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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC Court of Appeals

**APPEAL FROM SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION**

COMMISSIONERS AISHA G. TAYLOR, GENE MCCASKILL AND SUSAN S. BARDEN

WCC FILE NO. 1200329

JUAN YSLAS JR., EMPLOYEE, ... Appellant

v.

**JUAN YSLAS, EMPLOYER, and RIVERPORT INSURANCE,
ALLEGED CARRIER FOR EMPLOYER, and FULL CIRCLE
CONSTRUCTION, ALLEGED STATUTORY EMPLOYER, and
THE SOUTH CAROLINA UNINSURED EMPLOYERS'S FUND Respondents**

RECORD ON APPEAL - VOLUME II

James H. Moss, Esquire
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Post Office Drawer 507
Beaufort, South Carolina 29901-0507
[843] 524-3373; [843] 524-1302 FX
Attorneys for Appellant

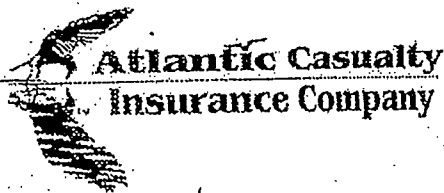
[Continued on Next Page]

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Attorneys for Respondents,
Full Circle Construction

Beaufort, South Carolina

April 4, 2014



COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Renewal of Number NEW

Policy No. L210000019

Named Insured and Mailing Address (No., Street, Town or City, County, State, Zip Code)*
YSLAS JR, JUAN

70 HICKORY HILL ROAD
SAINT HELENA ISLAND SC 29920

Policy Period * : From 11/22/2011 to 11/22/2012 at 12:01 A.M. Standard Time at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

Each Occurrence Limit	\$ 100,000	
Damages To Premises		
Rented To You Limit	\$ 100,000	Any one premises
Medical Expense Limit	\$ 10,000	Any one person
Personal and Advertising Injury Limit	\$ 100,000	Any one person or organization
General Aggregate Limit		\$ 200,000
Products / Completed Operations Aggregate Limit		\$ 200,000

RETROACTIVE DATE (CG 00 02 ONLY)

Coverage A of this Insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown here:
(Enter Date or "None" if no Retroactive Date applies)

DESCRIPTION OF BUSINESS AND LOCATION OF PREMISES

Form of Business:

☒ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (Other than Partnership or Joint Venture)

Business Description*:

FRAMING & SIDING CONTRACTOR

Location of All premises You Own, Rent or Occupy:

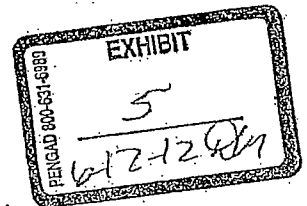
70 HICKORY HILL ROAD SAINT HELENA ISLAND SC 29920

PREMIUM

Classification	Code No.	Premium Basis	Territory	Pr/Co	Rate	All Other	Advance Premium	Pr/Co	All Other
Carpentry-Construction of Residential Property Not Exceeding Three Stories in Height	91340	P PR	18,000	001	29.032	9.313	\$523		\$168

See Attached ACD-GLS
Subtotal For ACD-GLS

Total or Minimum Premium \$ 691.00



*(a) area (c) total cost (m) admission (p) payroll (s) gross sales (u) units (t) other
FORMS AND ENDORSEMENTS applying to this Coverage part and made part of this policy at time of issue +:

SEE SCHEDULE OF FORMS AND ENDORSEMENTS

Countersigned:*

By

David J. Parker
Authorized Representative

*Entry optional if shown in Common Policy Declarations.

Forms and Endorsements applicable to this Coverage Part omitted if shown elsewhere in the policy.

THESE DECLARATIONS AND THE COMMON POLICY DECLARATIONS, IF APPLICABLE, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.

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ACD-GL1 08-11

000295

Policy Number: L210000019

LOCATION OF PREMISES

Location of All premises You Own, Rent or Occupy:

PREMIUM

Classification	Code No.	Premium Basis	Territory	Rate		Advance Premium	
				Pr/Co	All Other	Pr/Co	All Other
Sheet Metal Work - Shop and Outside	98884	P IF ANY PR	001	7.924	3.618	\$0	\$0

\$ \$

\$ \$

\$ \$

Total for extension Total \$0

**(a) area (c) total cost (m) admission (p) payroll (s) gross sales (u) units (t) other

000296

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PREMIUM AUDIT OR INSPECTION - DEPOSIT PREMIUM

THIS ENDORSEMENT MODIFIES INSURANCE PROVIDED UNDER THE FOLLOWING:

COMMERCIAL GENERAL LIABILITY COVERAGE

Conditions (Section IV), Commercial General Liability is amended as follows:

5. Premium Audit

Paragraph " b." is deleted and replaced by the following:

- b) Premium shown in this Coverage Part as advance premium is a minimum and deposit premium. It shall be determined based on an estimate of your exposures for the policy year. At the close of each audit period, or after expiration or cancellation of this policy, or during the policy term, we may, at our discretion, compute the policy premium based on your actual records, a telephone inspection or survey, physical inspection or survey, self-audit or an audit conducted of your actual records. If we do this computation and the premium developed is greater than the advance premium, the additional premium is due and payable. Additional premium may be generated by additional exposure(s) including but not limited to increases in the rating basis or classification changes. If any additional premium is not paid promptly the policy may be canceled at our discretion. If the total earned premium for the policy period is less than the advance premium, then the advance premium is the minimum premium and not subject to further adjustment.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**SCHEDULE**

Coverage	Amount and Basis of Deduction PER CLAIM or PER OCCURRENCE	
✓ Bodily Injury Liability OR	\$	\$
Property Damage Liability OR	\$ 250.00	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
- B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined
 as the result of any one "occurrence".
- If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

7. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

DEPOSITION OF JUAN YSLAS, III

JUAN YSLAS, JR.,

Employee/Claimant,

vs.

WCC FILE NO. 1200329

FULL CIRCLE CONSTRUCTION CO.,

Employer,

and

AMERISURE MUTUAL INSURANCE,

Carrier/Defendants.

COPY

JUAN YSLAS, III,

Employee/Claimant,

vs.

WCC FILE NO. 1200235

JUAN YSLAS, JR., d/b/a JUAN
YSLAS CONSTRUCTION AND
FULL CIRCLE CONSTRUCTION CO.,

Employer,

and

KEY RISK MANAGEMENT SERVICES,
INC., AMERISURE MUTUAL INSURANCE,
and SC UNINSURED EMPLOYERS' FUND,

Carrier/Defendants.

DEPONENT: JUAN YSLAS, III

DATE: JUNE 12, 2012

TIME: 1:00 P.M.

LOCATION: MOSS, KUHN & FLEMING, P.A.
1501 North Street

Beaufort, South Carolina 29901-0507

REPORTED BY: DENISE MCCAULEY, RPR, IA-CSR, GA-CCR
CAROLINA REALTIME, LLC

P.O. Box 80397

Charleston, South Carolina

(843) 277-0068

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

ON BEHALF OF THE CLAIMANT, JUAN YSLAS, JR.:

MOSS, KUHN & FLEMING, P.A.
BY: JAMES H. MOSS, ESQ.
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(843)524-3373

ON BEHALF OF THE CLAIMANT, JUAN YSLAS, III:

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macloskielawfirm@hargray.com

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ON BEHALF OF THE DEFENDANT, KEY RISK MANAGEMENT
SERVICES:

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BY: JACQUELINE ANN RICHARDSON, ESQ.
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(843)284-1085

1 APPEARANCES CONTINUED:

2

3 ON BEHALF OF THE DEFENDANT, SC UNINSURED EMPLOYERS'
4 FUND:

5

6 GRIFFITH, SADLER & SHARP, P.A.

7

8 BY: WORTH LIIPFERT, III, ESQ.

9 600 Monson Street

10

11 P.O. Box 570

12

13 Beaufort, South Carolina 29901

14

15 (843) 521-4242

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EXHIBIT

PAGE

(No exhibits were marked.)

000303

1 (The witness waived the right to read and sign
2 the deposition transcript.)

3 JUAN YSLAS, III,
4 having been duly sworn, was examined and testified as
5 follows:

6 EXAMINATION

7 BY MS. CARTER, at 1:04 p.m.:

8 Q. Would you state your name for the record,
9 please?

10 A. Juan M. Yslas, III.

11 Q. And what's your current address?

12 A. At 70 Hickory Hill. I'm staying with my
13 parents right now.

14 Q. And that's in Beaufort or Bluffton?

15 A. St. Helena, South Carolina.

16 Q. St. Helena. All right. And I just want to
17 explain a few things before the deposition starts.

18 You're under oath, and the court reporter is taking down
19 everything that we saw. And for that reason, I'm going
20 to ask you to give me a verbal answer to my questions.

21 Okay?

22 A. Okay.

23 Q. A lot of people will shake their head or say
24 uh-huh or something like that, but I want to make sure
25 it's clear and she's not having to try to interpret what

1 you're saying. Okay?

2 A. Yes, ma'am.

3 Q. Also, you'll have a tendency, because you're
4 probably nervous and want to get this over with, and I
5 certainly understand that, but to start answering my
6 question before I'm done with it. She can only take
7 down one of us at a time. So if you can try to wait
8 until my question is over, that would be great.

9 A. Yes, ma'am.

10 Q. If you answer my question, I'm going to
11 assume that you understood it. Okay?

12 A. Okay.

13 Q. If you don't understand it for any reason,
14 ask me to repeat it or rephrase it.

15 A. Yes, ma'am.

16 Q. I need to know if you're under the influence
17 of anything, whether it be medication or anything else,
18 that would keep you --

19 A. No, ma'am.

20 Q. -- that would keep you from being able to
21 understand my questions?

22 A. No, ma'am. I'm under the influence of
23 nothing.

24 Q. All right. Great. What is your date of
25 birth?

1 A. August 25, 1975.

2 Q. And you're Social Security number?

3 A. 266-81-9102.

4 Q. And what was your address before you moved
5 in with your parents?

6 A. I was staying at Oaks Plantation with my
7 wife and kids, my spouse and kids. We weren't actually
8 fully married. We were just together.

9 Q. Do you know that address?

10 A. It's Oak Plantation Road. I think it's 21
11 or 20. I can't, I can't recollect exact, the exact
12 address, but it's on Oaks Plantation Road.

13 Q. And how many kids do you have?

14 A. I have four kids, ma'am.

15 Q. What are their ages?

16 A. It's 12, 11, 10, and four.

17 Q. And are you currently married?

18 A. We're common law married. We got -- we
19 bought a marriage license. Never went through with it.
20 And we're kind of separated right now.

21 Q. What's her name?

22 A. Kelly Fletcher, Kelly Renee Fletcher.

23 Q. Have you ever been married to anyone other
24 than Ms. Fletcher?

25 A. No, ma'am.

1 Q. Do you have any kids by anybody other than
2 those four?

3 A. No, ma'am.

4 Q. Is there anybody who is financially
5 dependent on you other than your kids and Kelly
6 Fletcher?

7 A. Just them.

8 Q. Do you pay her money when you have money
9 coming in?

10 A. Yeah. I pay their rent. I pay their
11 lights. And when I can, I bring in some food and stuff,
12 but yeah.

13 Q. And how far did you go in school?

14 A. I graduated, ma'am.

15 Q. And where was that from?

16 A. Immokalee, Florida.

17 Q. And did you take any kind of college classes
18 after that or anything?

19 A. No. I had a scholarship to go to art
20 school, but didn't take it.

21 Q. To where?

22 A. Art school in Miami, but I didn't take it.
23 I had to go to work.

24 Q. And do you have any trouble reading or
25 writing or anything like that?

1 A. No, ma'am.

2 Q. Ever have any problem in school?

3 A. No, ma'am. I've got problems seeing. I
4 don't have my glasses. They got broke on the accident,
5 so --

6 Q. What type of glasses do you typically wear?

7 A. Just regular glasses, just glasses that I
8 can see. I'm near sighted, ma'am. I can't see far.

9 Q. And when you went to work after high school,
10 what type of work did you get into?

11 A. I was working for my aunt. I was a dumper
12 in the fields, tomato business, ma'am, working on the
13 top of the trucks dumping the tomatoes inside.

14 Q. And when did you move to South Carolina?

15 A. I think it was '94 or '95. I think it was
16 '94.

17 Q. Do you own any land in South Carolina?

18 A. The land that my parents reside in and I
19 reside in is under my name, ma'am.

20 Q. Does that mean you own it or somebody else?

21 A. We don't own it yet. It's, right now, it's
22 on some type of hold.

23 Q. What does that mean?

24 A. They were going to foreclose, but my parents
25 decided to do a remodification. And the remodification

1 just added to the payments. So they hired a lawyer to
2 take care of that, and right now it's all on hold or
3 something.

4 Q. So you have a mortgage on that land?

5 A. Yes, ma'am.

6 Q. And I understand there are two mobile homes
7 on that land?

8 A. Yes, ma'am.

9 Q. And one is at an address of 70 Hickory Hill
10 Road, and the other one is at 71 Hickory Hill Road?

11 A. Yes, ma'am.

12 Q. And do your parents reside at 70?

13 A. At 70.

14 Q. And who lives in 71?

15 A. Right now, it's Naun Ruiz that's living in
16 71.

17 Q. Who is he?

18 A. He is -- you could say he's like a brother
19 to me, a brother to us. He's part of the family. About
20 12 years ago they moved over here from Atlanta and
21 started working, he started working for my dad. And
22 then my dad asked me to come help him to teach these
23 guys how to work, yes, ma'am.

24 Q. And Naun Ruiz, does anybody else live at
25 that location with him?

000309

1 A. His family, his wife and kids.

2 Q. How many kids does he have?

3 A. Two kids, ma'am.

4 Q. Have you ever lived at 71 Hickory Hill Road?

5 A. Yes, ma'am.

6 Q. When did you live there?

7 A. I lived there approximately probably 13
8 years ago.

9 Q. And for how long?

10 A. For about a whole year, yeah, until we kind
11 of had problems and I had moved out with my family.

12 Q. So you moved away from your family?

13 A. Yeah. We moved away from them.

14 Q. Did you keep that as your mailing address?

15 A. Mailing address, yes. I've always had that
16 for my mailing address. I've never changed it.

17 Q. When you moved to South Carolina, what kind
18 of work were you doing at that point?

19 A. When I got here, I was helping my uncle in
20 the fields here, Paragon Produce. He was working for
21 Six L's, and I helped him out a little bit until a friend
22 of mine just offered me to help him frame. And I didn't
23 know anything about it, but it was another job,
24 something different, so I pursued it.

25 Q. So Six L's is who you were working for?

1 A. Yes, ma'am. When we first got here, yes.

2 Q. Was your dad in that business as well?

3 A. Well, at the time he started working with
4 him, he wasn't here, but when he came out, I guess,
5 prison or whenever he was, when he came out, he started
6 working for him for a little while, yes, ma'am.

7 Q. Was your father in prison?

8 A. Yeah.

9 Q. What was he in prison for?

10 A. Don't -- long time ago, ma'am. I really
11 don't care to tell you. It was -- it scarred my life,
12 so I really don't care to think about it.

13 Q. And how long ago was it?

14 MR. MOSS: Over ten years?

15 THE WITNESS: It was way over ten years ago,
16 ma'am. It was probably like '80 something.

17 MR. MOSS: More like 20 something years ago.

18 THE WITNESS: Yeah. 20 something years ago.

19 BY MS. CARTER:

20 Q. He hasn't been in prison since then?

21 A. No, ma'am.

22 Q. And so that was the first time you went into
23 framing?

24 A. Yes, ma'am. '94.

25 Q. And did you ever work at Six L's the same

1 time your father was working there?

2 A. No, ma'am.

3 Q. And who were you working for in the framing?

4 A. Joey Johnson, Johnson's Builders.

5 Q. Is that where you learned how to do it?

6 A. Yes, ma'am.

7 Q. And how long did you work for them?

8 A. Probably about a good six years, five years.

9 Q. And what happened after that?

10 A. They didn't want to give me a raise, so I
11 felt I had already learned as much as I needed to know,
12 so I went off on my own.

13 Q. And what was the name of your company?

14 A. I didn't have a company at first. I
15 didn't -- I was working for some other guys, and then I
16 was working for some other guys, and then I didn't get
17 my own company probably until 2002 or something like
18 that, 2003, somewhere around there.

19 Q. All right. And when you got your own
20 company, what was the name of that company?

21 A. John Julian Construction, the name of my
22 son.

23 Q. When you started doing construction in 1995
24 or so -- is that about right?

25 A. Yes, ma'am.

1 Q. Did you continue -- did you work in
2 construction from then on?

3 A. Uh-huh. 17 years.

4 Q. And all in framing?

5 A. Yes, ma'am. I have not done anything else
6 since then.

7 Q. And was John Julian Construction a sole
8 proprietorship or an LLC?

9 A. Yeah. I was sole, yeah.

10 Q. Did you have to file any paperwork with the
11 state for that company?

12 A. Yeah. Yeah. All kinds of stuff, yes,
13 ma'am.

14 Q. Did you get Workers' Compensation insurance?

15 A. Yes, ma'am.

16 Q. And do you remember who that was through?

17 A. Lowcountry Insurance.

18 Q. Do you remember who the insurance carrier
19 was?

20 A. Can't recollect that, ma'am, no.

21 Q. How long did you have insurance?

22 A. I had it for a few years. I had it probably
23 two years probably. I can't remember exactly.

24 Q. And during that time period, how many people
25 did you have working for you?

1 A. Actually, I had, I had a couple of crews,
2 ma'am, and I had -- they were subbing off of me. I was
3 subbing the jobs to them. One of them happened to be
4 Naun Ruiz. Another one happened to be Daniel Ruiz.

5 Q. So how many people were in those couple of
6 crews?

7 A. Probably four or five in each group, yeah.

8 Q. Four to five in each group?

9 A. Yeah.

10 Q. And when you said they were subbing off of
11 you, did you require them to have insurance?

12 A. Yes, ma'am. Or I would, I would withhold 20
13 percent so that I could pay the insurance.

14 Q. Do you remember if Naun Ruiz had insurance
15 or whether you withheld?

16 A. At first they didn't. At first they didn't.
17 I had to withhold 20 percent off of them so that I could
18 pay insurance, because it was high, awfully expensive.

19 Q. And who was the other person other than Naun
20 Ruiz?

21 A. Daniel Ruiz, his nephew, Daniel Ruiz.

22 Q. So what happened to your Workers' Comp.
23 insurance?

24 A. The last time that I got hurt, I wasn't able
25 to -- I lost jobs. I wasn't able to work or do the jobs

1 or get the jobs, and I lost jobs, and I had to let go of
2 the insurance.

3 Q. So it was for failure to pay the premium?

4 A. Yeah. Because I couldn't work.

5 Q. And when was that that you got hurt?

6 A. Ten years ago.

7 Q. Do you remember --

8 A. I broke my ankle.

9 Q. Do you remember the date?

10 A. No. I know it was ten years ago from today,
11 from this year. It was ten years ago.

12 Q. So in 2002?

13 A. Something like that, yes, ma'am.

14 Q. And you broke which ankle?

15 A. This one.

16 Q. Right or left?

17 A. Left one. Left ankle, ma'am.

18 Q. And how did that accident happen?

19 A. I was actually not supposed to be there. I
20 already had a cut on my hand that I was healing from.
21 And I had a harness. And my doctor told me,
22 Dr. Stoddard told me not to go to the job, because I was
23 on medication that didn't, you know -- that if I didn't
24 go to the job to see what these guys were doing, I
25 couldn't get paid to pay them. So I had to go.

1 And I went, disregarded my doctor's orders
2 not to go to work. And when I went in, I actually went
3 to the third floor, because they were already on the
4 roof framing the roof, so -- and I don't frame my stair
5 hole in until I'm done framing the house, because I
6 don't want nobody in there telling: No. I want to
7 change this. I want to change that.

8 So when I was up there with my thing on, I
9 was yelling at the guys. I was pissed off, yelling at
10 the guys, because they were putting rafters up that
11 weren't meeting the ridge about an inch. So as I was
12 walking backwards, I tripped over a brace that they had,
13 you know, on one of the dormers. And right as I turned
14 around, there was a gaping hole, my stair hole.

15 And I jumped across that, grabbed onto the
16 wall, and as long as I could, you know, and I had to
17 finally let go, because I had no help, somebody to grab
18 me. So the guys got off the roof. By the time they got
19 there, I let go and I broke my ankle.

20 Q. And how far did you drop?

21 A. Three floors.

22 Q. And did you have to have surgery on your
23 ankle?

24 A. Yes, ma'am.

25 Q. Who did that surgery?

1 A. Dr. Stoddard.

2 Q. So how long were you out of work from that
3 injury?

4 A. Oh, probably like three or four months.
5 That's why I lost jobs and I lost --

6 Q. So what happened with that injury? Did your
7 foot get better or --

8 A. Yeah. It got better. That plate that he
9 put inside with the screws, you know, I've been fine
10 with it.

11 Q. When did you start working again after that
12 accident?

13 A. Probably a good, a good seven months, six,
14 seven months after that. It was a while before I could
15 start walking good again and work.

16 Q. Once you started working again, did you go
17 back to doing the same thing you were doing before?

18 A. Yes, ma'am.

19 Q. Were you able to climb ladders, things like
20 that?

21 A. Yeah. Yeah. Yeah. I wasn't that bad
22 ma'am. No.

23 Q. Did you have any problems doing jobs?

24 A. I was young. I'm still young. I'm pretty
25 strong.

000317

1 Q. Did you lose any mobility in your foot from
2 that?

3 A. A little bit, but I'm still agile.

4 Q. All right. And so who did you start working
5 for after that injury?

6 A. Keith and Gary Regina.

7 Q. And what was the name of that company?

8 A. K & G Builders.

9 Q. And how long did you work for them?

10 A. I worked for them for nearly a year. And
11 then I moved out of the country, worked in Turks and
12 Caicos for a year. Then I moved back into the country,
13 and I worked for them again.

14 Q. So at Turks and Caicos were you doing
15 construction?

16 A. Yes, ma'am.

17 Q. And then when you moved back and worked for
18 them again, how long did you work for them?

19 A. Probably about a year until they had to let
20 us go, because we ran out of work.

21 Q. And what time period was that?

22 A. Was it 2009, 2010? I can't quite -- 2009,
23 ma'am, 2009. Can't quite recollect.

24 Q. And so who did you work for after them?

25 A. Been doing little odds and ends here and

1 there, whatever I could, you know, trying to grab a job
2 of my own. I got insurance again 2010. I was able to
3 get my insurance again, and I worked for Keith, Keith
4 Carter, 2010, ma'am. He gave me jobs. He subbed jobs
5 off to me.

6 Q. And Keith Carter --

7 A. -- Construction.

8 Q. -- Construction. How many people did you
9 have working for you?

10 A. At the most I had five. Four of us most of
11 the time, there was four of us, but at the most it was
12 five of us.

13 Q. Did your dad ever work for you?

14 A. A couple of times, yes, ma'am.

15 Q. Do you remember who you were working for,
16 what jobs you were doing?

17 A. At Keith Carter, Keith Carter. I gave
18 him -- he was without work. I gave him a job a couple
19 of times.

20 Q. So that would have been 2010?

21 A. Yes, ma'am.

22 Q. And who was your insurance through when you
23 got insurance in 2010?

24 A. Lowcountry.

25 Q. Do you remember --

1 A. And I can't remember the carrier itself, but
2 that's where I always got insurance was at Lowcountry.

3 Q. And what happened with that insurance?

4 A. I ran out of work and didn't have the money
5 to pay the premium.

6 Q. Do you remember when that ended?

7 A. Right at 2000 -- at the end of 2010 I ran
8 out of work. Struggled for most of 2011 until I got
9 back to working for Naun Ruiz. Well, I started working
10 for Naun Ruiz.

11 Q. And Keith Carter, was that a particular
12 project he was doing?

13 A. No, ma'am. He framed for Tilton. He framed
14 for Tilton Brothers, and he framed for Don Peele.

15 Q. So did his projects just sort of run out?

16 A. Yeah. They run out and he let me go. He
17 didn't have any more work for me.

18 Q. So what did you do in -- when did you begin
19 working for Naun Ruiz?

20 A. It was probably like May of 2011. If it
21 wasn't May, it was -- I can't quite recollect, but it
22 was around May or March, somewhere around there. May, I
23 think, it was May.

24 Q. And what job did you work on for him?

25 A. It was in Bluffton, a couple jobs in

1 Bluffton there, and one in Hampton Lake for -- I can't
2 remember the name of that contractor. He's a big
3 contractor in Bluffton. I can't remember. I can't
4 quite recollect their names, ma'am.

5 Q. Do you remember who the contractor was on
6 the job where you got injured?

7 A. On this job?

8 Q. Yes.

9 A. That I just got injured?

10 Q. Yes.

11 A. The contractor? Matt, yes, ma'am, Matt.

12 Q. Do you know the name of his company?

13 A. Yes. Full Circle Construction.

14 Q. So when you began working for Naun Ruiz, was
15 it with Full Circle Construction?

16 A. No, ma'am. Well, yeah, because, because he
17 had to put up his insurance or something. So we were
18 working for him at first, I know that.

19 Q. You were -- but I mean --

20 A. When Full Circle started, when Full Circle,
21 what I could remember is, I think, he sent his, he sent
22 his insurance so that we could get the jobs or Dad could
23 get the job, I guess.

24 Q. Who is he? I don't know who you're talking
25 about.

1 A. Naun Ruiz sent his insurance to Full Circle
2 so that he could get the house.

3 Q. So the first job you remember working on for
4 Naun Ruiz was Full Circle Construction the contractor,
5 the general contractor?

6 A. The general contractor, yes, ma'am.

7 Q. Do you remember what lot number that was?

8 A. I can't remember, ma'am.

9 Q. Do you remember how many different lots in
10 Hampton Lake you worked on?

11 A. When we were working for Full Circle or when
12 we were working with Naun?

13 Q. Well, both.

14 A. Both was three jobs.

15 Q. So you remember three different houses?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yep.

19 Q. All right. And so between the end of 2010
20 and May of 2011, what did you do for work?

21 A. Friends and homeowners here and there, just
22 little odds and ends, patching here stuff, patching
23 stuff there, fixing leaks, that's how I got by. I
24 barely got by. We barely got by.

