Direct Earned Premiums" (as used in the Act) for the calendar year 2001 for Insured Losses occurring from November 26, 2002, through December 31, 2002; seven percent (7%) of the carrier's Direct Earned Premiums for the calendar year 2002 for Insured Losses occurring during calendar year 2003; ten percent (10%) of the carrier's Direct Earned Premiums for the calendar year 2003 for Insured Losses occurring during calendar year 2004; or fifteen percent (15%) of the carrier's Direct Earned Premiums for the calendar year 2004 for Insured Losses occurring during calendar year 2005. The Federal Government's share of compensation for Insured Losses in each year is 90% of the amount of Insured Losses in excess of the carrier's deductible for that year. The carrier is responsible for the payment of the remaining 10% of Insured Losses. In no event, however, will the Federal Government or any "Insurer" (as defined in the Act) be required to pay any portion of the amount of aggregate Insured Losses occurring in any one year that exceeds \$100,000,000,000, provided that such Insurer has met its deductible.

As a requirement of the Act, insurers must make available "Property and Casualty Insurance" (as defined in the Act) coverage for Insured Losses that does not differ materially from the terms, amounts and other coverage limitations that apply to losses arising from events other than Acts of Terrorism. In other words, a loss will not be excluded just because it was caused by an Act of Terrorism; conversely, a loss will not be covered just because it was caused by an Act of Terrorism. The Act also requires insurers to disclose to policyholders premium charge for providing such terrorism coverage.

Please note that your policy being quoted does not contain an exclusion that specifically excludes coverage for Insured Losses. Your Workers' Compensation benefit obligations stemming from Acts of Terrorism as dictated by state law, will be covered.

Please note that your policy does not contain an exclusion that specifically excludes coverage for Insured Losses caused by Acts of Terrorism. Your Workers' Compensation benefit obligations stemming from Acts of Terrorism as dictated by state law, will be covered.

The rates used to develop your Residual Market premium were administered by the state. The passage of the Act results in a change in premium in accordance with the information listed below. The portion of your annual premium being quoted that is attributable to coverage for Acts of Terrorism is specifically identified on your quote schedule.

WIAQ5E04

Page 1 of 2

BWPH Ard Trucking 00092
APPELLANT ROA 00643

APPENDIX_00643

State
SOUTH CAROLINA

Rate per \$100 of Remuneration
0.030

NOTE - THE FOREGOING RATES ARE SUBJECT TO CHANGE AT ANY TIME BASED ON STATE REGULATORY ACTION.

Please contact your agent or broker if you have any questions on this notice, the Act or the impact of the Act on your policy.

WIAQ5E04

Page 2 of 2

BWPH Ard Trucking 00093
APPELLANT ROA 00644

APPENDIX_00644

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

ARD TRUCKING COMPANY INC

Name of Employer: _____

Date Program Implemented: _____

This form must be completed by you and returned to your carrier with a copy of applicable documentation as proof of compliance before the premium credit of five percent (5%) can be established and processed. A program must be certified during each year the employer receives credit. Failure to do so will remove you from eligibility for this credit.

The following are the four (4) minimum requirements necessary for a qualified employer workplace program. Please check the items below that apply.

1) Substance Abuse Policy Statement: Any policy must be designed to help employees who need substance abuse assistance while, at the same time, sending a clear message that the abuse of drugs and alcohol is not compatible with employment in that employer's workplace. The policy statement must evidence both the employer's respect for its employees and the employer's need to maintain a safe, productive, substance-abuse-free environment.

2) Employee Notification: In order to protect the individual rights of each employee and to begin the employee education process necessary for a well-defined, well-managed workplace drug and alcohol abuse prevention program, each existing employee and each new employee hired after program implementation must be given a clear, concise, readable notice of the program, the program's requirements, the policy statement, and the employer's expectations under the program. Notification should be and should remain, posted in employee common areas. In addition, each existing employee and each new employee must be given, by mail or by in-person delivery, a copy of the notice. Delivery may be accomplished by inclusion of the notice within the employee's paycheck package or any similarly important-to-the employee correspondence or benefits delivery.

3) Testing Program: The testing procedure must include a provision for random sampling of all persons who receive wages and compensation in any form from the employer and must provide for a second test to be administered within thirty minutes of the administration of the first test. Positive test results must be provided in writing to the employee within twenty-four hours of the time the employer receives the test results. Each employer must keep records of each test for up to one year.

4) Test Results Confidentially Protocols: Test results information, interviews, reports, statements, and memorandums received by the employer must be considered confidential and may not be used, received, or discovered in civil, criminal, or administrative proceedings. The burden to protect against unauthorized release is placed not only upon the employer and any laboratory, medical review officer, or rehabilitation program or their agents, but also upon the underwriting insurer. Employers, laboratories, medical review officers, insurers, drug or alcohol rehabilitation programs, and employer drug prevention programs, and their agents who receive or have access to information concerning test results shall keep all information confidential. Release of such information under any other circumstance shall be solely pursuant to a written consent form signed voluntarily by the employee tested or his designee unless the release is completed through disclosure by an agency of the State in a civil or administrative proceeding, order of a court of competent jurisdiction, or determination of a professional or occupational licensing board in a related disciplinary proceeding. The consent form must contain at a minimum:

- (1) the name of the person who is authorized to obtain the information;
(2) the purpose of the disclosure;
(3) the precise information to be disclosed;
(4) the duration of the consent; and
(5) the signature of a person authorizing release of the information.

Information on test results shall not be released for or used or admissible in any criminal proceeding against the employee.

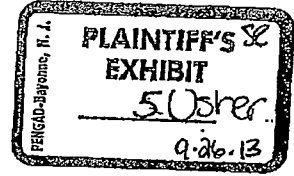
I certify that the above information is accurate and that I may be subject to an additional premium charge if it is determined that there is any misrepresentation of the established drug and alcohol free workplace program criteria. This is a true and factual depiction of my current program.

Employer Name Date Officer/Owner Signature*
*Application must be signed by an officer or owner
Title
Notary Public's Signature Date Exp. of Commission



One Tower Square, Pol. Adm. 6CR
Hartford, CT 06183

02147 G1



JANUARY 26, 2004

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540-0504

Policy Number: UB 0188B923

Policy Effective Date: 11/07/03

Dear Policyholder:

Effective January 1, 2004, we are changing the name of two of our insurance companies. They are:

- 1) The Travelers Indemnity Company of Illinois to Travelers Property Casualty Company of America
- 2) Travelers Casualty and Surety Company of Illinois to Travelers Casualty Insurance Company of America

This change in company name does not affect your premium or coverage. These two companies continue to have the same A.M. Best claims paying and financial strength rating of A++ (superior) which is the highest rating that A.M. Best provides.

We are in the process of updating our systems and you may notice the old name on some policies, bills and other documents. Until this process is completed, please note the former names and new names of these companies.

Below the cut line is an endorsement to amend your policy. Please attach this endorsement to your policy. If you have any questions, please contact your agent or insurance representative.

This endorsement only changes the company name on your policy.

Insurer Amendment Endorsement

The name of your insurer is changed from the former name to the new name shown below:

<u>Former Name</u>	<u>New Name</u>
The Travelers Indemnity Company of Illinois	Travelers Property Casualty Company of America
Travelers Casualty and Surety Company of Illinois	Travelers Casualty Insurance Company of America

New Company Address: One Tower Square
Hartford, Connecticut 06183

This name change endorsement does not alter the coverage provided by this policy and has no effect on the premium for this policy. This endorsement changes only the name of Insuring company.

IL T3 77 01 04

Effective January 1, 2004

APPELLANT ROA 00646

Travelers

**WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY**

CHANGE DOCUMENT WC 99 99 98 (00)

POLICY NUMBER: (R6EJUB-9560A28-5-03)

CHANGE EFFECTIVE DATE: 11-07-03

NCCI CO CODE: 13579

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

INSURED'S NAME: ARD TRUCKING COMPANY INC

This change is issued by that member of The Travelers Insurance Companies which issued the policy and forms a part of the policy. It is agreed that the policy is amended as follows:

An absence of an entry in the premium spaces below means that the premium adjustment, if any, will be made at time of audit.

ADDITIONAL PREMIUM	\$ NIL	RETURN PREMIUM	\$ 52116
ADDITIONAL NON-PREMIUM	\$ NIL	RETURN NON-PREMIUM	\$ NIL

THE POLICY CHANGE DESCRIPTION IS AS FOLLOWS:
APPROVED LETTER OF CREDIT RECEIVED

THE FOLLOWING ENDORSEMENT(S) IS ADDED:
WC89061400-01 POLICY INFORMATION PAGE ENDORSEMENT
WC99999800-01 CHANGE DOCUMENT

THE INFO PAGE SCHEDULE(S) ATTACHED REPLACE THOSE ON THE POLICY.



DATE OF ISSUE: 07-27-04 GS CHANGE NO: 002 PAGE 001 OF LAST
POL. EFF. DATE: 11-07-03 POL. EXP. DATE: 11-07-04
OFFICE: ORLANDO 870
PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

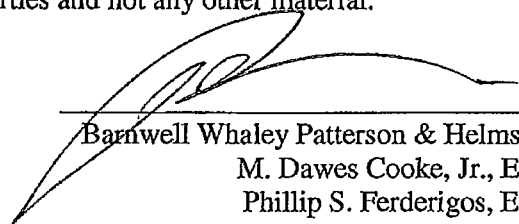
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APPELLANT ROA 00647 COUNTERSIGNED AGENT

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.

Date: March 25, 2016



Barnwell Whaley Patterson & Helms, LLC
M. Dawes Cooke, Jr., Esquire
Phillip S. Ferderigos, Esquire
P.O. Drawer H
Charleston, SC 29401
843-577-7700
Attorney for Appellant

Basic Manual—2001 Edition

Part One—Rules

Rule 4—Workers Compensation Insurance Plan Rules

Applicable To Assigned Risk Policies Only

Effective 01 Jan 2013 12:00:01

A. Workers Compensation Insurance Plan (WCIP)

10. Dispute Resolution Procedure

a. Procedure

The dispute resolution procedure can be categorized as either Assigned Risk Employer/Producer related disputes or WCIP related disputes.

b. Assigned Risk Employer/Producer Disputes

Any assigned risk policyholders and their producers affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances.

(1) Employer Disputes

The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned risk pricing programs

The Plan Administrator may intervene in disputes involving other matters arising under this Plan as determined by the Plan Administrator in its discretion.

The Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a written response within thirty (30) days.

(a) Interstate Appeals

When an employer dispute concerns any of the above matters, (other than the application

of NCCI's **Experience Rating Plan Manual** rules), in more than one state, the Plan Administrator will determine the appropriate jurisdiction in which the dispute will be heard, based upon the following factors:

- Governing state (state generating the greatest payroll)
- The state covered by the assigned carrier with the greatest exposure
- The state where the operations are best represented

Interstate Employer-Related Dispute Jurisdiction Table

If . . .	Then . . .
As determined by the Plan Administrator, the governing state is an NCCI Plan administered state that best represents the operations of the business	The governing state's dispute resolution process will apply
The governing state is an NCCI Plan administered state, but the Plan Administrator determines that the governing state does not best represent the operations of the business	The Plan Administrator will review the dispute and determine the appropriate jurisdiction in which the dispute will be heard
The dispute involves NCCI Plan administered states and non-NCCI Plan administered states	The jurisdiction selected and resulting decision will apply only to the NCCI Plan administered states
The governing state is not an NCCI Plan administered state	The employer must follow the appropriate dispute resolution process for the governing state

When a dispute concerns the application of NCCI's **Experience Rating Plan Manual** rules for interstate rated risks, the Plan Administrator will determine the appropriate jurisdiction for the dispute to be heard.

Unless state-specific rules apply, the ruling of the state appeals mechanism (as determined by the Plan Administrator to have jurisdiction over the dispute) will apply to all assigned risk policies whether written by one or more assigned carriers.

For a general overview of the employer dispute resolution process, refer to NCCI's **Assigned Risk Supplement**.

(2) Producer Disputes

For disputes relating to the calculation and/or payment of producer fees and producer of record changes, the Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a written decision within thirty (30) days.

c. WCIP Disputes

Any Plan participants (Association members and/or assigned carriers) who have a dispute with respect to any aspect of the Plan or Reinsurance Agreement(s) (including any dispute arising out of the Association Bylaws) must first seek a review of the matter under this section by providing the following to Plan Administrator:

- Written documentation detailing specific areas of the dispute
- Specific request for a review of all documentation
- Appropriate actions of areas to resolve the dispute

The Plan Administrator may request additional information, as it deems necessary to make a decision. All disputes submitted to the Plan Administrator will be governed as follows:

(1) Plan-Related Disputes

For disputes relating to the general operation of the Plan, including but not limited to, standards for assigned carrier performance, compensation and incentives and application assignment determination, the Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a detailed written decision within thirty (30) days.

Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a *de novo* review by the regulatory authority, by requesting such binding arbitration or *de novo* review in writing and at its own expense, within thirty (30) days after the date of such decision.

For disputes relating to the servicing carrier selection process, refer to the Bid Protest Procedures contained in the applicable Servicing Carrier Request for Proposal (RFP).

(2) Reinsurance Agreement-Related Disputes

If the dispute arises under the Association Bylaws or Reinsurance Agreement(s), the Administrator designated under the Association Bylaws will after receipt of all necessary information regarding the dispute, review the matter and provide a detailed written decision within thirty (30) days. Any party affected by the decision may seek a review by the Board of Directors established under the Association Bylaws by requesting such review, in writing, within thirty (30) days of the date of the decision by the Administrator under the Association Bylaws. The Board of Directors may (a) consider the matter and render its written decision pursuant to the procedures set forth in the Association Bylaws, or (b) waive its decision and offer the aggrieved party the option of appealing directly to the regulatory authority or submitting the dispute to arbitration in accordance with the terms and conditions established by the Board of Directors. Any party affected by a decision of the Board of Directors may seek a *de novo* review by an impartial arbitrator selected by mutual consent of the parties by requesting such a review, in writing, within thirty (30) days of the date of the Board of Directors' decision.

MISCELLANEOUS RULES

Effective 22 Sep 2009 12:00:01

DISPUTE RESOLUTION PROCESS

A. Summary of Dispute Resolution Process

The South Carolina Dispute Resolution Process (the Process) is hereby established to provide means by which South Carolina policyholders may obtain a review of the application of a National Council on Compensation Insurance, Inc. (NCCI) manual rule or rules to a workers compensation and employers liability insurance policy.

The Process has three steps:

1. A policyholder may obtain dispute resolution services only after the policyholder has made a reasonable attempt to first resolve the dispute directly with the insurance carrier.
2. If a policyholder cannot resolve the dispute directly with the carrier, then the policyholder may ask for NCCI's assistance with the dispute. Once NCCI has received a written request for dispute resolution services from the policyholder, NCCI will attempt to assist the policyholder and the carrier to reach an amicable resolution of the issues in dispute.
3. If a policyholder is unable to resolve the dispute to its satisfaction with NCCI's assistance, then the policyholder may ask NCCI to refer the dispute to the South Carolina Dispute Resolution Committee (the Committee) that is established by these rules.

The rules of the Process apply to disputes involving policies written in both the voluntary and residual markets. Additional rules found in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance* Rule 4-A apply regarding the resolution of disputes involving policies written in the residual market. Policyholders must seek resolution of disputes regarding policies written in the residual market through NCCI's *Basic Manual* Rule 4-A before the rules of this Process apply.

B. Authority, Purpose, and Scope of the Process

The purpose of the Process is to review the application or interpretation of NCCI manual rules. The Committee does not have the authority to interpret, apply, or provide an opinion on state or federal laws, rules, or regulations; or decisions of courts or administrative proceedings; or to hear disputes brought by carriers.

1. It is not within the jurisdiction of either NCCI or the Committee to make exceptions to rules that are approved by the South Carolina Department of Insurance. The Committee will exercise its discretion to interpret and apply NCCI's manual rules to the facts of each dispute.
2. The Process as set forth in these rules must be exhausted before a dispute within the jurisdiction of the Committee may be appealed to the next level of review. The Committee will not hear disputes about any issue that is pending in another forum.
3. All issues in dispute arising from the same policy and policy period must be submitted for resolution under these rules at the same time.

4. This Process applies to any dispute arising out of a policy issued either before or after the effective date of these rules. Policyholders seeking dispute resolution under this process must request dispute resolution services from NCCI within three (3) years of the expiration date of the policy in question. Any extension of time to file a request for review after three (3) years of the policy expiration will be granted at the sole discretion of the Committee. An extension of time under this section will be granted only once.
5. Carriers are encouraged to consult with NCCI about any question regarding the application or interpretation of NCCI's rules. Should a carrier, after consultation with NCCI, want to formally dispute any action by NCCI regarding a policy written in the voluntary market, the carrier is directed to the appropriate regulatory authority (and not the Committee). Disputes by carriers about any aspect of the Plan or Pool are governed by the rules found in NCCI's *Basic Manual* Rule 4-A.

C. Operations of the Committee

1. Members of the Committee

- a. The Committee will consist of five (5) voting members, one (1) member from the staff of the South Carolina Department of Insurance and one (1) non-voting advisor from NCCI.
- b. The member from the staff of the South Carolina Department of Insurance will serve as the Chair of the Committee and will vote only for the purpose of breaking a tie vote.
- c. All voting members will be appointed by and serve at the pleasure of the Director of the Department of Insurance (Director) for an indefinite term.
- d. Vacancies on the Committee of voting members will be filled by the Director.
- e. The non-voting advisor from NCCI will be appointed by NCCI for an indefinite term.

2. Meetings of the Committee

- a. The Committee will meet at least once in the last quarter of each calendar year:
 - (1) To elect a Vice Chair for the following calendar year. The Vice Chair will assist the Chair in any duties and substitute for the Chair when the Chair cannot attend a meeting or has a conflict.
 - (2) If at the time of this meeting no disputes are pending before the Committee, the meeting may be held via telephone at the discretion of the Chair.
 - (3) Notice of any meeting will be posted on the Department's website.
- b. At the discretion of the Chair:
 - (i) Any meeting may be cancelled if the Committee has no business to discuss or there are no disputes pending before the Committee.
 - (ii) Additional meetings may be called.
- c. Once NCCI has received a request from the policyholder to refer a dispute for review by the Committee, NCCI will then, in writing, request the Committee will hear the dispute at its next scheduled meeting with an opening on the agenda, unless:
 - (1) A continuance is granted pursuant to these rules; or
 - (2) NCCI or the Committee determines that some action is required by NCCI, the policyholder or the carrier, in which case the matter will be heard at the next scheduled

meeting of the Committee with an opening on the agenda following the completion of the action requested.

- d. The official record of the proceedings will be the Decision Notice issued by the Committee following each meeting and any minutes of other Committee business recorded by the non-voting NCCI advisor to the Committee. Proceedings before the Committee are subject to the requirements of the South Carolina Freedom of Information Act, S.C. Code Ann. §34-4-90(c).

3. Duties of the Committee

- a. It is the duty of every Committee member to:

- (1) Thoroughly review all Committee materials and agendas prior to each meeting of the Committee.
- (2) Determine as soon as possible if the member could reasonably be perceived to have a conflict of interest with any matter before the Committee. If so, that member will recuse himself or herself from participating in such Committee business.
- (3) Promptly notify the Chair if the member is unable to attend a Committee meeting or to otherwise participate in Committee business, and to secure an alternate who must be approved by the Chair to participate in the member's place prior to the Committee meeting in question. The Chair may appoint his or her own alternate if necessary to achieve a quorum.
- (4) Refrain from discussing any matter pending before the Committee with any other person who may have an interest in the outcome of a dispute pending before the Committee, except at a meeting of the Committee.
- (5) Fully participate in all disputes heard by the Committee and vote if authorized to vote in a given dispute.

- b. It is the duty of the Chair of the Committee to:

- (1) Maintain order during all phases of the dispute resolution proceedings.
- (2) Promptly provide a written report to the Director of any chronic absence or inappropriate behavior by any Committee member.

- c. It is the duty of the non-voting NCCI advisor to the Committee to:

- (i) Schedule each meeting of the Committee and send meeting notices to all Committee members and persons appearing before the Committee.
- (ii) Prepare and distribute agenda materials to the Committee prior to each Committee meeting.
- (iii) Prepare and distribute decisions of the Committee and minutes of other Committee business.
- (iv) Provide technical expertise to the Committee, either personally or through other employees of NCCI, on the application and interpretation of NCCI manual rules.

D. Appearances Before the Committee

1. Dispute resolution services under these rules are meant to be informal in nature. Formal administrative procedures or rules of South Carolina are not applicable to the Process.
2. Legal representation by either the policyholder or the carrier is not required. The policyholder or

the carrier may, at their own expense, be represented by legal counsel, or the policyholder may be represented by the policyholder's current agent of record.

3. Policyholders must choose to appear before the Committee in one of the following ways:

a. **In Writing:**

NCCI will notify the policyholder and the carrier in writing of the date and time of the Committee meeting at which the dispute will be heard. The Committee will only consider information received in writing by NCCI from the policyholder or the carrier prior to the date of the meeting by the Committee. Both the policyholder and the carrier may submit statements by others for the Committee's consideration. All statements made by the policyholder or carrier or any other person must be in writing and signed by the person making the statement. No personal appearance before the Committee by either the policyholder or the carrier or by any other person will be allowed, and no oral communications by any person will be considered by the Committee in making its decisions.

b. **By Telephone:**

NCCI will notify the policyholder and the carrier in writing of a date, time, and telephone number to be used to appear before the Committee. The Committee, in making its decisions, will consider information received by NCCI in writing prior to the date of the Committee meeting and any oral statements given by telephone at the time of the Committee meeting. Either the policyholder or the carrier may have witnesses present to give statements to the Committee by telephone.

c. **In Person:**

NCCI will notify the policyholder and the carrier in writing of a date, time, and place where parties and their witnesses are to appear before the Committee. The Committee, in making its decisions, will consider agenda materials prepared by NCCI prior to the date of the Committee meeting and any oral statements presented to the Committee at the time of the meeting. Either the policyholder or the carrier may have witnesses appear in person before the Committee.

4. The carrier will appear in the same manner chosen by the policyholder. Each party will be responsible for its own costs associated with participation in the Process. If the policyholder chooses to appear by telephone, NCCI will provide a toll free telephone number for use by the Committee, policyholder, carrier, and all witnesses.

E. Where to Send Documents

1. Initial requests by the policyholder for dispute resolution services must be sent to:

National Council on Compensation Insurance, Inc.
Regulatory Assurance Department—Dispute Resolution Services
901 Peninsula Corporate Circle
Boca Raton, FL 33487-1362
regulatoryassurance@ncci.com
Fax Number: 561-893-5043

2. Once NCCI receives a written request from a policyholder for dispute resolution services, NCCI

will assign a Regulatory Services Manager (RSM) to the dispute.

- a. NCCI will send a letter to the policyholder and the carrier advising the name and contact information of the RSM that has been assigned to the dispute.
- b. Any document submitted to NCCI under this Process must be submitted by the person or party making such a filing to the RSM using the contact information provided by NCCI.
- c. The filing party must also provide a copy simultaneously by US mail or facsimile transmission (fax) to all other parties to the dispute.

F. Disputes Involving Interstate Policies

When the resolution of the issue(s) in dispute affects the business operations of the policyholder in South Carolina and at least one other state, the Committee's decision will apply only to business operations located in South Carolina. The state of South Carolina has no jurisdiction to enforce any decision by the South Carolina Committee in another state.

G. Continuances

1. Except in an emergency, requests for continuances must be received by NCCI at least three (3) business days before the date the meeting is scheduled.
2. NCCI will grant a request timely submitted by either the policyholder or the carrier for a continuance of a meeting by the Committee, but in any case only one continuance per party will be allowed.

H. Decision of the Committee

1. A quorum consisting of a simple majority of Committee members eligible to vote must be present for each vote taken by the Committee.
2. The decision of the Committee will be by simple majority vote of those Committee members present at the Committee meeting. The votes of the individual Committee members will not be recorded or noted in the Committee's decision or otherwise disclosed in any manner to any person unless recording is requested in accordance with S.C. Code Ann. §38-4-90.
3. The Committee will issue its decision in writing within thirty (30) business days after the meeting, and will issue that decision to all parties to the dispute and the Director of the South Carolina Department of Insurance by US mail.
4. The Committee's decision will be a summary of the dispute resolution review proceedings including:
 - The issues in dispute
 - A statement of the applicable NCCI rules
 - A summary of the policyholder and carrier's positions on the issues in dispute
 - A brief discussion of the Committee's analysis
 - The Committee's decision
5. NCCI will distribute the Board's decision to all parties to the dispute and no one else unless required to do so by these rules, state law or regulatory agency.

I. Appeal of Committee Decisions

1. Either the policyholder or the insurer may appeal an NCCI denial of review or a decision of the Committee to the South Carolina Department of Insurance pursuant to S.C. Code Ann. §38-73-1080, 38-73-1270 and 38-73-495 by sending a written request for an appeal to:

South Carolina Department of Insurance
1201 Main Street, Suite 1000
Columbia, SC 29201

2. A request for an appeal under this section must be made by a party to the dispute within one year of policy expiration date or cancellation date, whichever comes first or in the case of decisions where a request for review with NCCI was filed more than one year after the expiration or cancellation date, but within three years of the expiration date of the policy as provided for under Section B-4 of this document then the request for an appeal must be made within thirty (30) business days after the date of the issuance of the Committee's decision letter or the decision of the Committee will become final.
3. An insurer or policyholder may appeal the final decision of the Department to the Administrative Law Court in accordance with S.C. Code Ann. §38-3-210.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

RECEIVED
SEP 30 2015
SC Court of Appeals

Appellate Case No. 2015-000806

Ard Trucking Company Respondent,

v.

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

INITIAL BRIEF OF APPELLANT

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TABLE OF CONTENTS

Statement of Issues on Appeal5

Statement of the Case6

Statement of the Facts6

Argument.....10

TABLE OF AUTHORITIES

CASES

American Freehold Land Mortgage Co. v. Felder
44 S.C. 478, 22 S.E. 598 (1985).....32

Ayant v. Willowglen Academy
367 S.C. 315, S.E.2d 797 (S.C. 2006)
affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003)14

Benn v. Camel City Coach Co.
162 S.C. 44, 160 S.E. 135 (1931).....36

Bennett v. S.C. Dep't of Corrections
305 S.C. 310, 408 S.E.2d 230 (1991)28

Burris v. Propst Lumber & Logging, Inc.
396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011).....15

Carolina Chloride, Inc. v. Richland County
394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto
Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) 27

Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp.
273 S.C. 306 (S.C. 1979) 32

City of York v. Turner – Murphy Company, Inc.
317 S.C. 194, 452 S.E.2d 615 (1995)..... 24

Citizens' Bank v. Heyward
135 S.C. 190, 190, 133, S.E. 709, 709 (1925)32

Evans v. State Farm Mut. Auto. Ins. Co.
269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)6, 19

Georgetown Steel Company vs. Capital City Insurance Company
318 B.R. 313 (U.S.B.C. (D.S.C.) 2004)35

Gregory v. Gregory
292 S.C. 587 (Ct. App. 1987).....36

Hill v. Carolina Power & Light Co.
204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943)32

Regions Bank v. Schmauch
354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler,
276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Id. at 663-664, 582 S.E.2d at
440; Id. at 664, 582 S.E.2d at 440 (Citing Citizens & S. Nat’l Bank of S.C. v.
Landord, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994))..... 6, 19

Stringer v. State Farm Mutual Automobile Ins. Co.
386 S.C. 188 (Ct. App. 2011)..... 34

STATUTES

S.C. Code Ann. § 34-31-20 38

RULES

3 Am.Jur.2d, Agency, § 273, et seq.32

3 C.J.S. Agency § 432, et seq..... 32

18B Am.Jur.2d Corporations § 1442 (2004)38

31A C.J.S. Evidence Section 132(1) (1980) 36

SCDOI/NCCI *passim*

SCDOI required initial Notice Endorsement, the Mandatory Endorsement, and the
LSRP Brochure..... *passim*

“The Loss Sensitive Rating Plan (LSRP): An Employer’s Guide To The Mandatory
Assigned Risk Retrospective Rating Program” *passim*

SCWCIP LSRP Endorsement (“Assigned Risk Loss Sensitive Rating Plan
Notification Endorsement”) *passim*

Workers’ Compensation Insurance Plan..... *passim*

STATEMENT OF ISSUES ON APPEAL

- I. ARD TRUCKING AGREED TO BE BOUND BY THE WCIP AND THE WCIP REQUIRES THAT THE LSRP IS APPLICABLE TO HIS ASSIGNED RISK POLICY AS A MATTER OF LAW.

