

ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 2013-000575

Artemio Alvarez v. Quality HR Services, et al.

W.C.C. File No.: X030301

William Brockman v. Quality HR Services, et al.

W.C.C. File No.: X030600

Martha Burke v. Quality HR Services, et al.

W.C.C. File No.: X030681

Lucille Dwight v. Quality HR Services, et al.

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Robert Hunter v. Quality HR Services, et al.

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Tammy Miller v. Quality HR Services, et al.

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Patricia Wade-Portee v. Quality HR Services, et al.

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Jessie Pringle v. Quality HR Services, et al.

W.C.C. File No.: 0327062

Steve Cameron v. Quality HR Services, et al.

W.C.C. File No.: 0316901

Ruth Harmon v. Spectrum HR Services, et al.

W.C.C. File No.: 0406103 Respondents,

v.

South Carolina Property and Casualty

Insurance Guaranty Association..... Appellant.

FINAL BRIEF OF RESPONDENT QUALITY HR SERVICES, INC.

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TABLE OF CONTENTS

	<u>Page No.</u>
Table of Authorities.....	ii
Statement of Issue on Appeal.....	1
Statement of the Case.....	2
Standard of Review.....	
Argument	
The Guaranty Association is liable for payment of the claims at issue.....	4
Conclusion.....	7

TABLE OF AUTHORITIES

Page No.

CASES

<u>Carter v. Associated Petroleum Carriers</u> , 235 S.C. 80, 110 S.E.2d 8 (1959).....	5
<u>Dependents of Sweeney v. Cape Fear Wood Corp.</u> , 236 S.C. 471, 118 S.E.2d 70 (1961).....	5
<u>Marsh v. Leo's, Inc.</u> , 249 S.C. 45, 152 S.E.2d 350 (1967).....	5
<u>Nolan v. Nat'l Sales Co., Inc.</u> , 292 S.C. 1, 354 S.E.2d 575 (Ct. App. 1987).....	5
<u>Yeomans v. Anheuser-Busch, Inc.</u> , 198 S.C. 65, 15 S.E.2d 833 (1941).....	4,5

STATUTES

S.C. Code Ann. § 38-31-20(8).....	4
S.C. Code Ann. §42-1-415.....	6

STATEMENT OF ISSUE ON APPEAL

Whether the Guaranty Association is responsible for payment of the claims at issue in this appeal.

STATEMENT OF THE CASE

This appeal arises out of eleven (11) workers compensation claims involving client companies of this Respondent, Quality HR Services, Inc. ("Quality HR"), and Spectrum HR, LLC ("Spectrum"). Both Respondent Quality HR and Spectrum HR are professional employer organizations ("PEOs"). Respondent Quality HR entered into an agreement with American Insurance Managers ("AIM") whereby AIM agreed to secure workers compensation coverage for Quality HR's client companies.

Prior to this time, AIM had entered into negotiations with AlphaStar Insurance Group, Ltd. ("AlphasStar") which owned Realm National Insurance Company ("Realm"), to purchase Realm. A Letter of Intent was signed by AlphaStar and AIM on October 2, 2002. (R. pp. 1073-1076, pp. 2014-2018). According to the Letter of Intent, Realm became an agent of AIM until the sale was consummated, such agency being contingent upon the execution of a general agency agreement. (R. pp. 1073-1076, 2014-2018). Without having executed a general agency agreement, AIM issued several Certificates of Insurance to various PEOs and their clients. (R. pp. 2019-2022). In exchange for the issuance of the Certificates, premiums were paid and capital contributions were made by the PEOs. Quality HR was one of the PEOs who submitted an application, was issued a Certificate and paid premiums and capital contributions. (R. p. p. 357, line 13 - p. 507, line 11, p. 511, line 16 - p. 512, line 14, pp. 526-530; p. 2022).

In November and December 2002, letters were sent to the PEOs from Realm wherein Realm denied coverage and purported to void the previously issued Certificates of Insurance. (R. pp. 958-960, 967-968, 986, 998-999). Suit was filed by Realm against AIM in a New York federal court. (R. pp. 1597-1646, 1660-1708). During the pendency of the New York suit, Realm continued to bind coverage, AIM continued to pay claims per Realm's directions and the parties continued to negotiate in an attempt to consummate the sale. (R. p. 357, line 13 - p. 507, line 11).