25 Q. Did you have anybody working for you during

1 that time period?

2 A. No. Huh-uh.

3 Q. That's a no?

4 A. No. Not really. No, ma'am.

5 Q. And sometime in 2011 you begin working for
6 Naun Ruiz?

7 A. It was around May.

8 Q. Had you ever worked for him before?

9 A. No. He was off on this side, and we were on
10 this side for probably two to three years.

11 Q. Does that mean you all didn't talk to each
12 other?

13 A. Well, we seen each other and talked to each
14 other, but we wouldn't work for each other. He had his
15 work on that side of Bluffton, Bluffton area, and we had
16 our work here. I had my work here.

17 Q. Different geographical locations?

18 A. Yeah. That's why. Then when we ran out of
19 work, we were steady looking for work, he offered us
20 work.

21 Q. And who is us?

22 A. Me and my uncle Ricky. And he offered Dad
23 too work, because Dad started working with us right
24 there with us too. So he offered everybody that he knew
25 that was without work, he offered us all work. So we

1 were all helping him out.

2 Q. And between May of 2011 up until the time
3 you had your accident, were you working on jobs for Full
4 Circle Construction?

5 A. No, ma'am. We -- I know the first job, the
6 first job that I was working for Full Circle
7 Construction, it was in November, the first job.

8 Q. That's what I'm trying to figure out. So
9 who was the job in May of 2011 for?

10 A. Oh, for -- that's a different contractor,
11 ma'am.

12 Q. Do you know who it was?

13 A. That's what I was trying to remember right
14 now, but I think I can recollect here in just a bit.
15 It's on the tip of my tongue.

16 MR. MONTGOMERY: Jeffcoat.

17 THE WITNESS: There you go, Randy Jeffcoat.

18 BY MS. CARTER:

19 Q. Was it in Hampton Lake?

20 A. Yes, ma'am.

21 Q. And how did Naun Ruiz pay you?

22 A. In cash money. Yeah. He's never gotten
23 around to getting a checkbook and doing all the right
24 stuff. He's always paying everybody in cash money.

25 Q. And did he provide you with any forms at the

1 end of the year for you to file your taxes?

2 A. Yeah. 1099.

3 Q. Do you know why he paid you on a 1099?

4 A. Because he, he never took taxes off of us is
5 what I think, you know.

6 Q. So when did you leave your employment with
7 Naun Ruiz?

8 A. It was in November. And Dad asked me to --
9 if I could help him out. I was working for Naun, and
10 Dad asked me if I wanted to work for him. And I said:
11 Well, I guess I could. Because none of them had, none
12 of his workers had a license to go in Hampton Lake to
13 drive, and I'm the only one who had a license to drive.

14 Q. None of his workers meaning Naun Ruiz's or
15 your dad's?

16 A. No. My dad, the workers my dad had. So he
17 asked me, he said: You want to come help me, son? So
18 you can, you can drive my van? You want to work for
19 me? So I said: Yeah, I guess so. I mean, you know, if
20 Naun didn't have a problem with it, because he had a lot
21 of work.

22 Q. So why was -- so your dad before that was
23 working for Naun Ruiz?

24 A. Yes, ma'am.

25 Q. So why did he start working on his own?

1 A. I guess, to make more money, ma'am, to try
2 to make more money. I'm not sure.

3 Q. Were you involved in any discussions with
4 your dad --

5 A. Huh-uh.

6 Q. -- and Naun Ruiz?

7 A. No. Never. I was always at the job reading
8 the prints for Naun.

9 Q. So did you talk to Naun Ruiz about leaving
10 him and going to work for your dad?

11 A. Yeah. I told him that Dad had asked me to
12 go help him out and if it was all right with him. He
13 said: That's fine.

14 Q. And what job were you working on when that
15 was occurring?

16 A. With Naun? What do you mean --

17 Q. When you switched from Naun to your dad.

18 A. It was a job there in Palmetto Bluff.

19 Q. Is that different than Hampton Lake?

20 A. Yes, ma'am.

21 MR. MOSS: Oh, yeah.

22 THE WITNESS: Yes, ma'am.

23 MR. MOSS: It's the cream of the cream over
24 there over at Palmetto Bluff.

25 MR. MONTGOMERY: That's where James' house

1 is.

2 BY MS. CARTER:

3 Q. Was it a house in Palmetto Bluff?

4 A. Yes, ma'am.

5 Q. Do you remember the address of that one or
6 the lot number?

7 A. It's been quite a few months. I can't
8 recollect all that.

9 Q. Do you remember what Lot 181 in Hampton Lake
10 was?

11 A. I don't know if that's the one. I don't
12 know if that was the first one, or I can't remember. I
13 can't quite remember.

14 Q. Do you remember what other lots you worked
15 on in Hampton Lake?

16 A. Just I know it was three places that I
17 worked in Hampton Lake, three places. One, the first
18 one, the first time that I ever been there, we worked
19 with Randy Jeffcoat.

20 Q. And that was in May?

21 A. Somewhere around that area, yeah, in that
22 area, May, June, or something like that. I can't
23 remember, but I know that that was the first house that
24 I worked on in Hampton Lake, the one for Randy
25 Jeffcoat. And then there was two other ones for Full

1 Circle Construction.

2 Q. Do you remember when those were?

3 A. In November and December and January.

4 Q. And --

5 A. Well, January the 16th was the last time
6 that I worked, so --

7 Q. And from November to January were you
8 working at both of those lots at the same time?

9 A. No. I think we finished one first. As a
10 matter of fact, the first one that we started, the first
11 one that Dad started for Full Circle, that first one
12 towards the end, ma'am, there wasn't no money on the
13 job, and I know I was, I was working for free towards
14 the end of that. I know that.

15 Q. What happened to the money?

16 A. We took too many weeks on that is what --
17 that's what happened, too long on that job.

18 Q. So it wasn't that they weren't paying you.
19 It's just the draw was done?

20 A. The draw was done. It wasn't that they
21 wasn't paying. The draw was done.

22 Q. But do you remember the second time you were
23 working in Hampton Lake?

24 A. Uh-huh.

25 Q. Do you remember who you were working for on

1 that job, whether it was Naun Ruiz or your dad?

2 A. Well, because Dad said that he was getting
3 it, the insurance, after the first week he was going to
4 get the insurance on his name, so I was going to be
5 fully -- it was going to be fully working towards him,
6 but we were working for Naun.

7 Q. So that job started with Naun?

8 A. With Naun.

9 Q. And then at some point it switched over to
10 your dad?

11 A. Uh-huh.

12 Q. Is that correct?

13 A. Yes, ma'am.

14 Q. And then it was with your dad before the
15 third job?

16 A. Yes, ma'am.

17 Q. As far as you know?

18 A. Yes, ma'am.

19 Q. Did you go with your dad when he got
20 Workers' Comp. insurance?

21 A. No, ma'am.

22 Q. Did he talk to you about it?

23 A. That's when he, when he said that he was
24 thinking of getting it. When he started the job, he's
25 like: Man, I'm thinking about getting my own insurance,

1 because I'm tired of getting paid by the hour, is what
2 he said, and not making anything by the hour. So, I
3 guess, that's why he got his own insurance.

4 Q. So your understanding of why your dad
5 started his own company was he wanted to make more
6 money?

7 A. Yes, ma'am.

8 Q. Did you hear anything about Naun Ruiz
9 leaving to go back to Mexico?

10 A. Yeah. He said he was going to leave to
11 Mexico and -- but he said that because something was
12 happening with they were kicking people out of the
13 country, or they were going to stop people for no reason
14 to check their licenses and stuff.

15 And he got scared, and he told Dad that by
16 the end of the year he was going to leave to Mexico.
17 But when they didn't do that no more, he didn't leave,
18 because they stopped that law or something where they
19 didn't have to check people's IDs, and that's what they
20 were scared of.

21 Q. So do you know when the job on Palmetto
22 Bluff began?

23 A. That one was on --

24 MR. MOSS: That hasn't got anything to do
25 with this.

1 MS. CARTER: Yes. It actually all has to do
2 with it. I've got to figure out when he began
3 forming his own company and what his intent was,
4 Jim, obviously.

5 MR. MOSS: Well, that doesn't have anything
6 to do with this case.

7 BY MS. CARTER:

8 Q. Go ahead and answer the question.

9 A. I think it was around -- no, because it took
10 a while, and that was a huge house. It took a while.
11 We were there probably a couple of months. I think that
12 was like August maybe. I can't remember, ma'am. It was
13 somewhere around that area. I know it took a while on
14 that house, because it was a big house.

15 Q. So that was before the second time you went
16 to Hampton Lake?

17 A. Yes, ma'am.

18 Q. And you were working for your dad on that
19 job?

20 A. No.

21 Q. Oh, I thought you said you were working for
22 your dad?

23 A. No. For Naun.

24 Q. For Naun?

25 A. No. Where I started for Dad is on that one

1 house for Full Circle. That's when I started working
2 for Dad.

3 Q. Which is the second job you'd done in
4 Hampton Lake?

5 A. Yes.

6 Q. And it was during that job that that
7 switched over?

8 A. Uh-huh.

9 Q. Is that correct?

10 A. Insurance was switched over, and, I guess,
11 bosses was switched over when the insurance switched
12 over.

13 Q. Do you remember when you started getting
14 paid by your dad versus Naun Ruiz?

15 MR. MOSS: Excuse me. I think you've got
16 three jobs now. I think you're getting two and
17 three juxtaposed with one or -- anyway, go ahead.
18 I just think the record is going to be screwed up,
19 but go ahead.

20 BY MS. CARTER:

21 Q. All right. You told me you had three jobs
22 on Hampton Lake. The first one you were with Jeffcoat,
23 and the second one you were with Full Construction, and
24 the third one with you were with Full Construction; is
25 that right?

1 A. Yes. Those are the only three jobs I've
2 been on on Hampton Lake, yes.

3 Q. And between the first Hampton Lake and the
4 second one, you did a job in Palmetto Bluff with Naun
5 Ruiz?

6 A. Yes.

7 Q. And then sometime during the second job you
8 had on Hampton Lake with Full Construction, it switched
9 from Naun Ruiz to your dad?

10 A. Yes, ma'am.

11 Q. Is that right?

12 A. Yes, ma'am.

13 Q. Do you know the date that happened?

14 A. Huh-uh. I can't recollect that date either.

15 Q. Do you remember if it had anything to do
16 with when your dad got Workers' Compensation insurance?

17 A. What do you mean?

18 Q. Well, you said your dad was going to get
19 insurance and he got insurance. Is that when you
20 started getting paid by your dad?

21 A. Yeah. After he got it, yeah, when the check
22 started coming in his name, he was paying me himself.
23 Other than that, he couldn't cash Naun's checks or
24 nothing like that. Naun was still involved.

25 Q. So as far as you know on the Full Circle

1 Construction job at Hampton Lake, the first one you did,
2 that check was going to Naun Ruiz?

3 A. Yes, ma'am.

4 Q. And then at some point during that job, the
5 checks started going to your dad?

6 A. To my dad.

7 Q. And when the checks started going to your
8 dad would have been when you started working for your
9 dad?

10 A. Yes, ma'am.

11 Q. Did you have any discussion with your dad
12 about whether you were an employee or independent
13 contractor or anything like that?

14 A. When he took me from Naun, he told me he
15 would pay me \$20 an hour, ma'am. He told me: Look, if
16 you come work for me, I'll pay you \$20 an hour. Because
17 Naun was paying me around \$18 an hour.

18 Q. But did he have any discussion with you
19 about whether you were an independent contractor or an
20 employee?

21 A. No. He knew, he knew I was an employee for
22 Naun.

23 Q. Well, did you still have a business in your
24 name at that time?

25 A. No, ma'am.

1 Q. So that would have been what time period are
2 we talking about now, that first job with Full Circle
3 Construction?

4 A. Yeah. That first job right there, that was
5 in November.

6 Q. And in 2011, if you'll show him Exhibit 4,
7 the first page of Exhibit 4, we've got page numbers on
8 the right-hand bottom corner if I flip through. This
9 was your tax return, I believe, for 2011?

10 A. Yes, ma'am.

11 Q. And on Page 3 of that, you're reporting a
12 profit or a loss of a business, and the name of that
13 business name was Juan Yslas?

14 A. Where is that, ma'am?

15 Q. On Page 3, on the very top: Profit or loss
16 from business. And then under C, it says: Business
17 name Juan Yslas?

18 A. Yeah. I see it.

19 Q. So you reported on your income taxes a
20 profit from a business; is that correct?

21 A. Well, what do you mean? From what Dad, from
22 the little bit that I made with Dad at the end of the
23 year? Yes, ma'am.

24 Q. Well, this is for a sole proprietorship,
25 which would have been your business; right?

1 A. I didn't have a business. That's the
2 problem. I don't know why he wrote that down there, but
3 no, I didn't have a business.

4 Q. Well, who would have written that down
5 there?

6 A. That had to have been my accountant, yeah.

7 Q. And you're reporting profit from your own
8 business; is that right?

9 A. Yeah. My business was the year before that
10 is when I had my business, 2010.

11 Q. So do you know why your accountant would
12 have issued a profit from your business if you didn't
13 have a business?

14 A. Probably because I got a 1099 from him is
15 why I think he did that, because I got a 1099 from Dad
16 and from --

17 Q. Well, let's look at that. On Page 6 is
18 where the 1099 was.

19 A. From Dad and from Naun, I got one for last
20 year.

21 Q. Well, that's what I'm trying to figure out.
22 I didn't see one from your dad. And, actually, I pulled
23 out some pages, but you can look at the whole thing if
24 you want. The only 1099 I saw was from Naun Ruiz, and
25 then there was another one from somebody else.

1 Do you remember getting a 1099 from your
2 father?

3 A. Yes, ma'am. I had it and it's in my file at
4 the house. Should have brought it.

5 (A discussion was held off the record.)

6 BY MS. CARTER:

7 Q. So that was Page 21 we're looking at now.
8 I'm sorry.

9 A. Okay.

10 Q. If you add --

11 A. Yes, ma'am.

12 Q. -- the 25,800 and the 2,800, that was the
13 amount put in as a profit from your business?

14 A. Uh-huh. Well, I don't know what business.
15 I didn't have no business last year, ma'am, but --

16 Q. And you don't know why your accountant would
17 have issued that?

18 A. I don't know why he would have put that on
19 there, but I didn't have any business.

20 Q. Do you know why you didn't receive a W-2
21 from your dad or Naun Ruiz?

22 A. Because, as far as I could tell, they
23 weren't taking any taxes either. So that's what
24 happened. I'm sure that's why they send me a 1099.

25 Q. Did your dad pay you in cash?

1 A. Yes, ma'am. He paid everybody in cash.

2 Q. And I believe you said he was paying you \$20
3 an hour?

4 A. Yes, ma'am.

5 Q. And how many hours a week were you typically
6 working?

7 A. Sometimes 40. Sometimes a little bit more.
8 Sometimes a little bit less, but most of the time it was
9 around 40.

10 Q. Did you talk to your dad about the Workers'
11 Compensation insurance that he got?

12 A. No, ma'am. Never, I've never asked him
13 anything about it.

14 Q. Do you know where he went to get it?

15 A. No, ma'am.

16 Q. Did you have any discussions with him about
17 whether he was going to include himself in coverage or
18 exclude himself from coverage?

19 A. No, ma'am. We never talked about that, I
20 don't think.

21 Q. When you got insurance, did you include
22 yourself in coverage or exclude yourself from coverage?

23 A. When I got insurance a long time ago, I
24 didn't know if -- I didn't know if I was excluded or
25 not. Never asked that question. Just got insurance to

1 get the job.

2 Q. If you look at Page 9 of that group --

3 A. Uh-huh.

4 Q. -- do you recognize what that is?

5 A. The --

6 Q. This document?

7 A. Yes, ma'am.

8 Q. What is it?

9 A. It's what Dad, actually, I guess had it, and
10 he had it in writing and stuff like that, in little
11 notebooks written, the hours and stuff. So he took it
12 out to the accountant to get it all in computerized
13 form.

14 Q. And how did you get a copy of this?

15 A. My dad asked for it.

16 Q. And so was this something you got to respond
17 to the subpoena that we sent you?

18 A. To respond to something. I needed
19 something, I'm sure, so I said: You might as well go
20 ahead and get it for me too if you're going to get it.

21 Q. Can you tell me what you asked your dad for?

22 A. Just what he -- proof of what he was paying
23 me by the hour, that's what I asked him for, because
24 that's what I guess you all wanted or people wanted. I
25 don't know.

1 Q. So does that mean that as of November 19 you
2 were working for your dad?

3 A. Yes, ma'am.

4 Q. And did you ever receive a document like
5 this from Naun Ruiz?

6 A. He hasn't finished his -- he hasn't done his
7 taxes yet. I know that. He hasn't done his taxes yet.
8 I already talked to him. I know he sent me a 1099 so I
9 could fix -- do my taxes, but he hasn't finished his
10 taxes yet. So I haven't asked him for that, no.

11 Q. So Page 9 was information you got from your
12 dad?

13 A. Yes, ma'am.

14 Q. And I'm just making sure that this was
15 documentation of the hours you worked for your dad, not
16 for Naun Ruiz?

17 A. No. No. No. We never -- he never thought
18 that -- I guess he never thought that we needed to ask
19 for Naun's.

20 Q. So this document is hours that you worked
21 for your dad?

22 A. From Dad's, yeah.

23 Q. And that would have been from November 19
24 forward? There's several pages of them.

25 A. Yes, ma'am.

1 Q. Did you ever receive any document from Naun
2 Ruiz concerning the hours you worked, other than that
3 1099?

4 A. No, ma'am. And I think it's because he
5 probably hasn't finished his -- he hasn't done his
6 taxes.

7 Q. All right. So tell me about the date of
8 accident, just briefly what happened. We've had some
9 descriptions from some other people.

10 A. Okay. I was on this wall. Juan was on the
11 other wall, and my father was in the center. And it's
12 on the end of a gable wall. It is where the garage is
13 at.

14 And that day we were on a roll that day.
15 The trusses got there, and it was going to take a couple
16 of days for us to get a crane out there. So we did what
17 we normally do. Our methods, how we, we spread all the,
18 spread all the trusses around. We already had them on
19 all the gable end walls to start picking them up and
20 carrying them. That's why we build scaffolds in the
21 center.

22 And my father was in the center. I was on
23 the side. And the first one we started picking up, I
24 started walking over to actually to tell him -- he's got
25 a lot of pride. And I was actually going over there to

1 tell him that he needed to get down and get one of the
2 younger guys up, but he didn't know I was behind him.

3 He started, you know, when the guys passed
4 up the truss, he started just pulling it up. And I was
5 walking over there to help him, to tell him: You know
6 what? Put it down. You get down and get the other guy
7 up.

8 But by the time I got there, he let go. And
9 when he let go, he lost his balance. But right as -- I
10 don't think he knew I was behind him. Right as I got
11 there, he went like that. And when he went like that,
12 the back hand hit me right on my chest. And that's when
13 I, I turned around, and I didn't know where to go. And
14 he looked at me, and we both just went straight down.

15 Q. So you all were on like a walkway that was
16 built along the wall?

17 A. Yeah. It was -- I was actually walking the
18 wall. He was on that walkway right there in the center,
19 the two scaffold boards that we built back there on the
20 edge of the wall, right on the edge of the wall. And we
21 had -- he was standing one foot on it and one foot on
22 the wall. And I was walking the wall towards him.

23 Q. And so, basically, once he lost his balance,
24 he kind of hit you and you lost your balance?

25 A. Yes, ma'am.

1 Q. And how far do you think you fell?

2 A. It was like 13 and a half feet, 13 feet,
3 because the house itself was 12 feet high, the walls
4 were. And then the garage had another foot and a half
5 still of slab higher. The walls were higher in the
6 garage, so it was about 13 and a half feet, 13 foot 6,
7 something like that.

8 Q. And how did you land?

9 A. I actually had to jump over some hardware
10 that we had up against the side of the wall. And, I
11 think, I guess as I lunged forward, I landed with my,
12 with my feet to jump over across the stuff that was
13 there. I actually lunged forward, and I think that's
14 why I fractured my heels.

15 Q. Did you land on your heels?

16 A. Yes, ma'am. I landed like on my feet and my
17 heels more, mostly, because I was lunging to try to jump
18 over the hardware -- that we had all the hardware that
19 we moved from the other house to that house.

20 Q. And so what did you injure in the accident?

21 A. My heels both got fractured. And my left
22 foot has something else wrong with it. And I need a CAT
23 scan done to it. Can't afford to do that yet right now.
24 It's not healing properly. It, by the end of the day,
25 it's like a balloon.

1 Q. And you're wearing a normal shoe on your
2 right foot; is that right?

3 A. Yes, ma'am. Yes. I can fit my shoe on this
4 one. I can't fit no shoe on this one.

5 Q. And on your left foot, you're wearing like a
6 sock and with an Ace bandage over it?

7 A. And with an Ace bandage over it.

8 Q. And that's because you can't put a shoe over
9 it?

10 A. I can't put a shoe over it. That's why I
11 just put the Ace bandage on it.

12 Q. And when you fractured both of your heels,
13 did they do surgery on them?

14 A. No, ma'am.

15 Q. So you haven't had any surgery?

16 A. No, ma'am.

17 Q. What treatment did they do for you?

18 A. He basically just -- all he did was -- we've
19 been just checking up. All he did was cast them, half
20 cast them, and we just been going for checkups and
21 x-rays every month.

22 Q. And who is treating you?

23 A. Dr. Stoddard, Leland Stoddard, ma'am.

24 Q. And how long were you cast?

25 A. Half casted for about -- I left them on for

1 about three and a half months, and three and a half
2 months left them on. I just started taking them off,
3 because he told me if I wanted to take them off to try
4 to see if I could start walking on my foot a little bit,
5 to go ahead and do it.

6 And I can't really still put pressure on my
7 whole foot. I use the top half of this foot, because I
8 got -- I'm supposed to get some gel shoes to put into my
9 soles so that I can walk, put pressure on my heels,
10 because I can't put full pressure on this right heel yet
11 neither, but you can't do that either, ma'am. They're
12 already there, but I can't pay for them.

13 Q. So you are using crutches now to assist
14 walking?

15 A. Yes, ma'am.

16 Q. Were you using something else before that?

17 A. Wheelchair.

18 Q. And when did you get out of the wheelchair?

19 A. About a month ago.

20 Q. And can you put any pressure on your left
21 heel?

22 A. Huh-uh.

23 Q. How about your left foot?

24 A. On my left foot from here up.

25 Q. From the top part?

1 A. From the top part, that's how I walk, like
2 that.

3 Q. And when you said something else is wrong
4 with your left foot --

5 MR. MACLESKIE: That's on his right foot.
6 He's indicated his right foot?

7 THE WITNESS: Yeah. Yeah. I can put --
8 from here up, I can put pressure. On this one, I
9 can't put no pressure on this one.

10 BY MS. CARTER:

11 Q. I'm sorry. I misunderstood you. So your
12 right foot you can put pressure on the front part of
13 your foot?

14 A. On the front part of my foot.

15 Q. But not the heel?

16 A. Not the heel, yeah.

17 Q. And on the left foot, can you put pressure
18 on anything?

19 A. Huh-uh.

20 Q. Can you give me a verbal answer?

21 A. No, ma'am. I'm sorry.

22 Q. And where does it swell when it swells?

23 A. Right there. As you can see, it's already
24 swelling.

25 MR. MOSS: You're referring to the left

1 foot.

2 THE WITNESS: The top of the foot.

3 BY MS. CARTER:

4 Q. Left foot, the top of the foot?

5 A. Yeah. And then on the side underneath my
6 ankle here.

7 Q. On the outside of your ankle like right
8 underneath?

9 A. Right underneath the ankle.

10 Q. Starting about mid-foot --

11 (Simultaneous talking.)

12 Q. I'm just describing it so we all know for
13 the record.

14 A. And then right here on this side.

15 Q. Again, that starts about mid-foot and goes
16 then down to underneath your ankle?

17 A. Uh-huh. It's around and up towards the
18 front right here.

19 Q. And when you said you're having other
20 problems with your foot, do you know in what part?

21 A. Well, that's what I was mentioning, that on
22 this foot right here, that's where I'm having other
23 problems besides that heel. It hurts all around right
24 here.

25 Q. And that's from ankle to ankle over the top

1 of your foot?

2 A. Over the top all through here.

3 Q. And do you have those same problems in the
4 right foot?

5 A. No, ma'am. Just the doctor said that this
6 foot is healing.

7 Q. Your right foot?

8 A. Yeah. It's healing. It's healing good.
9 It's just we're just having problems with the left foot.

10 Q. Does he think it has anything to do with the
11 prior problem you had in your left foot?

12 A. He doesn't seem to think so, but without the
13 CAT scan, he can't quite tell, ma'am. X-rays don't tell
14 what muscles or tendons or anything else is wrong with
15 it in there is what he told me, so --

16 Q. How often are you seeing Dr. Stoddard now?

17 A. It's been every month, one time every month.

18 Q. Is he treating any part of your body other
19 than your right foot and your left foot?

20 A. Well, previously, when I first started, I
21 was getting x-rays on different -- on my shoulder right
22 here. He thought I could have had probably a torn
23 rotator cuff maybe.

24 Q. And you're pointing to your right shoulder?

25 A. Yes, ma'am. And that's it. X-rays there

1 and x-rays on my feet is what he took x-rays of.

2 Q. So tell me about your right foot. Are you
3 having any pain in your right foot?

4 A. Yes, ma'am. Because I put all my pressure
5 to the front part of the foot. So at the end of the
6 day, my arch is killing me.

7 Q. And if you had to describe, when you're
8 having pain in your right foot, if you had to describe
9 that pain on a pain scale of zero to ten, with zero
10 being no pain, ten being pain that would send you to the
11 hospital, where does it typically fall?

12 A. About six, six, seven.

13 Q. And what would you say is the best that it
14 ever gets?

15 A. It will be earlier in the morning when I'm
16 waking up from bed. It would probably be, when the
17 swelling has gone down, it would probably be like, be
18 like a two or a one.

19 Q. And does it ever get worse than a six or a
20 seven?

21 A. At the end of the day, yes, ma'am.

22 Q. What would you say it is at the end of the
23 day?

24 A. Yeah. Around an eight or a nine.

25 Q. And let's talk about the left foot. What

1 would the pain level be on that foot?