- II. PER THE WCIP, THE PRODUCER IS THE AGENT OF THE ASSIGNED RISK INSURED AND THE PRODUCER ADMITTED HE HAD ACTUAL KNOWLEDGE THAT THE LSRP APPLIED TO ARD TRUCKING'S ASSIGNED RISK POLICY BEFORE ARD TRUCKING ISSUED AN IRREVOCABLE LETTER OF CREDIT (ILOC) TO THE SERVICING CARRIER; THEREFORE, ARD TRUCKING, THROUGH ITS PRODUCER, HAD ACTUAL KNOWLEDGE THAT THE LSRP APPLIED TO ITS POLICY.

- III. THE JUDGE'S PRE-JUDGMENT INTEREST AWARD IS IN ERROR PURSUANT TO S.C. CODE 34-31-20.

STATEMENT OF THE CASE

On October 20, 2005, Respondent Ard Trucking Company (hereinafter “Ard”) brought an action alleging Breach of Contract and Conversion against Appellant Travelers Property Casualty Company of America d/b/a The Travelers Indemnity Company of Illinois (hereinafter “Travelers”). Travelers answered and counterclaimed alleging that it was owed additional premium. After the parties had conducted discovery, the parties filed cross-Motions for Summary Judgment. Travelers filed its Motion for Summary Judgment on September 15, 2014, and Ard filed its Motion for Summary Judgment on November 20, 2014. The parties submitted respective Memoranda, Affidavits and accompanying exhibits and the matter was heard before Judge Burch on December 18, 2014. After both parties submitted competing Orders to Judge Burch, Judge Burch adopted Ard’s Order on February 13, 2015.

Travelers subsequently timely filed a Motion for Reconsideration on March 5, 2015 and Judge Burch subsequently denied Travelers’ motion on March 24, 2015. On April 20, 2015 Travelers timely served its Notice of Appeal.

STATEMENT OF THE FACTS

Ard Trucking submitted an Assigned Risk application for an Assigned Risk policy of workers’ compensation insurance pursuant to the WCIP through its producer, Michael P. Hair & Associates, Inc. on 11/6/03. See Assigned Risk Application dated 11/06/03. Pursuant to the application, Ard Trucking agreed to be bound by the WCIP. In its Application, Ard Trucking also acknowledged the LSRP was explained to Ard Trucking and that an explanatory notice or Brochure had been provided to Ard Trucking and that Ard Trucking would be bound by the LSRP if Ard Trucking’s estimated annual premium or preliminary physical audit premium met or

exceeded the premium eligibility requirements. On 11/20/03, SCDOI/NCCI assigned Travelers to be the servicing carrier based on Ard Trucking's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to Ard Trucking for the policy period effective 11/7/2003. See Travelers Binder dated 11/20/03.¹

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on Ard Trucking's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to Ard Trucking for the policy period of 11/07/03 to 11/07/04. See Travelers Assigned Risk policy. The Assigned Risk policy issued to Ard Trucking contained the SCDOI/NCCI required Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by SCDOI/NCCI. See Travelers Notice Endorsement. Subsequently, pursuant to the WCIP rules, Travelers performed a preliminary audit survey of Ard Trucking's payroll in February, 2004, which in turn triggered the WCIP LSRP provisions.

Pursuant to the WCIP, on or about March 1, 2004, Travelers issued a rewritten Assigned Risk policy, which included the NCCI required "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI. See Travelers Assigned Risk policy issued on 3/1/04 and Mandatory Endorsement. On or about March 1, 2004, Travelers also sent Ard Trucking and its producer a letter advising that Ard Trucking Assigned Risk policy had been issued as part of the mandatory LSRP and

¹ Admittedly, Allen Ard testified that he did not review his application before he signed it, did not read his entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by. In South Carolina, "[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Id. At 663-664, 582 S.E.2d at 440. "The law does not impose a duty on the [defendant] to explain to an individual what he could learn from simply reading the document." Id. At 664, 582 S.E.2d at 440 (Citing Citizens & S. Nat'l Bank of S.C. v. Landord, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)). See first deposition transcript of Allen Ard, pp. 19, 20, 67 & 68, and second deposition transcript of Allen Ard, pp. 24-28, 153-155.

also provided Ard Trucking and its producer with an SCDOI/NCCI required and copyrighted explanatory Brochure/pamphlet entitled “The Loss Sensitive Rating Plan (LSRP): An Employer’s Guide To The Mandatory Assigned Risk Retrospective Rating Program.” See Travelers March 1, 2004 letter and LSRP booklet. Pursuant to the WCIP and SCDOI plan documents, once Travelers forwarded the SCDOI/NCCI required Notice Endorsement, Mandatory Endorsement and Brochure, Ard Trucking had notice that the LSRP applied to its Assigned Risk policy as set forth by the SCDOI approved plan and WCIP – the SCDOI approved plan/WCIP requires no other notice to be sent to Ard Trucking or any other Assigned Risk insured.

Ard Trucking representatives initially testified that they did not know if they received the rewritten Assigned Risk policy, with the Mandatory Endorsement, or the Brochure on or about March of 2004.² However, in the Affidavit of Harry Brown,³ at the time Safety Director of Ard Trucking and now Ard Trucking’s vice-president, submitted to the Court prior to the summary judgment hearing, Ard Trucking admitted that Travelers sent the re-written Assigned Risk policy (which also contained the “Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement”), as well as the SCDOI/NCCI Brochure/pamphlet entitled “Loss Sensitive Rating Plan,” to Ard Trucking on or about March of 2004.

Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and Ard Trucking provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for \$52,116. See Ard Trucking ILOC dated

² Ard Trucking and his representatives initially testified that they did not know if they received the rewritten Assigned Risk policy or the booklet in or about March of 2004. See second deposition transcript of Allen Ard pp. 13-20; 31-32; 85-89; 153; and Harry Brown pp. 17-21; 27; 29-31. Ard Trucking’s producer testified, however, that he did receive the re-written Assigned Risk policy and he was aware that Ard Trucking Company Assigned Risk Policy was subject to the LSRP requirements before Ard Trucking Company issued its ILOC to Travelers. See Deposition transcript of Ard Trucking Company’s producer pp. 7-9; 12; 15-16; 17-18; 21-22; 33-34; 37-38.

³ Per the Affidavit of Harry Brown, Ard Trucking now admits it received the re-written Assigned Risk policy on or about March of 2004, where Par. 5 states: “Travelers ... issued a replacement policy dated March 1, 2004, which I also reviewed and filed;” and Par. 7 which states “Travelers mailed Ard Trucking Company a Brochure entitled “Loss Sensitive Rating Plan.” I cannot recall receiving and reviewing this document, however, I have no reason to doubt that Travelers sent it to Ard Trucking Company.”

5/17/04. Ard Trucking's producer testified that when Ard Trucking's initial Assigned Risk policy was issued to Ard Trucking, he did not know the details of the LSRP. However, after the producer received the mandatory Endorsement and Brochure, and after Travelers requested an ILOC, Ard Trucking's producer became familiar with the LSRP and its applicability to Ard Trucking's Assigned Risk policy and the producer further advised Ard Trucking that the LSRP was applicable to Ard Trucking's Assigned Risk policy, and he told Ard Trucking it was required to issue an ILOC to Travelers in accordance to LSRP requirements if Ard Trucking wished to continue having an Assigned Risk policy pursuant to the WCIP. It was only after Ard Trucking's producer became aware of the LSRP and its applicability to Ard Trucking's Assigned Risk policy (and, per the producer's testimony, he advised Ard Trucking of the same) that Ard Trucking issued an ILOC to Travelers. See deposition transcript of producer, selected pages.

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited Ard Trucking with an Annual Physical Audit and issued a final bill to Ard Trucking. See Travelers Final Premium bill dated 2/9/05. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated and issued a LSRP bill for Ard Trucking for \$175,064 based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy.⁴ Ard Trucking refused and has continued to refuse to pay Travelers' bill for additional premium of \$175,064 owed per the LSRP. Subsequently, per the LSRP provisions, Travelers drew upon the \$52,116 ILOC and Ard Trucking still owes Travelers

⁴ The WCIP and the Assigned Risk policy allow an applicant to obtain an Assigned Risk policy via an estimate based on the representations of Ard Trucking and its producer. Based on Ard Trucking's application, Ard Trucking was issued a South Carolina Assigned Risk policy. After the preliminary audit survey, per the WCIP and policy terms, Travelers determined Ard Trucking's premium triggered South Carolina's LSRP which is applicable to Assigned Risk policies. Based on the WCIP and applicable audit standards, Travelers is entitled to an additional premium of \$175,064 based on the LSRP. Travelers issued a bill to Ard Trucking for the additional \$175,064 in premium owed. Ard Trucking refused to pay the additional premium owed. Subsequently, per the LSRP, Travelers drew upon the \$52,116 ILOC and Ard Trucking still owes Travelers \$122,948 for premium owed.

\$122,948 for premium owed. Further, Ard Trucking did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the SCDOI/NCCI as required pursuant to WCIP Rule 4.⁵

Pursuant to South Carolina statutory law, case law, the SCDOI approved Plan/WCIP and the Assigned Risk policy terms (including the SCDOI/NCCI required Notice Endorsement, Mandatory Endorsement, and Brochure), a servicing carrier is required to charge premium pursuant to the LSRP. Therefore, Travelers, the servicing carrier, is entitled to the premium it seeks.

ARGUMENT

This appeal involves a challenge to the South Carolina Assigned Risk Workers' Compensation Insurance Plan (WCIP) as promulgated by the South Carolina Department of Insurance. Respectfully, the judge improperly applied the law, the WCIP, and the admitted facts of the case where the judge misconstrued the SCDOI required initial Notice Endorsement, the Mandatory Endorsement, and the LSRP Brochure (all required by the SCDOI) by relying solely upon the required initial Notice Endorsement,⁶ in isolation, while excluding notice provided by the required Mandatory Endorsement and Brochure, to come to a result which is contrary to the law and the WCIP.

Initially, there are two dispositive issues in favor of the servicing carrier which the judge regrettably ignored. First, as a matter of law, Ard Trucking agreed to be bound by the WCIP and, per the South Carolina Department of Insurance, the WCIP mandates the LSRP applied to Ard's Assigned Risk policy. This threshold issue is dispositive on its face, without reference to any additional notice to an assigned risk insured.

⁵ Indeed, Ard Trucking did not appeal any issue to the SCDOI/NCCI as is required by WCIP Rule 4. See first deposition transcript of Allen Ard, pp. 37; 53; 65.

⁶ In addition, Ard Trucking representatives testified that they did not even review or rely upon the initial Endorsement.

Second, the South Carolina Department of Insurance approved plan for giving additional notice to assigned risk insureds of the LSRP applicability to Assigned Risk policies “worked” in this case as (1) the Assigned Risk insured and his producer received the required initial Notice Endorsement, the Mandatory Endorsement, and the Brochure, (2) the insured’s producer knew the LSRP applied to his Assigned Risk insured’s policy, and (3) the insured’s producer notified the Assigned Risk insured that LSRP was applicable to his Assigned Risk policy before the Assigned Risk insured issued an Irrevocable Letter of Credit to the servicing carrier (as required by the WCIP). In other words, as a practical matter, this appeal does not involve a theoretical legal inquiry into the effectiveness of the Endorsements required by the South Carolina Department of Insurance because the insured’s producer admits that he received the Endorsements and the Brochure, understood such documents to explain to him (and the insured) that the LSRP applied to the insured’s Assigned Risk policy, and the producer told his Assigned Risk insured the LSRP applied to his Assigned Risk policy before the insured issued an ILOC to the servicing carrier.⁷ As such, as the Assigned Risk insured had actual and imputed knowledge that the LSRP applied to the Assigned Risk policy before the Assigned Risk insured issued an ILOC to the servicing carrier (as required by the Plan), the Assigned Risk insured cannot credibly claim that the servicing carrier should be estopped from charging it for the LSRP premium owed. Accordingly, based on the law and on the admitted facts, respectfully, the servicing carrier is entitled to a reversal of the judge’s Order.

Finally, Travelers respectfully submits that the judge erred in his application of the law and based his decision on theoretical supposition as opposed to any

⁷ Indeed, Ard Trucking did not have to continue with the Assigned Risk policy and could have chosen to refuse to submit an ILOC pursuant to the LSRP, which would have led to its cancellation of its Assigned Risk policy. The LSRP is the only mechanism a servicing carrier has to request an ILOC. By choosing to submit the ILOC to the servicing carrier, Ard Trucking certainly accepted the LSRO program at such time.

evidence in the Record when the judge negated the LSRP program in South Carolina by misconstruing the first Notice Endorsement in isolation and without reference to the Mandatory Endorsement and Brochure. Moreover, the judge erred by his ruling that a servicing carrier can somehow alter the Notice Endorsement which was required by the South Carolina Department of Insurance. Such ruling is unsupported by any evidence in the Record.

Accordingly, this appeal involves an attack on the authority of the South Carolina Department of Insurance to require specific Endorsements, which the South Carolina Department of Insurance deemed appropriate to provide notice to assigned risk insureds. In this case in particular, based on the facts in the Record, the notice requirements (Notice Endorsement, Mandatory Endorsement and Brochure) actually “worked” and provided the insured and his producer with actual knowledge that LSRP applied to the Assigned Risk policy issued to the Assigned Risk insured and the Assigned Risk insured should not be allowed to sidestep his obligations required under the WCIP in such circumstances.

I. ARD TRUCKING AGREED TO BE BOUND BY THE WCIP AND THE WCIP REQUIRES THAT THE LSRP IS APPLICABLE TO HIS ASSIGNED RISK POLICY AS A MATTER OF LAW.

A. BACKGROUND

South Carolina law provides for a workers’ compensation market for workers’ compensation policies of last resort, generally referred to as Assigned Risk workers’ compensation policies. Assigned Risk policies are for high risk employers who are unable to obtain workers’ compensation coverage in the voluntary market. Assigned Risk policies are highly regulated by the SCDOI and issued pursuant to the WCIP and are administrated through the SCDOI/NCCL.⁸ The

⁸ For those entities that cannot obtain workers’ compensation coverage in the voluntary market, the State has an established “Assigned Risk” or “residual market.” Rates for such a program are established by the State, and rules

SCDOI/NCCI require servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the SCDOI/NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the SCDOI/NCCI in South Carolina. Finally, and most importantly, the South Carolina Department of Insurance verified that, in South Carolina, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003.⁹ Accordingly, the WCIP mandates that LSRP is applicable to Ard Trucking Company's Assigned Risk policy, which was issued on November 7, 2013, as a matter of law.

This matter involves a premium dispute wherein Ard Trucking alleges Travelers improperly charged Ard Trucking premium pursuant to the WCIP's Loss Sensitive Rating Plan (LSRP). In South Carolina, pursuant to the law, the SCDOI, the WCIP, and the Assigned Risk policy terms, Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.¹⁰ The LSRP is a plan that adjusts the premium for an Assigned Risk policy, following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. Pursuant to the WCIP,

and procedures have been promulgated by the State as they relate to the Assigned Risk market – the South Carolina Workers' Compensation Assigned Risk Plan (WCIP), operating rules and procedures. The Plan administrator for the residual market is the National Council on Compensation Program, Inc. (NCCI).

⁹ The LSRP is a plan that adjusts the premium for an Assigned Risk policy following the policy term, based upon the actual occurrence of claims, i.e., the plan provides for a retroactive premium based on actual losses incurred at numerous intervals after the termination of the Assigned Risk policy. A retrospective rating plan for those employers who have an Assigned Risk workers' compensation insurance premium of \$200,000 or more. Initially, the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program details are further set forth in the NCCI approved Plan documents and NCCI Brochure entitled "*The Loss Sensitive Rating Plan (LSRP); An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program.*" See SCDOI letter and documentation

¹⁰ Per South Carolina law and the WCIP, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, LSRP is applicable to Ard Trucking Company's Assigned Risk policy as a matter of law.

based on Ard Trucking's payroll, Ard Trucking's Assigned Risk policy triggered the LSRP under the WCIP. Accordingly, pursuant to South Carolina law and the WCIP, Travelers, as the servicing carrier, is entitled to the additional premium it seeks pursuant to the LSRP.

Here, pursuant to the WCIP and SCDOI approved plan, Travelers was required to issue and in fact did issue the SCDOI/NCCI required Notice Endorsement, Mandatory Endorsement, and Brochure to Ard Trucking. Ard Trucking received these SCDOI/NCCI mandated forms, which SCDOI/NCCI has mandated provides notice to Ard Trucking (and to all Assigned Risk insureds in South Carolina) that the LSRP applies to its Assigned Risk policy. The judge, however, erred in holding that the Notice Endorsement, in isolation, excludes the application of the LSRP to Ard Trucking's policy, despite the fact that the Mandatory Endorsement and Brochure modify and supplant the Notice Endorsement as mandated by the WCIP. The judge also erred by holding that Travelers could somehow modify or alter the required SCDOI/NCCI forms mandated by the WCIP and SCDOI/NCCI. Finally, the judge erred by ignoring the dispositive testimony of Ard Trucking's producer that it, and therefore Ard Trucking, received the Mandatory Endorsement and Brochure and the producer not only had actual knowledge, but also understood and explained to Ard Trucking that the LSRP applied to Ard Trucking's Assigned Risk policy before Ard Trucking issued Travelers an ILOC. In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms (including the SCDOI/NCCI mandated Notice And Mandatory Endorsements and Brochure), Ard Trucking had sufficient notice that the LSRP applied to its Assigned Risk policy and servicing carrier Travelers is

entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.¹¹

B. DISPOSITIVE LEGAL ISSUE

No dispute exists between the parties concerning the amount of payroll/remuneration Ard Trucking paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to Ard Trucking's South Carolina Assigned Risk policy. See first Allen Ard deposition transcript, pp. 38-39. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to Ard Trucking's South Carolina Assigned Risk policy. Through his producer, Ard Trucking submitted an Assigned Risk application and Ard Trucking was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, Ard Trucking agreed to be bound by the terms of the WCIP.¹² The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to Ard Trucking pursuant to WCIP. Accordingly, as LSRP applies to Ard Trucking's Assigned Risk policy, Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

1. WCIP HAS THE "FORCE OF LAW."

In South Carolina, the WCIP has the force of law. According to the applicable provisions of the South Carolina Assigned Risk plan, the WCIP, as administered by SCDOI/NCCI, is the only "mechanism" in the state for implementing the Assigned Risk pool and has been approved by the Director of the Department of Insurance for

¹¹ Per South Carolina law and the WCIP, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, LSRP is applicable to Ard Trucking's Assigned Risk policy as a matter of law. Further, per the SCDOI/NCCI required Notice Endorsement, Mandatory Endorsement & Brochure, as expressly required by the WCIP, Ard Trucking had sufficient notice that the LSRP applied to its Assigned Risk policy.

¹² This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Ard Trucking alleges (1) that he is not bound by the LSRP, and (2) that the carrier is estopped from seeking the additional premium it is owed pursuant to the LSRP.

use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an Assigned Risk plan by approving the WCIP for its use in the Assigned Risk practice in this State. Id. The WCIP provides the framework for the Assigned Risk pool and includes numerous provisions governing Assigned Risk practice. Id. Without the WCIP, there would be nothing guiding Assigned Risk practice and its procedure, such as an employer's application process for Assigned Risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an Assigned Risk policy is by applying through SCDOI/NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. SCDOI/NCCI is designated in the WCIP as the "plan administrator." Id. The Supreme Court affirmed that WCIP rules have the "force of law" concerning Assigned Risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the Assigned Risk Basic Manual and Supplement "is controlling law with respect to the issues it addresses."

2. SOUTH CAROLINA ASSIGNED RISK POLICIES APPLY THE LSRP FOR ASSIGNED RISK POLICIES ISSUED AFTER NOVEMBER 1, 2003.

In South Carolina, Assigned Risk policies are governed by the WCIP. Pursuant to S.C. Department of Insurance, the LSRP applies to South Carolina Assigned Risk policies issued on or after November 1, 2003. The South Carolina Department of Insurance has verified:

“Initially the LSRP was implemented as part of the WC Insurance Plan and was administered by the National Council on Compensation Insurance (NCCI) from March 1, 1994 until May 1, 2000 for policies effective September 1, 1994 and later. Between May 1, 2000 and May 1, 2003, SCDOI/NCCI did not administer the Assigned Risk mechanism and it is unclear if the LSRP was mandated during that period. The SCDOI/NCCI again administered the WC Insurance Plan and the LSRP in South Carolina as of May 1, 2003 for policies effective on November 1, 2003 and after. The Loss Sensitive Rating Program is set forth in the attached SCDOI/NCCI Brochure and the attached approved item filing (including plan documents) provided by the SCDOI/NCCI.” See SCDOI documents 0001-0040.

In South Carolina, the WCIP has the force of law. The South Carolina Department of Insurance has verified that the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as Ard Trucking’s Assigned Risk policy was applied for on 11/6/03 and was issued on 11/7/03, the LSRP applies to the Assigned Risk policy issued to Ard Trucking.

Respectfully, the judge’s Order misapplies this fundamental point. Ard Trucking agreed to be bound by the WCIP. The WCIP mandates the LSRP applies to Ard Trucking’s Assigned Risk policy. The WCIP mandates the notice to be provided to Ard Trucking: the SCDOI/NCCI required Notice Endorsement, Mandatory Endorsement and Brochure. Although the Notice Endorsement does not list South Carolina specifically, when this specific Assigned Risk policy was issued, the SCDOI had mandated that South Carolina not be listed in the Notice Endorsement. SCDOI had determined that the Mandatory Endorsement and Brochure (which Travelers sent and Ard Trucking received) sufficiently amended and supplanted the Notice Endorsement and provided sufficient notice to Ard Trucking that the LSRP applied to its Assigned Risk policy. Accordingly, the SCDOI required Notice & Mandatory Endorsements (and the Brochure) [including the mandated Application, Policy & Binder], all of which Ard Trucking received in

accordance with the WCIP, provides sufficient notice of the LSRP application to Ard Trucking's Assigned Risk policy as a matter of law.¹³

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advises Ard Trucking of the LSRP's applicability. In his application, Ard Trucking signed an applicant statement agreeing to be bound by the WCIP and agreeing that his policy may be subject to the LSRP. Specifically, the Assigned Risk application states:

"The undersigned applicant understands further that since he/she has been unable to secure workers compensation coverage through any other insurance provider, this coverage is being afforded through a Workers Compensation Insurance Plan, and that the rates charged may be higher than those in the voluntary market.

The following statement is only applicable in jurisdictions where the SCDOI/NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

"By signing below I acknowledge that the SCDOI/NCCI, Inc. Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or Brochure has been provided to me and I agree that I shall be bound by the terms of such plan. If my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement."

Here, Ard Trucking signed and submitted an Assigned Risk application to SCDOI/NCCI, and Ard Trucking is bound by such Applicant's Statement. Ard Trucking acknowledged that it is bound by the LSRP if South Carolina had approved the LSRP in South Carolina. Based on the SCDOI approval of LSRP in South Carolina for Assigned Risk policies after 11/1/2003, Ard Trucking Company is bound by the LSRP as a matter of law.

¹³ In other words, the judge's interpretation of the Notice Endorsement, to the exclusion of these other NCCI required Endorsements and Forms, erroneously negates the SCDOI/WCIP requirement that LSRP applies to Ard Trucking's policy and constitutes an error of law.

Here, Ard Trucking signed and submitted such application to SCDOI/NCCI, and Ard Trucking is bound by such Applicant's Statement. Ard Trucking acknowledged that it is bound by the LSRP if South Carolina has approved the LSRP in South Carolina. Admittedly, Allen Ard testified that he did not review Ard Trucking's application before he signed it, did not read the entire policy, and did not review the WCIP or LSRP provisions he agreed to be bound by. In South Carolina, "[a] person who signs a contract or other written document cannot avoid the effect of the document by claiming that he did not read it." Regions Bank v. Schmauch, 354 S.C. 648, 663, 582 S.E.2d 432, 440 (Ct. App. 2003) (citing Sims v. Tyler, 276 S.C. 640, 643, 281 S.E.2d 229, 230 (1981); Evans v. State Farm Mut. Auto. Ins. Co., 269 S.C. 584, 587, 239 S.E.2d 76, 77 (1977)). Instead, when a person signs a document, he is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents. Id. at 663-64, 582 S.E.2d at 440. "The law does not impose a duty on the [defendant] to explain to an individual what he could learn from simply reading the document." Id. at 664 582 S.E.2d at 440 (citing Citizens & S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 545, 443 S.E.2d 549, 551 (1994)). Based on the SCDOI approval of LSRP in South Carolina for Assigned Risk policies after 11/1/2003, Ard Trucking is bound by the LSRP as a matter of law.

4. ASSIGNED RISK POLICY

Identical with WCIP, the Assigned Risk policy itself allows Travelers to charge premiums in accordance with the WCIP. Specifically, the Assigned Risk policy states:

"A. OUR MANUALS

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

Moreover, the Assigned Risk policy and binder set forth:

“COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer’s failure to comply with the terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan.”

...

“Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.”

Accordingly, per the Assigned Risk policy terms itself, the WCIP’s LSRP applies to Ard Trucking’s Assigned Risk policy as a matter of law.

5. THE NOTICE ENDORSEMENT, THE MANDATORY ENDORSEMENT & THE LSRP BROCHURE.

Respectfully, the judge erroneously held that the Notice Endorsement, in isolation, negated or excluded the application of the LSRP to Assigned Risk policies in South Carolina. However, the judge’s decision failed to consider the WCIP/SCDOI approved plan and rules concerning how the Notice Endorsement, the Mandatory Endorsement, and the brochure work in tandem provide sufficient notice to an Assigned Risk applicant/insured of the applicability of the LSRP to Assigned Risk policies.

The SCDOI/WCIP requires a servicing carrier to issue a Notice Endorsement upon the submission of an Assigned Risk application and the issuance of an initial Assigned Risk policy – Travelers issued the required Notice Endorsement. After the issuance of an initial Assigned Risk policy with a Notice Endorsement, the SCDOI/WCIP allows a servicing carrier to perform an initial audit survey to determine whether the premium triggers the LSRP – Travelers performed such a survey, which triggered the LSRP. After the LSRP is triggered, the SCDOI/WCIP requires a servicing carrier to issue a rewritten policy with a required Mandatory Endorsement and a Brochure—Travelers issued the required Mandatory Endorsement and Brochure. These three documents (the required Notice Endorsement, Mandatory Endorsement & Brochure) are the only documents that the servicing carrier is required to forward to the Assigned Risk insured and Travelers forwarded such documentation to Ard Trucking.¹⁴ Accordingly, as SCDOI/NCCI (and therefore the Legislature) has determined that these three documents are the only documentation required to provide Ard Trucking with sufficient notice of the LSRP applicability to Ard Trucking’s Assigned Risk policy, no other act is required by the servicing carrier to apply the LSRP to Ard Trucking’s Assigned Risk policy (See SCDOI Plan Documents SCDOI 0001 - 0039).

