THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. 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 I OF II

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SC Court of Appeals

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOR THE FOURTH JUDICIAL CIRCUIT C/A 2010-CP-16-0435
ARD TRUCKING COMPANY, INC. PLAINTIFF, VERSUS TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA, D/B/A THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS. DEFENDANT.	SUMMARY JUDGMENT ORDER IN FAVOR OF PLAINTIFF

SCOTT BRUCE
CLERK OF COURT
DARLINGTON, S.C.
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This case involves a dispute regarding whether the insurance policy for coverage year from November 7, 2003 through November 7, 2004 issued by Defendant to Plaintiff included language authorizing extraordinary additional premiums charges for losses after the coverage year ended. The parties come before the Court on cross motions for summary judgment.

Plaintiff maintains that after paying Defendant's "Final Premium Bill" under the policy, Defendant refused to refund and wrongfully converted $52,116 from a May 2004 "Letter of Credit" Plaintiff had pledged to secure payment of any additional premiums due and owing based on Defendant's "Final Audit" after the coverage year ended.[1]

Defendant claims Plaintiff owes additional extraordinary premiums totaling $175,064 pursuant to a "Loss Sensitive Rating Plan" (hereafter LSRP) approved for use in South Carolina by the SC Department of Insurance (SCDOI), which became effective on November 1, 2003, just six days before the policy in question was issued.

1. It is noted that Plaintiff's May 2004 letter of credit pledge of $52,116 was treated by Defendant as a "return premium" debt owed to Plaintiff. This fact is reflected by a policy "change document" Defendant issued under policy on July 27, 2004. Defendant's said "return premium" document makes no mention whatsoever of the LSRP.

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DARLINGTON COUNTY, SC

In response to Defendant's LSRP claim, Plaintiff maintains that the LSRP provisions Defendant relies on were specifically negated and excluded from Defendant's South Carolina policy it issued to Plaintiff due to the clear and unambiguous language in Defendant's policy.

FACTS

Plaintiff obtained the workers compensation insurance policy in question through a broker in North Carolina, which located a South Carolina "assigned risk" policy with an estimated annual premium approximately $168,000. Defendant's said policy was issued on December 1, 2003 to cover a one year period from November 7, 2003 to November 7, 2004.

Included in the initial policy were 11 separate endorsements. The only place where the term "LSRP" was addressed was under Endorsement WC 00 06 17 (00) (also known as the LSRP Notification Endorsement). Endorsement WC 00 06 17 (00) specifically listed all states wherein LSRP applied; however, South Carolina was excluded from the list.

Subsequently on March 1, 2004, following an early 2004 corporate reorganization of Defendant, Defendant replaced the initial policy had issued to Plaintiff with a replacement policy for the same insurance coverage year. Defendant's replacement policy contained 13 endorsements, or two endorsements not contained in the initial policy. Nevertheless, the identical LRSP Notification Endorsement which was contained in the initial policy was also included in the replacement policy.

Accordingly, identical LRSP Notification Endorsement was incorporated into both the initial and replacement policy. Again, the endorsement contained in both the initial and replacement policies informed and notified Plaintiff that LSRP was not applicable to Plaintiff's South Carolina policy.

After the policy year ended on November 7, 2004, and pursuant to the policy's terms relating to the computation of premiums, Defendant conducted an on-site "Final Audit" of

Plaintiff's operations (number of employees, positions held, salaries, etc.) to determine the "Final Premium" due to Defendant. On February 9, 2005, Defendant notified Plaintiff that a "Final Premium Bill" of $29,245 was due by February 24, 2005. Plaintiff promptly paid this sum to Defendant on February 22, 2004.

On July 21, 2005, Defendant informed Plaintiff that an extraordinary premium of $175,064 was due under the policy's LSRP provisions. After reviewing the initial policy dated December 1, 2003 and the replacement policy dated March 1, 2004, Plaintiff's counsel concluded that the LSRP Notification Endorsement, included under both policies, clearly and specifically excluded South Carolina from LSRP application.

When Defendant refused to release and or refund Plaintiff's $52,116 Letter of Credit and, instead, applied this sum to the alleged LSRP extraordinary premium Defendant had asserted, Plaintiff initiated this lawsuit to recover the $52,116 from Defendant. Defendant counterclaimed to recover the extraordinary LSRP premiums it had asserted.

LEGAL ISSUE PRESENTED

The sole issue for determination in this case is whether the LSRP, upon which Defendant claims extraordinary premiums from Plaintiff, applied under the policy issued to Plaintiff. This issue requires examination of the pertinent terms contained in the two policies Defendant issued to Plaintiff on December 1, 2003 and March 1, 2004.

Both parties cite a 2004 South Carolina Bankruptcy Court case, *Georgetown Steel Company v. Capital City Insurance Company*, 318 B.R. 313 (USBC/D.S.C 2004), as supporting their respective contentions. The principal issue in *Georgetown Steel* was whether LSRP provisions contained in a South Carolina assigned risk workers compensation policy were valid and enforceable. In deciding this issue, the bankruptcy court in *Georgetown Steel* held

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that questions regarding the terms under insurance contracts require courts to examine the policy language used to determine if the terms in question are clear and unequivocal, or not.

The following analysis of Defendant's pertinent policy provisions applies the same law and logic as applied by the bankruptcy court in *Georgetown Steel*. This analysis demonstrates that Defendant's policy is clear and unambiguous language regarding the application of LSRP. Based on Defendant's own clear and unambiguous language, LSRP did not apply to the South Carolina policy issued to Plaintiff, since both of the initial and replacement policies issued to Plaintiff clearly and unequivocally excluded LSRP application from South Carolina policies.

PERTINENT POLICY LANGUAGE EXAMINED

Insurance policies typically contain declarations and provisions, and include endorsements applicable to various situations and identified venues. The Defendant's policy initially had 11 endorsements and its replacement policy had 13 endorsements. Several endorsements included under the initial (12/1/ 2003) policy and replacement (3/1/2004) policy bear scrutiny in deciding whether LSRP applied to the South Carolina policy issued to Plaintiff.

1. The Assigned Risk Endorsement

Both the initial and replacement policies issued to Plaintiff 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 "assigned risk" policies. Without question, this endorsement applies to Plaintiff's South Carolina policy because the endorsement specifically lists South Carolina among the ten (10) states wherein the "assigned risk" surcharge 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 the premium under the Assigned Risk Adjustment Program and, importantly, and (2) the assigned risk surcharge addressed in the Assigned Risk Endorsement is applicable to South Carolina insureds, which included Plaintiff.

2. A/R Loss Sensitive Rating Plan Notification Endorsement

Defendant's 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 the LSRP Notification Endorsement.[2] An LSRP Notification Endorsement containing the identical language was attached to the initial and replacement

---

2. On November 1, 2003, the South Carolina Department of Insurance (SCDOI) authorized insurance companies to include LSRP provisions under assigned risk workers compensation policies issued in South Carolina. SCDOI's rules regarding LSRP specifically required insurers to include a "notification" endorsement in all such policies to "ensure" that all South Carolina insureds were properly notified that LSRP would applied to their policy and how LSRP could affect premiums:

> 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.)

See SCDOI's BASIC MANUAL for rules regarding LSRP insurance provisions.

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South Carolina policies issued to Plaintiff. These identical LSRP Notification Endorsements clearly and unequivocally declared that LSRP was not 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 two LSRP Notification Endorsements incorporated by Defendant into the two South Carolina policies issued to Plaintiff expressly negated the application of LSRP to the policies. Defendant's own clear and unambiguous language excluded both of the policies issued to Plaintiff from any LSRP application. Therefore, LSRP provisions did not apply to the South Carolina policy issued by Defendant to Plaintiff.

Defendant could easily have clearly and unequivocally applied LSRP to the two South Carolina policies issued to Plaintiff, just as Defendant clearly and unequivocally applied the Assigned Risk Endorsement to Plaintiff's policy. However, Defendant failed to include, and therefore clearly excluded, LSRP application from Plaintiff's South Carolina policy.

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Instead of notifying and informing Plaintiff that LSRP and extraordinary LSRP premiums applied to Plaintiff's South Carolina policy, Defendant's own plain, ordinary, and unequivocal language declared that LSRP provisions did not apply in South Carolina; and, therefore, did not apply to Plaintiff's South Carolina policy. The die was cast by Defendant and this Court cannot rewrite Defendant's policy.

3. Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement

Other than Defendant's LSRP Notification Endorsement which excluded LSRP application under the South Carolina initial and replacement policies issued to Plaintiff, 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 (12/1/2003) policy, but only included in replacement (3/1/2004) policy. The purpose of the MARLSRP Endorsement is to explain how the LSRP extraordinary premiums, if and when applicable, were to be computed.

While the MARLSRP Endorsement stated, "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 Defendant delivered to Plaintiff, 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 Plaintiff's South Carolina policies from LSRP application, and (2) the MARLSRP Endorsement (only contained in the March 1, 2004 policy) which simply explained how LSRP premiums, if applicable, were to determined, there were no other

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endorsements or provisions under Defendant's initial or replacement policies 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 Ratting Plans" is used on one page and "LSRP" is used on another page) falls far short of overcoming Defendant'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.

***GEORGETOWN STEEL* CASE SUPPORTS PLAINTIFF'S CLAIM**

Defendant urges the Court to accept the proposition that LSRP was *automatically* included in the policy it issued to Plaintiff *as a matter of law*, because LSRP had been approved by the SCDOI for use in South Carolina assigned risk policies. However, acceptance Defendant's proposition requires the Court to disregard Defendant's clear and unambiguous exclusion, under its LSRP Notification Endorsement, of South Carolina from the list of states wherein LSRP applies. Moreover, by accepting Defendant'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 policy language used by the insurer in *Georgetown Steel* was radically different from the policy language adopted for use by the Defendant herein.

The debtor in *Georgetown Steel* was insured under an assigned risk workers compensation insurance policy. The debtor sought to negate the application of LSRP provisions within the insurer's policy issued to the debtor so that the debtor could recover

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substantial funds the insurer was holding to cover LSRP premiums owed to the insurer by the debtor.[3] 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 .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 has 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 insurer's two separate LSRP Notification Endorsements which

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3. The debtor in *Georgetown Steel* argued that "blanks" (zeros) on a worksheet on the final page of the insurer's MARLSRP Endorsement effectively rendered the policy's LSRP provisions "invalid and meaningless." However, the bankruptcy court rejected this argument because the policy contained clear and unambiguous language applying LSRP to the debtor's policy before it.

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).

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However, no such language exists within the two policies Defendant issued to Plaintiff herein. Instead, Defendant plainly and unambiguously provided under the LSRP Notification Endorsement it included in both the initial and replacement policies issued to Plaintiff 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 Defendant's own clear and unambiguous language used in the LSRP Notification Endorsement is that LSRP did not apply to either of the two South Carolina policies Defendant issued to Plaintiff.

DEFENDANT'S ARGUMENTS ARE WITHOUT MERIT

Defendant's arguments are based on Defendant's assumption that LSRP applied to the initial and replacement policies issued to Plaintiff. Since the language used by the Defendant in its own policy negated any LSRP application to Plaintiff's policy, Defendant contends that LSRP applied to the policy issued to Plaintiff, as a matter of law, notwithstanding Defendant's own policy language excluding the application of LSRP to the South Carolina policy issued to Plaintiff. This contention, however, defies the rules of insurance contract law requiring courts to apply contract law. Insurers are bound by the terms used in their policies.

Simply because SCDOI allowed insurers to include LSRP provisions in South Carolina assigned risk policies beginning November 1, 2003, LSRP provisions were not automatically incorporated into every South Carolina assigned risk policy. The Court rejects this notion as fallacious reasoning which amounts to nothing more than a distraction or diversion, often referred to as a "red herring." Contract cases are determined by applying settled law to the used within the insurance contract; not by collateral and extraneous matters which contradict the policy's terms and language. *See, e.g., Georgetown Steel, supra.*

Since insurers are deemed to be experts, and in order to protect the public and insured parties, the insurance industry is highly regulated. SCDOI's BASIC MANUAL regarding the use of LSRP by insurers specifically requires insurers to incorporate the LSRP Notification Endorsement into their assigned risk policies "to ensure that all possible qualifying risks (insureds) are notified of the intent and details of the ("LSRP")":

> 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.)[4]

However, instead of using the required LSRP Notification Endorsement to notify Plaintiff that LSRP would be applied to the South Carolina policy issued to Plaintiff by Defendant, the language Defendant used in the required endorsement not only failed to include South Carolina as a state where in LSRP applied, it effectively excluded Plaintiff's South Carolina policy from being subject to LSRP application. Therefore, the LSRP Notification Endorsements Plaintiff received from Defendant in both the initial policy and the replacement policy failed to notify Plaintiff that LSRP applied to the South Carolina policy Defendant issued to Plaintiff. Instead, the endorsement provided to Plaintiff clearly and unequivocally informed Plaintiff that LSRP would not apply to the policies issued to Plaintiff.

The fact that an insurer is authorized to include LSRP provisions within a South Carolina policy does not automatically write the LSRP provisions into such policies. If this were true, contracting parties could never rely on the language contained in their contracts and chaos would

4. See Footnote 2.

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reign within the business world and within the courts. The proposition urged by the Defendant arises out of desperation. Contract cases must be determined by settled contract law which requires contracts to be interpreted by their own terms, and not by extraneous matters.

Defendant's policy not only failed to inform Plaintiff that LSRP would apply to the policy issued by Defendant, the policy specifically informed Plaintiff, in clear and unambiguous language, that LSRP did not apply to the South Carolina policy issued to Plaintiff. Defendant cannot retroactively rewrite its own insurance contract in order to suit its own pleasure. Instead, Defendant is bound by the plain and unambiguous language in the policy it unilaterally drafted, issued and delivered to Plaintiff.

Defendant also argues that Plaintiff failed to provide expert testimony to demonstrate that Defendant had breached a duty owed to Plaintiff. Under the controlling contract principles applied in *Georgetown Steel* and relied on by Plaintiff it its motion for summary judgment, no expert testimony is required. The Court, as fact finder, can readily read Defendant's insurance policy and determine what the policy says.

More particularly in this case, the Court can read Defendant's LSRP Notification Endorsement and determine what it says about the application of LSRP to the South Carolina policy issued to Plaintiff. It is clear to the Court that Defendant's own language specifically excluded the application of LSRP from the South Carolina policy issued to Plaintiff. *See also*, *Brouwer v. Sisters of Charity Providence Hospitals*, 2014 WL 3844059 (S.Ct. 2014) (it is not necessary to have expert testimony regarding matters of common knowledge).

In sum, the Court holds that Defendant is bound by its own clear and unambiguous contractual terms which unequivocally state that LSRP did not apply to the South Carolina policy issued to Plaintiff.

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ORDER

Based on the application of South Carolina law to the analysis of the insurance contracts issued by Defendant to Plaintiff, including the clear and unambiguous exclusions of LSRP from application to the South Carolina insurance policy in question, Plaintiff's Motion for Summary Judgment is hereby granted. Accordingly, Plaintiff is entitled to recover $52,116 by way of an unearned premium, as the liquidated contractual damages, plus interest at the legal rate from February 23, 2005 when the Final Premium bill from Defendant was paid by Plaintiff, resulting in an additional amount of $51,728.74 for a total of $103,844.74. Therefore, judgment in favor of Plaintiff Ard Trucking Company is granted against Defendant Travelers Insurance Company in the sum of $103,844.74.

AND IT IS SO ORDERED!

PAUL M. BURCH
CIRCUIT COURT JUDGE FOR THE
FOURTH JUDICIAL CIRCUIT

February
January 5th, 2015

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DARLINGTON COUNTY, S.C.

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STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON Ard Trucking Company, Plaintiff, v. Travelers Property Casualty Company of America d/b/a The Travelers Indemnity Company of Illinois, Defendant.	IN THE COURT OF COMMON PLEAS OF THE FOURTH JUDICIAL CIRCUIT Case Number: 2010-CP-16-0435 **ORDER**

This matter is before the Court on Defendant's Motion to Alter or Amend. After carefully reviewing all evidence before me and my prior order in the above-referenced matter, the Defendant's Motion Pursuant to Rules 52(b) and 59(e), SCRCP, is hereby DENIED.

THEREFORE, Defendant's Motion to Alter or Amend is hereby DENIED.

AND IT IS SO ORDERED.

The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

Chesterfield, South Carolina
March 20, 2015

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DARLINGTON COUNTY, S.C.

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DARLINGTON COUNTY, S.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO. 2010-CP-16-435
Ard Trucking Company,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING TRAVELERS' MOTION FOR SUMMARY JUDGMENT AND JUDGMENT OF $160,908.20 IN FAVOR OF TRAVELERS**
	)	
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,	)	
	)	
Defendant.	)	
	)	

THIS MATTER came before me upon Travelers' and Plaintiff's cross-motions for summary judgment on December 18, 2014. Present in the courtroom were Phillip S. Ferderigos, counsel for Defendant Travelers Property Casualty Company of America d/b/a The Indemnity Company of Illinois (hereinafter "Travelers"), and Martin S. Driggers, Sr., Esquire, counsel for Plaintiff Ard Trucking Company (hereinafter "ATC"), and Plaintiff Allen Ard, President of ATC. After reviewing the parties' motions and memoranda and accompanying exhibits and documentation and considering the arguments of counsel, the Court makes the following Findings of Fact and Conclusions of Law.

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 issued pursuant to the WCIP and are administrated through the NCCI.[1] NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP

[1] 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 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).

provisions and utilize forms as required by the NCCI in South Carolina. Finally, the South Carolina Department of Insurance has verified that, in South Carolina, the Loss Sensitive Rating Plan ("LSRP")[2] is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, the WCIP mandates that LSRP is applicable to ATC's Assigned Risk policy, which was issued on November 7, 2013 as a matter of law.

This matter involves a premium dispute wherein ATC alleges Travelers improperly charged ATC premium pursuant to the WCIP's LSRP. In South Carolina, pursuant to the law, 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.[3]

FINDINGS OF FACT

ATC 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. Pursuant to the application, ATC agreed to be bound by the WCIP. In its Application, ATC also acknowledged the LSRP was explained to ATC and that an explanatory notice or brochure had been provided to ATC and that ATC would be bound by the LSRP if ATC's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on ATC's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to ATC for the policy period effective 11/7/2003.

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on ATC's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to ATC for the policy period of 11/07/03 to11/07/04. The Assigned Risk policy issued to ATC contained the NCCI required Assigned Risk policy standard SCWCIP LSRP

[2] 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 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 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."*

[3] 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 ATC's Assigned Risk policy as a matter of law.

Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Subsequently, pursuant to the WCIP rules, Travelers performed a preliminary audit survey of ATC'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. On or about March 1, 2004, Travelers also sent ATC and its producer a letter advising that ATC Assigned Risk policy had been issued as part of the mandatory LSRP and also provided ATC and its producer with an explanatory pamphlet entitled *"The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program."*

ATC 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. However, in the Affidavit of Harry Brown, at the time Safety Director of ATC and now ATC's vice-president, submitted to the Court prior to the summary judgment hearing, ATC admitted that Travelers sent the re-written Assigned Risk policy as well as the NCCI pamphlet entitled "Loss Sensitive Rating Plan," to ATC on or about March of 2004.

Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and ATC provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for $52,116. On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited ATC with an Annual Physical Audit and issued a final bill to ATC. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated and issued a LSRP bill for ATC for $175,064 based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. ATC 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 ATC still owes Travelers $122,948 for premium owed. Further, ATC did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI as required pursuant to WCIP Rule 4.

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium pursuant to the LSRP. Here, I hereby find Travelers, the servicing carrier, is entitled to the premium it seeks.

CONCLUSIONS OF LAW

No dispute exists between the parties concerning the amount of payroll/remuneration ATC 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 ATC'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 ATC's South Carolina Assigned Risk policy. Through his producer, ATC submitted an Assigned Risk application and ATC was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, ATC agreed to be bound by the terms of the WCIP.[4] 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 ATC pursuant to WCIP. Accordingly, I hereby find that the LSRP applies to ATC's Assigned Risk policy, and 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 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 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 NCCI and the WCIP and

[4] This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that it is not bound by the LSRP and (2) that the carrier is otherwise estopped from seeking the additional premium it is owed pursuant to the LSRP.

certifying that the employer is unable to obtain voluntary coverage. Id. 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, 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."

In South Carolina, the WCIP has the force of law. Pursuant to the WCIP, the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as ATC'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 ATC.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advised ATC of the LSRP's applicability. In his application, ATC 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 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."

Here, ATC signed and submitted such application to NCCI, and ATC is bound by such Applicant's Statement. ATC 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 ATC'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, I hereby find that ATC 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, I hereby find that the WCIP's LSRP applies to ATC's Assigned Risk policy.

5. ATC'S PRODUCER IS AN AGENT OF ATC, NOT TRAVELERS.

In South Carolina, the WCIP mandates and I hereby find 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 ATC is the agent of ATC, not Travelers. As such, any failure of ATC's producer to explain to his own client the WCIP, the LSRP, the Assigned Risk policy or its implications rests solely with ATC's own agent, not with Travelers. See S.C.W.C.I.P. "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 ATC and its producer admitted that the producer is the agent of ATC, not the servicing carrier.

Here, ATC's producer admitted he was aware that the LSRP applied to ATC's Assigned Risk policy before ATC provided the ILOC to the servicing carrier. Also, ATC's producer admitted he became aware of and had conversations with ATC about the LSRP on or about March of 2004, before ATC issued it's ILOC to Travelers. I hereby find that the producer had knowledge that ATC's Assigned Risk policy had triggered the LSRP and that ATC's Assigned Risk policy was subject to the LSRP prior to ATC issuing an ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to ATC 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 ATC's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to ATC issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to ATC, and I hereby find that ATC had knowledge that the LSRP applied to its Assigned Risk policy prior to ATC issuing an ILOC to Travelers.

6. ATC HAS FAILED TO PROVIDE ANY EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.

ATC 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 ATC's Assigned Risk policy. ATC has not listed any expert to opine that Travelers has improperly determined that the LSRP applies to ATC'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 ATC. 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, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff 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 ATC argues that Travelers provided ATC 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), ATC has provided no evidence that the Endorsements (the Notification and Mandatory endorsements) issued by Travelers to ATC were not standard Endorsements drafted, copyrighted and mandated by NCCI. ATC has provided no evidence that a servicing carrier, such as Travelers, has any discretion to vary the Endorsements mandated by the NCCI. Here, ATC has failed to provide any expert testimony 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 NCCI. Accordingly, I hereby find that ATC's lack of any expert testimony to support its claims against Travelers is also fatal to ATC's claims.

7. ATC FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.

ATC asserts that Travelers is estopped from seeking the premium it is owed. However, ATC failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires ATC to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission and/or Administrative Law Judge and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed LSRP determination binds ATC per the WCIP requirements. The WCIP Rule 4 provides ATC with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 set forth the following mechanism:

> "Any Assigned Risk policyholders 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. 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 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 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 NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs"

Here, as required by the WCIP, ATC did not file any appeal of Travelers' LSRP decision to the NCCI. Rather, ATC 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").

Accordingly, ATC is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and ATC 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 ATC's abandoned appeal via NCCI pursuant to the WCIP provisions, I hereby find that Travelers is entitled to the premium it seeks on such grounds as well. Accordingly, as ATC failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, ATC cannot collaterally attack Travelers unappealed decision via this present collateral lawsuit. If ATC wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

8. ATC'S COUNTER-ARGUMENTS ARE WITHOUT MERIT.

Finally, ATC's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, ATC 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). Here, I find that ATC had the means of knowledge and implied, if not actual, knowledge of the LSRP. I also find that ATC did not "reasonably rely" on any representation by Travelers.

ATC's first counter-argument is that the LSRP does not apply to ATC's South Carolina Assigned Risk policy because of the LSRP "Notice" Endorsement contained in the Assigned Risk policy. ATC argues that the LSRP "Notice" Endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds.[5] However, ATC'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) 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 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, ATC "could have examined the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." ATC failed to do so, at its own peril.

[5] ATC ignores the Mandatory Endorsement completely in asserting its arguments. As the NCCI has determined that the "Notification" and "Mandatory" Endorsements provide the requisite notice to an Assigned Risk policy insured, such Endorsements provide adequate notice to ATC of the LSRP applicability to Assigned Risk policies in South Carolina.

The Assigned Risk policy Endorsement's language is mandated by the NCCI and South Carolina's Department of Insurance. The Assigned Risk policy 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 ATC agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, ATC had the means of knowledge to obtain and review a copy of the WCIP, or contact his 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 ATC's producer admitted he knew the LSRP applied to ATC's Assigned Risk policy before he asked ATC to issue the irrevocable LOC to the servicing carrier; such knowledge is imputed to ATC. Finally, as ATC's producer testified he advised ATC of the LSRP before ATC issued its ILOC to Travelers, I hereby find ATC had the means of knowledge, imputed knowledge, and actual knowledge of the LSRP during the pendency of its Assigned Risk policy.

Accordingly, ATC not only had the means of knowledge, but also had knowledge that the LSRP applied to the Assigned Risk policy before ATC 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 ATC. For these reasons, ATC's first counter-argument fails.

For a second defense/counter-argument, ATC argues that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which ATC paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. ATC supports its position by a selective reading of Section E of the Premium section of the Assigned Risk policy. However, ATC ignores Section A of the Premium section which clearly sets forth that: "All premium for this policy will be determined by our manuals, rates, rating plans and classifications."

As the LSRP applies to this Assigned Risk policy, I hereby find Travelers is entitled to the additional premium pursuant to the LSRP and it may not be estopped based on Travelers having issued a "final bill" to ATC where LSRP specifically requires additional billings after the "final bill" is calculated during the policy term, and the policy itself and the WCIP mandate such retrospective LSRP charges.

CONCLUSION

I hereby grant Travelers' Motion for Summary Judgment and find that Travelers is entitled to the additional premium of $122,948 (a liquidated amount) and interest from 6/29/05 to the present of an additional amount of $37,960.20 for a total of $160,908.20. I hereby issue a judgment in favor of Travelers against Ard Trucking Company in the amount of $160,908.20.

IT IS SO ORDERED!

_____

Paul M. Burch, Presiding Judge
Fourth Judicial Circuit

Dated:_____

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DARLINGTON) 2010-CP-16-0435

ARD TRUCKING COMPANY)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
TRAVELERS PROPERTY CASUALTY)
COMPANY OF AMERICA d/b/a THE)
TRAVELERS INDEMNITY COMPANY OF)
ILLINOIS)
DEFENDANT)

December 18, 2014
Darlington, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

A P P E A R A N C E S:

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Attorney for the Defendant

HATTIE O. GORDON
Circuit Court Reporter

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E X H I B I T S

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

COLLOQUY

THE COURT: All right.

MR. FERDERIGOS: Your Honor, may it please the Court. My name is Phillip Ferderigos, and I represent Travelers. We have a cross motion for summary judgment here today. Mr. Driggers is running late. He isn't here right now. So I won't talk no more at this time.

THE COURT: Ready?

MR. DRIGGERS: Thank you.

THE COURT: All right.

MR. FERDERIGOS: Your Honor, it's my pleasure to represent Traveler, an assigned risk carrier in this matter. The quick one minute version of my argument, Your Honor, is that Mr. Ard and the Plaintiff signed an assigned risk application which said that he would be bound by the W.C.I.P. The policy of insurance that was issued pursuant to an assigned risk plan said that he would be bound by the W.C.I.P. W.C.I.P. is Workers Compensation Insurance Plan.

And, Your Honor, the end result is that the Plaintiff is bound by the W.C.I.P., the Workers Compensation Insurance Plan. South Carolina has stated, and this is the most important document, Your Honor, Document Exhibit Number One to my motion from the South Carolina Department of Insurance that the W.C.I.P. says that the L.S.R.P., the

Loss Sensitive Rating Plan, applies to assigned risk policies when he got an assigned risk policy. That's the one minute version of my argument.

The application says he's bound by the W.C.I.P. The policy says he's bound by the W.C.I.P. The W.C.I.P. is the law in South Carolina, and I cited cases before that for Your Honor. And because of the W.C.I.P. said that he's bound by the L.S.R.P, the Loss Sensitive Rating Plan, which is reflected in Exhibit Number One, 40 pages, that sets forth specific plans that have been adopted in South Carolina.

Mr. Ard and the assigned risk policy that he has has other L.S.R.P. requirements. Therefore, as a matter of law the cross motion for summary judgment are that either we're entitled to the additional premium that we seek under the L.S.R.P. because there is no dispute about what that figure would be or Mr. Ard is entitled to get back his letter of credit which Travelers drew pursuant to the L.S.R.P. So that's the one minute argument.

The details are somewhat important though, Your Honor. As I indicated this is a premium dispute between a servicing carrier and an assigned risk policy. An assigned risk policy is a policy of last resort. It is not a policy of insurance that comes from a voluntary market. It's governed by the Workers Compensation

Insurance Plan, and it's administered by the administrative body which is called N.C.C.I.