2 A. Yeah. It stays at around an eight or a
3 nine.

4 Q. Does it ever get better than that?

5 A. Early in the morning only, when I've slept
6 the whole night and the swelling has gone down.

7 Q. And what would it be at its best?

8 A. About a two, yeah, about a two or a three.

9 Q. Has Dr. Stoddard talked to you about how
10 long you have to be on crutches, or is it just you keep
11 going?

12 A. Well, I need to go to -- he's got me a
13 referral to go see a therapist, but I can't do that
14 yet. And he said that they need to put us in a tank, a
15 water tank that the therapy on the foot, especially this
16 one, and he wants to take a CAT scan of it, ma'am, but
17 he -- I can't do that yet either.

18 Q. So tell me about your right shoulder.

19 A. Only when I pick up something heavy it
20 hurts. Only when I pick up something real heavy.

21 Q. Was that injured in the accident?

22 A. It's the only time it started hurting, after
23 the accident.

24 Q. And it did start --

25 A. Before that it didn't hurt.

1 Q. Did you have problems with that right after
2 the accident?

3 A. Right after the accident. I told the
4 doctor.

5 Q. And you said he was questioning whether you
6 had a rotator cuff tear?

7 A. Yes. He was -- it didn't look like anything
8 was broken in there or nothing. It had to be something
9 with the rotator cuff probably tear.

10 Q. Did you have an MRI?

11 A. I haven't been able to do that yet either,
12 ma'am.

13 Q. So that was just x-rays?

14 A. Yeah. That was just x-rays. He told me I
15 needed an MRI, I needed this, but it hasn't happened
16 yet.

17 Q. Has that right shoulder gotten better?

18 A. I think it has. I haven't lifted anything
19 heavy, so I can't tell yet. I really haven't lifted
20 anything heavy, so I can't tell.

21 Q. So you said you have pain in the right
22 shoulder now when you're picking up something heavy?

23 A. Yeah. When I pick up -- the other day I
24 picked up a bag, and I felt the sharp pain in there.

25 Q. And you're pointing right to the front of

1 your shoulder?

2 A. Right there, yeah, right in that area right
3 there.

4 Q. Does it hurt when you're not picking up
5 something heavy?

6 A. No, ma'am.

7 Q. Does it hurt when you're using crutches?

8 A. No, ma'am.

9 Q. Does Dr. Stoddard still think you need any
10 treatment for your right shoulder?

11 A. He asked me about it the other day, but he
12 had already told me I needed an MRI on it, ma'am. And
13 he referred -- he's got me some referrals, but I can't
14 do it until I pay or something.

15 MR. MOSS: I got one of those. They don't
16 get better.

17 BY MS. CARTER:

18 Q. Do you have any injuries to any other body
19 parts, other than your right foot, your left foot, and
20 your right shoulder, from the accident?

21 A. From that accident, no. I don't feel no
22 other pain nowhere else.

23 Q. Do you have pain from a different accident?

24 A. No, ma'am.

25 Q. And the problem you were having with your

1 left foot that you had from that previous accident, were
2 you having any ongoing problems with that before this
3 accident?

4 A. No.

5 Q. Were you seeing a doctor for it at all?

6 A. No, ma'am. I was supposed to have taken
7 that plate out probably I don't know how many years ago,
8 but it hasn't bothered me.

9 Q. And who did the surgery on that?

10 A. Dr. Leland Stoddard.

11 MR. MOSS: Doctor who?

12 THE WITNESS: Leland Stoddard. Leland
13 Stoddard.

14 MR. MOSS: Oh, Leland Stoddard did that one
15 too?

16 THE WITNESS: Yes.

17 BY MS. CARTER:

18 Q. Before this injury, had you ever had an
19 injury to your right foot?

20 A. No, ma'am.

21 Q. Had you ever had any other injuries to your
22 left foot, other than the one you told us about?

23 A. No, ma'am.

24 Q. Had you ever had an injury to your right
25 shoulder?

1 A. No, ma'am.

2 Q. Had you ever had any treatment for your
3 right foot and right shoulder before the injury?

4 A. No, ma'am.

5 Q. You had had the treatment to your left foot?

6 A. Just that one to the left foot, just that
7 broken ankle.

8 Q. Have you seen any doctors for this injury
9 other than Dr. Stoddard?

10 A. No, ma'am. We've been referred, ma'am, but
11 that's it.

12 Q. Do you remember who he referred you to?

13 A. No. No, ma'am. He just said that I
14 probably had to see a different -- when I told him about
15 the, about that foot, he wants to see the CAT scan. And
16 if there isn't a CAT scan, he wants to refer me to a
17 different physician if the CAT scan don't show him what
18 he wants to see.

19 Q. Have you worked anywhere since the accident?

20 A. No, ma'am. No, ma'am. I can't, can't do
21 nothing. It's more being depressed at the house, eating
22 a lot.

23 Q. And have you applied for Social Security
24 disability?

25 A. I just did, yes, ma'am.

1 Q. Do you remember when you did that?

2 A. I did probably two weeks ago, week and a
3 half ago, something like that.

4 Q. I assume you haven't heard anything back?

5 A. My dad just got his back, and they denied
6 it. So I'm waiting on mine.

7 MR. MOSS: They deny everybody the first
8 time. I have people with legs missing and they
9 deny it the first time.

10 MS. CARTER: Not anymore. I have got a lot
11 of people accepted the first time.

12 MR. MOSS: They do get it the first time?

13 MS. CARTER: Yeah. Not at his age, but --

14 THE WITNESS: Yeah. They haven't sent me
15 yet.

16 (A discussion was held off the record.)

17 BY MS. CARTER:

18 Q. Have you ever been convicted of a crime?

19 A. Yes.

20 Q. And what was that?

21 A. Simple possession.

22 Q. And marijuana?

23 A. Yes, ma'am.

24 Q. What year was that?

25 A. Last year. I can't remember the exact date.

1 Q. Was it before this accident, or I guess that
2 was 2012?

3 A. Way before, it was way before the accident,
4 yes, ma'am.

5 Q. And what happened with that? Did you plead
6 guilty?

7 A. Yes, ma'am. Paid my fine and I was out.

8 Q. Have you ever been treated for any type of
9 like anxiety or depression or anything like that?

10 A. No, ma'am.

11 Q. Now, tell me about Full Circle
12 Construction. When you started working on the jobs with
13 them, did you know anybody at Full Circle Construction?

14 A. Yeah. Mr. -- I had met Craig before.

15 Q. And what was Craig's job?

16 A. He's the project manager. I had met him
17 when I was working for Naun at the Randy Jeffcoat job.
18 He came over to talk to Dad and to Naun and wanted to
19 know. That's how we first met them, or that's how we
20 first met Craig.

21 Q. And what did Craig do on the job?

22 A. Project manager, oversee the job.

23 Q. But what actually day to day did he do?

24 A. He'd come by every morning and make sure we
25 didn't need anything.

1 Q. And who provided the tools that you'd use on
2 that job?

3 A. Dad. Dad actually, at the end, at the end,
4 I think at the end, at the end of all when the job, the
5 last job was finally over, Dad actually wrote a check
6 out to the guy, what Dad said, to the guy that gave him
7 the tools that he owed tools to, so --

8 Q. I noticed in your 2011 tax return that you
9 had some money spent on tools. Do you remember what
10 that was?

11 A. Yeah. I've got a couple of stuff at the
12 house, saws and -- saws and compressor. I mean,
13 everybody has their saws, tools, and we don't give them
14 away or sell them or anything, ma'am. You never know
15 when you're going to need your tools.

16 Q. And in 2011, do you know why you would have
17 bought tools?

18 A. I bought, I bought a couple of tools, ma'am,
19 quite a few tools. But, see, I've had also problems
20 with my wife, so she sold a lot of my tools, ma'am, when
21 we were off and on.

22 Q. Did you use any of your tools on the job at
23 Full Construction, either one of those jobs?

24 A. No, ma'am. I didn't have to.

25 Q. Do you know where your dad got his tools?

1 A. Borrowed some from Naun and bought most of
2 them.

3 Q. And what kind of tools did he use?

4 A. Framing guns, saws, skill saws, Sawzall,
5 drills, hammer drills, compressors, the whole works,
6 ma'am.

7 Q. Do you know if your dad used any equipment
8 that Full Circle Construction provided on that job?

9 A. I don't think so, ma'am. I don't think he
10 ever borrowed anything from him.

11 MR. MOSS: The wood, the product, all that
12 was --

13 THE WITNESS: Just did that, just the wood,
14 the product was Full Circle's.

15 BY MS. CARTER:

16 Q. The materials they would provide?

17 A. The materials they would provide.

18 Q. But the tools and things that were used?

19 A. Dad provided the tools.

20 Q. Did Craig ever direct you on how to do
21 something?

22 A. I mean, Craig knew that I was the lead man
23 on the job site. So he always pretty much came to me
24 and always told me if I had any questions or if I always
25 came, if there was a change in the house or something,

1 he always came to me, because he knew I was the lead
2 man.

3 Q. But did he have to direct you on how to do
4 anything?

5 A. No.

6 Q. Did you know Matt from Full Circle?

7 A. Yeah. A little bit.

8 Q. How did you know him?

9 A. Met him at the office one day.

10 Q. What was your understanding of his job?

11 A. He was the owner, yeah.

12 Q. Had to be nice to him?

13 A. Yes, ma'am. Super nice.

14 Q. So at this point you're looking for
15 treatment to both of your feet and possibly your right
16 shoulder?

17 A. Possibly.

18 Q. Anything else?

19 A. Huh-uh.

20 Q. That's a no?

21 A. No, ma'am.

22 Q. And you mentioned you were not on any
23 medications?

24 A. No, ma'am.

25 Q. Did you take any medications after the

1 accident?

2 A. Yes, ma'am. After the accident, I was
3 taking -- they had us on Percocet, and they weaned us
4 down to Lorcet and then some other -- then another after
5 Lorcet, because that's what the doctor tries to do is
6 wean you away from it, so --

7 And up to now I haven't took anything but a
8 couple of ibuprofen at nights to go to sleep, to be able
9 to sleep.

10 Q. And do you remember when the last time you
11 actually would have taken any prescription medication?

12 A. Probably about three weeks ago, three or
13 four weeks ago the last time I took some pain pills.
14 Another thing is because I haven't been able to afford
15 them. And they first sent me a card, and I was using a
16 card from Key Risk Management. They sent me a card. I
17 was using a card, and then they canceled the card.

18 Q. The job proposals that were done to Full
19 Circle Construction, did you have anything to do with
20 writing those out?

21 A. I know I wrote a couple of them out for Dad.

22 Q. Is that your -- that's Exhibit 2. Is that
23 your --

24 A. That looks like one of them, yes, ma'am. I
25 know, I know, because he's not -- he never finished

1 school, ma'am. He barely can read some and writes
2 sloppy. And so either me or my sisters is always
3 helping him out with that stuff.

4 Q. Did you ever review any insurance policies
5 with your dad?

6 A. No, ma'am.

7 Q. Did you ever look at any of his insurance
8 policies?

9 A. No, ma'am. The only time I seen his
10 insurance policies is when we were showing them to the
11 lawyers. That's the only time I ever seen it.

12 Q. After the accident?

13 A. Yeah. After the accident.

14 MS. CARTER: All right. I think that's all
15 the questions I have for you. I'm going to give
16 everybody else a chance.

17 THE WITNESS: Okay.

18 MR. MOSS: Any other questions? I don't
19 have any.

20 EXAMINATION

21 BY MR. MONTGOMERY, at 2:01 p.m.:

22 Q. I've got some. My name is Ryan Montgomery.
23 I represent Full Circle. What pharmacy do you use?

24 A. Walgreen's.

25 Q. I may jump around a bit, because I go next.

1 So if you don't know what I'm talking about, ask me.

2 Okay?

3 A. Uh-huh.

4 Q. The jobs at Full Circle, did you finish
5 those jobs, both of them?

6 A. Yes, sir. As far as I know that Dad -- I
7 know that when I got hurt, I told Dad that I quit, not
8 ever going to frame again. I'm tired of getting hurt.
9 I've got four kids. I'm not getting any younger. I
10 told Dad I quit. As far as I know, Dad sent my sister
11 to take those guys to go finish up, because it was
12 his -- one of his main concerns was to finish the job
13 for Full Circle.

14 Q. Have you been back to the job site at any
15 point to see whether it's done or not?

16 A. No, sir.

17 Q. So you don't know one way or the other?

18 A. No, sir. As much as I love building, I'm
19 tired of it. I'm tired of the accidents.

20 Q. What are you going to do now?

21 A. Well, I'm thinking about cooking. I'm a
22 real good cook.

23 Q. Do you have a nickname on the job site?

24 A. John Boy.

25 Q. John Boy? Do they ever call you Junior?

1 A. Junior or John Boy. Well, I know that from
2 Full Circle, he would call me Junior.

3 Q. And that's because your dad was on the job
4 site?

5 A. Yeah.

6 Q. The earlier injury to your foot, did you
7 file a Workers' Comp. claim for that?

8 A. No, sir. Didn't want to lose my work.

9 Q. Did you ever get any kind of impairment
10 rating or disability rating or anything?

11 A. No. I always paid that stuff with my cash
12 money, and that's probably why I also messed my ownself
13 up.

14 MR. MONTGOMERY: That's all.

15 MR. MOSS: Anything, Worth?

16 MR. LIIPFERT: Yeah. I've got just a
17 couple.

18 EXAMINATION

19 BY MR. LIIPFERT, at 2:02 p.m.:

20 Q. What did you meet with Matt about in his
21 office one day?

22 A. Dad decided to take me in there one day to
23 go talk to Matt about the jobs.

24 Q. Was that before you started on them?

25 A. I think it was right before we started,

1 yeah, right before we started, or I can't remember. I
2 can't quite remember. I know he took me in there,
3 because he's not real good with -- his speech slurs up
4 or something. Sometimes I've got to help him out with a
5 couple of stuff he has to say.

6 Q. Do you remember what you all discussed as
7 far as the jobs go?

8 A. Just about the work. I can't remember
9 exactly what, you know, but they were doing most of the
10 talking. The only time that he needed me is if there
11 was something that he couldn't say or something that he
12 couldn't.

13 MR. LIIPFERT: I got you. I think that's
14 all I've got for you.

15 FURTHER EXAMINATION

16 BY MS. CARTER, at 2:03 p.m.:

17 Q. I've just got one follow-up. The 1099 that
18 your dad gave you in 2011 reflected \$2,800 in income.
19 The records that we have from November 19 through
20 December 9, which I think were the only 2011 records, go
21 to 2,500.

22 Do you remember if there were -- were there
23 wages other than what's designated on here?

24 A. Can't quite recollect, ma'am. I can't
25 quite -- I know that him and -- him and his accountant

1 went over there, him and his accountant went over there
2 and they did all that stuff. I can't quite recollect,
3 ma'am.

4 Q. Do you remember if there was a break in
5 working between December the 9th and January? Did you
6 all take a break?

7 A. Yeah. Something -- I think it was that, it
8 was that, because of the Christmas. I know there was a
9 break somewhere in there. It was Christmas or
10 something, a week, or I can't remember. I can't quite
11 remember.

12 Q. Well, that's almost a month. The last
13 record we have from 2011 was through December 9, and
14 then it doesn't begin until January 7.

15 A. I know that the last couple of weeks that we
16 worked, I know we didn't get paid. I know I was working
17 for free the last couple of weeks, because Dad got drawn
18 out.

19 Q. So you may have been working that time
20 period, but not getting paid?

21 A. Not getting paid.

22 MS. CARTER: Got you. No further questions.

23 EXAMINATION

24 BY MR. MOSS, at 2:05 p.m.:

25 Q. Is it common that Latino contractors pay all

1 the employees at the bank?

2 A. Yes, sir. Common to pay it right outside
3 the bank with cash money, yes, sir.

4 Q. That's the common practice?

5 A. That's the common practice.

6 Q. The general -- or the boss man takes the
7 contract check from the contractor, and he goes to the
8 bank, and he pays everybody in cash?

9 A. Cash right outside the bank, yes, sir.

10 Q. And that's because a lot of people have a
11 problem with identification at the banks?

12 A. Identification and getting accounts, and
13 yeah.

14 MR. MOSS: Right. Opening accounts and so
15 forth. Okay. I have nothing further.

16 EXAMINATION

17 BY MR. MACLESKIE, at 2:05 p.m.:

18 Q. Only one thing I have is you mentioned
19 something in some questions that Ms. Carter asked you
20 about your medical treatment. And you correct me if I'm
21 wrong, but I think I heard you say that Dr. Stoddard
22 wants you to get a CAT scan, he wants you to go to
23 physical therapy, something about water tank therapy?

24 A. Uh-huh.

25 Q. He wants to get an MRI on your right

1 shoulder. And you testified that he's prescribed
2 medications for you, but what is the reason that you're
3 not pursuing this?

4 A. The what? The --

5 Q. The stuff that Stoddard wants you to do.

6 A. I don't have the money to pay for it.

7 MR. MACLESKIE: That's all I have. Thank
8 you.

9 MR. MOSS: I think that's it.

10 FURTHER EXAMINATION

11 BY MS. CARTER, at 2:06 p.m.:

12 Q. I've got a follow-up on that real quick.
13 You said he was weaning you off medication?

14 A. Oh, yeah. He weaned us off.

15 Q. So are you not taking medication because he
16 weaned you off, or are you not taking it because you
17 can't afford it?

18 A. One is because I can't afford it, the main
19 reason.

20 Q. Well, if you could afford it, would he be
21 giving you medication?

22 A. Well, I know that it was about three weeks
23 ago when he last prescribed me medication, but I
24 haven't, I haven't, I haven't taken -- I'm not taking
25 them, because he also told me that it was bad for my

1 liver. And, ma'am, all my years of life, ma'am, I don't
2 even like to take aspirins. I don't even like to take
3 Tylenol. So that's one of the reasons why I don't -- I
4 decided on myself that I was not going to take them
5 anymore.

6 MS. CARTER: Okay. Thank you.

7 FURTHER EXAMINATION

8 BY MR. MACLESKIE, at 2:07 p.m.:

9 Q. One other thing. Has Dr. Stoddard or any
10 other doctor given you any indication of how long you're
11 going to be disabled or when you're going to be able to
12 go back to work or what condition you're going to be in
13 when you're going back to work?

14 A. Well, he said that, he said that, until I
15 have a CAT scan, he can't tell what's going on with this
16 foot here.

17 MR. MACLESKIE: All right.

18 MR. MOSS: All right. That's it.

19 (The deposition concluded at 2:07 p.m.)

20

21

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25

C E R T I F I C A T E

1

2

3 STATE OF SOUTH CAROLINA)

4 COUNTY OF CHARLESTON)

5

6 I, Denise McCauley, Registered Professional
7 Reporter and Notary Public for the State of South
8 Carolina at Large, do hereby certify that the witness in
9 the foregoing deposition was by me duly sworn to testify
10 to the truth, the whole truth and nothing but the truth
11 in the within-entitled cause; that said deposition was
12 taken at the time and location therein stated; that the
13 testimony of the witness and all objections made at the
14 time of the examination were recorded stenographically
15 by me and were thereafter transcribed by computer-aided
16 transcription; that the foregoing is a full, complete
17 and true record of the testimony of the witness and of
18 all objections made at the time of the examination; and
19 that the witness was given an opportunity to read and
20 correct said deposition and to subscribe the same.

21 Should the signature of the witness not be
22 affixed to the deposition, the witness shall not have
23 availed himself of the opportunity to sign or the
24 signature has been waived.

25

I further certify that I am neither related to
nor counsel for any party to the cause pending or
interested in the events thereof.

18

Witness my hand, I have hereunto affixed my
official seal this 30th day of JUNE, 2012; at
Charleston, Charleston County, South Carolina.

19

20

21

22

23

24

Denise McCauley
RPR, IA-CSR, GA-CCR
My Commission expires
May 29, 2013

1 BEFORE THE SOUTH CAROLINA
2 WORKERS' COMPENSATION COMMISSION

3 DEPOSITION OF MATTHEW RYAN BADER

4 JUAN YSLAS, JR.,

5 Employee/Claimant,

6 vs.

WCC FILE NO. 1200329

7 FULL CIRCLE CONSTRUCTION CO.,

8 Employer,

9 and

10 AMERISURE MUTUAL INSURANCE,

11 Carrier/Defendants.

12 JUAN YSLAS, III,

13 Employee/Claimant,

14 vs.

WCC FILE NO. 1200235

15 JUAN YSLAS, JR., d/b/a JUAN
16 YSLAS CONSTRUCTION AND
17 FULL CIRCLE CONSTRUCTION CO.,

18 Employer,

19 and

20 KEY RISK MANAGEMENT SERVICES,
21 INC., AMERISURE MUTUAL INSURANCE,
22 and SC UNINSURED EMPLOYERS' FUND,

23 Carrier/Defendants.

24 DEPONENT: MATTHEW RYAN BADER

25 DATE: JUNE 12, 2012

 TIME: 12:30 P.M.

 LOCATION: MOSS, KUHN & FLEMING, P.A.

 1501 North Street

 Beaufort, South Carolina 29901-0507

 REPORTED BY: DENISE MCCAULEY, RPR, IA-CSR, GA-CCR

 CAROLINA REALTIME, LLC

 P.O. Box 80397

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

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2

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4 FUND:

5

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6

BY: WORTH LIIPFERT, III, ESQ.

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1 Q. I got you. You work with them to design the
2 plans?

3 A. Yeah. I give them input. I send them to
4 the architect. I help them through selections, you
5 know. They bounce questions off of me, but I don't
6 physically draw the plans.

7 Q. I got you. Now, how many subs do you all
8 usually hire when you're building a house? How many do
9 you use?

10 A. Anywhere on average house, 16 to 22. It
11 could be more or less depending on the scope of work
12 perhaps.

13 Q. And that would be, obviously, for roughing
14 in, electrical, plumbing?

15 A. Yes. We're not licensed to do any of that
16 work, so we have to hire it out.

17 Q. You hire licensed people?

18 A. Yes, sir.

19 Q. Now, let's talk about the second house. I
20 believe that was on -- I want to make sure -- 181, Lot
21 181?

22 A. Yes.

23 Q. Tell me about that house. How did it come
24 that Juan Yslas, Jr., got that contract or that
25 agreement?

1 A. Well, both the younger son -- the middle son
2 and the father came into my office one day and said that
3 they needed to change their insurance, that the father
4 would be -- or the son. I'm -- I really don't know --

5 Q. Right.

6 A. -- who was who. There's a lot of them.

7 Q. Yeah.

8 A. They came in in a panic and said they needed
9 to change the insurance and who the checks would be
10 written to.

11 Q. Okay. Needed to change the insurance and
12 who the checks would be written to for the completion of
13 work?

14 A. Yeah. Because we have to -- you know, I
15 prequalify all the subcontractors. They have to have a
16 W-9, and they have to have insurance certificates before
17 they can do my work.

18 Q. Okay. Now, by insurance certificates,
19 you're talking about liability insurance as well as
20 Workers' Comp.?

21 A. And automobile if they have it, yes.

22 Q. And auto if that's involved?

23 A. Uh-huh.

24 Q. Okay. So, basically, what he was telling
25 you is he wanted the checks made payable to him instead

1 Q. In any event, she didn't tell you they
2 weren't approved or they weren't able to do it or didn't
3 have the right insurance?

4 A. She won't write a check and I won't sign it
5 unless it's all been checked off.

6 Q. And she would have a record of all of this,
7 I would assume; is that correct?

8 A. Sure. We use Timberline Accounting
9 Software. We have records of all of the subcontractors,
10 hard copies --

11 Q. Right.

12 A. -- scanned copies inputted into the system,
13 and there's checks and balances involved.

14 Q. Now, do you recall, do you recall the day of
15 the injury that he was injured on the job?

16 A. Craig Whitley, who works with me, called me
17 and told me that there was an injury, and I told him to
18 document everything.

19 Q. And I assume he did document it?

20 A. I'm sure he did.

21 Q. And as I understand it, they were apparently
22 passing trusses up and the trusses apparently gave way
23 and they fell?

24 A. I believe one person fell, from what Craig
25 told me, and the other person grabbed onto the other

1 person and pulled the other one down.

2 Q. Pulled them down?

3 A. Yes.

4 Q. And was Greg (sic) there when it happened,
5 or did he just come there after it happened?

6 A. It's Craig, C-R-A-I-G.

7 Q. Craig. Excuse me. Oh, C-R-A-I-G?

8 A. Uh-huh.

9 Q. I'm sorry.

10 A. That's okay. I'm not -- I don't know the
11 answer to that.

12 Q. But there's no question they were injured on
13 the job? I mean, that's pretty well given?

14 A. I believe they were injured on Lot 181.

15 Q. Yes. Did you know how they got to the
16 hospital or whether somebody had taken them, or was
17 Craig in charge of that?

18 A. I don't know how they got there, but the
19 other guy right before me told me -- I mean, I overheard
20 him saying he drove them, but I don't -- prior to
21 that --

22 Q. Other than that --

23 A. Prior to that, I did not know how they got
24 there, no.

25 MR. MOSS: I don't think I have anything

1 A. Not with them, no.

2 Q. Did you have any knowledge as to whether
3 Juan Yslas, Jr., was included or excluded in his
4 coverage as an owner of the business?

5 A. No. I did not know. I do not know.

6 Q. Is that something that your financial
7 person, Katrina, would typically check on?

8 A. No. She enters the policy numbers, the
9 amount of the insurance, and the dates into our computer
10 software. She does not know who owns, operates,
11 excludes themselves from any insurance issues.

12 Q. And did you visit them in the hospital?

13 A. No.

14 Q. Have you had any contact with them since the
15 accident?

16 A. No.

17 Q. Did they finish that Job 181?

18 A. No.

19 Q. What happened with that?

20 A. I hired another contractor to finish it, and
21 I had to hire another contractor to finish Lot 149,
22 because they didn't do it either.

23 Q. So Lot 149 still wasn't finished as of the
24 date of the accident?

25 A. That's correct.

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200235

JUAN YSLAS, III,
Employee/Claimant,

vs.

