THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Larry B. Hyman, Jr., Circuit Court Judge

Case No.: 2009-CP-26-3298
(Appeal Tracking No.:2011200507)

David G. Becker, Appellant,

v.

Steve Frazier, d/b/a Sunrise Construction, Frazier Properties of Myrtle Beach and Steve's Housing Center and South Carolina Uninsured Employers Fund, Respondent.

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

This case arose out of a construction accident on July 17, 2006 in which the Appellant fell from a scaffold causing injuries to his chest, ribs and back while working for Respondent. A hearing was held on September 21, 2007 to determine the compensability of the claim. On June 19, 2008, Commissioner J. Alan Bass issued an Order finding Respondent Steven Frazier, d/b/a Sunrise Construction Company and Frazier Properties of Myrtle Beach did not have four or more employees regularly employed in South Carolina and that there was not an employer/employee relationship between the Appellant and Respondent. [R. pp. 2-12].

Appellant filed a timely Form 30 Request for Commission Review. [R. pp. 13-14]. The Appellate Panel of the South Carolina Workers' Compensation Commission affirmed the order of the Single Commissioner and denied the Appellant's claim, holding that Respondent did not regularly employ four or more employees and was not subject to the Workers' Compensation Act. [R. pp. 15-20]. The Appellate Panel also found that Respondent was not the statutory employer of Appellant and that Appellant did not sustain any injury by accident arising out of and in the course of employment with Respondent. [R. p. 18].

In an Order dated August 30, 2011, the Circuit Court found that Appellant was a covered employee of Respondent but that Appellant and subcontractors' employment for Respondent was casual and that Respondent did not regularly employ four or more people during the relevant time period. [R. pp. 21-26]. The Appellant filed a timely Notice of Appeal on October 05, 2011 pursuant to Rule 201 of the South Carolina Rules of Appellate Practice. [R. p. 27].

STATEMENT OF FACTS

On January 9, 2006, the Respondent obtained building permits from the city of North Myrtle Beach using his Residential Home Builders License under the name of Sunrise Construction Company to renovate and reconstruct a beach house for his home rental business. [R. pp. 30-34]. Respondent owned and operated Frazier Properties of Myrtle Beach along with his sons Mark Frazier and Scott Frazier, and his wife Ashley Frazier, who handled the payroll. [R. pp. 35-38, 64). The Respondent, doing business as Steve's Housing Center previously

carried workers' compensation insurance that was never canceled by filing a Form 38. The Respondent, doing business as Frazier Properties of Myrtle Beach and as the general contractor for the home reconstruction project, did not carry any workers compensation insurance and did not require any of his subcontractors to provide proof of insurance.

On July 17, 2006, the Appellant, employed by a subcontractor hired by Respondent, was injured when he fell from a wooden scaffold while working under the house owned by Respondent. Appellant had to be transported by helicopter to MUSC Medical Hospital in Charleston where he was admitted for treatment to his multiple rib fractures, transverse process fractures of T-9 through T-11, left-sided pneumothorax, and left lower lobe atelectasis and contusion. Appellant has not been able to work since the accident and has incurred more than Thirty Thousand ($30,000.00) Dollars in medical bills. At the time of Appellant's accident, Appellant was working for a subcontractor of Respondent and had agreed to work for $400.00 per week. [R. pp. 68-75]. There is no evidence to the contrary that Appellant sustained these injuries other than as a result of the accident on July 17, 2006 while working for Respondent's subcontractor.

Respondent's bank records verify that Respondent paid over twenty individuals for work on the construction project over the life of the construction project. [R. p. 72] [R. pp. 35-38, 40-63]. Notwithstanding the employment of and payments to numerous individuals and subcontractors, Respondent's wife and two sons were regularly employed during the relevant time period.

Respondent testified that he carried workers' compensation insurance while he operated his rental business under the name of Steve's Housing Center. [R. pp. 65-67]. Respondent testified that although he stopped doing business under that name, that he never filed a Form 38 with the South Carolina Workers' Compensation Commission.

STANDARD OF REVIEW

The question presented is one of jurisdiction to be determined as a matter of law. Porter v. Labor Dept., 372 S.C. 560, 567, 642 S.E.2d 96, 100 (Ct. App. 2007). When deciding questions of law, this court has the power and duty to review the entire record and decide the jurisdictional facts in accord with its view of the preponderance of the evidence. Wilkinson ex. rel. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 299, 676 S.E.2d 700, 702 (2009); Harrell v. Pineland Plantation, Ltd., 337 S.C. 313, 320, 523 S.E.2d 766, 769 (1999).