In South Carolina and there are multiple cases that I referred to for Your Honor the W.C.I.P. when it comes to assigned risk policies is the law. The Supreme Court said that a couple times already. And as I indicated Exhibit Number One says that in South Carolina the L.S.R.P. applies to assigned risk policies after they were issued after November 1 of 2003. And that's the sole issue in this case.

Mr. Ard's assigned risk policy, Your Honor, was applied for November 6th 2003. Was issued November the 7th 2003. So a week after the L.S.R.P. became effective in South Carolina.

Now, Your Honor, the other issue with the Workers Compensation Insurance Plan the Workers Compensation Insurance Plan says that a Producer that Mr. Ard used to submit the assigned risk application to the N.C.C.I. is as a matter of law the agent of the Plaintiff, not the servicing carrier. So anything that the Producer failed to do or didn't fail to do that's between the Plaintiff and his own agent and is not attributed to the servicing carrier.

That's consistent with the testimony in this case of both the Producer and everybody from the Plaintiff

testified that the Producer was the Plaintiff's agent not the servicing carrier's agent. Now, Your Honor, the assigned risk application says, "That the Plaintiff agrees to be bound by the W.C.I.P. and bound by the L.S.R.P. if the L.S.R.P. is applicable in South Carolina."

And, Your Honor, in my memorandum on Page One I've got the specific language where it says, "That the undersigned applicant understands that because he is unable to secure workers compensation coverage through any other insurance provider; that would be the voluntary market that this coverage is being afforded through the Workers Compensation Insurance Plan in that the rates charged may be higher than those in the voluntary market." As you can imagine the rates are going to be higher.

It also says, "The following statement is only applicable in jurisdictions where N.C.C.I. has been approved for use." And I remind you that in South Carolina it has been approved for use -- well, six months before but that it became implemented a week before this policy to Mr. Ard was issued.

It says, "By signing below I acknowledge that the N.C.C.I. Loss Sensitive Rating Plan has been explained to me or that explanatory notice or brochure has been provided to me, and I agree that I shall be bound by this such plan." And it goes on to say, "If the premiums are

triggered for that plan then the servicing carrier can charge that premium."

Now, Your Honor, the binder and the policy itself has similar language where the policy says, as far as charging premium and this is on Page Seven of my memo, "All premium for this policy will be determined by our manuals of rules, rates, rating plan and classification. We may change our manuals and apply the changes to this policy as authorized by law or a governmental agency regulating this insurance," which would be the N.C.C.I.

It says, "That please note that premiums may be assigned higher than the standard voluntary market." Importantly, it says, "Coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the L.S.R.P. in the event that your estimated annual premium or preliminary physical audit meets or exceeds the premium eligibility requirement."

So, Your Honor, what happened in this case was Travelers sent the following documents, three documents, to the Plaintiff and the Producer. The first document, in accordance with the initial policy, and this is an N.C.C.I. form that is a standard form that is required by the N.C.C.I. The servicing carrier cannot vary this form. It is the Assigned Risk Loss Sensitive Rating Plan Notification Endorsement.

Your Honor, that is the first endorsement that is required the servicing carrier to send. That is the endorsement that you're going to hear about a little bit from Mr. Driggers. That's the endorsement that does not have South Carolina listed on it. That's what's required in South Carolina, and this is reflected in Exhibit Number One. You can see where that form is there as well.

Your Honor, after the amount of premium was sent to N.C.C.I -- this is a larger employer. We're talking about a multi-million dollar employer here, the W.C.I.P. says that there is an initial interrum audit which hasn't been marked since 2014. When that happened that triggered the L.S.R.P. requirements which meant that pursuant to the W.C.I.P. Travelers then had to send a rewritten assigned risk policy with another N.C.C.I. form, the mandatory assigned risk loss sensitive rating plan endorsement.

The first one was the notice which is Exhibit Six. The second one is the mandatory which is Exhibit Nine. And, finally, the third document, Your Honor, is the Loss Sensitive Rating Plan L.S.R.P. Employer's Guide for the Mandatory Assigned Risk Program which is also prepared by N.C.C.I. and written by N.C.C.I. All of those three documents the servicing carrier was required to forward to the Plaintiff and the Producer or forward to the Plaintiff and Producer. The Plaintiff and Producer have admitted

that they have received each of those three documents.

Okay. Your Honor, the Producer testified that when he first wrote the policy to Mr. Ard he himself did not know what the L.S.R.P. is. That's unfortunate, but that's what he testified to. He discovered about -- and this is his testimony. It's in my memo. That once the interrum audit had taken place and the rewritten policy was issued with the explanatory booklet he learned about the L.S.R.P. policy and then told the Plaintiff about the L.S.R.P. policy.

At that point the Producer asked and W.C.I.P. required an L.S.R.P. deposit, and what the Plaintiff did was issue an irrevocable letter of credit in order to satisfy that deposit. And the Plaintiff can do that. So Travelers requested an L.O.C., Letter of Credit, and the Plaintiff issued a letter of credit. That was for approximately $52,000, Your Honor.

After that -- that was all during the policy period. At the end of the policy period and this is after the interrum audit there was the final audit W.C.I.P. and at that final audit Travelers determined that there was an additional $29,000 owed pursuant to the W.C.I.P. Nothing to do with the L.S.R.P. They issued that bill to Plaintiff. Plaintiff did pay that bill. Then the L.S.R.P. bill came, and the Plaintiff did not pay the

L.S.R.P. bill. And the L.S.R.P, Your Honor, is three different valuations -- four different valuations over a period of months after the policy ends.

And, Your Honor, that L.S.R.P. bill was for approximately $175,000. The Plaintiff refused to pay for the bill so Travelers drew on the letter of credit. So Travelers is still owed approximately $120,948. Your Honor, that's just the key facts of the case.

Flipping very quickly to argument, and I know it looks like alphabet soup with a lot of L.S.R.P. and W.C.I.P. but the details are important. We have three affidavits from our experts: Underwriter, auditor and L.S.R.P. expert. It says, "The servicing carrier did everything that they were supposed to do. The Plaintiff has failed to list any expert at all, and there is no testimony that the servicing carrier violated any standards of care at all."

Finally, Your Honor, the Plaintiff did not appeal Travelers decision until the Rule Four, which is in my memorandum -- in my memorandum of the W.C.I.P. which says, "If you have a problem with these issues you have to appeal it to the N.C.C.I. which is the administrative body. The Plaintiff never did that.

So the Plaintiff cannot collaterally attack Travelers in N.C.C.I. decision in this court here today when they

abandoned their appeal right to get an administrative decision cause, Your Honor, an unchallenged ruling of an administrative body is the law of the case.

Your Honor, I quickly move to the very first endorsement, the notice endorsement that does not specifically list South Carolina. N.C.C.I. in its wisdom mandated that the notice endorsement was to go out without having South Carolina listed. That's their key argument that the servicing carrier should be estopped from saying that L.S.R.P. applies. This is under the first endorsement.

But, Your Honor, that issue has already been litigated in South Carolina and through the reported decision, Georgetown Steel Company v. Capital City Insurance Company. And in that case, Your Honor, that's a bankruptcy case. Not a Court of Appeals or a Supreme Court case. And in that case the court said that use of standard forms and policies such as the notice endorsement that was pled here did not have South Carolina is not ambiguous to a person in South Carolina as a matter of law. The assignments application of the W.C.I.P. and the assignment of the policy put the insured on notice of the L.S.R.P. and its details as a matter of law."

The Court held that, "An insured is examined the South Carolina plan determined the specific factors

applicable to all policies written under the assigned risk claim. And that the standard L.S.R.P. endorsement drafted and incorporated by N.C.C.I." So, Your Honor, there is already a reported decision rejecting the argument that Plaintiffs are going to make.

Also, Your Honor, the Plaintiff admitted that he didn't even read or review the application before he signed it, and in key parts of their deposition testimony the Plaintiff and his safety director admitted that they didn't read or review the notice endorsement and didn't rely on it. So there is no -- there is means and knowledge, and ignorance of the law is no excuse. And there is also actual knowledge.

But also the Producer himself testified that he knew about the L.S.R.P. before the I.L.S.C. was given to Travelers. Therefore, that's imputed knowledge to the principal as a matter of law. So, Your Honor, what this basically comes down to is a simple question: Does the L.S.R.P. apply. And because, as a matter of lew, the W.C.I.P. mandates that the L.S.R.P. apply. It does in this case.

So, Your Honor, nothing further unless you have any questions.

THE COURT: Thank you.

MR. FERDERIGOS: Thank you for your patience.

THE COURT: Mr. Driggers.

MR. DRIGGERS: Your Honor, ordinarily any case involving insurance policy, in my experience over the years, the insurance company has been the one who said, 'read the fine print'. In this case the insured, Mr. Ard here, is the one who tells the insurance company, 'read your own policy'.

The basics that we are relying on in this case have not been changed and they are not changed by the fact that the South Carolina Insurance Commission permits insurance company to impose certain requirements on the insured. We believe in spite of all that that there is also -- there always exists a basic rule of insurance contract law that applies to this case.

An insurance company, if they had intend for something to be stated in their policy then they have an obligation to state in their policy clear, plain language and unambiguously what they intend to do. In this case you will see in a moment the insurance company specifically told Mr. Ard that there is this L.S.R.P, the Loss Sensitive Rate Plan, which is adopted and has been agreed to by the South Carolina Insurance Commission.

It can be imposed on an insured, but they told him in his policy it didn't apply to South Carolina. And as counsel for the insurance company just stated this is a

plan that went into effect on November 1, 2003. That's the same time Mr. Ard was looking for a policy to cover his company for worker's compensation beginning November 6, 2003. Well, not a week's time. Nobody ever told him that South Carolina had adopted this L.S.R.P. Plan on November 1, 2003.

And like I first said it's kind of hard to organize it and explain it. I'm hoping for the Court to understand, but let me stop right there and tell you that very interestingly when Mr. Ard applied for the policy the only thing they asked him to do was sign that application. And in his affidavit, and I'm going to hand it up to you right now. It's in the record already, but several documents in here that I'd like to point out to you.

But when he -- when Mr. Ard was looking for insurance at that time his agent on his deposition Mr. Ard put they never heard of the L.S.R.P. They didn't know a thing about it. And there is a statement in there that to the effect on the application. "If the L.S.R.P. applies to your jurisdiction you will be bound by it."

But they didn't tell them he was -- that this particular L.S.R.P. feature had been adopted in South Carolina. And when the policy was delivered a month later it specifically told him that L.S.R.P. did not apply in South Carolina. So on that basis alone we believe that

Mr. Ard is entitled to rely on the contract issued by the insurance company.

Interestingly, within about -- I think it was three months later the insurer in this case, Travelers, went through a transformation, reorganized itself, and they issued Mr. Ard a second policy. Same coverage terms, and it had the identical endorsement in that -- in the policy that stated, "This L.S.R.P. does not apply in South Carolina." And I'll sure there is more specific language.

So not only do they tell him when the first policy was issued on December 1st he never heard of it before. Oh, L.S.R.P., don't worry. That doesn't apply in South Carolina. Then on March the 1st 2003 -- do you have a copy of that for the Court? Again, they failed the same thing. They said "The L.S.R.P. does not apply in South Carolina."

And, Judge, I think anybody should be able to rely on what the insurance company says. I don't know why the insurance company said that when they could have said that in South Carolina the L.S.R.P. does apply in South Carolina. But they specifically told Mr. Ard it does not. They have him a list of I think ten states that -- where it was covered, and South Carolina was not listed. Let me show that document to you. It's in Mr. Ard's affidavit. I'm under the policy listing. If you want to look at it.

You're looking at Mr. Ard's affidavit.

Under the second exhibit which is the policy itself. There is the policy if you want to pull it out and look at it yourself. It might be helpful, but anyway, this is the entire policy issued to Mr. Ard. The only mention in this entire policy of L.S.R.P, Loss Sensitive Rating Plan, is on an endorsement entitled, "Assigned Risk Loss Sensitive Rating Plan Notification Endorsement." Now, this endorsement is very interesting.

The counsel for Travelers included this in his brief. A manual that was adopted by the South Carolina Insurance Commission when it allowed insurance companies to impose an L.S.R.P. requirement on their -- on people who buy insurance. And it's about a 20 page document inside Phillip's brief. And it says, "State special rating plan and assigned risk mandatory lost sensitive rating plan, L.S.R.P, South Carolina." And it's numbered, South Carolina Department of Insurance, 00020.

And it states the basic manual insert, and in this basic manual it -- not only does it address L.S.R.P. and how it can be applied in South Carolina. Very importantly, if I can show you on this page here: If you look at Page Ten of the manual, and it's listed S.C.D.O.I. 00029. Do you have a copy of that, by the way, sir? If you don't I'll hand this up to you.

THE COURT: If you could hand that to me. I don't see that here.

MR. DRIGGERS: This was from the South Carolina Insurance Commission, and it specifically states on that form there what the insurance company must do that adopts the L.S.R.P. And I've blown it up here, and it says right here, "Notice." Now, we all know that notice is an important concept under the law, and the Insurance Commission notice to assigned risk policy holders.

Now, what it tells and first, right off the top, all assigned risk policies shall be endorsed with policy endorsement W.C.000417, and I'll show you that second page here is that 000417, Assigned Risk Policy Sensitive Rating Plan Notification Endorsement required by the South Carolina Commission.

Okay. Assigned Risk Loss Sensitive Plan Notification, "In order to insure 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." All right, sir. And so what happened? In November 2003 when the issue of this policy to Mr. Ard following the order of the South Carolina Insurance Commission under to attach this 17, "In order to insure that all possible qualifying risks are notified of the intent and details of the plan

shall be required to attach."

This is what they sent. "The endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory loss sensitive plan eligibility," and it lists here certain requirements in order for this required endorsement to apply to the insured and the policy being issued.

At the bottom it says, "This endorsement applies in the states listed in the schedule below. Schedule states -- and the premium goes up if you meet a certain threshold of premium that would kick in." I won't read them all, Judge. Closest thing to South Carolina on this list is South Dakota. No South Carolina listed anywhere.

This was the notice pursuant to the South Carolina Insurance Commission order for insurance companies to notify Mr. Ard concerning the loss sensitive rating plan. And what did they tell him? "This endorsement applies in the states listed in the schedule below." South Carolina is not listed.

Now, that is plain. That is unambiguous. I don't think any first grader could read this and you ask him, 'Does this endorsement apply in South Carolina'? He looks at the list of states and clearly it does not. And Mr. Ard didn't draw this up. Mr. Ard received it when he got his policy issued to him and after he paid his premium

and it bound him and actually it's on December 1st 2003. This particular form, however, is dated March 1, 2004. They reissued the same thing when that changed their name three months later. They sent him the same form and again told Mr. Ard the same thing, "This endorsement applies in the states listed in the schedule below, and here is the list."

Now, the case that Mr -- that Mr. Phillip -- I apologize for not calling you by your last name, but it's Greek to me.

MR. FERDERIGOS: That's okay.

MR. DRIGGERS: Judge, hold on one second, please.

THE COURT: Hold on. You ready. Okay.

MR. DRIGGERS: Your Honor, as I understand the theory of Travelers, and by the way, Your Honor, the -- Mr. Ard's company is the plaintiff in this case. He brought the lawsuit to recover the money that he understood would be applied to the final premium of coverage in this case. And like all worker's compensation insurance policies insurance companies reserve the right to come in at the end of the year and do an audit to make sure that all employees are accounted for and their job titles and the rating and risk is properly accounted for.

And they did that, and the policy they issued Mr. Ard, too, the one that you have before you there, if

you look back just a page or two before that there is about five pages called 'Worker's Compensation Employer Liability Insurance Policy', and it tells him that you pay a premium based on your rate and it would be rated up because it's worker's compensation and it's also because it's a target insured to worker's compensation and you are an assigned risk insured. It's going to be rated up. Pay for it.

But by the end of the year we will send you a final premium, and they did. They sent a final premium in January of 2005 -- excuse me. February of 2005, and he paid it before it was due, 29,000 additional dollars. That did not take into account a lump sum of money that they had asked him to put up in a line of credit with Mr. Ard. And if you look at the line of credit you won't see loss sensitive rating plan on that line of credit anywhere.

In fact the only place you see loss are -- those initials and that term, L.S.R.P. on the policy they issued to him is that one endorsement telling him that it doesn't apply in South Carolina. So it's not anywhere on here that put Mr. Ard on notice. They didn't tell him about it until he got the policy. It wasn't even in effect until the week before he started, and he had not met the threshold that they claim on his premium because his

premium was hundreds of thousands of dollars. Nobody said anything to him about L.S.R.P. ever being involved in the policy so he never had a reason to go look for it.

I think, again, I keep repeating myself. An insurance company must put in their policy what they expect to rely on, and an insured can reply on the policy issued to them. So Phillip indicates this case and he cites it in his brief. I've cited it in my brief. I think the case is a great case. The case stands for the proposition that I maintain Mr. Ard's entitled to, and I'll give you a copy of that case, Your Honor.

It's a bankruptcy case. I don't know how they managed the trial in bankruptcy. I don't think they would have a jury, what have you, but in this case let me give you some of the background on this case. The plaintiff in this case was Georgetown Steel, and the defendant was Capital Insurance Company. And it was a worker's compensation insurance policy.

Interestingly, in this case, and it's by the way the case was decided in April of 2004 which is just within a year and a half after Mr. Ard took out the policy. But this case is very similar in many respects. The insurance company first of all had a policy that was issued to them, and they -- while that policy in issue they had -- they were going through some financial difficulties. And at

some point in time a second policy was issued. So two policies issued in this case.

And there were endorsements filed and -- on the policy. Very similar. This very same endorsement -- where is the number? 0417 was important in this case. And it was not just like this one but just like the one this company did. We'll talk about that in just a moment. But, anyway, so policy was issued and one of the endorsements which was a detailed explanation about the L.S.R.P. premium was to be determined.

In the Georgetown case had a worksheet page on it. Hear it is. The last page of this endorsement which is 0418 is one right behind this -- and by the way, this endorsement was not on Mr. Ard's original policy guide. It was not there. And the last page, and again, it's a detailed several pages, but it details how the L.S.R.P. is being computed. On the last page, if you will see there, there is a little worksheet for an example of how the L.S.R.P. is computed.

Now, I don't think I would have done this but for anybody, but the lawyer for Georgetown Steel, and I don't know his name. I don't want to disparage him, but he said in that case the fact that there were zeros down there next to the L.S.R.P. on that worksheet form there negated the application of L.S.R.P. to the policy issued to

Georgetown Steel. But, Judge, I don't think it would take a long time to decide that that was not -- that wasn't such a hot argument. And the court didn't buy it. They said, "That's just a worksheet. That's just a form. That doesn't mean that there is no charge for L.S.R.P. There is nothing to base it on. Those zeros there are just put there on a blank form."

And you can't transform the policy and say that the L.S.R.P. doesn't apply, and that form, by the way, is right on the schedule. A larger endorsement explains how the L.S.R.P. system works. They told -- and so the court threw that argument out and ruled in favor of the insurance company and said that L.S.R.P. does apply and just because an insurance company puts a form like that on to a policy it does not have figures on it is not a reason to change the intent of the whole policy.

Now, importantly, very importantly, Georgetown Steel case, and if you look on that case, Your Honor, on about the third page and this is all cited in my brief. Let me find it. It says the following. And by the way, the court also points out in the -- and the Georgetown Steel case points out the following: General rules of contract instruction pursuant to South Carolina law apply. And he's talking about a policy here, Judge, very similar. Worker's comp policy that has an insurance company trying

to impose the L.S.R.P. provisions upon the insured. He says, "General rules of contract instruction pursuant to South Carolina law applies." There is Page 3 -- 5 of my brief. The intent of the parties is to be primary considered which can be ascertained from the language of the policies. It give citations. "If the language is clear and unambiguous the language alone is controlling. If capable of two reasonable interpretations that construction which is most favorable to the insured will be adopted."

Then he turns -- the court turns to addressing the arguments and the policy before the court in the Georgetown case. And I think it's important here it says that -- one second. It says in determining that the insured was bound by the L.S.R.P. in the Georgetown case and this is -- I think it's Page 313 on the bankruptcy case. Perhaps the most telling of the policies with respect to the application of L.S.R.P. is the endorsements included in the policy. The policies contain -- these are two policies. One that the first issue. The second issue.

He says, "The policy contain -- I'm reading from the Court's order, and it says here, 'assigned risk loss sensitive rating plan notification endorsements'. All right, sir. He goes on to say, "The endorsements provides

as follows." We're talking about -- please understand that we're talking about the Georgetown case endorsement. And this is what they said, "This plan will adjust your premiums for this insurance based upon the losses incurred during the period covered by the insurance. The endorsement further specifies specific that -- and this is very important, your insurance is written under South Carolina Worker's Compensation Assigned Risk Plan that has adopted the loss sensitive rating plan. There is nothing like that language on the same endorsement that they attached to Mr. Ard's first policy. And they attached to his second policy.

And so this case is clearly distinguishable, and the Georgetown case that Travelers relies upon the court clearly found that they had -- they did what they were supposed to do. They used this like the Insurance Commission told them to do it, notifying the insurance -- the insurer. Notify them so that they understand all risks or notify them. And they did this, and they didn't put down here.

Instead of saying, 'this endorsement applies to states listed below and not put South Carolina'. They said, 'your insurance is written under South Carolina Worker's Compensation Risk Plan and has adopted the loss sensitive rating plan'. That's what they said. What

Travelers says is the only way you can read that at all is that South Carolina is not covered by L.S.R.P. plan.

And so at the end of the year Mr. Ard paid the final premium off. I think that was in February. In June or July I think it was they notified him for the first time, 'oh, by the say, Mr. Ard, you owe us another premium of $75,000 under this L.S.R.P. plan. He admittedly asked for legal assistance to look into the policy and see what we're talking about. He never heard of that. And low and behold we go looking and we didn't find anything like that in the policy.

What they said is we found South Carolina did not -- was not covered by the L.S.R.P. by their own written endorsement. I want to also point out just momentarily get back to the Georgetown case. It says that in the case that in that particular policy that I find -- bear with me just one second, Your Honor. It says that the policy in the Georgetown case was replete with reference to applicability of an L.S.R.P. There is not one word in that policy that was issued to Mr. Ard in December that said one word about that endorsement. In fact just the opposite.

The only mention of L.S.R.P. said it was not applicable in South Carolina. For those reasons we resort to the same common law that we recited in the case before

you there by the bankruptcy court. Contract rules should apply. Notice rules should apply. The South Carolina Insurance Commission had a special requirement to notify their insurer by endorsement that they were covered under that policy in South Carolina by L.S.R.P. They told Mr. Ard just the opposite.

So, again, Your Honor, it's our position that the policy speaks for itself, and of course, if it's not covered by the L.S.R.P. Mr. Ard had no duty to do anything with respect to the L.S.R.P. including any type time of appeal. They didn't -- he didn't think it ever applied. He still doesn't because they told him it did not. Thank you.

THE COURT: Thank you.

MR. FERDERIGOS: Thank you. Your Honor, if I may just very quickly.

THE COURT: Yes, sir.

MR. FERDERIGOS: Your Honor, ignorance of the law is not an excuse. The W.C.I.P. is the law. And the L.S.R.P. applies to this policy as a matter of law. Anything the producer failed to say or not say, and at a certain point Mr. Driggers said they didn't notify him of this. They didn't notify him of that. That's the producer. That's his own agent, not the servicing carrier.

Your Honor, I'm not going to read the Georgetown

decision to you or cherry pick parts to read to you. If you read to Georgetown decision you will see that it rejects the Plaintiff's arguments. The noticed endorsement that is blown up over there, Your Honor, without South Carolina listed, is what is referred to in the Georgetown decision. And, Your Honor, at that point in time South Carolina was not listed on that endorsement. That's an N.C.C.I. requirement, Your Honor.

Mr. Driggers argued that the servicing carrier could have added this or take that out. The servicing carrier had no authority to do that under the plan administered through the state.

Your Honor, the Plaintiff's counsel did not bring to your attention the second policy that they admitted they received. The rewritten policy has a mandatory endorsement as well as a notice endorsement, and that's what the W.C.I.P. requires. Initially it goes out with that endorsement, the notice endorsement. If there is an interrum item and it triggers the L.S.R.P. and in this case there was, they send it out with that again and the mandatory endorsement which is listed as Exhibit Nine.

They've admitted that they received that, but Mr. Driggers didn't talk about that today. That's what the W.C.I.P. requires the servicing carrier to do. Send out that document, send out the mandatory endorsement, send

out the booklet. That's what the servicing carrier did. There is no expert testimony from the other side to prove their case.

And, finally, Your Honor, as far as the final bill argument by it's nature an L.S.R.P. retrospective planning you can't jus quote Part E of the manual and ignore Part A that said that the W.C.I.P. determines our ratings.

So, Your Honor, for all those reasons it's a simple case of what I started off with at the beginning. The Plaintiff signed an application that he didn't read that says he's bound by the W.C.I.P. The policy says he's bound by the W.C.I.P. He's bound by the W.C.I.P. and all of these arguments are just background noise. They're not really relevant. To the contrary. Thank you, Your Honor.

THE COURT: All right, gentlemen, I want proposed orders in 20 days. Exchange any briefs that you want to present to the Court.

MR. FERDERIGOS: Thank you, Your Honor. And also there may have been some few pages, Pages 33 and 34, of my Exhibit A, and Page 12 and Page 16 of Exhibit 16 that may not have made it with my filings. May I submit those to the Court?

THE COURT: Yes, sir.

MR. FERDERIGOS: They're in my brief. I referred to them, but they may not have made it into my brief. Thank

you, Your Honor.

END OF TRANSCRIPT OF RECORD

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DARLINGTON)

I, HATTIE O. GORDON, Official Court Reporter for the 4th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Darlington County, South Carolina, on the 18th day of December, 2014.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

June 22, 2015

HATTIE O. GORDON, Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DARLINGTON

IN THE ☒ COURT OF COMMON PLEAS
FAMILY COURT

Ard Trucking Company)
)
☐ Plaintiff)
v.)
Travelers Property Casualty Company)
Of America d/b/a The Travelers)
Indemnity Company of Illinois,)
☑ Defendant)

CASE NO.: 2010-CP-16-0435

MOTION INFORMATION FORM
AND COVER SHEET

COPY

name, S.C. Bar no. and address of plaintiff's attorney	name, S.C. Bar no. and address of defendant's attorney
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☑ MOTION HEARING REQUESTED (attach written motion and complete Sections I and III)
FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 45 minutes Court Reporter Needed: Yes

SECTION II: Motion Type

☑ Written motion attached
Form Motion I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ~~Plaintiff~~/Defendant — September 15, 2014 Date submitted

SECTION III: Motion Fee

☑ PAID – AMOUNT: $25 when Motion was filed

EXEMPT: (check reason)
Rule to Show Cause in Child or Spousal Support
Domestic Abuse or Abuse and Neglect
Indigent Status State Agency v. Indigent Party
Sexually Violent Predator Act Post-Conviction Relief
Motion for Stay in Bankruptcy
Motion for Publication Motion for Execution (Rule 69, SCRCP)
Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
Other: Order of Protection (vacation)

FILED
2014 SEP 16 AM 10:58
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

JUDGE'S SECTION

Motion Fee to be paid upon filing of the attached order.
Other:

JUDGE

CODE Date:

CLERK'S VERIFICATION

DATE FILED

Collected by:
(print name)
MOTION FEE COLLECTED:
CONTESTED – AMOUNT DUE:

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

{00488601.DOC.1 }

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON)	C/A NO. 2010-CP-16-435
Ard Trucking Company,)	
)	
Plaintiff,)	
)	
vs.)	**MOTION FOR SUMMARY JUDGMENT**
)	
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,)	
)	
Defendant.)	

FILED
2014 SEP 16 AM 10:58
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DARLINGTON COUNTY, S.C.

TO: MARTIN S. DRIGGERS, SR., ESQUIRE, COUNSEL FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that within ten (10) days or as soon thereafter as counsel for the Defendant may be heard, Defendant will move pursuant to SCRCP Rule 56 of the South Carolina Rules of Civil Procedure for an Order granting summary judgment to Defendant Travelers Property Casualty Company of America (hereinafter "Travelers") as no genuine issue of fact exists and Travelers is entitled to the premium it seeks pursuant to its Assigned Risk policy and the Workers' Compensation Insurance Plan (WCIP).

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 issued pursuant to the WCIP and are administrated through the NCCI.[1] NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina.

[1] 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 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).

TRUE CERTIFIED COPY
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.

This matter involves a premium dispute wherein Plaintiff alleges Travelers improperly charged Plaintiff premium pursuant to the WCIP's Loss Sensitive Rating Plan (LSRP). In South Carolina, pursuant to the law, 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.[2] 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, based on Plaintiff's payroll, Plaintiff'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.