JUAN YSLAS, JR., D/B/A JUAN YSLAS CONSTRUCTION,
Employer,

and

KEY RISK MANAGEMENT SERVICES, INC.,
Carrier/Defendants.

COPY

JUAN YSLAS, JR.,
Employee/Claimant,

vs.

JUAN YSLAS, JR., D/B/A JUAN YSLAS CONSTRUCTION AND FULL
CIRCLE CONSTRUCTION,
Employers,

and

KEY RISK MANAGEMENT SERVICES, INC., AMERISURE MUTUAL
INSURANCE AND SC UNINSURED EMPLOYERS' FUND,
Carrier/Defendants.

DEPONENT: LETVY JACQUELYN FERNANDEZ

DATE: June 26, 2012

TIME: 12:25 PM

LOCATION: MOSS, KUHN & FLEMING, P.A.
P.O. Drawer 507
1501 North Street
Beaufort, SC 29901-0507

REPORTED BY: NANCY ENNIS TIERNEY, CSR, (IL)
CAROLINA REALTIME LLC

000379

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1 LETVY JACQUELYN FERNANDEZ, having been first
2 duly sworn, testified as hereinafter set forth.

3 EXAMINATION

4 BY MS. CARTER:

5 Q. Ms. Fernandez, my name is Allison Carter. We met
6 right before your deposition, and I represent Riverport
7 Insurance Company in two different cases.

8 One is filed by Juan Yslas, Jr., and one is
9 filed by Juan Yslas, III, and your deposition is being
10 taken in both of those cases.

11 We have the attorneys sitting here today,
12 and we also have Ryan Montgomery on the phone as well,
13 okay?

14 A. Okay.

15 Q. And I know you have probably never had your
16 deposition taken before?

17 A. No.

18 Q. I want to explain a couple of things to you. The
19 court reporter is taking down everything that you say,
20 and she is going to provide it later to us in a booklet
21 form with questions and answers. So, for that reason, I
22 am going to always ask you to give me verbal answers to
23 my questions, okay?

24 And you are a little soft-spoken. She is
25 typing it in and she is recording it, so if you don't

1 mind speaking up. And, also, Ryan needs to hear your
2 answers as well.

3 A. Okay.

4 Q. If you answer my question, I'm going to assume
5 you understood it, okay?

6 A. Okay.

7 Q. If you don't understand it for any reason, just
8 ask me to repeat or rephrase it and I will be happy to
9 do that, all right?

10 A. Okay.

11 Q. What is your full name?

12 A. Letvy Jacquelyn Fernandez.

13 Q. And where do you currently reside?

14 A. 19 Doe Drive, Beaufort, South Carolina, 29907.

15 Q. And how long have you lived in Beaufort?

16 A. Since 3rd grade.

17 Q. How old are you now?

18 A. 22.

19 Q. And where are you employed?

20 A. Peoples Choice Insurance.

21 Q. And how long have you been employed there?

22 A. Since 2007.

23 Q. And what is your job there?

24 A. I am an agent.

25 Q. How many agents are there there?

000383

1 A. Currently, two.

2 Q. Who is the other agent there?

3 A. Les, the owner.

4 Q. Is that Les Goude?

5 A. Yes.

6 Q. G-o-u-d-e?

7 A. Yes.

8 Q. And so he's the owner of Peoples Choice?

9 A. Yes.

10 Q. And are you Spanish speaking as well?

11 A. Yes.

12 Q. So you are fluent in English and Spanish?

13 A. More -- Spanish I'm okay with. I'm not great,
14 but I'm okay.

15 Q. And how about Les? Is he fluent in Spanish?

16 A. No.

17 Q. He doesn't speak Spanish?

18 A. No.

19 Q. And what are your job duties as an agent there?

20 A. I run quotes. Well, I also, you know, pick up
21 phone calls, I run quotes, I do endorsements, take
22 payments, walk-ins.

23 Q. And do you issue applications for insurance
24 policies?

25 A. Yes.

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1 Q. And so what is your part in that procedure? What
2 typically happens?

3 A. Normally I will take the information for a quote,
4 I will run the quote, show them the price. And then if
5 they like it, we will sell the policy, and then they
6 will sign the policy in front of me, and then I will
7 sign, if I'm the agent, I will sign on it.

8 Q. And do you go over the application with them?

9 A. Yes.

10 Q. And do you do workers' compensation applications?

11 A. Yes.

12 Q. Do you do those through the assigned risk plan?

13 A. Through NCCI?

14 Q. Yes.

15 A. Yes.

16 Q. Is that the only place you ever get workers'
17 comp, or do you get it other places, too?

18 A. Yes. We have First Comp, we have Appalachian
19 Underwriters and NCCI. I think it's those three.

20 Q. And when you send an application to NCCI, do you
21 know which insurance company is going to get that
22 policy?

23 A. No. We always wait until we get a fax back. We
24 do everything via fax, not e-mail.

25 Q. Do you do anything on-line?

1 A. Just the quoting, when we put in the information.

2 Q. Do you remember Mr. Yslas?

3 A. Yes.

4 Q. And did you know him outside of --

5 A. Oh, no. They have auto with us, and his daughter
6 does, too.

7 Q. What is his daughter's name, do you know?

8 A. He has Marissa Lyons and he has a Cindy Garcia.

9 Q. And how long has he been doing business with
10 Peoples Choice?

11 A. I'm not sure. It was when they first -- when
12 they first came in it was just to get auto for Marissa
13 and for Cindy, but that was maybe two years, two years
14 or a year.

15 Q. So Peoples Choice issues all kinds of insurance?

16 A. Yes.

17 Q. And so what do you remember about Mr. Yslas and
18 the workers' compensation insurance?

19 A. He came in to get a quote. But when I was doing
20 the NCCI and checked for prior audits or anything, he
21 had an audit that he never completed, and so I told him
22 I can't issue anything until he completes the audit.

23 And I had the company fax it to me. It was
24 a paper audit. Either fax it to me or mail it to me.
25 Somehow I got the audit paper, and I filled it out in

1 the office with him. And I brought the copy just in
2 case, if you need it.

3 Q. Okay.

4 A. Where, you know, he put he had no employees
5 and -- it was from the 2010 to '11 term, I think. Yeah,
6 July 21st, 2010 to 2011.

7 Q. And what we will do is, if you don't mind, make a
8 copy of this, and we can make this an exhibit to your
9 deposition.

10 So this is dated -- this is from The
11 Hartford, and it was for a policy from July 21st, 2010
12 through July 21st of 2011, and it looks like they were
13 requesting audit information?

14 A. Yes, because when I was doing the quote through
15 NCCI, since he had an audit that he never did, I
16 couldn't sell him the policy.

17 Q. And what is the fax number on the top? Is that
18 you-all's fax number?

19 A. No. They must have faxed me the audit
20 information, and then we filled it out in my office and
21 then I faxed it back to them.

22 Q. And this fax number on the top -- I mean the fax
23 date on the top here is November 14th of 2011. Do you
24 think that is when you received it?

25 A. Yeah.

1 MR. MACLOSKIE: Allison, let me interrupt
2 you real quick. Would it make it easier --

3 MS. CARTER: To go ahead and make a copy?

4 MR. MACLOSKIE: -- to just go ahead and make
5 copies right now and then everybody --

6 MS. CARTER: Sure.

7 MR. MACLOSKIE: Can we take just a little
8 break?

9 Q. Did you have anything else?

10 A. Well, just -- I think you guys already have a
11 copy of this. It's the paperwork he signed that his
12 son --

13 MR. MACLOSKIE: Yes.

14 MS. CARTER: All right. We will go off the
15 record for a second. Let's get a copy of that.

16 (Brief pause.)

17 (Defendants' Exhibit No. 2 was marked for
18 identification.)

19 Q. Ms. Fernandez, we have made some documents that
20 you brought with you to the deposition Exhibit 2,
21 because we are also using in your deposition Exhibit 1
22 from Cheryl Perkins' deposition.

23 Before you got to the documents on
24 Exhibit 2, had you already done the application for the
25 workers' compensation or had one been done --

1 A. No. I had already typed in like the agency code,
2 the license number code, his information, his address.
3 And then when it goes almost to the last screen before
4 the payment screen, it checks their history to make sure
5 there is no money owed, no audit or anything. That is
6 when I pulled it up and I couldn't go any further.

7 And it had the phone number to contact the
8 company that the audit was still opened for, and I
9 called them and they faxed me the audit information.

10 Q. So if you look on Page 5 of Exhibit 1, that
11 packet of documents, I am just trying to figure out is
12 that the application you are talking about, or was there
13 one before that?

14 A. No. It's this one. It just wasn't printed out.
15 It was all on the screen.

16 Q. So would it have been before November 21st of
17 2011?

18 A. What, the audit?

19 Q. Well, when you first did the application?

20 A. Yeah, because they faxed this to me the 14th, so
21 I started running the quote probably either the 14th or
22 before the 14th.

23 Q. So then we can get to Exhibit 2. That is
24 information that The Hartford sent you?

25 A. Yes.

1 Q. And what did they indicate to you needed to be
2 done?

3 A. He just needed to complete the audit so that they
4 could, I guess, close it, so he could get another
5 workers' comp policy.

6 Q. So what did you do with him to --

7 A. Oh, he was in the office. I just filled it out
8 for him, like what type of business he does, if he had
9 any employees during that term, which he said he didn't
10 and it was just him.

11 And then he brought me -- I am pretty sure
12 he brought me a copy of his taxes. Yeah, Schedule C.

13 Q. When you are talking about that term, so this
14 would be asking if he had any employees from July 21st
15 of 2010 through July 21st of 2011?

16 A. Yes.

17 Q. And he indicated to you that he did not have any
18 employees during that time period?

19 A. Correct.

20 Q. And so like on the third page of that exhibit
21 there is some -- it says tell us about your employees,
22 and there is some not applicable. Is that your
23 handwriting on there?

24 A. Yes.

25 Q. Meaning he didn't have any?

1 A. Right.

2 Q. And then on the next page, tell us about your
3 non-employee labor, and you basically wrote not
4 applicable the whole way through there as well?

5 A. Yes.

6 Q. And then on -- what page is this -- the fifth
7 page it says send us your supporting documentation, and
8 there is a signature there. Whose signature is that?

9 A. My signature, because I was the one that filled
10 out the pages, so I went ahead and signed it.

11 Q. And then the last two pages are a Schedule C from
12 his 2010 taxes?

13 A. Yes.

14 Q. Did he provide that to you?

15 A. Yes.

16 Q. So you took all of that information and then you
17 faxed it back to The Hartford?

18 A. Yes, and then we had to wait for the audit to
19 clear to continue through the NCCI application process.

20 And it also -- that was one of the errors,
21 and the other error was his son, whether he was
22 affiliated with that business or if his son had anything
23 to do with the business, and I was told that he had to
24 have something in writing and signed and dated.

25 Q. Before we get to that let's go to Page 5. I am

1 going to ask you to look at Page 5 and at Page 20. They
2 appear to be the same document, one signed and one not
3 signed, so I wanted to ask you about that. It's Page 5
4 through Page 11, the copy of the application.

5 A. Yes.

6 Q. That is the typical application that you send in
7 to NCCI?

8 A. Yes.

9 Q. Is that the application you send to other
10 carriers or just NCCI?

11 A. Well, I just type all the information into the
12 computer, and then this is what prints out with
13 everything that I already typed. I want to say they all
14 use the same format because they are all ACORD forms.

15 Q. Would you typically try to get somebody insurance
16 not through NCCI first?

17 A. Yes.

18 Q. And what is the purpose of that?

19 A. On NCCI, the last question, it asks if they were
20 rejected coverage through another company. When I can't
21 find a rate -- like Appalachian, I am going to say, oh,
22 we don't have no one available for that class code with
23 that much payroll. And then -- so if I can't do it with
24 someone else, then I will go to NCCI.

25 Q. Why would it be better to get it not through

1 NCCI? Are the rates better?

2 A. Yeah. Like with people with employees, NCCI is
3 not a good option. It would be like First Comp or
4 Appalachian.

5 Q. Is it because NCCI is more expensive?

6 A. Yes.

7 Q. And so you would fill out the same application
8 whether it was going through NCCI or you were trying to
9 get it through First Comp or Appalachian, is that right?

10 A. It would print out on the same form.

11 Q. And is that the first thing you would do, is take
12 down all of this information?

13 A. Yes.

14 Q. And so if you look at Page 20, what is the
15 difference between Pages 5 through 11 and Pages 20
16 through 26?

17 A. Just the signatures.

18 Q. And do you send the application in on-line first?

19 A. No. After we submit it -- well, after payment
20 has been submitted, then it will print the application
21 out, and then the insured signs it, and Les will sign it
22 and then I fax it in to the company.

23 Q. So I guess we will look at Page 20 then since
24 that is the signed one.

25 A. Uh-huh.

1 Q. And tell me, what is your process in filling out
2 this information? What do you do?

3 A. No, it's already filled out.

4 Q. Well, how do you know what to put in the
5 information?

6 A. It's in the quoting screen. Like it will say
7 what is the insured's name and then I type it in. All
8 of this is typed in during the quoting process. After I
9 submit the payment, it just prints out everything that I
10 already typed.

11 Q. Is there another document showing what you typed
12 first for the quoting process?

13 A. On the payment screen, right before you put the
14 check information, it will show his name and the
15 premium. But I don't see the application until after
16 the payment has been submitted, and then it will print
17 out the application.

18 Q. On Page 20, when you get down to the section for
19 individuals included/excluded, how do you know what to
20 put in that section?

21 A. Oh, we ask them.

22 Q. That is what I'm asking.

23 A. We get their name, their date of birth, their
24 address. As I'm going through the application I am
25 asking him the questions and I'm typing it in.

1 Q. Okay. So you would have like something -- the
2 questions that are on Page 20 on a computer screen?

3 A. Yes.

4 Q. And then later it would fill that information in
5 for you?

6 A. Yes, and it will print it out for me.

7 Q. And are you actually the one typing in the
8 information?

9 A. Yes.

10 Q. And was Mr. Yslas there with you?

11 A. Yes.

12 Q. So when you get to the individuals
13 included/excluded, what is your typical -- do you have
14 something typically that you say, or do you remember
15 what you talked to Mr. Yslas about?

16 A. Well, first we ask do you have any employees, yes
17 or no. And then, will it just be you, is it a sole
18 proprietor or partnership or anything. Then we ask them
19 do you want to be included or excluded.

20 Typically we get what is the difference?

21 And then we tell them included, if anything were to
22 happen you would be covered. Excluded is just basically
23 a ghost policy. If anything were to happen to you, you
24 are not covered, but you could get a certificate made
25 showing that you do have a workers' comp policy.

1 Q. And do you go over the difference in premium if
2 they are included or excluded?

3 A. Yes. I normally -- when they normally ask how
4 much is the excluded, I tell them \$750. And then when
5 they ask how much is the included, I say I have to run a
6 quote to see -- because different -- I don't know the
7 price for included. That varies depending on the
8 payroll.

9 Q. And do you remember what happened with Mr. Yslas
10 with that discussion?

11 A. No. He didn't ask me to run the quote, because I
12 checked the file to see if I had a price written down
13 with him included, and I didn't, so I never ran a quote
14 with him included, or I was never asked to run a quote
15 with him included.

16 Q. So before you came to the deposition you are
17 saying you looked through your file to see if there was
18 a quote for what the premium would be if he was included
19 in coverage?

20 A. Yes.

21 Q. And that would be typically done if they were
22 asking how much that would be?

23 A. Yes.

24 Q. Do you remember whether Mr. Yslas told you he
25 wanted to be included or excluded in coverage?

1 A. No, he just -- because I didn't run a quote for
2 included, so he just must have wanted the \$750 policy.

3 Q. And did you designate that on the application?
4 Is that designated on the application?

5 A. Yes, because I put him on there as excluded.

6 Q. Is there any -- do you remember any conversation
7 with him where he may have asked you that he wanted to
8 be included in coverage?

9 A. No. Well, normally they all usually say I will
10 get excluded now and maybe later I will get included,
11 but they never do it.

12 Q. And in the policies that you do through NCCI, are
13 most of them \$750 ghost policies?

14 A. Yes.

15 Q. For construction work, mainly?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes, painting or construction, yes.

19 Q. So do you remember specifically what Mr. Yslas
20 said to you?

21 A. I just know that he was in a rush, because I
22 guess he was going to do a big job. Because I remember
23 when I told him I couldn't because of the audit, I told
24 him I have to wait until it's cleared and everything.

25 And he kept calling every day to see if it had cleared

1 or not.

2 Q. Would there have been any reason for you not to
3 go over with him whether he should be included or
4 excluded?

5 MR. MOSS: Objection to the form of the
6 question.

7 A. No.

8 Q. Do you ever do an application where you don't go
9 over that with someone?

10 A. No.

11 Q. And on Page 21, what is that section about?

12 A. Oh, what type of business he does. Because we
13 have to put the class code, and then it just explains
14 what the class code duties are.

15 Q. And does it indicate if he has any employees?

16 A. Yes.

17 Q. And what does that indicate?

18 A. Zero employees.

19 Q. And did it indicate he had any -- that he paid
20 anybody anything?

21 A. No, zero.

22 Q. And would you have had any information other than
23 from Mr. Yslas to fill that out?

24 A. No, just from him.

25 Q. So do you know what date this application was

1 filled out on?

2 A. No. It had to have been prior to the issue date
3 because of the audit. Because I found out that he had
4 to do an audit, and they faxed it to me the 14th of
5 November. So I typed everything in either on the 14th
6 or before the 14th.

7 Q. And so do you know why the application has the
8 date November 21st, 2011 on it?

9 A. That was after the audit was cleared. That is
10 the day that we actually uploaded the payment. And his
11 audit was clear, so we could actually submit the policy.

12 Q. And on Page 23 there is a signature at the bottom
13 of that?

14 A. Yes.

15 Q. Whose signature is that?

16 A. Juan and Les's.

17 Q. And why do you have Mr. Yslas sign it?

18 A. He's the one applying for the policy.

19 Q. And it has a date on it. Do you know what date
20 he signed it?

21 A. 11-21-11.

22 Q. So does that mean he would have come in and
23 signed it on that date?

24 A. Yes, because that is the same day he made the
25 payment.

1 Q. Do you remember if you asked him if anything had
2 changed or if everything was the same?

3 A. No.

4 Q. Did he indicate to you that anything had changed?

5 MR. MOSS: Objection.

6 A. No.

7 Q. Would you have changed the application if he had
8 indicated to you anything had changed?

9 A. Yes.

10 Q. And then there is another signature on Page 26.
11 What are those signatures for?

12 A. It's always two signature pages.

13 Q. And is that Mr. Yslas' signature?

14 A. Yes.

15 Q. And then on the bottom right-hand corner is whose
16 signature?

17 A. Les.

18 Q. Does Les sign all of the applications?

19 A. Yes.

20 Q. Do you have to be an agent of record or something
21 to do that?

22 A. Yes.

23 Q. Is there any reason why you don't sign them?

24 A. Yeah, because it uses his -- the agency Federal
25 ID number and his license number.

1 Q. And as you alluded to before, at some point you
2 got some questions from NCCI, is that correct?

3 A. Yes.

4 Q. So what do you remember? How did that happen?

5 A. When it does the history, the background check,
6 that is when it pulled up his audit and it pulled up his
7 son's business information.

8 And he said that his son's business and him
9 are completely different, have nothing to do with each
10 other, and that they don't -- he doesn't work with him.

11 And so they said that we had to have
12 something in writing, and so he went ahead and signed
13 the form and I faxed it in and they said that was fine.

14 Q. And the letter that was sent to NCCI, which I
15 think is Page 35 of this packet, who typed up that
16 letter?

17 A. I did.

18 Q. And was Mr. Yslas there when you typed it up?

19 A. Yes.

20 Q. Did he provide you that information?

21 A. Yes.

22 Q. And did he sign it?

23 A. Yes. I read it to him and he signed it.

24 Q. Now, you said earlier that he told you that his
25 son did not work for him?

1 A. Right.

2 Q. Was that when this application process was going
3 on?

4 A. Yes. It was when they pulled the whole thing
5 about his son's business. He said, no, no, my son has
6 nothing to do with it.

7 Q. So that would have been either November 22nd or
8 November 23rd?

9 A. Yes.

10 Q. Did he say his son doesn't work for him, or did
11 he say he doesn't have anything to do with my business?
12 I'm just trying to remember what --

13 A. No, both.

14 Q. So he specifically said his son did not work for
15 him?

16 A. Yes.

17 Q. And so then the application goes through?

18 A. Yes.

19 Q. And what happens from there?

20 A. After the payment has been submitted, I print out
21 the application. He signs and then Les will sign. And
22 then anything that I need to fax -- well, I fax the
23 application in, and then they will fax me something back
24 saying we need certain documents. And that is when this
25 would be faxed and anything else that needs to be faxed.

1 Q. And "this" being the letter on Page 35?

2 A. Yes.

3 Q. And did he receive insurance through NCCI, as far
4 as you know?

5 A. They did the policy -- the quote go through?

6 Q. Yes.

7 A. Yes.

8 Q. And do you know who the policy was with?

9 A. Riverport.

10 Q. And does Peoples Choice agency have any
11 affiliation with Riverport?

12 A. No. Well, when we do a quote through NCCI, we
13 never know what company is going -- they are going to
14 end up getting.

15 Q. So you are not an agent for Riverport?

16 A. No.

17 Q. And by "you", I meant Peoples Choice.

18 A. Yes.

19 Q. Peoples Choice is not an agent of Riverport?

20 A. No.

21 Q. And did you receive any further request to
22 provide any information to either NCCI or Riverport
23 after that?

24 A. No. It was just that letter.

25 Q. And on Page 54 of that packet of exhibits, that

1 last page, there is a certificate of insurance. Do you
2 recognize that?

3 A. Yes.

4 Q. And do you know who that was issued by?

5 A. Tyler.

6 Q. And who is Tyler?

7 A. Tyler Bodkins. Sorry. He's an agent. Well,
8 right now he's in Florence, but he was an agent back
9 then. And his computer is a computer where we generate
10 certificates.

11 So the insured called, and he gave me the
12 information for Full Circle, and then I gave that to
13 Tyler, and then he types up the certificate and then we
14 fax it in.

15 Q. And what is Tyler's last name?

16 A. Bodkins.

17 Q. So Tyler works for Peoples Choice?

18 A. Well, right now he doesn't, but he did.

19 Q. So do you know what date it was issued? It looks
20 like November 28th of 2011.

21 A. Yes.

22 Q. On November 28th of 2011, Tyler worked for
23 Peoples Choice?

24 A. Yes.

25 Q. But are you the one that would have put in the

1 information?

2 A. No. I normally write it down, and whoever is
3 sitting at the computer will type it up.

4 Q. But was this certificate of insurance issued by
5 Peoples Choice Insurance Agency?

6 A. Yes.

7 Q. And who was it issued to?

8 A. Full Circle Construction Company.

9 Q. And we noted that the -- under Section B is where
10 the workers' compensation is designated?

11 A. Yes.

12 Q. And the number there appears to be the binder
13 number and not the policy number?

14 A. Yes.

15 Q. Do you know why that would be?

16 A. We didn't receive the policy in the mail yet.

17 Q. Does Peoples Choice typically receive a copy of
18 the policy?

19 A. Yes, in the mail. Sometimes we will receive the
20 insured's copy and the agent copy, and then we will
21 forward the insured's copy to them.

22 Q. Did you look in this file to see whether you had
23 received a copy of the policy?

24 A. Yes, we do. We have one.

25 Q. Do you know whether you received the insured's or

1 whether he received it directly?

2 A. I'm not sure.

3 Q. And this document that is on Page 54 is not on a
4 standard ACORD form. Do you know why that is?

5 A. Normally, when we get a policy we will get blank
6 certificates. So we have one already scanned in our
7 computer and it's saved on there.

8 Q. And under the workers' compensation section, on
9 the standard ACORD form there has been a section added
10 that asks whether a sole proprietor, partner or officer
11 has been excluded or included in coverage.

12 Do you know --

13 A. Oh, not on this one?

14 Q. It's not on this one.

15 A. Oh, okay.

16 Q. Have you seen it on the other one?

17 A. No.

18 Q. Do you have any idea why it's not on the
19 certificate that you-all issued on November 28th?

20 A. No. All the ones we issue is in this same
21 format. It's just the one we have always had saved on
22 the computer.

23 Q. Have you ever seen one that had a section under
24 the workers' comp asking whether or not the partner,
25 officer has been excluded from coverage?

1 A. No.

2 Q. Did you provide any information to NCCI or
3 Riverport showing that Mr. Yslas, Juan Yslas, Jr.,
4 wanted to be included in coverage?

5 A. No.

6 Q. Do you remember any information he ever provided
7 to you that he did want to be included in coverage?

8 A. No.

9 MS. CARTER: That's all the questions I
10 have.

11 MR. MONTGOMERY: Do you want me to go next
12 again?

13 MR. MOSS: Sure.

14 EXAMINATION

15 BY MR. MONTGOMERY:

16 Q. Ms. Fernandez, my name is Ryan Montgomery. I
17 represent Full Circle Construction in this workers'
18 compensation case, okay?

19 A. Okay.

20 Q. If for any reason you can't hear me, just yell at
21 me and I will repeat it, okay?

22 A. Okay.

23 Q. On Page 54 that you were just being asked
24 about --

25 A. Okay.

1 Q. -- is this document the normal document that
2 Peoples Choice uses?

3 A. As a certificate, yes.

4 Q. Correct. Is it kept in the ordinary and normal
5 course of business with Peoples Insurance?

6 A. Yes, Peoples Choice.

7 Q. The information that is provided on this, do you
8 recall whether you provided it to Tyler?

9 A. Yes.

10 Q. Under the policy number section, it appears to be
11 one digit off, and it would be the third digit, a number
12 1, but the actual policy number is a number 2.

13 Do you know any reason that that would be
14 different than the actual policy number?

15 A. We normally type in the binder number that we get
16 faxed in.

17 Q. Right. Let me rephrase that. The binder number
18 is actually 3927995, where this certificate has 3917995.

19 Would that be a typographical error? Would
20 it be some other reason that it's a 1 instead of a 2?

21 A. No. I guess it was a typo.

22 Q. And as far as the other information under the
23 workers' comp section, effective date, expiration date,
24 policy limits, are those all accurate as far as you
25 know?