The above is especially true where Ard Trucking and its producer admitted that they knew that the LSRP applied to its Assigned Risk policy before Ard

¹⁴ The judge’s adoptive Order further erred by holding “However, instead of using the required Notification Endorsement to notify Ard Trucking that LSRP would be applied to the South Carolina policy issued to Ard Trucking by Defendant, the language Defendant used in the required Endorsement not only failed to include South Carolina as a state wherein LSRP applied, it effectively excluded Ard Trucking’s South Carolina policy from being subject to LSRP application.” Importantly, as set forth in the Affidavit of the Travelers underwriter, auditor and LSRP experts, the Notice Endorsement Travelers sent (which did not list South Carolina) was the SCDOI/NCCI required Endorsement. There is absolutely no evidence in the Record that Travelers was supposed to send any other Notice Endorsement and the judge’s finding of fact to the contrary is erroneous. Further, no evidence in the Record exists to support any finding that Travelers could alter the SCDOI/NCCI required Endorsements and such finding of fact is also erroneous. Finally, the proposition that the law (i.e., the WCIP) is extraneous and not incorporated into an Assigned Risk policy is a clear error of law based on South Carolina law. Finally, in contrast to the judge’s public policy pronouncements, respectfully, stripping the WCIP from applying to Assigned Risk policies would cause “chaos to reign within the business world and within the courts,” specifically in the Assigned Risk markets.

Trucking issued its ILOC to the servicing carrier. Not only did Travelers comply with the WCIP requirements to provide Ard Trucking with notice as required by the WCIP, Ard Trucking and its producer have admitted that they knew the LSRP applied to its Assigned Risk policy before Ard Trucking issued its ILOC to Travelers; yet, Ard Trucking argues and the judge's Order embraces the notion that, despite complying with the SCDOI/WCIP requirements which provides notice to an insured and despite the fact that Ard Trucking and its producer admit that they knew the LSRP applied to its policy, the Notice Endorsement, which fails to list South Carolina, in isolation, dictates that the Assigned Risk policy does not allow, negates, or somehow excludes the LSRP to Ard Trucking's Assigned Risk policy...irrespective of the fact that the Mandatory Endorsement and Brochure amended the initial Notice Endorsement and were sent to and received by Ard Trucking before it issued its ILOC to Travelers. Respectfully, such result is absurd on its face, ignores the SCDOI approved plan/WCIP, evades the province of the SCDOI/NCCI and the Legislature, and risks the entire Assigned Risk program in South Carolina to inure to the benefit of Ard Trucking, which voluntarily applied for and received an Assigned Risk policy (by design, a more expensive policy of last resort) and where it voluntarily agreed to be bound by the WCIP.

Accordingly, respectfully, this appeal should be resolved upon application of the law (the WCIP) as set forth in the Basic Manual, Supplemental Manual, and the SCDOI Plan documentation in its entirety, and interpreting the initial Notice Endorsement, in isolation, as set forth in the judge's adopted Order violates the law and constitutes an error of law.

Respectfully, a fatal error in the judge's adoptive Order is that it ignores the SCDOI approved plan/WCIP, i.e., the law. In South Carolina, the WCIP, as adopted by the SCDOI and NCCI, mandates the LSRP applies to Ard Trucking's Assigned Risk policy as a matter of law. Respectfully, the judge erred by adopting Ard

Trucking's argument that the Notice Endorsement excludes or negates the LSRP in South Carolina because it does not list South Carolina as a state to which the Notice Endorsement applies. Although the Notice Endorsement does not list South Carolina, the Mandatory Endorsement does apply to South Carolina and, most importantly, the SCDOI/NCCI/SCDOI has determined that the Mandatory Endorsement (along with the Brochure) amend/supplant the Notice Endorsement to provide sufficient notice to Ard Trucking that the LSRP applies to its South Carolina Assigned Risk policy. The WCIP requires Travelers to issue the SCDOI/NCCI required Notice Endorsement if issued to Ard Trucking. After the initial audit survey, once the payroll triggers the LSRP (as in this present case), the WCIP requires Travelers to issue a SCDOI/NCCI required Mandatory Endorsement and Brochure. Pursuant to the WCIP, the Mandatory Endorsement (and Brochure) revises and amends the Notice Endorsement and the WCIP mandates that the Mandatory Endorsement (and Brochure) provides sufficient notice that the LSRP applies to Ard Trucking's Assigned Risk policy.

In addition to the Mandatory Endorsement, the WCIP also requires that Travelers send the SCDOI/NCCI required Brochure which clearly explains the LSRP applicability in South Carolina, its purpose, and how the LSRP works. It is uncontroverted that Travelers sent and Ard Trucking received these SCDOI/NCCI required Forms and Brochure. As such, according to the law, Ard Trucking had sufficient notice and Ard Trucking is deemed to have notice of the LSRP applicability to its Assigned Risk policy as a matter of law. To solely interpret the initial Notice Endorsement in isolation as excluding the LSRP applicability ignores the entire regulatory scheme as set forth in SCDOI 0001 – 00031, which mandates how a servicing carrier notifies an insured of the LSRP's applicability. Respectfully, regretfully, the judge ignored entire portions of the WCIP (i.e., the law) to render the LSRP program to be irrelevant. Further, the judge erred by finding the Mandatory Endorsement (and Brochure) did not provide sufficient notice that the LSRP applies

in South Carolina. The Mandatory Endorsement (and Brochure) clearly advises that LSRP applies to an Assigned Risk policy in states that have approved the LSRP. In South Carolina, as the LSRP applies to all Assigned Risk policies after November 1, 2003, the Mandatory Endorsement incorporates the LSRP into Ard Trucking's Assigned Risk policy. The Mandatory Endorsement clearly states "This Endorsement applies where the LSRP has been approved." Thus, although the initial Notice Endorsement did not specifically list South Carolina, the Mandatory Endorsement clearly applies in South Carolina. Further, interpreting the Mandatory Endorsement to mean nothing and to render it a nullity based on the initial Notice Endorsement violates the SCDOI approved plan/WCIP and renders the entire LSRP obsolete in South Carolina and constitutes an error of fact and law.

6. ARD TRUCKING HAS FAILED TO PROVIDE ANY EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.

Ard Trucking has failed to list any expert to opine that Travelers breached any standard of care. Indeed, the South Carolina Department of Insurance has verified that LSRP applies to Assigned Risk policies issued after November 1, 2003 date and, therefore, specifically applies to Ard Trucking's Assigned Risk policy. Ard Trucking has not listed any expert to opine that Travelers has improperly determined that the LSRP applies to Ard Trucking's Assigned Risk policy or breached any standard of care in regard to its audits. Indeed, no expert testimony exists that Travelers took any act that violated any standard of care or caused any damages to Ard Trucking. In South Carolina, a party is required to provide expert testimony to establish the standard of care and deviation from such standard in order to proceed with a professional negligence case. See City of York v. Turner – Murphy Company, Inc., 317 S.C. 194, 452 S.E.2d 615 (1995) (stating "In a professional negligence cause of action, Ard Trucking must prove the professional failed to

conform to generally recognized and accepted practices in the profession. If Ard Trucking cannot meet this burden, then the professional cannot be found liable as a matter of law.... Where professional negligence is alleged, expert testimony is usually necessary to establish both the standard of care and the professional's deviation from that standard, unless the subject matter is within the area of common knowledge and experience of the layman so that no special learning is needed to evaluate the professional's conduct").

Although Ard Trucking argues that Travelers provided Ard Trucking with an Assigned Risk policy that was "better" than a typical South Carolina Assigned Risk policy (due to the Notification Endorsement's failure to specifically list South Carolina), Ard Trucking has provided no evidence that the Endorsements (the Notification and Mandatory Endorsements) issued by Travelers to Ard Trucking were not standard Endorsements drafted, copyrighted and mandated by SCDOI/NCCI. Ard Trucking has provided no evidence that a servicing carrier, such as Travelers, has any discretion to vary the Endorsements mandated by the SCDOI/NCCI. Here, Ard Trucking has failed to provide any testimony, expert or otherwise, that Travelers, its underwriters, or its auditor breached any standard of care or to provide any evidence that the Endorsements used by Travelers were not mandated by SCDOI/NCCI. Accordingly, Ard Trucking's lack of any expert testimony to support its claims against Travelers is also fatal to Ard Trucking's claims.

Nowhere is the above more evident than the judge's Order which simply finds that Travelers could have simply added in South Carolina to the initial Notice Endorsement or that Travelers somehow selected to provide Ard Trucking with defective Endorsements. No evidence (zero, zilch, nada) exists to support any finding that Travelers did not issue the SCDOI/NCCI required and copyrighted

Endorsements or Forms.¹⁵ Also, no evidence exists that Travelers had any authority to alter or amend any of the SCDOI/NCCI required and copyrighted Endorsements or Forms. In contrast, it is uncontroverted that Travelers issued the SCDOI/NCCI required and copyrighted Endorsements or Forms and fully complied with all of its obligations as set forth in the WCIP.

7. ARD TRUCKING FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.

Ard Trucking asserts that Travelers is estopped from seeking the premium it is owed. However, Ard Trucking failed to make such arguments via the appeal mechanism to SCDOI/NCCI set forth in WCIP Rule 4. The WCIP appellate process requires Ard Trucking to appeal such dispute to SCDOI/NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission, the appellate courts, and ultimately to the State Supreme Court.

The SCDOI/NCCI/WCIP unappealed LSRP determination binds Ard Trucking per the WCIP requirements. The WCIP Rule 4 provides Ard Trucking with an appeal mechanism/process to appeal to SCDOI/NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and SCDOI/NCCI Basic Manual Rule 4 set forth the following mechanism:

“Any Assigned Risk policyholders affected by the actions of their assigned carrier or SCDOI/NCCI are provided with a process in which

¹⁵ Indeed, Your Honor's adoptive Order errs where it finds “simply because SCDOI allowed insurers to include LSRP provisions in South Carolina Assigned Risk policies beginning in November 1, 2003, LSRP provisions were not automatically incorporated into every South Carolina Assigned Risk policy.” In South Carolina, pursuant to the WCIP, the proposition that Ard Trucking is bound by the law (the WCIP) is not a red herring argument as Ard Trucking asserts; to the contrary, pursuant to the WCIP and the policy terms itself, Ard Trucking is bound by the law and the law requires LSRP's applicability when Ard Trucking signed its Application wherein it agreed to be bound by the WCIP. The judge's Order which speculates a servicing carrier can alter “the law” or choose not to follow “the law” or that the servicing carrier can alter/amend/change the SCDOI/NCCI required Endorsements is an error of law, further, per the WCIP, the LSRP is automatically applicable to Ard Trucking's policy based on the SCDOI/approved plan/verification, the application, the binder and policy, and the required Endorsements and Brochure which Ard Trucking received.

grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances. For further information on this process, refer to Basic Manual Rule 4-A-10.

The state's approved workers compensation appeal mechanism is the forum for hearing the dispute. This process is administered by SCDOI/NCCI in its capacity as rating organization and/or Plan Administrator. The Plan Administrator's intervention in disputes is generally limited to matters involving experience rating modification factors, application of rules contained in SCDOI/NCCI manuals, eligibility and assignment under the WCIP, classification assignment, and Assigned Risk pricing programs."

"Any party affected by the decision of the Plan Administrator may seek binding arbitration for such purpose; or in the alternative, the party may seek a de novo review by the regulatory authority, by requesting such binding arbitration or de novo review in writing and at its own expense, within thirty (30) days after the date of such decision."

"The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- Application of rules contained in SCDOI/NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs"

Here, as required by the WCIP, Ard Trucking did not file any appeal of Travelers' LSRP decision to the SCDOI/NCCI. Rather, Ard Trucking abandoned its appeal of the dispute and, pursuant to WCIP, the insured is bound by Travelers' decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County

v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating “an unchallenged ruling, right or wrong, becomes law of the case.”); Bennett v. S.C. Dep’t of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating “the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action”).

Further, Ard Trucking’s argument asserted at the hearing that Rule 4 of the WCIP does not apply to it because Ard Trucking’s president did not subjectively believe the rule applied to him is incredible. Ard Trucking’s counsel argued: “So, again, Your Honor, it’s our position that the policy speaks for itself, and of course, if it’s not covered by the LSRP, Mr. Ard had no duty to do anything with respect to the LSRP including any type time of appeal [sic]. They didn’t – he didn’t think it ever applied. He still doesn’t because they [presumably his producer] told him it did not.” Such argument is unbelievable. Ard Trucking agreed to be bound by the WCIP, which contains and requires an appeal via an administrative appeal mechanism of any disputes between the insured and servicing carrier concerning “application of rules contained in NCCI manuals” and “Assigned Risk pricing programs;” however, Ard Trucking asserts it is not bound by the WCIP appeal mechanism because he, the president, did not believe he was bound by it. The law, however, does not work in such a manner and how Ard Trucking “feels” about the appeal mechanism (which he agreed to be bound by) does not dictate whether or not Ard Trucking is bound by such appeal mechanism. With little doubt, Ard Trucking is bound by the WCIP, including its appeal mechanism, when he agreed to be bound by the WCIP in his Assigned Risk application.

Accordingly, Ard Trucking is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and Ard Trucking is bound by the prior unappealed Travelers/NCCI determination pursuant to the WCIP. As no genuine issue of fact exists for a jury to determine any

factual issue as the servicing carrier's entitlement to premiums has been established pursuant to the WCIP provisions and Ard Trucking's abandoned appeal via SCDOI/NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks on such grounds as well. Accordingly, as Ard Trucking failed to timely appeal Travelers' decision to the SCDOI/NCCI, the administrative body charged with administering the WCIP, Ard Trucking cannot collaterally attack Travelers unappealed decision via this present collateral lawsuit. If Ard Trucking wished to assert estoppel arguments, it was required to raise those arguments before the SCDOI/NCCI previously.

II. PER THE WCIP, THE PRODUCER IS THE AGENT OF THE ASSIGNED RISK INSURED AND THE PRODUCER ADMITTED HE HAD ACTUAL KNOWLEDGE THAT THE LSRP APPLIED TO ARD TRUCKING'S ASSIGNED RISK POLICY BEFORE ARD TRUCKING ISSUED AN IRREVOCABLE LETTER OF CREDIT (ILOC) TO THE SERVICING CARRIER; THEREFORE, ARD TRUCKING, THROUGH ITS PRODUCER, HAD ACTUAL KNOWLEDGE THAT THE LSRP APPLIED TO ITS POLICY.

A. ARD TRUCKING'S PRODUCER IS AN AGENT OF ARD TRUCKING, NOT TRAVELERS.

In South Carolina, the WCIP mandates that the producer is an agent of the insured, not the servicing carrier Travelers. Pursuant to the WCIP and South Carolina law, the producer who submitted the Assigned Risk application on behalf of Ard Trucking is the agent of Ard Trucking, not Travelers. As such, any failure of Ard Trucking's producer to explain to his own client the WCIP, the LSRP, the Assigned Risk policy or its implications rests solely with Ard Trucking's own agent, not with Travelers. See S.C.W.C.I.P. Section I. "Duties and Responsibilities Under the Plan: The Producer's and Agency's Duties and Responsibilities" ... [a producer] "is not a contract agent or agent of the servicing carrier. [Producers] have no authority from the servicing carrier to bind or cancel coverage nor to otherwise act within such an agency relationship." Moreover, both Ard Trucking and its producer admitted that the producer is the agent of Ard Trucking, not the servicing carrier.¹⁶ See first deposition of Ard, pp. 13-14; 21; 23-24; 27; 29; and the producer pp. 4-5.

¹⁶ The judge's adoptive Order erroneously ruled, in passing, that Michael P. Hair & Associates was a mere "broker" in North Carolina. The Order fails to find that Michael P. Hair & Associates was Ard Trucking's producer and that the producer's knowledge is imputed to Ard Trucking as a matter of fact and law. In its Motion for Reconsideration, Travelers respectfully requested the judge to issue specific findings of fact that the producer was an agent of Ard Trucking and that the knowledge of the producer was imputed to Ard Trucking, which had actual knowledge that the LSRP was applicable to its Assigned Risk policy; however, the judge denied such Motion for Reconsideration.

Here, Ard Trucking's producer admitted he was aware that the LSRP applied to Ard Trucking's Assigned Risk policy before Ard Trucking provided the irrevocable LOC to the servicing carrier:

“Q. Okay. Now, after the binder was issued, did the producer become aware that due to the amount of premium for the case, the premium and the payroll of the insured, that the LSRP was triggered?

A. Not right away. I think it was sometime after an audit was performed and it was determined that the payroll was higher than what we – you know – what was submitted in the application so...

Q. Right. And that was the preliminary audit that's in line with the WCIP provisions?

A. I believe so, yes.”

Gary T. Usher deposition transcript, p. 12, l. 9-19

“Q. Okay. At some point before the letter of credit was requested, was the producer Michael P. Hair informed of the LSRP program and the details set forth in Defendant's Exhibit No. 4? [March 1, 2004 letter from Travelers and LSRP booklet attached as Exhibit 10 to this Memorandum.]

A. Yes. We were when we received this.”

Gary T. Usher deposition transcript, p. 16, l. 11-15

“Q. Okay. And did you have any conversations with the safety manager at Ard Trucking about the LSRP?

A. I'm sure I did.”

Gary T. Usher deposition transcript, p. 16, l. 25 – p. 17, l. 3;

“A. Harry Brown was the safety manager and he was my contact person there. He was who I talked to about whatever issues we needed to talk about.

Q. Okay. And did you advise Mr. Brown about the LSRP?

A. I'm sure once this – it became aware to both of us I'm sure we had probably more than one discussion on it and just – you know -- just discovering what it was and what was necessary and what had to be done going forward.”

Gary T. Usher deposition transcript, p. 17, l. 5 – l. 14. See referenced producer deposition pages.

Here, Ard Trucking's producer admitted he was aware that the LSRP applied to Ard Trucking's Assigned Risk policy before Ard Trucking provided the ILOC to the servicing carrier. Also, Ard Trucking's producer admitted he became aware of and had conversations with Ard Trucking about the LSRP on or about March of 2004, before Ard Trucking issued its ILOC to Travelers. As such, the producer had knowledge that Ard Trucking's Assigned Risk policy had triggered the LSRP and that Ard Trucking's Assigned Risk policy was subject to the LSRP prior to Ard Trucking issuing an ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to Ard Trucking as a matter of law. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306 (S.C. 1979); see 3 Am.Jur.2d, Agency, § 273, et seq.; 3 C.J.S. Agency § 432, et seq.; American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1985); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943). Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133, S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations); 18B Am.Jur.2d Corporations § 1442 (2004) ("A corporation's knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment").

As Ard Trucking's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to Ard Trucking issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to Ard Trucking, and Ard Trucking had imputed knowledge that the LSRP applied to its Assigned Risk policy prior to Ard Trucking issuing an ILOC to Travelers. Further, the producer testified that he notified Ard Trucking of the

LSRP applicability to its Assigned Risk policy, establishing actual knowledge of the same on behalf of Ard Trucking.

B. ARD TRUCKING'S COUNTER-ARGUMENTS AS ADOPTED BY THE JUDGE'S ORDER ARE WITHOUT MERIT.¹⁷

Ard Trucking's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, Ard Trucking must demonstrate: (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Stringer v. State Farm Mutual Automobile Ins. Co., 386 S.C. 188 (Ct. App. 2011). Admittedly, Ard Trucking had the means of knowledge and implied, if not actual, knowledge of the LSRP. Also, per the WCIP, the Mandatory Endorsement & Brochure, as well as the entire WCIP's availability to Ard Trucking, provides notice, knowledge, and the means of knowledge of the LSRP's applicability. Further, admittedly, Ard Trucking did not "reasonably rely" on any representation by Travelers.

Ard Trucking's first counter-argument, which the judge adopted in his Order, is that the LSRP does not apply to Ard Trucking's South Carolina Assigned Risk policy because of the LSRP "Notice" Endorsement contained in the Assigned Risk policy. Ard Trucking argues that the LSRP "Notice" Endorsement excluded the LSRP applicability (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds.¹⁸ However, Ard Trucking's argument is flawed because the

¹⁷ Indeed, the judge's Order holds that a strained interpretation of the Notice Endorsement did not advise Ard Trucking of what it already knew, where: 1) Ard Trucking is presumed to know the law (the WCIP) as a matter of law; 2) the Mandatory Endorsement and Brochure provided notice to Ard Trucking as a matter of law; 3) the producer admitted it knew the LSRP was applicable to Ard Trucking's policy; and 4) the producer told Ard Trucking that LSRP applied to its Assigned Risk policy.

¹⁸ Ard Trucking ignores the Mandatory Endorsement completely in asserting its arguments. As the SCDOI/NCCI has determined that the "Notification" and "Mandatory" Endorsements (along with the Brochure) provide the requisite notice to an Assigned Risk policy insured, such Endorsements provide adequate notice to Ard Trucking of the LSRP applicability to Assigned Risk policies in South Carolina.

Mandatory Endorsement (and Brochure) supplants/amends and revises the Notice Endorsement (to the extent it may be interpreted to exclude the LSRP in South Carolina¹⁹).

Further, Ard Trucking's argument has already been soundly rejected by South Carolina courts. Specifically, the reasoning and holding of the Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C. (D.S.C.) 2004) decision is particularly instructive. In Georgetown, the South Carolina bankruptcy court held that the servicing carrier's use of standard forms and policies (such as the Assigned Risk LSRP Notification Endorsement at the time) is not ambiguous to a reasonable person in South Carolina as a matter of law. The Court held that the Assigned Risk application, the WCIP, and Assigned Risk policy terms put the insured on notice of the LSRP and its details as a matter of law because "an insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." Moreover, "the standard LSRP Endorsements drafted and copyrighted by SCDOI/NCCI" ... "specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina and states that the plan will be adjusted based upon the losses incurred." Similarly, Ard Trucking "could have examined the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." Ard Trucking failed to do so, at its own peril.²⁰ Further, the Application, the Policy, the Binder, the Mandatory

¹⁹ Indeed, a literal application of the Notice Endorsement merely sets forth that the Notice Endorsement itself does not apply to Ard Trucking's Assigned Risk policy, a far cry from "excluding" or "negating" the LSRP in South Carolina; rather, it merely notifies an insured of specific states which have LSRP programs pursuant to such specific Endorsement. Failure to list South Carolina as a specific state does not exclude or negate the LSRP from applying in South Carolina; rather, it merely prevents the application of the Notice Endorsement itself. Moreover, once the payroll triggers the LSRP during an interim audit survey, the WCIP provides specific notice that the LSRP applies to an Assigned Risk policy via the Mandatory Endorsement and Brochure, which amend/supplant the Notice Endorsement.

²⁰ Bizarrely, Ard Trucking's interpretation, as adopted by the judge's Order, negates the key holding of the Georgetown Steel decision. The fact that the Endorsements required by the WCIP/NCCI at the time of Georgetown decision differed than the Endorsements the WCIP/NCCI required at the time Ard Trucking policy was issued does

Endorsement (which supplements/revises the Notice Endorsement) and the Brochure, all drafted, copyrighted, approved and required by SCDOI/NCCI, “specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina.”

The Assigned Risk policy Endorsements’ language is mandated by the SCDOI/NCCI and South Carolina’s Department of Insurance. The Assigned Risk policy/Binder itself mandates that “Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.” As Ard Trucking agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, Ard Trucking had the means of knowledge to obtain and review a copy of the SCDOI approved plan/WCIP, or contact its producer, or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse: “It is fundamental principle of law that everyone is charged with or deemed to have knowledge of the law. The legal axiom that ignorance of the law is no excuse has long been the law of this nation and state. 31A C.J.S. Evidence Section 132(1) (1980); Benn v. Camel City Coach Co., 162 S.C. 44, 160 S.E. 135 (1931); Gregory v. Gregory, 292 S.C. 587 (Ct. App. 1987). In South Carolina, the WCIP’s LSRP is the law. Moreover, as Ard Trucking’s producer admitted he knew the LSRP applied to Ard Trucking’s Assigned Risk policy before he asked Ard Trucking to issue the irrevocable LOC to the servicing carrier, such knowledge is imputed to Ard Trucking. Finally, as Ard Trucking’s

not mean that the Endorsements SCDOI/NCCI required to be sent to Ard Trucking are somehow defective. Rather, the crux of the Georgetown decision centers around a servicing carrier’s use of SCDOI/NCCI approved and required Endorsements as providing notice to an Assigned Risk insured and, more importantly, an insured’s own responsibility to review the WCIP to determine the applicability of the LSRP. Ard Trucking and its producer had the same access to the WCIP that the Georgetown insured had and, accordingly, the Georgetown decision supports Travelers position in this case. Further, under Georgetown’s reasoning, the Mandatory Endorsement and Brochure amend the initial Notice Endorsement and provide sufficient notice of the LSRP to Ard Trucking in South Carolina.

producer testified he advised Ard Trucking of the LSRP before Ard Trucking issued its ILOC to Travelers, Ard Trucking had the means of knowledge, imputed knowledge, and actual knowledge of the LSRP applicability to its Assigned Risk policy.

Accordingly, Ard Trucking not only had the means of knowledge, but also had knowledge that the LSRP applied to the Assigned Risk policy before Ard Trucking issued an irrevocable LOC to the servicing carrier. Further, in key parts of their depositions, Allen Ard and Harry Brown both testified that they did not rely on the Assigned Risk “Notice” Endorsement, negating any reasonable reliance on the part of Ard Trucking. See second deposition of Allen Ard, pp. 24, 30, 153-155, and Brown deposition, pp. 21, 29-31. For these reasons, Ard Trucking’s first counter-argument fails.

For a second defense/counter-argument, Ard Trucking argues, and the judge’s Order implies, that the servicing carrier should be estopped due to the servicing carrier having issued a “final” bill which Ard Trucking paid and that the amount that Ard Trucking owed pursuant to the LSRP was somehow “extraordinary.”²¹ This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill, and is intended to be a mechanism to ensure that large employers, such as Ard Trucking, pay their fair share based on the number of losses such employers have during the policy period.²² Indeed, the LSRP specifically provides for three evaluation periods after

²¹ Indeed, respectfully, the judge’s adoptive Order reflects a bias against the LSRP, referring to the additional LSRP premium owed by Ard Trucking as “extraordinary additional premium charges for losses after the coverage year ended” and “extraordinary LSRP premiums” on eight separate occasions. Respectfully, it should be beyond the purview of the Court to question the wisdom or folly of the Legislature/SCDOI/NCCI in regard to the LSRP; rather, the Court should be limited to applying the law, not re-writing the law. The Legislature/SCDOI/NCCI have determined that the LSRP is necessary/required to ensure the viability of the entire Assigned Risk program in South Carolina, to benefit all employers and South Carolina workers, and ad hoc judicial opinions negating the LSRP in South Carolina (via a strained interpretation of the Notice Endorsement) risk the entire Assigned Risk system and circumvent the intent of the Legislature.

²² The judge’s Order’s footnote 1 is also erroneous based on the WCIP. Travelers’ July 2004 (Letter of Credit for \$52,116) documentation is not evidence Ard Trucking was owed a “return premium,” but it is merely a

the final premium billing to capture such additional premium owed. Section A of the Premium section clearly sets forth that: "All premium for this policy will be determined by our manuals, rates, rating plans and classifications." Moreover, the LSRP program itself exists and was adopted by the SCDOI to ensure large employers pay their fair share to ensure the stability and continued financial viability of the Assigned Risk program in South Carolina. In other words, excusing Ard Trucking from the LSRP program based on a strained reading of the Notice Endorsement in isolation (while ignoring the Mandatory Endorsement/Brochure which amends the initial Notice Endorsement) – because the judge viewed the LSRP premium as being "extraordinary" – will necessarily increase workers compensation costs on all other employers in South Carolina (based on how the Assigned Risk program is funded and maintain). Such result is contrary to the WCIP itself and the public policy reasons underpinning the LSRP as expressed by the Legislature and the SDOI.