B. FACTS

Ard Trucking Company 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. Pursuant to the application, Plaintiff agreed to be bound by the WCIP. Plaintiff also acknowledged the LSRP was explained to Plaintiff and that an explanatory notice or brochure had been provided to Plaintiff and that Plaintiff would be bound by the LSRP if Plaintiff's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 1/20/03, NCCI assigned Travelers to be the servicing carrier based on the Ard Trucking Company's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period effective 11/7/2003.[3]

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on the Plaintiff's Assigned Risk application and issued an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period of 11/07/03 to11/07/04. The Assigned Risk policy issued to Plaintiff contained the Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Pursuant to the WCIP rules, Travelers performed a preliminary audit of Plaintiff's payroll in

[2] Per South Carolina law and the WCIP, based on the Plaintiff's payroll, premium is properly charged pursuant to the LSRP.

[3] Admittedly, Plaintiff 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.

February, 2004. The preliminary audit's payroll triggered the WCIP LSRP provisions. On or about March 1, 2004, Travelers then issued a rewritten Assigned Risk policy, which included the "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI.[4] On or about March 1, 2004, Travelers also sent Ard Trucking Co. and its producer a letter advising that the Ard Trucking Company Assigned Risk policy had been issued as part of the mandatory LSRP and also provided Plaintiff and its producer with an explanatory booklet entitled *"The Loss Sensitive Rating Plan (LSRP): An employer's guide to the mandatory Assigned Risk retrospective rating program."* Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and Ard eventually provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for $52,116.

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited Ard Trucking Company with an Annual Physical and issued a final bill to Ard Trucking Company.[5] In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated an LSRP bill for Plaintiff based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. Plaintiff refused and has continued to refuse to pay Travelers' bill for additional premium owed per the LSRP. However, Plaintiff did not contest Travelers' LSRP determination with Travelers by filing a written request for a reconsideration or appeal, and Plaintiff did not appeal any determination to the NCCI. Ard Trucking Company did not appeal Travelers' LSRP determination to NCCI as required pursuant to WCIP Rule 4.[6]

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium for payroll that triggers the LSRP. In this case, Plaintiff's payroll triggered the LSRP for Assigned Risk policies, and Travelers, the servicing carrier, is entitled to the premium it seeks as a matter of law.

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[4] Plaintiff and his representatives have testified that they do not know if they received the rewritten Assigned Risk policy or the booklet in March of 2004. Travelers' representatives will testify that these items were sent to the Plaintiff and its producer. Nevertheless, whether or not these items were sent or received by Plaintiff is irrelevant as the LSRP applies to South Carolina assigned risk policies as a matter of law.

[5] The WCIP and the Assigned Risk policy allow an applicant to obtain an assigned risk policy via an estimate based on the representations of the Plaintiff and its producer. Based on the Plaintiff's application, Plaintiff was issued a South Carolina Assigned Risk policy. After the initial interim audit, per the WCIP and policy terms, Travelers determined the Plaintiff's premium triggered South Carolina's LSRP applicable to assigned risk policies. Based on the WCIP and applicable audit standards, Travelers was entitled to an additional premium of $175,064 based on the LSRP. Travelers issued a premium bill to the Plaintiff for the additional $175,064 in premium owed. Plaintiff refused to pay the additional premium owed. Subsequently, per the LSRP, Travelers drew upon the $52,116 LOC and Plaintiff still owes Travelers $122,948 for premium owed.

[6] Indeed, Plaintiff did not appeal any issue to NCCI as is required by WCIP Rule 4.

C. DISPOSITIVE LEGAL ISSUE

No dispute exists between the parties concerning the amount of payroll/remuneration Plaintiff 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 Plaintiff'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 Plaintiff's South Carolina Assigned Risk policy. Through his producer, Plaintiff submitted an Assigned Risk application and was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, Plaintiff agreed to be bound by the terms of the WCIP.[7] The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to the Plaintiff pursuant to WCIP. Accordingly, as LSRP applies to Plaintiff'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 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 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 NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. NCCI is designated in the WCIP as the "plan administrator." Id. The Supreme Court affirmed that WCIP rules have the "force

[7] This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff 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.

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, 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."

In South Carolina, the WCIP has the force of law. The South Carolina Department of Insurance has verified that (1) the LSRP applies to Assigned Risk policies on or after November 1, 2003. Specifically, the South Carolina Department of Insurance has verified the above via its letter dated June 24, 2014 and accompanying documents Bates stamped SCDOI 0001 – 00040 attached as Exhibit 1 to this Motion. Accordingly, as a matter of law, as the Plaintiff'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 the Plaintiff. As a matter of law, the LSRP applies to Ard Trucking Company's South Carolina Assigned Risk Policy pursuant to the WCIP.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advises Plaintiff of the LSRP's applicability. In his application, Plaintiff 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 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."

Here, Plaintiff signed and submitted such application to NCCI, and the Plaintiff is bound by such Applicant's Statement.

4. ASSIGNED RISK POLICY

Identical with WCIP, LSRP, and Rules 2-A and 2-H, 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 AR policy terms itself, the WCIP's LSRP applies to Plaintiff's Assigned Risk policy as a matter of law.

5. PLAINTIFF'S PRODUCER IS AN AGENT OF THE INSURED

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 Plaintiff is the agent of Plaintiff, not Travelers, as a matter of law. As such, any failure of Plaintiff's producer to explain to his own client the WCIP and assigned risk policy or its implications rests solely with Plaintiff's own agent, not with Travelers. See S.C.W.C.I.P. "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." SCWCIP, Section I. Moreover, the admitted knowledge of the producer is imputed to Plaintiff as a matter of law.

Here, Plaintiff's producer admitted he was aware that the LSRP applied to the Plaintiff's Assigned Risk policy before Plaintiff provided the irrevocable LOC to the servicing carrier.[8] As his producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to Plaintiff issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to the Plaintiff as a matter of law and the Plaintiff himself had specific knowledge that the LSRP applied to his Assigned Risk policy.

6. PLAINTIFF'S COUNTER-ARGUMENTS ARE FLAWED.

Plaintiff's first counter-argument is that the LSRP does not apply to South Carolina Assigned Risk policies because of the LSRP Endorsement contained in the Assigned Risk policy. Plaintiff argues that the LSRP endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds. However, Plaintiff's argument has already been soundly rejected by South Carolina courts. Specifically, in the recent Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C.(D.S.C.) 2004) decision, 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) are not ambiguous to a reasonable person in South Carolina as a matter of law. The Assigned Risk application, the WCIP, and Assigned Risk

[8] In addition, both the insured and the producer testified that the producer is the agent of the insured, not the servicing carrier.

policy terms put the insured on notice of the LSRP and its details as a matter of law. The court held that "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 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."

The Assigned Risk policy Endorsement's language is mandated by the NCCI and South Carolina's Department of Insurance. The Assigned Risk policy 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 the Plaintiff agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, Plaintiff had the means of knowledge to contact his producer or the South Carolina Department of Insurance to inquire further concerning the LSRP applicability. Ignorance of the law is no excuse and, in South Carolina, the WCIP's LSRP is the law. Moreover, as Plaintiff's producer admitted he knew the LSRP applied to Plaintiff's Assigned Risk policy before he asked Plaintiff to issue the LOC to the servicing carrier, such knowledge is imputed to the Plaintiff as a matter of law.

Accordingly, Plaintiff not only had the means of knowledge, but also had actual knowledge that the LSRP applied to the Assigned Risk policy before the Plaintiff issued an LOC to the servicing carrier. For these reasons, Plaintiff's first counter-argument fails as a matter of law.

For a second defense/counter-argument, Plaintiff argues that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which the Plaintiff paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. As the LSRP applies to this Assigned Risk policy as a matter of law, Travelers is entitled to the additional premium pursuant to the LSRP and may not be estopped based on Travelers having issued a "final bill" to the Plaintiff where LSRP specifically requires additional billings after the "final bill" is calculated during the policy term.

7. PLAINTIFF HAS NO EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.[9]

Finally, Plaintiff has not listed any expert to opine that Travelers has improperly determined the LSRP applies to Plaintiff's Assigned Risk policy or breached any standard of care in regard to its audits. 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, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff 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"). Here, Plaintiff has failed to provide any expert testimony that Travelers or its auditor breached any standard of care. Indeed, Plaintiff failed to list any expert at all. Accordingly, Plaintiff's lack of any expert testimony to support its claims against Travelers is fatal to Plaintiff's claims as a matter of law.

8. PLAINTIFF FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.[10]

Plaintiff has asserted that Travelers is estopped from seeking the premium it is owed. However, aside from being meritless, Plaintiff failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires Plaintiff to

[9] Plaintiff has failed to list any expert to opine that Travelers breached any standard of care. Plaintiff has also failed to create an issue of fact as it has retained no expert who has opined that Travelers breached any standard of care to it. 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 the Plaintiff's AR policy. Moreover, Plaintiff has not provided any evidence that Travelers' calculations of the LSRP are incorrect. Accordingly, Plaintiff has failed to create any issue of fact that Travelers breached any standard of care and, Travelers is entitled to summary judgment.

[10] Plaintiff failed to appeal Travelers' decision to the NCCI pursuant to Rule 4 of the WCIP and, therefore, Plaintiff failed to exhaust his administrative remedies and cannot contest Travelers' decision via this present lawsuit. The WCIP Rule 4 sets forth: the appeal mechanism whereby the Plaintiff was required to file an appeal to the NCCI if the Plaintiff contested the LSRP's applicability to South Carolina assigned risk policies or the premium amount Travelers sought pursuant to the LSRP. As the Plaintiff failed to appeal Travelers' decision (that the LSRP applies to South Carolina policies), Travelers is entitled to additional premium pursuant to the LSRP formulas, and Plaintiff can no longer contest Travelers' determination via a collateral lawsuit.

appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Administrative Law Judge and ultimately to the State Supreme Court. Here, Plaintiff 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").

Accordingly, Plaintiff is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation and is bound by the prior unappealed NCCI determination pursuant to the WCIP. Moreover, based on NCCI's determination, the servicing carrier's entitlement to premiums set forth in its Complaint has been established as a matter of law, and Plaintiff is bound by such NCCI adjudication which is the "law of the case." 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 the Plaintiff's abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks. Accordingly, as Plaintiff failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, Plaintiff cannot collaterally attack Travelers unappealed decision via this present lawsuit. If Plaintiff wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

D. CONCLUSION

Based on the above, Travelers is entitled to the additional premium of $122,948 (a liquidated amount) and interest from 6/29/05 to the present, and Travelers respectfully requests this Court issue an Order granting it summary judgment on such grounds. For the reasons set forth above, Travelers respectfully requests this Honorable Court grant its Motion for Summary Judgment.

Respectfully submitted,

(Signature on following page)

Barnwell Whaley Patterson & Helms, LLC

By: _____
Phillip S. Ferderigos
288 Meeting Street (29401)
P.O. Drawer H
Charleston, SC 29402
843-577-7700
Counsel for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 15th day of September, 2014, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
323 West Home Avenue
P.O. Box 1439
Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: _____
Legal Assistant

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DARLINGTON COUNTY, S.C.

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Scott B. Suggs
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DARLINGTON COUNTY, S.C.

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

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

June 24, 2014

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

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.



National Council on Compensation Insurance, Inc.

The Loss Sensitive Rating Plan (LSRP)

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

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. ■

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.

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APPELLANT ROA 0075
APPENDIX_0075

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.

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APPELLANT ROA 0076

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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 ILOC 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.

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- 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.

Cancelation 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 cancelations 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

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APPELLANT ROA 0078

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➢ **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]

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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/ILOC?**

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

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APPELLANT ROA 0080
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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.

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APPELLANT ROA 0081
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National Council on Compensation Insurance, Inc.

Residual Markets

Industry Relations and Services

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

Contact: James R. Nau, Director 407-997-4563
Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4331

SOUTH CAROLINA ITEM FILING

[redacted]-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

* 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.

P.S.#33 South Carolina
Item Filing

National Council on Compensation Insurance

Government, Consumer and Industry Affairs

Roy D. Wood
Director

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

9847103

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

Dear Commissioner Richards:

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.

101 E. College Avenue, Suite 550, Tallahassee, FL 32301
Telephone: 904-224-7260

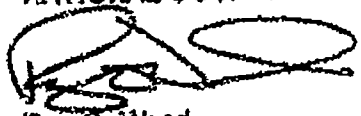
Page 2

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.

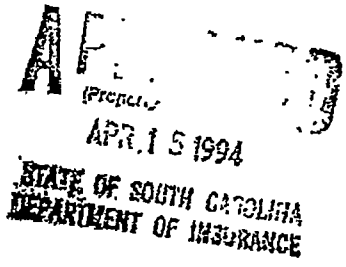
Respectfully submitted,

NATIONAL COUNCIL ON COMPENSATION INSURANCE



Roy O. Wood
Director
Government, Consumer and Industry Affairs

cc: Executive Director, Workers' Compensation Commission



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 407-997-4563
Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4881

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	1.123
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.

NATIONAL COUNCIL ON COMPENSATION INSURANCE ITEM 01-SC-94

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 <u>not</u> 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 (ILOC) 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.

* 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 NCCI 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.

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LSRP CALCULATION EXAMPLE

Retro Premium(RP) = Tax[(Basic X SP) + (RDF x LCF X SP) + LCF X 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

Basic	=	0.30		
Minimum	=	0.75	or	$254,250 (minimum premium)
Maximum	=	1.75	or	$593,250 (maximum premium)
Loss Conversion Factor (LCF) =	1.126			
Tax (Tax Multiplier)	=	1.126		

1st Adjustment

RP = 1.126[(.30 X 339,000) + (.31 X 1.125 X 339,000) + (1.125 X 254,250)]
RP = 1.126[101,700 + 118,226 + 286,031]
RP = 1.126[505,957]
RP = 567,708

2nd Adjustment

RP = 1.126[(.30 X 339,000) + (.21 X 1.125 X 339,000) + (1.125 X 271,200)]
RP = 1.126[101,700 + 80,089 + 305,100]
RP = 1.126[486,889]
RP = 548,237

3rd Adjustment

RP = 1.126[(.30 X 339,000) + (.15 X 1.125 X 339,000) + (1.125 X 305,100)]
RP = 1.126[101,700 + 57,206 + 343,238]
RP = 1.126[502,144]
RP = 565,414

4th Adjustment

RP = 1.126[(.30 X 339,000) + (.0 X 1.125 X 339,000) + (1.125 X 339,000)]
RP = 1.126[101,700 + 0 + 381,375]
RP = 1.126[483,075]
RP = 634,942

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 (ILOC), 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 (ILOC), 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.

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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.

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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 Cancelation condition of the Standard Policy permits cancelation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancelation 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 Cancelation

1. Cancelation By the Insurance Carrier, except for non-payment of premium.

2. Cancelation 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 cancelation 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 cancelation 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 cancelation 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. Cancelation 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 =

$1,095,000 x 5.00 (per $100) x 1.00

= $54,750

(c) Maximum Retrospective Premium:

$54,750 x 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

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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.

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 00 04 17

Original Printing Effective March 1, 1994

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

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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.

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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. Cancelation

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.

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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.

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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

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STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT C/A NO. 2010-CP-16-435
Ard Trucking Company, Plaintiff, vs. Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois, Defendant.	**TRAVELERS' MOTION FOR RECONSIDERATION PURSUANT TO SCRCP RULES 52 & 59 & RULES OF CIVIL PROCEDURE**

COMES NOW Travelers which respectfully files its Motion for Reconsideration. Travelers respectfully submits that the Order adopted by Your Honor fails to make dispositive findings of fact, contains numerous erroneous findings of fact (for which no evidence in the Record supports) and reflects clear errors of law as more specifically set forth in this motion. In order to preserve its rights, Travelers hereby respectfully objects and requests Your Honor specifically issue specific findings of facts and/or conclusions of law as to the specific following issues:

1) whether Michael P. Hair & Associates was the producer of Ard Trucking Company (hereinafter "ATC"), as opposed to a mere "broker," which producer submitted an Assigned Risk application to NCCI on behalf of ATC;

2) whether, pursuant to the Workers Compensation Insurance Program (hereinafter "WCIP"), Michael P. Hair & Associates, ATC's producer, is an agent of the insured ATC in regard to the Assigned Risk policy issued to ATC;

3) whether ATC (through Allen Ard and Harry Brown) knew that the LSRP applied to ATC's Assigned Risk policy before ATC was asked to issue and thereafter issued an ILOC (Irrevocable Letter of Credit) in accordance with the LSRP;

4) whether ATC, which submitted an Assigned Risk application to NCCI through its producer Michael P. Hair & Associates, is bound by the knowledge of its producer (specifically that the producer- and ATC- knew that the LSRP applied to ATC's Assigned Risk policy before ATC issued an ILOC (Irrevocable Letter of Credit) in accordance with the LSRP;

5) whether ATC is bound by its Applicant's Statement where ATC agreed to be bound by and subject to the WCIP;

6) whether South Carolina's WCIP, including the Basic Manual and Supplemental Manuals and the South Carolina Department of Insurance (hereinafter "SCDOI") plan documentation, as adopted by NCCI, has the "force of law" in South Carolina in accordance with Avant and Burris decisions for ATC's Assigned Risk policy;

7) whether the LSRP has been approved and adopted in South Carolina pursuant to the SCDOI and SC WCIP;

8) whether the South Carolina's WCIP requires the LSRP to apply to Assigned Risk policies issued after November 1, 2003 as a matter of fact and as a matter of law and, therefore, the LSRP applied to ATC's Assigned Risk policy as a matter of fact and as a matter of law;

9) whether the Court is bound by South Carolina's WCIP, the Basic Manual and Supplemental Manual, and accompanying SCDOI documentation in regards to a servicing carrier's duties and an insured's duties relative to an Assigned Risk policy Travelers issued to ATC in accordance with the WCIP;

10) whether a Court is required to apply the law (i.e. the WCIP) even if the Court believes that the amount owed by an insured pursuant to the LSRP is "extraordinary," as it is the province of the Legislature (as delegated to NCCI) to determine the law applicable to Assigned Risk policies, not the courts;

11) whether a Court is required to apply the law (i.e. the WCIP) concerning SCDOI/NCCI's rules where Travelers, a servicing carrier, sent an initial Notice Endorsement, a subsequent Mandatory Endorsement, and a Brochure concerning the LSRP via FORMS required and approved by the NCCI, and, pursuant to the WCIP, such mandated FORMS constitute sufficient notice to ATC, an Assigned Risk insured, that the LSRP applies to Assigned Risk policies in South Carolina;

12) whether NCCI requires servicing carriers to use specific NCCI copyrighted and approved Endorsement forms and whether Travelers used the NCCI copyrighted and approved Endorsement FORMS required by NCCI in regards to the ATC Assigned Risk policy;

13) whether the Notice Endorsement, Mandatory Endorsement, and Brochure required by NCCI and provided to ATC in accordance with WCIP rules provides sufficient notice to ATC that the LSRP applies to ATC's Assigned Risk policy;

14) whether Travelers complied with its obligations pursuant to the WCIP by issuing the NCCI required Endorsements and Brochure in accordance with South Carolina's WCIP;

15) whether the Court erred by failing to find that the Mandatory Endorsement (and the Brochure) supplants/amends the Notice Endorsement and provides sufficient notice to ATC as a matter of fact and law;

16) whether the LSRP applies to ATC's Assigned Risk policy where Travelers sent and ATC received the NCCI mandated and required Application, Policy, Binder, Notice Endorsement, Mandatory Endorsement and Brochure as required by the WCIP and NCCI which provide notice to ATC that the LSRP applies to its Assigned Risk policy, where the WCIP mandates no further notice to ATC and where the WCIP was equally available to ATC, as it is to all Assigned Risk insureds;

17) whether it is erroneous for the Court to find that the Notice Endorsement excludes or negates the application of the LSRP to ATC's Assigned Risk policy when the WCIP rules require the issuance of the Notice Endorsement, the Mandatory Endorsement, and the Brochure which Travelers sent to and ATC received before ATC issued an ILOC to Travelers in accordance with the WCIP and LSRP;

18) whether it is erroneous for the Court to find that the Notice Endorsement excludes or negates the application of the LSRP where ATC was issued a re-written Assigned Risk policy with the required Mandatory Endorsement (and Brochure) which provides the WCIP required notice to ATC that LSRP applied to its Assigned Risk policy, especially where ATC admitted that it did not review or rely on the Notice Endorsement (and where ATC's producer admits he had actual knowledge that the LSRP applied to ATC's Assigned Risk policy), all prior to ATC issuing an ILOC to Travelers in accordance with the LSRP;

19) whether the Court's finding of fact that a servicing carrier has the discretion to somehow alter or revise South Carolina's WCIP and the applicability of the LSRP to South Carolina Assigned Risk policies by somehow unilaterally amending or revising the NCCI required and mandated Endorsement FORMS, a finding which no evidence in the Record supports, constitutes an erroneous finding of fact and error of law;

20) whether ATC's failure to procure any expert testimony establishing the standard of care of a servicing carrier or the breach thereof is fatal to its claims against Travelers;

21) whether ATC was required to comply with the WCIP Rule 4 appeal mechanism if ATC wished to preserve its right to contest Travelers' determination that the LSRP applied to ATC's policy or will ATC be allowed to side-step the administrative appeal mechanism set forth in the WCIP by seeking direct redress from the Court, where NCCI is the appropriate administrative body to address ATC's arguments;

22) whether ATC's failure to appeal Travelers' LSRP determination to NCCI in accordance with the WCIP requires that the unappealed administrative decision, right or wrong, to be the "law of the case" and not subject to a collateral attack by ATC via a collateral action in a court of law;

23) whether the Court's decision to negate the application of the LSRP to ATC's policy invades the province of the Legislature and threatens to undermine the LSRP as approved and implemented by the SCDOI in South Carolina and unnecessarily risks the continued viability of the Assigned Risk program in South Carolina;

24) whether the pre-judgment interest awarded by the Court is in error.

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 issued pursuant to the WCIP and are administrated through the NCCI.[1] NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina. Finally, the South Carolina Department of Insurance has verified that, in South Carolina, the Loss Sensitive Rating

[1] 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 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).

Plan ("LSRP")[2] is applicable to Assigned Risk policies issued after November 1, 2003. Accordingly, the WCIP mandates that LSRP is applicable to ATC's Assigned Risk policy, which was issued on November 7, 2013 as a matter of law.

Here, pursuant to the WCIP and SCDOI approved plan, Travelers was required to issue and in fact issued the NCCI required Notice Endorsement, Mandatory Endorsement, and Brochure to ATC. ATC received these NCCI mandated FORMS, which NCCI has mandated provides notice to ATC (and to all Assigned Risk insureds in South Carolina) that the LSRP applies to its Assigned Risk policy. The Court, however, has erred in holding that the Notice Endorsement, in isolation, excludes the application of the LSRP to ATC's policy, despite the fact that the Mandatory Endorsement and Brochure modify and supplant the Notice Endorsement as mandated by the WCIP. The Court has also erred by holding that Travelers could somehow modify or alter the required NCCI FORMS mandated by the WCIP and NCCI. Moreover, the Court has erred in outright ignoring the dispositive testimony of ATC's producer that it, and therefore ATC, received the Mandatory Endorsement and Brochure and the producer not only had actual knowledge, but also understood and explained to ATC that the LSRP applied to ATC's Assigned Risk policy before ATC issued Travelers an ILOC. In South Carolina, pursuant to the law, the WCIP, and the Assigned Risk policy terms (including the NCCI mandated Notice And Mandatory Endorsements and Brochure), ATC had sufficient notice that the LSRP applied to its Assigned Risk policy and Travelers is entitled to charge premium pursuant to the LSRP which is applicable to Assigned Risk policies.[3]

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[2] 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 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 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."*

[3] 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 ATC's Assigned Risk policy as a matter of law. Further, per the NCCI required Notice Endorsement, Mandatory Endorsement & Brochure, as expressly required by the WCIP, ATC had sufficient notice that the LSRP applied to its Assigned Risk policy.

UNCONTROVERTED EVIDENCE IN THE RECORD

ATC 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. Pursuant to the application, ATC agreed to be bound by the WCIP. In its Application, ATC also acknowledged the LSRP was explained to ATC and that an explanatory notice or brochure had been provided to ATC and that ATC would be bound by the LSRP if ATC's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on ATC's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to ATC for the policy period effective 11/7/2003.

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on ATC's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to ATC for the policy period of 11/07/03 to11/07/04. The Assigned Risk policy issued to ATC contained the NCCI required Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. Subsequently, pursuant to the WCIP rules, Travelers performed a preliminary audit survey of ATC'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. On or about March 1, 2004, Travelers also sent ATC and its producer a letter advising that ATC Assigned Risk policy had been issued as part of the mandatory LSRP and also provided ATC and its producer with an 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."* Pursuant to the WCIP and SCDOI plan documents, once Travelers forwarded the NCCI required Notice Endorsement, Mandatory Endorsement and Brochure, ATC had notice that the LSRP applied to its Assigned Risk policy as set forth by the WCIP -- the WCIP requires no other notice to be sent to ATC or any other Assigned Risk insured.

ATC representatives initially testified that they did not know if they received the rewritten Assigned Risk policy, with the Mandatory Endorsement, or the booklet in or about March of 2004. However, in the Affidavit of Harry Brown, at the time Safety Director of ATC

and now ATC's vice-president, submitted to the Court prior to the summary judgment hearing, ATC 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 NCCI brochure/pamphlet entitled "Loss Sensitive Rating Plan," to ATC on or about March of 2004.

Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and ATC provided an acceptable, clean, unconditional, Irrevocable Letter of Credit (ILOC) for $52,116. ATC's producer testified that when ATC's initial Assigned Risk policy was issued to ATC, he did not know the details of the LSRP. However, after Travelers requested an ILOC, ATC's producer became familiar with the LSRP and its applicability to ATC's Assigned Risk policy and the producer further advised ATC that the LSRP was applicable to ATC's Assigned Risk policy and ATC was required to issue an ILOC to Travelers in accordance to LSRP requirements if ATC wished to continue having an Assigned Risk policy pursuant to the WCIP. It was only after ATC's producer became aware of the LSRP and its applicability to ATC's Assigned Risk policy (and, per the producer's testimony, he advised ATC of the same) that ATC issued an ILOC to Travelers.[4]

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited ATC with an Annual Physical Audit and issued a final bill to ATC. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated and issued a LSRP bill for ATC for $175,064 based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. ATC 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 ATC still owes Travelers $122,948 for premium owed. Further, ATC did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI as required pursuant to WCIP Rule 4.

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms (including the 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.

[4] Other than the LSRP, a servicing carrier has no authority or mechanism to request an ILOC by an Assigned Risk insured.

A) YOUR HONOR'S ADOPTIVE ORDER MISAPPREHENDS THE WCIP.

Initially, Your Honor's Order misapprehends the WCIP. The WCIP is "the law" and a servicing carrier can not alter or amend "the law" applicable to an Assigned Risk applicant/insured. Further, a servicing carrier is required to use the NCCI copyrighted and approved Endorsements and Brochure as required by NCCI and is required to comply with the WCIP/approved SCDOI plan. A servicing carrier does not have the discretion to alter or amend the WCIP, the NCCI required FORMS, or the LSRP as adopted by the SCDOI:

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 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 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 NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. 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. ATC'S PRODUCER IS AN AGENT OF ATC, 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 ATC is the agent of ATC, not Travelers. As such, any failure of ATC's producer to explain to his own client the WCIP, the LSRP, the Assigned Risk policy or its implications rests solely with ATC's own agent, not with Travelers. See S.C.W.C.I.P. "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 ATC and its producer admitted that the producer is the agent of ATC, not the servicing carrier.[5]

Here, ATC's producer admitted he was aware that the LSRP applied to ATC's Assigned Risk policy before ATC provided the ILOC to the servicing carrier. Also, ATC's producer admitted he became aware of and had conversations with ATC about the LSRP on or about March of 2004, before ATC issued it's ILOC to Travelers. As such, the producer had knowledge that ATC's Assigned Risk policy had triggered the LSRP and that ATC's Assigned Risk policy was subject to the LSRP prior to ATC issuing an ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to ATC 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 ATC's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to ATC issuing a letter of credit pursuant to the LSRP as

[5] Your Honor's adoptive Order erroneously finds, 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 ATC's producer and that the producer's knowledge is imputed to ATC as a matter of fact and law. Travelers respectfully requests Your Honor issue specific findings of fact that the producer was an agent of ATC and that the knowledge of the producer was imputed to ATC, which had actual knowledge that the LSRP was applicable to its Assigned Risk policy.

required by the WCIP, the knowledge of the producer is imputed to ATC, and ATC had knowledge that the LSRP applied to its Assigned Risk policy prior to ATC issuing an ILOC to Travelers.

3. THE LSRP IS APPLICABLE FOR SOUTH CAROLINA 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, 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."

In South Carolina, the WCIP has the force of law. Pursuant to the WCIP, the LSRP applies to Assigned Risk policies on or after November 1, 2003. Accordingly, as a matter of law, as ATC'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 ATC.