1 A. Yes.

2 Q. And Tyler, you said he was an agent or an
3 employee of Peoples Choice?

4 A. Yes.

5 Q. And was this, if you recall, was this certificate
6 sent to Full Circle at the request of anyone?

7 A. Yes, Juan Yslas.

8 Q. Jr.? Mr. Yslas, Jr.?

9 A. Yeah -- no. I think he called me, and then he
10 put his daughter, Cindy, on the phone and she read the
11 information to me.

12 Q. And the information that was read to you, what
13 was that?

14 A. Just the name of the company and the address and
15 the fax number.

16 Q. What is your fax number at Peoples Choice?

17 A. 843-522-1503.

18 Q. And does this look like the certificate you would
19 have sent to -- strike that.

20 Were you the one that actually faxed it to
21 Full Circle?

22 A. No. Whoever types it up faxes it.

23 Q. So Tyler would have faxed this?

24 A. Yes.

25 Q. Since he is the one that signed it?

1 A. Yes.

2 Q. Do you know if when you send a fax it indicates
3 your fax number across the top or not?

4 A. I'm not sure.

5 Q. I mean, I am looking at Exhibit 54 and it's not
6 on there. Would you agree with that, a fax number?

7 A. No, it's not on there.

8 Q. Do you recall whether you have ever seen that on
9 any of your faxes before?

10 A. No, because we never see what the other person
11 receives.

12 Q. Now, when you were communicating with Mr. Yslas,
13 were you communicating with him in Spanish or English?

14 A. No. He likes to speak English. I mean, every
15 now and then he will do some Spanglish, but he likes to
16 do English.

17 Q. Who is she?

18 A. No, he.

19 Q. He. And so when you are explaining the policy
20 and the exclusion and inclusion, are you doing that in
21 Spanish, English or Spanglish?

22 A. English.

23 Q. Did he have any questions of you, if you recall,
24 when you got to the inclusion and exclusion section,
25 meaning I don't understand that, could you explain it

1 further, what does that mean, all of that stuff?

2 A. Okay. Normally, when they come in to get a quote
3 we ask them if they are going to have any employees and
4 then if they want to be covered or not.

5 Q. Now, you indicated earlier that Mr. Yslas was in
6 a rush and you remember him calling you repeatedly?

7 A. Yes. After -- we already filled out the audit
8 information. We had to wait for it to clear to bind the
9 quote that I was doing. So he was calling just about
10 every day to see if it had cleared already so he could
11 hurry up and get his policy in force.

12 Q. If you had run quotes for included coverage,
13 would that have delayed this policy? Meaning, would it
14 have taken time to get those quotes back from various
15 carriers?

16 A. Yes.

17 Q. Was the excluded version a quicker version?

18 A. Well, I mean, it still would have took time if I
19 would have done it included, because he still would have
20 had the audit outstanding.

21 Q. Well, once the audit is cleared up, and that is
22 what I'm trying to get at, which is the quicker route to
23 go, excluded or included?

24 A. Excluded.

25 Q. Did he ever come back in after he completed his

1 application and either request to be included or
2 identify any employees to be included on payroll?

3 A. No.

4 Q. I'm sorry?

5 A. No.

6 Q. The documents that we have referred to throughout
7 this deposition as exhibits that you have been provided,
8 the ones that are either generated by you or that you
9 have in your file, are those kept in the ordinary and
10 normal course of business with Peoples Choice?

11 A. Yes.

12 Q. I don't have any other questions. Thank you.

13 A. You're welcome.

14 MR. LIIPFERT: I don't have any questions.

15 EXAMINATION

16 BY MR. MOSS:

17 Q. I have some questions. On this Page 54 I'm
18 referring to -- what is Tyler's last name you said?

19 A. Bodkins.

20 Q. Odkins?

21 A. B-o-d-k-i-n-s.

22 Q. And you say he's in Florence now?

23 A. Yes.

24 Q. Why is -- I mean, if he's an agent for Full
25 Circle --

1 MR. MONTGOMERY: Objection.

2 A. No. He's an agent for Peoples Choice.

3 Q. He was an agent for Peoples Choice?

4 A. Yes.

5 Q. Okay. Well, that is what confused me. I thought
6 you said he was the agent for Full Circle.

7 A. No.

8 Q. So he was the agent for Peoples Choice at the
9 time this was signed?

10 A. Yes.

11 Q. I notice on here that they issued a general
12 liability policy, is that correct?

13 A. Yes.

14 Q. And that was \$200,000.

15 A. Yes. That is the normal -- the minimum, the
16 State minimum.

17 Q. What does that cover?

18 A. Any damage that he does to the property that he's
19 working on.

20 Q. Well, suppose he injured somebody on the
21 property. Would it cover him if he injured somebody?

22 A. I'm not sure.

23 Q. You don't know?

24 A. No.

25 Q. In any event, go through those -- I can't see

1 mine very clearly -- if you could, on that Page 54.

2 What is the first line?

3 A. It says general aggregate.

4 Q. And what is the second line?

5 A. Products completed, I'm pretty sure.

6 Q. And the third line?

7 A. Terrorism. Is it terrorism?

8 MS. CARTER: Personal --

9 A. Oh, yeah, personal, ADV, injury.

10 Q. That is if somebody is injured by him, that he's
11 covered to \$100,000?

12 A. I'm not sure. I don't --

13 Q. And what is the next, if you can read it? Fire?

14 A. No. Fire is the one after that. I can't read
15 it. I mean, I could look at it at the screen at work
16 and call you and tell you what it -- oh, no, no, no,
17 each occurrence.

18 Q. \$100,000 each occurrence?

19 A. Yes.

20 Q. And then there is a \$10,000. Is that medical
21 pay?

22 A. Medical expense.

23 Q. Would that cover Mr. Yslas or his son?

24 A. I'm not sure.

25 Q. You're not sure. All right. Who would know the

1 answers to that?

2 A. The company, Atlantic Casualty Insurance.

3 Q. Atlantic Casualty Insurance?

4 A. Yes.

5 Q. And that is this policy that you-all issue?

6 A. Yes.

7 Q. Is that a copy of it?

8 A. Yes.

9 Q. Now, you have on here workers' compensation, 100,
10 and then it has 500, is that correct?

11 A. Yes.

12 Q. Now, was this given to Full Circle; do you know?

13 A. This certificate, yes.

14 Q. This was given to them?

15 A. It was faxed to them.

16 Q. So they knew Mr. Yslas had insurance?

17 A. Yes.

18 Q. Now, when you say ghost policy, what do you mean?

19 A. It doesn't cover him if he were to get injured.

20 Q. Does it cover anybody?

21 A. From what I have heard, if he has an employee
22 working with him at the time, they will cover it, but
23 then they will do an audit and then his -- they will
24 charge him for whatever time period the employee worked
25 for him, and then his future policy will be, I guess,

1 prorated or adjusted with the employee included.

2 Q. Now, are you an agent? Have you taken a test to
3 become an agent?

4 A. Yes, in 2007.

5 Q. So you are an agent, and you were an agent at
6 this time, is that correct?

7 A. Yes.

8 Q. Now, you said this application was actually
9 filled out earlier than it was signed, is that correct,
10 because you had to wait for the audit?

11 A. Yes.

12 Q. When did you actually fill it out, what date; do
13 you recall?

14 A. No. Either the 14th or before the 14th, because
15 this was faxed to me on the 14th, the audit information.

16 Q. And then on Page 26, it was not signed until the
17 21st, correct? Page 26, I believe.

18 A. Yes, November 21st.

19 Q. But you think you filled it all out on the
20 computer on the 14th?

21 A. Yes. I typed it in before -- either on the 14th
22 or before the 14th.

23 MR. MOSS: I don't think I have anything
24 further.

25 MR. MACLOSKIE: I have no questions.

1 FURTHER EXAMINATION

2 BY MS. CARTER:

3 Q. Did you ever issue any insurance for Juan Yslas,
4 III?

5 A. No.

6 Q. Have you ever had any dealings with him at all?

7 A. No.

8 Q. Do you know who he is?

9 A. I think at one point he was on his sister's car
10 insurance, but, no.

11 MS. CARTER: I don't have any further
12 questions.

13 MR. MONTGOMERY: Nothing from me.

14 (The deposition was concluded at 1:05 p.m.)

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1 STATE OF SOUTH CAROLINA)
2)
3 COUNTY OF CHARLESTON)

4 I, Nancy Ennis Tierney, Certified Shorthand Reporter
5 and Notary Public for the State of South Carolina at
6 Large, do hereby certify that the witness in the
7 foregoing deposition was by me duly sworn to testify to
8 the truth, the whole truth and nothing but the truth in
9 the within-entitled cause; that said deposition was
10 taken at the time and location therein stated; that the
11 testimony of the witness and all objections made at the
12 time of the examination were recorded stenographically
13 by me and were thereafter transcribed by computer-aided
14 transcription; that the foregoing is a full, complete
15 and true record of the testimony of the witness and of
16 all objections made at the time of the examination; and
17 that the witness was given an opportunity to read and
18 correct said deposition and to subscribe the same.

19 Should the signature of the witness not be affixed to
20 the deposition, the witness shall not have availed
21 himself/herself of the opportunity to sign or the
22 signature has been waived.

23 I further certify that I am neither related to nor
24 counsel for any party to the cause pending or interested
25 in the events thereof.

26 Witness my hand, I have hereunto affixed my official
27 seal this 30th day of June, 2012, at Charleston,
28 Charleston County, South Carolina.

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Nancy Ennis Tierney, CSR (IL)
My Commission Expires:
April 6, 2014


THE
HARTFORD
PREMIUM AUDIT
P.O BOX 2927
HARTFORD, CT 06104-2927

7 pages
for xcel

YSLAS, JUAN JR
70 HICKORY HILL RD
ST HELENA ISLAND, SC 29920

Policy Number: 6S60 UB 4308P58A
Audit Period: 07/21/10 to 07/21/11
Due Date: 08/05/11

Dear Insured:

Your Workers' Compensation Policy in effect from 07/21/10 to 07/21/11 was issued using estimated payrolls to establish the premium for your policy. To determine the final premium, we need to review your payroll records. As outlined in Part Five G of the workers compensation policy contract, you are required to allow us to examine all records that relate to your policy when requested.

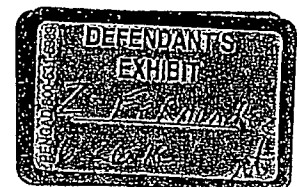
To comply, please answer all questions and return all pages of the attached Policyholder Audit Report along with the required supporting documentation no later than 08/05/11. You may return the documents via our fax number (800) 879-0892. If assistance is needed to complete the report, please contact our customer service department at (800) 842-4271.

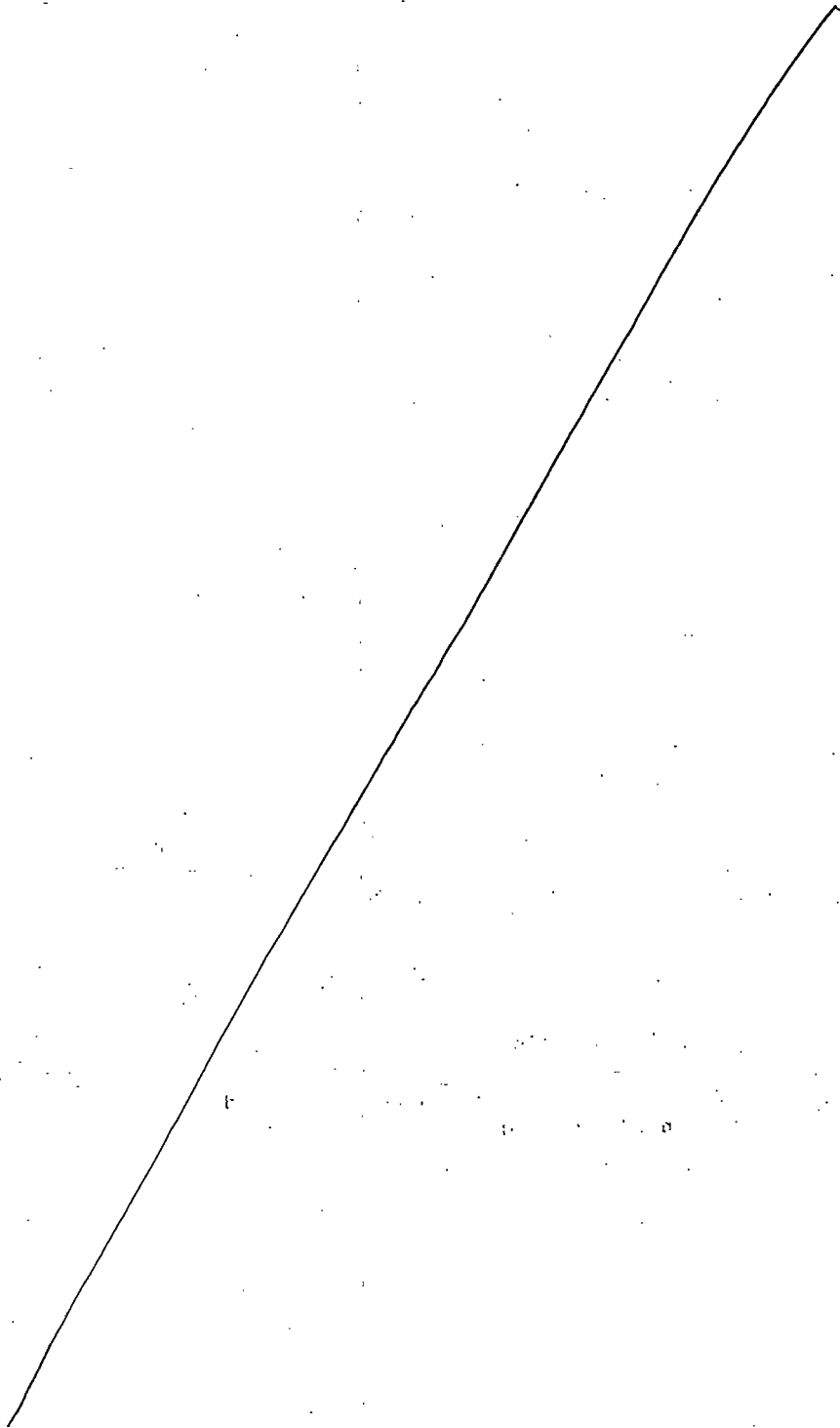
It is not necessary to return the Policyholder Audit Report and the required supporting documentation by mail if you have already faxed our customer service department the information.

It is important that the supporting documentation listed on page 4 be included with the Policyholder Audit Report. Without this documentation your accurate premium can not be calculated. If you do not return this report by the due date your current policy may be cancelled or any future application for Workers' Compensation Insurance may be rejected by the Plan Administrator.

All information you provide is confidential and will be for internal use only.

We thank you in advance for your cooperation and assistance in this matter.





000420



Insuring Company:

HARTFORD UNDERWRITERS INSURANCE COMPANY

POLICYHOLDER AUDIT REPORT

PREMIUM AUDIT
P.O BOX 2927
HARTFORD, CT 06104-2927

YSLAS, JUAN JR
70 HICKORY HILL RD
ST HELENA ISLAND, SC 29920

AUD ID 904

Date of Notice: 07/21/11

Policy Number 6S60 UB 4308P58A

Audit Term 07/21/10 to 07/21/11

Audit Type FA

PLEASE RETURN BY: 08/05/11

FAX (800) 879-0892
Customer Service (800) 842-4271

1. TELL US ABOUT YOUR BUSINESS

Please provide a detailed description of your business operations (e.g. work performed; product manufactured; services provided) including any new operations added during this term.

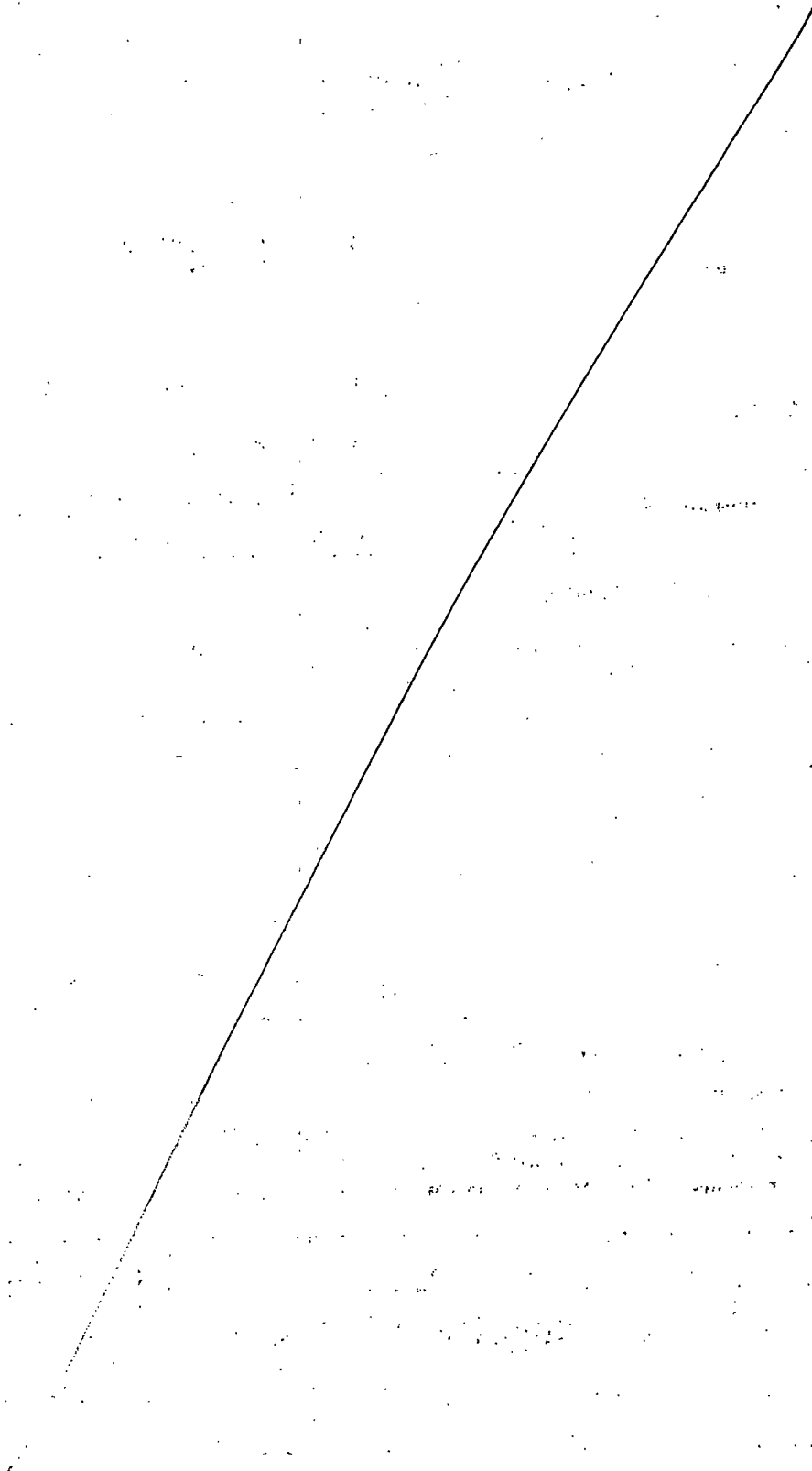
Siding / framing ? remodeling

2. TELL US ABOUT YOUR COMPANY STRUCTURE

(Circle One) Individual Partnership Corporation Limited Liability Co.

List Sole Proprietor, Partner(s), or Corporate Officer(s) along with their duties, number of weeks employed during the policy term, and their earnings/draws/profits. Include all principals even if they receive no pay or have elected, by filing an exclusion form, not to be covered. Please give more detail than simply "administrative" or "managerial" duties.

Title	Name	Specific Duties	# of Weeks Employed	Actual Earnings	Company Use Only
owner	Juan Yslas Jr	Siding / framing	52		



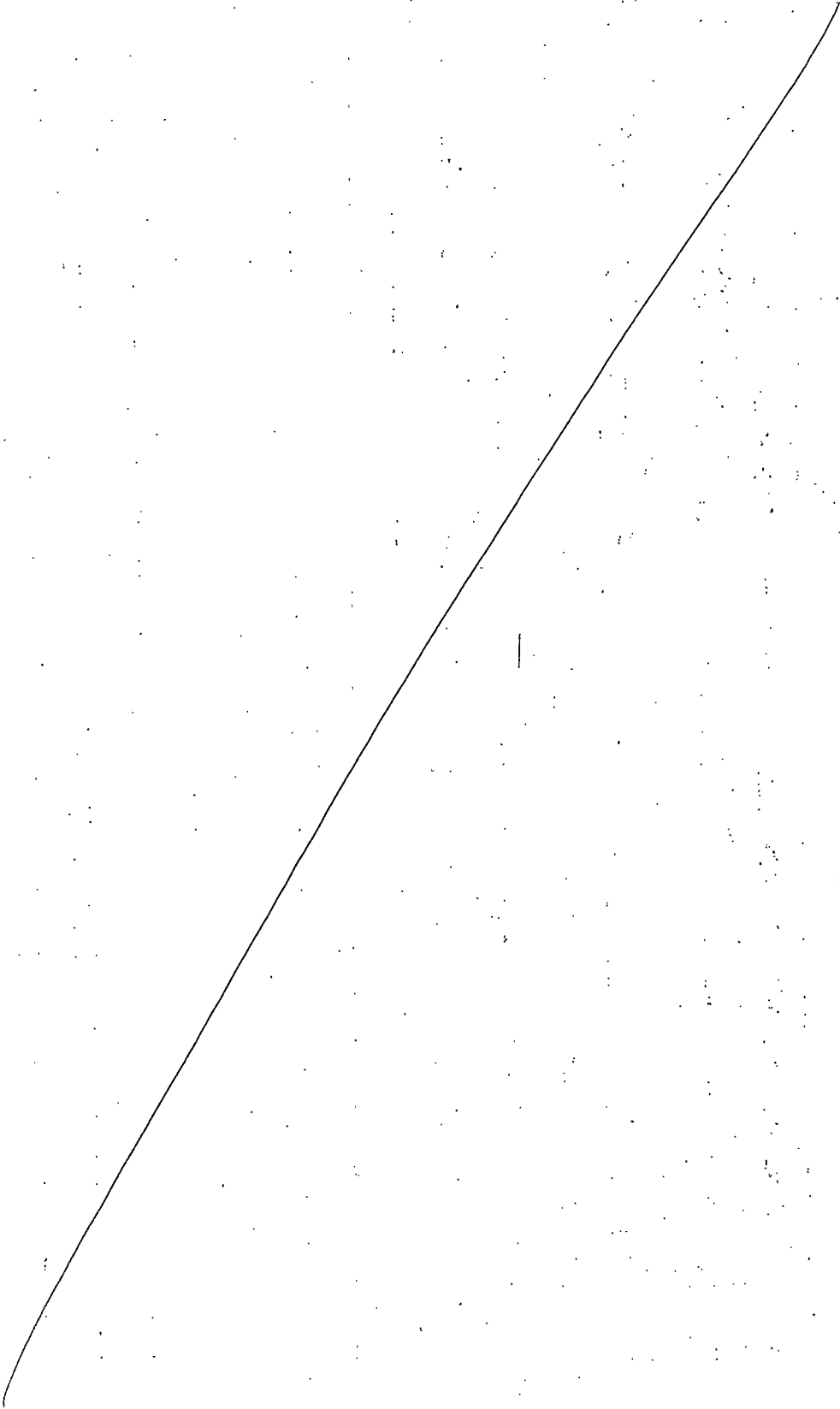
Insured Name: YSLAS, JUAN JR

Gross Payroll means the total amount paid during the policy term for all full time and part time employees, including personnel no longer employed, prior to any deductions.

3. TELL US ABOUT YOUR EMPLOYEES - DO NOT INCLUDE INDIVIDUALS LISTED IN SECTION 2.

[illegible][illegible]

00423



000424

Insured Name: YSLAS, JUAN JR

4. TELL US ABOUT YOUR NON-EMPLOYEE LABOR

Did you use anyone other than an employee to perform work, or a portion of a job, on your behalf? If you check "No", no additional information is required to complete this section.

Yes ☐ No ☒

Yes ☐ No ☒

ATTACH COPIES OF ALL CERTIFICATES OF INSURANCE PROVIDED BY YOUR CONTRACTORS COVERING THE DATES WORKED.

If the contractor, please attach copies of the invoices.