It is the policy of South Carolina courts to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act. Hill v. Eagle Motor Lines, 373 S.C. 422, 429, 645 S.E.2d 424, 427 (2007); Wilkinson, 382 S.C. at 300, 676 S.E.2d at 702 (indicating the court's sensitivity "to the general principle sanctioned by the Legislature that workers' compensation laws are to be construed liberally in favor of coverage"). The issue of whether an employer regularly employs the requisite number of employees to be subject to the South Carolina Workers' Compensation Act is jurisdictional. Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (Ct. App. 2007).

The review of a decision of the workers' compensation commission is governed by the Administrative Procedures Act and although the Court may not substitute its judgment for that of the full commission as to the weight of the evidence on questions of fact, it may reverse where the decision is affected by an error of law. Rodriguez v. Romero, 363 S.C. 80, 84, 610 S.E.2d 488, 490 (2005). Review is limited to deciding whether the commission's decision is unsupported by substantial evidence or is controlled by some error of law. Id.

ARGUMENT

I. APPELLANT IS A STATUTORY EMPLOYEE OF RESPONDENT AND THE WORKERS' COMPENSATION COMMISSION ERRED IN HOLDING THAT APPELLANT DID NOT SUSTAIN AN INJURY BY ACCIDENT ARISING OUT OF AND IN THE COURSE OF EMPLOYMENT WITH RESPONDENT.

The substantial evidence supports that Appellant was a statutory employee of Respondent at the time of the accident and sustained an injury by accident arising out of and in the course of employment with Respondent. At the time of the accident, Appellant was performing a task that is an essential part of Respondent's business. The Act is the exclusive remedy for an employee injured in the course and scope of his employment. S.C. Code Ann. § 42-1-540; see Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct. App. 2008). This exclusivity provision extends to workers not directly employed by the defendant if the worker can be classified as a statutory employee. Edens v. Bellini, 359 S.C. 433, 445, 497 S.E.2d 863, 869 (Ct. App. 2004).

Under the Act, a statutory employee is any person qualifying for coverage under S.C. Code Ann. § 42-1-400, which provides as follows:

> When any person . . .referred to as an "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person . . . (referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

A worker is a statutory employee if the activity he performed for the owner at the time of the injury satisfies one of the following three tests: (1) the activity is an important part of the owner's business or trade; (2) the activity is a necessary, essential, and integral part of the owner's trade, business, or occupation; or (3) the identical activity has previously been performed by the owner's employees. Riden v. Kemet Elecs. Corp., 313 S.C. 261, 263-64, 437 S.E.2d 156, 157-58 (Ct. App. 1993). If the activity at issue satisfies even one of these three tests, the worker qualifies as the statutory employee of the owner. Olmstead v. Shakespeare, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003).

In ruling on the legal issue of whether Appellant is a statutory employee, any doubts as to the worker's status should be resolved in favor of including him under the Act. Id. Respondent was in the business of building, repairing and renting properties and consistently hired subcontractors to provide electrical, plumbing, carpentry, flooring, framing, and various other services associated with the various properties owned and maintained by Respondent.

Although worker's compensation law usually requires an employer-employee relationship, the statutory employee doctrine imposes workers' compensation liability on an owner or principal contractor to a worker not directly

employed by the owner or contractor. Edens, 359 S.C. at 442-43, 597 S.E.2d at 868; S.C. Code Ann. § 42-1-400, et. seq. (1976). The statutory employee doctrine operates to prevent the employer's evasion of compensation liability. "[I]f a subcontractor's employees were not considered in determining the contractor's exemption under the Act, the work could simply be subdivided among different contracting entities to evade liability under the Act." Ost v. Integrated Products, 296 S.C. 241, 371 S.E.2d 796 (1988), (quoting Smith v. Weber, 3 Va. App. 379, 350 S.E.2d 213 (Va. App. 1986)).

In this case, Appellant meets all three tests. Appellant was engaged in repair work on a house owned by Respondent. Appellant's work was an important and necessary part of Respondent's business of renting properties and had previously been performed by Respondent's own employees or subcontractors. Construction work is an important part of construction and home renovation which comprises the Respondent's business. It is undisputed that renovating homes was a necessary part of the Respondent's business. [R. p. 8].