Your Honor's adoptive Order mis-applies this fundamental point. ATC agreed to be bound by the WCIP. The WCIP mandates the LSRP applies to ATC's Assigned Risk policy. The WCIP mandates the notice to be provided to ATC: the NCCI required Notice Endorsement, Mandatory Endorsement and Brochure. Although the Notice Endorsement does not list South Carolina specifically, the NCCI has mandated that South Carolina not be listed in the Notice Endorsement. NCCI and the SCDOI have determined that the Mandatory Endorsement and Brochure (which Travelers sent and ATC received) amends and supplants the Notice Endorsement and provides sufficient notice to ATC that the LSRP applies to its Assigned Risk policy. Accordingly, the NCCI required Notice & Mandatory Endorsements (and the Brochure) [including the mandated Application, Policy & Binder], all of which ATC received in accordance with the WCIP, provides notice of the LSRP application to ATC's Assigned Risk policy as a matter of law; moreover, Your Honor's interpretation of the Notice Endorsement, to the exclusion of these other NCCI required Endorsements and Forms, erroneously negates the WCIP requirement that LSRP applies to ATC's policy and constitutes an error of law.

4. ASSIGNED RISK APPLICATION

The Assigned Risk application advised ATC of the LSRP's applicability. In his application, ATC 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 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."

Here, ATC signed and submitted such application to NCCI, and ATC is bound by such Applicant's Statement. ATC 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 ATC'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, ATC is bound by the LSRP as a matter of law.

5. 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 ATC's Assigned Risk policy.

6. THE NOTICE ENDORSEMENT, THE MANDATORY ENDORSEMENT & THE LSRP BROCHURE.

In Your Honor's adoptive Order, respectfully, the Court has erroneously held that the Notice Endorsement, in isolation, negates or excludes the application of the LSRP to Assigned Risk policies in South Carolina. However, Your Honor's decision fails to consider the WCIP/SCDOI rules concerning how the Notice Endorsement, the Mandatory Endorsement and the LSRP work in tandem provide sufficient notice to an Assigned Risk applicant/insured of the applicability of the LSRP to Assigned Risk policies.

The 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 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 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 ATC.[6] Accordingly, as NCCI (and therefore the Legislature) has determined that these three documents are the only documentation required to provide ATC with sufficient notice of the LSRP applicability to ATC's Assigned Risk policy, no other act is required by the servicing carrier to apply the LSRP to ATC's assigned Risk policy (See SCDOI Plan Documents SCDOI 0001 - 0039).

The above is especially true where ATC and its producer admitted that they knew that the LSRP applied to its Assigned Risk policy before ATC issued its ILOC to the servicing carrier. Not only did Travelers comply with the WCIP requirements to provide ATC with notice as required by the WCIP, ATC and its producer have admitted that they knew the LSRP applied to its Assigned Risk policy before ATC issued its ILOC to Travelers; yet, ATC argues and Your Honor's Order embraces the notion that, despite complying with the WCIP requirements which provides notice to an insured and despite the fact that ATC and its producer admit that they knew the LSRP applied to its policy before ATC issued an ILOC to Travelers, the Notice Endorsement, which fails to list South Carolina, in isolation, requires that the Assigned Risk policy does not allow, negates, or somehow excludes the LSRP to ATC's Assigned Risk policy...irrespective of the fact that the Mandatory Endorsement and Brochure amended the initial Notice Endorsement and were sent to

[6] Your Honor's adoptive Order further errs by holding "However, instead of using the required Notification Endorsement to notify Plaintiff that LSRP would be applied to the South Carolina policy issued to Plaintiff 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 Plaintiff'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 NCCI required Endorsement. There is absolutely no evidence in the Record that Travelers was supposed to send any other Notice Endorsement and Your Honor'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 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. In contrast to Your Honor's adoptive Order sentiments, 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.

and received by ATC before it issued its ILOC to Travelers. Respectfully, such result is absurd on its face, ignores the WCIP, evades the province of the NCCI and the Legislature, and risks the entire Assigned Risk program in South Carolina to inure to the benefit of ATC, which voluntarily applied for and received an Assigned Risk policy (by design, a more expensive policy of last resort) and voluntarily agreed to be bound by the WCIP.

Accordingly, respectfully, Your Honor is bound to apply the law (the WCIP) as set forth in the Basic Manual, Supplemental Manual, and the SCDOI plan documentation, and interpreting the initial Notice Endorsement, in isolation, as set forth in Your Honor's adopted Order violates the law and constitutes an error of law.

Respectfully, the fatal error in Your Honor's adoptive Order is that it ignores the WCIP, i.e., the law. In South Carolina, the WCIP, as adopted by the SCDOI and NCCI, mandates the LSRP applies to ATC's Assigned Risk policy as a matter of law. Respectfully, Your Honor errs by adopting ATC'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 apply to South Carolina, the Mandatory Endorsement does apply to South Carolina and, most importantly, the NCCI/SCDOI has determined that the Mandatory Endorsement (along with the Brochure) amend/supplant the Notice Endorsement to provide sufficient notice to ATC that the LSRP applies to its South Carolina Assigned Risk policy. The WCIP requires Travelers to issue the NCCI required Notice Endorsement it issued to ATC. After the initial audit survey, once the payroll triggers the LSRP (as in this present case), the WCIP requires Travelers to issue a 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 ATC's Assigned Risk policy.

In addition to the Mandatory Endorsement, the WCIP also requires that Travelers send the 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 ATC received these NCCI required Forms. As such, according to the law, ATC had sufficient notice and ATC 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, Your Honor can not ignore entire portions of the WCIP (i.e., the law) to render the LSRP program to be irrelevant. Further, Your Honor errs by finding the Mandatory Endorsement does not provide sufficient notice that the LSRP applies in South Carolina. The Mandatory Endorsement 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 ATC's Assigned Risk policy. The Mandatory Endorsement clearly states "This endorsement applies where the LSRP has been approved." Thus, although the Notice Endorsement may not apply in 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 prior Notice Endorsement violates the WCIP and renders the entire LSRP obsolete in South Carolina and constitutes an error of fact and law.

B. ATC'S COUNTER-ARGUMENTS AS ADOPTED BY YOUR HONOR'S ORDER ARE WITHOUT MERIT.[7]

ATC's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, ATC 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, ATC 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 ATC, provides notice, knowledge, and the means of knowledge of the LSRP's applicability. Further, admittedly, ATC did not "reasonably rely" on any representation by Travelers.

ATC's first counter-argument, which Your Honor has adopted in Your Order, is that the LSRP does not apply to ATC's South Carolina Assigned Risk policy because of the LSRP "Notice" Endorsement contained in the Assigned Risk policy. ATC 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

[7] Indeed, Your Honor's adoptive Order holds that a strained interpretation of the Notice Endorsement did not advise ATC of what it already knew, where: 1) ATC is presumed to know the law (the WCIP) as a matter of law; 2) the Mandatory Endorsement and Brochure provided notice to ATC as a matter of law; 3) the producer admitted it knew the LSRP was applicable to ATC's policy; and 4) the producer told ATC that LSRP applied to its Assigned Risk policy.

additional LSRP funds.[8] However, ATC's argument is flawed because the Mandatory Endorsement (and Brochure) supplants/amends and revises the Notice Endorsement (to the extent it may be interpreted to exclude the LSRP in South Carolina[9]).

Further, ATC'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 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, ATC "could have examined the South Carolina plan to determine the specific factors applicable to all policies written under the Assigned Risk plan." ATC failed to do so, at its own peril.[10] Further, the Application, the Policy, the Binder, the Mandatory

[8] ATC ignores the Mandatory Endorsement completely in asserting its arguments. As the 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 ATC of the LSRP applicability to Assigned Risk policies in South Carolina.

[9] Indeed, a literal application of the Notice Endorsement merely sets forth that the Notice Endorsement itself does not apply to ATC'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 anyway.

[10] Bizarrely, ATC's interpretation, as adopted by Your Honor, 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 the ATC policy was issued does not mean that the Endorsements NCCI required to be sent to ATC are somehow defective. Rather, the crux of the Georgetown decision centers around a servicing carrier's use of 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. ATC 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 ATC in South Carolina.

Endorsement (which supplements/revises the Notice Endorsement) and the Brochure, all drafted, copyrighted, approved and required by 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 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 ATC agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, ATC had the means of knowledge to obtain and review a copy of the 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 ATC's producer admitted he knew the LSRP applied to ATC's Assigned Risk policy before he asked ATC to issue the irrevocable LOC to the servicing carrier, such knowledge is imputed to ATC. Finally, as ATC's producer testified he advised ATC of the LSRP before ATC issued its ILOC to Travelers, ATC had the means of knowledge, imputed knowledge, and actual knowledge of the LSRP during the pendency of its Assigned Risk policy.

Accordingly, ATC not only had the means of knowledge, but also had knowledge that the LSRP applied to the Assigned Risk policy before ATC 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 ATC. For these reasons, ATC's first counter-argument fails.

For a second defense/counter-argument, ATC argues, and Your Honor's Order implies, that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which ATC paid and the amount that ATC owed pursuant to the LSRP was somehow

"extraordinary."[11] 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 ATC, pay their fair share based on the number of losses such employers have during the policy period.[12] Indeed, the LSRP specifically provides for three evaluation periods after 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 ATC 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) 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.

C. ATC HAS FAILED TO PROVIDE ANY EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.

ATC 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 ATC's Assigned Risk policy. ATC has not listed any expert to opine that Travelers has improperly

[11] Indeed, respectfully, Your Honor's adoptive Order reflects a bias against the LSRP, referring to the additional LSRP premium owed by ATC as "extraordinary additional premium charges for losses after the coverage year ended" and "extraordinary LSRP premiums" on eight occasions. 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 to suit ATC's needs. 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.

[12] Your Honor's adoptive Order's footnote 1 is also erroneous based on the WCIP. Travelers' July 2004 (Letter of Credit for $52,116) documentation is not evidence ATC was owed a "return premium," but it is merely a 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 is the LSRP valuation was zero in the future. As the LSRP valuations are not determined until after the policy periods end, Your Honor'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.

determined that the LSRP applies to ATC'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 ATC. 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, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff 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 ATC argues that Travelers provided ATC 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), ATC has provided no evidence that the Endorsements (the Notification and Mandatory Endorsements) issued by Travelers to ATC were not standard Endorsements drafted, copyrighted and mandated by NCCI. ATC has provided no evidence that a servicing carrier, such as Travelers, has any discretion to vary the Endorsements mandated by the NCCI. Here, ATC 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 NCCI. Accordingly, ATC's lack of any expert testimony to support its claims against Travelers is also fatal to ATC's claims.

Nowhere is the above more evident than where Your Honor's adopted Order simply finds that Travelers could have simply added in South Carolina to the initial Notice Endorsement or that Travelers somehow selected to provide ATC with defective Endorsements. No evidence (zero, zilch, nada) exists to support any finding that Travelers did not issue the NCCI required and copyrighted Endorsements or Forms.[13] No evidence exists that Travelers had any authority to alter

[13] 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 ATC is bound by the law (the WCIP) is not a red herring; to the contrary, pursuant to the WCIP and the policy terms itself, ATC is bound by the law and the LSRP is applicable to ATC pursuant to South Carolina law and the properly interpreted policy terms of the Assigned Risk policy.

or amend any of the NCCI required and copyrighted Endorsements or FORMS. In contrast, it is uncontroverted that Travelers issued the NCCI required and copyrighted Endorsements or FORMS and fully complied with all of its obligations as set forth in the WCIP.

D. ATC FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.

ATC asserts that Travelers is estopped from seeking the premium it is owed. However, ATC failed to make such arguments via the appeal mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires ATC to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission, the circuit courts, and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed LSRP determination binds ATC per the WCIP requirements. The WCIP Rule 4 provides ATC with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 set forth the following mechanism:

> "Any Assigned Risk policyholders 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. 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 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 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 NCCI manuals

- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- Assigned Risk pricing programs"

Here, as required by the WCIP, ATC did not file any appeal of Travelers' LSRP decision to the NCCI. Rather, ATC 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").

Accordingly, ATC is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and ATC 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 ATC's abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks on such grounds as well. Accordingly, as ATC failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, ATC cannot collaterally attack Travelers unappealed decision via this present collateral lawsuit. If ATC wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

E. YOUR HONOR'S PRE-JUDGMENT INTEREST AWARD IS IN ERROR PURSUANT TO S.C. CODE 34-31-20.

Assuming Your Honor does not reconsider his prior Order, S.C. Code Ann. § 34-31-20, entitled "Legal Rate of Interest," sets forth that the correct pre-judgment interest award for ATC would be at the rate of 8 ¾ percent per annum. As the ATC's ILOC was not drafted until September 8, 2005, the correct interest determination would be $52,116 at 8 ¾ percent per annum from September 8, 2005 until February 13, 2015 (the date of Your Honor's Order). Applying an 8 ¾ percent simple interest calculation, the correct pre-judgment interest award is $42,941.40, not $51,728.74, as set forth in Your Honor's Order.

CONCLUSION

No dispute exists between the parties concerning the amount of payroll/remuneration ATC 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 ATC'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 ATC's South Carolina Assigned Risk policy[14]. Through his producer, ATC submitted an Assigned Risk application and ATC was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP. In his application, ATC agreed to be bound by the terms of the WCIP.[15] 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 ATC pursuant to WCIP. ATC received the NCCI mandated Notice Endorsement, the Mandatory Endorsement, and Brochure establishing ATC had notice of the LSRP as a matter of law. Accordingly, the LSRP applies to ATC's Assigned Risk policy, and Travelers, the servicing carrier, is entitled to the premium it now seeks as a matter of law.

In summation, Travelers respectfully requests this Honorable Court to reconsider its prior decision, issue specific finding of fact and conclusions of law requested herein, and further grant Travelers' Motion for Summary Judgment and find that Travelers is entitled to the additional premium of $122,948 (a liquidated amount) and interest from 6/29/05 to the present of an additional amount of $103,993.52 for a total of $264,901.72.

Respectfully submitted,

Barnwell Whaley Patterson & Helms, LLC

By: _____

M. Dawes Cooke, Jr.
Phillip S. Ferderigos
288 Meeting Street (29401)
P.O. Drawer H

[14] 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.

[15] This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff alleges (1) that it is not bound by the LSRP and (2) that the carrier is otherwise estopped from seeking the additional premium it is owed pursuant to the LSRP.

March 2, 2015
Charleston, South Carolina

Charleston, SC 29402
843-577-7700
Counsel for Defendant Travelers

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of March, 2015, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
323 West Home Avenue
P.O. Box 1439
Hartsville, SC 29551

Barnwell Whaley Patterson & Helms, LLC

By: _____
Beverly Mitton, Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO. 2010-CP-16-435
Ard Trucking Company,	)	
Plaintiff,	)	
vs.	)	**TRAVELERS' MEMORANDUM IN SUPPORT OF ITS MOTION FOR SUMMARY JUDGMENT**
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,	)	
Defendant.	)	

SCOTT B. SUGGS
CLERK OF COURT/RMC
DARLINGTON COUNTY, S.C.
2014 DEC 17 AM 8:30
FILED

TO: MARTIN S. DRIGGERS, SR., ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Defendant Travelers Property Casualty Company of America (hereinafter "Travelers") respectfully submits this Memorandum in Support of its Motion for Summary Judgment.

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 issued pursuant to the WCIP and are administrated through the NCCI.[1] NCCI requires servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the NCCI in South Carolina. Finally, and most importantly, the South Carolina Department of Insurance has verified that, in South Carolina, the LSRP is applicable to Assigned Risk policies issued after November 1, 2003. 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.

[1] 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 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).

TRUE CERTIFIED COPY
Scott B Suggs
CLERK OF COURT/RMC
DARLINGTON COUNTY SC

This matter involves a premium dispute wherein Plaintiff alleges Travelers improperly charged Plaintiff premium pursuant to the WCIP's Loss Sensitive Rating Plan (LSRP). In South Carolina, pursuant to the law, 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.[2] 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, based on Plaintiff's payroll, Plaintiff'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.[3]

B. FACTS

Ard Trucking Company 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 Ard Trucking Company's Assigned Risk Application, dated 11/6/03, is attached as Exhibit 3 to the Affidavit of Ghayal. Pursuant to the application, Plaintiff agreed to be bound by the WCIP. Plaintiff also acknowledged the LSRP was explained to Plaintiff and that an explanatory notice or brochure had been provided to Plaintiff and that Plaintiff would be bound by the LSRP if Plaintiff's estimated annual premium or preliminary physical audit premium met or exceeded the premium eligibility requirements. On 11/20/03, NCCI assigned Travelers to be the servicing carrier based on the Ard Trucking Company's application and Travelers issued a binder for an Assigned Risk workers' compensation policy to Ard Trucking Company for the policy period effective 11/7/2003.[4] See Travelers' Binder dated 11/20/03, attached as Exhibit 4.

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[2] 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.

[3] Travelers hereby submits the Affidavits of Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista and accompanying exhibits attached as Exhibits 1, 2, and 3 to this Memorandum.

[4] 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 663-64, 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

Pursuant to the WCIP, Travelers was assigned to be the servicing carrier based on the Plaintiff's Assigned Risk application and issued an Assigned Risk Workers' Compensation Policy number 6JUB-0188B92-3-03 to Ard Trucking Company for the policy period of 11/07/03 to11/07/04. See Travelers Assigned Risk policy attached as Exhibit 4 to the Affidavit of Ghayal. The Assigned Risk policy issued to Plaintiff contained the Assigned Risk policy standard SCWCIP LSRP Endorsement ("Assigned Risk Loss Sensitive Rating Plan Notification Endorsement") adopted by NCCI. See Travelers' Endorsement attached as Exhibit 6. Pursuant to the WCIP rules, Travelers performed a preliminary audit survey of Plaintiff's payroll in February, 2004. The preliminary audit survey's payroll triggered the WCIP LSRP provisions. See Travelers' Affidavits of Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista and accompanying exhibits attached as Exhibits 1, 2 and 3.

Pursuant to the WCIP, on or about March 1, 2004, Travelers then issued a rewritten Assigned Risk policy, which included the "Mandatory Assigned Risk Loss Sensitive Rating Plan Endorsement" adopted by NCCI.[5] See Travelers' Assigned Risk policy issued on 3/01/04, attached as Exhibit 5 to the Affidavit of Ghayal; and the Endorsement, attached as Exhibit 9. On or about March 1, 2004, Travelers also sent Ard Trucking Company and its producer a letter advising that the Ard Trucking Company Assigned Risk policy had been issued as part of the mandatory LSRP and also provided Plaintiff and its producer with an explanatory pamphlet entitled *"The Loss Sensitive Rating Plan (LSRP): An Employer's Guide To The Mandatory Assigned Risk Retrospective Rating Program."*[6] See Travelers' March 1, 2004 letter and pamphlet, attached as Exhibit 10. Afterwards, pursuant to the WCIP and Assigned Risk rules and LSRP, Travelers requested and Ard Trucking Company provided an acceptable, clean, unconditional, Irrevocable

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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, attached as Exhibit 5.

[5] Plaintiff 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, attached as Exhibit 7. Plaintiff'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, attached as Exhibit 8.

[6] Per the Affidavit of Harry Brown, Plaintiff 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."

Letter of Credit (ILOC) for $52,116. See Ard Trucking Company's Irrevocable Letter of Credit dated 5/17/04, attached as Exhibit 11.

On or about December 24, 2004, at the end of the policy period, pursuant to the WCIP, Travelers audited Ard Trucking Company with an Annual Physical Audit and issued a final bill to Ard Trucking Company. See Travelers' Final Premium Bill for $29, 245.00 dated 2/9/05, attached as Exhibit 12. In addition, pursuant to the WCIP's LSRP, Travelers subsequently calculated an LSRP bill for Plaintiff based upon the actual losses incurred at several intervals after the termination of the Assigned Risk policy. Plaintiff refused and has continued to refuse to pay Travelers' bill for additional premium of $175,064 owed per the LSRP.[7] However, Plaintiff did not contest Travelers' LSRP determination by filing a written appeal of Travelers' LSRP determination or any other issue to the NCCI. As such, Ard Trucking Company did not appeal Travelers' LSRP determination to NCCI as required pursuant to WCIP Rule 4.[8]

Pursuant to South Carolina statutory law, case law, the WCIP and the Assigned Risk policy terms, a servicing carrier is required to charge premium pursuant to the LSRP. Here, Travelers, the servicing carrier, is entitled to the premium it seeks as a matter of law.

C. DISPOSITIVE LEGAL ISSUE

No dispute exists between the parties concerning the amount of payroll/remuneration Plaintiff 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 Plaintiff's South Carolina Assigned Risk policy. See first Allen Ard deposition transcript, pp. 38-39, attached as Exhibit 14. Stated differently, the dispositive legal issue involved in this case is solely a legal issue – whether or not the LSRP applies to Plaintiff's South Carolina Assigned Risk policy. Through his producer, Plaintiff submitted an Assigned Risk application and Plaintiff was issued an Assigned Risk policy of workers' compensation insurance pursuant to the WCIP.

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[7] The WCIP and the Assigned Risk policy allow an applicant to obtain an Assigned Risk policy via an estimate based on the representations of the Plaintiff and its producer. Based on the Plaintiff's application, Plaintiff was issued a South Carolina Assigned Risk policy. After the preliminary audit survey, per the WCIP and policy terms, Travelers determined the Plaintiff'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 the Plaintiff for the additional $175,064 in premium owed. Plaintiff refused to pay the additional premium owed. Subsequently, per the LSRP, Travelers drew upon the $52,116 ILOC and Plaintiff still owes Travelers $122,948 for premium owed.

[8] Indeed, Plaintiff did not appeal any issue to NCCI as is required by WCIP Rule 4. See first deposition transcript of Allen Ard, pp. 37; 53; 65, attached as Exhibit 13.

In his application, Plaintiff agreed to be bound by the terms of the WCIP.[9] The SCDOI has verified that the LSRP applied to South Carolina Assigned Risk policies when the Assigned Risk policy was issued to the Plaintiff pursuant to WCIP. Accordingly, as LSRP applies to Plaintiff'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 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 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 NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. 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."

[9] This case revolves around the Loss Sensitive Rating Plan (LSRP) which is mandated by the WCIP. Plaintiff 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.

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, 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." See SCDOI documents 0001-0040 attached to the Affidavit of Roshani B. Ghayal, Exhibit 1.

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 Plaintiff'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 the Plaintiff.

3. ASSIGNED RISK APPLICATION

The Assigned Risk application advises Plaintiff of the LSRP's applicability. In his application, Plaintiff 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 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."

Here, Plaintiff signed and submitted such application to NCCI, and Plaintiff is bound by such Applicant's Statement. Plaintiff acknowledged that he is bound by the LSRP if South Carolina has 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.

4. ASSIGNED RISK POLICY

Identical with WCIP, LSRP, and Rules 2-A and 2-H, 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 and the Roshani B. Ghayal, Frederick B. Moylen, and Steven V. Evangelista, the WCIP's LSRP applies to Plaintiff's Assigned Risk policy as a matter of law.

5. PLAINTIFF'S PRODUCER IS AN AGENT OF THE INSURED

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 Plaintiff is the agent of Plaintiff, not Travelers, as a matter of law. [10] As such, any failure of Plaintiff's producer to explain to his own client the WCIP, the LSRP, and Assigned Risk policy or its implications rests solely with Plaintiff's own agent, not with Travelers. See S.C.W.C.I.P. "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." See SCWCIP, Section I attached as Exhibit 16.

Here, Plaintiff's producer admitted he was aware that the LSRP applied to the Plaintiff's Assigned Risk policy before Plaintiff 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;

[10] In addition, both the Plaintiff and its producer testified that the producer is the agent of the insured, not the servicing carrier. See first deposition transcript of Allen Ard, pp. 13-14; 21; 23-24; 27; 29, and the producer, pp. 4-5, attached as Exhibit 15.

"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 attached as Exhibit 17.

Here, the producer admitted he became aware of and had conversations with Plaintiff about the LSRP on or about March of 2004, before Plaintiff issued it's ILOC to Travelers. Moreover, the admitted knowledge of the producer is imputed to Plaintiff 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 Plaintiff's producer admitted that he knew that the LSRP applied to the Assigned Risk workers' compensation policy prior to Plaintiff issuing a letter of credit pursuant to the LSRP as required by the WCIP, the knowledge of the producer is imputed to the Plaintiff as a matter of law, and Plaintiff himself had specific knowledge that the LSRP applied to his Assigned Risk policy.

6. PLAINTIFF'S COUNTER-ARGUMENTS ARE FLAWED.

Plaintiff's counter-arguments are based on estoppel. In South Carolina, in order to prevail on a claim of estoppel, the insured 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). Here, as a matter of law, Plaintiff had the means of

knowledge and actual knowledge of the LSRP. Also, Plaintiff did not "reasonably rely" on any representation by Travelers.

Plaintiff's first counter-argument is that the LSRP does not apply to South Carolina Assigned Risk policies because of the LSRP Endorsement contained in the Assigned Risk policy. Plaintiff argues that the LSRP Endorsement is ambiguous (as the Endorsement does not specifically list South Carolina) and therefore the servicing carrier is estopped from seeking additional LSRP funds. However, Plaintiff's argument has already been soundly rejected by South Carolina courts. Specifically, in the recent Georgetown Steel Company vs. Capital City Insurance Company, 318 B.R. 313 (U.S.B.C.(D.S.C.) 2004)[11] decision, 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) is not ambiguous to a reasonable person in South Carolina as a matter of law. 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. The court held that "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 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."

The Assigned Risk policy Endorsement's language is mandated by the NCCI and South Carolina's Department of Insurance. The Assigned Risk policy 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 the Plaintiff agreed to be bound by the WCIP and applied for and received an Assigned Risk policy, Plaintiff had the means of knowledge to obtain and review a copy of the WCIP, or contact his 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

[11] The Georgetown decision is attached as Exhibit 18 for the Court's ease of reference.

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 Plaintiff's producer admitted he knew the LSRP applied to Plaintiff's Assigned Risk policy before he asked Plaintiff to issue the irrevocable LOC to the servicing carrier, such knowledge is imputed to the Plaintiff as a matter of law. Finally, as Plaintiff's producer testified he advised the Plaintiff of the LSRP before Plaintiff issued its ILOC to Travelers, Plaintiff had the means of knowledge, imputed knowledge and actual knowledge of the LSRP as a matter of law.

Accordingly, Plaintiff not only had the means of knowledge, but also had actual knowledge that the LSRP applied to the Assigned Risk policy before Plaintiff 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 even rely on the Assigned Risk Loss Sensitive Rating Plan Notification Endorsement, negating any reasonable reliance on the part of Plaintiff. See second deposition of Allen Ard, pp. 24, 30, 153-155, and Brown deposition, pp. 21, 29-31, attached as Exhibit 19. For these reasons, Plaintiff's first counter-argument fails as a matter of law.

For a second defense/counter-argument, Plaintiff argues that the servicing carrier should be estopped due to the servicing carrier having issued a "final" bill which the Plaintiff paid. This argument is also flawed because, by its nature, LSRP mandates retrospective billings, beyond the final premium bill. Indeed, the LSRP specifically provides for three evaluation periods after the final premium billing. Moreover, the Assigned Risk policy itself sets forth that "All premium for this policy will be determined by our manuals, rates, rating plans and classifications" See Section 4 of this Memorandum.

As the LSRP applies to this Assigned Risk policy as a matter of law, Travelers is entitled to the additional premium pursuant to the LSRP and it may not be estopped based on Travelers having issued a "final bill" to the Plaintiff where LSRP specifically requires additional billings after the "final bill" is calculated during the policy term, and the policy itself and the WCIP mandate such retrospective LSRP charges.

7. PLAINTIFF HAS NO EXPERT TESTIMONY THAT TRAVELERS BREACHED ANY STANDARD OF CARE.[12]

Plaintiff has not listed any expert to opine that Travelers has improperly determined that the LSRP applies to Plaintiff'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 the Plaintiff. 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, the plaintiff must prove the professional failed to conform to generally recognized and accepted practices in the profession. If the plaintiff 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").

Here, Plaintiff has failed to provide any expert testimony that Travelers, its underwriters, or its auditor breached any standard of care. Indeed, Plaintiff failed to list any expert at all. Accordingly, Plaintiff's lack of any expert testimony to support its claims against Travelers is fatal to Plaintiff's claims as a matter of law.

8. PLAINTIFF FAILED TO APPEAL TRAVELERS' LSRP/PREMIUM DETERMINATION PURSUANT TO WCIP RULE 4.[13]

Plaintiff has asserted that Travelers is estopped from seeking the premium it is owed. However, aside from being meritless, Plaintiff failed to make such arguments via the appeal

[12] Plaintiff has failed to list any expert to opine that Travelers breached any standard of care. Plaintiff has also failed to create an issue of fact as it has retained no expert who has opined that Travelers breached any standard of care to it. 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 the Plaintiff's Assigned Risk policy. Moreover, Plaintiff has not provided any evidence that Travelers' calculations of the LSRP are incorrect.