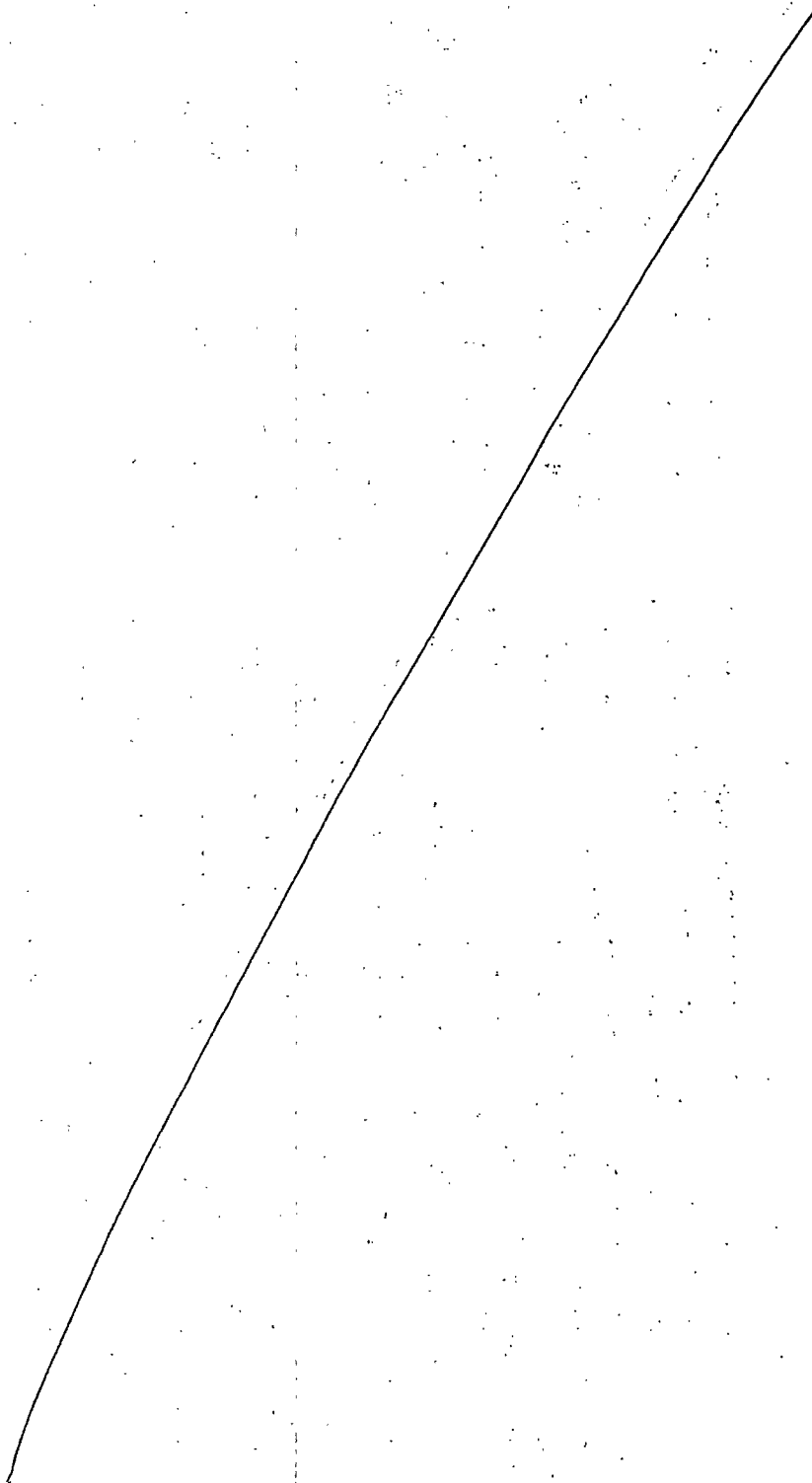
ATTACH COPIES OF ALL CERTIFICATES OF INSURANCE PROVIDED BY YOUR CONTRACTOR.

If the amounts paid to the contractor included the cost of materials provided by the contractor - please attach copies of the invoices.

If yes, please complete the worksheet below.

[illegible]

000425



000426

Insured Name: YSLAS, JUAN JR
Policy Number: 6S60 UB 4308P58A

5. SEND US YOUR SUPPORTING DOCUMENTATION

In order to complete this report we need the following forms pertaining to the policy period:

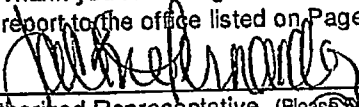
- the last four(4) Federal Employer's Quarterly Tax Return (Form 941) or State Unemployment Wage Reports for all states covered on this policy.
- Form 1096 and 1099's, if applicable.

If you do not file the forms listed above, please attach:

- for Sole Proprietor, Profit or Loss From Business (Form 1040) Schedule C pages 1 and 2
- for Partnership, U.S. Partnership Return of Income (Form 1065) pages 1 and 2
- for Corporation, U.S. Corporation Income Tax Return (Form 1120) pages 1 and 2

6. PLEASE SIGN YOUR REPORT

Thank you for taking the time to complete this report. Please fill in the information below and return your report to the office listed on Page 1.


Authorized Representative (Please Sign)

Jackie Hernandez
Authorized Representative (Please Print)

Email Address (Please Print)

AGENT
Title

11/14/11
Date

(843) 522-0995
Area Code and Phone Number

(843) 522-1503
Fax - Area Code and Phone Number

FAX (800) 879-0892

Customer Service (800) 842-4271



000428

SCHEDULE C
(Form 1040)

Profit or Loss From Business

(Sole Proprietorship)

OMB No. 1545-0074

2010

Attachment
Sequence No. 09

Department of the Treasury
Internal Revenue Service (99)

Partnerships, joint ventures, etc., generally must file Form 1065 or 1065-B.
Attach to Form 1040, 1040NR, or 1041. See Instructions for Schedule C (Form 1040).

Name of proprietor

JUAN M YSLAS

Social security number (SSN)

239-15-1999

A Principal business or profession, including product or service (see page C-2 of the Instructions)

B Enter code from pages C-9, 10, & 11

ALL OTHER SPECIALTY

238990

C Business name, if no separate business name, leave blank.

D Employer ID number (EIN), if any

JUAN YSLAS

E Business address (including suite or room no.)

City, town or post office, state, and ZIP code

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ☒ Yes ☐ No

G Did you "materially participate" in the operation of this business during 2010? If "No," see page C-3 for limit on losses

H If you started or acquired this business during 2010, check here

Part I Income

1 Gross receipts or sales. Caution. See page C-4 and check the box if:

- This income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked, or
- You are a member of a qualified joint venture reporting only rental real estate income not subject to self-employment tax. Also see page C-3 for limit on losses.

1 20047

2 Returns and allowances

2

3 Subtract line 2 from line 1

3 20047

4 Cost of goods sold (from line 42 on page 2)

4

5 Gross profit. Subtract line 4 from line 3

5 20047

6 Other income, including federal and state gasoline or fuel tax credit or refund (see page C-4)

6

7 Gross income. Add lines 5 and 6

7 20047

Part II Expenses. Enter expenses for business use of your home only on line 30.

8 Advertising

8

18 Office expense

18

9 Car and truck expenses

9

19 Pension and profit-sharing plans

19

(see page C-4)

4226

20 Rent or lease (see page C-6):

a Vehicles, machinery, and equipment

20a

b Other business property

20b

10 Commissions and fees

10

21 Repairs and maintenance

21

11 Contract labor (see page C-4)

11

22 Supplies (not included in Part III)

22

12 Depletion

12

23 Taxes and licenses

23

13 Depreciation and section 179

13

24 Travel, meals, and entertainment:

a Travel

24a

expense deduction (not included

in Part III) (see page C-5)

b Deductible meals and

entertainment (see page C-6)

24b

14 Employee benefit programs

14

25 Utilities

25

(other than on line 19)

15 Insurance (other than health)

15

26 Wages (less employment credits)

26

16 Interest:

16

27 Other expenses (from line 48 on

page 2)

27

a Mortgage (paid to banks, etc.)

16a

b Other

16b

17 Legal and professional

17

services

28 Total expenses before expenses for business use of home. Add lines 8 through 27

28 4226

29 Tentative profit or (loss). Subtract line 28 from line 7

29 15821

30 Expenses for business use of your home. Attach Form 8829

30

31 Net profit or (loss). Subtract line 30 from line 29.

31

- If a profit, enter on both Form 1040, line 12, and Schedule SE, line 2 or on Form 1040NR, line 13 (if you checked the box on line 1, see page C-7). Estates and trusts, enter on Form 1041, line 3.
- If a loss, you must go to line 32.

15821

32 If you have a loss, check the box that describes your investment in this activity (see page C-7).

- If you checked 32a, enter the loss on both Form 1040, line 12, and Schedule SE, line 2, or on Form 1040NR, line 13 (if you checked the box on line 1, see the line 31 instructions on page C-7). Estates and trusts, enter Form 1041, line 3.
- If you checked 32b, you must attach Form 6198. Your loss may be limited.

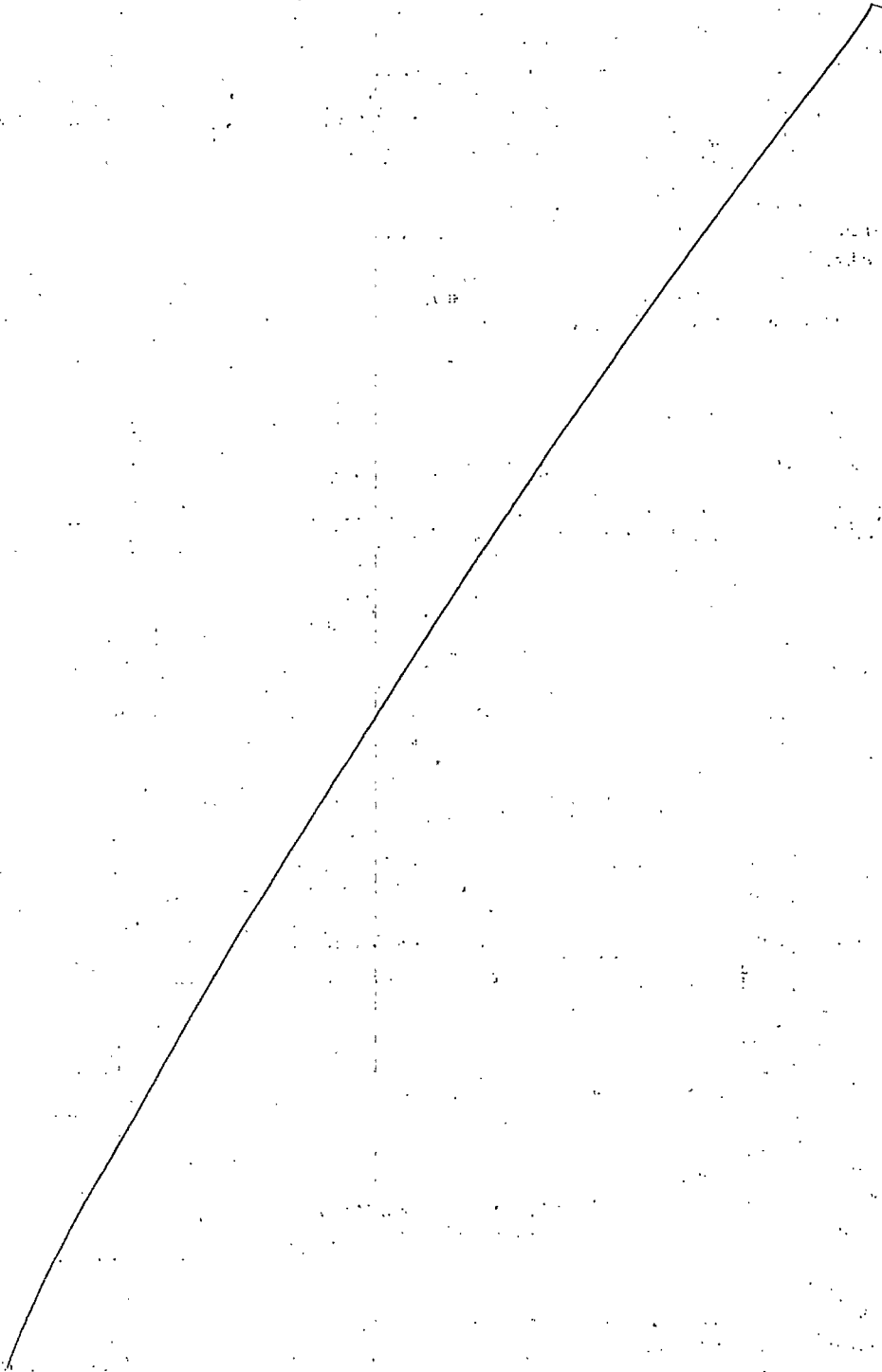
- 32a ☐ All investment is at risk.
- 32b ☐ Some investment is not at risk.

For Paperwork Reduction Act Notice, see your tax return Instructions.

Schedule C (Form 1040) 2010

QNA

000429



000481

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JUAN YSLAS, JR.,

Claimant,

vs.

FULL CIRCLE CONSTRUCTION CO.,

Employer,

and

AMERISURE MUTUAL INSURANCE,

Carrier.

)
) BEFORE THE SOUTH CAROLINA
) WORKERS COMP COMMISSION

)
)
)
) NOTICE OF WITNESSES AND WRITTEN
) MEDICAL REPORTS TO
) BE INTRODUCED
) AS DIRECT EVIDENCE ON BEHALF OF
) CLAIMANT; WCC FILE NO: 1200329

TO: COMMISSIONER A. WILKERSON, and ALL COUNSEL OF RECORD:

YOU ARE HEREBY NOTIFIED that the Claimant above named, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, 1976, as amended, herewith submits the following medical reports as direct evidence on behalf of the Claimant, to wit:

NUMBER	MEDICAL PROVIDER - DATES OF SERVICE	PAGES
1.	Beaufort Memorial Hospital 01/16/12 - 01/18/12	01 - 32
2.	Beaufort Emergency Medicine 01/16/12	33 - 34
3.	Beaufort Medical Imaging 01/16/12	35 - 36
4.	Lowcountry Anesthesia 02/07/12	37
5.	Leland Stoddard, M.D., Lowcountry Medical Group	38 - 89

YOU ARE HEREBY FURTHER NOTIFIED that the Claimant intends to offer the following materials as

Exhibits at hearing:

000432

On the issues of Coverage of this Claimant:

NUMBER	IDENTIFICATION OF DOCUMENTS	PAGES
6.	Correspondence from 01/18/12 - 03/21/12 to/from various writers regarding coverage issues	90 - 104
7.	Business license and SC WCC materials secured online regarding coverage	105 - 108
8.	<i>Affidavit</i> of Ricardo Yslas dated 02/28/12	109- 110
9.	<i>First Report of Injury</i> as to Juan Yslas, Jr.	111
10.	Riverport Insurance Company materials re: Policy WC-39-84-012364-00	112 - 136
11.	Riverport Insurance Company materials on Employers' Liability Policy	137 - 141
12.	Riverport Insurance Company materials re: filing claims	142 - 151
13.	Atlantic Casualty Insurance Company re: commercial lines policy	152 - 154
14.	The Hartford materials regarding Policy No: 6S60 UB 4308P58A regarding policy audit for 07/21/10 - 07/21/11	155 - 161

On the issue of Average Weekly Wage [AWW]:

NUMBER	IDENTIFICATION OF DOCUMENTS	PAGES
15.	2010 Tax Return and 1099 forms	162 - 175
16.	Materials regarding work on Lots 149 and 181, Hampton Lake, Bluffton, SC	176 - 189
17.	Letter of Eduardo Hernandez dated 06/26/12 with supporting materials	190 - 196

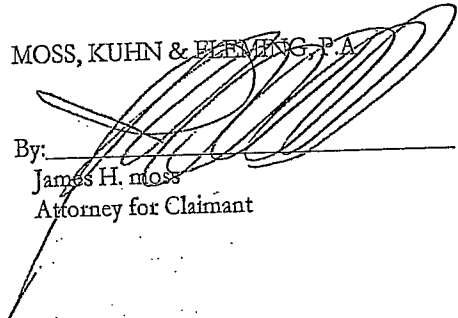
YOU ARE HEREBY FURTHER NOTIFIED that the Claimant intends to call the following witnesses to testify, either in person at hearing, or by deposition and statement, for submission pursuant to the Administrative Procedures Act (APA):

- Claimant
- Claimant's son, Juan Yslas, III
- Ricardo Yslas [by *Affidavit*]
- Eduardo Hernandez [by letter]
- Jackie Hernandez [by deposition]
- Cheryl Perkins [by deposition]

YOU ARE HEREBY FURTHER NOTIFIED that you have the right of cross-examination, and should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians or witnesses, whose reports are submitted for the purposes of cross-examination.

000433

MOSS, KUHN & FLEMING, P.A.

By: 

James H. Moss

Attorney for Claimant

Beaufort, South Carolina

June 29, 2012

000434

CERTIFICATE OF SERVICE

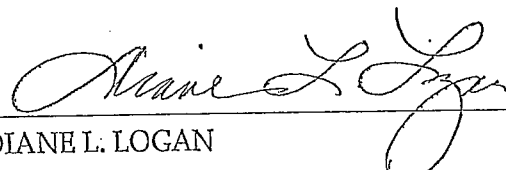
I, DIANE L. LOGAN, Assistant to James H. Moss, Esquire, counsel for the Claimant named in the foregoing action, do hereby certify that on the 2nd day of July, 2012, I caused to be hand delivered a service copy of the within *Form 58 - Pre-Hearing Brief of Claimant and Notice of Witnesses and Written Medical Reports as Direct Evidence*, with said copy being supplied to opposing counsel of record at the address indicated below:

Ryan S. Montgomery, Esquire
Attorney at Law
9 Washington Park
Greenville, South Carolina 29601
ryan@ryanmontgomerylaw.com

Allison M. Carter, Esquire
Attorney at law
421 Wando Park Boulevard, Suite 100
Mt. Pleasant, South Carolina 29464
amcarter@wjlaw.net

Charles B. Macloskie, Esquire
Attorney at Law
Post Office Box 280
Beaufort, South Carolina 29901-0280
macloskielawfirm@hargray.com

O. Edworth Liipfert, III, Esquire
Attorney at Law
Post Office Box 570
Beaufort, South Carolina 29901-0570
wliipfert@griffithsadlersharp.com


DIANE L. LOGAN

000435

Beaufort Memorial Hospital
955 Ribaut Road
Beaufort, South Carolina 29902

History & Physical

Patient name: YSLAS, JUAN SR
Date of Birth: 04/24/1957
Admit Date: 01/16/12
Attending Doctor: LELAND STODDARD, MD

Account number: H02007207
Unit number: D111962
Discharge Date:

CHIEF COMPLAINT: Bilateral foot and ankle pain.

HISTORY OF PRESENT ILLNESS: This is a 54-year-old Hispanic male who was working on a roof earlier today. He lost his balance and went off falling approximately 12 feet. He sustained bilateral calcaneal fractures. He denies other injury, although is a little tender over the left hip. No loss of consciousness. He is kindly referred by Dr. Duff with the above injury.

Past history is positive for knee surgery in the past. Otherwise, he denies any other medical or surgical problems of any kind.

He denies drug allergy.

Again, he works as a roofer.

Physical exam reveals well-developed Hispanic male in no distress. HEENT: Is grossly normal. No sign of head trauma. Throat is benign. NECK: Is supple without JVD or carotid bruit. HEART: Has a regular rate and rhythm without murmur or gallop. LUNGS: Clear to auscultation. ABDOMEN: Soft, benign to deep palpation. Exam of the feet, the patient has marked swelling over the left ankle. Right ankle not so swollen. Both heels are moderately swollen and tender. Neurovascular status is intact and normal in both feet.

X-ray showed bilateral calcaneal fractures. I do not see a definite ankle fracture. While somewhat comminuted, an intra-articular Bohler angles are relatively well maintained.

IMPRESSION: Bilateral calcaneal fractures.

PLAN: Short-leg cast applied to both legs which are bivalved to convert into a posterior splint. Patient is admitted for pain control and therapy. Will go ahead with a CT scan to see if surgery may be something to consider. The consult is greatly appreciated.

Report: HIM0116-0172

1 of 2

CC: LELAND STODDARD, MD

Transcribed Dat/Time: 01/16/12 2314
Transcriptionist: Rachal L Willingham
Transcriptionist Initials: RLW
Printed Date/Time: 01/17/12 0802

000436

4



Amerisure Mutual Holdings, Inc.
Amerisure Mutual Insurance Company
Amerisure Insurance Company
Amerisure Partners Insurance Company

January 30, 2012

Juan Yslas
c/o James Moss
Moss Kuhn & Fleming, P.A.
PO Drawer 507
Beaufort, SC 29901-0507

Re: Claimant: Juan Yslas
Insured: Full Circle Construction Co., LLC
DOI: 1/16/2012
Claim# 1255545
WCC#
Carrier Code# 0105-1

Dear Mr. Yslas:

At this time, I must respectfully deny the above-mentioned workers' compensation claim. Based on the information we have obtained thus far, we do not feel you are an employee of Full Circle Construction and have sustained an injury by accident while working for Full Circle Construction.

Sincerely,

Robbie Buff, AIC
Exclusive Agency Claim Specialist
Ph: 704-510-8343
Fax: 704-510-8327
Email: rbuff@amerisure.com

received
2/6/12

10715 David Taylor Drive, Suite 500, Charlotte, NC 28262-2007
Claim Mailing Address: P.O. Box 33478, Detroit, MI 48232-5478
800.532.6230 www.amerisure.com

000437

cc to JMM 02/06/12

South Carolina Workers' Compensation Commission

P.O. Box 1715 • 1612 Marion Street
Columbia, South Carolina 29202-1715
(803) 737-5700

WCC File # 1200239

Carrier File # 1000097117

Carrier Code #

Employer FEIN

Juan Yslas, Jr. 239-15-1999
Claimant's Name SSN

70 Hickory Hill, St. Helena Island, SC 29920
Address City State Zip

(843) 473-9058

Home Phone Work Phone

Allison M. Carter
Preparer's Name

421 Wando Park Boulevard, Suite 100, Mount Pleasant, SC 29464 (843) 284-1083
Address Phone #

Juan Yslas, Jr. d/b/a Juan Yslas Construction
Employer's Name

70 Hickory Hill, St. Helena Island, SC 29220
Address City State Zip

Key Risk Management Services, Inc.
Insurance Carrier

TO: SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION AND
JAMES H. MOSS, ESQUIRE, ATTORNEY FOR CLAIMANT
O. EDWORTH LIPFERT, ESQUIRE, ATTORNEY FOR UNINSURED EMPLOYERS' FUND
CHARLES MACLOSIE, ESQUIRE, ATTORNEY FOR JUAN YSLAS, III
RYAN T. MONTGOMERY, ESQUIRE, ATTORNEY FOR AMERISURE MUTUAL INSURANCE

YOU ARE HEREBY NOTIFIED THAT DEFENDANTS, pursuant to the provisions of the South Carolina Workers' Compensation Act and South Carolina Code Section 1-23-330, (1976, as amended), herewith submits the following medical reports as direct evidence on behalf of the defendants, to wit:

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
Exhibit (A) Work proposal from Juan Yslas	11/29/11	1
Exhibit (B) Work proposal from Naun Ruiz and Juan Yslas	11/02/11	2
Exhibit (C) Certificate of Insurance		3
Exhibit (D) Exhibit 4 for deposition of Juan Yslas, Jr.		4 - 40
Exhibit (E) W9 for Juan Yslas	11/22/11	41
Exhibit (F) Policy Information (Used in depositions of Cheryl Perkins and Jackie Fernandez)		42 - 95
Exhibit (G) Audit Report		96 - 102
Exhibit (H) Tax Returns for Juan Yslas, Jr.		103 - 117

YOU ARE FURTHER HEREBY NOTIFIED that you have the right to cross-examination; and, should you desire to exercise said right, you are to forthwith schedule the depositions of any of the physicians, whose reports are submitted, for the purposes of cross-examination.

YOU ARE FURTHER NOTIFIED that the originals of the documents referred to herein, or photocopies received from said physicians/others, are being herewith forwarded to the South Carolina Workers' Compensation Commission, for insertion in the file of the South Carolina Workers' Compensation Commission and inclusion into the evidence on behalf of the employer-defendant.

YOU ARE FURTHER NOTIFIED that the following witnesses may be called on behalf of the defendants: See Pre-Hearing Brief.

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Allison M. Carter

Allison M. Carter
Willson Jones Carter & Baxley, P.A.
421 Wando Park Boulevard, Suite 100
Mount Pleasant, SC 29464

June 29, 2012

July 9, 2012
(hearing date)

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EXHIBIT "B"

PRODUCER		INSURED		COMPANIES AFFORDING COVERAGE	
PEOPLES CHOICE INSURANCE AGENCY, LLC 23 SAVANNAH HWY BEAUFORT, SC 29906		Juan Yelas Jr. 70 Hickory Hill Road St. Helena Island SC 29920		COMPANY LETTER A	Atlantic Casualty Insurance Company
				COMPANY LETTER B	Riverport Insurance Company
				COMPANY LETTER C	
				COMPANY LETTER D	
				COMPANY LETTER E	

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

CO. LETTER	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE	POLICY EXPIRATION DATE	LIMITS
A	GENERAL LIABILITY	E210D00019	11/22/2011	11/22/2012	GENERAL LIABILITY: 200,000 PRODUCTS/COMPLAINTS: 200,000 PERSONAL AUTO: 100,000 AUTOMOBILE: 100,000 FIRE DAMAGE (OWNERS): 100,000 MED. EXPENSE (OWNERS): 10,000 COVERED SCHEDULE EQUIPMENT DAMAGE BOAT LIABILITY (OWNERS) PROPERTY DAMAGE ADVERTISING AGGREGATE
B	WORKERS COMPENSATION AND EMPLOYERS LIABILITY	39-17995-11327-985101	11/22/2011	11/22/2012	STATUTORY LIMITS DISEASE/INJURY: 100,000 DISEASE/FOLLY: 500,000 DISEASE/DEATH/BENEFIT: 100,000

DESCRIPTION OF OPERATIONS, VEHICLES, SPECIALTY ITEMS

CERTIFICATE HOLDER

Full Circle Construction Company, Inc
168A Boardwalk Dr
Cherry Point Business Center
Ridgeland, SC 29936
Fax: 982-0813

Should any of the above described policies be cancelled before the expiration date, the company shall endeavor to mail, no days, written notice to the certificate holder named to that effect, but failure to mail such notice shall impose no obligation of liability of any kind upon the company, its agents or representatives.

AUTHORIZED REPRESENTATIVE

6-12-12 AM

000440

11/19/2011 - 11/25/2011

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									1200.00
Juan Yslas III	20.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	960.00
Ricardo Islas	14.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	672.00
Oscar Godoni	12.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	624.00
Juan Velazquez	12.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	576.00
Jose Cruz	12.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	576.00
Christian Cruz	12.00	8.00	0.00	10.00	10.00	10.00	0.00	48.00	576.00
Expenses									816.00
									6000.00

Juan Yslas Jr 1200.00

Juan Yslas III 960.00

Ricardo Islas 672.00

Oscar Godoni 624.00

Juan Velazquez 576.00

Jose Cruz 576.00

Christian Cruz 576.00

Expenses 816.00

6000.00

Expenses

Nails 320.00

Gas 372.00

Passes 60.00

Misc 64.00

816.00

000441

12

CONTRACTORS INVOICE

WORK PERFORMED AT:

TO: Juan M. Yela
Full Circle Const.

34 Palmetto Cove Ct
lot #141 Hampton Lake
Sharon Residence

DATE

11-29-11

YOUR WORK ORDER NO.

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

3rd Draw of Framwork to LC

\$3,500.00

Thank You!