III. THE JUDGE'S PRE-JUDGMENT INTEREST AWARD IS IN ERROR PURSUANT TO S.C. CODE 34-31-20.

S.C. Code Ann. § 34-31-20, entitled "Legal Rate of Interest," sets forth that the correct pre-judgment interest award for Ard Trucking would be at the rate of 8 $\frac{3}{4}$ percent per annum. As Ard Trucking's ILOC was not drafted until September 8, 2005, the correct interest determination would be \$52,116 at 8 $\frac{3}{4}$ percent per annum from September 8, 2005 until February 13, 2015 (the date of the judge's Order). Applying an 8 $\frac{3}{4}$ percent simple interest calculation, the correct pre-judgment interest award is \$42,941.40, not \$51,728.74, as set forth in the judge's Order.

confirmation/receipt that the ILOC was received by Travelers on July 27, 2004. Indeed, the Travelers documentation was issued months before the first valuation of LSRP was triggered, well before the expiration of the policy, and merely reflects what premium would be returned if the LSRP valuation were zero in the future. As the LSRP valuations are not determined until after the policy periods end, the judge's finding that the July 27th Travelers document promises a return of the ILOC as a "return premium," before any LSRP valuation was completed, is erroneous and is not supported by any evidence in the Record.

CONCLUSION

No dispute exists between the parties concerning the amount of payroll/remuneration Ard Trucking paid to its workers during the relevant policy period (or the LSRP calculations based on such payroll). The only dispute between the parties is whether or not the LSRP applies to Ard Trucking's South Carolina Assigned Risk policy. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to Ard Trucking's South Carolina Assigned Risk policy.²³ Through his producer, Ard Trucking submitted an Assigned Risk application and Ard Trucking was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, Ard Trucking agreed to be bound by the terms of the WCIP. The Assigned Risk Binder and Policy were issued in accordance with the WCIP. The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to Ard Trucking pursuant to WCIP. Ard Trucking received the SCDOI/NCCI mandated Notice Endorsement, the Mandatory Endorsement, and Brochure establishing Ard Trucking had notice of the LSRP as a matter of law. Accordingly, the LSRP applies to Ard Trucking's Assigned Risk policy, and Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

In conclusion, Travelers respectfully requests this Honorable Court reverse the prior judge's Order and further issue an Order/judgment in favor of Travelers for the additional premium of \$122,948 (a liquidated amount) and interest from 6/29/05 to the date of the judge's prior Order for an additional amount of \$103,993.52 for a total of \$264,901.72.

²³ No reasonable jury could find for Ard based on the uncontroverted facts such that the Court is presented with an issue of law. At a minimum, however, triable issues of fact exist to prevent an issuance of an Order in favor of Ard's Motion for Summary Judgment as to Travelers.

CERTIFICATE OF COMPLIANCE

This Brief of Appellant has been prepared using:

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Phillip S. Ferderigos

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SC Court of Appeals

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 28th day of September, 2015, I filed with the Clerk's Office of the United States Court of Appeals for the Fourth Circuit, via U.S. Mail, the required number of copies of this Initial Brief of Appellant, and further certify that I served the required number of copies of the foregoing Initial Brief of Appellants on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
PAUL M. BURCH, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2015-000806

Ard Trucking Company

Respondent.

vs.

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

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

STATEMENT OF ISSUES ON APPEAL 3

STATEMENT OF THE CASE..... 4

STATEMENT OF FACTS..... 4

ARGUMENT..... 10

I. APPELLANT’S POLICY TERMS, WHICH CLEARLY AND UNAMBIGUOUSLY STATED LSRP WAS NOT APPLICABLE TO RESPONDENT’S POLICY, CANNOT BE UNILATERALLY *CHANGED, AMENDED OR REWRITTEN*..... 10

A. TERMS OF APPELLANT’S POLICY MAY NOT BE CHANGED OR WAIVED EXCEPT BY ENDORSEMENT ISSUED BY APPELLANT AS PART OF THIS POLICY 11

B. NO REMEDY “AS A MATTER OF LAW” WAS AVAILABLE TO CHANGE APPELLANT’S *ADMITTED* EXCLUSION OF LSRP FROM APPLYING TO RESPONDENT’S POLICY..... 14

1. APPELLANT’S “LSRP MANDATORY ENDORSEMENT” DID NOT *AMEND, CHANGE OR REWRITE* THE “LSRP NOTIFICATION ENDORSEMENT” 16

2. APPELLANT’S LSRP “BROCHURE” DID NOT *AMEND, CHANGE OR REWRITE* THE “LSRP NOTIFICATION ENDORSEMENT”..... 22

II. COURTS MUST ENFORCE INSURANCE CONTRACTS ACCORDING TO THE PLAIN, ORDINARY AND POPULAR MEANING OF THEIR TERMS AND CANNOT REWRITE INSURANCE CONTRACTS TO SUIT ONE OF THE PARTIES 25

III. RESPONDENT’S RESPONSE TO APPELLANT’S OBJECTION TO LOWER COURT’S PREJUDGMENT INTEREST CALCULATION..... 33

CONCLUSION..... 34

TABLE OF AUTHORITIES

USAA Prop. & Cas. Ins. Co. v. Clegg,
377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) 16

Auto-Owners Insurance Company v. Benjamin,
Op. No. 5367 (S.C. Ct. App. filed December 9, 2015)
(Shearouse Adv. Sh. No. 48 at 36) 26

Georgetown Steel Company v. Capital City Insurance Company,
318 B.R. 313 (U.S.B.C. (D.S.C.) 2004)..... 28

Ard Trucking Company, Inc. v. Travelers Property Casualty Company of America, d/b/a The Travelers Indemnity Company of Illinois, USAA C/A 2010-CP-15-0435 (Darlington County Order dated February 5, 2015 Circuit Court Judge Paul M. Burch) 17-22, 28-31

STATEMENT OF ISSUES ON APPEAL

- I. APPELLANT’S POLICY TERMS, WHICH CLEARLY AND UNAMBIGUOUSLY STATED LSRP WAS NOT APPLICABLE TO RESPONDENT’S POLICY, CANNOT BE UNILATERALLY *CHANGED, AMENDED OR REWRITTEN***

- II. COURTS CANNOT REWRITE INSURANCE CONTRACTS TO SUIT ONE OF THE PARTIES; INSTEAD, COURTS MUST ENFORCE INSURANCE CONTRACTS ACCORDING TO THE PLAIN, ORDINARY AND POPULAR MEANING OF THEIR TERMS**

- III. RESPONDENT CONCURS WITH APPELLANT’S OBJECTION TO LOWER COURT’S PREJUDGMENT INTEREST CALCULATION**

STATEMENT OF THE CASE

This case involves the interpretation of contractual terms contained in two assigned risk workers compensation insurance policies: an initial policy on 12/1/03 (R. pp 00594-00615); and a replacement policy on 3/1/04 (R. pp. 00616-00647) issued by Appellant to Respondent. Appellant asked the Lower Court to rewrite the insurance policies it drafted and issued to Respondent by disregarding time honored insurance contract rules established by South Carolina's Courts which require insurance policies to "say what they mean and to mean what they say."

Appellant's effort to rewrite the two policies was rejected by the Lower Court, which awarded judgment in favor of Respondent in the sum of \$52,116 for unearned premiums wrongfully retained by Appellant and prejudgement interest. (R. pp 001-0014.) The Lower Court's Order dated February 5, 2015 should be sustained by the Court of Appeals.

STATEMENT OF FACTS

In this appeal, Appellant seeks to impose upon Respondent an extraordinary premium surcharge requirement, known as the Loss Sensitive Rate Plan or LSRP, which, including interest, totals \$264,901.72.

(Appellant's Final Brief at Page 38.) This claim is made in spite of

Appellant's own specific, clear and unambiguous terms included in both of the policies issued to Respondent which state that LSRP did not apply to the policy Appellant issued to Respondent. (Initial 12/3/03 policy at R. p. 00608 and replacement 03/01/01 policy at R. p. 00628.)

On November 1, 2003 and six (6) days prior to the effective date coverage began under the policies Appellant issued to Respondent, the South Carolina Department of Insurance (SCDOI) conditionally authorized Appellant, and other similar insurers, to add an LSRP premium surcharge to assigned risk insurance policies issued in South Carolina. However and importantly, SCDOI simultaneously issued a BASIC MANUAL of LSRP rules (R. pp. 00566-00590) which required insurers qualifying to invoke LSRP to specifically include within their policies an LSRP Notification Endorsement that would "ensure" that all that South Carolina insureds to be affected by LSRP would have actual notice LSRP could be applied to their policies. (R. p. 00575.)

SCDOI's BASIC MANUAL of rules and mandatory LSRP requirements for insurance carriers authorized to invoke LSRP insurance provisions, stated, in part, as follows:

D. Notice to Assigned Risk Policyholders.

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.
(Emphasis supplied.) (R. p. 00575.)

On December 1, 2003, Appellant issued Respondent's initial insurance policy for one coverage year from November 6, 2003 through November 6, 2004. Included in Appellant's policy was a one page endorsement designated "WC 00 04 17" and captioned, **ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT** (See LSRP Notification Endorsement WC 00 04 17 dated 12/01/03 at R. p. 00608. See also the said endorsement attached to Respondent's Final Brief as Exhibit 1.)

The LSRP Notification Endorsement stated in part, "you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP)." Thereafter, the LSRP Notification Endorsement listed seven (7) qualifications for "eligibility" for LSRP to

apply. Importantly, the LSRP Notification Endorsement ended with the following plain, clear, and unambiguous language:

This endorsement applies in the states listed in the schedule below:

SCHEDULE	
STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

Therefore, the insurance policy Appellant issued to Respondent on December 1, 2003 failed to include Respondent's South Carolina insurance policy as being subject to LSRP application. Conversely stated, the clear and unequivocal language in the policy Appellant issued to Respondent affirmatively excluded LSRP from being applicable to the South Carolina insurance policy issued to Respondent.

Subsequently, Appellant issued and delivered a “replacement” policy to Respondent on March 1, 2004. The replacement policy contained the identical LSRP Notification Endorsement contained in the initial policy. (See LSRP Notification Endorsement WC 00 04 17 dated 03/01/04 at R. p. 00628.) Therefore, both policies issued by Appellant and delivered to Respondent contained the identical LSRP Notification Endorsement and both of them clearly, unequivocally and affirmatively omitted the application LSRP application from the South Carolina insurance policy Appellant issued to Respondent.

After the insurance coverage year ended on November 6, 2004, Respondent paid the “Final Premium Bill” to Appellant based on a Final Audit by Appellant’s CPA. However, Appellant refused to refund and release \$52,116 which Respondent had pledged to Appellant under a May 2004 Letter of Credit to secure payment of any additional premiums due.¹

1. Appellant treated the \$52,116 pledged by Respondent under the May 2004 letter of credit as credit as a “return premium” debt owed to Plaintiff. This fact is reflected by a policy “change document” issued under Defendant’s policy on July 27, 2004. (R. p. 00542.) It is also noted here that there is no mention in this document regarding the application of the Loss Sensitive Rating Plan or LSRP to the policy issued. See, Affidavit of Allen Ard, Respondent’s President, and the exhibits attached to the affidavit. (R. p. 00503-00508 paragraphs 17.-21 and the affidavit’s attachments.)

Respondent sued Appellant to recover the funds pledged under the May 2004 Letter of Credit. Appellant counterclaimed, seeking additional extraordinary premiums from Appellant totaling \$175,064 under the LSRP provisions it maintained were incorporated into the policies issued to Respondent “as a matter of law.” While Appellant admits the exclusion of LSRP application under the Notification Endorsement Appellant included in Respondent’s policies, Appellant nevertheless maintained that other documents that were not included in the policies operated to “amend,” “supplant,” and “revise” the policies. (See, e.g., Appellant’s Final Brief at Page 23.)

In cross motions for summary judgment, Appellant requested the Lower Court to disregard the clear, specific and unequivocal language used in Appellant’s policy’s LSRP Notification Endorsement which excluded the application of LSRP from the South Carolina policy Appellant issued to Respondent and requested the Lower Court to rewrite the policy to impose the application of LSRP upon Respondent’s policy.

The Lower Court refused Appellant’s request to rewrite the policies issued to Respondent and held, instead, that LSRP did not apply to the insurance contracts issued by Appellant to Respondent due the clear,

unambiguous, unequivocal and affirmative language Appellant used in the LSRP Notification Endorsement. The Lower Court granted Respondent's request for the recovery of the unearned premiums held by Appellant under the May 2004 Letter of Credit, plus prejudgment interest. From the Lower Court's Order, Appellant has appealed.

ARGUMENT

I. APPELLANT'S POLICY TERMS, WHICH CLEARLY AND UNAMBIGUOUSLY STATED LSRP WAS NOT APPLICABLE TO RESPONDENT'S POLICY, CANNOT BE UNILATERALLY *CHANGED, AMENDED OR REWRITTEN*

As the Lower Court stated in its February 5, 2015 Order denying Appellant's request that the Lower Court to disregard the LSRP Notification Endorsement, "The die was cast by (Appellant) and this Court cannot rewrite (Appellant's) policy." (R. p. 007 lines 4 and 5.)

Appellant argued to the Lower Court, and continues to argue in this appeal, that Appellant is somehow immune from the consequences of its own policy language (through the LSRP Notification Endorsement incorporated into Appellant's policies) which specifically notified and informed Respondent that LSRP did not apply to Respondent. In spite of the LSRP exclusion Appellant itself issued to Respondent, Appellant

arrogantly continues to argue that the LSRP Endorsement was, “as a matter of law,” “amended,” “supplanted,” or “revised” by other documents not included in the two policies issued to Respondent.

Specifically, Appellant argues that (1) the LSRP Mandatory Endorsement included in the March 1, 2004 replacement policy issued to Respondent and (2) a Brochure delivered to Respondent which explained LSRP, somehow individually or combined to rewrite the unambiguous language contained in the LSRP Notification Endorsement incorporated into both policies issued to Respondent. The Lower Court properly rejected Appellant’s arguments.

A. TERMS OF APPELLANT’S POLICY MAY NOT BE CHANGED OR WAIVED EXCEPT BY ENDORSEMENT ISSUED BY APPELLANT AS PART OF THIS POLICY

The two insurance policies issued by Appellant to Respondent contain a five-page form entitled WC 00 00 00 (A), which forms the core of Appellant’s assigned risk workers compensation insurance policies. Among other matters, this form explains responsibilities of the insured employer, exclusions from coverage and the way the premium is determined.

Importantly, Form WC 00 00 00 (A) of Appellant's insurance contract issued to Respondent contains "boilerplate" contractual principles (R. p. 00603-00606) and effectively included the time tested contractual admonition: "The only contractual terms or agreements between the contracting parties are those terms set forth, included, and contained within the four corners of this contract."

The first policy provision of the WC 00 00 00 (A) form plainly states the contractual principles controlling "changes" under Appellant's policy:

**WORKERS COMPENSATION AND EMPLOYERS
LIABILITY INSURANCE POLICY**

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or

waived except by endorsement issued by us to be part of this policy.

(Emphasis supplied.)(R. p. 00603.)

Accordingly, Appellant's own policy terms state as follows:

1. Appellant's insurance policy is a contract between Appellant and Respondent.
2. The only agreements relating to the insurance contract are stated in the policy.
3. The terms of Appellant's insurance contract may not be "changed" or waived except by endorsement issued by Appellant and made a part of this policy.

Therefore, Appellant's policy language prohibits any "change" to the terms of the policy "except by endorsement issued by (Appellant) to be part of this policy."

The lynchpin proposition relied upon in Appellant's appeal maintains that Appellant's own clear and unequivocal terms contained in the LSRP Notification Endorsement - which excluded LSRP application from Respondent's South Carolina insurance policy - were somehow ("by operation of law") "changed" or, in Appellant's words,

“amended/supplanted” (Appellant’s Final Brief at Page 23, Line 6) and/or “revised and amended” (Appellant’s Final Brief at Page 23, Line 12).

Appellant’s novel lynchpin proposition is not only (1) contrary to common sense and (2) violates hardened South Carolina rules regarding insurance contracts which hold contracting parties to their contractual terms, Appellant’s proposition is (3) specifically prohibited by Appellant’s own insurance contract provisions.

**B. NO REMEDY “AS A MATTER OF LAW”
WAS AVAILABLE TO CHANGE
APPELLANT’S *ADMITTED* EXCLUSION OF
LSRP FROM APPLYING TO
RESPONDENT’S POLICY**

As demonstrated on page 23 of Appellant’s Brief, Appellant is forced to admit, because it cannot deny, that Appellant’s own clear and unambiguous terms used in the LSRP Notification Endorsement, and which were incorporated into both of policies issued to Respondent, specifically state that LSRP is not applicable to Respondent’s South Carolina policies.

However, through extraordinary convoluted reasoning, Appellant maintains it is somehow immune from its own clear and unambiguous terms and that the Courts should allow it to rewrite the terms in LSRP Notification Endorsement to completely reverse their meaning:

Although the Notice Endorsement does not list South Carolina, the Mandatory Endorsement does apply to South Carolina and, most importantly, the SCDOI/NCCI/SCDOI has determined that the Mandatory Endorsement (along with the Brochure) amend/supplant to provide sufficient notice to (Respondent) that the LSRP applies to its South Carolina Assigned Risk policy. The WDIP requires (Appellant) to issue SCDOI/NCCI required Notice Endorsement it issued to (Respondent). After the initial audit survey, once the payroll triggers the LSRP (as in this present case), the WCIP requires (Appellant) to issue a SCDOI/NCCI required Mandatory Endorsement and Brochure. Pursuant to the WCIP, the Mandatory Endorsement (and Brochure) revises and amends the Notice Endorsement and the WCIP mandates that the Mandatory Endorsement (and Brochure) provides sufficient notice that the LSRP applies to (Respondent's) Assigned Risk policy.

(Emphasis supplied.) (Appellant's Brief at Page 23, Lines 3 - 14.)

This ham-handed effort to rewrite ("amend," supplant," and/or "revise") Appellant's own clear and unambiguous language used to promulgate contract terms, is just a desperate attempt by Appellant to avoid the consequences of its own terms contained in its own insurance contract.

Appellant's novel proposition would require this Court to rewrite the insurance contract's terms so that they the contract would then have the

exact opposite meaning from the existing plain, clear and unambiguous meaning. However, courts cannot rewrite insurance policies to suit the pleasure of one of the contracting parties. *See, USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.)

1. APPELLANT’S “LSRP MANDATORY ENDORSEMENT” DID NOT AMEND, CHANGE OR REWRITE THE “LSRP NOTIFICATION ENDORSEMENT”

Appellant’s argues that the LSRP Mandatory Endorsement Appellant (included in the policy issued to Respondent March 1, 2004) somehow displaced and overrode (in Appellant’s terminology “amended,” “supplanted” and/or “revised” or “amended/supplanted”) the LSRP Notification Endorsement “as a matter of law.” Ironically, the March 1, 2004 replacement policy (R. p. 00616-00646) wherein the LSRP Mandatory Endorsement first appeared, also contains the identical LSRP Notification Endorsement incorporated into the initial (12/1/03) policy issued Appellant to Respondent. Again, the same language appeared in the LSRP Notification Endorsement attached to both policies, which clearly and

unequivocally declares that LSRP does not apply to Respondent's policy. (Agin, the WC 00 04 17 (00) endorsement dated 12-01-03 is at R. p. 00608 and the same identical dated 03-01-04 is at R. p. 00628.)

The Lower Court carefully reviewed all of the contractual provisions contained in both insurance policies issued to Respondent, including the LSRP Mandatory Endorsement in the replacement policy which Appellant maintains "revised and amended" or "amended/supplanted" the replacement policy to include the application of LSRP "as a matter of law." Following the Lower Court's analysis, the Lower Court determined that the LSRP Mandatory Endorsement did not negate the clear and unequivocal language contained in the LSRP Notification Endorsement:

PERTINENT POLICY LANGUAGE EXAMINED

Insurance policies typically contain declarations and provisions, and include endorsements applicable to specific situations and venues. The (Appellant's) policy initially had 11 endorsements and its replacement policy had 13 endorsements. Several endorsements included under the initial (12/1/03) policy and replacement (3/1/03) policy bear scrutiny in deciding whether the LSRP applied to the South Carolina policy issued to (Respondent).

1. Assigned Risk Endorsement

Both the initial and replacement policies issued to (Respondent) contain an identical one-page Assigned Risk Adjustment Program endorsement (WC 00 06 15 (00)), informing Plaintiff that Defendant may add a “surcharge” to the premium for South Carolina policies. Without question, this endorsement applies to (Respondent’s) South Carolina policy because the endorsement specifically lists South Carolina among the ten (10) states wherein this surcharge may be applied. The first paragraph of the “assigned risk” endorsement may be applied.

The first paragraph of the Assigned Risk Endorsement states,

. . . The (assigned risk) program adds a surcharge to the premium of insureds who are eligible for an experience rating modification, are assigned risks, and meet the other requirements of the program.
(Balance omitted.)

It is noted that the Assigned Risk Endorsement does not incorporate, explain, or even mention LSRP in any way. Accordingly, and not to be confused with the extraordinary premiums charged whenever LSRP is applicable, the Assigned Risk Endorsement clearly and unequivocally notifies and informs Plaintiff that (1) a surcharge may be applied to Plaintiff’s premium under the Assigned Risk Adjustment Program and, importantly, (2) the assigned risk surcharge addressed in the Assigned Risk Endorsement is applicable to South Carolina insureds, which included (Respondent).

2. A/R Loss Sensitive Rating Plan Notification Endorsement

(Appellant's) in initial and replacement policies both contained an extremely important endorsement entitled the Assigned Risk Loss Sensitive Rating Plan Notification Endorsement (WC 00 06 17 (00)), hereafter LSRP Notification Endorsement. An LSRP Notification Endorsement containing the identical language was attached to the initial and replacement policies South Carolina policies issued to (Respondent). These identical LSRP Notification Endorsements clearly and unequivocally declared that LSRP was applicable to policies issued in South Carolina. Specifically, both endorsements stated as follows:

This endorsement applies in the states listed in the schedule below:

SCHEDULE	
STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

Stated differently, the LSRP Notification Endorsement incorporated by (Appellant) into the

two South Carolina policies issued to (Respondent) expressly negated the application of LSRP to the policies. (Appellant's) own clear and unambiguous language excluded both of the policies issued in South Carolina from any LSRP application. Therefore, LSRP provisions did not apply to the South Carolina policy issued by (Appellant) to (Respondent).

(Appellant) could easily have clearly and unequivocally applied LSRP provisions to the two South Carolina policies issued to (Respondent), just as (Appellant) clearly and unequivocally applied the Assigned Risk Endorsement to (Respondent's) South Carolina policy. However, (Appellant) failed to include, and therefore clearly excluded, LSRP application from (Respondent's) South Carolina policy.

Instead of notifying and informing (Respondent) that LSRP and extraordinary LSRP premiums applied to (Appellant's) the South Carolina policy, (Appellant) own plain, ordinary, and unequivocal language declared that LSRP provisions did not apply in South Carolina and, therefore, did not apply to (Respondent's) South Carolina policy. The die was cast by (Appellant) and this Court cannot rewrite (Appellant's) policy.

3. Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement

Other than the (Appellant's) LSRP Notification Endorsement which excluded LSRP application under the South Carolina initial and replacement policies issued to (Respondent), the only other endorsement related to LSRP contained in the

policy was the Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement (MARLSRP Endorsement) (WC 00 06 18 (00)). It is noted that this endorsement was not included in the initial (12/1/03) policy, but only included in the replacement (3/1/05) policy. The purpose of the MARLSRP Endorsement is to explain how LSRP extraordinary premiums, if and when applicable, were to be computed.

While the MARLSRP Endorsement states, “This endorsement applies where the LSRP has been approved,” nowhere in the endorsement does it specifically state LSRP was ever approved in the state of South Carolina. As already noted, the LSRP Notification Endorsement discussed above and which was included in both the initial and replacement policies (Appellant) delivered to (Respondent), clearly and unequivocally declares that LSRP does not apply in South Carolina.

4. Other Policy References to LSRP

Except for (1) the LSRP Notification Endorsement (contained in both policies) which clearly and unequivocally exclude (Respondent’s) South Carolina policy from LSRP application, and (2) the MARLSRP Endorsement (only contained in the March 1, 2004 policy) which simply explained how LSRP premiums, if applicable, are to be determined, there were no other endorsements or provisions under (Appellant’s) initial or replacement policy which address the application of LSRP. All told, there are only two other references to LSRP anywhere else in the replacement policy, both of which appear on the two page “Extension of Info Page Schedule.”

However, such scant and unexplained use of LSRP terminology (“Loss Sensitive Rating Plans” is used on one page and “LSRP” is used on another page) falls far short of overcoming (Appellant’s) own clear and unambiguous exclusion of LSRP from having any application to the South Carolina replacement policy

issued to (Respondent), which exclusion is contained in (Appellant’s) own LSRP Notification Endorsement.

(The foregoing excerpt from the Lower Court’s order is located found at R. pp. 004-008.)

Following the Lower Court’s thorough review and analysis of Appellant’s insurance policy provisions, the Lower Court rejected Appellant’s proposition that Appellant’s LSRP Mandatory Endorsement had altered (“revised and amended” or “amended/supplanted”) the clear and unequivocal language Appellant used in the LSRP Notification Endorsement.

**2. APPELLANT’S LSRP “BROCHURE”
DID NOT *AMEND, CHANGE OR
REWRITE* THE “LSRP
NOTIFICATION ENDORSEMENT”**

Appellant’s proposition that the delivery to Respondent of a Brochure (R. pp 00335-00343) explaining LSRP also somehow rewrote (“revised and amended” or “amended/supplanted”) the LSRP Notification Endorsement is

without merit. As stated in affidavits of Respondent's President Allen Ard (R. pp. 00503-00508) and Respondent's Safety Director Harry Brown (R. pp. 00545-00546), Respondent did not believe LSRP applied to the policies issued by Appellant to Respondent. Moreover, the language in the Brochure did not inform Respondent that LSRP applied to the insurance policies issued to Respondent by Appellant. Again, the policies themselves stated that LSRP did not apply to Respondent's policies. (The WC 00 04 17 (00) endorsement dated 12-01-03 is at R. p. 00608 and the identical endorsement contained in the replacement policy dated 03-01-04 is at R. p. 00628.)

Respondent's Safety Director Brown's affidavit states, in part, as follows:

6. I have carefully reviewed the original (of Appellant's) policy issued on December 1, 2003, as well as (Appellant's) replacement policy issued on March 1, 2004. Neither of these policies includes LSRP provisions which would have applied to (Respondent). In fact, the LSRP coverage endorsement under both of these policies specifically omits South Carolina from the list of states where LSRP provisions were applicable.

7. During my deposition on April 26, 2014, I was informed that after (Appellant) insured (Respondent) in November of 2003, (Appellant)

mailed (Respondent) a brochure entitled “Loss Sensitive Rating Plan.” I cannot recall receiving and reviewing this document, however, I have no reason to doubt that (Appellant) sent it (Respondent). This document would have been forwarded to me, (Respondent’s) Safety Director to review. In looking over the brochure during my deposition, the brochure appears to have been intended to explain how the LSRP provisions operate whenever a policy includes LSRP requirements. However, since the original and replacement (of Appellant’s) insurance policies on file in the (Respondent’s) Safety Department excluded South Carolina from compliance with LSRP. As a result, the brochure regarding LSRP was not applicable to (Respondent) and I would have discarded it as being inapplicable to (Respondent) and, therefore, unnecessary to review or maintain.

(R. pp. 00545-00546.)

The fact that an LSRP Brochure was delivered to Respondent did not alter and amend the terms of the LSRP Notification Endorsement Appellant incorporated into the two policies issued to Respondent. The LSRP Notification Endorsement, contained in both policies, clearly and unequivocally notified and informed Respondent that LSRP did not apply to the South Carolina policies issued by Appellant to Respondent.

Finally, the Brochure relied upon by Appellant as altering or rewriting the LSRP Notification Endorsement “as a matter of law,” states

on page 3 that LSRP was not yet implemented in South Carolina:

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six month's advance notice is intended to give you time to seek coverage in the voluntary market. (*Note: The implementation may vary by state.*) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters.

(R. p. 00244)

Appellant's Brochure, was not part of either of the two policies Appellant issued to Respondent and could not have altered, "revised," "amended," or "supplanted" Appellant's LSRP Notification Endorsement included in both policies and which clearly and unequivocally excluded Respondent's South Carolina policies from LSRP application.