[13] Plaintiff failed to appeal Travelers' LSRP determination or any other decision to the NCCI pursuant to Rule 4 of the WCIP and, therefore, Plaintiff failed to exhaust his administrative remedies and cannot contest Travelers' decision via this present lawsuit. The WCIP Rule 4 sets forth the appeal mechanism whereby the Plaintiff was required to file an appeal to the NCCI if the Plaintiff contested the LSRP's applicability to South Carolina Assigned Risk policies or the premium amount Travelers sought pursuant to the LSRP. As the Plaintiff failed to appeal Travelers' decision (that the LSRP applies to South Carolina policies), Travelers is entitled to additional premium pursuant to the LSRP formulas, and Plaintiff can no longer contest Travelers' determination via a collateral lawsuit.

mechanism to NCCI set forth in WCIP Rule 4. The WCIP appellate process requires Plaintiff to appeal such dispute to NCCI and, if unsatisfied, the appeal process requires an appeal to the Workers' Compensation Commission and/or Administrative Law Judge and ultimately to the State Supreme Court.

The NCCI/WCIP unappealed code classification binds Ard Trucking Company per the WCIP requirements. The WCIP Rule 4 provides Ard Trucking Company with an appeal mechanism/process to appeal to NCCI, an administrative body, concerning any LSRP dispute between the parties. Specifically, the Assigned Risk Supplement and NCCI Basic Manual Rule 4 (attached as Exhibit 18) set forth the following mechanism:

> "Any Assigned Risk policyholders 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. 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 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 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 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 Company never filed any appeal of Travelers' LSRP decision to the NCCI. Here, Plaintiff 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").

Accordingly, Plaintiff is prohibited from asserting its current defenses or seeking its present claims against the servicing carrier in this present litigation, and Plaintiff is bound by the prior unappealed Travelers/NCCI determination pursuant to the WCIP. Moreover, based on NCCI's determination, the servicing carrier's entitlement to premiums set forth in its Complaint has been established as a matter of law, and Plaintiff is bound by such NCCI adjudication (i.e., the unappealed Travelers decision) which is the "law of the case."

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 the Plaintiff's abandoned appeal via NCCI pursuant to the WCIP provisions, Travelers is entitled to the premium it seeks. Accordingly, as Plaintiff failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, Plaintiff cannot collaterally attack Travelers unappealed decision via this present lawsuit. If Plaintiff wished to assert estoppel arguments, it was required to raise those arguments before the NCCI previously.

D. CONCLUSION

Based on the above, Travelers is entitled to the additional premium of $122,948 (a liquidated amount) and interest from 6/29/05 to the present, and Travelers respectfully requests this Court issue an Order granting it summary judgment on such grounds. For the reasons set forth above, Travelers respectfully requests this Honorable Court grant its Motion for Summary Judgment.

Respectfully submitted,

[Signature on following page]

Barnwell Whaley Patterson & Helms, LLC

By: _____
Phillip S. Ferderigos
288 Meeting Street (29401)
P.O. Drawer H
Charleston, SC 29402
843-577-7700
Counsel for the Defendant

December 17, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of December, 2014, I served a copy of the foregoing Motion on counsel of Record via U.S. Mail, with sufficient postage affixed, properly addressed as follows:

Martin S. Driggers, Sr., Esquire
323 West Home Avenue
P.O. Box 1439
Hartsville, SC 29551

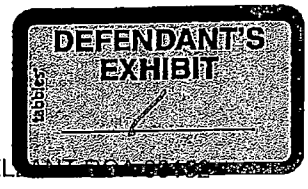
Barnwell Whaley Patterson & Helms, LLC

By: _____
Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2010-CP-16-435
Ard Trucking Company,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF ROSHANI B. GHAYAL
	)	
vs.	)	
	)	
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,	)	
	)	
Defendant.	)	
	)	

The undersigned, Roshani B. Ghayal, 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 WCIP, and the Loss Sensitive Rating Plan (LSRP) 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] attached as Exhibit 2, 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. On or about November 6, 2003, Ard Trucking Company, through its producer Michael P. Hair & Associates, Inc. submitted an Assigned Risk Application [BWPH Ard Trucking 4 – 7] attached as Exhibit 3.
6. Pursuant to the application, Ard Trucking Company, the Plaintiff, agreed to be bound by the terms of the WCIP as set forth in the applicant's statement.
7. Pursuant to the application, Travelers was assigned as the servicing carrier pursuant to the WCIP and issued a policy binder and assigned risk policy number 6JUB-0188B92-3-03, dated 12-01-03, policy period from 11-07-03 to 11-07-04, attached as Exhibit 4.



8. As required by the WCIP, the policy contained the LSRP Endorsement as mandated by the NCCI and the WCIP.

9. Pursuant to the WCIP, Travelers conducted a preliminary audit survey based on the payroll of the Plaintiff; given the Plaintiff's payroll at such time and pursuant to the WCIP, the assigned risk policy was re-written as an assigned risk LSRP policy on or about March 1, 2004.

10. Based upon a review of Travelers' records kept in the ordinary course of business, and in accordance with Travelers' regular practice and protocols, pursuant to the WCIP, Travelers sent the re-written policy, policy number R6EJUB-9560A28-5-030, dated 3-1-04 [BWPH Ard Trucking 00065-94] attached as Exhibit 5, as well as the pamphlet, "The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program" [BWPH 63, & 243-250] attached as Exhibit 6, to the Plaintiff and its producer on or about March 1, 2004.

11. On or about May 2004, in accordance with the LSRP requirements, Travelers requested that the Plaintiff pay the additional LSRP deposit or submit an irrevocable letter of credit in accordance with the WCIP.

12. In accordance with LSRP requirements, Plaintiff provided an irrevocable letter of credit for $52,116 in favor of Travelers on or about June 2004.

13. Following the expiration of the term of the policy on or about December 24, 2004, Travelers conducted a physical audit in accordance with the WCIP and, based on the payroll of the Plaintiff, Travelers determined that additional premium was owed and, pursuant to the LSRP and the loss history of the Plaintiff during the policy term, Travelers determined that an additional $175,064 was owed by the Plaintiff.

14. The Plaintiff refused to make the required LSRP premium payments and, pursuant to the WCIP and LSRP, Travelers properly drafted the irrevocable letter of credit that Plaintiff had issued previously in favor of Travelers.

15. Based on the WCIP, Travelers' charges for premium, including charges for LSRP premium, are proper and in accordance with the WCIP and LSRP and Travelers is entitled to an additional $122,948.00 in premium that the Plaintiff still owes Travelers.

16. Finally, Plaintiff never filed an appeal of Travelers' LSRP determination to NCCI in accordance with the WCIP.

FURTHER AFFIANT SAYETH NOT.

Witness

Witness

Roshani B. Ghayal

RONAY NELSON
Notary Public - State of Florida
My Comm. Expires Oct 9, 2018
Commission # FF 167732
Bonded through National Notary Assn.

Sworn to and Subscribed before me
this 16th day of December, 2014.

Ronay Nelson

Notary Public for the State of: Florida

Expires Oct 9, 2018

{00506097.DOC.1}

My Commission expires: Expires Oct 9, 208

Roshani B Ghayal
14118 Baroness Court, Orlando, FL 32828.
Home: (407) 282-7277 Cell: (407) 592-0108 Work: (407) 388-3068 Email: ghayalrb@gmail.com

A Senior Underwriter with 20+ years of proven technical experience in workers compensation underwriting and state compliance procedures. Superior record of delivering simultaneous large-scale account management and alliance building. Excellent interpersonal, organizational and communication skills. Proficient in working with senior management and corporate leadership.

- Proven Leadership abilities include managing a team of 13 underwriters and 2 account assistants
- Consistently meet goals and increase premium by using critical thinking and logical analytics.
- Investigative experience gained from New Scotland Yard and Travelers Insurance from over 20 years.
- Excellent Customer Service record with internal and external business partners.
- Strong emphasis on alliance building and superior organizational skills.
- Special Assignment to collaborate with FBI and US States Attorney.
- Successfully represented Travelers on a multimillion premium dispute case.
- Trusted to handle complex projects with detail preparation, accuracy, and confidentiality.
- Extensive knowledge of multiple state insurance plans and applicable state regulations
- Member of Toastmasters International Club

Work Experience:

June 1990 – Present –Travelers Insurance Companies, Orlando, FL.

2002-present Senior Account Manager Underwriter, Orlando, FL.
Primary responsibility is to implement new guidelines and procedures for management and support teams. Lead teams and facilitate weekly meetings in absence of assistant operations manager for Massachusetts, Indiana, and Georgia and Michigan teams. As the senior member of the team I mentor underwriters individually and in group settings. Review performance and prepare development plans as necessary. Presented an overview of corporate in house computer systems to re-insurers.
Manage multi-million dollar policies and increase premium by $10.5 million for 70 accounts.
Consistently exceed all Premium Accuracy goals.
I represented Travelers on a large premium dispute matter with Indiana Bureau.
Selected to be part of a team assembled by FBI and United States Attorney to collate data and subsequently testified to the validity of company documents on a high profile Washington DC account.
Continue to represent Travelers by providing depositions and witness testimonies in numerous court cases involving premium and coverage issues.
Handle specific Temporary/Leasing and Multiple Coordinated accounts
Independently manage an assigned book of business including specialty coverage's.
Respond to consumer complaints in a timely fashion.
Assisted in the development of core underwriting strategies for Massachusetts and Georgia.
Prepared files for Market Conduct reviews for Direct Assignment clients.
Conducted department wide hands-on training for navigation and use of NCCI website

2000-2002- Team Coordinator, Travelers Insurance *Companies*, Orlando, FL.
Responsible for managing and providing leadership to a team of 13 underwriters and 2 account assistants. Administered all human resources related functions as they applied to team members i.e. individual performance assessments, goal setting, counsel/coach/motivate individuals/team to achieve appropriate results. Ensured state and regulatory compliance by conducting monthly file reviews for 8 states.

DEFENDANT'S EXHIBIT
APPELLANT

1996-2000 - Project Analyst II, *Travelers Insurance Companies,* Orlando, FL.
Duties included support of underwriting department through management practices to ensure compliance with state and regulatory standards. I developed and conducted training to upgrade skills of underwriters. I reviewed and analyzed state regulatory and bureau guidelines to determine overall impact on departmental workflow. I developed new operational procedures and practices.

1993-1996 - Account Specialist, Travelers Insurance Companies, Orlando, FL.
Responsibilities included startup of Policy Issuance Team. Created training program, targeting use of Travelers systems, rules and procedures. Monitored production and checked daily work. Provided on-going training of new team.
Attended local job fairs to attract new applicants. Interviewed and checked references for new hires. Participated as a group mentor for new underwriters.

1990-1993 - Customer Service, Travelers Insurance Companies, Naperville, Illinois
Answered 100+ calls per day. Personally handled any problems to ensure complete customer satisfaction.

1985- 1989 – Investigations Officer, New Scotland Yard, London, England.
Kilburn Police Station, London

Investigation of Traffic Accidents and Drink/Drive accidents. Researched accidents involving diplomats and police officers. Wrote court summons for offenses. Interpreter for police department as necessary. Handled/managed financial ledgers for overtime and expenses. Analyzed witness statements, photographs and all investigative reports. Made recommendations to the Chief Inspector, and Great Britain Foreign Office suggesting action to be taken against suspects and diplomats. Successfully deported diplomats that were repeat offenders. Prepared off-site location for arrival of special victims for medical sample collection and questioning by detectives. Trained and guided new employees to review and process cases.

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

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

June 24, 2014

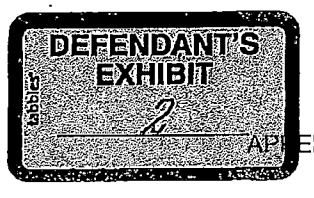
Phillip Ferderigos
Barnwell Whaley Patterson & Helms, LLC
288 Meeting Street, Suite 200
Charleston, SC 29401

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



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 00158

APPENDIX_00158

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. ■

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.

SCDOI 0003
APPELLANT ROA 00159
APPENDIX_00159

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.

SCDOI 0004
APPELLANT ROA 00160
APPENDIX_00160

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 ILOC 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.

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APPELLANT ROA 00161
APPENDIX_00161

- 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.

Cancelation 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 cancelations 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

SCDOI 0006
APPELLANT ROA 00162
APPENDIX_00162

➢**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]

SCDOI 0007
APPELLANT ROA 00163
APPENDIX_00163

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/ILOC?**

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

SCDOI 0008
APPELLANT ROA 00164
APPENDIX_00164

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.

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APPENDIX_00165

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National Council on Compensation Insurance, Inc.

Residual Markets

Industry Relations and Services

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

Contact: James R. Nau, Director 407-997-4563
Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4331

SOUTH CAROLINA ITEM FILING

[redacted]-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.

P.S.#33 South Carolina
Item Filing

National Council on Compensation Insurance

Government, Consumer and Industry Affairs

Roy G. Wood
Director

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

9847100[illegible]
APPROVED
STATE OF SOUTH CAROLINA
DEPARTMENT OF INSURANCE

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

Dear Commissioner Richards:

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.

100 E. College Avenue, Suite 650, Tallahassee, FL 32301
Telephone: 904-224-7200

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

APPROVED
(Property & Casualty)
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 407-997-4563
Technical Contact: Paula Shields, Residual Market Underwriting 407-997-4931

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
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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.

NATIONAL COUNCIL ON COMPENSATION INSURANCE ITEM 01-SC-94

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 <u>not</u> 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 (ILOC) 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.

* 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 NCCI 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

Retro Premium(RP) = Tax[(Basic X SP) + (RDF x LCF X SP) + LCF X 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

Basic	=	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

RP = 1.126[(.30 X 339,000) + (.31 X 1.125 X 339,000) + (1.125 X 254,250)]
RP = 1.126[101,700 + 118,226 + 286,031]
RP = 1.126[505,957]
RP = 567,708

2nd Adjustment

RP = 1.126[(.30 X 339,000) + (.21 X 1.125 X 339,000) + (1.125 X 271,200)]
RP = 1.126[101,700 + 80,089 + 305,100]
RP = 1.126[486,889]
RP = 548,237

3rd Adjustment

RP = 1.126[(.30 X 339,000) + (.15 X 1.125 X 339,000) + (1.125 X 305,100)]
RP = 1.126[101,700 + 57,206 + 343,238]
RP = 1.126[502,144]
RP = 565,414

4th Adjustment

RP = 1.126[(.30 X 339,000) + (.0 X 1.125 X 339,000) + (1.125 X 339,000)]
RP = 1.126[101,700 + 0 + 381,375]
RP = 1.126[483,075]
RP = 534,942

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.

SCDOI 00021
APPELLANT ROA 00177

APPENDIX_00177

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 (ILOC), 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 (ILOC), 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.

SCDOI 00027
APPELLANT ROA 00183

APPENDIX_00183

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 Cancelation condition of the Standard Policy permits cancelation by the insured or insurance carrier, the premium determination for a canceled policy is controlled by Rule X - Cancelation 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 Cancelation

1. Cancelation By the Insurance Carrier, except for non-payment of premium.

2. Cancelation 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 cancelation 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 cancelation 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 cancelation 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. Cancelation 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,

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APPELLANT ROA 00187

APPENDIX_00187

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 =

$1,095,000 x 5.00 (per $100) x 1.00

= $54,750

(c) Maximum Retrospective Premium:

$54,750 x 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

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APPELLANT ROA 00190

APPENDIX_00190

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.

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APPELLANT ROA 00191

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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

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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.

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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. Cancelation

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.

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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.

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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

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ACORD

WORKERS COMPENSATION APPLICATION

11-6-03

PRODUCER PHONE (A/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
	YRS IN BUS: 59 YRS; SIC: ☐ Individual ☐ "S" Corporation ☐ Limited Corp. ☒ Corporation ☐ Partnership ☐ Other
CODE: SUB CODE:	
AGENCY CUSTOMER ID:	FEDERAL EMPLOYER ID NUMBER / NCCI ID NUMBER / OTHER RATING BUREAU ID OR STATE EMPLOYER REGISTRATION NUMBER

STATUS OF SUBMISSION
☐ Quote
☐ Bound(Give date and/or attach copy)
☒ Assigned Risk (Attach Acord 133)
☐ Issue Policy

BILLING/AUDIT INFORMATION

BILLING PLAN: ☐ Agency Bill ☒ Direct Bill

PAYMENT PLAN: ☐ Annual ☐ Semi-Annual ☐ Quarterly — MONTHLY — % DOWN:

AUDIT: ☒ At expiration ☐ Monthly ☐ Semi-Annual ☐ Other ☐ 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)	PROPOSED EXP DATE (MM/DD/YY)	NORMAL ANNIVERSARY RATING DATE	☐ Participating ☒ Non-Participating	RETRO PLAN
11/7/03	11-7-04	11/1		

PART 1 - WORKERS COMPENSATION (States)	PART 2 - EMPLOYER'S LIABILITY	PART 3 - OTHER STATES INS	DEDUCTIBLES	AMOUNT/%	OTHER COVERAGES
SC	$ 500,000 EACH ACCIDENT $ 500,000 DISEASE-POLICY LIMIT $ 500,000 DISEASE-EACH EMPLOYEE	ALL EXCEPT MONOPOLISTIC	☐ Medical ☐ Indemnity ☐ Per Claim		☐ U.S.L.&H. ☐ Voluntary Compensation

DIVIDEND PLAN/SAFETY GROUP

ADDITIONAL COMPANY INFORMATION

RATING INFORMATION

STATE	LOC	CLASS CODE	COMPANY USE	CATEGORIES, DUTIES, CLASSIFICATIONS	# OF EMPLOYEES FULLTIME	# OF EMPLOYEES PARTTIME	ESTIMATED ANNUAL REMUNERATION	RATE	ESTIMATED ANNUAL PREMIUM
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

	FACTOR	FACTORED PREMIUM
TOTAL		$
INCREASED LIMITS		
DEDUCTIBLE		
EXPERIENCE MODIFICATION	.731	
LOSS CONSTANT		
ASSIGNED RISK SURCHARGE		
ARAP		
PREMIUM DISCOUNT		
EXPENSE CONSTANT		
TOTAL EST ANNUAL PREMIUM		

DEFENDANT'S EXHIBIT 3

151333.00

MINIMUM PREMIUM $ DEPOSIT PREMIUM $

PARTNERS, OFFICERS, RELATIVES TO BE INCLUDED OR EXCLUDED, (Remuneration to be included must be part of rating information section)

#	NAME	DATE OF BIRTH	TITLE/ RELATIONSHIP	OWNER-SHIP %	DUTIES	INC/EXC	CLASS CODE	REMUNERATION
1	J W ARD, SR		OWNER	49	OFFICE	Inc	8810	45,000
2	C ALLEN ARD		PRES	51	GEN. MGR	Inc	8810	45,000
3	MICHAEL HARLAN		V-P		OFFICE	Inc	8810	45,000
4	GRACE STREETT		SEC/TREA		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 ☒ Yes ☐ No

YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE
Current	CO: AMERICAN INTERSTATE POL#:			4	45,929	161,875
1st Yr Prior	CO: CLARENDON NATIONAL POL#:			1	4,499	1,186
2nd Yr Prior	CO: TRANS. EMP. SELF INSD T POL#:			0		
3rd Yr Prior	CO: TRANS. EMP. SELF INSD T POL#:			1	17,695	
4th Yr Prior	CO: POL#:			0		

NATURE OF BUSINESS/DESCRIPTION OF OPERATIONS

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

TRUCKER FOR HIRE

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES	Yes/No
1. DOES APPLICANT OWN, OPERATE, OR LEASE AIRCRAFT/WATERCRAFT?	No
2. DO/HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. asbestos, wastes, fuel tanks, etc)	No
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET?	No
4. ANY WORK PERFORMED ON BARGES, VESSELS, DOCKS, BRIDGES OVER WATER?	No
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?	No
6. ARE SUB-CONTRACTORS USED? IF YES, % OF WORK:	No
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INS?	No
8. IS A FORMAL SAFETY PROGRAM IN OPERATION?	No
9. ANY GROUP TRANSPORTATION PROVIDED?	No
10. ANY EMPLOYEES UNDER 16 OR OVER 60 YEARS OF AGE?	No
11. ANY PART TIME OR SEASONAL EMPLOYEES?	No
12. IS THERE ANY VOLUNTEER OR DONATED LABOR?	No
13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?	No
14. DO EMPLOYEES TRAVEL OUT OF STATE?	Yes

EXPLAIN ALL "YES" RESPONSES	Yes/No
15. ARE ATHLETIC TEAMS SPONSORED?	No
16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?	No
17. ANY OTHER INSURANCE WITH THIS INSURER?	No
18. ANY PRIOR COVERAGE DECLINED/ CANCELLED/NON-RENEWED IN THE 3 YEARS? NOT APPLICABLE IN MD	No
19. ARE EMPLOYEE HEALTH PLANS PROVIDED?	No
20. IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS/SUBSIDIARY?	No
21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?	No
22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME?	No

CONTACT INFORMATION

INSPECTION	PHONE:	(843)393-5101
	NAME:	HARRY BROWN
ACCTNG RECORD	PHONE:	(843)393-5101
	NAME:	GRACE STREETT
CLAIMS INFO	PHONE:	(843)393-5101
	NAME:	HARRY BROWN

REMARKS

APPLICANT'S SIGNATURE

PRODUCER'S SIGNATURE

ACORD 130 (10/98)

BWPH Ard Trucking 0005
APPELLANT ROA 00198

ACORD™

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: 11/09/03

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

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		
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).		
3. YEAR APPLICANT'S BUSINESS BEGAN:		

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

	YES	NO
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.	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

BWPH Ard Trucking 0006

APPELLANT ROA 00199

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

PAYMENT METHOD - SELECT ONE:

IS THE PREMIUM FINANCED? [X] YES [ ] NO

[ ] 1. VERBAL CHECK

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

[ ] 2. ELECTRONIC FUNDS TRANSFER

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

[X] 3. MAIL-IN CHECK

CHECK #: 18506 PREMIUM PAYMENT AMOUNT: $ 157333.00

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 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	11/6/03	

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	EXPIRATION DATE

PRODUCER NAME (PRINT OR TYPE)	DATE	PRODUCER SIGNATURE
Frank McCrary	11/6/03	

BWPH Ard Trucking 0007
APPELLANT ROA 00200
APPENDIX_00200

Travelers

SAFETY SERVICES

PLAINTIFF'S SE EXHIBIT 4 Other 9.26.13 PERIGAD-Bayonne, N. J.

Notice to policy recipient: If you are not the person directly responsible for the safety 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?

DEFENDANT'S EXHIBIT 4

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
(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
(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
Otwy Ctr-1009 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) 961-6074

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
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 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

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) 570-6194

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
Settle, 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

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

3678

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

1. **NCCI CO CODE:** 13579

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

3879

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

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4789

		STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	$	166946
PREMIUM DISCOUNT		NONE
0900-39 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
OFFICE: ORLANDO 870
PRODUCER: MICHAEL P HAIR & ASSOC 26XSD

ST ASSIGN: SC

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 RATE BUREAU ID: 390236328
EXP. MOD. EFFECTIVE DATE: 11-01-03

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

1680

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.

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 disease 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 exhausted, 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-0188B92-3-03)

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. Cancelation

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-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

DATE OF ISSUE: 12-01-03 ST ASSIGN: SC (Rev. 03-03)

Travelers

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

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

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 (OO)

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

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 12 (00)

POLICY NUMBER: (6JUB-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

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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.

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. Cancelation

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: SC

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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

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON SC 29540

DEFENDANT'S EXHIBIT 5

DEFENDANT'S EXHIBIT 5

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

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

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

ST ASSIGN: SC

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

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

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

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

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. Cancelation, 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. Cancelation, 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

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

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

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 00232

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

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. Cancelation

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

BWPH Ard Trucking 00076
APPELLANT ROA 00234

APPENDIX_00234

Travelers

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)

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 18 (00)

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.

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. Cancelation

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.

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

Travelers

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

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

Travelers

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

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.

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: 03-01-04 ST ASSIGN: SC

BWPH Ard Trucking 00082
APPELLANT ROA 00240

APPENDIX_00240

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) ☐ SAME

PARENT COMPANY/INSURED'S NAME	LOCATION CODE	NATURE OF BUSINESS	POLICY FORM	POLICY NUMBER
			(R6EJUB-9560A28-5-03)	

EMPLOYEE INFORMATION

EMPLOYEE'S NAME (FIRST, MI, LAST)	GENDER ☐ MALE ☐ 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 ☐ YES ☐ NO

MARITAL STATUS	EMPLOYMENT STATUS CODE ☐ FULL-TIME ☐ 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? ☐ YES ☐ NO

LOCATION OF ACCIDENT ADDRESS (STREET, CITY, STATE & ZIP)	COUNTY

DID EMPLOYEE LOSE ANY TIME FROM WORK? ☐ YES ☐ NO	IS THE EMPLOYEE BACK AT WORK? IF YES, DATE RETURNED ☐ YES ☐ NO	DATE EMPLOYEE LAST WORKED	WAS EMPLOYEE PAID FOR DATE OF INJURY? ☐ YES ☐ NO	DATE EMPLOYEE LAST PAID

DATE DISABILITY BEGAN	DATE DISABILITY ENDED	IS / WAS EMPLOYEE'S SALARY CONTINUED? ☐ YES ☐ NO	WAS EMPLOYEE'S INJURY RELATED TO A COMPANY-SPONSORED EVENT? ☐ YES ☐ NO	WAS ACCIDENT FATAL? IF YES, DATE OF DEATH ☐ YES ☐ 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? ☐ YES ☐ NO	DESCRIPTION OF SAFEGUARDS	WERE SAFEGUARDS USED? ☐ YES ☐ 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)	PREVOUS RELATED CONDITION? ☐ YES ☐ NO	PRE-EXISTING MEDICAL CONDITION(S)

CUMULATIVE INJURY? IF YES, LENGTH OF EXPOSURE ☐ YES ☐ 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
☐ FIRST AID -			

	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	TREATMENT	LENGTH OF STAY	1ST DAY OF TREATMENT
☐ HOSPITAL/ CLINIC -				

	NAME AND ADDRESS (STREET, CITY, STATE & ZIP)	PHONE NUMBER	TREATMENT	SPECIALTY	1ST DAY OF TREATMENT
☐ PHYSICIAN -		( )			

CONTINUED ON REVERSE SIDE

WUNTCG98

BWPH And Trucking 00080
APPELLANT ROA 00241

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

(R6EJUB-9560A28-5-03)

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

Name of Employer: ARD TRUCKING COMPANY INC

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

© 1997 National Council on Compensation Insurance, Inc.

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

MANUAL INSERT REQUIRED

W39P1H95

MANUAL INSERT REQUIRED

See instructions on other side.

MANUAL INSERT INFORMATION

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

MANUAL INSERT INFORMATION

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CARRIER – Name:
Address:

Telephone No.

POLICY NUMBER:

SC

APPENDIX 00248

BWPH Ard Trucking 00090
APPELLANT ROA 00248

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

ST PAUL TRAVELERS

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.

State	Rate per $100 of Remuneration
SOUTH CAROLINA	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.

(R6EJUB-9560A28-5-04)

APPLICATION FOR DRUG AND ALCOHOL FREE WORKPLACE PREMIUM CREDIT PROGRAM

Name of Employer: ARD TRUCKING COMPANY INC

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

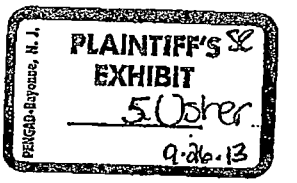
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W39N6A98

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:

Former Name	New Name
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 01/01/2004

Travelers

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

DEFENDANT'S EXHIBIT 6

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 00255

APPENDIX_00255

> **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. ■

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.

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APPELLANT ROA 00256
APPENDIX_00256

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.

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APPELLANT ROA 00257
APPENDIX_00257

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 ILOC 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.

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APPELLANT ROA 00258
APPENDIX_00258

- 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.

Cancelation 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 cancelations 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

BWPH Ard Trucking 000247
APPELLANT ROA 00259
APPENDIX_00259

➢ 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]

BWPH Ard Trucking 000248
APPELLANT ROA 00260
APPENDIX_00260

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/ILOC?

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

BWPH Ard Trucking 0000249
APPELLANT ROA 00261
APPENDIX_00261

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. ■

BWPH Ard Trucking 000250

APPELLANT ROA 00262

APPENDIX_00262

STATE OF SOUTH CAROLINA COUNTY OF DARLINGTON	)	IN THE COURT OF COMMON PLEAS FOURTH JUDICIAL CIRCUIT C/A NO. 2010-CP-16-435
Ard Trucking Company, Plaintiff, vs. Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois, Defendant.	)	AFFIDAVIT OF FREDERICK J. MOYLEN

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]

DEFENDANT'S EXHIBIT d

Witness

Witness

Frederick J. Moylen

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

Ronay Nelson

Notary Public for the State of Florida
My Commission expires: Oct 9, 2018

RONAY NELSON
Notary Public - State of Florida
My Comm. Expires Oct 9, 2018
Commission # FF 167732
Bonded through National Notary Assn.