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full invoice due and payable by: _____ Month _____ Day _____ Year
in accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

11/26/2011 - 12/02/2011

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									800.00
Juan Yslas III	20.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	800.00
Ricardo Islas	4.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	560.00
Oscar Godoni	13.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	520.00
Juan Velazquez	12.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	480.00
Jose Cruz	12.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Christian Cruz	12.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses									340.00
									3500.00

Juan Yslas Jr 800.00

Juan Yslas III 800.00

Ricardo Islas 560.00

Oscar Godoni 520.00

Juan Velazquez 480.00

Jose Cruz 0.00

Christian Cruz 0.00

Expenses 340.00

Expenses

Nails 0.00

Gas 260.00

Passes 50.00

Misc 30.00

3500.00

340.00

000443

11

CONTRACTORS INVOICE

WORK PERFORMED AT:

TO: Juan M. Yelas
Full Circle Construction

94 Palmetto Cove Ct
lot #149 Hampton Lake
Section Residence

DATE

12/6/11

YOUR WORK ORDER NO.

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

4th Draw of Framework to 1st

\$3,322.50

Thank You!

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full invoice due and payable by: _____ Month _____ Day _____ Year
in accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

12/03/2011 - 12/09/2011

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									800.00
Juan Yslas III	20.00	0.00	0.00	8.00	8.00	7.00	7.00	37.00	740.00
Ricardo Islas	14.00	0.00	0.00	8.00	8.00	7.00	7.00	37.00	518.00
Oscar Godoni	13.00	0.00	0.00	8.00	8.00	7.00	7.00	37.00	481.00
Juan Velazquez	12.00	0.00	0.00	8.00	8.00	7.00	7.00	37.00	444.00
Jose Cruz	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Christian Cruz	2.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Expenses									340.50
									3323.50

Juan Yslas Jr 800.00
 Juan Yslas III 740.00
 Ricardo Islas 518.00
 Oscar Godoni 481.00
 Juan Velazquez 444.00
 Jose Cruz 0.00
 Christian Cruz 0.00
 Expenses 340.50

Expenses
 Nails 0.00
 Gas 260.50
 Passes 50.00
 Misc 30.00

3323.50

340.50

000445 13

16

CONTRACTORS INVOICE

WORK PERFORMED AT:

TO: Juan M. Yslas
Full Circle Const.

Full Circle Development
Lot 181 Hampton Lake
A New Single Family Residence

DATE

11/29/11

YOUR WORK ORDER NO.

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

We hereby propose to furnish the tools and perform the labor necessary for the completion of all framework including windows, doors, tyvek, titanium, and hardware.

For the sum of
\$12,118.50

Payments to be made weekly with a weekly invoice.

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specification provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full Invoice due and payable by: _____ Month _____ Day _____ Year

in accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

CONTRACTORS INVOICE

WORK PERFORMED AT:

Col. 1st
 2nd
 Hampton Lab.

Joan in Vlas

TO: Full Circle Const

YOUR WORK ORDER NO.

OUR BID NO.

DATE 1/10/12

DESCRIPTION OF WORK PERFORMED

1st Drive of frame work

We should have all the wall up by 1/10/12

probably the hardware. All

P. 1st drive of frame work

5,100.00

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full invoice due and payable by: _____ Month _____ Day _____ Year

In accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

01/07/2012 - 01/13/2012

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									000.00
Juan Yslas III	20.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	800.00
Ricardo Islas	14.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	560.00
Oscar Godoni	13.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	520.00
Juan Velazquez	12.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	480.00
Jose Cruz	12.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	480.00
Leortino Reyes	12.00	0.00	0.00	8.00	8.00	8.00	8.00	40.00	480.00
Expenses									5000.00

Juan Yslas Jr 1000.00

Juan Yslas III 800.00

Ricardo Islas 560.00

Oscar Godoni 520.00

Juan Velazquez 480.00

Jose Cruz 480.00

Leortino Reyes 480.00

Expenses 680.00

5000.00

Expenses

Nails 320.00

Gas 320.00

Passes 0.00

Misc 40.00

680.00

000448

19

CONTRACTORS INVOICE

WORK PERFORMED AT:

lot 181

lake residence

Hampton lake

TO: Full Circle Const.

DATE

01/17/2012

YOUR WORK ORDER NO.

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

2nd draw of frame work

All Trusses, plywood, Hurricane clips
and soffits for the amount of

\$5000.00

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specifications provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full invoice due and payable by: _____ Month _____ Day _____ Year

in accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

01/14/2012 - 01/20/2012

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									1000.00
Juan Yslas III	20.00	0.00	6.50	0.00	0.00	0.00	10.00	6.50	800.00
Ricardo Islas	14.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	560.00
Oscar Godoni	13.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	520.00
Juan Velazquez	12.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	480.00
Jose Cruz	12.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	480.00
Leortino Reyes	12.00	0.00	8.00	8.00	8.00	8.00	8.00	40.00	480.00
Expenses									680.00
									5000.00

Juan Yslas Jr 1000.00

Juan Yslas III 800.00

Ricardo Islas 560.00

Oscar Godoni 520.00

Juan Velazquez 480.00

Jose Cruz 480.00

Leortino Reyes 480.00

Expenses 680.00

Expenses

Nails 320.00

Gas 320.00

Passes 0.00

Misc 40.00

5000.00

680.00

000450

21

CONTRACTORS INVOICE

Juan m / Yslas

WORK PERFORMED AT:

TO: Full Circle Coast

Lot 181 Hampton Lake

DATE

1/14/12

YOUR WORK ORDER NO.

OUR BID NO.

DESCRIPTION OF WORK PERFORMED

Last Draw
Shout hole

by the end of the week

\$2,115.50

If still want the tray ceiling it'll be an extra

\$150.00

All Material is guaranteed to be as specified, and the above work was performed in accordance with the drawings and specification provided for the above work, and was completed in a substantial workmanlike manner for the agreed sum of _____ Dollars (\$ _____)

This is a ☐ Partial ☐ Full invoice due and payable by: _____ Month _____ Day _____ Year

in accordance with our ☐ Agreement ☐ Proposal No. _____ Dated _____ Month _____ Day _____ Year

01/21/2012 - 01/27/2012

	Sat	Sun	Mon	Tue	Wed	Thu	Fri	Hours	Total
Juan Yslas Jr									0.00
Juan Yslas III	20:00	0:00	0:00	6:50	0:00	0:00	0:00	6:50	0:00
Ricardo Islas	14:00	0:00	0:00	8:00	8:00	8:00	8:00	40:00	560.00
Oscar Godoni	13:00	0:00	0:00	10:00	0:00	0:00	0:00	10:00	30:00
Juan Velazquez	12:00	0:00	0:00	10:00	8:00	8:00	8:00	42:00	504.00
Manisa Lyons		0:00	0:00	0:00	0:00	0:00	0:00	0:00	300.00
Leortino Reyes	12:00	0:00	0:00	8:00	8:00	8:00	8:00	40:00	480.00
Expenses									294.50
									2268.50

Juan Yslas Jr 0.00

Juan Yslas III 0.00

Ricardo Islas 560.00

Oscar Godoni 130.00

Juan Velazquez 504.00

Jose Cruz 300.00

Leortino Reyes 480.00

Expenses 294.50

Expenses

Nails 0.00

Gas 260.00

Passes 0.00

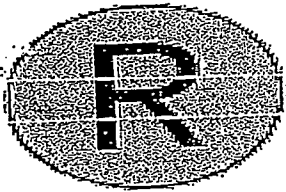
Misc 34.50

2268.50

294.50

000452

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South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

Enclosed is your:

Coverage Document for South Carolina Worker's Compensation

Please carefully review your policy or Agreement, the Information Page and any Endorsements to ensure that the coverages you want or need are included and that they are accurately prepared. Your agent will also receive copies of your Information Page and any Endorsements. Please communicate with your agent or Berkley Risk Administrators Company, LLC if there are errors or if changes are necessary. Also included for your review are the forms and instructions you need to report all workers' compensation claims to us.

South Carolina Workers' Compensation Renewal Document

Please carefully review your renewal Policy or Agreement, the Information Page and any Endorsements to ensure that the coverages you want or need are included and that they are accurately prepared.

New supply of First Report of Injury forms and/or the other information you requested.

YOU MUST MAINTAIN AN ADEQUATE SUPPLY OF FIRST REPORT OF INJURY FORMS.

They should be kept where they are accessible to the person who is responsible for completing the form and sending it to us. If you run out of forms or can't find your supply, please complete the form below and return it to Berkley Risk Administrators Company, LLC. We will gladly send you a supply of forms and provide any other information you request. Please do it today because you never know when an injury might be reported by one of your employees.

CUT ON LINE

WC-39-84-012364-00

JUAN YSLAS JR

70 HICKORY HILL RD

SAINT HELENA ISLAND, SC 299204303

Please send the following information to the attention of:

at the address at left

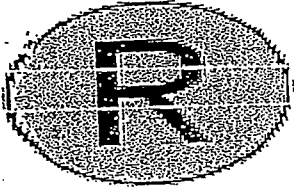
- ☐ First Report of Injury Forms
- ☐ Supervisor's Report of Accident forms
- ☐ Employer's Loss Control Booklet
- ☐ Employer's Injury Management Guide

Clip and mail to:

Berkley Risk Administrators Company, LLC
P.O. Box 59143
Minneapolis, MN 55459-0143

BA3110 (11/01)
000453 3836 924453

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25



South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

STATEMENT OF PREMIUM

1. The Insured:

WCIP

Policy Number: WC-39-84-012364-00
Risk ID:

JUAN YSLAS JR
70 HICKORY HILL RD
SAINT HELENA ISLAND, SC 299204303

Tax ID#: F 23-9151999

Policy Period: From: 11/22/2011
To: 11/22/2012

Date of Mailing: 11/29/2011

Standard Premium	\$520.00
Expense Constant	\$230.00
Terrorism	\$0.00
Total Estimated Annual Premium	\$750.00
Total Fees & Premium	\$750.00
Net Deposit Premium Required	\$750.00
Premium Paid to Date	(\$750.00)
Total Premium Due	\$0.00

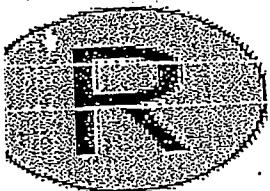
Stat Code 9740

Agency Name and Address
Peoples Choice Ins Agency
586 Paris Island Gtwy
Beaufort, SC 29906

000454

BA3200 (11/95)
3836 924453

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South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

INFORMATION PAGE

Policy No. New

Insured:

AN YSLAS JR

HICKORY HILL RD

HELENA ISLAND, SC 299204303

WCIP

Policy Number: WC-39-84-012364-00

Risk ID:

Tax ID#: F 23-9151999

Date of Mailing: 11/29/2011

☒ Individual ☐ Partnership
☐ Corporation ☐ Other

The policy period is from 12:01 a.m. 11/22/2011 to 12:01 a.m. 11/22/2012 at the insured's mailing address.

Workers' Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states listed here:

SC

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	\$100,000 each accident.
Bodily Injury By Disease	\$500,000 policy limit.
Bodily Injury By Disease	\$100,000 each employee.

Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

SEE WC 00-03-26 (A)

This policy includes these endorsements and schedules:

00308 WC000326A WC000402 WC000403 WC000404 WC000414 WC000415B WC000417B WC000419 WC000421C WC000422A
90001A WC990601

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

PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	CODE NO.	ENTRIES IN THIS ITEM, EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS CONTRACT; DO NOT MODIFY ANY OF THE OTHER PROVISIONS OF THIS POLICY.	ESTIMATED ANNUAL PREMIUM
			Manual Premium	\$0.00
			Subject Premium	\$0.00
			Modified Premium	\$0.00
			Minimum Premium Adjustment	\$520.00
			Standard Premium	\$520.00
			Expense Constant	\$230.00
			Terrorism	\$0.00
			Total Estimated Annual Premium	\$750.00
			Total Fees & Premium	\$750.00
			Net Deposit Premium Required	(\$750.00)
			Premium Paid to Date	\$0.00
			Total Premium Due	

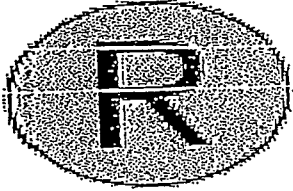
Stat Code 9740

Agency Name and Address

Peoples Choice Ins Agency
586 Paris Island Gtwy
Beaufort, SC 29906

11/29/2011

Signature:



South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

I. The Insured:

WCIP

Policy Number: WC-39-84-012364-00
Risk ID:

JUAN YSLAS JR
70 HICKORY HILL RD
SAINT HELENA ISLAND, SC 299204303

Tax ID#: F 23-9151999

Policy Period: From: 11/22/2011
To: 11/22/2012
Endorsement Eff. Date: 11/22/2011
Date of Mailing: 11/29/2011

policy does not cover bodily injury to any person described in the schedule.
Premium basis for the policy does not include the remuneration of such persons.
will reimburse us for any payment we must make because of bodily injury to such persons.

SCHEDULE

Partners

Officers

Others
JUAN YSLAS

Other terms and conditions of this policy remain unchanged.

Agency Name and Address
Peoples Choice Ins Agency
586 Paris Island Gtway
Beaufort, SC 29906

WC 00-03-08
3836 924453
000456

31
28



WORKERS COMPENSATION APPLICATION

 DATE (MM/DD/YYYY)
11/21/2011

AGENCY NAME AND ADDRESS PEOPLES CHOICE INSURANCE AGENCY 586 PARRIS ISLAND GTWY BEAUFORT, SC 29906-6300		COMPANY: UNDERWRITER: APPLICANT NAME: JUAN YSLAS JR OFFICE PHONE: (843) 473-9058 MOBILE PHONE: (843) 838-5373 MAILING ADDRESS (Including Zip + 4) 70 HICKORY HILL RD SAINT HELENA ISLAND, SC 29920-4303									
PRODUCER NAME: LES GOUDE CS REPRESENTATIVE NAME: OFFICE PHONE (843) 522-0995 (A/C, No. Exits) MOBILE PHONE: FAX (843) 522-1503 (A/C, NOI): EMAIL ADDRESS: PCINSURANCE@HARGRAY.COM CODE: SUB CODE:		YRS IN BUS: 0 SIC: NAICS: Website Address: E-MAIL ADDRESS <table border="1"> <tr> <td>☒ SOLE PROPRIETOR</td> <td>☐ CORPORATION</td> <td>☐ LLC</td> <td>☐ TRUST</td> </tr> <tr> <td>☐ PARTNERSHIP</td> <td>☐ SUBCHAPTER "S" CORP</td> <td>☐ JOINT VENTURE</td> <td>☐ OTHER</td> </tr> </table> CREDIT BUREAU NAME: FEDERAL EMPLOYER ID NUMBER: 23-9151999 RCCI RISK ID NUMBER: ID NUMBER: OTHER RATING BUREAU ID EMPLOYER REGISTRATION NUMBER OR STATE		☒ SOLE PROPRIETOR	☐ CORPORATION	☐ LLC	☐ TRUST	☐ PARTNERSHIP	☐ SUBCHAPTER "S" CORP	☐ JOINT VENTURE	☐ OTHER
☒ SOLE PROPRIETOR	☐ CORPORATION	☐ LLC	☐ TRUST								
☐ PARTNERSHIP	☐ SUBCHAPTER "S" CORP	☐ JOINT VENTURE	☐ OTHER								
AGENCY CUSTOMER ID:											

STATUS OF SUBMISSION ☐ QUOTE ☐ ISSUE POLICY ☐ BOUND (Give date and/or attach copy) ☒ ASSIGNED RISK (Attach ACORD 133)		BILLING / AUDIT INFORMATION <table border="1"> <tr> <td>☐ BILLING PLAN</td> <td>☐ PAYMENT PLAN</td> <td>☐ AUDIT</td> </tr> <tr> <td>☐ AGENCY BILL</td> <td>☐ ANNUAL</td> <td>☐ AT EXPIRATION</td> </tr> <tr> <td>☐ DIRECT BILL</td> <td>☐ SEMI-ANNUAL</td> <td>☐ SEMI-ANNUAL</td> </tr> <tr> <td></td> <td>☐ QUARTERLY</td> <td>☐ QUARTERLY</td> </tr> </table> OTHER: ☐ MONTHLY % DOWN:		☐ BILLING PLAN	☐ PAYMENT PLAN	☐ AUDIT	☐ AGENCY BILL	☐ ANNUAL	☐ AT EXPIRATION	☐ DIRECT BILL	☐ SEMI-ANNUAL	☐ SEMI-ANNUAL		☐ QUARTERLY	☐ QUARTERLY
☐ BILLING PLAN	☐ PAYMENT PLAN	☐ AUDIT													
☐ AGENCY BILL	☐ ANNUAL	☐ AT EXPIRATION													
☐ DIRECT BILL	☐ SEMI-ANNUAL	☐ SEMI-ANNUAL													
	☐ QUARTERLY	☐ QUARTERLY													

LOCATIONS	
LOC #	STREET, CITY, COUNTY, STATE, ZIP CODE
1	70 HICKORY HILL RD SAINT HELENA ISLAND, SC 29920-4303

POLICY INFORMATION		PROPOSED EXP DATE		NORMAL ANNIVERSARY RATING DATE		PARTICIPATING		RETRO PLAN	
PROPOSED EFF DATE		11/22/2011		11/22/2012		NON-PARTICIPATING			
PART 1 - WORKERS COMPENSATION (States)		PART 2 - EMPLOYER'S LIABILITY		PART 3 - OTHER STATES INS		DEDUCTIBLES (N/A in WI)		AMOUNT / % (N/A in WI)	
SC		\$ 100,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 100,000 DISEASE-EACH EMPLOYEE				☐ MEDICAL ☐ INDEMNITY		OTHER COVERAGES ☐ U.S.L. & H. ☐ VOLUNTARY COMP ☐ FOREIGN COV	
DIVIDEND PLAN/SAFETY GROUP		ADDITIONAL COMPANY INFORMATION							
SPECIFY ADDITIONAL COVERAGES / ENDORSEMENTS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)									

TOTAL ESTIMATED ANNUAL PREMIUM - ALL STATES		
TOTAL ESTIMATED ANNUAL PREMIUM ALL STATES	TOTAL MINIMUM PREMIUM ALL STATES	TOTAL DEPOSIT PREMIUM ALL STATES
\$750.00	\$0.00	\$750.00

CONTACT INFORMATION			
TYPE	NAME	OFFICE PHONE	MOBILE PHONE
INSPECTION	JUAN YSLAS	(843) 473-9058	
ACTING RECORD	JUAN YSLAS	(843) 473-9058	
CLAIMS INFO	JUAN YSLAS	(843) 473-9058	

INDIVIDUALS INCLUDED / EXCLUDED								
PARTNERS, OFFICERS, RELATIVES (Must be employed by business operations) TO BE INCLUDED OR EXCLUDED (Remuneration/Payroll to be included must be part of rating information section.)								
Exclusions in Missouri must meet the requirements of Section 287.090 RSMo.								
STATE	LOC #	NAME	DATE OF BIRTH	TITLE/RELATIONSHIP	OWNER-SHIP %	DUTIES	INC/EXC	CLASS CODE
SC		YSLAS, JUAN	04/24/1957	SOLEPRP	100	OWNER	E	5645

000457

 34
31

STATE RATING SHEET # 1 OF 1 SHEETS

FOR MULTIPLE STATES, ATTACH AN ADDITIONAL PAGE 2 OF THIS FORM

RATING INFORMATION - STATE: South Carolina

PREMIUM

REMARKS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

000458

35
32

AGENCY CUSTOMER ID: _____

PRIOR CARRIER INFORMATION / LOSS HISTORY

PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS					LOSS RUN ATTACHED	
YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE
	CO:					
	POL #:					
	CO:					
	POL #:					
	CO:					
	POL #:					
	CO:					
	POL #:					

NATURE OF BUSINESS / DESCRIPTION OF OPERATIONS

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

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES	Y / N
1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT / WATERCRAFT?	N
2. DO / HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. landfills, wastes, fuel tanks, etc)	N
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET?	N
4. ANY WORK PERFORMED ON BARGES, VESSELS, DOCKS, BRIDGE OVER WATER?	N
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?	N
6. ARE SUB-CONTRACTORS USED? (If "YES", give % of work subcontracted)	N
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INSURANCE? (If "YES", payroll for this work must be included in the State Rating Worksheet on Page 2)	N
8. IS A WRITTEN SAFETY PROGRAM IN OPERATION?	N
9. ANY GROUP TRANSPORTATION PROVIDED?	N
10. ANY EMPLOYEES UNDER 16 OR OVER 60 YEARS OF AGE?	N
11. ANY SEASONAL EMPLOYEES?	N
12. IS THERE ANY VOLUNTEER OR DONATED LABOR? (If "YES", please specify)	N

AGENCY CUSTOMER ID: _____

GENERAL INFORMATION (continued)

EXPLAIN ALL "YES" RESPONSES	Y/N
13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?	N
14. DO EMPLOYEES TRAVEL OUT OF STATE? (If "YES", indicate state(s) of travel and frequency)	N
15. ARE ATHLETIC TEAMS SPONSORED?	N
16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?	N
17. ANY OTHER INSURANCE WITH THIS INSURER?	N
18. ANY PRIOR COVERAGE DECLINED / CANCELLED / NON-RENEWED IN THE LAST THREE (3) YEARS? (Missouri Applicants - Do not answer this question)	N
19. ARE EMPLOYEE HEALTH PLANS PROVIDED?	N
20. DO ANY EMPLOYEES PERFORM WORK FOR OTHER BUSINESSES OR SUBSIDIARIES?	N
21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?	N
22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME? If "YES", # of Employees: _____	N
23. ANY TAX LIENS OR BANKRUPTCY WITHIN THE LAST FIVE (5) YEARS? (If "YES", please specify)	N
24. ANY UNDISPUTED AND UNPAID WORKERS COMPENSATION PREMIUM DUE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? (If "YES", explain including entity name(s) and policy number(s))	N

REMARKS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

NCCI APP# 27256550

APPLICABLE IN TENNESSEE AND VERMONT: IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE OR MISLEADING INFORMATION TO ANY PARTY TO A WORKERS COMPENSATION TRANSACTION FOR THE PURPOSE OF COMMITTING FRAUD. PENALTIES INCLUDE IMPRISONMENT, FINES AND DENIAL OF INSURANCE BENEFITS.

ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT INSURANCE ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND (NY: SUBSTANTIALLY) CIVIL PENALTIES; (Not applicable in CO, DC, FL, HI, MA, NE, OH, OK, OR, VT or WA; in LA, ME, TN and VA, insurance benefits may also be denied)

IN THE DISTRICT OF COLUMBIA, WARNING: IT IS A CRIME TO PROVIDE FALSE OR MISLEADING INFORMATION TO AN INSURER FOR THE PURPOSE OF DEFRAUDING THE INSURER OR ANY OTHER PERSON. PENALTIES INCLUDE IMPRISONMENT AND/OR FINES.

IN MASSACHUSETTS, NEBRASKA, OREGON AND VERMONT, ANY PERSON WHO KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, MAY BE COMMITTING A FRAUDULENT INSURANCE ACT, WHICH MAY BE A CRIME AND MAY SUBJECT THE PERSON TO CRIMINAL AND CIVIL PENALTIES.

IN WASHINGTON, IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES, AND DENIAL OF INSURANCE BENEFITS.

APPLICANT'S SIGNATURE (Must be Officer, Owner or Partner)	DATE	PRODUCER'S SIGNATURE	NATIONAL PRODUCER NUMBER
<i>[Signature]</i>	11/21/2011	<i>[Signature]</i>	

ACORD 130 (2009/09)

Page: 4 of: 4

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WORKERS COMPENSATION APPLICATION

 DATE (MM/DD/YYYY)
11/21/2011

AGENCY NAME AND ADDRESS PEOPLES CHOICE INSURANCE AGENCY 586 PARRIS ISLAND GTWY BEAUFORT, SC 29906-6300		COMPANY: UNDERWRITER: APPLICANT NAME: JUAN YSLAS JR	
PRODUCER NAME: LES GOUDE		OFFICE PHONE: (843) 473-9058 MOBILE PHONE: (843) 838-5373	
CS REPRESENTATIVE NAME: OFFICE PHONE (A/C, No. Ext): (843) 522-0995 MOBILE PHONE: FAX (A/C, NO): (843) 522-1503 EMAIL ADDRESS: PCINSURANCE@HARGRAY.COM CODE: SUB CODE:		MAILING ADDRESS (Including Zip + 4) 70 HICKORY HILL RD SAINT HELENA ISLAND, SC 29920-4303 YRS IN BUS: 0 SIC: NAICS: Website Address:	
AGENCY CUSTOMER ID:		E-MAIL ADDRESS X SOLE PROPRIETOR CORPORATION LLC TRUST PARTNERSHIP SUBCHAPTER "S" CORP JOINT VENTURE OTHER	
CREDIT BUREAU NAME: FEDERAL EMPLOYER ID NUMBER: 23-9151999 NCCI RISK ID NUMBER:		ID NUMBER: OTHER RATING BUREAU ID EMPLOYER REGISTRATION NUMBER OR STATE	

STATUS OF SUBMISSION

☐	QUOTE	☐	ISSUE POLICY
☐	BOUND (Give date and/or attach copy)		
☒	ASSIGNED RISK (Attach ACORD 133)		

BILLING / AUDIT INFORMATION

BILLING PLAN ☐ AGENCY BILL ☐ DIRECT BILL		PAYMENT PLAN ☐ ANNUAL ☐ SEMI-ANNUAL ☐ QUARTERLY		OTHER: ☐ % DOWN:	AUDIT ☐ AT EXPIRATION ☐ SEMI-ANNUAL ☐ QUARTERLY	☐ MONTHLY
--	--	---	--	--	---	----------------------------------

LOCATIONS

LOC #	STREET, CITY, COUNTY, STATE, ZIP CODE
1	70 HICKORY HILL RD SAINT HELENA ISLAND, SC 29920-4303

POLICY INFORMATION

PROPOSED EFF DATE 11/22/2011		PROPOSED EXP DATE 11/22/2012		NORMAL ANNIVERSARY RATING DATE		PARTICIPATING NON-PARTICIPATING		RETRO PLAN	
PART 1 - WORKERS COMPENSATION (States) SC		PART 2 - EMPLOYER'S LIABILITY \$ 100,000 EACH ACCIDENT \$ 500,000 DISEASE-POLICY LIMIT \$ 100,000 DISEASE-EACH EMPLOYEE		PART 3 - OTHER STATES INS		DEDUCTIBLES (N/A in WI) ☐ MEDICAL ☐ INDEMNITY		AMOUNT / % (N/A in WI) OTHER COVERAGES ☐ U.S.L. & H. ☐ VOLUNTARY COMP ☐ FOREIGN COV	
DIVIDEND PLAN/SAFETY GROUP		ADDITIONAL COMPANY INFORMATION							
SPECIFY ADDITIONAL COVERAGES / ENDORSEMENTS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)									

TOTAL ESTIMATED ANNUAL PREMIUM - ALL STATES

TOTAL ESTIMATED ANNUAL PREMIUM ALL STATES \$750.00	TOTAL MINIMUM PREMIUM ALL STATES \$0.00	TOTAL DEPOSIT PREMIUM ALL STATES \$750.00
---	--	--

CONTACT INFORMATION

TYPE	NAME	OFFICE PHONE	MOBILE PHONE	E-MAIL
INSPECTION	JUAN YSLAS	(843) 473-9058		
ACCTING RECORD	JUAN YSLAS	(843) 473-9058		
CLAIMS INFO	JUAN YSLAS	(843) 473-9058		

INDIVIDUALS INCLUDED / EXCLUDED

PARTNERS, OFFICERS, RELATIVES (Must be employed by business operations) TO BE INCLUDED OR EXCLUDED (Remuneration/Payroll to be included must be part of rating information section.)
 Exclusions in Missouri must meet the requirements of Section 287.090 RSMo.