A Stock Purchase Agreement was ultimately executed March 21, 2003 whereby AlphaStar was to sell Realm to AIM. (R. pp. 1333-1401). Sale of Realm, however was not consummated.

At some point in the summer of 2003, Respondent Quality HR spoke with Realm's president who informed Quality HR that it had coverage with Realm. (R. p. 468, line 2 – p. 469, line 3, p. 500, lines 3-18). However, on October 10, 2003, Realm's president sent a letter to Quality HR informing it that there was no coverage and that the Certificates of Insurance had been issued without authority. Thereafter, AIM filed suit against AlphaStar in Delaware and AlphaStar filed for bankruptcy. As a result of the bankruptcy, Realm was liquidated. In connection with the liquidation, AIM was given a quitclaim bill of sale of Realm by AlphaStar's bankruptcy Trustee.

The parties to the various claims at issue consented to consolidation for purposes of having the Commission to determine the sole issue of whether the South Carolina Uninsured Employers Fund ("UEF") or the South Carolina Property and Casualty Insurance Guaranty Association ("Guaranty Association") is liable for payment of the concerned claims. By Order dated April 22, 2009, Commissioner Andrea C. Roche found the Guaranty Association liable for all claims arising between the dates July 22, 2003 and November 7, 2003 and further left all other claims open for a later determination as to whether the UEF, a direct employer or carrier for a statutory employer was liable. (R. pp. 7-45), On appeal, a three member panel of the Commission affirmed Commissioner Roche's Order (R. pp. 46-60).

On appeal to the Circuit Court, the matter was heard by Judge Charles B. Simmons August 18, 2010 and was remanded to the Commission for responses to three specific questions. R. pp. 61-69). On August 30, 2012, the Full Commission responded (R. pp. 70-77) and additional oral argument was heard by Judge Simmons October 24, 2012. By Order dated February 13, 2012, Judge Simmons found the Guaranty Association liable for all claims at issue

in this appeal. (R. pp. 78-101). An Amended Order was issued by Judge Simmons March 11, 2013—again the Guaranty Association was held liable for all claims. (R. 102-125).

This appeal followed. (R. pp.129-135).

ARGUMENT

THE GUARANTY ASSOCIATION IS LIABLE FOR PAYMENT OF THE CLAIMS AT ISSUE.

The doctrine of substantial compliance dictates the conclusion that coverage existed for each of the claims at issue. As such, each claim constitutes a “covered claim” under the South Carolina Property and Casualty Insurance Guaranty Association Act (“Guaranty Act”) and thus, are payable by the South Carolina Property and Casualty Insurance Guaranty Association (“Guaranty Association”). A “covered claim” is defined, in part, as “an unpaid claim, including one of unearned premiums, which arises out of and is within the coverage and is subject to the applicable limits of an insurance policy to which this chapter applies issued by an insurer, if the insurer is an insolvent insurer and...” S.C. Code Ann. § 38-31-20(8). Inasmuch as there is no dispute among the parties that if coverage did exist for each of the claims then the Guaranty Association is responsible, the decisive issue on appeal is whether the doctrine of “substantial compliance” is applicable under the facts underlying this appeal.

As it must, the Appellant argues, primarily, that the Circuit Court’s application of the doctrine of substantial compliance was improper and inconsistent with the decisions not only of this Court, but also with those of the South Carolina Supreme Court. The Appellant’s decision is without merit and should be dismissed summarily.

According to the doctrine of substantial compliance, as first announced in Yeomans v. Anheuser-Busch, Inc., 198 S.C. 65, 15 S.E.2d 833 (1941), “substantial compliance” with

applicable Workers Compensation statutes is sufficient to establish coverage under the Workers Compensation Act. In Yeomans, an otherwise exempt employer was found to be subject to the Workers Compensation Act and its statutes despite the employer's failure to file the statutorily required formal notice of acceptance of the Act or file an actual policy of insurance because it had taken all other actions necessary to cover its employees, such as actually procuring insurance and filing a policy number with the Commission. Id. The court concluded that these acts constituted "substantial compliance" with the Act. Id. In accordance with that conclusion, the South Carolina Supreme court rejected the otherwise exempt employer's attempt to avoid the Act on the "technicality" that it had not filed the notice or actual policy as required by the Act. Id. The Court further supported its application of the doctrine of "substantial compliance" by referring to a "record....contain[ing] evidence all one way....tending to establish that the employer...desire[d] to become subject to the Act." Id. 198 S.C. 65, 15 S.E.2d at 834.