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 proving 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

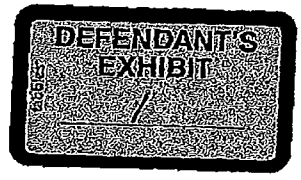
Accounting Analyst (October 1989 to May 1992)

- 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.



- 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 1986 graduated Weymouth North High School, Weymouth, MA

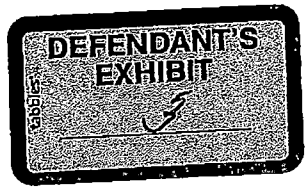
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO. 2010-CP-16-435
Ard Trucking Company,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF STEVEN V.
	)	EVANGELISTA, APA
vs.	)	
	)	
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,	)	
	)	
Defendant.	)	
	)	

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]



Witness

Witness

Steven V. Evangelista, APA

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

Notary Public for the State of: South Carolina
My Commission expires: 7/30/21

National Council on Compensation Insurance, Inc.

SERVICE CENTER
901 Peninsula Corporate Circle

Boca Raton, FL 33487
Tel. 1-800-622-4123

November 20, 2003

EFFECTIVE DATE: 11/07/2003
BINDER NUMBER: 39-10804-03323-427501
FED ID NUMBER: 57-0604441
APPLICATION ID: 10827560

ARD TRUCKING COMPANY INC
PO BOX 504
DARLINGTON, SC 29540

RE: WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY BINDER

0188B923
DA

This is to acknowledge receipt of an initial or deposit premium payment and your application for coverage through the Workers Compensation Insurance Plan for the State of SOUTH CAROLINA.

Coverage is provided under this binder, beginning at 12:01 A.M. on the effective date shown above, and with the insurance company named below, and shall remain in effect until canceled or a policy has been issued. Coverage is provided under the Workers Compensation Law of SOUTH CAROLINA and of such additional jurisdictions as may be requested, in accordance with the Plan rules. Employers liability coverage is also provided, subject to the standard limits prescribed in the Basic Manual, unless higher limits have been requested in accordance with the Plan rules.

Please retain this binder as evidence of the coverage until you receive your policy.

RECEIVED
NOV 21 2003
AAMD ORLANDO

INSURANCE COMPANY:

TRAVELERS INDEMNITY CO OF IL
1000 LEGION PLACE
GATEWAY CENTER
ORLANDO, FL 32802

DEFENDANT'S EXHIBIT 4

AGENCY NAME:
MICHAEL P HAIR & ASSOC
PO BOX 472224
CHARLOTTE, NC 28247

26 XSD
DA.

7028J4078
DA.

39-10804-03323-427501 ASSIGNMENT ADDITIONAL NOTICE

ARD TRUCKING COMPANY INC

NOTICE

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 terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan.

NOTICE

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE

Your policy provides coverage for certain losses caused by acts of terrorism. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.

The portion of your estimated annual premium that is currently attributable to coverage for certain losses caused by acts of terrorism is: $812.

NOTICE

CERTIFICATES OF INSURANCE

Effective upon receipt of the enclosed binder, the producer may issue certificates of insurance only under the following conditions: 1) that the certificate is issued only on the standard ACORD form; 2) that the certificate is issued only for operations in the states listed in 3.A. of the Information Page; 3) that the policyterms are unchanged; 4) that the certificate holder is not extended any greater rights than those extended to the insured; and 5) that the servicing carrier is provided with a copy of each certificate.

APPLICATION NOTES:

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.

Corporate Officers have not elected to be excluded.

Carrier: Current experience rating worksheet attached.

Please forward form 941 (or its equivalent) to the carrier as named on the binder.

Please forward a copy of the signed finance agreement to the carrier as named on the binder.

a roll call of different servicing carriers in the state. And then, whoever is up next gets that assignment and that's who issues the policy?

A. Not as I can remember.

Q. Didn't explain that to you. Okay. When you applied for the Assigned Risk Policy --

A. I didn't apply for an Assigned Risk Policy. The agent said he was going to get me Workmens' Comp insurance. Okay? And he got me Workmans' Comp insurance. Being that it now is called assigned risk or what. You know that's --

Q. Do you know, sitting here today, if you signed an assigned risk Workers' Compensation insurance policy application, to be submitted to NCCI?

A. That, I couldn't tell you.

Q. You were just relying on the producer?

A. Right. I mean, you sign a bunch of papers with the producer so he can go out and shop the market. And, you know -- I don't -- you don't really know what -- he says you got to sign these papers, to give me exclusive use, to shop the market for you so I can block other people out. Now, what's in that paper when you sign it --

Q. Is it a fair statement and we'll talk about the application here. Is it a fair statement, that you

APPELLANT ROA 00275

DEFENDANT'S EXHIBIT 7

APPENDIX_00275

didn't necessarily read the application from start to finish? That you signed before it was submitted to NCCI?

A. I would -- this -- I would fairly say that. I mean --

Q. Is that a yes or no?

A. Yes. I mean I -- you know, you wouldn't read every single thing. Your producer tells you what is in it. And you're paying him, and you trust him. If he leaves stuff out, then to me -- you know. And him, working as an agent for you and the insurance company, he should be playing straight. Right?

Q. Wasn't he your agent, in the sense that you hired him to get Workers' Compensation insurance for you?

A. Yes.

Q. Under the assigned risk plan, you don't know which servicing carrier is going to be assigned to a risk until after the application is submitted. Is that correct?

A. I don't know.

Q. Did your producer, at the time, explain to you that whichever servicing carrier was going to be next, is going to be the one that's going to end up issuing the policy?

APPENDIX_00276

Q. And the document that's attached, take your time to look it over. Is this the Assigned Risk Application that was submitted to NCCI, on your company's behalf? You can look at the details, and then confirm for me, if that's your signature.

A. Yes. That's my signature.

Q. So you'd agree that at the end of the application that's your signature there, Allen Ard, President?

A. Yes, sir.

Q. Does that application look familiar to you? Did you review it before you signed it, and before the producer submitted it at NCCI?

A. No, sir. They just basically -- you had to sign these applications so they could submit them. This is -- this looks to me like that's who we had Workmen's Comp with --

Q. Before?

A. Yeah. And then what does this say? In the previous years?

Q. Yes, sir.

A. Okay.

Q. And my question to you is, this application has different information on it. It has payroll on it, individual employees, people that are officers of the

court, and it also has an applicant's statement. Did you review, and read these documents before you signed them?

A. No, sir. Not fully. He just said, "this is your application. You have to fill it out."

Q. Did you review the application for accuracy?

A. No, sir.

Q. And it's got --

MR. DRIGGERS: Now this -- in the discovery we have -- I'm trying to see. I don't have that letter in your discovery.

MR. FERDERIGOS: Okay. And remember Marty, I didn't have the case then. So whatever I have here --

MR. DRIGGERS: Well, you know, what you do is you file a discovery request. You get the information. You go over it with your client. Then depositions follow. And I'm going to have to object to any documents, that you have, that were not produced before today.

MR. FERDERIGOS: Okay. My understanding was that everything was produced. But I'm not the attorney that was on there. I understand, and I agree with what you are saying. I don't want to ask him any questions about any documents, that you don't have, or

THE WITNESS: The first page of the --

Q. And the first page is a cover letter from Michael Hair and Associates, the producer, to NCCI. And that's Defendant's Exhibit Number 1. The remainder of that Defendant's Exhibit Number 1 is the assigned risk application that you signed, that was submitted to NCCI?

A. Yes.

Q. When you signed that, did you read it?

A. No, sir, he just told me to sign it.

Q. Okay.

A. That's common.

Q. As far as this application, it notes that you had about 70 drivers, and now we're talking about the time period around 2003.

A. That's the list of them on the back.

Q. Sure. And is that accurate that they were -- and these are estimates at the time you were putting in the applications that you had 70 drivers with an estimated annual remuneration of $2,100,000?

A. I can't answer that honestly.

Q. And then it says clerical 22 employees, estimated 410,000 remuneration and outside sales one, estimated 16,000 remuneration?

A. Numbers I will not be able to answer --

Q. Okay.

A. -- correctly.
Q. But that's what's on the application that was submitted?
A. I see it's on the application.
Q. Okay. And then on the second page it has J. Ward, Senior, is that --
A. Jesse Woolard, JW, that's my father, that's deceased.
Q. That's your father, who's the owner and then C. Allen Ard, which is you.
A. That's correct.
Q. And Michael Harlan, was the vice president at the time?
A. Yes, sir.
Q. Is he still the vice president?
A. No, sir.
Q. Okay. Grace Street, secretary?
A. Yes, sir.
Q. And how -- then it has the remuneration that y'all were estimated to get paid and the audit concluded?
A. I don't understand that. That don't make no sense to me.
Q. Okay. But that's what the application says?
A. Well, I mean, Yeah, that's what the application says and, you know, I don't know if we just signed this

form and then I gave it to Michael Hair and they filled out everything; I don't have a clue.

Q. Okay. And this is your signature?

A. Yes, sir.

Q. At the bottom of that page?

A. Yes, sir.

Q. Okay. And then if you flip a few more pages, it has an applicant statement and then it has your signature?

A. That's correct.

Q. And the date?

A. That's correct.

Q. It's 11/6/2003 and your name and president.

A. That's correct.

Q. Did you read the applicant's statement before --

A. No, sir.

Q. -- you signed it?

A. No, sir.

Q. Do you see that paragraph at the bottom of the applicant's statement that says, by signing below, I acknowledge that --

MR. DRIGGERS: Without -- I would like to ask the record, would you read the line before that, please? Before that paragraph.

MR. FERDERIGOS: Oh, sure, sure.

Q. "The following statement is only applicable in jurisdictions where the NCCI, Inc., loss sensitive rating plan, has been approved for use, colon, 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;" (as read) do you see that?

A. Yes, I see that.

Q. When you signed this application, you didn't review that portion?

A. I have no idea what it means.

Q. Okay.

MR. DRIGGERS: I'd like to note on the record that the preceding sentence before that paragraph obviates the necessity of having to do that in this case?

MR. FERDERIGOS: Okay. We don't need to argue the case with objections.

MR. DRIGGERS: I know.

MR. FERDERIGOS: If you want to object for the record, you can object.

MR. DRIGGERS: I'd like to make a point that you made an assertion that I don't think is true, because that statement there actually states that -- that provision is not applicable.

MR. FERDERIGOS: Well, that's what the whole case is about.

Q. This statement that you signed, this applicant statement is what you signed?

A. Yes, I did sign it --

Q. In its entirety?

A. That's right.

Q. Okay.

MR. FERDERIGOS: And I'm going to go ahead and make that Defendant's 1 to this deposition.

MR. DRIGGERS: Okay. I want to make sure I understand. Is there not an exhibit number on that one?

MR. FERDERIGOS: Yeah, there already is. That was from the prior deposition, but -- and we can get off the record.

(OFF THE RECORD)

BY MR. FERDERIGOS:

Q. Now, Mr. Ard, do you recall receiving the initial

Exhibits 5 of Usher.

MR. FERDERIGOS: Yeah, I see, I see.

Q. Next is Plaintiff's Exhibit No. 5 of Usher. Do you ever recall seeing that -- or do you know if you or anybody (scratch that prior question). Do you know if you or anybody from your staff received this letter?

A. No. I don't, but I assume we did because I remember hearing about the name change.

Q. Okay.

A. When? I couldn't answer.

Q. Okay. The next one is Plaintiff's Exhibit 4.

A. It looks to me like that's what the safety department would use if they needed to call for a claim.

Q. Sure, if you flipped to 1,2,3,4,5 and 6 that's the copy of the -- would you agree that's a copy of the original policy before it was rewritten in 3/1/04.

A. That's the copy of the only policy that I've ever gotten, yes it is.

Q. The question is when did you receive a copy of this policy? Do you know? You personally.

A. No. I don't.

Q. Do you know when somebody working for you received a copy?

A. No, I do not.

Q. Okay. Did you review this policy at any time?

A. No. I didn't. Not study it.
Q. Do --
A. I just looked at it.
Q. Okay. When is the first time you looked at this policy?
A. I have no clue.
Q. Okay.
A. I look at so many policies. I mean, we have what liability insurance, physical damage insurance, workmens' comp insurance, general liability insurance, cargo insurance, contingencies insurance --
Q. Let me ask you --
A. -- we just have so many policies.
Q. Is it true that you do not know when you or someone from your staff --
A. That is correct.
Q. -- received and reviewed this policy?
A. That is correct.
Q. Is that true? You have no idea when?
A. No. It's usually anywhere from 30 to 45 days after the policy. See the problem we got. I've been with Cherokee Insurance since 2006 and all I can tell you is what their standards procedure is. I have every policy from them within 45 days of the renewal date.
Q. Okay. But my question to you is very specific.

Defendant's Exhibit No. 11 (scratch that). Plaintiffs Exhibit No. 4 in Gary Ushers' Deposition. Do you know when you or someone from your staff received it and reviewed it?

A. No. I don't.

Q. Okay. So you don't have no testimony that you or someone from your staff actually reviewed the policy that's attached to Plaintiff's Exhibit No. 4, Gary Ushers' deposition?

A. I have no knowledge of anybody doing it, whether they did it. I have no knowledge.

Q. Okay. The next one is Plaintiff's Ushers Exhibit No. 3. And is this your producer asking you to sign something for your assigned risk plan. That's actually part of your assigned risk application.

A. That's my signature but, anything else is not my handwriting on there. I can definitely tell you that it's not because I make my checks to the left this a right hand check.

Q. What are we talking about?

A. All this other hand writing in here, you know.

Q. Okay.

A. I have no clue.

Q. FEIN you mean?

A. Well, that, that, that all that stuff is from --

Travelers

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:

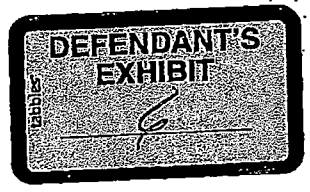
1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or 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



DATE OF ISSUE: 12-01-03 ST ASSIGN: SC (Rev. 03-03)

guessing is what I'm telling you. I just know what happened in the past.

Q. Sure, sure. Is it PO Box 504, Darlington, South Carolina, 29540?

A. That's our PO box now.

Q. PO box now. Your assigned risk application, that was the mailing address on it as well?

A. If that's --

Q. And this is Defendant's Exhibit 1, which is the assigned risk application that was submitted that we talked about in your prior deposition?

A. Yes.

Q. Okay. So anything that would get mailed to this PO box from 2003, 2004, who would pick up that mail?

A. My father that's deceased now.

Q. Okay. And he would pick up the mail from the PO box on a daily basis?

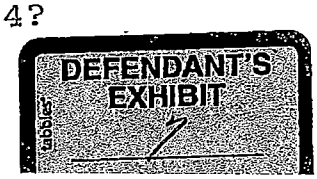
A. Every day, and he would carry the mail back to the post office every day. He would make the bank deposits every day.

Q. So every day your father would pick up the mail from the PO box that we just mentioned.

A. That's correct.

Q. And this would be from 2003 to 2004?

A. That's correct.



Q. Okay. And then your father would hand it to who, Grace Street?
A. He would distribute it out, to who it would belong to, I'm assuming. I don't know. All I know is mail would be put on my desk.
Q. Okay. And that's what I was going to ask; if something came from your producer's office, a mail, or something came from Traveler's, would your father be the one to make the decision about whether it goes to the safety department or Grace Street or whether it goes to you.
A. I couldn't answer that in respect for him.
Q. Sure. Okay. So your father would pick up the mail and, I mean, generally, for day-to-day workers' compensation issues, would you expect that that would get distributed to -- and this during 2003, 2004 -- that that would get distributed to Mr. Brown first, or somebody in the safety department?
A. It all depends. The way it -- and it's strictly memory, okay?
Q. Sure.
A. We're talking 10 years ago or more. Whatever had my name on it, addressed on the outside got put on my desk. If it had maintenance or if it had safety or if it had operations on it, it probably got put on their

desk.
Q. Okay.
A. That would theoretically, if it -- you know, if it was accounts payable, then it got put on accounts payable desk.
Q. What if it's just Ard's Trucking Company, Inc., PO Box 504, Darlington, South Carolina, 29540; that's all that was on the letter, the address, and it didn't say any more specifics?
A. It could go anywhere due to trying to look at the return address.
Q. So if it's from an insurance company?
A. It would probably go to safety department.
Q. If it's from your producer?
A. It would probably go to the safety department.
Q. Okay.
A. You know, do you understand what I'm trying to say?
Q. Yes, sir.
A. Okay.
Q. Oh, I think I do. No, but I have to ask.
A. Oh, I understand.
Q. Because everybody does it differently. I don't know.
A. Oh, I know.
Q. So if it has a general Ard's Trucking, Inc., is

that -- is at the PO box and it shows up with nothing more then that on it, the address and the name of the company, but it's from an insurance company or the producer, you would expect that from 2003 to 2004, that that would be given to the safety department; is that correct?

A. Let me back up, okay? Because we don't get mail no more. Okay. At that time I remember everything that was put on my desk was already opened.

Q. Okay.

A. Somebody opened it. And that might be how they decided where it needed to go.

Q. Okay.

A. Unless it said personal or confidential, it was opened.

Q. Got it, got it. So sitting here today, thinking about, you know, what the process was in place November 7th, 2003 through November 7 of 2004, you would expect that -- if a mail came to the PO box to the company and it dealt with insurance or workers' comp insurance, you would expect that somebody would open that up and it would be given to somebody in the safety department --

A. Unless it was --

Q. -- on a daily basis?

A. -- addressed directly to a specific person.

Q. Okay. So your testimony is -- let me know if I'm paraphrasing it right or wrong, and then you get to clarify. If it comes -- if a letter came to that PO box from an insurance company or from a producer, you would expect that it would be opened up and then given to someone on the safety department, unless it was addressed to a specific person?

A. So we stay straight, the words you said expect, okay, I'm assuming, just like you just said, that that's what happen. Whether it happened or not, I can't answer.

Q. Got you. Got you. So for a lot of the documents that we're going to talk about here today, that were sent to the PO box of Ard Trucking Company, is it true that you wouldn't have any personal knowledge about whether or not that document was mailed to and received by someone that opened up the mail for Ard Trucking?

A. No.

Q. In other words, there's a possibility, is that correct?

A. That's correct.

Q. So it's possible that even though you, yourself, haven't seen document X, whatever X may be, that that document was mailed to Ard Trucking, somebody opened it up and somebody looked at it and never brought it to

your attention?
A. I can't answer that.
Q. Would that be possible?
A. Anything's possible.
Q. So that would be -- that could happen?
A. If it happened, it could happen.
Q. Okay. Now, Grace Street, what's her official title for you back in 2003 and 2004?
A. Secretary.
Q. Is she still a secretary today?
A. Yes.
Q. Okay. And what does her job involve?
A. She's accounts payable.
Q. Does she -- and this is during the 2003, 2004 time period; would she -- she wouldn't get any of the mail from the PO box?
A. That I don't know. I'm assuming she probably -- yeah, she would get some, because if it's a bill, then she had to pay it.
Q. Okay. Well, let me start off, would she pick up the mail from the post office at all?
A. No, my father does -- did.
Q. Your father did, okay. What about mail that comes to your physical address, or came to your physical address?

A. He did that too. It's just across the street.
Q. Okay. So he would -- he would pick up -- so the first person would be your father, who would pick up the mail during that time?
A. After he retired that was his job. I mean, he wanted to stay active. And so he had a desk and he showed up at 9:30 or 10:00, he left about 12:00, he came back about 3:30, he left again about 4:30. With the in and outgoing mail, and that was it.
Q. Well, there you go.
A. And them times could be off, you know, then. I mean, that's just --
Q. Right. If he didn't know where something went, do you know if he'd give it to the secretary, would she -- is your secretary like my secretary, which is like an administrative assistant as well, and she knows kind of what goes on in the office, and people go to her when they need some assistance?
A. It would be hard to say what he -- who he would give it to, you know. And this is just hearsay; I've heard him say before, you know, that this is a bill, because it's got a window, this is a check because it's got a different window, this is -- I just seen him do it, you know, have stacks of mail on his desk know what I'm saying? Now, where he went from there, I don't

know. Know what I mean? If they fell off the desk into the trash can, I ain't got a clue.

Q. Okay. And would you expect, if there was a letter to you, that he would open up the letter and then --

A. No, I don't think he never opened up anything, you know, I --

Q. I'm sorry. Who would open it up?

A. I don't have a clue. All I know is when it was on my desk, unless it said personal or confidential, it was opened.

Q. Okay. So a lot of the letters that you get about various issues, you don't personally yourself, open up the mail, somebody else gives it to you.

A. That's right.

Q. And that's true for 2003 and 2004, you would expect that somebody else in your corporation would open up the mail for you and then somebody makes a decision about whether you should see it or not, and then puts it on your desk; is that true?

A. That's correct.

Q. And is that the way you still do stuff? Which is fine.

A. We don't hardly ever get any mail. Yeah, mail is still put on my desk if I get any, that's correct.

Q. Okay. So you're relying on somebody else,

I mean, would you mind identifying that each time, because I cannot -- the record might not know what it is.

MR. FERDERIGOS: Okay. Loss sensitivity rating program or rating print plan.

BY MR. FERDERIGOS:

Q. So my -- and we're going to go through documents, but my question is, sitting here today, can you say one way or another whether or not any of your employees at your corporation, from 2003 to 2004 ever received a cover describing the LSRP, a booklet describing the LSRP and a rewritten policy?

A. No, I cannot, because I don't know what it is and if somebody did receive it, they can't -- they didn't know what it was, because I've never heard of it.

Q. Okay. Okay. And we're going to go through it here in a little bit, but you can't say one way or another whether or not that was ever received in 2003, 2004, correct?

A. I cannot.

Q. By the same token, you can't sit here today and say, I know for a fact nobody received such documentation; is that correct?

A. I cannot.

Q. Okay. It would be speculating one way or the other.
A. That's right. 50/50 chance, right? US Postal is always on time, right. Hadn't we had mail throwed in dumpsters.(as spoken)
Q. I don't know. Did that happen from time to time?
A. Oh, yeah, we lost a lot of mail. The postal guys decided to throw it away.
Q. Now, as far as the bills that you would get from 2003 to 2004, you used a financing company?
A. That's correct.
Q. Okay. So you would pay -- you'd have a coupon?
A. That's correct.
Q. To pay on a monthly basis?
A. That's correct.
Q. Okay. You would also receive Traveler's bills from time to time?
A. Meaning what?
Q. Or let me ask you this, --
A. We paid the whole premium up front.
Q. Okay.
A. And they would use the finance company to finance it at six and three quarter percent, okay. In the middle of the policy payments, they went from seventeen thousand to nineteen thousand, because they had

I think is misleading to the record.
MR. FERDERIGOS: Do you have an objection, Marty?
MR. DRIGGERS: Well, I'm just asking if you would just offer him -- Show him -- show me in the letter where the policy attachment that you have is indicated. Is it there?
MR. FERDERIGOS: Marty, Marty, If you have an objection, you stated your objection. Let me ask the question then I'm going to ask him what I think you want me to ask him. Let me ask it the way I want to first. Then we'll go from there.
MR. DRIGGERS: Sure.
BY MR. FERDERIGOS:
Q. And now I'm going to hand you 64 through 94 and documents 243 through 250. Could you tell me whether or not you have any knowledge whether anyone from your company received these document on or about March 1, 2004?
A. The first page they couldn't have, cause it was dated in 2003. Okay I see it.
Q. Now let's start over. The bate stamped I just handed you 64 through 94 and 243 through 250. Do you have any knowledge whether anyone from your company

received these documents, bate stamp documents, on or about March 1, 2004?

A. Can you repeat the question?

Q. Do you have any knowledge that anyone from your company received those bate stamped documents, that I indicated, on or about March 1, 2004?

A. That's in the earlier pages. 85 and 94 is duplicate. The question that you asked was, did anybody in my office ever see any of this; I can't answer it.

Q. Okay.

A. There's no signatures nowhere.

Q. Okay. And now, let me ask the question the way Marty wanted me to ask the question. Bates stamp number 64; did you receive bates stamp -- did you or anyone from your office receive Bates stamp number 64 on or about March 1st, 2004?

A. I can't answer that. That's what I'm supposed to say, right?

Q. And bates stamps number 65 through 94, did you or anyone from your office receive this -- these bates stamps number 65 to 94; do you know whether you or anyone from your office ever received those bates stamps on or about March 1st, 2004?

MR. DRIGGERS: Let me just make an objection for the record. There's an

implication here --
MR. FERDERIGOS: Marty, you can object to the form and I don't want a speaking objection.
MR. DRIGGERS: My -- there's -- to offer the page 64 and then, of course, all three documents were handed to him as a group and to offer him 64 and then ask him -- and he's seen that, then ask him 63 through 94, I don't -- Let me ask you a question; what's the relationship between bates 63 through 94 and the letter is 64. I don't -- I don't understand it.
MR. FERDERIGOS: Marty, it's an improper speaking objection. I posed the question to the deponent, has he received those bates stamps documents. I'm entitled to that answer.
MR. DRIGGERS: Is it represented by -- by you and your client that -- that the -- that 63 --
MR. FERDERIGOS: Marty --
MR. DRIGGERS: through 65. It's a question.

MR. FERDERIGOS: No, no, this is not the proper time for this question and you know it. It's an improper speaking objection. Please stop doing it, or I'm going to have to ask you the judge --

MR. DRIGGERS: Well, it's not relevant. It's not relevant.

MR. FERDERIGOS: Then just say objection to form, irrelevant, and you're done, okay. Now, come on now. I know you're an older attorney and you all like to try to do lots of speaking objections. We don't do that anymore.

MR. DRIGGERS: But in think in fairness to the record --

MR. FERDERIGOS: State your objection.

MR. DRIGGERS: In fairness to the record.

MR. FERDERIGOS: Marty, Marty, I don't want you to keep talking or I'm going to have to ask the judge to intervene. You stated an objection, you're done.

Q. If you could answer the question, please.

A. No.
Q. You don't know?
A. No.
Q. You do not know?
A. I do not know.
Q. Okay. So your testimony is you do not know whether someone from your office received bates stamp 65 through 94 on or about March 1st, 2004.
A. No.
Q. You do not know?
A. I do not know.
Q. Okay. Same question, for bate stamps 243 through 250; did you or someone from your office -- do you have knowledge that you or someone from your office received bate stamps 243 to 250 on or about March 1st, 2004?
A. I do not know.
MR. DRIGGERS: Let the record also show that of the bate stamped document that I have, I think the -- the bates stamped 243 through 250 are the absolute last bates stamped documents that I have received. They were added onto the end of the entire stack.
Q. Okay. Let me show you bates stamp number 98 and 99. Do you know whether or not you or anyone from your

Exhibits 5 of Usher.

MR. FERDERIGOS: Yeah, I see, I see.

Q. Next is Plaintiff's Exhibit No. 5 of Usher. Do you ever recall seeing that -- or do you know if you or anybody (scratch that prior question). Do you know if you or anybody from your staff received this letter?

A. No. I don't, but I assume we did because I remember hearing about the name change.

Q. Okay.

A. When? I couldn't answer.

Q. Okay. The next one is Plaintiff's Exhibit 4.

A. It looks to me like that's what the safety department would use if they needed to call for a claim.

Q. Sure, if you flipped to 1,2,3,4,5 and 6 that's the copy of the -- would you agree that's a copy of the original policy before it was rewritten in 3/1/04.

A. That's the copy of the only policy that I've ever gotten, yes it is.

Q. The question is when did you receive a copy of this policy? Do you know? You personally.

A. No. I don't.

Q. Do you know when somebody working for you received a copy?

A. No, I do not.

Q. Okay. Did you review this policy at any time?

A. Yeah, yeah. And then he would distribute it to whoever he thought it should go to.
Q. Okay, and as far as workers' compensation issues, and correspondences and documents like that, would Mr. Allen Ard's father, bring that to you or someone in the safety department, how would that work in the 2003, 2004 time frame?
A. It would come to me or one of the girls that worked for me, you know. I don't know if it would, all of it, would end up on my desk, but, yeah, most of it would.
Q. Okay. Okay. Do you recall receiving or reviewing the assigned risk application before Mr. Ard signed it back in 2003, 2004?
A. No, I don't remember reviewing the application.
Q. Okay. Do you recall receiving a copy of the initial assigned risk policy that was issued by Travelers in the early part of 2003?
A. I don't recall receiving it, but I'm sure I did.
Q. Okay. Do you recall receiving the subsequent policy, the rewritten policy that Travelers issued in March of 2003?
A. No, I don't.
Q. Okay. Do you, do you have testimony one-way or the other whether you ever received that, in other words, what I'm getting at, is it your testimony, no, I never

received it or is your testimony, I don't know if I received it or not?