II. COURTS MUST ENFORCE INSURANCE CONTRACTS ACCORDING TO THE PLAIN, ORDINARY AND POPULAR MEANING OF THEIR TERMS AND CANNOT REWRITE INSURANCE CONTRACTS TO SUIT ONE OF THE PARTIES

Plainly put, Appellant's bold request to rewrite the policies issued to Respondent is the only hope Appellant has to overcome the consequences of

its own insurance policy provisions. However, doing this would defile, distort and ignore centuries of contract rules of law, which would create disorder, disruption and chaos.

This Court should deny Appellant's request and, instead, require Appellant to comply with established and controlling rules of insurance contract law. Under South Carolina law, both the insurer and the insured, as parties to the insurance contract, are bound by the clear, specific and unequivocal terms of the insurance policy's unequivocal provisions and terms.

The following is but one of legions of cases citing and applying long standing rules of law that bind contracting parties to the plain, specific, unequivocal language of insurance contracts, and is taken from the recent case of *Auto-Owners Insurance Company v. Benjamin*, Op. No. 5367 (S.C. Ct. App. filed December 9, 2015) (Shearouse Adv. Sh. No. 48 at 36):

"Insurance policies are subject to the general rules of contract construction." *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010)). "The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language." *Id.* (quoting *McGill v.*

Moore, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." *Id.* (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008)).

"Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628 (quoting *McGill*, 381 S.C. at 185, 672 S.E.2d at 574). Whether the language of a contract is ambiguous is a question of law for the court. *Id.* "An insurance contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" *Beaufort Cty. Sch. Dist. v. United Nat'l Ins. Co.*, 392 S.C. 506, 516, 709 S.E.2d 85, 90 (Ct. App. 2011) (quoting *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 348 (1976)). However, this court must construe "[a]mbiguous or conflicting terms in an insurance policy . . . liberally in favor of the insured and strictly against the insurer." *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628 (quoting *Clegg*, 377 S.C. at 655, 661 S.E.2d at 797). "Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." *Owners Ins. Co. v. Clayton*, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005).

The Lower Court's February 5, 2015 Order applied South Carolina law to the terms of Appellant's policies issued to Respondent. In the :Lower Court's Order, the Lower Court conducted a thorough analysis of

the law relied upon in *Georgetown Steel Company v. Capital City Insurance Company*, 318 B.R. 313 (U.S.B.C. (D.S.C.) 2004). (*Georgetown Steel* is also addressed in Appellant's Brief at Page 35.)

Georgetown Steel involved facts quite similar to the facts in this case; however, significant factual differences are noted in the Lower Court's order. In particular, the language contained in the LSRP provisions used by the insurer in *Georgetown Steel* are significantly different from the language Appellant used in the LSRP provisions Appellant incorporated into the two policies issued to Respondent.

As the Lower Court noted, the bankruptcy court in *Georgetown Steel* resolved the issues facing it by applying the South Carolina law of contracts.

The Lower Court's analysis of *Georgetown Steel* follows:

***GEORGETOWN STEEL* SUPPORTS
(APPELLANT'S) CLAIM**

(Appellant) urges the Court to accept the proposition that LSRP was *automatically* included in the policy it issued to (Respondent) *as a matter of law*. However, acceptance of (Appellant's) proposition requires the Court to disregard (Appellant's) clear and unambiguous exclusion, under its LSRP Notification Endorsement, of South Carolina from list of states wherein LSRP

applies. Moreover, by accepting (Appellant's) proposition, this Court would have to ignore established rules of contract law that should control.

In *Georgetown Steel*, the bankruptcy court held that the parties to a contract are bound by the clear and unambiguous terms in the contract. The facts in *Georgetown Steel* are similar in many respects to the facts before the Court now. Importantly, however, the language used by the insurer in *Georgetown Steel* was radically different from the language used in the policy language adopted for use by the (Appellant) herein.

The debtor in *Georgetown Steel* was insured under an assigned risk workers compensation insurance policy. The debtor sought to negate the application of the LSRP provisions within the insurer's policy issued to the debtor so that the debtor could recover substantial funds the insurer was holding to cover LSRP premiums owed to the insurer by the debtor. The critical question in *Georgetown Steel* was whether LSRP provisions contained under the debtor's assigned risk insurance policies were valid or not. After applying the law of contracts to the facts, the bankruptcy court in

Georgetown Steel held that LSRP clearly applied to the debtor's insurance policy.

Before undertaking its analysis of the contract provisions, the *Georgetown Steel* bankruptcy court stated the controlling principles of contract law:

General rules of contract instruction pursuant to South Carolina law apply. The intent of the parties is to be primarily considered, which can be ascertained from the language of the Policies. *Schulmeyer v. State Farm Fire and Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *Goldston v. State Farm Mut. Auto. Ins. Co.*, 358 S.C. 157, 169–70, 594 S.E.2d 511, 518 (Ct.App.2004). If the language is clear and unambiguous, the language alone is controlling. *Schulmeyer*, 353 S.C. at 495, 579 S.E.2d at 134. If capable of two reasonable interpretations, that construction which is most favorable to the insured will be adopted. *Hansen v. USAA*, 350 S.C. 62, 68, 565 S.E.2d 114, 117 (Ct.App.2002) (citation omitted).

After applying the law to the debtor’s policy, the bankruptcy court concluded that the insurer “specifically and unambiguously notified the policyholder that LSRP had been adopted in South Carolina and states that “the plan will be adjusted based upon the losses incurred.” In reaching this conclusion, the bankruptcy court was compelled by the clear and unequivocal language contained in the insurers’ two separate LSRP Notification Endorsements which specifically notified and informed the insured debtor that the LSRP provisions were specifically applicable under the debtor’s South Carolina policy:

Perhaps the most telling portion of the Policies with respect to the application of an LSRP is the Endorsements included in the Policies. The Policies contain an Assigned Risk Loss Sensitive Rating Plan Notification Endorsement and an Assigned Risk Loss Sensitive Rating Plan Notification Endorsement (the “Endorsements”). The Endorsements provide as follows:

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

The Endorsements further specifically state that:

Your insurance is written under the South Carolina Workers Compensation Assigned Risk Plan that has adopted the Loss Sensitive Rating Plan (LSRP).

The Endorsements further set forth the LSRP Premium elements, the formula for calculation of the LSRP Premium, and when calculations and

payments related to the LSRP Premium must be made. Accordingly, the Policies, including the Endorsements, unambiguously provide that an LSRP applies in South Carolina and should have put Debtor on notice as to the further adjustment of premium. (Emphasis supplied.)

In sum, the insurer in *Georgetown Steel* specifically and explicitly notified and informed the debtor under the LSRP Notification Endorsement (WC 00 06 17 (00)), which was incorporated into to the two South Carolina policies issued to the debtor, that LSRP applied to the debtor's South Carolina policy:

Your insurance is written under the South Carolina Workers Compensation\Assigned Risk Plan that has adopted the Loss Sensitive Rating Plan (LSRP).

However, no such language exists within the two policies that (Appellant) issued to (Respondent) herein. Instead, (Appellant) plainly and unambiguously provided under the LSRP Notification Endorsement it included in both the initial and replacement policies issued to (Respondent) that a specific list of the states wherein LSRP had been adopted and applied. Clearly and unambiguously, South Carolina was excluded from the list. The only reasonable interpretation of (Appellant's) own clear and

unambiguous language used in the LSRP Notification Endorsement is that LSRP did not apply to either of the two policies (Appellant) issued to (Respondent).

(The foregoing excerpt from the Lower Court's order is located found at R. pp. 008-011.)

III. RESPONDENT CONCURS WITH APPELLANT'S OBJECTION TO LOWER COURT'S PREJUDGMENT INTEREST CALCULATION

Appellant Brief indicates the Lower Court erred in computing the prejudgment interest due Respondent. Specifically, Appellant maintains that since the Letter of Credit funds were not drafted by Appellant until September 8, 2005, the statutory interest of 8.75% on the sum due to Respondent did not begin to run until September 8, 2005, therefore, the accrued interest should have been "\$42,941.40, not \$51,728.74, as set forth in the judge's Order."

Respondent consents to an appropriate modification of the Lower Court's Order to reflect the proper interest due to Respondent. Moreover, this error was caused by Respondent's counsel, not the Lower Court. At an appropriate time, Respondent will request and or consent to, the amendment of the February 5, 2015 Order.

CONCLUSION

Insurance policies cannot be unilaterally rewritten to suit the pleasure of one of the parties. As an insurer operating in South Carolina, Appellant was bound to follow the mandates of SCDOI. SCDOI specifically required insurers authorized to apply LSRP to their policies to provide specific notification in policies issued to insured parties that the insurer intended to apply LSRP to their policy premiums. This notification mandate had preeminent importance to SCDOI and anything less was insufficient.

However, the LSRP Notification Endorsement Appellant placed in both the initial (12/1/03) policy and replacement (3/1/04) policy issued to Respondent clearly and unequivocally excluded Respondent's South Carolina two policies from LSRP application. The Lower Court properly concluded:

(Appellant) could easily have clearly and unequivocally applied LSRP provisions to the two South Carolina policies issued to (Respondent), just as (Appellant) clearly and unequivocally applied the Assigned Risk Endorsement to (Respondent's) South Carolina policy. However, (Appellant) failed to include, and therefore clearly excluded, LSRP application from (Respondent's) South Carolina policy.

(R. p. 006, last paragraph.)

And:

The only reasonable interpretation of (Appellant's) own clear and unambiguous language used in the LSRP Notification Endorsement is that LSRP did not apply to either of the two policies (Appellant) issued to (Respondent).”

(R. p. 0011, lines 4-8.)

Appellant's appeal seeks this Court's permission to rewrite the policies in question. This would be and contrary to established rules of law. If Courts invade this sacred providence and permit Appellant to disregard its own plain and unequivocal language, parties to insurance contracts would not longer be able to rely on plain, specific, clear and unequivocal language. Instead, contracting parties would be required to go far beyond the four corners of the contract in order to fully comprehend their contractual rights. This result would not only be ludicrous and nonsensical, by disruptive and chaotic.

Appellant's Brief points to South Carolina law requiring an insured party to read and be bound by the terms of their insurance policies. (Appellant's Brief at Page 19.) Clearly this principle of law is a sword with two edges. Insurers, who promulgate the terms of their insurance policies

likewise have a duty read their own policies and are also bound by their terms.

The Lower Court properly refused Appellant's request to anyway rewrite, amend, supplant, or revise the plain and unambiguous terms Appellant itself used. Respondent respectfully submits that the Lower Court's February 5, 2015 Order should be sustained except as to an appropriate modification of prejudgment interest contained in the Lower Court's judgment and consented to by Respondent.

Respectfully submitted,
Driggers & Moyd, LLC

By:

/S

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April 25, 2016
Hartsville, South Carolina

RESPONDENT'S EXHIBIT #1

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WFC 03 04 07 (03)

POLICY NUMBER: 16-45-0162903-3-021

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk Mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or voluntary physical audit premium equals or exceeds the amount listed in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, consecutive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, it is determined that an employer qualifies for LSRP, its policy shall not be changed until renewal.
6. Notwithstanding anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the retro application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate total of all states having approved LSRP annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will raise your premium for the insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

STATE	SCHEDULE	PREMIUM ELIGIBILITY
Alabama		\$200,000
Alaska		\$200,000
Connecticut		\$200,000
District of Columbia		\$200,000
Georgia		\$200,000
Idaho		\$200,000
Illinois		\$200,000
Indiana		\$100,000
Kansas		\$200,000
Kentucky		\$200,000
New Hampshire		\$175,000
North Carolina		\$200,000
South Dakota		\$200,000

DATE OF ISSUE: 13-06-09

ST. ASSIN: 50

(Rev. 03-05)

CERTIFICATE OF COMPLIANCE

This Brief of Respondent has been prepared using:

WordPerfect X6 (2012)

Times New Roman

14 Point Type

Exclusive of the Table of Contents, Table Authorities, the Certificate of Filing and Service, and this Certificate of Compliance, this Brief contains, 6,006 words.

I understand that a material misrepresentation can result in the Court's striking the Brief and imposing sanctions. If the Court so directs, I will provide an electronic version of the Brief and/or a copy of the word or line print-out.

/S

By: Counsel for Respondent
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 25th day of April 2016, I filed with the Clerk's Office of the South Carolina Court of Appeals, via U.S. Mail, the required number of copies of this Final Brief of Respondent and further certify the I served the required number of copies of the Final Brief of Respondent on other counsel of record via U. S. Mail with sufficient postage, properly addressed as follows:

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April 25, 2016

By: /S
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Counsel for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000806

Ard Trucking Company Respondent,

v.

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

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES iii

STATEMENT OF THE ISSUES..... iii

I. ARD TRUCKING’S ARGUMENTS ARE CONTRARY TO THE LAW.....3

**II. ARD TRUCKING’S ARGUMENTS ARE CONTRARY TO THE FACTS
IN THE RECORD.24**

**III. ARD TRUCKING FAILS TO ADDRESS ITS FAILURE TO APPEAL
TRAVELERS’ PREMIUM DECISION TO NCCI AS REQUIRED BY
WCIP RULE 4.....2**

**IV. ARD TRUCKING FAILS TO ADDRESS ITS PRODUCER’S ADMISSIONS
ABROGATING ITS PRESENT ARGUMENTS TO THE COURT.....25**

CONCLUSION.....25

TABLE OF AUTHORITIES

CASES

Georgetown Steel Company vs. Capital City Insurance Company,
318 B.R. 313 (U.S.B.C.(D.S.C.) 2004).....7, 11, 18, 21, 22,

STATUTES

RULES

Loss Sensitive Rating Plan (“LSRP”) *passim*
SCDOI Documents *passim*
Workers’ Compensation Insurance Plan (WCIP) *passim*
WCIP RULE 425

STATEMENT OF THE ISSUES

- I. ARE ARD TRUCKING’S ARGUMENTS CONTRARY TO THE LAW?
- II. ARE ARD TRUCKING’S ARGUMENTS CONTRARY TO THE FACTS IN THE RECORD?
- III. DOES ARD TRUCKING’S FAILURE TO APPEAL TRAVELERS’ PREMIUM DECISION TO NCCI AS REQUIRED BY WCIP RULE 4 BAR ITS CLAIM AGAINST TRAVELERS?
- IV. DOES ARD TRUCKING’S FAILURE TO ADDRESS ITS PRODUCER’S ADMISSIONS BAR ITS CLAIM AGAINST TRAVELERS?

The Legislature, by the South Carolina Department of Insurance (“SCDOI”), has adopted the entire LSRP plan and the WCIP which has the “force of law” in South Carolina. Ard Trucking’s attempt to “gut” the entire Loss Sensitive Rating Plan (“LSRP”) plan by focusing on a small part of the entire process (where the SCDOI requires a five-step Endorsement/LSRP Brochure process) to the exclusion of the other parts of the notification process (the Application Notice, the Coverage Binder Notice, the Mandatory Endorsement, and the LSRP Brochure) attempts to create an ambiguity where no ambiguity exists.

At first blush, Ard Trucking’s (hereinafter “Ard”) arguments appear plausible if, and only if, this Court ignores the law and the facts in the Record. After reviewing the SCDOI approved plan and the evidence in the Record, however, it is clear that Ard quintessentially places “the cart before the horse” and ignores both the law and the uncontroverted facts in the Record in order to support its arguments. Although the Notice Endorsement is a part of the Workers’ Compensation Insurance Plan (WCIP) and statutory scheme adopted by the SCDOI to provide an assigned risk insured of notice of the LSRP, it is only a minor part of providing such notice. It does not, however, affirmatively exclude the LSRP from the assigned risk policy as Ard asserts.¹ Rather, the Application Notice, the Coverage Binder Notice, the Notice Endorsement, the Mandatory Endorsement and the LSRP Letter and LSRP Brochure (hereinafter collectively referred to as the “SCDOI LSRP Notice Documents”) provide specific notice to an assigned risk insured that the LSRP applies to assigned risk policies in South Carolina where, in addition to the specific notice provided by these documents, the Mandatory Endorsement unequivocally sets forth: “this Endorsement applies where LSRP has been approved.” As the LSRP had previously been approved in South Carolina before the assigned risk policy was issued to Ard, the SCDOI LSRP Notice Documents provide sufficient notice to Ard that the LSRP applied to its assigned risk policy. Such notification scheme is specifically set forth in the SCDOI approved plan document

¹ By its own express terms, the Notice Endorsement is self-limiting and the Endorsement itself does not apply to the assigned risk policy. In contrast, by its express terms, the Mandatory Endorsement applies to Ard’s policy. Per the SCDOI approved plan, the Mandatory Endorsement provides specific notice of the LSRP once the assigned risk premium exceeds the LSRP premium threshold.

[SCDOI 00029].

Specifically, on or about March 1, 2004, Ard also received the Mandatory Endorsement, Travelers' explanatory LSRP letter, and the LSRP Brochure explaining the LSRP to Ard in laymen's terms. See Travelers March 1, 2004 letter to Ard stating:

Dear Insured:

The above referenced policy has been issued as part of the mandatory Loss Sensitive Rating Plan (LSRP). The purpose of the LSRP is to provide a retrospective rating plan for employers with assigned risk workers' compensation premium over a certain threshold. Retrospective rating programs determine the final premium for a policy after the policy period has ended and is based on actual losses incurred during the policy period.

Enclosed please find the explanatory booklet *The Loss Sensitive Rating Plan (LSRP): An employer's guide to the mandatory assigned risk retrospective rating program*. Please review the booklet carefully and discuss it with your producer.
(BWPH Ard 00063)

Ard cannot cherry-pick one part of the entire scheme and ignore the entire WCIP/SCDOI approved plan as a whole. Ard cannot point to the Notice Endorsement, in isolation, and ignore the entire remaining statutory scheme in place, including this letter, the LSRP Brochure, and the Mandatory Endorsement. The Notice Endorsement plays but a small part, a minor step, in the approved plan by the SCDOI as set forth in SCDOI 0001 to 0040. The Notice Endorsement is just one step in the process, not the entire process itself, and it is not the entire solution to the issues presented in this case.

Ard agreed to be bound by the WCIP. The SCDOI adopted the LSRP statutory scheme as part of the WCIP and SCDOI determined that sufficient notice is provided to an assigned risk insured if the insured is provided with the SCDOI LSRP Notice Documents that Ard received. Here, based on the WCIP, the assigned risk insured Ard, a large dollar employer, and its producer (Ard's agent pursuant to the WCIP) received the SCDOI LSRP Notice Documents which, as a matter of law, provide notice to Ard of the LSRP. Moreover, the uncontroverted evidence in the Record proves that the SCDOI's LSRP Notice Documents "worked" – it is uncontroverted that Ard's producer knew of the LSRP program and told its insured that the LSRP applied to its assigned risk policy before Ard provided its LSRP deposit² to Travelers.

² Indeed, the only mechanism for a servicing carrier to require an additional deposit from an assigned risk insured is the LSRP plan. If there was no LSRP plan that was adopted by the SCDOI, Travelers would be unable to request an ILOC in accordance with the LSRP plan documents SCDOI 4, 6, 16, 23, 27 (Cite to Record on Appeal).

I. ARD'S ARGUMENTS ARE CONTRARY TO THE LAW.

Ard's attempt to focus exclusively on the Notice Endorsement, to the exclusion of the rest of SCDOI approved plan and the SCDOI LSRP Notice Documents, should fall on deaf ears.³ Here, based on the uncontroverted evidence in the Record, the LSRP notice provisions were satisfied where it is uncontroverted that Travelers sent and Ard received the SCDOI LSRP Notice Documents; further, and importantly, in this specific case, the SCDOI plan "worked" because these documents provided actual notice and knowledge to Ard and its producer, where Ard was fully aware and knew that the LSRP plan applied to its assigned risk policy before it issued an irrevocable letter of credit (ILOC) according to the SCDOI approved plan.⁴

Ard's arguments appear deceptively simple – because the Notice Endorsement does not affirmatively list South Carolina, it must necessarily follow that it specifically excludes the LSRP in South Carolina; therefore, Ard "wins." Ard asserts every other document/notice is either irrelevant or insufficient to put it on notice that the LSRP applies to its assigned risk policy. With no evidence in the Record, Ard further asserts that the servicing carrier could have somehow altered the Notice Endorsement (i.e., by adding South Carolina in the Notice Endorsement listing), but failed to do so. However, there is no evidence in the Record that the servicing carrier had or has the authority to alter the Notice Endorsement required by the SCDOI/NCCI (Affidavit of Travelers Representatives, Cite Record). Finally, Ard also asserts that the Mandatory Endorsement is meaningless as it only explained how the LSRP would be calculated if it applied to the assigned risk policy and the LSRP Brochure (which explains the LSRP in detail) is not an Endorsement and, therefore, cannot alter the policy. As such, according to Ard, the original Notice Endorsement

³ Ard's argument that the policy terms specifically stated that the LSRP did not apply to the assigned risk policy ignores the terms of the policy and the applicable law. Ard makes its arguments by simply cherry-picking a minute part of the SCDOI plan and ignoring the rest of the plan designed to give sufficient notice of the LSRP. Ard purposely attempts to misconstrue the first Endorsement, to the exclusion of the Mandatory Endorsement and LSRP Brochure which, combined together, provide sufficient notice to Ard as is required by the SCDOI. Ard's argument is especially ironic where, here, the SCDOI approved plan actually "worked" to provide notice to Ard before it issued an ILOC.

⁴ As such, this appeal does not involve an "innocent" employer who, out of nowhere, was charged an "extraordinary" premium where the employer had relied on the Notice Endorsement. Indeed, Ard admitted in its representative depositions that it did not review or rely on the Notice Endorsement (Depo. Excerpts of Ard and Brown in Travelers' Memorandum, Cite to Record on Appeal). To the contrary, this appeal involves a large dollar, sophisticated employer who received the required Notices and Endorsements pursuant to the SCDOI requirements, and who agreed to be bound by the WCIP terms (including the LSRP). Furthermore, this large dollar employer (and his producer/agent) had actual knowledge that the LSRP applied to his assigned risk policy before said employer issued an ILOC.

[which did not specifically list South Carolina] governs the day and it should not be required to pay the LSRP premium. As indicated previously, Ard's arguments appear plausible only IF this Court ignores the law (the WCIP and the entire LSRP plan set up by the SCDOI) and the uncontroverted facts in the Record in this case. Ard's "sleight of hand," red herring arguments are quickly exposed when the Court reviews SCDOI 0001-0040, which is the approved plan by the SCDOI concerning the LSRP.

A. THE SCDOI APPROVED PLAN

In reviewing the SCDOI adopted plan, the SCDOI provides for sufficient notice to an assigned risk insured where a servicing carrier provides the SCDOI LSRP Notice Documents [the Application, the Coverage Binder, the Notice Endorsement, the Mandatory Endorsement and the LSRP Brochure], which Travelers provided and which Ard received in this case. According to the SCDOI approved plan, SCDOI 00029 sets forth the notice to be provided to an assigned risk insured:

D. Notice to Assigned Risk Policyholders

All assigned risk policies shall be endorsed with policy Endorsement WC00 04 17 – Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this Endorsement to all assigned risk policies. **[First requirement: Notice Endorsement]**

Assigned risk policies meeting the eligibility threshold to qualify for LSRP, shall be endorsed with policy Endorsement WC 00 04 18. **[Second requirement: Mandatory Endorsement]**

Assigned risk carriers shall be required to indicate on all renewal quotations to risks with premium of \$150,000 or more that payment of the renewal deposit constitutes knowledge and acceptance of the possible applicability of the LSRP to the policy. The assigned risk carrier shall provide the employer with the full details of the LSRP. **[Third requirement: LSRP Brochure]**

The ACORD application for the assigned risk market will include the following language immediately above the signature of the employer:

By signing below I acknowledge that the Loss Sensitive Rating Plan has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement. [Fourth requirement: Application]

When the policy is bound, a notice shall be included which reads:

Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the Loss Sensitive Rating Plan in the event that your estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement. [Fifth requirement: Binder]

Once Travelers issued the SCDOI LSRP Notice Documents set forth above, pursuant to the law (the WCIP and the SCDOI approved plan), Travelers is entitled to charge the LSRP premium as the SCDOI has determined that Ard was provided with sufficient notice with such documents.⁵

B. ARD'S BRIEF ARGUMENTS

Ard's Brief arguments are set forth in three distinct sections. Ard's first argument is that the policy terms "cannot be unilaterally changed, amended or re-written." Ard fails to point out to the Court, however, that, by its very nature, the assigned risk policy explicitly sets forth that the premium will be governed by the WCIP manual of rules, rates, rating plans, which include the LSRP, and all of which are applicable to the policy from its inception. In relevant part, Ard's assigned risk policy sets forth:

PART FIVE – PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

Accordingly, Ard's argument that Travelers' policy terms "cannot be unilaterally changed, amended or rewritten" ignores the very language of the assigned risk policy itself which requires Travelers to charge premiums in accordance with the WCIP. Indeed, the LSRP is applicable to Ard's policy because the LSRP was adopted and became effective prior to the date the assigned risk insured policy was issued to it. It is not a matter "unilaterally changing, amending or rewriting" the policy terms as Ard would have the Court believe; rather, it is a matter of applying the policy terms in accordance with what the policy terms actually are; i.e., that the servicing carrier will charge premiums in accordance with the plan manual. Pursuant to Ard's application and policy terms themselves, Ard agreed to be bound by the WCIP and it agreed to pay for the premium charges which include the LSRP in South Carolina.

⁵ Here, the SCDOI LSRP Notice Documents were uncontrovertibly sent to and received by Ard and its producer.

Ard's related, but more specific, argument is that the policy may not be "changed or waived except by Endorsement issued by Appellant as part of this policy." Ard then focuses on a small part of a five-step process of providing an assigned risk insured notice and asserts that the Notice Endorsement itself must affirmatively exclude the LSRP so that the servicing carrier can no longer charge premium for LSRP unless the servicing carrier specifically lists South Carolina as an LSRP state in another Endorsement itself. Unfortunately for Ard, such is not the law in South Carolina or in this case. Again, Ard misrepresents the policy terms and the law to attempt to come to a forced conclusion.⁶ The WCIP and the SCDOI approved plan set forth the applicable law in this instance. Ard's argument that the Notice Endorsement itself must list South Carolina or a servicing carrier can never be allowed to charge LSRP premium is directly refuted and rejected by the SCDOI approved LSRP plan itself.⁷

In Section I.B. of its Brief, Ard asserts its second argument – that no remedy was available to change Travelers' "admitted exclusion" of LSRP. As set forth previously, such argument is directly refuted and contrary to the SCDOI approved plan which has the effect of law. Nowhere does the Notice Endorsement exclude the LSRP applicability to the assigned risk policy. In conjunction with its second erroneous argument, Ard argues that the LSRP Mandatory Endorsement and the LSRP Brochure do not amend, change or rewrite the LSRP Notification Endorsement; however, again, Ard misses the point of the Mandatory Endorsement and the LSRP Brochure. Contrary to Ard's argument, the Mandatory Endorsement and the LSRP Brochure [along with the other SCDOI LSRP Notice documents] provide specific notice of the LSRP's application in South Carolina to any reasonable person. Even more importantly, however, the SCDOI, pursuant to the SCDOI approved plan and the WCIP, have deemed the LSRP Mandatory Endorsement and the LSRP Brochure (and the other SCDOI LSRP Notice Documents) as the

⁶ The assigned risk policy is governed by laws that are different than a voluntary insurance policy. The Supreme Court has been very clear that the WCIP governs assigned risk policies and takes precedence over more general insurance common law. Ard ignores the entire SCDOI statutory scheme that sets up the LSRP and the SCDOI's decision that the SCDOI LSRP Notice Documents provide sufficient notice to an assigned risk insured that the LSRP applies to the assigned risk policy.