Respondent's employees or subcontractors had performed the exact activity that Appellant was performing at the time of his injury. Respondent hired a subcontractor to perform remodeling work on a home that the Respondent owned and the subcontractor subsequently hired the Appellant to assist in the remodeling work. [R. p. 8]. The Appellant was performing this remodeling work when he was injured. Appellant was tearing out wood underneath a home owned by Respondent when he fell backwards off of scaffolding. [R. pp. 65-67.]. Appellant was taken to Seacoast Medical Center by ambulance and then airlifted

to a trauma center in Charleston where he remained for eight days. [R. p. 67]. Appellant sustained broken ribs, a punctured lung, and broken vertebrae. [R. pp. 67-68].

Appellant further testified that he had never sustained any injuries to his lungs, ribs, or back prior to this accident. [R. p. 70]. The uncontroverted evidence confirms that Appellant was injured in an accident while working for Respondent's subcontractor. Based on the facts of this case, Appellant is clearly a statutory employee of the Respondent.

As a statutory employee, the Appellant receives workers' compensation through either the principal contractor or owner. S.C. Code Ann. §§ 42-1-400, 42-1-410 (1976). In the present case, Respondent Steve Frazier is both the owner and the principal contractor. [R. pp. 33-35, 38-44, 54-55]. Our Supreme Court addressed the question of "owner" liability under S.C. Code Ann. § 42-1-400 in Harrell v. Pineland Plantation, Ltd. and Parker v. William and Madjanik, Inc. Harrell, 337 S.C. 313, 523 S.E.2d 766 (1999); Parker, 275 S.C. 85, 267 S.E.2d 534 (1980). In both cases, the owner of the real property and the owner of the business enterprise were held liable for providing workers' compensation to the Claimant as an employee of the subcontractor, even though the property owner and business owner did not have any employees of their own.

Subcontractors and employees of subcontractors are considered statutory employees if the employer hires the subcontractor to perform work which is part of the employer's trade, business or occupation. S.C. Code Ann. §42-1-400. As aforementioned and applying our court's holding in Ost v. Integrated Products

Inc., it is clear that Appellant and other subcontractors are statutory employees of Respondent for the pertinent construction. The statutory employer doctrine was enacted to prevent the exact type of conduct by Respondent in which a general contractor can evade liability by utilizing subcontractors. Id.

Accordingly, the Respondent is liable for providing workers' compensation benefits to Appellant as the principal and the owner of the business enterprise that hired the subcontractor that directly employed Appellant. As a statutory employee, Appellant is a covered employee under the South Carolina Workers' Compensation Act. The substantial evidence in this matter confirms that the Commission erred in finding that Appellant did not sustain an injury by accident arising out of and in the course of his employment with Respondent.

II. THE WORKERS' COMPENSATION COMMISSION ERRED IN FINDING THAT RESPONDENT DID NOT REGULARLY EMPLOY FOUR OR MORE PEOPLE DURING THE RELEVANT TIME PERIOD.

There is substantial evidence that Respondent regularly employed four or more people during the relevant time period. According to Respondent's own banking records and testimony, Respondent regularly employed four or more people during the relevant time period. In determining whether the employer regularly employs four or more employees, the court examines whether the employees were regularly employed within the relevant time period. Hernandez-Zuniga. While S.C. Code Ann. § 42-1-360(2) exempts coverage for employers who do not regularly employ four or more employees in the same business in South Carolina, it is clear that Respondent exceeded this threshold during the construction project in which Appellant was injured. In Ost v. Integrated Products

Inc., our court held that both direct and statutory employees are counted toward the four employee minimum.

S.C. Code Ann. § 42-1-360 does not define the term "regularly employed." When faced with an undefined statutory term, the court must interpret the term in accord with its usual and customary meaning. Hernandez-Zuniga, 374 S.C. at 247, 647 S.E.2d at 697. Because South Carolina workers' compensation law is fashioned after North Carolina's statute, our courts often rely on North Carolina precedent for guidance in interpreting the South Carolina Workers' Compensation Act. Hernandez-Zuniga, 374 S.C. at 248-249, 647 S.E.2d at 698. North Carolina Courts have interpreted "regularly employed" as "employment of the same number of persons throughout the period with some constancy." Id. (quoting Grouse v. DRB Baseball Management, Inc., 121 N.C. App. 376, 465 S.E.2d 568, 570 (N.C. Ct. App. 1996)).