A. I don't know if I received it or not.

Q. Okay. Did you ever receive a letter from Travelers with an LSRP booklet explaining the LSRP?

A. I don't recall that.

Q. Okay. So, your testimony is, it's not that, no, I never received it, it's I don't know if I ever received it or not.

A. I don't know.

Q. You don't know?

A. No.

Q. Okay. Would you have reviewed -- assume that you received the policies of insurance, would you have reviewed the policies?

A. Yes.

Q. Okay. When you received the initial policy of insurance, did you review the policy of insurance?

A. Yeah, I'm sure I did. That would have been normal practice.

Q. Okay. If you would have received the rewritten policy of insurance, would you have -- would you have reviewed that policy of insurance?

A. Yes, I'm sure I would.

Q. Okay, if you would have received the letter and

LSRP booklet, would you have reviewed that letter and LSRP booklet?

A. Yes.

Q. Okay. Did Gary Usher, and this is in the early part of 2003, did he ever contact you and say that the insurance company, Workers' Compensation Insurance Company, Travelers, was requesting more money than the initial premium estimate?

A. I don't know.

Q. Did Gary Usher in 2003, and it would be in early 2003, did he ever contact you and advise you that the reason Travelers Insurance Company is requiring a additional deposit is because the LSRP was triggered under the assigned risk provision rules?

A. Not that I can recall.

Q. And just to be clear, is it your testimony, no, that never happened or is it your testimony, I just don't know?

A. I don't know.

Q. Okay. From the time that the assigned risk application was submitted --

A. Uh-huh.

Q. Okay? -- up until the end of the policy and maybe that's an in artful way of asking, as far as your communications with Gary Usher after the initial

application process, what communications did you have with Gary Usher about the assigned risk, about the assigned risk policy of insurance?
A. I don't know. If I had any conversation with Gary, at all, it was maybe to ask a question or discuss a claim or something, you know, to that nature, as far as I know. I mean, we're talking ten years ago.
Q. I understand. Okay. So, sitting here today you don't recall, specifically, what the substance of the conversations, if any, would have been between you and Gary Usher from the date that the policy was issued until the end of the policy date?
A. No, I don't.
Q. Is that correct?
A. Yes, nothing specific that I can recall.
Q. Okay. Do you know what the LSRP is today?
A. I do now.
Q. Did you know what the LSRP was in 2003 or 2004?
A. I'm not sure, but I knew it didn't apply to us.
Q. Okay, and why do you say that?
A. Because it on the page that where it goes through the LS, whatever it is, on the bottom of the page it's got states listed down there and it says, these are the states that it affects and South Carolina is not on it.
Q. Okay. Did you have that conversation about that

endorsement with Gary Usher back in 2003 or 2004?
A. Not that I can recall.
Q. Okay. Did you review the application in 2003 or 2004 to look at that, that endorsement provision that you're referencing about the LSRP?
MR. DRIGGERS: I'm not Objecting. You said, did you look at the application. I think his answer was that he looked at the policy. It was not an application he was referring to, I don't think. I think he's referring to a policy.
MR. FERDERIGOS: Yeah, did I use the word application?
MR. DRIGGERS: You used the word application.
MR. FERDERIGOS: Let me, sorry, let me rephrase that.
Q. The initial policy of insurance that was issued from Travelers, back in 2003, 2004 time period, did you review the policy of insurance and, specifically, did you review that endorsement provision that referenced the LSRP in that initial policy?
A. I can't say for sure that I did because I don't remember, but I don't understand why I would not saw that.

Q. Okay. Travelers drawing on the letter of credit back in 2003 and 2004, do you have any testimony about how that effected Ard Trucking Company?
A. No, I don't.
Q. Do you have any testimony that it impacted Ard's, -- - Ard Trucking Company, in any way?
A. No.
Q. How much did Ard Trucking Company pay for workers' compensation in the years before 2003, 2004?
A. I don't know.
Q. Okay. Do you know how much Ard Trucking Company paid for workers' compensation in the years after 2003 and 2004?
A. No, I don't.
Q. Do you know how much Ard Trucking Company pays now for workers' compensation insurance?
A. No, I don't.
Q. Okay. Do you know if you reviewed the application that Mr. --
MR DRIGGERS: Asked and answered.
Q. -- Ard signed? You can respond.
A. No, I wouldn't have of, I don't think, I would have reviewed that.
Q. And when's the first time that you understood what LSRP was?

A. -- which meant it didn't apply to me in any way, shape, or form.
Q. Now, the first time that you read the endorsement that we're talking about now, was when?
A. I'm sure I read it whenever I got the policy because I normally read every policy, but, like I said, it didn't apply to me so I didn't pay any attention to it.
Q. So, do you have a recollection of getting the initial policy, looking at that endorsement --
A. No, I don't have --
Q. -- provision and relying on that provision?
A. No, I don't have a recollection of, of, I mean, I'm assuming that I read the policy because I always did. I don't know why I wouldn't have read this one, you know.
Q. Okay. So, is it true that you have no testimony that you, as a safety director for Ard Trucking Company, read and relied upon that endorsement provision in 2003 and 2004?
MR. DRIGGERS: I object to the question. The question was asked and answered.
MR. FERDERIGOS: You can respond. No objections, speaking objections, Marty. I thank you for your objections. Go ahead. You can respond.

A. I don't recall, you know, I just don't.
Q. Okay. So, you have no testimony sitting here today about that?
MR DRIGGERS: I just -- I'm going to object to that. That is a total mis-characterization of what this witnesses testimony --
MR. FERDERIGOS: Go ahead. Thank you, Marty. Go ahead.
A. No.
Q. Okay, so you do not have testimony about that?
A. No, other than what I've already said, I don't know of anything else I can say.
Q. All right. Is, is it your testimony -- well, let me ask it like this, just to make sure that I've got it right. Can you testify that you reviewed and relied upon the endorsement provision referencing LSRP in the initial policy that was issued in 2003, back in 2003 or 2004?
A. With 100 percent accuracy that I actually saw that page and reviewed that page, I can't be sure I did. That was ten years ago, you know.
Q. So you couldn't testify to that?
A. No.
Q. Is that correct?

A. Yes.
Q. Have you ever had a conversation about the LSRP with Allen Ard?
A. Not until about two days ago.
Q. Do you have any evidence that Travelers breeched any standard of care in complying with the WCIP?
A. I don't have any evidence of that, no.
Q. Did you have any evidence that -- well, (scratch it), I won't ask that. When was the last time you saw Gary Usher?
A. I don't think I've seen Gary Usher since sometime in 2003 and 2004.

MR. FERDERIGOS: Okay. Well, I have no further questions. Please answer any questions that your attorney may ask.

(OFF THE RECORD)

BY MR. DRIGGERS:
Q. I'm just going to take a couple of minutes. You testified earlier, as I recall, that you were aware that this was what has been described as assigned risk workers' compensation policy issued by Travelers through the Hair Agency, back in 2003, 2004; is that a fair statement?
A. Yes.

stamped document No. 7, there is an applicant statement? The very last one.

A. Right, okay.

Q. And that applicant statement -- and the applicant in that case would be Mr. Ard for the plaintiff, for ARD Trucking?

A. Uh-huh.

Q. Is that correct?

A. Right.

Q. And the applicant statement says quote, coverage is being bound subject to your signed statement acknowledging and agreeing to the terms of the -- well, I'm sorry. Let me scratch that. I was reading the wrong paragraph. Could you read the highlighted portion of Bates stamped No. 7?

A. Do you want me to read it?

Q. Yes, sir.

A. Okay. 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.

Q. Okay. And then underneath that is where Mr. Ard signed?

A. Right.

Q. Okay. Now, persaunt to the applicant statement, the insured agreed to be bound by the terms of the WCIP?

A. I believe so.

Q. Okay. And the insured signed the statement acknowledging that the LSRP has been explained to him or that an explanatory notice or brochure has been given to him?

A. Right.

Q. Okay. And when Mr. Ard signed the application statement, the applicant statement and the assigned risk application, and the producer submitted it to NCCI, did the producer, Michael P. Hair, realize that Mr. Ard would be bound by the WCIP?

A. Yes, I would assume so, yeah.

Q. Okay. And then at that point the way NCCI, WCIP program --

MR. DRIGGERS: I just -- I'm sorry. I have to make an objection on leading. His answer to your question was he assumes so. You know, you are testifying and he's -- you're asking him to confirm

your testimony.

MR. FERDERIGOS: You can object to the form and I appreciate that and I'll reword my question.

MR. DRIGGERS: All right.

MR. FERDERIGOS: Thanks.

BY MR. FERDERIGOS:

Q. Now, after the WCIP or after the assigned risk policy was submitted to the NCCI, was a servicing carrier selected?

A. Yes.

Q. Okay.

A. After we submitted it that's all we did.

Q. Right. And in this case Travelers was selected as a servicing carrier?

A. Right.

Q. Okay. Now, when a producer submits an application for an assigned risk policy, would you agree that the producer acknowledges and understands that the insured is asking for an assigned risk policy that is governed by the WCIP?

A. Correct, yes.

Q. Okay. And would you also agree that the insured is bound by the WCIP rules?

A. Right.

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.

Q. Okay. And is that binder consistent with the application statement concerning the LSRP?

A. Yeah, I would say so.

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.

Q. Okay. And after the determination was made that the LSRP was triggered, did Travelers send -- let me mark --

MR. DRIGGERS: Is that -- just a moment. He's asking you questions and I'm going to have to note again the objection to leading.

handed you?

MR. DRIGGERS: I think the exhibit speaks for itself. He did not write it and his name is not even on it.

MR. FERDERIGOS: I can ask him the questions I want, Marty. Thank you.

MR. DRIGGERS: Okay.

BY MR. FERDERIGOS:

Q. Go ahead, Gary.

A. Let's see. It's a letter introducing an explanatory booklet of what the Loss Sensitive Rating plan is.

Q. Okay.

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

Q. Okay. And was that letter and booklet sent to the producer and to the insured at the correct address?

MR. DRIGGERS: I object to the question. He doesn't know that. He couldn't know that.

MR. FERDERIGOS: Let him answer the question and then we go from there.

BY MR. FERDERIGOS:

Q. Go ahead, Gary.

A. That appears to be the right address for

ARD and then that is our correct address.

Q. Okay. Did the producer receive that letter and booklet?

A. I'm pretty sure we did.

Q. Okay.

A. I don't have our files or anything, but this looks familiar.

Q. Okay.

A. Again, I'm going by a lot of memory here so...

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?

A. Yes. We were when we received this.

Q. Okay. And at that point did the producer discuss or talk with the plaintiff about the LSRP program and what it required?

A. I would -- I would have to assume so because I was not the agent of record for the account. I know there was conversations probably back and forth with our agent and the plaintiff as to who said what. If he had a physical meeting with them and how all that was discussed, I don't know.

Q. Okay. And did you have any conversations

with the safety manager at ARD Trucking about the LSRP?

A. I'm sure I did.

Q. Okay.

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.

Q. Okay. And what did the servicing carrier ask in regards to the plaintiff to do pursuant to the LSRP?

A. Well, I think it was determined that the estimated annual premiums based on the audit was a good bit higher than what it initially was and what -- as we understand by rating that -- you know -- once the premium threshold exceeded 200,000 it automatically reverted to this LSRP plan. And part of that was that it not only required more premium but it also required a deposit.

Q. Okay.

A. And I don't remember the exact amount of the deposit.

Q. Okay. And did it require a irrevocable letter of credit?

A. The -- I know it required a deposit. I assume at that point that maybe the insured asked if a letter of credit would be acceptable in lieu of cash and I think that's where the letter of credit came in to. I believe Travelers said that they would accept it and we went from there.

Q. Okay. So you had conversations with Mr. Brown, the safety manager, discussing the LSRP and what the letter of credit was for?

A. Again, this is going by memory, but I would bet so because this was a big change in what was originally bound back in November. It was obviously -- you know -- a lot more premium and when you are talking a lot more money, obviously, there are going to be conversations.

Q. Okay.

A. But I cannot recall any specific conversation or -- you know -- documentation of that because frankly I don't have it.

Q. Okay. Did ARD Trucking ever appeal any

that final audit if it was either more or less -- you know -- the audit would be more money or a return premium so...

Q. Whatever the LSRP dictates?

A. Correct.

Q. Okay. Are you aware of any point of ARD appealing either Travelers determination of payroll, the code classifications used for the payroll, the amount of premium owed, the application of the LSRP or the calculations under the LSRP to the NCCI at any time?

A. I'm not aware of any.

Q. Okay. If the LSRP formula is accurately calculated, is there any reason that Travelers is not entitled to the additional premium that it seeks?

A. Not that I'm aware of.

Q. Okay. So you -- not you -- but the producer recognizes that if the LSRP is --

MR. DRIGGERS: Leading.

BY MR. FERDERIGOS:

Q. Okay. Let me ask you this, would you agree that --

MR. DRIGGERS: Leading.

MR. FERDERIGOS: Well that's --

MR. DRIGGERS: You are getting ready to give testimony and ask him if he agrees to it.

BY MR. FERDERIGOS:

Q. Would you tell me whether or not the producer recognizes that if the LSRP calculations are accurate that the defendant, servicing carrier, Travelers, is entitled to the additional premium that it seeks?

A. Yes, I mean that would be --

Q. Is that a yes?

A. Yes. I'm sorry.

Q. Okay.

MR. FERDERIGOS: Please answer any questions that the plaintiff's attorney could have.

EXAMINATION

BY MR. DRIGGERS:

Q. Mr. Usher, where are you currently employed, sir?

A. I work for Service Insurance Agency.

Q. Okay. I take it you are no longer working for Hair; is that correct?

A. Right. The agency was sold and closed down back in 2011.

Q. 2011. Okay. Were you working with them at that time?

yeah, that would be correct.

BY MR. FERDERIGOS:

Q. Okay.

A. Now, we found out that this LSRP program was different. It was -- it was a -- I don't even know how to describe it. Because we had not -- frankly, we had not had a client that had been under this program before.

So once the policy was determined to fit this program, okay, and to be converted to this program we had to learn about it too because we had no prior knowledge of it, okay.

As I remember, as we read this and read the description of it -- and this was somewhat of a complicated formula there -- as I understand, as I recollect it, the deposit was collected to either be returned or to be paid towards claims for that policy period.

In other words, it was like a -- I don't know if you are familiar with what a retro program is, but Liberty Mutual used to do a lot of them. I'm sorry for digressing, but basically you would have a reporting type of program and if an extra set of money was set aside and it was for potential claims in excess of what you would typically have for that year for that policy.

If the claims were low, the money was returned. If the claims were high, that money was used to pay towards those claims. It's kind of complicated. We weren't experts on -- I'm certainly not going to say I'm an expert on it. But that's the way we understood it after this came into play. That's what was going on and I remember when there was -- and I'm sure Harry and I probably had conversations about it because we were learning about this program.

Q. Okay. And you've answered very fairly, I think, and testified very fairly here.

A. Okay. I'm trying to. Again, I'm going on ten year old information, sir.

Q. That's a long time ago, sir.

A. That is a long time ago.

Q. This would have been some time in, I believe it was October, November 2003 when these conversations between Mr. Ard and the company you work for were initiated; is that fair?

A. That sounds fair.

Q. Okay. Ten years ago --

A. Yeah.

Q. -- right?

A. Right.

Q. As we sit here now. All right, sir. And

yeah.

BY MR. DRIGGERS:

Q. So why would you waste a lot of time trying to explain to Mr. Ard about the plan if you didn't think it applied?

A. Right. I mean, this is all conjecture now. If, for example, the payroll, the initial payroll, caused the basic annual premium to be in excess of 200,000, then obviously we would have had to go through it right then because we would have known about it right then.

Q. Okay.

A. I think the initial premium was like 167, 157-some thousand.

Q. That's right.

A. Okay. That was the original premium. So as far as we knew it was a standard straight up and down workers compensation premium, it had to be financed and the whole nine yards, and then when the audit was performed the payroll was determined to be a good bit higher and the estimated premium was a good bit higher based on that payroll and then that's when all the LSRP -- you know -- kicked into play.

Q. And during that time Dave would still have

been the person who had been talking with Mr. Ard; is that fair?

A. Correct.

Q. Okay.

A. Right.

Q. And you don't know what conversations they had about this program or explanations wheresoever, do you?

A. I do not know.

Q. All right. And what do you recall happened when you first realized or became involved with this plan we are talking about, the Loss Sensitive Rating Plan? Can you give us a date when you became involved with Mr. Ard on the rate sensitive rating plan explanations that you talked about earlier? Or did you?

A. I mean, I can't give a date. And I never talked to -- to my knowledge, I never talked to Mr. Ard directly about it. I may have talked to Mr. Brown about it. I'm sure we probably did, but I can't give you dates or conversations or anything like that.

Q. Do you recall at some point in time well into this policy Mr. Brown calling and saying, what are you talking about? What is this all about?

Travelers

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

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.

DEFENDANT'S EXHIBIT
APPELLANT ROA 00331

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. Cancelation

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.

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

Travelers

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:

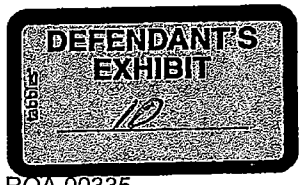
The above referenced policy has been issued as part of the mandatory Loss Sensitive Rating Plan (LSRP). The purpose of the LSRP is to provide a retrospective rating plan for employers with assigned risk workers' compensation premium over a certain threshold. Retrospective rating programs determine the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

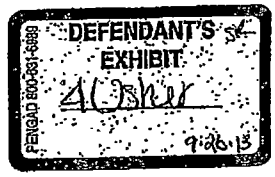
Enclosed please find the explanatory booklet *The Loss Sensitive Rating Plan (LSRP): An employer's guide to the mandatory assigned risk retrospective rating program.* Please review the booklet carefully and discuss it with your producer.

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





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 00336

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. ■

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.

APPELLANT ROA 00337 BWPH Ard Trucking 000244

APPENDIX_00337

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.

APPELLANT ROA 00338 BWPH Ard Trucking 000245

APPENDIX_00338

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 ILOC 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.

BWPH Ard Trucking 000246
APPELLANT ROA 00339
APPENDIX_00339

- 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.

Cancelation 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 cancelations 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

APPELLANT ROA 00340 BWPH Ard Trucking 000247

APPENDIX_00340

➢ 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]

BWPH Ard Trucking 000248
APPELLANT ROA 00341
APPENDIX_00341

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/ILOC?**

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

APPELLANT ROA 00342 BWPH Ard Trucking 000249

APPENDIX_00342

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.

BWPH Ard Trucking 000250
APPELLANT ROA 00343
APPENDIX_00343

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: CAROLINA BANK
P. O. BOX 1028
104 ORANGE STREET
DARLINGTON, SC 29540

Date of Issue: 05-17-2004 Letter of Credit Number: 127

Amount: U.S. $ 52,116.00
(FIFTY TWO THOUSAND ONE HUNDRED SIXTEEN AND NO/100 U.S. DOLLARS)

For Benefit Of:
Beneficiary Name and Address

ST PAUL TRAVERLERS INSURANCE CO.
P.O. BOX 3556 ORLANDO, FLORIDA 32803 ATTN: ERICA STAFFORD

For Account Of:
Applicant Name and Address

ARD TRUCKING COMPANY INC
POST OFFICE DRAWER 604
DARLINGTON, SC 29540

LETTER OF CREDIT. Issuer establishes this Irrevocable Standby Letter of Credit (Letter of Credit) in favor of Beneficiary in the amount indicated above. Beneficiary may draw on this Letter of Credit with a Draft (or Drafts, if the maximum number of drawings is greater than one) together with the documents described below. Each Draft shall be signed on behalf of Beneficiary and be marked "Drawn under *[Issuer name]* Letter of Credit No. *[Letter of Credit number]* dated *[Letter of Credit date]*." Drafts must be presented at Issuer's address shown above on or before the Expiration Date. The presentation of any Draft shall reduce the Amount available under this Letter of Credit by the amount of the Draft.

This Letter of Credit sets forth in full the terms of Issuer's obligation to Beneficiary. This obligation cannot be modified by any reference in this Letter of Credit, or any document to which this Letter of Credit may be related.

This Letter of Credit expires on the Expiration Date.

DRAWINGS.

- ☐ Partial drawings shall not be permitted under this Letter of Credit.
- ☒ Partial drawings are permitted. The maximum number of drawings that may be made is 1

DOCUMENTS. Each Draft must be accompanied by the following, in original and two copies except as stated:

- ☐ The original Letter of Credit, together with any amendments.
- ☐ A sight draft drawn by Beneficiary on Issuer.
- ☒ A signed statement by Beneficiary including the following statement: DRAWN UNDER CAROLINA BANK IRREVOCABLE STANDBY LETTER OF CREDIT NO. 127 DATED 05/17/2004.
- ☐ Other documents:

Issuer shall be entitled to accept a draft and the documentation described above, as required by the terms of this Letter of Credit, from any person purporting to be an authorized officer or representative of Beneficiary without any obligation or duty on the part of Issuer to verify the identify or authority of the person presenting the draft and such documentation.

DEFENDANT'S EXHIBIT 11

SPECIAL INSTRUCTIONS:

EXPIRATION DATE. This Letter of Credit expires at the close of business at Issuer's address at 5:00 (Time) on 01-17-2006 (Date). Issuer agrees to honor all Drafts presented in strict compliance with the provisions of this Letter of Credit on or before the Expiration Date.

- ☒ If Beneficiary has not drawn the full amount of this Letter of Credit prior to the Expiration Date, the Expiration Date shall be extended for a period of 365 days from the Expiration Date, unless Issuer notifies Beneficiary in writing at least 90 days prior to the Expiration Date that Issuer elects not to extend this Letter of Credit. In any event, this Letter of Credit shall expire on 01-17-2007 without any notice from Issuer to Beneficiary.

ANSFERABILITY: This Letter of Credit is ☐ transferable [X] non-transferable.

ICABLE LAW. This Letter of Credit shall be governed by:
the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (UCP), or any later version or amendment.
the International Standby Practices 1998 (ISP98).
etter of Credit shall also be governed by the laws of CONNECTICUT, the United States of a, so long as such laws are not inconsistent with the UCP or ISP, as applicable.

LINA BANK
er Name)

(Signature)

5/17/04
(Date)

JAMES O. MORPHIS, III, SENIOR VICE PRESIDENT
(Signer Name and Title)

Streett, about LSRP?

A. I would be shocked if anybody at the trucking company even knows what LSRP is, Okay? I mean, I would -- it would really shock me.

Q. And do you recall what your payroll was for November 7th, 2003, to November 7th, 2004?

A. No, sir.

Q. Did anybody at Ard Trucking ever appeal any decision of Travelers, about the Assigned Risk Policy to the NCCI, about any issue of dispute?

A. Not as I know of.

Q. Do you know if anybody at Ard Trucking ever appealed the premium decision of the Travelers' auditor, to the NCCI, about how much premium was owed?

A. Not as I know.

Q. Do you know if anybody at Ard Trucking ever appealed the Travelers' auditor's determination, as far as the amount of payroll, for November 7th, 2003, to November 7th, 2004?

A. Say that again, now.

Q. Did anybody at Ard Trucking, or on behalf of Ard Trucking, ever appeal the Travelers' auditor's determination about the payroll of Ard Trucking, from November 7th, 2003, to November 7th, 2004?

A. No, sir.

DEFENDANT'S EXHIBIT 17

A. Zero balance. I don't know if you'd call it a bill or a statement.

Q. And did you ever appeal Travelers' decision about LSRP? Did either you or your producer ever appeal Travelers decision about --

A. I can't answer for him. As far as me, I don't recall doing it.

Q. So, you don't recall appealing Travelers' decision about applying LSRP to NCCI, at any point? Is that correct?

A. No. I don't. I don't recall me doing it. The producer could've done it. You know? I don't know.

Q. If it turns out that Travelers is entitled to the premium that they are owed, and it turns out that Travelers is entitled to the LSRP, do you have any problem with Travelers cashing in on that Letter of Credit if it was owed that premium? And, if so, what?

A. They already took the Letter of Credit. Cashed it.

Q. I understand. But my question to you is, if it turns out -- and I'm asking on assumption, for the record. I'm not asking you to agree.

A. Right.

Q. But if it turns out that Travelers is

deposit.

Q. And, at that point, when Travelers asked for a Letter of Credit, no one on behalf of your company, that you are aware of, appealed that decision to NCCI?

A. No, sir. That I'm aware of.

Q. That you're aware of.

A. Yeah.

THE WITNESS: The sun's going to come down in a minute. And, I'm going to want to change seats.

MR. FERDERIGOS: Well, if you need to take a break, we can certainly --

THE WITNESS: No, I'm just saying that sun's going to come down --

MR. FERDERIGOS: And, hit you in the head?

THE WITNESS: Well, it's going to be in my eyes. Is what it's going to be. Then, we're going to change seats.

MR. FERDERIGOS: There you go.

THE WITNESS: I'll sit over there beside you. We'll both look -- we'll look that way. You know what I mean?

Mr. FERDERIGOS: I understand. Mark this as Defendant's Exhibit No. 1. Why don't we take a

APPELLANT ROA 00350

APPENDIX_00350

Q. So, with the WCIP, if there is a dispute about certain things then there's an appellate mechanism that can be triggered. The company, the insured can appeal to NCCI to get a decision made. Do you have any knowledge of that happening in this case?

A. No, sir.

Q. Do you have any knowledge, if there is a dispute between the parties, about the amount of payroll from November 7th, 2003, to November 7th, 2004?

A. If there was a dispute, between the parties of payroll?

Q. Yes. Not premiums owed --

A. Right.

Q. -- but the amount of payroll?

A. Not as I know of.

Q. And one of the things I have to do is, kind of figure out what it is we're disagreeing about.

A. Right.

Q. My understanding is, there's not a dispute about the payroll from November 7th, 2003, to November 7th, 2004. It's just how the premium is determined on that payroll, because of the LSRP. Is that accurate?

A. That's correct. That's accurate. I mean, our people did the payroll, reported it. The Travelers' audit came in, audited, and they agreed with

DEFENDANT'S EXHIBIT 14

it. And so, to me, it was agreed on payroll.

Q. So, we don't have a dispute about the amount of payroll, during that period. Also, it's my understanding, correct me if I'm wrong, that there's not a dispute about the code classifications, as far as the type of -- the workers and the codes. Is that correct?

A. That's correct

Q. The only dispute is whether this LSRP applies to your company, or not, because that means the premiums were more?

A. Right.

Q. Is that correct?

A. Because -- that's correct. Because I had no knowledge of what the -- at that time, what LSRP is.

Q. Do you have any knowledge today of what the LSRP is? Substantively, not what the letters are.

A. No. You know, I just know from reading.

Q. And, you've had assigned risk policies before this Travelers' policy, and after this Travelers' policy?

A. Yes, sir.

Q. Has any producer, at anytime, ever explained to you what LSRP is?

A. I mean, we've jut always paid the premiums,

APPELLANT ROA 00353
APPENDIX_00353

It's just, he can -- whoever he can sell for.

Q. So, as an independent insurance agent, he can sell different policies of insurance from different carriers?

A. I'm assuming, yeah.

Q. And do you know who, from the producer's office, came to you?

A. No. I don't.

Q. But the purpose of retaining someone from Michael P. Hair's office, was to procure Workers' Compensation insurance for your company, starting around November of 2003. Correct?

A. Yes, sir.

Q. Did this individual, from the producer's office, tell you that they were going to submit an assigned risk application for you, to get Workers' Compensation insurance?

A. I think everybody in the trucking industry was assigned risk. I think -- you know, I think that's just a word that they use. That's all I've ever heard. What it means? I have no idea.

Q. So, you knew that the producer, the independent agent, was submitting an application that you've signed off on, which we'll talk about here in a little bit, into the assigned risk plan to obtain an

DEFENDANT'S EXHIBIT 15

Q. As far as you know, Michael P. Hair and Associates was an independent agency?

A. Yes, sir.

Q. And you asked someone at Michael P. Hair's office to get you Workers' Compensation insurance?

A. Yes, sir.

Q. So, he was a broker for you?

A. No. I don't know if you'd call him a broker for me. He was a broker for the insurance company that he represented, I assume. I mean, I don't know if I'm wording it right or not.

Q. Let me ask you like this. Did you retain Michael P. Hair and Associates, as an independent insurance agent, to find Workers' Compensation for you?

A. Yes, sir. Michael P. Hair and Associates --

Q. Yeah.

A. They would come in with -- it would -- whatever insurance company it is. I think Travelers, this time. You know, another agent is liable to come in with a different one. Liberty Mutual, or somebody like that. And, you know so I mean they're independent, you know.
Then, next year, he might come in wanting to sell me Liberty Mutual instead of Travelers. So, you know, I don't know his relation, as him being independent.