⁷ The Notice Endorsement itself merely sets forth that it does not apply to the policy; it in no way limits the Mandatory Endorsement which clearly applies to the assigned risk policy pursuant to its own express terms.

appropriate mechanisms for a servicing carrier to provide sufficient notice to an assigned risk insured. Pursuant to the SCDOI approved plan, a servicing carrier is not only allowed, but is required, to charge premium for LSRP once those documents are sent to the insured. Here, it is uncontroverted that Ard received the SCDOI LSRP Notice Documents including the Notice Endorsement, the Mandatory Endorsement, and the LSRP Brochure. Ard's producer received such documentation and understood that the LSRP applied to Ard's assigned risk policy. Pursuant to the SCDOI approved plan and the LSRP, the servicing carrier was not required to take any further action in order to properly charge premium for LSRP in accordance with the SCDOI approved plan.⁸

In Section II of its Brief (Ard's third argument), Ard asserts that "the courts must enforce insurance contracts according to their plain ordinary and popular meaning of their terms and cannot rewrite insurance contracts to suit one of the parties." Travelers certainly agrees with such proposition; however, Ard purposely misapplies it. Travelers would assert that the Court must enforce insurance contracts according to the law (which certainly includes the plain, ordinary and popular meaning of their terms as is required by law) and courts cannot rewrite insurance contracts to suit one of the parties. Unfortunately, the judge's Order below violates this principle as it rewrites the assigned risk contract to suit Ard's needs, not the needs of the assigned risk market, a market that Ard voluntarily agreed to join and voluntarily agreed to be bound by.⁹ Ard artfully attempts to create

⁸ Travelers does not acquiesce in Ard's strained argument that the Mandatory Endorsement or the LSRP Brochure do not provide notice that the LSRP applies in South Carolina. Any reasonable person who would read the Mandatory Endorsement, as well as the LSRP Brochure, would certainly understand, or at least be on notice, that the LSRP applies to the assigned risk policy in South Carolina. As set forth in the Georgetown Steel Co. decision cited in Travelers' Appellant's Brief, it is the assigned risk insured's responsibility to obtain a copy of and review the SCDOI approved plan if it is confused about what the LSRP is when it receives the SCDOI LSRP Notice Documents. Further, Ard's argument that the Mandatory Endorsement and the LSRP Brochure did not provide sufficient notice to Ard is largely irrelevant where (1) Ard agreed to be bound by the WCIP and (2) the SCDOI approved plan requires that an assigned risk insured be charged LSRP if the servicing carrier issues the SCDOI LSRP Notice documents to the assigned risk insured. As it is uncontroverted that Travelers, the servicing carrier, provided the SCDOI LSRP Notice Documents to Ard (and its producer admits that he received them and understood that the LSRP applied to Ard), the sufficiency of the notice provided by these documents *in the abstract* is simply irrelevant. Ard agreed to be bound by the WCIP and the WCIP requires LSRP to be charged if the assigned risk insured received the SCDOI LSRP Notice Documents. As Ard received such documents, LSRP is appropriate in this case.

⁹ Respectfully, courts are required to enforce the law, including the contract between the servicing carrier and the assigned risk insured which incorporates the WCIP. Ard agreed to be bound by the WCIP. The WCIP requires the premium for LSRP in South Carolina. The only requirement for it to charge the LSRP premium is for the servicing

an issue premised on the argument that the Notice Endorsement, in isolation, and to the exclusion of the Application Notice, Binder Coverage Notice, the Mandatory Endorsement, the LSRP Letter and Brochure and in violation of the law (the WCIP and SCDOI approved plan) somehow creates an ambiguity that binds the servicing carrier and forever limits it from charging LSRP, where the policy language and law say otherwise. Importantly, the “plain, ordinary and popular meaning” of the policy terms in this case specifically incorporate the WCIP, which Ard agreed to be bound by. The policy terms themselves set forth premium will be charged in accordance with the manuals (the WCIP):

PART FIVE – PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

Based on **Part 5** of the policy itself, Ard’s third argument necessarily fails.¹⁰

C. ARD’S ADDITIONAL FACT¹¹ AND ARGUMENT ERRORS

1. Ard’s false “extraordinary” premium charge argument

Ard consistently refers to the LSRP premium as “an extraordinary premium surcharge

carrier to provide the SCDOI LSRP Notice Documents as required by SCDOI approved plan. Uncontrovertedly, Travelers provided these documents to Ard; accordingly, Ard had actual and imputed knowledge that the LSRP applied. No further inquiry is required by the Court in order to enforce the WCIP and to allow the servicing carrier to charge the mandatory LSRP premium in this case.

¹⁰ In Section III of its Brief, Ard also graciously concurs with Travelers’ objection to the lower court’s pre-judgment interest calculation. Travelers further asserts, however, that the error in pre-judgment interest is merely one of a series of errors of law in the trial judge’s Order below. Indeed, the eight times the trial judge’s Order refers to the LSRP premium as “extraordinary” shows a bias against the SCDOI approved plan. In other words, the Order below is not based on the law the way it exists, but rather how the underlying judge felt the law should be.

¹¹ Ard’s purported “Statement of the Facts” fails to advise the Court of key evidence in the Record and misconstrues several important facts and the law. However, it is instructive for the Court based on the manner in which Ard attempts to present “facts” and, even more importantly, for the facts that Ard purposely omits. In a nutshell, Ard attempts to focus the Court on what it calls “the interpretation of contractual terms contained in two assigned workers’ compensation insurance policies” as the basis of this appeal; however, Ard fails to mention that the assigned risk policies are governed by the WCIP and the approved SCDOI plan for LSRP. Ard further fails to indicate that it agreed to be bound by the WCIP even before the assigned risk policy was issued to Ard. Ard argues that Travelers asked the lower court to “rewrite” the insurance policies by “disregarding time-honored insurance contract rules”; however, it is Ard that is asking the Court to ignore the law (WCIP) and to misinterpret the assigned risk insurance contracts by narrowly interpreting one Endorsement, in isolation and to the exclusion of the entire plan (as well as policy terms themselves). The law is the time-honored tradition that needs to be enforced and Ard’s purposely misconstruing of one part of the policy (the Notice Endorsement) in isolation does not negate the law or the policy terms themselves. Ard further argues that Travelers’ “effort to rewrite the two policies was rejected in lower court”; however, Travelers’ current appeal is an attempt to have the Court enforce the law and properly apply the assigned risk policy terms in accordance with their express terms and the law, not to rewrite the assigned risk policy as the lower court did.

requirement”; however, such characterization is refuted directly by the SCDOT approved plan.¹² As the SCDOI Plan states, the LSRP is a program which seeks to have large dollar employers pay their fair share of premiums in order to allow the entire assigned risk market to be viable. (Cite to SCDOI documents). Ad hoc judicial decisions which prevent servicing carriers from charging premium based on the exposure of these large dollar employers will only serve to weaken the entire assigned risk market and dramatically increase premium costs for all employers in the assigned risk policy market and the voluntary market as well.¹³ The LSRP is not an “extraordinary premium surcharge” as Ard asserts; rather, it is a necessary component of the assigned risk market required by the SCDOI to ensure the assigned risk market’s survival as an alternate workers’ compensation system for high risk employers such as Ard. High risk, large dollar employers, such as Ard, should bear the cost of their extraordinary exposure and should pay their fair share. Further, assigned risk insureds, such as Ard, agree to be bound by the WCIP on the “front end,” before an assigned risk policy is issued to it. Ard was free to obtain a cheaper policy in the voluntary market if it desired to do so/was able to do so; however, having voluntarily applied for an assigned risk policy, Ard cannot seriously complain that it is bound by the WCIP/SCDOI plan, where it expressly agreed to be bound by such plan before obtaining the benefits of its assigned risk policy.¹⁴

2. Ard’s false “conditional” authority and servicing carrier discretion arguments

In its “Facts,” Ard states that SCDOI “conditionally authorized appellant, and other similar insurers to add an LSRP premium surcharge to assigned risk insurance policies issued in South Carolina.” (Emphasis added). Further, Ard asserts that the servicing carrier was to “specifically include” within their policies an LSRP Notice Endorsement that would “ensure” that all South Carolina insureds would have notice LSRP could

¹² Ard also either forgets or ignores the fact that an assigned risk policy, by design, is more expensive than a workers’ compensation policy in the voluntary market.

¹³ Slanted judicial decisions in favor of big local employers risk the entire workers’ compensation market in South Carolina which will inevitably lead to premiums skyrocketing, businesses closing, and the state economy suffering. If South Carolina courts allow state court judges to let local, multi-million dollar employers skirt their responsibility to pay LSRP premium, South Carolina will likely face such a fate.

¹⁴ This is especially the case with Ard where Travelers paid hundreds of thousands of dollars in benefits to injured employees during the exact same policy period.

be applied. By these two sentences, Ard misrepresents the LSRP plan as set forth in SCDOI numbers 0001 - 0040. First, there is absolutely no evidence in the Record that the SCDOI conditionally authorized the servicing carrier to add LSRP; rather, the evidence in the Record is uncontroverted that the SCDOI requires LSRP to be applicable to assigned risk policies after November 1, 2003. This is a significant fact. Similarly, there is no evidence that a servicing carrier can vary the LSRP Endorsements that the SCDOI required in this case as Ard suggests. It is uncontroverted that Travelers provided the SCDOI required Endorsements to Ard.

Of particular importance to exposing Ard's false argument, the SCDOI approved plan's statement that the servicing carrier should "ensure" that South Carolina insureds be provided with notice of the LSRP is not a broad statement of law that is left up to the discretion of each individual servicing carrier; in stark contrast to Ard's claim, the LSRP and SCDOI approved plan documents specifically set forth that notice to the insured is "ensured" by the servicing carrier sending the required SCDOI LSRP Notice Documents, including the exact WC000417 Notice Endorsement the servicing carrier uncontrovertedly sent in this case. The SCDOI approved plan is very specific in stating that the LSRP Notice Documents ensure notice of the LSRP to an assigned risk insured.¹⁵ The SCDOI plan specifically sets forth what Travelers was required to do, and Travelers did exactly what the SCDOI requires in this case.

In error, and with no evidence in the Record, the trial judge *sua sponte* found as a fact that Travelers could have altered the Notice Endorsement somehow; however, there is absolutely no evidence in the Record that supports any such finding. To the contrary, the uncontroverted evidence in the Record is that the Notice Endorsement, along with the Mandatory Endorsement and LSRP Brochure, which Travelers sent to Ard and its producer, were required by the SCDOI and "ensured" notice to Ard in accordance with the SCDOI's plan. As a matter of law, the SCDOI LSRP Notice Documents provide the insured with sufficient notice and knowledge of the LSRP

¹⁵ The plan specifically requires the Notice Endorsement Travelers sent and Ard received in this case. As a matter of law, the SCDOI approved plan/Basic Manual that Ard refers to is a part of the overall SCDOI plan itself which specifically sets forth that notice is provided to an assigned risk insured by a servicing carrier providing the specific SCDOI LSRP Notice Documents Travelers provided to Ard in this case. There is absolutely no evidence in the Record that Travelers was required to provide any other notice (or, on the flip side, was allowed to provide any other notice) to Ard concerning the LSRP plan; Ard's suggestion otherwise is contrary to the approved plan.

applying to its assigned risk policy.¹⁶

Finally, as Ard asserts, the Basic Manual states "D. Notice to Assigned Risk Policy Holders... all assigned risk policies shall be endorsed with Policy Endorsement WC000417 - Assigned Risk Loss Sensitive Rating Plan (LSRP) notification in order to ensure that 'all possible qualifying risks are notified of the intent and details of the plan'"; however, again, Ard fails to advise the court that the WC000417 Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification Endorsement [SCDOI 00029 & 00036, cite to Record] is very specific and is the exact same Notification Endorsement that Ard now complains did not provide it sufficient notice. By providing the SCDOI/NCCI required Notice Endorsement, along with the other SCDOI LSRP Notice Documents, Travelers provided the required "notice to assigned risk policy holders" which, as a matter of law, "ensured" Ard was notified of the intent and details of the LSRP.¹⁷

3. Ard's false "affirmative exclusion" argument

Based on Ard's purposeful misconstruing of the LSRP plan, Ard further asserts that Travelers' assigned risk policy

"failed to include Respondent South Carolina insurance policy as being subject to LSRP application. Conversely stated, the clear and unequivocal language in the policy Appellant issued to Respondent affirmatively excluded LSRP from being applicable to the South Carolina insurance policy...."

Again, this bold assertion is a clear error of law in light of the law and the facts in this case. The Notice Endorsement does not "affirmatively exclude" the LSRP as Ard asserts. Travelers was required to provide the exact Notice Endorsement that it provided as set forth in the SCDOI document 00036, which is only one step in a multi-step process of providing Ard notice of the LSRP application with the SCDOI LSRP Notice Documents. Whereas the Notice Endorsement required by the SCDOI approved plan/NCCI does not list South Carolina, the SCDOI has

¹⁶ Even more than an academic exercise, however, the uncontroverted evidence in this case is that Ard knew that the LSRP applied to its policy before it issued the ILOC; however, after having this knowledge and issuing an ILOC in accordance with the LSRP plan, Ard then flips and now attempts to argue Travelers is estopped by the singular Notice Endorsement in isolation – by itself – without reference to the entire WCIP and SCDOI approved plan. The SCDOI's approved plan which Ard references, in and of itself, provides specific notice to Ard that the LSRP applies in South Carolina. "Ignorance of the law is no excuse," and, just as the appellant in Georgetown Steel Co., *supra*, Ard had knowledge of the Basic Manual, the WCIP, and the SCDOI approved plan requiring LSRP in South Carolina.

¹⁷ As set forth in the SCDOI approved plan, after a preliminary audit's premium threshold indicated that Ard was a large dollar employer which was subject to the LSRP, Travelers issued a Mandatory Endorsement and LSRP Brochure explaining the LSRP to Ard pursuant to the SCDOI approved plan.

determined that the Application Notice, Coverage Binder Notice, the Mandatory Endorsement, and the LSRP Brochure do provide notice of the LSRP. The SCDOI has determined that together these SCDOI LSRP Notice Documents provide sufficient notice to Ard, and any objective reading of these documents support SCDOI's decision to provide notice in such a manner.¹⁸ Therefore, focusing on the Notice Endorsement in isolation is an error of law, especially where Ard's logic is premised upon/assumes that the Notice Endorsement *affirmatively excludes* LSRP in South Carolina, where the Notice Endorsement verbiage itself and the SCDOI plan sets forth otherwise.¹⁹

4. The false "change document" argument

In Footnote 1 on page 10 of its Brief, Ard purposefully misconstrues the "change document" issued by Travelers on July 27, 2004. The actual date on the document (July 27, 2004) is key to understanding the document's accurate meaning. The "change document" is a receipt of the ILOC of \$52,116. It simply notes that such amount will be returned as "return premium" assuming that there are no additional claims during the policy period which trigger the LSRP valuations. Such return premium, however, is premised upon no additional LSRP premium being due during the LSRP valuation periods which occur after the policy is concluded.²⁰ This document is in accordance with and pursuant to the SCDOI approved plan.²¹

5. Ard's false policy language arguments

¹⁸ Indeed, SCDOI's plan is validated where Ard's producer admits he understood the LSRP applied to Ard's assigned risk policy after he received the SCDOI LSRP Notice Documents.

¹⁹ In other words, by focusing only on the Notice Endorsement itself and ignoring the entire plan, Ard would have this Court ignore the law and the plan in its entirety and hold that the Notice Endorsement, in and of itself, excludes the possibility of a servicing carrier charging LSRP premium. Such absurd result, however, would be contrary to the law, the express policy terms, and the public policy of having large dollar employers pay their fair share to support the assigned risk market that they benefit from.

²⁰ Thus, the change document reflects the ILOC premium deposit to be returned to Ard subject to the LSRP valuations. Here, given Ard's multiple claims filed during the policy period, once LSRP valuations were calculated based on Ard's actual claim history during the policy period, Ard was not owed any refund; rather, Ard owed Travelers the \$52,116 (collateralized by the ILOC), as well as an additional \$122,948.

²¹ Despite Ard's argument to the contrary, there is no requirement or need for the servicing carrier to "mention in this document" the application of LSRP as Ard has already been provided sufficient notice pursuant to the SCDOI plan required notices. Travelers' July 2004 (Letter of Credit for \$52,116) documentation is not evidence Ard was owed a "return premium," but it is merely a confirmation/receipt that the ILOC was received by Travelers on or about July 27, 2004. Indeed, the Travelers documentation was issued months before the first valuation of LSRP was triggered, well before the expiration of the policy, and merely reflects what premium would be returned if the LSRP valuation were zero in the future. As the LSRP valuations are not determined until after the policy periods end, the judge's finding that the July 27th Travelers document promises a return of the ILOC as a "return premium," before any LSRP valuation was completed, is erroneous, violates the SCDOI approved plan, and is not supported by any evidence in the Record.

On page 9, Argument I of its Brief, Ard asserts "the die was cast (by Appellant) and this Court cannot rewrite (Appellant's) policy" as support for the trial judge's Order finding that the LSRP Notification Endorsement required the judge to find that Travelers cannot charge LSRP premium pursuant to the SCDOI plan. However, the exact opposite is true as "the die was cast" by Ard when it agreed to be bound by the WCIP and the court cannot rewrite the assigned risk policy to ignore the law or the terms of the policy that expressly incorporate the law. Ard asserts Travelers argues that it is somehow "immune from the consequences of its own policy language ... which specifically notified and informed Respondent that LSRP did not apply to Respondent." Ard further asserts "Travelers arrogantly²² continues to argue that the LSRP Endorsement was, 'as a matter of law,' 'amended,' 'supplanted,' or 'revised' by other documents not included in the two policies issued to" Ard.²³ Again, here, Ard intentionally misconstrues the policy terms, the SCDOI LSRP Notice Documents and, most importantly, the WCIP/SCDOI approved plan. Ard's argument rests on a supposition that the law does not apply to it but, in contrast, the Notice Endorsement, in isolation, binds the servicing carrier not to charge LSRP premium, despite the policy terms themselves, the Notice Endorsement's express verbiage, and the entire SCDOI approved plan which state otherwise.

Ard further asserts that Travelers' argument is that the LSRP Mandatory Endorsement and the LSRP Brochure "somehow individually or combined to rewrite the unambiguous language in the LSRP Notice Endorsement"; however, again, Ard purposely misstates Travelers' position. Pursuant to the WCIP/SCDOI approved plan and the unambiguous language of the policy terms, Travelers is required to charge LSRP premium. As stated previously, the Notice Endorsement does not exclude the LSRP. **Part 5** requires and incorporates LSRP charges in accordance with the plan. Further, the approved plan itself requires the Mandatory Endorsement

²² Travelers' argument is not "arrogant"; to the contrary, Ard's argument is "arrogant" in light of the fact that it requests this Court to ignore the law based on a strained interpretation of the Notice Endorsement which is just one part of a multi-faceted plan which provides sufficient notice to Ard.

²³ On page 10 of its Brief, Ard appears to suggest that the Mandatory Endorsement was "not included in the policies"; however, on page 17 and 21 of its Brief, Ard admits that the Mandatory Endorsement was provided in its assigned risk policy and, further, that it received the LSRP Brochure.

and LSRP Brochure to be issued via a rewritten LSRP policy once a premium threshold is met. Travelers is not arguing to amend ambiguous language as Ard asserts; rather, Travelers is asking the Court to enforce the unambiguous language of the policy and the express provisions of the SCDOI approved plan.

On page 12, Argument I.A. of its Brief, Ard asserts that the terms of the assigned risk policy may not be changed or waived except by Endorsement and Ard further states that WC000000(A) sets forth that "the only contractual terms or agreements between the contracting parties are those terms set forth, included and contained within the four corners of this contract." Also, in the general section of the policy, Ard states that "the only agreements relating to this insurance are stated in this policy. The terms of the policy may not be changed or waived except by Endorsement issued by us to be part of this policy." Ard focuses on these provisions, again in isolation, to attempt to assert that the Notice Endorsement provision cannot be altered or the policy cannot require LSRP premium unless it somehow includes another Notice Endorsement that specifically lists South Carolina; unfortunately for Ard, it is wrong on both counts as, once again, Ard ignores the WCIP and the express policy terms set forth in **Part 5** of the policy.²⁴ As such, in citing the General Section A as supporting its contrived argument, Ard ignores that the very policy terms themselves allow the servicing carrier to charge premium in accordance with the WCIP "manuals of rules" which incorporates the LSRP. As such, the policy terms themselves incorporate the LSRP program set forth by the SCDOI approved plan; thus, Ard's red herring argument is easily dispelled.²⁵

²⁴ It is also important to note that this argument was not made to the lower court or ruled upon by the lower court, but has been made for the first time by Ard on appeal. Importantly, Ard fails to inform the Court that **Part 5** of the policy specifically and in unambiguous terms requires Ard to be responsible for premium based on the manuals/plan, which in South Carolina include the LSRP. In addition to the express terms of the contract, Ard is also bound by the law which is the WCIP and the SCDOI approved plan. Accordingly, the SCDOI's implementation of the LSRP program for assigned risk policies in South Carolina requires, as a matter of law, that LSRP applies to Ard's policy and Ard's reference to the General Section A, which ignores the "premium" **Part 5** section and the SCDOI approved plan, does not alter this result.

²⁵ Throughout its Brief, Ard artfully dances around and ignores the obvious ... the SCDOI approved plan binds Ard and Travelers is entitled to the premium it seeks. In South Carolina, an assigned risk policy of insurance, like all policies of insurance, incorporates South Carolina law. The assigned risk policy incorporates the WCIP. The specific provisions of the WCIP/the assigned risk plan, and the SCDOI approved plan govern the assigned risk policy.

Ard continues to ignore that (1) South Carolina law is incorporated into the policy as a matter of law, and (2) the policy terms themselves require the servicing carrier to charge for premiums in accordance with the manual and plans, which include the LSRP. Thus, Ard's argument that the policy terms themselves exclude the LSRP is refuted in light of **Part 5** of the policy which specifically requires the servicing carrier to charge premium in accordance with the WCIP Plan which includes the LSRP. As **Part 5** incorporates the LSRP into the policy, Travelers is not requesting any "change" to the terms of the policy as the LSRP was incorporated into the assigned risk policy from the inception of Ard's assigned risk policy.²⁶

6. Ard's false "novel lynchpin proposition" argument

Ard argues that Travelers' "lynchpin proposition" is that the LSRP Notification Endorsement "exclusion of LSRP application" was somehow "by operation of law" "changed," "amended/supplanted," and/or "revised and amended" by the Mandatory Endorsement. Ard's mischaracterization is silly. As stated previously, the Notice Endorsement does not "exclude" the LSRP application. Further, the LSRP is applicable to the assigned risk policy as a matter of law pursuant to the SCDOI approved plan set forth in pages SCDOI 0001-00040. The SCDOI plan provides for SCDOI LSRP Notice Documents in order to provide sufficient notice to an assigned risk insured.²⁷ In other words, it is not, as Ard would assert, that the LSRP magically comes into existence after the Mandatory Endorsement and LSRP Brochure are sent; rather, the LSRP is applicable to Ard as a matter of law from the inception of the policy and, according to the SCDOI approved plan, Travelers is only required to send the SCDOI LSRP Notice Documents in order to be able to charge the LSRP premium mandated by the WCIP. It is the SCDOI approved plan itself reflected in SCDOI 0001-00040 which sets forth the statutory scheme which the SCDOI determined provides sufficient notice to make the LSRP applicable to

Accordingly, Ard attempts to avoid the law by purposely misconstruing parts of the insurance policy terms, to the exclusion of others, is unavailing.

²⁶ In addition, although the law itself is sufficient notice to Ard that the LSRP applies, the SCDOI approved plan sets forth that sufficient notice is provided to the insured as a matter of law if the servicing carrier sends the SCDOI LSRP Notice Documents in accordance with the SCDOI plan. Because Travelers sent those documents, which is uncontroverted, Ard had sufficient notice as a matter of law and there is no defense to Travelers seeking the premium that it now seeks pursuant to the LSRP in this case.

²⁷ It is uncontroverted that Travelers provided these documents to Ard and its producer. Once these documents were provided to the producer and Ard, the SCDOI Plan itself requires Travelers to charge LSRP premium.

Ard's policy, despite the lack of listing South Carolina in the initial Notice Endorsement. The SCDOI plan itself states the Mandatory Endorsement and LSRP Brochure, along with the other SCDOI LSRP Notice Documents, provide sufficient notice of the LSRP to Ard.²⁸ Contrary to Ard's argument, it is Ard's "novel lynch pin proposition" that it is not bound by the law, especially when it agreed to be bound by the law, which is (1) contrary to common sense; (2) violates hardened South Carolina rules regarding insurance contracts which hold contracting parties to their contractual terms;²⁹ and (3) is specifically prohibited by Ard's agreement to be bound by the law/WCIP.

In Section I. B. of its Brief, Ard argues that Travelers "is forced to admit, because it cannot deny" that the LSRP notification does not specifically list South Carolina. Travelers has always admitted and continues to admit that the Notice Endorsement provision required by the SCDOI does not specifically list South Carolina. However, Ard goes a step further and argues that, because South Carolina is not listed in the Notice Endorsement itself, this means that the LSRP is affirmatively excluded and is "not applicable" to the assigned risk policy. Such argument is a non-sequitur and contrary to the law. The Notice Endorsement express verbiage supports no such assertion. Simply put, Ard's argument ignores the WCIP and the SCDOI approved plan. It is Ard's extraordinarily convoluted reasoning where Ard maintains it is somehow immune from the law and the clear and unambiguous terms of the policy (which says that premiums will be charged in accordance with the manuals) which underpins (and undermines) Ard's fallacious arguments. It is Ard that is requesting the Court to rewrite the terms of the LSRP program in South Carolina and to ignore the SCDOI approved plan altogether. It is Ard that is asking the Court to ignore the plain and unambiguous words of its assigned risk policy.³⁰

²⁸ It is certainly within the SCDOI's authority to develop such an approved plan in South Carolina.

²⁹ Here, the assigned risk policy terms themselves incorporate the law in **Part 5** of the policy which states that premium will be charged in accordance with plan manuals.

³⁰ Ard also asserts that Travelers is partaking in a "ham-handed effort to rewrite Appellant's own clear and unambiguous language used to promulgate contract terms," and it is "a desperate attempt by Travelers to avoid the consequences of its own terms contained in its own insurance contract." To the contrary, it is Ard's arguments that are a "ham-handed" effort to attempt to have this Court ignore the clear and unambiguous language in the contract itself (such as **Part 5**), as well as the law itself (the WCIP/SCDOI approved plan). Pellucidly, Ard's argument is a "desperate attempt" for Ard "to avoid the consequences" of the insurance contract terms it agreed

Ard continues to assert that Travelers' "novel proposition" would require this Court to rewrite the insurance contract terms so that they have the exact opposite meaning from the existing plain, clear, and unambiguous words used in the policy; however, in actuality, Ard is peddling the novel proposition that it is not bound by the law or that applying the law somehow "rewrites" the insurance terms where the plain meaning of the terms themselves allow Travelers to charge the premium in accordance with plan manuals, which include the LSRP.³¹

7. Ard's false Mandatory Endorsement argument

In Section B.1 of its Brief, Ard argues that the Mandatory Endorsement did not amend, change or rewrite the LSRP Notification Endorsement. In making its argument, Ard again ignores the SCDOI approved plan pages 00017, 18, 23, 29, 33, 36 and 37 which set forth that the Notice Endorsement, Mandatory Endorsement and the LSRP Brochure provide sufficient notice to Ard. Specifically, SCDOI 00029 sets forth the required "notice to assigned risk policyholders," (i.e., the SCDOI LSRP Notice Documents) which is the exact notice Ard received.³²

Ard also argues that the Mandatory Endorsement only applies if the Notice Endorsement specifically lists South Carolina, and it does not indicate that the LSRP is applicable in South Carolina.³³ Again, such argument is contrived because the LSRP is applicable to the assigned risk

to and the law. Further, Travelers' efforts are not a "ham-handed" attempt to rewrite the policy, but rather it is Travelers' effort to require Ard to fulfill the obligations it agreed to when it agreed to be bound by the WCIP. Travelers respectfully asks this Court to enforce the law. If the courts look to the law (the WCIP and the SCDOI approved plan), then it is self-evident that Ard's arguments are based on cherry-picked, purposeful misinterpretations of the Notice Endorsement and general policy language, to the exclusion of the specifics of the entire SCDOI plan, as well as the specific policy terms. Courts are required to enforce the law and Ard is asking the Court to ignore the law.