In Hernandez-Zuniga, our court held that the relevant time period begins when the claimant starts working and ends when the employer stops operating his business. In this matter, Appellant began working on July 17, 2006 and the project was completed by the end of February of 2007. South Carolina has also defined the relevant time period as the period of construction. Harding v. Plumley, 329 S.C. 580, 584, 496 S.E.2d 29, 31 (Ct. App. 1998). The relevant time period determination can be particularly difficult for employment in which workers come and go in accordance with the nature of the work they perform, including construction work. Hernandez-Zuniga, 374 S.C. at 250, 647 S.E.2d at 698. In Durham v. McLamb, 59 N.C. App. 165, 296 S.E.2d 3 (N.C. Ct. App.

1982), a North Carolina court held that an employer is not precluded from providing coverage just because the number of workers on the job site the day of an injury falls below the required minimum.

The testimony of Respondent confirms that his wife, Ashley Frazier, was an employee that managed the payroll for Respondent and for the pertinent construction project in which Appellant was injured. [R. pp. 32-34]. Respondent and his two sons also worked on the construction project and were all co-owners of Respondent's business. [R. pp. 32-35, 38-60,]. Respondent also testified that he employed Jim Chapman for the construction project. [R. p. 45, 56, 58].

Respondent, his wife, and his two sons all worked on the construction project and are enough to satisfy the threshold S.C. Code Ann. § 42-1-360(2). [R. p. 60]. Respondent worked on the construction project himself and received payments for nearly every month of the construction project. [R. pp. 34-35, 40, 80, 85, 90, 96, 99, 101, 103-104, 107-108, 111, 113, 115, 119-121, 124-125, 128-129, 131-132, 137-138, 140, 144-146, 148, 150-151, 154, 159-160, 165]. Appellant satisfies the Hernandez-Zuniga test as Respondent's bank records verify that he regularly employed and paid more than four people every month from July 2006 through February of 2007. [R. pp. 72-148]. The Single Commissioner erroneously prevented Appellant's counsel from asking Respondent about the specific people who were paid to work on the construction project for the Respondent after July 17, 2006, the date of Appellant's injury. [R. p. 53, line 25; p. 54, lines 1-6]. The Single Commissioner's actions were in direct

contravention to the court's holding in Hernandez-Zuniga in regards to the relevant time period.

Respondent's bank records detail the following employees and/or subcontractors were paid during the time period in which Appellant began working for Respondent and the completion of the project in accordance with Hernandez-Zuniga:

July 2006:	Grice Construction Don Smith Scott Frazier George Benedeaux Mark Jones Jim Chapman Jordan Mims C.B. Painting Carolina Cooling & Plumbing
August 2006:	George Benedeaux Lee House Movers Jim Chapman Jackie Coble Mark Jones Dale Buckley Sam Hardee James Parnell
September 2006:	Steve Freeman Jackie Coble Kelly Sweat Billy Stapleton C.B. Painting Jessica O'Brian George Benedeaux Byrd Sweat
October 2006:	Steve Freeman Byrd Sweat Kelly Sweat Willis Quick Jackie Coble Steve Sweat

	Buster Jones
November 2006:	Kelly Sweat Steve Freeman Jackie Coble Willis Quick Curry Electric
December 2006:	Willis Quick Jackie Coble Steve Freeman Robert Freeman Kelly Sweat Sanford Hunt, Jr. Fred Randall Daniel Smith Steve Frazier Pyramid Engineering
January 2007:	Steve Frazier Jackie Coble Kelly Sweat Robert Freeman Terry Chandler Steve Freeman Fred Randall James Milligan
February 2007:	Jackie Coble Steve Freeman Kelly Sweat Robert Freeman James Milligan Steve Frazier Amy Frazier John Bonnick

A construction project by its nature does not use multiple people in the project all at once. However, as is clear from the list above which is formulated from Respondent's testimony and the banking records of Respondent's operations, at least four employees and/or subcontractors were regularly employed and paid each month for their efforts during the construction project as

defined by Hernandez-Zuniga. Respondent should not be permitted to evade compensation liability because of the nature of his work as the principal contractor and the fact that employees and subcontractors were coming and going throughout the life of the construction. Respondent utilized many of the same individuals over several months for this particular project. Respondent's engagement of these individuals cannot be characterized as occurring by chance or casual but is periodically regular during the relevant time period.