The continued viability of the doctrine has been acknowledged in the cases of Dependents of Sweeney v. Cape Fear Wood Corp., 236 S.C. 471, 118 S.E.2d 70 (1961), Carter v. Associated Petroleum Carriers, 235 S.C. 80, 110 S.E.2d 8 (1959), Marsh v. Leo's, Inc., 249 S.C. 45, 152 S.E.2d 350 (1967) and Nolan v. Nat'l Sales Co., Inc., 292 S.C. 1, 354 S.E.2d 575 (Ct. App. 1987). In each of these subsequent cases, the Court considered the acts taken by the employer in an attempt to provide its employees with workers compensation coverage. See id. In those instances where sufficient acts were taken by the employer to bring provide its employees with coverage and therefore bring itself within the mandates of the Act, the Court found "substantial compliance" and concluded in essence that coverage existed and extended to the employee. See id.

The Appellant takes issue with the applicability of the "substantial compliance" doctrine to the facts of this case and contends that it is has no bearing on the issue of whether coverage

existed at a particular time. On the contrary, however, whether an employer maintained valid workers compensation insurance at a particular time in question is almost very, if not exclusively, dependent on whether that employer took the necessary steps to bring itself within the confines of the Act. In each of the cases addressing the doctrine of “substantial compliance”, the Court focuses exclusively on the actions of the employer or entity purported to be providing coverage under the Act and what the employer or entity has bring the employer under the Act and to afford coverage to its employees. That analysis remains viable to the issue presented in this appeal; namely, whether Quality HR engaged in sufficient acts, on behalf of its respective client company employers, to bring those client company employers under the Act and therefore provide coverage to their employees. It is undisputed that the owners of Quality HR believed that they had procured proper coverage for their client companies. Certificates of Insurance, appended with policy numbers, were provided by AIM identifying Realm National as the carrier for Quality HR’s client companies.¹ In accordance with the issuance of those Certificates and policy numbers, Realm National actually covered and paid claims from Quality HR’s client companies until its insolvency. Quality HR’s actions in securing these Certificates and policy numbers on behalf of its client companies and the submission of claims to Realm require a finding that it (Quality HR), took sufficient actions, on behalf of its client companies, which were consistent with providing workers compensation coverage to the employees of its client companies, subjecting each client company to the Act’s statutory and regulatory provisions.

CONCLUSION

Appellant’s position that it is not responsible for payment of these claims is wholly dependent upon its flawed argument that the doctrine of “substantial compliance” is not

¹ Pursuant to S.C. Code Ann. § 42-1-415, certificates of insurance are considered valid proof of workers’ compensation coverage.

applicable and that there is no coverage. As discussed herein, the actions of Quality HR, for and on behalf of its client companies, evidence a clear intent to bring each of the client companies (employers) within the statutory framework of the Act and its correlative regulations. Those acts constitute substantial compliance such that a finding of coverage is mandated with respect to each of the claims at issue. For these reasons, this Court should **affirm** the Order of the lower Court consistent with the arguments set forth herein.

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September 26, 2013

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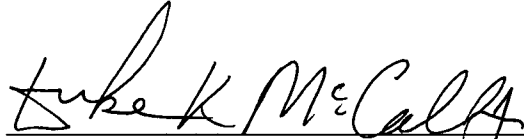
v.

South Carolina Property and Casualty
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this **Final Brief of Respondent, Quality HR Services, Inc.** complies with Rule 211(b) of the South Carolina Rules of Court.

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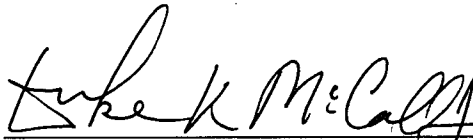
IT IS HEREBY CERTIFIED that a copy of the **Final Brief of Respondent, Quality HR Services, Inc.**, was served on counsel of record this 27th day of **September, 2013**, by placing a copy of the same in the United States Mail, with sufficient postage affixed thereto, addressed as follows:

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