³¹ Travelers agrees that the courts cannot rewrite insurance policies to suit the pleasure of one of the contracting parties; indeed, in this case, the underlying trial Order rewrites the assigned risk policy to suit the pleasure of Ard by ignoring the law and the express terms of the policy.

³² Also, Ard points to the lower court's Order that the Mandatory Endorsement "did not negate the clear and unequivocal language contained in the LSRP notification Endorsement." However, the lower court's finding is an error of law because it ignores the WCIP/SCDOI approved plan. Ard continues to argue that the LSRP Notice Endorsement "expressly negated" the application of LSRP to the policies; however, Ard's argument is contrary to the WCIP/SCDOI approved plan. Further, the Notice Endorsement is self-limiting and does not apply to the policy – it does not and cannot affirmatively exclude the LSRP. In short, just because the Notice Endorsement does not specifically list South Carolina, it does not automatically mean that the entire SCDOI plan is rendered irrelevant, especially where the Plan itself [SCDOI 0017, 18 & 29] sets forth that the Notice Endorsement, along with the Mandatory Endorsement and the LSRP Brochure, provide sufficient notice to Ard pursuant to the Plan. Therefore, cherry-picking the Notice Endorsement in isolation and ignoring the rest of the SCDOI plan is not supportive of Ard's arguments.

³³ Indeed, Ard's argument makes little sense. If South Carolina was listed in the Notice Endorsement, then there would be no need for the Mandatory Endorsement or the LSRP Brochure to begin with. The SCDOI chose a statutory scheme which provides notice to an insured by the Mandatory Endorsement and LSRP Brochure supplementing the Notice Endorsement when a premium threshold is met. Reasonable people may differ about whether or not the

policy in South Carolina as of November 1, 2003 as a matter of law pursuant to the WCIP and SCDOI approved plan.³⁴ The SCDOI approved plan only requires that Travelers provide the insured with the Mandatory Endorsement [and the other SCDOI LSRP Notice Documents] which Ard admits it received. Initially, Ard admits the Mandatory LSRP Endorsement states “this Endorsement applies where the LSRP has been approved,” but Ard then asserts “nowhere in the Endorsement does it specifically state LSRP was ever approved in the State of South Carolina.” Again, Ard places “the cart before the horse.” What Ard fails to acknowledge is that the servicing carrier is not required to specifically list South Carolina in any Endorsement in order to advise Ard that the LSRP was approved in the state of South Carolina because **THAT IS THE LAW IN SOUTH CAROLINA**. As the LSRP applies in South Carolina, by its express terms, the Mandatory Endorsement applies to Ard’s policy. Further, it is axiomatic that the WCIP is the law and ignorance of the law is no excuse. Similar to the appellant in Georgetown Steel, Ard could have requested clarification from its producer or obtained and reviewed the actual SCDOI approved plan which is set forth in the Record in SCDOI 0001 - 00040.³⁵

It is simply incredible that Ard attempts to argue that the Mandatory Endorsement, along with the March 2004 letter and the LSRP Brochure, are somehow confusing. No reasonable person would be confused by such Endorsement, LSRP Brochure, or letter. What is uncontroverted, however, is that Ard’s producer was not confused by the Mandatory Endorsement and the LSRP Brochure as the producer himself, the agent of Ard, knew that the LSRP applied to the assigned risk policy before the ILOC was issued by Ard to Travelers. This notice is imputed to

SCDOI approved plan method of notice is the “best” method of providing notice, but it is axiomatic that the SCDOI has the discretion and the right to adopt the plan in accordance with what it believes is appropriate.

³⁴ By its own terms, the Notice Endorsement is self-limiting and does not apply to the policy. The Notice Endorsement does not and cannot affirmatively exclude anything. Per the plan, once Ard’s estimated premium exceeded the LSRP threshold, the policy was re-written to be an LSRP policy issued with the Mandatory Endorsement which supplants the Notice Endorsement and, along with the LSRP Brochure and accompanying Letter, specifically advises an insured of the LSRP applicability where it specifically states “this Endorsement applies where the LSRP has been approved.” As the LSRP had been approved in South Carolina prior to when the assigned risk policy was issued, the Mandatory Endorsement provides specific notice of the LSRP to Ard.

³⁵ Ard, like any reasonable person/entity, could have determined that the LSRP applies in South Carolina if it was confused by the Mandatory Endorsement provision or the LSRP Brochure.

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Ard as a matter of law.³⁶ Accordingly, the argument *in the abstract* that the Mandatory Endorsement does not provide notice that the LSRP applies in South Carolina is contrary to the facts in this case where Ard's producer testified under oath to the exact opposite.³⁷

8. Ard's false subjective beliefs and LSRP Brochure arguments

In Section B. 2. of its Brief, Ard essentially asserts that the LSRP Brochure did not "amend, change or rewrite" the LSRP Notification Endorsement because "Respondent did not believe LSRP applied to the policies." However, Ard's statement that it did not *subjectively* believe the LSRP applied to its policies is (1) irrelevant, and (2) is directly refuted by its producer's admission that Ard and its producer had actual knowledge of the LSRP's applicability to the assigned risk policy before Ard issued the ILOC to Travelers. Ard further argues that the LSRP Brochure did not specifically advise it of the LSRP's applicability in South Carolina; again, Ard's argument is meritless as any objective reading of the LSRP Brochure would put any reasonable person on notice that LSRP applies in South Carolina; moreover, to the extent that the LSRP Brochure does not do so, Ard is presumed to know the law which is incorporated into the assigned risk policy.

Ard's safety director Brown's generic Affidavit (cited on page 23 of Respondent's Brief) setting forth his *subjective* belief that the LSRP did not apply to Ard's assigned risk policy is simply irrelevant. Mr. Brown's "belief" after "carefully" reviewing the policy during the course of this litigation is irrelevant and does not refute Ard's sworn admissions that it did not rely on the Notice Endorsement or that its producer explained the LSRP to Ard prior to its issuing the ILOC to Travelers. [Cite to Record]. Once again, Ard employs "sleight of hand" arguments, submitting an Affidavit which purports to create the impression that Ard relied on the Notice Endorsement, or was unaware of the LSRP applicability to the assigned risk policy based on the Notice

³⁶ Indeed, Ard does not even discuss this dispositive fact in its Brief/Arguments. Ard argues that Travelers did not sufficiently advise it of what, as a matter of law, it already knew! Ard's argument collapses under the weight of its own absurdity.

³⁷ As such, the Mandatory Endorsement, which specifically sets forth that "the Endorsement applies where the LSRP has been approved," is notice to Ard that the LSRP has been approved in South Carolina. Because the LSRP was approved in South Carolina on November 1, 2003 prior to the issuance of Ard's assigned risk policy, pursuant to the Mandatory Endorsement itself, the Mandatory Endorsement provides sufficient notice to Ard that the LSRP applies to its assigned risk policy by any objective and reasonable reading.

Endorsement or LSRP Brochure, when such innuendo is directly refuted by Mr. Ard (Ard President), Mr. Brown (Ard Safety Director), and its own producer's sworn testimony.³⁸

Finally, on page 24 of its Brief, Ard argues that the LSRP booklet stated that the LSRP was not yet implemented in South Carolina in the provision marked "Implementation" (where the brochure states "we have proposed that in your state, the LSRP be implemented six months from the effective of regulatory approval.") However, this section does not fail to provide notice of the LSRP to Ard because, once again, Ard could easily have determined the date of approval and implementation of the LSRP in South Carolina. As set forth in SCDOI 0001, the LSRP was again approved on May 1, 2003 and became effective on November 1, 2003, six months later. Approximately one week later, Ard's assigned risk policy was issued. As the date of regulatory approval and implementation were available to Ard, the "implementation" paragraph in the brochure does not excuse Ard's failure to comply with the law. As the date of LSRP regulatory approval was May 1, 2003, and Ard could have easily determined such information by reviewing the SCDOI approved plan, Ard is bound by the November 1, 2003 implementation date.³⁹

9. Ard's request to ignore the law

In Section B. II. of its Brief, Ard appears to argue that the court should not apply the law when interpreting insurance contracts.⁴⁰ Ard, by sticking its head in the sand and ignoring the law and **Part 5** of the policy, continues to assert that Travelers is "boldly" attempting to avoid its own insurance policy provisions. In contrast, Travelers merely seeks to apply the law and the contract pursuant to its express terms. As set forth previously, the assigned risk policy provisions themselves require Travelers to charge premium in accordance with the LSRP (i.e., **Part 5** of the

³⁸ Ard safety director Brown's Affidavit indicates that his current beliefs are based on having "carefully" reviewed the policies and appear to assert what Ard's legal position is in this case. His Affidavit, however, is in stark contrast to the Ard President's, his own and their producer's testimony where Ard readily admitted under oath that they had not reviewed or relied upon the Notice Endorsement; thus, Ard's key factual assertion which underpins their entire argument is refuted by Ard's own sworn testimony.

³⁹ Ard further asserts that the LSRP Brochure is not an Endorsement and therefore cannot bind Ard; however, such argument is contrary to the SCDOI plan and the law applicable in this case.

⁴⁰ Ard slants its argument by stating, "plainly put, Appellant's bold request to rewrite the policies issued to Respondent is the only hope Appellant has to overcome the consequences of its own insurance policy provisions. However, doing this would defile, distort and ignore centuries of contract rules of law, which would create disorder, disruption and chaos."

policy) and, moreover, the WCIP/SCDOI approved Plan requires the same. Regrettably, it is Ard who seeks to “defile, distort and ignore centuries of contract rules of law, which would create disorder, disruption and chaos.”⁴¹ This Court should deny Ard’s request to invite chaos in South Carolina workers’ compensation markets and, instead, require Ard to comply with (1) the established and controlling rules of insurance contract law, (2) the law (i.e., the WCIP and SCDOI approved plan), and (3) to keep its promise to be bound by the WCIP. Under South Carolina, both the insurer and the insured, as parties to the insurance contract are bound by the law and the clear terms of the insurance policies’ unequivocal provisions. As set forth in the WCIP, the SCDOI approved plan and **Part 5** of the policy, Ard is obligated to pay premium in accordance with NCCI’s manuals and the WCIP, which includes the LSRP premium in this case.⁴²

10. Ard’s false Georgetown Steel arguments

As set forth in Travelers’ Brief, the Georgetown Steel decision further supports Travelers’ position. Ard attempts to distinguish Georgetown Steel by citing that the Notice Endorsements’ NCCI/SCDOI required language at the time was different. However, although the SCDOI/NCCI Notice Endorsement language itself is different, the holding of Georgetown Steel and the reasoning supporting its holding negates Ard’s present arguments. Indeed, the Georgetown Steel court held that the LSRP applied to the assigned risk policy because the servicing carrier provided the NCCI required Endorsements to the assigned risk insured. It matters not that the verbiage of the Endorsements that was required by SCDOI in Georgetown Steel is different than the verbiage that SCDOI requires in this present case as the SCDOI has determined that the SCDOI LSRP Notice Documents that Travelers provided to Ard are, as a matter of law, sufficient to provide

⁴¹ In so doing, Ard advocates that the SCDOI plan be torn asunder and for premiums rightly owed by large dollar employers to go uncollected and that their large exposure risk should be borne by the entire voluntary and assigned risk workers’ compensation market throughout South Carolina. If such is the case, premiums across the board in both assigned risk markets and voluntary markets in South Carolina will continue to spiral and sky-rocket, affecting every other employer throughout this State.

⁴² Interestingly, in citing “legions of cases” applying “long standing rules of law” for insurance contracts on page 26 of its Brief, Ard correctly cites the law dispositive in this appeal: “an insurance contract is read as a whole document so that one may not, by pointing out a single sentence or clause, create an ambiguity.” Ard violates this principle by pointing to a single part of the insurance contract and a single part of the WCIP to falsely attempt to create a forced ambiguity where no ambiguity exists (where the assigned risk policy **Part 5** and the SCDOI approved plan should be read and implemented in their entirety according to the SCDOI plan).

notice of the LSRP. Moreover, a review of the SCDOI LSRP documents, in addition to the March 1, 2004 letter from Travelers to Ard and the LSRP Brochure, clearly provide notice to Ard that the LSRP applies in South Carolina in laymen's terms. Ard's attempt to misconstrue Georgetown Steel given the specific Endorsement language required at that time is unavailing. As Georgetown Steel states ... "An insured could examine the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan."⁴³ Ard cannot escape Georgetown Steel's holding, which is equally applicable to Ard, if not more so, where Ard's producer admitted he knew that the Endorsements and LSRP Brochure (of which Ard now complains) notified him and, therefore, Ard of the LSRP's applicability in South Carolina.

11. Ard's false "conclusion" arguments

In its conclusion, Ard asserts that an insurer operating in South Carolina is "bound to follow the mandates of SCDOI." Travelers agrees with such assertion and further asserts that Ard is also bound to follow such mandates. The SCDOI specifically requires Travelers to provide notification with the SCDOI LSRP Notice Documents to Ard. Travelers provided these exact documents to Ard and, therefore, Travelers is entitled to the LSRP premium it seeks. With no evidence in the Record, Ard asserts that Travelers was mandated to provide additional notice somehow and that Travelers somehow failed to provide "specific notification" which is of "preeminent importance" to the SCDOI. Ard has not set forth any evidence as to what additional notification the SCDOI required. Ard also argues that the LSRP Notice Endorsement "clearly and unequivocally excluded" the LSRP, where Ard ignores the SCDOI approved plan which refutes such argument. Ard also focuses on the lower court's erroneous finding which stated "Travelers could easily have clearly and unequivocally applied LSRP provisions ... but failed to include, and therefore clearly excluded, LSRP application" to Ard's policy. Such finding is erroneous, however, because there is no evidence in the Record that

⁴³ Similar to this case, Georgetown Steel also holds that "The standard LSRP Endorsements drafted and copyrighted by SCDOI/NCCI ... specifically and unambiguously notifies the policy holder that the LSRP has been adopted in South Carolina." Here, similarly, the SCDOI/NCCI required SCDOI LSRP Notice Documents unquestionably provided specific notice to Ard and put Ard on notice that the LSRP applies to its assigned risk policy in South Carolina.

Travelers could in any way alter the SCDOI/NCCI Endorsements and LSRP Brochure which Ard admits it received in this case.

Although Ard argues that it would be "contrary to establish rules of law" for the court to rewrite the policies in question, it is the underlying trial Order below which in fact rewrites the policies contrary to the WCIP, which is the law in South Carolina. If the courts invade this sacred providence and permit Ard to disregard the law and the plain language of the policy, the assigned risk market would be torn asunder and parties to insurance contracts would no longer be able to rely on the WCIP, the law, or the plain, specific, clear and unequivocal language as set forth in the SCDOI approved plan and the policy itself. Instead, contracting parties would be required to go beyond the law and beyond the four corners of the contract and require servicing carriers to do more than the WCIP requires in order to provide notice of the LSRP to Ard, even though the SCDOI statutory scheme for providing notice actually "worked" and provided notice to Ard in this case.⁴⁴

Finally, Ard argues that Travelers "points to South Carolina law requiring an insured party to read and be bound by the terms of their insurance policies" and "clearly this principle of law is a sword with two edges. Insurers who promulgate the terms of their insurance policies likewise have a duty to read their own policies and are also bound by their terms." Travelers agrees that it is bound by both the WCIP and the policy; however, it is Ard who attempts to "slice and dice" the law and the policy in a manner that is contrary to the law and the express terms of the policy itself in order to come to an absurd result. Protecting a local, large dollar employer seems to be a motivating factor in the underlying opinion. However, the trial Order below attempts to "gut" the WCIP in South Carolina as it seeks to protect this local, large dollar employer from paying the premium it should pay in accordance with the law and the assigned risk policy terms themselves. The underlying decision is a knife at the "heart and soul" of the LSRP program of the WCIP

⁴⁴ Such a result would not only be ludicrous and nonsensical, but destructive and chaotic to the assigned risk market and voluntary workers compensation market in South Carolina. When Ard applied for and received an assigned risk policy, it agreed to be bound by the terms of the WCIP. Ard should not be allowed to skirt its agreement after having benefitted from it.

which is the law in South Carolina. The South Carolina courts have repeatedly held that the WCIP is the law in prior decisions (from the Supreme Court's 2006 Avant decision to the more recent Court of Appeals' Burris decision) and the underlying Order skirts these binding precedents in order to help a local, large dollar employer. The law should not bend or be broken for such parochial concerns. Travelers requests that this Court refuse to condone the errors in the trial court's Order and apply the WCIP, as well as the assigned risk policy terms themselves, in an even-handed and balanced manner as is required by the law.

II. ARD'S ARGUMENTS ARE CONTRARY TO THE FACTS IN THE RECORD.

This case does not represent the factual scenario which Ard is trying to present. Ard representatives admitted that they did not rely on the Notice Endorsement. (Depo. excerpts of Ard and Brown, Cite to Record on Appeal). Ard's producer admitted that he knew the LSRP plan applied to Ard's assigned risk policy and he told Ard representatives (the safety director) that the LSRP applied before Ard issued its ILOC to Travelers. Ard did not rely on the Notice Endorsement and was later shocked to find out that LSRP applied to its assigned risk policy. The facts in the Record, which are uncontroverted, set forth a much more calculating argument by Ard where it received the required SCDOI LSRP Notice Documents advising it of the LSRP, it voluntarily moved forward by issuing an ILOC after its producer explained to Ard representatives that the LSRP applied and, only after the LSRP bill was due (based on the actual losses of Ard during the policy period), did Ard begin with its present argument that it should not pay what it had agreed to pay pursuant to the WCIP.

This appeal does not involve an esoteric philosophical debate about whether or not the SCDOI LSRP Notice Documents provide sufficient notice to Ard *in the abstract*; rather, here, the SCDOI approved plan to provide sufficient notice of the LSRP to Ard actually "worked." Here, Ard's producer/agent received these documents, understood the LSRP to apply to Ard's assigned risk policy before Ard issued an ILOC, and then explained to Ard representatives that the LSRP applied to its assigned risk policy before Ard issued an ILOC pursuant to the LSRP. Any failure of Ard to understand the specifics of the LSRP program, if such failure actually existed, would lie

with Ard's own producer's negligence in failing to explain to Ard the full parameters of the LSRP, not with the servicing carrier. Ard's producer admits that he knew the LSRP applied and advised Ard that the LSRP applied before an ILOC was issued to Travelers by Ard. As such, Ard had actual and imputed knowledge that the LSRP applied to its assigned risk policy before it issued the ILOC. Accordingly, Ard's arguments rest on its hope that this Court will ignore the law, as well as these uncontroverted facts in the Record.⁴⁵

III. ARD FAILS TO ADDRESS ITS FAILURE TO APPEAL TRAVELERS' PREMIUM DECISION TO NCCI AND THE SCDOI AS REQUIRED BY WCIP RULE 4.

Travelers incorporates its prior arguments set forth in its Appellant brief. Ard's failure to administratively appeal these issues prohibit it from asserting its current arguments to the Court. The trial court's refusal to rule on such dispositive issues of fact and law concerning the administrative appeal mechanism via Travelers Request for Reconsideration Nos. 21 & 22 are fatal to Ard's appeal. Ard cannot sidestep the entire administrative mechanism in place which was the appropriate forum to address Ard's objections to the LSRP.

IV. ARD FAILS TO ADDRESS ITS PRODUCER'S ADMISSIONS NEGATING ITS PRESENT ARGUMENTS TO THE COURT.

Travelers incorporates its prior arguments set forth in its Appellant brief. The trial court's refusal to rule on such dispositive issues of fact and law concerning the producer's admissions via Travelers Request for Reconsideration Nos. 1-4 and 18 are fatal to Ard's appeal.

Respectfully Submitted,

Barnwell Whaley Patterson & Helms, LLC

By: 

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Counsel for the Appellant

Dated: February 29, 2016

⁴⁵ On page 20 of its Brief, Ard asserts that the trial judge was correct in finding that Travelers could have easily and unequivocally applied LSRP provisions to Ard's assigned risk policy if it would have listed South Carolina in the Notice Endorsement. However, there is absolutely no evidence in the Record that Travelers could alter the SCDOI/NCCI required forms that were a part of the assigned risk policies issued to Ard; moreover, per the Affidavits of Roshani B. Ghayal, Frederick B. Moylen, and Steven Evangelista (Cite to Record on Appeal), the uncontroverted evidence in the Record, these forms were required by the SCDOI/NCCI at the time this policy was issued and pending. Thus, the trial judge's incorporation of Ard's argument at the summary judgment hearing that the servicing carrier could have somehow altered the Notice Endorsement in any way is mere speculation, adopted by the trial judge, and not supported by any evidence in the Record.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000806

Ard Trucking Company Respondent,

v.

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

PROOF SERVICE

I hereby certify that on the 29th day of February, 2016, I mailed a copy of the foregoing Reply of Appellants to counsel of Record, with sufficient postage, properly addressed as follows:

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Martin S. Driggers, Sr., Esquire
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Attorney for Respondent

Barnwell Whaley Patterson & Helms, LLC

By: 
Phillip S. Ferderigos

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Ard Trucking Company, Respondent,

v.

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

Appellate Case No. 2015-000806

Appeal From Darlington County
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2018-UP-010
Heard September 19, 2017 – Filed January 10, 2018

REVERSED

M. Dawes Cooke, Jr., and Phillip S. Ferderigos, both of
Barnwell Whaley Patterson & Helms, LLC, of
Charleston, for Appellant.

Martin S. Driggers, Sr., of Driggers & Moyd, of
Hartsville, for Respondent.

PER CURIAM: In this civil action, Travelers Property Casualty Company of
America (Travelers) appeals the circuit court's grant of summary judgment in favor
of Ard Trucking Company. Travelers asserts the circuit court erred in finding a

Loss Sensitive Rate Plan (LSRP)¹ did not apply to the insurance policy it issued to Ard Trucking because (1) Ard Trucking agreed to be bound by a Workers' Compensation Insurance Plan (the Plan), which required the LSRP to apply to Ard Trucking's assigned risk policy as a matter of law; and (2) Ard Trucking had knowledge the LSRP applied to its policy. Travelers also argues (3) the circuit court's prejudgment interest award was in error. We reverse.

FACTS

South Carolina provides a workers' compensation insurance market for policies of last resort, generally referred to as assigned risk workers' compensation policies. Assigned risk policies are for high risk employers who are unable to obtain workers' compensation coverage in the voluntary market. The South Carolina Department of Insurance (SCDOI) approved the LSRP as part of the South Carolina Workers' Compensation Assigned Risk Plan, naming the National Council on Compensation Insurance (the Council) as Plan Administrator. The Council dictated the LSRP would be mandatory for all assigned risk insureds with a standard premium equal to or exceeding \$200,000. Additionally, the Council instructed insurers: "[a]ll assigned risk policies shall be endorsed with policy endorsement WC 00.04.17 - Assigned Risk [LSRP] Notification."

Allen Ard, owner of Ard Trucking, submitted an application for an assigned risk insurance policy with Travelers. The application contained the following clause above Ard's signature:

By signing below I acknowledge that the [LSRP] has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

Travelers issued the policy to Ard Trucking to cover a one-year period, with an estimated annual premium of \$168,000. The policy stated the premium was subject to verification and change by audit. The policy included eleven separate endorsements, including the Assigned Risk LSRP Notification. The Assigned Risk LSRP Notification endorsement explained to the insured it was "issued because you may qualify to have the cost of your insurance subjected to the assigned risk

¹ LSRP refers to a plan that adjusts the premium on a policy, following the policy term, based upon the actual occurrence of claims.

mandatory [LSRP]." The endorsement provided that it applied in twelve states and the District of Columbia and listed the premium eligibility for each associated state; however, South Carolina was not one of the states listed.

Ard Trucking's estimated annual premiums exceeded \$200,000. As a result, Travelers issued a replacement policy to Ard Trucking for the same coverage year, with an estimated annual premium of \$262,000. The replacement policy indicated the rating mode was LSRP and the LSRP Contingent Deposit was \$52,116. The replacement policy contained an additional endorsement, the Mandatory Assigned Risk LSRP Endorsement, which was added "to explain the rating plan and how the Assigned Risk [LSRP] premium will be determined." The replacement policy contained the Assigned Risk LSRP Notification endorsement, identical to the one provided in the initial policy, which did not include South Carolina on the list of applicable states. After receiving the replacement policy, Ard Trucking obtained an irrevocable letter of credit from Carolina Bank in the amount of \$52,116 and permitted Travelers to draw on the letter of credit with a draft.

After the policy year ended, Travelers conducted an audit of Ard Trucking's operations to determine the final premium due to Travelers. Travelers notified Ard Trucking it owed a final premium of \$29,245, which Ard Trucking promptly paid. Thereafter, Travelers notified Ard Trucking that it still owed \$175,064 under the LSRP and warned that Travelers would draw the entire letter of credit if Ard Trucking did not pay that amount. Ard Trucking claimed the LSRP Notification Endorsement specifically excluded South Carolina from the LSRP and refused to make the additional payment. Consequently, Travelers drafted the letter of credit.

Ard Trucking filed a claim in the circuit court against Travelers for breach of contract and conversion. The parties filed cross motions for summary judgment, and the circuit court held a hearing. Afterward, the circuit court granted summary judgment to Ard Trucking. The court found the LSRP did not apply to the policy and awarded Ard Trucking \$103,844.74. Travelers filed a Rule 59(e) motion to alter or amend the order, which the circuit court denied. This appeal followed.

STANDARD OF REVIEW

"An appellate court reviews the granting of summary judgment under the same standard applied by the [circuit] court," which "may grant a motion for summary judgment 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" *Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 234-35, 692 S.E.2d 499,

505 (2010) (quoting Rule 56(c), SCRCP). We are also required to view "the evidence and all inferences which can reasonably be drawn therefrom . . . in the light most favorable to the nonmoving party." *Id.* at 235, 692 S.E.2d at 505 (quoting *Pye v. Estate of Fox*, 369 S.C. 555, 563, 633 S.E.2d 505, 509 (2006)).

LAW/ANALYSIS

Travelers argues the LSRP applied to Ard Trucking's assigned risk insurance policy. Both parties conceded during oral argument that the policy was unambiguous, and therefore, we need only examine the policy. *See Beaufort Cty. Sch. Dist. v. United Nat'l. Ins. Co.*, 392 S.C. 506, 526, 709 S.E.2d 85, 95–96 (Ct. App. 2011) (stating the interpretation of an unambiguous insurance policy is for the court); *Williams v. Gov't Emps. Ins. Co.*, 409 S.C. 586, 594, 762 S.E.2d 705, 709 (2014) (providing that when an insurance policy's language is unambiguous, the language alone determines the policy's force and effect); *Way v. Way*, 398 S.C. 1, 7 n.7, 726 S.E.2d 215, 219 n.7 (Ct. App. 2012) (per curiam) (finding matters conceded at oral argument unnecessary for discussion of issue on appeal).

"Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary[,] and popular meaning." *Sloan Constr. Co. v. Cent. Nat'l. Ins. Co. of Omaha*, 269 S.C. 183, 185, 236 S.E.2d 818, 819 (1977). When construing the provisions of an insurance policy, the court must examine the policy as a whole and adopt a construction that gives effect to the entire instrument and each of its various parts and provisions. *Yarborough v. Phoenix Mut. Life Ins. Co.*, 266 S.C. 584, 592, 225 S.E.2d 344, 349 (1976). "[T]he meaning of a particular word or phrase is not determined by considering the word or phrase by itself, but by reading the policy as a whole and considering the context and subject matter of the insurance contract." *Id.* at 593, 225 S.E.2d at 349; *see also MGC Mgmt. of Charleston, Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 548, 520 S.E.2d 820, 823 (Ct. App. 1999) ("[T]he law is clear that, in construing an insurance contract, all of its provisions must be considered together.").