A. No, sir.

Q. Did your producer tell you that you -- when you filled out the application, did your producer tell you that you're going to get a Travelers' policy?

A. No, sir.

Q. It just so happened it ended up being a Travelers policy.

A. What they do, so you understand, on my side is, they come in and they say, "sign this application so I can be your agent of record, and I'll go out and I'll shop the market, and I'll find you the one that's going to sell you the cheapest -- that you're going to get the cheapest premium with. And, I'm going to come back and give you your options." Okay? And, that's what they do. We're -- to get -- I know we are only talking about Workmen's Comp here, but you got to figure, he shops liability, cargo, physical damage, everything else.

Q. Did your producer, at the time, explain to you that an Assigned Risk Policy is not the cheapest policy, and it's actually more expensive than a voluntary policy?

A. I thought policies was rated on whatever the percent was per classification you was in.

Q. Right. But, Assigned Risk Policies, as a

Q. Did your producer, at the time, tell you that the reason that he was submitting an assigned risk application policy, and had you sign that and submit it through NCCI, was because he could not place you in the voluntary market?

A. You know, you ask -- this -- this is real old, you know. I mean, I could guess at it. Best to say is, I don't know. I don't want to guess at it.

Q. I agree. I should have started off with that, as well. If you don't know the answers to my question, I don't know is a perfectly acceptable answer.

A. Okay.

Q. I do not want you to guess.

A. Right. And I felt like where I was getting pushed to.

Q. No. And I don't want to push you.

A. Guessing the questions, you know.

Q. Please don't guess. If you don't know, I don't know. And then we just move on. Because you are testifying under oath. So, you certainly don't want to guess.

A. Right.

Q. Now, did anyone from Travelers Insurance Company ever tell you that your producer was a

Travelers' agent?

A. Not as I can recall.

Q. Do you have any knowledge about whether or not the producer, in this case, is an agent -- let's say, a general agent or a special agent of Travelers?

A. Explain the two differences.

Q. Let's just say, agent of Travelers, to get started with.

A. He would have to represent Travelers, or he wouldn't have been able to sell me insurance.

Q. Is that what you believe?

A. That's what I believe.

Q. Did anyone from Travelers ever tell you that the producer was a Travelers' agent?

A. No. Not that I remember.

Q. Did the producer ever tell you that they were exclusively a Travelers' agent?

A. No.

Q. Did the producer ever tell you that they were a Travelers' agent?

A. Not that I can recall. They -- they represent Travelers or they wouldn't have been able to sell me the policy.

Q. Did your producer ever explain to you that under the WCIP, he is an agent of the insured, which is

a producer's role?

A. No, sir. I just know what the words -- the letters stand for. Just like CAA stands for Allen Ard.

Q. Do you have any evidence that the producer was an agent of Travelers, and not your company?

A. Say that again now. Didn't you ask me that earlier?

Q. No. This is a little different.

A. Okay.

Q. Because this is my one chance to find out.

A. Okay.

Q. Do you have any evidence that the producer was an agent of Travelers, and not of your company?

A. No. I don't. The agent brought us all of our paperwork --

Q. You mean the producer?

A. Michael P. Hair brought all the paperwork to us that we got.

Q. Now, do you understand what the WCIP is, or no?

A. No. I just understand -- I know the word is what the letters stand for.

Q. As far as, from November 7th, 2003, to November 7th, 2004 -- that time period -- and the reason I'm asking these questions. I want to find out

under the WCIP, if your premium exceeds a certain amount of money, then there's LSRP requirements that need to be abided by?

A. No, sir. But does that apply in every state?

Q. At a deposition, I ask the questions and you answer the questions. But let me ask you this. Did your producer explain to you that LSRP applied in South Carolina, when you had the producer submit your assign risk policy?

A. No, sir.

Q. So, when you applied for the Assigned Risk Policy, the producer never had a conversation with you that South Carolina has LSRP, and what that means?

A. No, sir.

Q. Is that correct?

A. That's correct.

Q. At any point in time, did your producer explain to you what LSRP is?

A. If he did, I don't remember.

Q. Did there come a point in time, when the insurance carrier -- the servicing carrier, Travelers, required the insured to get a Letter of Credit?

A. Yes.

Q. In order to insure that additional premium would be paid?

Q. They have been Bates stamped?
A. Right.
Q. Okay. And we are going to ask your testimony about what you know about those documents as well.
MR. DRIGGERS: Can we go off the record for a second?
MS. FERDERIGOS: Sure.
(Off-the-record.)
BY MR. FERDERIGOS:
Q. Now, Michael P. Hair & Associates as the producer submitted an application on behalf of ARD Trucking Company, the plaintiff, on or about 11-06-03; is that correct?
A. Yeah. I wouldn't know the date, but that would be --
Q. Right. And I'll refer you to Bates stamped documents No. 4 through 7. Is that an accurate copy of the assignor's application signed by Mr. Ard, the president of ARD Trucking?
A. It looks like it, yes.
Q. Okay. Now, the relationship between M. P. Hair & Associates and the insured, ARD Trucking, is governed by the WCIP for an assigned risk policy?
A. Right.

Q. And the relationship between M. P. Hair and the servicing carrier is also governed by the WCIP rules --

A. Right.

Q. -- correct?

A. Right.

Q. Okay. Under the WCIP the producer is not an agent of the servicing carrier; is that correct?

A. Correct. Right.

Q. All right. The producer is an agent of the insured; is that correct?

A. Right.

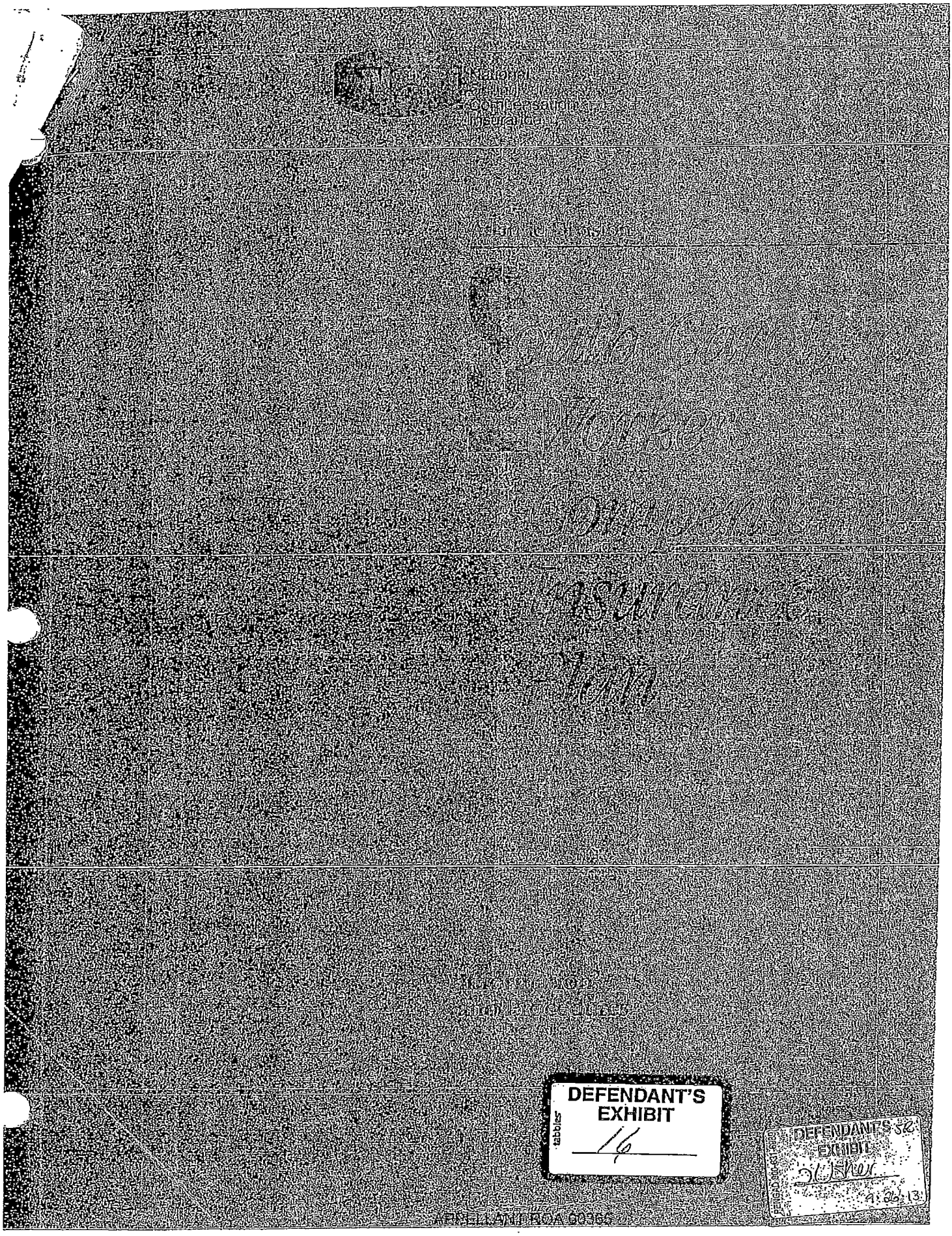
Q. Okay.

MR. FERDERIGOS: And let's go ahead and mark as Defendant's Exhibit No. 1 the Bates stamped documents 4 through 7. And let's mark as Defendant's Exhibit No. 2 a portion of the South Carolina workers compensation insurance plan.

(Defendant's Exhibit No. 1, Workers Compensation Application, was marked for identification.)

(Defendant's Exhibit No. 2, portion of South Carolina Workers Compensation Insurance Plan, was marked for identification.)

BY MR. FERDERIGOS:


DEFENDANT'S
EXHIBIT
16
tabbies
DEFENDANT'S
EXHIBIT
9-26-13

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.

to 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 cancelations 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 cancelation 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 advised 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 cancelation 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.

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.

Q. Okay. And is that binder consistent with the application statement concerning the LSRP?

A. Yeah, I would say so.

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.

Q. Okay. And after the determination was made that the LSRP was triggered, did Travelers send -- let me mark --

MR. DRIGGERS: Is that -- just a moment. He's asking you questions and I'm going to have to note again the objection to leading.

ARD and then that is our correct address.

Q. Okay. Did the producer receive that letter and booklet?

A. I'm pretty sure we did.

Q. Okay.

A. I don't have our files or anything, but this looks familiar.

Q. Okay.

A. Again, I'm going by a lot of memory here so...

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?

A. Yes. We were when we received this.

Q. Okay. And at that point did the producer discuss or talk with the plaintiff about the LSRP program and what it required?

A. I would -- I would have to assume so because I was not the agent of record for the account. I know there was conversations probably back and forth with our agent and the plaintiff as to who said what. If he had a physical meeting with them and how all that was discussed, I don't know.

Q. Okay. And did you have any conversations

with the safety manager at ARD Trucking about the LSRP?

A. I'm sure I did.

Q. Okay.

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.

Q. Okay. And what did the servicing carrier ask in regards to the plaintiff to do pursuant to the LSRP?

A. Well, I think it was determined that the estimated annual premiums based on the audit was a good bit higher than what it initially was and what -- as we understand by rating that -- you know -- once the premium threshold exceeded 200,000 it automatically reverted to this LSRP plan. And part of that was that it not only required more premium but it also required a deposit.

Basic Manual—2001 Edition

PART ONE—RULES

RULE 4—WORKERS COMPENSATION INSURANCE PLAN RULES

A. WORKERS COMPENSATION INSURANCE PLAN (WCIP)

Applicable To Assigned Risk Policies Only

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

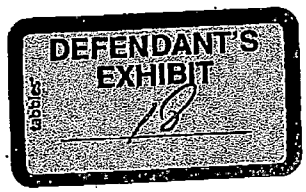
The Plan Administrator may intervene in disputes involving other matters arising under this Plan as determined by the Plan Administrator in its discretion.

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.

THE WITNESS: The first page of the --

Q. And the first page is a cover letter from Michael Hair and Associates, the producer, to NCCI. And that's Defendant's Exhibit Number 1. The remainder of that Defendant's Exhibit Number 1 is the assigned risk application that you signed, that was submitted to NCCI?

A. Yes.

Q. When you signed that, did you read it?

A. No, sir, he just told me to sign it.

Q. Okay.

A. That's common.

Q. As far as this application, it notes that you had about 70 drivers, and now we're talking about the time period around 2003.

A. That's the list of them on the back.

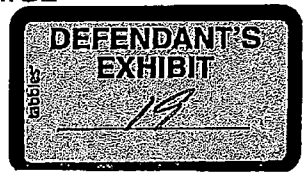
Q. Sure. And is that accurate that they were -- and these are estimates at the time you were putting in the applications that you had 70 drivers with an estimated annual remuneration of $2,100,000?

A. I can't answer that honestly.

Q. And then it says clerical 22 employees, estimated 410,000 remuneration and outside sales one, estimated 16,000 remuneration?

A. Numbers I will not be able to answer --

Q. Okay.



November the 11th, because it's like we know that that's going to come right away, okay.

Q. Okay. So you believe that your producer, Hair, sent you the initial policy?

A. I don't -- I can't answer that. I don't know where it came from. I just know we have a policy in our file.

Q. Okay. So you don't know, sitting here today, if you received and reviewed that policy in 2003, 2000 -- or 2004; is that correct?

A. That's correct.

Q. Do you know if anybody in your corporation, an employee or Mr. Brown or anyone in the safety department, received and reviewed that initial policy in 2003 or 2004?

A. If you made that two questions, I can answer it.

Q. Okay.

A. Somebody received it definitely, because we have it. As far as reviewing it, I can't answer that.

Q. Okay. Do you know whether or not any of your employees received a letter and a booklet explaining what the LSRP is, along with a rewritten policy, sometime in 2003 and 2004?

A. To the best of my knowledge --

MR. DRIGGERS: When you say -- Would you mind, LSRP; what does that mean?

Exhibits 5 of Usher.

MR. FERDERIGOS: Yeah, I see, I see.

Q. Next is Plaintiff's Exhibit No. 5 of Usher. Do you ever recall seeing that -- or do you know if you or anybody (scratch that prior question). Do you know if you or anybody from your staff received this letter?

A. No. I don't, but I assume we did because I remember hearing about the name change.

Q. Okay.

A. When? I couldn't answer.

Q. Okay. The next one is Plaintiff's Exhibit 4.

A. It looks to me like that's what the safety department would use if they needed to call for a claim.

Q. Sure, if you flipped to 1,2,3,4,5 and 6 that's the copy of the -- would you agree that's a copy of the original policy before it was rewritten in 3/1/04.

A. That's the copy of the only policy that I've ever gotten, yes it is.

Q. The question is when did you receive a copy of this policy? Do you know? You personally.

A. No. I don't.

Q. Do you know when somebody working for you received a copy?

A. No, I do not.

Q. Okay. Did you review this policy at any time?

A. No. I didn't. Not study it.
Q. Do --
A. I just looked at it.
Q. Okay. When is the first time you looked at this policy?
A. I have no clue.
Q. Okay.
A. I look at so many policies. I mean, we have what liability insurance, physical damage insurance, workmens' comp insurance, general liability insurance, cargo insurance, contingencies insurance --
Q. Let me ask you --
A. -- we just have so many policies.
Q. Is it true that you do not know when you or someone from your staff --
A. That is correct.
Q. -- received and reviewed this policy?
A. That is correct.
Q. Is that true? You have no idea when?
A. No. It's usually anywhere from 30 to 45 days after the policy. See the problem we got. I've been with Cherokee Insurance since 2006 and all I can tell you is what their standards procedure is. I have every policy from them within 45 days of the renewal date.
Q. Okay. But my question to you is very specific.

Defendant's Exhibit No. 11 (scratch that). Plaintiffs Exhibit No. 4 in Gary Ushers' Deposition. Do you know when you or someone from your staff received it and reviewed it?

A. No. I don't.

Q. Okay. So you don't have no testimony that you or someone from your staff actually reviewed the policy that's attached to Plaintiff's Exhibit No. 4, Gary Ushers' deposition?

A. I have no knowledge of anybody doing it, whether they did it. I have no knowledge.

Q. Okay. The next one is Plaintiff's Ushers Exhibit No. 3. And is this your producer asking you to sign something for your assigned risk plan. That's actually part of your assigned risk application.

A. That's my signature but, anything else is not my handwriting on there. I can definitely tell you that it's not because I make my checks to the left this a right hand check.

Q. What are we talking about?

A. All this other hand writing in here, you know.

Q. Okay.

A. I have no clue.

Q. FEIN you mean?

A. Well, that, that, that all that stuff is from --

endorsement with Gary Usher back in 2003 or 2004?
A. Not that I can recall.
Q. Okay. Did you review the application in 2003 or 2004 to look at that, that endorsement provision that you're referencing about the LSRP?
MR. DRIGGERS: I'm not Objecting. You said, did you look at the application. I think his answer was that he looked at the policy. It was not an application he was referring to, I don't think. I think he's referring to a policy.
MR. FERDERIGOS: Yeah, did I use the word application?
MR. DRIGGERS: You used the word application.
MR. FERDERIGOS: Let me, sorry, let me rephrase that.
Q. The initial policy of insurance that was issued from Travelers, back in 2003, 2004 time period, did you review the policy of insurance and, specifically, did you review that endorsement provision that referenced the LSRP in that initial policy?
A. I can't say for sure that I did because I don't remember, but I don't understand why I would not saw that.

APPENDIX_00382

A. -- which meant it didn't apply to me in any way, shape, or form.
Q. Now, the first time that you read the endorsement that we're talking about now, was when?
A. I'm sure I read it whenever I got the policy because I normally read every policy, but, like I said, it didn't apply to me so I didn't pay any attention to it.
Q. So, do you have a recollection of getting the initial policy, looking at that endorsement --
A. No, I don't have --
Q. -- provision and relying on that provision?
A. No, I don't have a recollection of, of, I mean, I'm assuming that I read the policy because I always did. I don't know why I wouldn't have read this one, you know.
Q. Okay. So, is it true that you have no testimony that you, as a safety director for Ard Trucking Company, read and relied upon that endorsement provision in 2003 and 2004?

MR. DRIGGERS: I object to the question. The question was asked and answered.
MR. FERDERIGOS: You can respond. No objections, speaking objections, Marty. I thank you for your objections. Go ahead. You can respond.

A. I don't recall, you know, I just don't.
Q. Okay. So, you have no testimony sitting here today about that?
MR DRIGGERS: I just -- I'm going to object to that. That is a total mis-characterization of what this witnesses testimony --
MR. FERDERIGOS: Go ahead. Thank you, Marty. Go ahead.
A. No.
Q. Okay, so you do not have testimony about that?
A. No, other than what I've already said, I don't know of anything else I can say.
Q. All right. Is, is it your testimony -- well, let me ask it like this, just to make sure that I've got it right. Can you testify that you reviewed and relied upon the endorsement provision referencing LSRP in the initial policy that was issued in 2003, back in 2003 or 2004?
A. With 100 percent accuracy that I actually saw that page and reviewed that page, I can't be sure I did. That was ten years ago, you know.
Q. So you couldn't testify to that?
A. No.
Q. Is that correct?

A. Yes.
Q. Have you ever had a conversation about the LSRP with Allen Ard?
A. Not until about two days ago.
Q. Do you have any evidence that Travelers breeched any standard of care in complying with the WCIP?
A. I don't have any evidence of that, no.
Q. Did you have any evidence that -- well, (scratch it), I won't ask that. When was the last time you saw Gary Usher?
A. I don't think I've seen Gary Usher since sometime in 2003 and 2004.

MR. FERDERIGOS: Okay. Well, I have no further questions. Please answer any questions that your attorney may ask.

(OFF THE RECORD)

BY MR. DRIGGERS:
Q. I'm just going to take a couple of minutes. You testified earlier, as I recall, that you were aware that this was what has been described as assigned risk workers' compensation policy issued by Travelers through the Hair Agency, back in 2003, 2004; is that a fair statement?
A. Yes.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DARLINGTON	)	C/A NO: 2010-CP-16-435
Ard Trucking Company,	)	
Plaintiff,	)	AFFIDAVIT OF ROSHANI B. GHAYAL
vs.	)	
Travelers Property Casualty Company Of America d/b/a The Travelers Indemnity Company of Illinois,	)	
Defendant.	)	

FILED
2014 DEC 17 PM 2:29
SCOTT B. SUGGS
CLERK OF COURT/R.O.D.
DARLINGTON COUNTY, S.C.

The undersigned, Roshani B. Ghayal, 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 WCIP, and the Loss Sensitive Rating Plan (LSRP) 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] attached as Exhibit 2, 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. On or about November 6, 2003, Ard Trucking Company, through its producer Michael P. Hair & Associates, Inc. submitted an Assigned Risk Application [BWPH Ard Trucking 4 – 7] attached as Exhibit 3.
6. Pursuant to the application, Ard Trucking Company, the Plaintiff, agreed to be bound by the terms of the WCIP as set forth in the applicant's statement.
7. Pursuant to the application, Travelers was assigned as the servicing carrier pursuant to the WCIP and issued a policy binder and assigned risk policy number 6JUB-0188B92-3-03, dated 12-01-03, policy period from 11-07-03 to 11-07-04, attached as Exhibit 4.

DEFENDANT'S EXHIBIT 1

8. As required by the WCIP, the policy contained the LSRP Endorsement as mandated by the NCCI and the WCIP.

9. Pursuant to the WCIP, Travelers conducted a preliminary audit survey based on the payroll of the Plaintiff; given the Plaintiff's payroll at such time and pursuant to the WCIP, the assigned risk policy was re-written as an assigned risk LSRP policy on or about March 1, 2004.

10. Based upon a review of Travelers' records kept in the ordinary course of business, and in accordance with Travelers' regular practice and protocols, pursuant to the WCIP, Travelers sent the re-written policy, policy number R6EJUB-9560A28-5-030, dated 3-1-04 [BWPH Ard Trucking 00065-94] attached as Exhibit 5, as well as the pamphlet, "The Loss Sensitive Rating Plan (LSRP), An Employer's Guide to the Mandatory Assigned Risk Retrospective Rating Program" [BWPH 63, & 243-250] attached as Exhibit 6, to the Plaintiff and its producer on or about March 1, 2004.

11. On or about May 2004, in accordance with the LSRP requirements, Travelers requested that the Plaintiff pay the additional LSRP deposit or submit an irrevocable letter of credit in accordance with the WCIP.

12. In accordance with LSRP requirements, Plaintiff provided an irrevocable letter of credit for $52,116 in favor of Travelers on or about June 2004.

13. Following the expiration of the term of the policy on or about December 24, 2004, Travelers conducted a physical audit in accordance with the WCIP and, based on the payroll of the Plaintiff, Travelers determined that additional premium was owed and, pursuant to the LSRP and the loss history of the Plaintiff during the policy term, Travelers determined that an additional $175,064 was owed by the Plaintiff.

14. The Plaintiff refused to make the required LSRP premium payments and, pursuant to the WCIP and LSRP, Travelers properly drafted the irrevocable letter of credit that Plaintiff had issued previously in favor of Travelers.

15. Based on the WCIP, Travelers' charges for premium, including charges for LSRP premium, are proper and in accordance with the WCIP and LSRP and Travelers is entitled to an additional $122,948.00 in premium that the Plaintiff still owes Travelers.

16. Finally, Plaintiff never filed an appeal of Travelers' LSRP determination to NCCI in accordance with the WCIP.

FURTHER AFFIANT SAYETH NOT.

Witness

Witness

Roshani B. Ghayal

RONAY NELSON
Notary Public - State of Florida
My Comm. Expires Oct 9, 2018
Commission # FF 167732
Bonded through National Notary Assn.

Sworn to and Subscribed before me
this 16th day of December, 2014.

Ronay Nelson

Notary Public for the State of: Florida

Expires Oct 9, 2018

{00306007.DOC.1 }

My Commission expires: Expires Oct 9, 208

(00505007.DOC.1)

Roshani B Ghayal
14118 Baroness Court, Orlando, FL 32828.
Home: (407) 282-7277 Cell: (407) 592-0108 Work: (407) 388-3068 Email: ghayalrb@gmail.com

A Senior Underwriter with 20+ years of proven technical experience in workers compensation underwriting and state compliance procedures. Superior record of delivering simultaneous large-scale account management and alliance building. Excellent interpersonal, organizational and communication skills. Proficient in working with senior management and corporate leadership.

- Proven Leadership abilities include managing a team of 13 underwriters and 2 account assistants
- Consistently meet goals and increase premium by using critical thinking and logical analytics.
- Investigative experience gained from New Scotland Yard and Travelers Insurance from over 20 years.
- Excellent Customer Service record with internal and external business partners.
- Strong emphasis on alliance building and superior organizational skills.
- Special Assignment to collaborate with FBI and US States Attorney.
- Successfully represented Travelers on a multimillion premium dispute case.
- Trusted to handle complex projects with detail preparation, accuracy, and confidentiality.
- Extensive knowledge of multiple state insurance plans and applicable state regulations
- Member of Toastmasters International Club

Work Experience:

June 1990 – Present –Travelers Insurance Companies, Orlando, FL.

2002-present Senior Account Manager Underwriter, Orlando, FL.
Primary responsibility is to implement new guidelines and procedures for management and support teams. Lead teams and facilitate weekly meetings in absence of assistant operations manager for Massachusetts, Indiana, and Georgia and Michigan teams. As the senior member of the team I mentor underwriters individually and in group settings. Review performance and prepare development plans as necessary. Presented an overview of corporate in house computer systems to re-insurers.
Manage multi-million dollar policies and increase premium by $10.5 million for 70 accounts.
Consistently exceed all Premium Accuracy goals.
I represented Travelers on a large premium dispute matter with Indiana Bureau.
Selected to be part of a team assembled by FBI and United States Attorney to collate data and subsequently testified to the validity of company documents on a high profile Washington DC account.
Continue to represent Travelers by providing depositions and witness testimonies in numerous court cases involving premium and coverage issues.
Handle specific Temporary/Leasing and Multiple Coordinated accounts
Independently manage an assigned book of business including specialty coverage's.
Respond to consumer complaints in a timely fashion.
Assisted in the development of core underwriting strategies for Massachusetts and Georgia.
Prepared files for Market Conduct reviews for Direct Assignment clients.
Conducted department wide hands-on training for navigation and use of NCCI website

2000-2002- Team Coordinator, Travelers Insurance *Companies*, Orlando, FL.
Responsible for managing and providing leadership to a team of 13 underwriters and 2 account assistants. Administered all human resources related functions as they applied to team members i.e. individual performance assessments, goal setting, counsel/coach/motivate individuals/team to achieve appropriate results. Ensured state and regulatory compliance by conducting monthly file reviews for 8 states.

DEFENDANT'S EXHIBIT
00389

1996-2000 - Project Analyst II, *Travelers Insurance Companies,* Orlando, FL.
Duties included support of underwriting department through management practices to ensure compliance with state and regulatory standards. I developed and conducted training to upgrade skills of underwriters. I reviewed and analyzed state regulatory and bureau guidelines to determine overall impact on departmental workflow. I developed new operational procedures and practices.

1993-1996 - Account Specialist, Travelers Insurance Companies, Orlando, FL.
Responsibilities included startup of Policy Issuance Team. Created training program, targeting use of Travelers systems, rules and procedures. Monitored production and checked daily work. Provided on-going training of new team.
Attended local job fairs to attract new applicants. Interviewed and checked references for new hires. Participated as a group mentor for new underwriters.

1990-1993 - Customer Service, Travelers Insurance Companies, Naperville, Illinois
Answered 100+ calls per day. Personally handled any problems to ensure complete customer satisfaction.

1985- 1989 – Investigations Officer, New Scotland Yard, London, England.
Kilburn Police Station, London

Investigation of Traffic Accidents and Drink/Drive accidents. Researched accidents involving diplomats and police officers. Wrote court summons for offenses. Interpreter for police department as necessary. Handled/managed financial ledgers for overtime and expenses. Analyzed witness statements, photographs and all investigative reports. Made recommendations to the Chief Inspector, and Great Britain Foreign Office suggesting action to be taken against suspects and diplomats. Successfully deported diplomats that were repeat offenders. Prepared off-site location for arrival of special victims for medical sample collection and questioning by detectives. Trained and guided new employees to review and process cases.

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

NIKKI R. HALEY
Governor

RAYMOND G. FARMER
Director

June 24, 2014

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

DEFENDANT'S EXHIBIT 2

National Council on Compensation Insurance, Inc.
The Loss Sensitive Rating Plan (LSRP)
An employer's guide to the mandatory assigned risk retrospective rating program

> **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. ■

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.

SCDOI 0003
APPELLANT ROA 00393
APPENDIX_00393

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.

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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 ILOC 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.

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- 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.

Cancelation 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 cancelations 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

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➢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]

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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/ILOC?**

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

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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. ■

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National Council on Compensation Insurance, Inc.

Residual Markets

Industry Relations and Services

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SOUTH CAROLINA ITEM FILING

[redacted]-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.