The employees and subcontractors listed above, in addition to Respondent's wife who maintained payroll and Respondent's two sons, clearly satisfy the threshold of four or more employees regularly employed during the relevant time period. Applying the framework of Hernandez-Zuniga and Harding to the facts of this case, including Respondent's testimony and banking records, the lower court and commission erred by finding that Appellant was not a statutory employee of Respondent and that Respondent did not regularly employ four or more persons during the construction project.

III. THE SOUTH CAROLINA WORKERS' COMPENSATION ACT ENCOURAGES COVERAGE AND PROTECTION OF APPELLANT AND ANY DOUBT AS TO EMPLOYMENT STATUS SHOULD BE RESOLVED IN APPELLANT'S FAVOR.

Any doubt as to Appellant's status should be resolved in favor of including his claim under the South Carolina Workers' Compensation Act. South Carolina courts encourage coverage under the Workers' Compensation Act and doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act. Riden, 313 S.C. at 263, 437 S.E.2d at 158. The Act is the exclusive remedy for an employee injured in the course and

scope of employment. S.C. Code Ann. § 42-1-540; see Posey v. Proper Mold & Eng'g, Inc., 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct. App. 2008). This exclusivity provision applies to both direct employees and "statutory employees," like the Appellant, under S.C. Code Ann. § 42-1-400 (1985). Carter v. Florentine Corp., Inc., 310 S.C. 228, 423 S.E.2d 112 (1992). Coverage under the Act is Appellant's sole remedy as he was injured while acting as a statutory employee of the Respondent.

South Carolina courts recognize that the legislative purpose of the statutory employee statutes is "to afford the benefits of compensation to those who are exposed to the risks of the owner's business and to place the burden of paying compensation upon the organizer of the enterprise." Carver v. Pridemore & Co., 278 S.C. 235, 294 S.E.2d 419 (1982). With facts similar to the case at bar, the South Carolina Supreme Court in Long v. Atlantic Homes held that a statutory employee may bring a claim against his statutory employer and stated that the effect of the statutory employee provisions, §§ 42-1-400 through 42-1-450, is "to impose the absolute liability of an immediate employer upon the owner and/or general contractor although it was not in law the immediate employer of the injured workman." Long v. Atlantic Homes, 311 S.C. 237, 428 S.E.2d 711 (1993), (citing Parker v. Williams and Madjanik, Inc.). The court in Parker provided, in part:

> [T]he **manifest purpose** [of these sections] **is to afford the benefits of compensation to the men who are exposed to the risks of its business, and to place the burden of paying compensation upon the organizer of the enterprise.** In consequence, both the owner and the contractors who he engages to do his work are subjected to

> the requirements of the Act, and the workers receive double protection.

Id. at 143, 54 S.E.2d at 528 (quoting Blue Ridge Rural Elec. Co-op v. Byrd, 238 F.2d 346 (4th Cir. 1956), reversed on other grounds, 356 U.S. 525, 78 S. Ct. 893, 1 L.Ed. 2d 953 (1958) (emphasis supplied)).

Applying South Carolina jurisprudence and public policy to the facts of this case, Appellant should be afforded protection under the South Carolina Workers' Compensation Act.

IV. THE WORKERS' COMPENSATION COMMISSION ERRED IN FAILING TO FIND THAT RESPONDENT IS STILL SUBJECT TO AND OPERATING UNDER THE WORKERS' COMPENSATION ACT PURSUANT TO S.C. CODE ANN. REG. 67-404 (1990).

Respondent testified that he previously carried workers' compensation insurance while operating his business under the name of Steve's Housing Center. [R. pp. 61-62]. Respondent has not incorporated any of his entities and simply operates his businesses as proprietorships. [R. pp. 61-62]. Although Respondent claims that he ceased to operate as Steve's Housing Center, he never filed a Form 38 with the South Carolina Workers' Compensation Commission as required by S.C. Code Ann. Reg. 67-404 (1990). [R. p. 62]. Regulation 67-404 provides:

> An employer who, having elected to come under the Act, being at that time exempt, is deemed to continue to operate under the Act until a Form 38, Notice of Withdrawal from the Act, is filed with the Commission's Coverage and Compliance Department and its employees are provided written notice in Section B. Below.

Id.