Considering the policy as a whole and the subject matter of the insurance contract, we find the LSRP applied to Ard Trucking's assigned risk insurance policy. The replacement policy listed the LSRP as its rating mode and listed \$52,116 as the LSRP Contingent Deposit. Although the Assigned Risk LSRP Notification endorsement stated the insured *may* qualify to have the cost of its insurance subjected to the LSRP, the Mandatory Assigned Risk LSRP Endorsement— included in the replacement policy—stated it was added to the policy "to explain the rating plan and how the Assigned Risk [LSRP] premium *will* be determined." (emphasis added). In accordance with clearly established contract law, this court

may not read the provision in the Assigned Risk LSRP Notification Endorsement in isolation to defeat application of the LSRP. *See MGC Mgmt.*, 336 S.C. at 549, 520 S.E.2d at 823 ("[I]f the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties."). Therefore, we reverse the circuit court's grant of summary judgment.²

REVERSED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

² Because our resolution of the prior issue is dispositive, we decline to address the remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not address remaining issues when its resolution of a prior issue is dispositive).

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
PAUL M. BURCH, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2015-000806

Ard Trucking Company Respondent.
vs.

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

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

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PETITION FOR REHEARING

Pursuant to Appellate Practice Rule 221 (a), Respondent respectfully petitions the South Carolina Court of Appeals for a rehearing of the above captioned case and to alter and/or reverse the January 10, 2018 decision of the Court of Appeals, wherein the Court of Appeals reversed the trial court's grant of summary judgment in favor of Respondent.

The points of error asserted by Respondent are overlooking and/or misinterpreting the applicable law as applied to the facts involved.

REQUEST FOR *EN BANC* REHEARING

Pursuant to Appellate Practice Rule 219 (b), Respondent respectfully suggests that the rehearing by the Court of Appeals' of its said January 10, 2018 decision be heard *En Banc* by the Court of Appeals due to the significance and gravity errors in the said January 10, 2018 decision; the importance and necessity of securing uniformity of the Court of Appeals' decisions; and correct conflicts between the said January 10, 2018 decision and applicable and controlling law.

POINTS OF ERROR COMMITTED BY COURT OF APPEALS

Respondent respectfully asserts the following are points of error that were overlooked and/or misinterpreted by the Court of Appeals:

- I. The Court of Appeals' failed to properly apply South Carolina law to the two identical "LSRP Notification Endorsements" Appellant incorporated into each of the two policies (an initial policy and a replacement policy) Appellant issued to Respondent, which resulted in the Court of Appeals' failure to acknowledge and enforce a the *clear and unambiguous exclusion* of the disputed "Loss Sensitive Rate Plan" surcharge premium from the policies issued by Appellant.
- II. The Court of Appeals' improperly rewrote Appellant's policy in favor of Appellant's interest by resorting to a rule of law which only arises whenever an ambiguity exists, after the Court of Appeals had agreed with both parties that there was no ambiguity in Appellant's policy.
- III. The Court of Appeals' erred by factually concluding that Respondent knew Appellant intended to and would apply the LSRP surcharge premium to the policies issued to Respondent, which conclusion resulted from the Court of Appeals disregarding, ignoring and rewritint the *clear and unambiguous exclusion* "Loss Sensitive Rate Plan" surcharge premium from the policies issued by Appellant.

Pursuant to Appellate Practice Rule 240 (c), Respondent attaches a
Memorandum of Authorities in Support of Respondent's Petition for Rehearing

January 25, 2018

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM DARLINGTON COUNTY
PAUL M. BURCH, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2015-000806

Ard Trucking Company Respondent.

vs.

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

RESPONDENT'S MEMORANDUM AND TABLE OF AUTHORITIES
IN SUPPORT OF RESPONDENT'S PETITION FOR REHEARING
AND
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TABLE OF CONTENTS

TABLE OF CONTENTS 5

TABLE OF AUTHORITIES..... 6

STATEMENT OF FACTS 7

DISCUSSION OF POINTS OF ERROR 12

I. The Court of Appeals’ failed to properly apply South Carolina law to the two identical “LSRP Notification Endorsements” Appellant incorporated into each of the two policies (an initial policy and a replacement policy) Appellant issued to Respondent, which resulted in the Court of Appeals’ failure to acknowledge and enforce a the *clear and unambiguous exclusion* of the disputed “Loss Sensitive Rate Plan” surcharge premium from the policies issued by Appellant . . . 11

II. The Court of Appeals’ improperly rewrote Appellant’s policy in favor of Appellant’s interest by resorting to a rule of law which only arises whenever an ambiguity exists, after the Court of Appeals had agreed with both parties that there was no ambiguity in Appellant’s policy.. 15

III. The Court of Appeals’ erred by factually concluding that Respondent knew Appellant intended to and would apply the LSRP surcharge premium to the policies issued to Respondent, which conclusion resulted from the Court of Appeals disregarding, ignoring and rewritint the *clear and unambiguous exclusion* “Loss Sensitive Rate Plan” surcharge premium from the policies issued by Appellant ... 17

CONCLUSION 25

CERTIFICATE OF COMPLIANCE..... 27

CERTIFICATE OF FILING AND SERVICE 28

TABLE OF AUTHORITIES

USAA Prop. & Cas. Ins. Co. v. Clegg,
377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) 12

Auto-Owners Insurance Company v. Benjamin,
Op. No. 5367 (S.C. Ct. App. filed December 9, 2015)
(Shearouse Adv. Sh. No. 48 at 36) 14, 16

STATEMENT OF FACTS

Respondent is a family owned trucking company in the Pee Dee area of South Carolina which operated since 1945. Respondent employs over 70 truck drivers and 40 office administrators supplying national transportation for Respondent's customers. (R. 00503.)

This case concerns the interpretation and enforcement of an insurance policy *exclusion* contained in two assigned risk insurance policies issued to Respondent by Appellant. The initial policy was issued on December 1, 2003 (R. pp 00594-00615) and a replacement policy was issued on March 1, 2004 (R. pp. 00616-00647). Both policies contain the identical one page endorsement entitled, "LSRP Notification Endorsement." (The "LSRP Notification Endorsement" in the initial policy is at R. p. 00608 and in the replacement policy at R. p. 00628.) The endorsement *excludes* the application of a LSRP surcharge premium from South Carolina policies, such as the policies issued to Respondent.

On November 1, 2003, just six (6) days prior the effective date the Respondent's initial policy, the South Carolina Department of Insurance (SCDOI) *conditionally* authorized South Carolina assigned risk insurers, including Appellant, to charge an extraordinary Loss Sensitive Rate Plan surcharge premium to certain policy holders in South Carolina. (R. 547.) SCDOI's condition for

permitting the LSRP surcharge premium, required participating insurers to provide prospective insured parties with a “notification” the LSRP surcharge premium could apply to their policies.

Specifically, SCDOI’s BASIC MANUAL of LSRP rules (R. pp. 00566-00590) required insurers who intended to apply the LSRP surcharge premium to incorporate into each policy an “LSRP Notification Endorsement” that would “ensure” that any South Carolina insured affected by the LSRP surcharge premium would be notified about the LSRP surcharge premium:

D. Notice to Assigned Risk Policyholders.

All assigned risk policies shall be endorsed with policy endorsement WC 00 04 17 - Assigned Risk Loss Sensitive Rating Plan (LSRP) Notification (“LSRP Notification Endorsement”) in order to ensure that all possible qualifying risks are notified of the intent and details of the Plan. All assigned carriers shall be required to attach this endorsement to all assigned risk policies.

(Emphasis supplied.) (R. p. 00575.)

Pursuant to the SCDOI notification requirement, both of the policies issued to Respondent contained Appellant’s “LSRP Notification Endorsement” based on a model endorsement provided by SCDOI. (R. p. 00582,) Appellant incorporated the endorsement into Respondent’s initial policy at R. p. 00608 and into Respondent’s replacement policy at R. p. 00628.

The first sentence of Appellant’s “LSRP Notification Endorsement” stated:

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

(R. p. 00608 and R. p. 00628.)

After listing the seven (7) qualifications for LSRP “eligibility,” the endorsement ended with the following sentence:

This endorsement applies in the states listed in the schedule below:

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	\$200,000
Alaska	\$200,000
Connecticut	\$200,000
District of Columbia	\$200,000
Georgia	\$200,000
Idaho	\$200,000
Illinois	\$200,000
Indiana	\$100,000
Kansas	\$200,000
Nevada	\$200,000
New Hampshire	\$175,000
North Carolina	\$200,000
South Dakota	\$200,000

Appellant’s own plain, clear and unambiguous language in the “LSRP Notification Endorsement,” *excluded* the application of the LSRP surcharge premium from South Carolina insurance policies, such as the policies issue to Respondent.

Notwithstanding the *exclusion* of LSRP surcharge premium from the policies Appellant issued to Respondent, Appellant asserted a claim against Respondent for the LSRP surcharge premium after the policy year concluded. As a result, Respondent filed this lawsuit to recover from Appellant a \$52,114 Letter of Credit pledged by Respondent to cover any additional workers compensation premium found due. After extensive discovery, both parties file motions summary judgement in the lower court.

The lower court applied South Carolina law regarding interpretation of insurance policies to the *exclusion* in Appellant's "LSRP Notification Endorsement" and ordered Appellant to refund the Letter of Credit to Respondent. (R. 001 - 14) Appellant appealed the lower court's order.

On January 10, 2018, the Court of Appeals reversed the lower court's order by holding that the exclusion of the LSRP premium surcharge did not apply to Respondent's policy "as a matter of law." The Court of Appeals justified its refusal to enforce the *exclusion* under Appellant's "LSRP Notification Endorsement" by making a factual determination that both Respondent and Appellant intended for the LSRP surcharge premium to apply to Respondent's insurance coverage.

Respondent respectfully requests the Court of Appeals to reconsider the manner in which it applied the controlling law in this case and to reconsider its

factual conclusion that Respondent had agreed for Appellant to apply the LSRP surcharge premium to apply to the policies Appellant issued to Respondent, since Appellant never informed Respondent that the LSRP surcharge would apply to the policies issued to Respondent and the *exclusion* in question specifically stated that the LSRP surcharge *would not apply* to the policies issued to Respondent.

DISCUSSION OF POINTS OF ERROR

- I. The Court of Appeals' failed to properly apply South Carolina law to the two identical "LSRP Notification Endorsements" Appellant incorporated into each of the two policies (an initial policy and a replacement policy) Appellant issued to Respondent, which resulted in the Court of Appeals' failure to acknowledge and enforce a the *clear and unambiguous exclusion* of the disputed "Loss Sensitive Rate Plan" surcharge premium from the policies issued by Appellant.

After properly stating South Carolina rules of insurance policy interpretation, the Court of Appeals failed to properly apply these rules to the exclusionary language contained in Appellant's "LSRP Notification Endorsement."

Appellant's "LSRP Notification Endorsement" clearly and unambiguously listed the states wherein Appellant intended to apply the LSRP premium surcharge. Clearly, South Carolina was not on the list. This omission of South Carolina constituted an *exclusion* of Respondent's South Carolina policies from the LSRP premium surcharge.

Under Appellant’s basic insurance policy, Appellant sets out the principles controlling “changes” to the policy:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

(Emphasis supplied.)(R. p. 00603.)

Therefore, Appellant’s own policy prohibits any “change” of the policy terms “except by endorsement issued by (Appellant) to be part of this policy.”

In this appeal, Appellant sought to avoid the consequences of its own the clear and unequivocal terms used in its “LSRP Notification Endorsement” and urged the Court of Appeals to rewrite the policy for Appellant’s benefit. The Court of Appeals order agreeing with Appellant violates controlling rules of insurance contract law and also violates and breaches Appellant’s own insurance contract which prohibits unilateral policy changes. *See, USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008) (Courts must enforce,

not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning.)

Appellant persuaded the Court of Appeals to accept a false proposition that simply because SCDOI *conditionally* allowed insurers to apply the LSRP surcharge premium to South Carolina policies, the LSRP surcharge premium was automatically included in all policies “as a matter of law.” However, SCDOI required Appellant to give insured parties notice that it intended to apply the LSRP surcharge premium to their policies.

Appellant’s “LSRP Notification Endorsement” utterly failed to notify Respondent that LSRP would apply to Respondent’s policies. Instead, Appellant’s clear and unequivocal language it used in its endorsement *excluded* LSRP from applying to the South Carolina policies issued to Respondent.

Instead of enforcing Appellant’s clear and unambiguous *exclusion*, the Court of Appeals has embraced Appellant’s false proposition that SCDOI’s allowance of the LSRP surcharge premium, “as a matter of law,” “amended/supplanted” (Appellant’s Final Brief at Page 23, Line 6) and/or “revised and amended” (Appellant’s Final Brief at Page 23, Line 12) Appellant’s own plain, ordinary, clear and unambiguous *exclusion* of LSRP from South Carolina policies.

Appellant's false proposition is contrary ignores and disregards time-honored South Carolina rules of law that bind contracting parties to their clear and unambiguous contractual terms. The actions of the Court of Appeals in this case, if unabated and uncorrected, will result in unambiguous terms used in insurance contracts to no longer be enforceable and will, in spite of plain, clear and unambiguous language, permit insurers to contest clear and unambiguous terms in order to suit their own ends.

The Court of Appeals should not be taken in by Appellant's false and erroneous proposition and should not assist Appellant rewrite its *exclusion* which drastically changes and alters the plain, ordinary and unambiguous meaning of Appellant's insurance policies. The Court of Appeals should not bend the law to point of breaking the law in an effort to release Appellant from of its self-created delima. The only fair, reasonable and proper interpretation of Appellants' "LSRP Notification Endorsement" is to determine, as the lower court did, that the LSRP premium surcharge was clearly and unambiguously *excluded* from the South Carolina policies Appellant issued to Respondent.

Auto-Owners Insurance Company v. Benjamin, 415 S.C. 137, 781 S.E. 2d 137 (Ct. Ap. 2015) (Shearouse Adv. Sh. No. 48 at 36) is an example of legions of cases which have applied long standing rules of law in order to bind contracting

parties to the plain, specific, unequivocal language contained in insurance contracts:

Insurance policies are subject to the general rules of contract construction. *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 614, 732 S.E.2d 626, 628 (2012) (quoting *M & M Corp. of S.C. v. Auto-Owners Ins. Co.*, 390 S.C. 255, 259, 701 S.E.2d 33, 35 (2010)). The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. *Id.* (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning. *Id.* (quoting *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 655, 661 S.E.2d 791, 797 (2008)).

Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect. *Whitlock*, 399 S.C. at 615, 732 S.E.2d at 628 (quoting *McGill*, 381 S.C. at 185, 672 S.E.2d at 574).

- II. The Court of Appeals' improperly rewrote Appellant's policy in favor of Appellant's interest by resorting to a rule of law which only arises whenever an ambiguity exists, after the Court of Appeals had agreed with both parties that there was no ambiguity in Appellant's policy.

In interpreting the clear and unambiguous *exclusion* contained in Appellant's "LSRP Notification Endorsement," the Court of Appeals erroneously decided to "consider the policy as a whole" in order to second guess the intention of the parties. However, there was no reason for the Court of Appeals to look any further

than the clear and unequivocal *exclusion* in Appellant's the "LSRP Notification Endorsement."

Under South Carolina law, parties are bound by the plain, specific, unequivocal language in their insurance contracts. In cases, Courts are required to enforce the policy and cannot second guess what either party may have intended. However, in case of an ambiguity, Courts are permitted to look beyond the ambiguous terms in order to ascertain the contracting parties' intentions.

The foregoing rules are enunciated in *Auto-Owners Insurance Company v. Benjamin, supra*. First of all, *Auto-Owners Insurance Company* states that the "cardinal rule" of construction requires courts to ascertain and give legal effect to the insurance contract language:

Insurance policies are subject to the general rules of contract construction. (Citations omitted.) The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language. (Citations omitted.) "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." (Citations omitted.) Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect." (Citations omitted.)

Secondly, if the Court determines that the insurance contract language is ambiguous, the Court can then look beyond the ambiguous language and consider

the “whole document” in order to assist the Court determine the intention of the parties:

Whether the language of a contract is ambiguous is a question of law for the court. An insurance contract is read as a whole document so that 'one may not, by pointing out a single sentence or clause, create an ambiguity.'" (Citations omitted.) However, this court must construe "[a]mbiguous or conflicting terms in an insurance policy . . . liberally in favor of the insured and strictly against the insurer." (Citations omitted.) Insurance policy exclusions are construed most strongly against the insurance company, which also bears the burden of establishing the exclusion's applicability." (Citations omitted.)

Since the *exclusion* in Appellant’s “LSRP Notification Endorsement” was not ambiguous, the Court of Appeals should have enforced it as written, just as the lower court did, without going beyond the *exclusion* in to interpret the *exclusion*’s clear and unambiguous language.

- III. The Court of Appeals’ erred by factually concluding that Respondent knew Appellant intended to and would apply the LSRP surcharge premium to the policies issued to Respondent, which conclusion resulted from the Court of Appeals disregarding, ignoring and rewritint the *clear and unambiguous exclusion* “Loss Sensitive Rate Plan” surcharge premium from the policies issued by Appellant.
 - A. The intention of the parties to a clear and unambiguous insurance contract should be deduced from the plain, ordinary and unambiguous language within the policy itself.

The Court of Appeals failed to enforce the plain language contained in Appellant's "LSRP Notification Endorsement," which clearly and ambiguously *excluded* the LSRP surcharge premium from the policies Appellant issued to Respondent. Instead, the Court of Appeals went out of its way to second guess what the parties intended. In this process, the Court conclude that Respondent knew that Appellant intended to apply the LSRP surcharge to Respondent's insurance coverage.

However, this factual conclusion is contradicted by Appellant's own plain and unambiguous language it used in its "LSRP Notification Endorsement," which clearly and specifically *excluded* the LSRP surcharge from applying to the two South Carolina policies Appellant issued to Respondent.

How could Respondent have ever known that Appellant would attempt to apply the LSRP surcharge premium to Respondent's policies when Appellant's own "LSRP Notification Endorsement" clearly, plainly and unambiguously stated that LSRP was *excluded* from Respondent's South Carolina policies? The intention of parties to an insurance contract is best derived from the language the parties use the insurance contract itself.

Whenever insurance contract language is clear and unambiguous, Courts should not attempt rewrite a contract, second guess what the parties intended, or

otherwise torture the plain, unambiguous language in the contract, in an effort to arrive at some different interpretation, meaning or conclusion that favors one party and harms the other.

- B. Appellant *specifically informed* Respondent by using plain, ordinary and unambiguous language in its “LSRP Notification Endorsement” that the LSRP surcharge premium did not apply to the South Carolina policies issued to Respondent.

The Court of Appeals should have looked no further than the language Appellant itself used in the “LSRP Notification Endorsement” to ascertain what Appellant intended. A reading of the Appellant’s plain, ordinary and unambiguous language contained in Appellant’s “LSRP Notification Endorsement,” it is impossible to conclude that Appellant intended for the LSRP surcharge premium to the policies issued to Respondent.

Likewise, it is impossible to conclude that Respondent could have possibly known that the plain, ordinary and unambiguous language Appellant used to *exclude* Respondent’s South Carolina policies from the LSRP surcharge premium did not mean what it said and that the Court of Appeals could or would discard and ignore the *exclusion* in an effort to reach a diametrically opposite conclusion.

- C. Neither (1) the application Respondent signed on November 6, 2003 or (2) the LSRP brochure Appellant provided to Respondent negated Appellant’s clear and unambiguous *exclusion* contained in the policies

that Appellant subsequently issued to Respondent, both of which stated that the LSRP surcharge premium did not apply to the South Carolina policies issued to Respondent.

In an effort to support its decision to ignore the clear and unambiguous *exclusion* of the LSRP surcharge premium contained in the policies Appellant issued to Respondent, the Court of Appeals factually concluded that Respondent knew that Appellant intended to apply the LSRP surcharge premium to Respondent's policies.

To support this factual conclusion, the Court of Appeals relied on language contained in Respondent's November 6, 2003 application for insurance and on Respondent's receipt of an "LSRP brochure" Appellant provided to Respondent. However, neither of these informed Respondent that LSRP would apply to the policies Appellant issued to Respondent. Moreover, Appellant's subsequently issued policies both contained the clear and unambiguous *exclusion* which negated anything to the contrary.

1. The November 6, 2003 Insurance Application signed by Respondent contained an important "disclaimer"

The "FACTS" recited by Court of Appeals in its January 10, 2018 decision stated, in part:

Allen Ard, owner of Ard Trucking, submitted an application for an assigned risk insurance policy with

Travelers. The application contained the following clause above Ard's signature:

By signing below I acknowledge that the [LSRP] has been explained to me or that an explanatory notice or brochure has been provided to me and I agree that I shall be bound by the terms of such plan if my estimated annual premium or preliminary physical audit premium meets or exceeds the premium eligibility requirement.

Unfortunately, the Court of Appeals omitted an important “disclaimer” also contained on the application immediately above the foregoing, which stated:

The following statement is only applicable in jurisdictions where the NCCI, Inc. Loss Sensitive Rating Plan has been approved for use:

(R. 00200)

When the application was executed on November 6, 2003, Respondent had never heard of LSRP, no one explained LSRP to Respondent at the time the application was signed, and no one ever informed Respondent that LSRP had been *conditionally* approved on November 1, 2003 in South Carolina by the South Carolina Insurance Commission. (R. 00503.)

Importantly, both policies Appellant issued to Respondent *excluded* LSRP from Respondent’s policies, thereby overriding anything to the contrary.

2. The “LSRP brochure” provided to Respondent by Appellant stated that Respondent would be informed if and when LSRP applied to the policies Appellant issued to Respondent.

The acknowledgment in the November 6, 2003 application Respondent signed indicated that several methods would be used by Appellant to notify the applicant regarding LSRP:

By signing below I acknowledge that the [LSRP] has been explained to me, (assumedly by the agent, which was not done)

or

. . . an explanatory notice or brochure has been provided to me . . . (assumedly by mail from Appellant as the insurer)

(R. 00200. Emphasis supplied.)

Affidavits provided by Respondent’s officers (President Allen Ard at R. 00503 and Safety Director Harry Brown at R. 00545) stated that no one explained LSRP to Respondent. According to Respondent’s Safety Director, a brochure explaining the LSRP surcharge premium would not had any relevance to Respondent because the policies Appellant issued to Respondent both *excluded* the LSRP surcharge premium from applying to Respondent’s South Carolina policies.

It is noted that Appellant's "LSRP brochure" mailed to Respondent states on page 3 the following prominently displayed language:

Implementation

We have proposed that in your state, the LSRP be implemented six months from the effective date of regulatory approval. This six months' advance notice is intended to give you time to seek coverage in the voluntary market. (*Note: The implementation date may vary by state.*) Upon approval, all LSRP-eligible accounts currently in the residual market, their producers or brokers and current assigned carriers will be advised of the approval and implementation dates, as well as the LSRP parameters. (R. 549.)

Therefore, Appellant's LSRP brochure itself states that the LSRP was not yet implemented in South Carolina, and that Respondent would be informed when the implementation occurred. Respondent was never so notified.

Again both policies issued by Appellant to Respondent *excluded* LSRP from application in Respondent's policies, thereby overriding anything to the contrary.

The *exclusion* plainly and unambiguously stated that the LSRP surcharge premium did not apply to Respondent's South Carolina policies.

- D. Although the Court of Appeals found that the \$52,116 Letter of Credit (LOC) Respondent gave Appellant evinced the intention of both parties from the LSRP to apply to Respondent's policies, this finding is contradicted by Appellant's own July 27, 2004 "change document" which made no mention of LSRP.

The lower court found there was “scant” use by Appellant of the term “LSRP” under the policies issued to Respondent:

However, such scant and unexplained use of LSRP terminology (“Loss Sensitive Rating Plans” is used on one page and “LSRP” is used on another page) falls far short of overcoming (Appellant’s) own clear and unambiguous exclusion of LSRP from having any application to the South Carolina replacement policy issued to Plaintiff, which exclusion is contained in Defendant’s own LSRP Notification Endorsement. (R. 008)

However, the Court of Appeals’ January 10, 2018 decision found that Appellant’s use of the term “LSRP” in a March 1, 2004 single page contained the replacement policy and which related to a \$52,116 Letter of Credit Respondent gave Appellant demonstrated that Respondent knew Appellant intended for the two policies issued to Respondent to include the LSRP surcharge premium. (R. 00620.) Subsequently, on July 27, 2004, Appellant attached a “Change Document” to the March 1, 2004 replacement policy which identified the \$52,116 Letter of Credit as a “RETURN PREMIUM” without any reference whatsoever to “LSRP.” (R. 00543)

Respondent’s affidavit states Respondent understood that the \$52,116 Letter of Credit “would be rescinded by (Appellant) as soon as the final audit was completed and the Final Premium paid by (Respondent.) (R. 00507.) As stated above, the scant use of the term “LSRP” by Appellant did not change the clear,

unambiguous *exclusion* Appellant included in both policies issued to Respondent which *excluded* the application of LSRP from the South Carolina policies issued Respondent.

CONCLUSION

The January 10, 2018 decision of the Court of Appeals constitutes a catastrophic financial turn of events for Respondent which should be reviewed and reversed, or altered. The plain, ordinary and unambiguous language used by Appellant in its “LSRP Notification Endorsement” states that the LSRP surcharge premium *did not apply* to Respondent’s policies. Instead, the LSRP surcharge premium was unilaterally, specifically, clearly and unambiguously *excluded* by Appellant under the “LSRP Notification Exclusion” incorporated into Respondent’s two South Carolina policies.

Appellant’s clear and unambiguous language it used to *exclude* the LSRP surcharge premium from the South Carolina policies Appellant issued to Respondent created a dispositive contractual obligation upon Appellant which the Court of Appeals was bound to recognize and enforce, just as the lower court did. *Assuming arguendo* that Appellant made a mistake by *excluding* the LSRP surcharge premium from Appellant’s South Carolina policies - a fact Appellant has

never admitted - Appellant is nonetheless bound by its own insurance contract terms.

To the extent that the Court of Appeals again concludes there are actual issues in this case regarding what the parties intended to be included in the subject policies and/or factual issues regarding the meaning of the policy language Appellant used in the insurance contract, this case should be remanded to the lower court so that such factual issues can be fully and appropriately adjudicated.

January 25, 2018

Respectfully submitted,

/Signed
By: Counsel for Respondent
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CERTIFICATE OF COMPLIANCE

This Request for Rehearing by Respondent has been prepared using:

WordPerfect X8 (2014)

Times New Roman

14 Point Type

I understand that a material misrepresentation can result in the Court's striking the Brief and imposing sanctions. If the Court so directs, I will provide and electronic version of the Brief and/or a copy of the word or line print-out.

January 25, 2018

Respectfully submitted,

/Signed

By: Counsel for Respondent

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 25th day of January, 2018 I filed with the Clerk's Office of the South Carolina Court of Appeals, via U.S. Mail, the required number of copies of this Respondent's Petition for Rehearing and Respondent's Suggestion of an En Banc Hearing, and I further certify that I served the required number of copies of Respondent's Petition for Rehearing and Respondent's Suggestion of an En Banc Hearing on other counsel of record via U. S. Mail with sufficient postage, properly addressed as follows:

Phillip Ferderigos
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Counsel for Appellant

January 25, 2018

Respectfully submitted,

/Signed

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000806

Ard Trucking Company Respondent

v.

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

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

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Attorney for Respondent

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

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

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

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

Respectfully submitted,

By: 

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Dated: February 5, 2018

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2015-000806

Ard Trucking Company, Respondent,

v.

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

CERTIFICATE OF FILING AND SERVICE

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

Martin S. Driggers, Sr., Esquire
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P.O. Box 1439
Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: 

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The South Carolina Court of Appeals

Ard Trucking Company, Respondent,

v.

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

Appellate Case No. 2015-000806

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Wren

J.

Paul M. Burch

J.

Stephen P. McNeill

J.

Columbia, South Carolina

cc:

Phillip S. Ferderigos, Esquire
Martin S. Driggers, Sr., Esquire
M. Dawes Cooke, Jr., Esquire
The Honorable Paul M. Burch

FILED

April 18, 2018 S.S.