At the time of Appellant's injury on July 17, 2006 and the hearing in front of the Single Commissioner on September 21, 2007, Respondent had not

submitted a Form 38 withdrawing from inclusion under the Act. In fact, Respondent testified:

Commissioner Bass:	Sir, it's important that we get the identity of the business entities correct. So I want to make sure I understand. You had workers' comp. coverage at what time? Did you personally?
Respondent:	At Steve's Housing Center, back in the '90's, yes, sir.
Commissioner Bass:	Well, that was a sole proprietorship?
Respondent:	Yes, sir.
Commissioner Bass:	Wasn't it a corporation?
Respondent:	No, sir.
Commissioner Bass:	So it was you?
Respondent:	Yes, sir.
Commissioner Bass:	Okay. But you may have done business as?
Respondent:	Right, right.
Commissioner Bass:	All right. So you personally had the policy?
Respondent:	Yes, sir.
Commissioner Bass:	Okay. What happened to the policy? I don't care about what happened to the business. What happened to the policy?
Respondent:	Well, we didn't - - we dissolved it. There was no employees, you know.
Commissioner Bass:	Did you - -
Respondent:	We lapsed it or canceled it.
Commissioner Bass:	Okay. Did you sign any forms in order to cancel the policy?

Respondent:	Not as I know of, no, sir.
Commissioner Bass:	Okay. You didn't file a Form - - what's the number of the form, Mr. McMaster?
Mr. McMaster:	Thirty-eight.
Mr. Quinn:	Yes, sir.
Commissioner Bass:	Did you file a Form 38 with the Workers' Comp. Commission to cancel the policy?
Respondent:	Not as I know of, sir.

[R. pp. 61-63].

In Earl v. HTH Assoc., Inc., the South Carolina Court of Appeals affirmed the commission's findings that the employer had failed to proper cancel a policy and was subjected to sanctions under Reg. 67-404. Earl v. HTH Assoc., Inc., 368 S.C. 76, 627 S.E.2d 760 (Ct. App. 2006). In Earl, the court held that Reg. 67-404 required that notice of termination of policy was required to be filed by the employer. An insurance policy is deemed continuous until a notice of cancellation is filed. S. C. Code Ann. Regs. 67-406 (E) (2005).

Workers' compensation statutes and regulations are to be construed liberally in favor of coverage. See Mauldin v. Dyna-Color/Jack Rabbit, 308 S.C. 18, 22, 416 S.E.2d 639, 641 (1992). Because workers' compensation is a creature of statute, the court is "bound to strictly construe the terms of the statute...." Brown v. Bi-Lo, Inc., 354 S.C. 436, 441, 581 S.E.2d 836, 838 (2003). The requirements for canceling a workers' compensation insurance policy are exacting and strictly construed because of the "essential role of insurance in the compensation process, and the serious potential effects of noninsurance on both

employer and employee...." Arthur Lawson and Lex K. Larson, Larson's Workers' Compensation Law, §150.03 (2005). An insurer's failure to strictly comply with the regulations renders a termination ineffective. Id.

Under a strict interpretation of the regulations, construing them in favor of coverage, Respondent did not properly cancel the policy as he failed to file a Form 38. Consequently, Respondent was still operating under and subject to the South Carolina Workers' Compensation Act at the time of Appellant's accident and subsequent claim.

CONCLUSION

Appellant was a statutory employee of Respondent as he was performing a task that was necessary and integral to Respondent's operations at the time of the accident. Appellant sustained an injury by accident arising out of and in the course of his employment with Respondent. Respondent regularly employed four or more people during the construction project and is subject to the South Carolina Workers' Compensation Act. The South Carolina Workers' Compensation Act and public policy encourage coverage for Appellant's claim. Respondent was still operating under and subject to the Act as he failed to file a Form 38 with the commission effectively cancelling a prior policy of insurance. For the reasons stated herein, the Court should reverse the decision of the commission and find that the Appellant's claim is covered under the South Carolina Workers' Compensation Act.

Respectfully Submitted,

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Construction, Frazier
Properties of Myrtle Beach and
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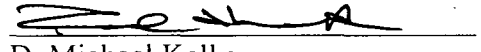
Uninsured Employers Fund..... .....Respondents.

RULE 211 (b) CERTIFICATION

The undersigned, an attorney in this matter for the Appellant, certifies that this Final Appellant's Brief is identical to the Initial Appellant's Brief, except for inclusion of references to the Record and correction of typographical errors and/or misspellings, and it otherwise conforms to the requirements of Rule 211(b), SCACR.

Respectfully Submitted,

By: 

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