STATE	LOC #	NAME	DATE OF BIRTH	TITLE/ RELATIONSHIP	OWNER-SHIP %	DUTIES	INC/EXC	CLASS CODE	REMUNERATION/ PAYROLL
SC		YSLAS, JUAN	04/24/1957	SOLEPRP	100	OWNER	E	5645	0

STATE RATING SHEET # 1 OF 1 SHEETS

FOR MULTIPLE STATES, ATTACH AN ADDITIONAL PAGE 2 OF THIS FORM

RATING INFORMATION - STATE: South Carolina

PREMIUM		FACTOR	FACTORED PREMIUM	FACTOR	FACTORED PREMIUM
STATE:	N/A		\$0		\$0
TOTAL			\$0.00	SCHEDULE RATING *	
INCREASED LIMITS			\$0	CCPAP	
DEDUCTIBLE *	0			STANDARD PREMIUM	\$0.00
			\$0	PREMIUM DISCOUNT	\$0.00
EXPERIENCE OR MERIT MODIFICATION	0		\$0	EXPENSE CONSTANT	N/A
			\$0.00	TAXES / ASSESSMENTS *	\$0.00
ASSIGNED RISK SURCHARGE *	0		\$0.00		\$0
ARAP *	0.00		\$0.00		
* N/A in Wisconsin		MINIMUM PREMIUM		DEPOSIT PREMIUM	
TOTAL ESTIMATED ANNUAL PREMIUM					
\$750.00		\$750.00			

REMARKS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

NCCI APP# 27256550

503

AGENCY CUSTOMER ID: _____

PRIOR CARRIER INFORMATION / LOSS HISTORY

AGENCY CUSTOMER

PRIOR CARRIER INFORMATION / LOSS HISTORY					LOSS RUN ATTACHED	
PROVIDE INFORMATION FOR THE PAST 5 YEARS AND USE THE REMARKS SECTION FOR LOSS DETAILS						
YEAR	CARRIER & POLICY NUMBER	ANNUAL PREMIUM	MOD	# CLAIMS	AMOUNT PAID	RESERVE
	CO:					
	POL #:					
	CO:					
	POL #:					
	CO:					
	POL #:					
	CO:					
	POL #:					
	CO:					
	POL #:					

NATURE OF BUSINESS / DESCRIPTION OF OPERATIONS

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

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES	Y/N
1. DOES APPLICANT OWN, OPERATE OR LEASE AIRCRAFT / WATERCRAFT?	N
2. DO / HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. landfills, wastes, fuel tanks, etc)	N
3. ANY WORK PERFORMED UNDERGROUND OR ABOVE 15 FEET?	N
4. ANY WORK PERFORMED ON BARGES, VESSELS, DOCKS, BRIDGE OVER WATER?	N
5. IS APPLICANT ENGAGED IN ANY OTHER TYPE OF BUSINESS?	N
6. ARE SUB-CONTRACTORS USED? (If "YES", give % of work subcontracted)	N
7. ANY WORK SUBLET WITHOUT CERTIFICATES OF INSURANCE? (If "YES", payroll for this work must be included in the State Rating Worksheet on Page 2)	N
8. IS A WRITTEN SAFETY PROGRAM IN OPERATION?	N
9. ANY GROUP TRANSPORTATION PROVIDED?	N
10. ANY EMPLOYEES UNDER 16 OR OVER 60 YEARS OF AGE?	N
11. ANY SEASONAL EMPLOYEES?	N
12. IS THERE ANY VOLUNTEER OR DONATED LABOR? (If "YES", please specify)	N

AGENCY CUSTOMER ID: _____

GENERAL INFORMATION (continued)

EXPLAIN ALL "YES" RESPONSES	Y/N
13. ANY EMPLOYEES WITH PHYSICAL HANDICAPS?	N
14. DO EMPLOYEES TRAVEL OUT OF STATE? (If "YES", indicate state(s) of travel and frequency)	N
15. ARE ATHLETIC TEAMS SPONSORED?	N
16. ARE PHYSICALS REQUIRED AFTER OFFERS OF EMPLOYMENT ARE MADE?	N
17. ANY OTHER INSURANCE WITH THIS INSURER?	N
18. ANY PRIOR COVERAGE DECLINED / CANCELLED / NON-RENEWED IN THE LAST THREE (3) YEARS? (Missouri Applicants - Do not answer this question)	N
19. ARE EMPLOYEE HEALTH PLANS PROVIDED?	N
20. DO ANY EMPLOYEES PERFORM WORK FOR OTHER BUSINESSES OR SUBSIDIARIES?	N
21. DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?	N
22. DO ANY EMPLOYEES PREDOMINANTLY WORK AT HOME? If "YES", # of Employees: _____	N
23. ANY TAX LIENS OR BANKRUPTCY WITHIN THE LAST FIVE (5) YEARS? (If "YES", please specify)	N
24. ANY UNDISPUTED AND UNPAID WORKERS COMPENSATION PREMIUM DUE FROM YOU OR ANY COMMONLY MANAGED OR OWNED ENTERPRISES? (If "YES", explain including entity name(s) and policy number(s))	N

REMARKS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

NCCI APP# 27256550

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IN THE DISTRICT OF COLUMBIA, WARNING: IT IS A CRIME TO PROVIDE FALSE OR MISLEADING INFORMATION TO AN INSURER FOR THE PURPOSE OF DEFRAUDING THE INSURER OR ANY OTHER PERSON. PENALTIES INCLUDE IMPRISONMENT AND/OR FINES.

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IN WASHINGTON, IT IS A CRIME TO KNOWINGLY PROVIDE FALSE, INCOMPLETE, OR MISLEADING INFORMATION TO AN INSURANCE COMPANY FOR THE PURPOSE OF DEFRAUDING THE COMPANY. PENALTIES INCLUDE IMPRISONMENT, FINES, AND DENIAL OF INSURANCE BENEFITS.

APPLICANT'S SIGNATURE (Must be Officer, Owner or Partner)

DATE

PRODUCER'S SIGNATURE

NATIONAL PRODUCER NUMBER

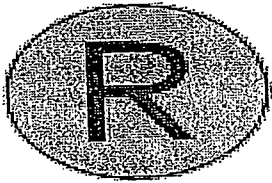
11/21/2011

ACORD 130 (2009/09)

Page: 4 of: 4

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South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

INFORMATION PAGE

Renewal Of No. New

WCIP

Policy Number: WC-39-84-012364-00

Risk ID:

Tax ID#: F 23-9151999

1. The Insured:
JUAN YSLAS JR
70 HICKORY HILL RD
SAINT HELENA ISLAND, SC 299204303

Date of Mailing: 11/29/2011

☒ Individual ☐ Partnership
☐ Corporation ☐ Other

2. The policy period is from 12:01 a.m. 11/22/2011 to 12:01 a.m. 11/22/2012 at the insured's mailing address.
3.A. Workers' Compensation Insurance: Part One of the policy applies to the Workers' Compensation Law of the states 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	\$100,000	each accident.
Bodily Injury By Disease	\$500,000	policy limit.
Bodily Injury By Disease	\$100,000	each employee.

C. Other States Insurance: Part Three of the policy applies to the states, if any, listed here:

SEE WC 00-03-26 (A)

D. This policy includes these endorsements and schedules:
WC000308 WC000326A WC000402 WC000403 WC000404 WC000414 WC000415B WC000417B WC000419 WC000421C WC000422A
WC990001A WC990601

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

PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER \$100 OF REMUNERATION	CODE NO.	ENTRIES IN THIS ITEM, EXCEPT AS SPECIFICALLY PROVIDED ELSEWHERE IN THIS CONTRACT; DO NOT MODIFY ANY OF THE OTHER PROVISIONS OF THIS POLICY.	ESTIMATED ANNUAL PREMIUM
See Schedule			Manual Premium	\$0.00
			Subject Premium	\$0.00
			Modified Premium	\$0.00
			Minimum Premium Adjustment	\$520.00
			Standard Premium	\$520.00
			Expense Constant	\$230.00
			Terrorism	\$0.00
			Total Estimated Annual Premium	\$750.00
			Total Fees & Premium	\$750.00
			Net Deposit Premium Required	\$750.00
			Premium Paid to Date	(\$750.00)
			Total Premium Due	\$0.00

Agency Name and Address
Peoples Choice Ins Agency
586 Paris Island Gtway
Beaufort, SC 29906

DATE: 11/29/2011

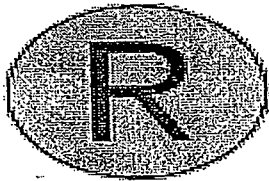
Signature:

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WC 99-00-01

000465





South Carolina Workers' Compensation Insurance Plan
Riverport Insurance Company
Administered by Berkley Risk Administrators Company, LLC
P.O. Box 59143 Minneapolis, Minnesota 55459-0143
Phone (612) 766-3000 Fax (866) 215-8118 Toll Free (888) 548-7431
NCCI Carrier Code 27995

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

1. The Insured:

WCIP

Policy Number: WC-39-84-012364-00
Risk ID:

JUAN YSLAS JR
70 HICKORY HILL RD
SAINT HELENA ISLAND, SC 299204303

Tax ID#: F 23-9151999

Policy Period: From: 11/22/2011
To: 11/22/2012
Endorsement Eff. Date: 11/22/2011
Date of Mailing: 11/29/2011

This policy does not cover bodily injury to any person described in the schedule.
The Premium basis for the policy does not include the remuneration of such persons.
You will reimburse us for any payment we must make because of bodily injury to such persons.

SCHEDULE

Partners

Officers

Others

JUAN YSLAS

All other terms and conditions of this policy remain unchanged.

Agency Name and Address
Peoples Choice Ins Agency
586 Paris Island Gtwy
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SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE #1200329 and 1200235

JUAN YSLAS, JUNIOR)
 JUAN YSLAS, III)
 CLAIMANTS,)

VS.)

JUAN YSLAS, JUNIOR)
 EMPLOYER,)

AND)

AMERISURE, RIVERPORT)
 SC UEF)
 CARRIER.)

SC WORKERS' COMPENSATION COMMISSION

HEARING OF

JUAN YSLAS, JUNIOR and
 JUAN YSLAS, III

VS

JUAN YSLAS, JUNIOR

This is the Transcript of the South Carolina Workers' Compensation Hearing of Juan Yslas, Junior and Juan Yslas, III, taken before Gloria Davis, a Court Reporter and Notary Public in and for the State of South Carolina, commencing at the hour of 2:33 P.M., Monday, July 8, 2012, at North Charleston City Hall, 2500 City Hall Lane, North Charleston, South Carolina.

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1 that been paid I think we would be bound by that
2 and couldn't be arguing it but we're arguing it on
3 the position that we're not bound by our -- what
4 our Investigators found at that time because he
5 could have been an independent contractor, as
6 well. Mr. Montgomery had stated earlier in the
7 pre-hearing conferences that he either had to be
8 an employee or an uninsured subcontractor, or he
9 could be an independent contractor. Because of
10 all of the issues surrounding the case we simply
11 --

12 Commissioner Wilkerson: Let me ask a
13 question. If he had been a true independent
14 contractor they wouldn't have picked those
15 payrolls up, right?

16 Ms. Carter: -- well, that's -- they didn't
17 -- their position at that point was to try to
18 cover anybody that possibly could be covered.
19 They didn't go into the in-depth, what we're doing
20 today as to a hearing. There's no finding from --

21 Commissioner Wilkerson: But the audit was
22 never disputed, it just wasn't paid; is that what
23 I heard?

24 Ms. Carter: -- they -- and there was no
25 response to it.

1 Commissioner Wilkerson: Okay. And they
2 didn't change it, they, being the insurance
3 company or the auditing firm?

4 Ms. Carter: No.

5 Commissioner Wilkerson: Okay. All right.
6 Okay.

7 Ms. Carter: But obviously, Riverport,
8 through me --

9 Commissioner Wilkerson: Yes.

10 Ms. Carter: -- has disputed that he was an
11 employee, subsequently.

12 Commissioner Wilkerson: Oh, I understand.

13 Ms. Carter: Yes.

14 Commissioner Wilkerson: Okay.

15 Ms. Carter: As to the comp rate I believe
16 that we agree to the comp rate discussed by Mr.
17 MacLoskie based on the 2011 tax records of average
18 weekly wage, five forty-four, twenty-three
19 (\$544.23) and three sixty-two (\$362.00). And I
20 think that's our position.

21 Commissioner Wilkerson: Okay. Mr. Liipfert?

22 Mr. Liipfert: Commissioner, it's the
23 position of the UEF that if -- if you find that --
24 as -- as -- as Mr. -- as Ms. Carter said, if you
25 find that Mr. Yslas, III, is an employee then they

1 Q. -- was funds you received; is that right?

2 A. Yes, sir.

3 Q. And that one states up at the top here, all trusses,
4 plywood, hurricane clips and soffits; is that correct?

5 A. Uh-huh. Yes, sir.

6 Q. Now, had you already been injured -- you recall you
7 were injured on the 16th; is that correct?

8 A. Yes, sir.

9 Q. And tell me, basically, what on the 16th happened to --
10 to cause your injury?

11 A. Well, we started the -- the spreading out of the
12 trusses around the house and it was everybody, you
13 know, helping, you know, the guys that I had.

14 Q. Well, let me ask you this. Now, who were the
15 supervisors on this job? Does Full Circle have a
16 supervisor?

17 A. Well, it was Craig -- it was Craig; yeah, he worked for
18 Mr. -- Full Circle.

19 Q. Yes.

20 A. He was the supervisor.

21 Q. All right. Was he on the job every day?

22 A. Yeah. He -- he would be there every day, just about --

23 Q. Okay. Now --

24 A. -- yeah.

25 Q. -- who furnished the wood and all of the items that

1 were used in the erection on this job?

2 A. Full Circle.

3 Q. All right. Now, did they, in fact, have the trusses
4 brought in pre-made?

5 A. Yeah, but I think there was another company there, you
6 know, that brought them in; I don't know who that was
7 -- who was the -- the name of the company.

8 Q. A company delivered them --

9 A. Delivered, yeah --

10 Q. -- to the job site?

11 A. -- to the job site.

12 Q. Okay. And did they deliver them the day that you
13 started putting them up or were they delivered before
14 then?

15 A. No. We started the house, you know, but they was kind
16 of delayed, you know, but they came in --I don't know
17 if it was on a Friday instead of a Monday.

18 Q. And did --

19 A. But, yeah.

20 Q. -- you all start putting them up then?

21 A. We started putting them up.

22 Q. All right. And was there any equipment to basically
23 use to lift these trusses?

24 A. No, sir.

25 Q. Were there any cranes?

1 Q. Now, was -- was the supervisor on the job every day?

2 A. Yes, sir.

3 Q. Okay. And did they -- or were they attempting to
4 terminate you at that time; do you know?

5 A. Well, on the first house when we started, you know, I
6 think it was -- we was falling a little short behind,
7 you know, and I think it was -- he -- he -- I think
8 what he -- what I heard about him was he was he was
9 trying to get another subcontractor to -- to fill in
10 the other house. I didn't thought I was going to get
11 it but he gave me another chance.

12 Q. This was a second chance?

13 A. A second chance, yeah.

14 Q. Okay. So, he could terminate you at any time?

15 A. Right.

16 Q. All right. What were your hours of work that the
17 supervisor required you to come to work?

18 A. Well, like eight (8) hours or nine (9) hours, you know.

19 Q. What time did you have to be there in the morning?

20 A. About 7:30, eight o'clock.

21 Q. Okay.

22 A. Yeah, 7:30 to 5:00.

23 Q. And did you have any employees working for you?

24 A. Yeah. Yes, sir.

25 Q. Who assisted you as employees?

- 1 A. Which one was what?
- 2 Q. Did -- did your -- did your son assist you as an
- 3 employee?
- 4 A. Yeah.
- 5 Q. All right.
- 6 A. Him and my brother.
- 7 Q. And your brother?
- 8 A. And -- and the other guys come in.
- 9 Q. And then some other guys from time to time?
- 10 A. Right.
- 11 Q. Were they casual employees or did they come there full
- 12 time?
- 13 A. No, they -- well, some of them, you know, they were
- 14 casual at times, you know, and then the last ones I had
- 15 them all the whole three (3) weeks or two (2) weeks.
- 16 Q. The whole two (2) weeks --
- 17 A. Yeah, I can't remember.
- 18 Q. -- before you got hurt?
- 19 A. I can't remember that much, you know.
- 20 Q. Now, after you fell you were taken to the Beaufort
- 21 Memorial Hospital; is that correct?
- 22 A. Yes, sir.
- 23 Q. And you were diagnosed with bilateral calcaneal
- 24 injuries; is that correct?
- 25 A. Yes, sir.

1 A. -- it made it hurt worser.

2 Q. Now, tell me -- tell me why you went to get an
3 insurance policy? who required you to go get an
4 insurance policy?

5 A. Well, when I talked to the supervisor, Craig, you know,
6 he told me I needed some insurance, you know.

7 Q. The supervisor for Full Circle?

8 A. Full Circle.

9 Q. Okay.

10 A. I needed the insurance, you know, general liability and
11 Workman's Comp.

12 Q. Okay. And did you go to First Choice?

13 A. Right.

14 Q. And with whom did you talk to at First Choice?

15 A. Well, I talked to Jackie and she checked in the
16 computer, you know, but when I left, you know, she was
17 going to check too -- she was going to let me know.
18 So, when I left that day I remember that she called me
19 that something about, you know, if I had a partnership
20 with my son, Juan Junior, III. And I tell her, no, we
21 never -- you know, we've never been a partnership, so.

22 Q. And you hadn't been in partnership --

23 A. No.

24 Q. -- had you?

25 A. No, sir. No.

1 A. No.

2 Q. -- in the records? Excuse me.

3 A. Well, I -- I was talking to her over the phone about
4 this statement, you know. But she -- she was trying to
5 get my insurance, you know, for me to get my insurance,
6 you know.

7 Q. She was trying to get it for you?

8 A. Yeah.

9 Q. Okay.

10 A. But -- but when I got there she already had, you know,
11 typed up this paper to send the insurance that I wasn't
12 partners.

13 Q. That you were not partners?

14 A. I was not partners, yeah.

15 Q. Excuse me.

16 Mr. Moss: What exhibit number is that?

17 Ms. Carter: Thirty-eight (38) in mine.

18 Commissioner Wilkerson: Thirty-eight (38),
19 yes.

20 A. And I -- I looked at it, you know, but I didn't know.
21 Really I'm not too good at reading either, so. I mean,
22 I did sign it. I do -- I do read very little.

23 Q. All right. I'm referring you to this --

24 A. Uh-huh.

25 Q. -- document here. It says: "I, Juan Yslas, Junior, am

- 1 a sole proprietor for my current business."
- 2 A. Uh-huh.
- 3 Q. That's true, correct?
- 4 A. Right.
- 5 Q. "My son, Juan Yslas, III, F-E-I-N --
- 6 A. Uh-huh.
- 7 Q. -- is not and it's not to be affiliated with my current
- 8 business."
- 9 A. Uh-huh.
- 10 Q. So, you said your son is not --
- 11 A. Uh-huh.
- 12 Q. -- affiliated with your current business, right?
- 13 A. Right.
- 14 Q. And that was true; is that correct?
- 15 A. I think so; yes, sir.
- 16 Q. Okay. Also, I never had any ownership or affiliation
- 17 in my son's business, JJ Construction --
- 18 A. Right.
- 19 Q. -- is that correct?
- 20 A. Yes, sir.
- 21 Q. That was the name of his business?
- 22 A. I think so, sir. You know, I mean, I know -- I know he
- 23 had it but it was just like a title.
- 24 Q. But this was -- did -- did -- is this something that
- 25 Ms. Hernandez got off line or what?

1 A. Yes, sir.

2 Q. Do you know what she did with Full Circle?

3 A. Well, once -- once she found out that they okayed my --
4 my Workman's Comp and then I asked her to -- to send
5 Full Circle a certificate for the general liability.

6 Q. Okay. And did she do that --

7 A. She did.

8 Q. -- to your knowledge?

9 A. Yes, sir.

10 Q. Okay.

11 A. Well, after everything was settled and good; yes, sir.

12 Q. Okay.

13 A. She wanted to send me one too, also.

14 Q. And then you went to work for Full Circle?

15 A. Yeah.

16 Q. All right.

17 A. Yes, sir.

18 Q. Now, as I understand it, did Full -- did you use most
19 of your own tools on the job?

20 A. Yes, sir.

21 Q. Okay. Who told you what they needed to work on next,
22 in other words, and how to -- how to -- was it -- how
23 to construct a house? Was there somebody that laid it
24 out for you?

25

Mr. Liipfert: Objection. That calls for

1 hearsay.

2 Q. Did the supervisor determine --

3 Commissioner Wilkerson: Hold --

4 Q. -- what you were to do?

5 Commissioner Wilkerson: -- hold on. Your
6 objection is?

7 Mr. Liipfert: It calls for hearsay. He's
8 asking him who told him to do things.

9 Q. Yes. How did you know what to do on the job?

10 A. Well, we had -- I know how to read the plans, you know,
11 and even my son know how to read them, too. So, you
12 know, he does the layout because he's younger, you
13 know, but -- you know, because -- you know, and I
14 couldn't really see it because I don't have my -- you
15 know, I never had my glasses on, you know, I've got to
16 have reading glasses.

17 Q. Who -- who prepared the plans; do you know?

18 A. No, sir; I don't know.

19 Q. You didn't prepare them?

20 A. I -- I get -- I get them from Full Circle.

21 Q. Okay. Now, I show you these cards. These are ID cards

22 --

23 A. Uh-huh.

24 Q. -- Mr. Bader is the President and Craig Whitley --

25 A. Uh-huh.

1 Ms. Carter: -- it might be easier than me
2 walking all the way over there. All right.

3 Mr. Moss: Yes. I'll be glad to.

4 Ms. Carter: Thank you. If you'll look at
5 page 2 of my APA's to begin with, the APA part,
6 page 2.

7 Commissioner Wilkerson: On Junior?

8 Mr. Moss: I don't have page numbers on
9 yours.

10 Ms. Carter: If you'll look on the bottom
11 right hand corner. Keep going, you haven't gotten
12 to the APA's yet.

13 Mr. Moss: Oh, excuse me. Okay. Here it is.
14 Yes. Page 2?

15 Ms. Carter: Yes.

16 Mr. Moss: Okay.

17 CROSS-EXAMINATION

18 By Ms. Carter:

19 Q. Mr. Yslas, from what I understand, this is the first
20 contract that you worked on with Full Circle
21 Construction; is that right?

22 A. Yes, ma'am.

23 Q. And that contract is made out to Naun Ruiz and Juan
24 Yslas, Junior, correct?

25 A. Yes, ma'am.

1 Q. Well, Juan Yslas, I guess. Was that you or was that
2 your son?

3 A. No, that was me, you know, because I was the supervisor
4 and it was him; it was -- you know, I had to put down
5 my name and my number so Full Circle can get in contact
6 with me and it was -- I speak better English than he
7 does, so.

8 Q. Than Naun Ruiz?

9 A. Than Naun Ruiz, yeah. But I was --

10 Q. And he is someone who's like a --

11 A. -- a subcontract --

12 Q. -- a son to you?

13 A. -- a subcontractor, yeah.

14 Q. Well, he's like a son to you?

15 A. Yeah, he's my son.

16 Q. All right. And you were working for him on November
17 2nd of 2011?

18 A. Yes, ma'am.

19 Q. And -- now, you're the one that had the relationship
20 with Full Circle Construction, right?

21 A. Yes, sir -- yes, ma'am.

22 Q. You were working next to them and they noticed your
23 work?

24 A. Yes, ma'am.

25 Q. You knew Craig; you knew Matt?

1 A. Yes, ma'am.

2 Q. But the contract was actually under Naun Ruiz?

3 Mr. Moss: I mean, who is Matt?

4 A. No.

5 Mr. Moss: Who is Matt?

6 Q. Bader.

7 A. Matthew -- Matthew Bader.

8 Mr. Moss: Okay. Go ahead.

9 Q. But the contract was actually with Naun Ruiz, not you?

10 A. Yes, ma'am.

11 Q. Is that because you couldn't get insurance at that
12 time?

13 A. I didn't have no insurance at that time, ma'am.

14 Q. Is -- is that why the contract was with him and he was
15 letting --

16 A. Right.

17 Q. -- you use his insurance?

18 A. Yes, ma'am.

19 Q. Okay. Was Naun Ruiz ever in -- on the job?

20 A. He did -- after when I got hurt, you know.

21 Q. Okay.

22 A. Yeah.

23 Q. From November 2nd, 2011 up until January 16th of 2012,
24 was Naun Ruiz -- Ruiz ever on that job?

25 A. Yeah. Well, he went once or twice but other than that

1 he just --

2 Q. So, this is really your job and you were using his
3 insurance?

4 A. -- yeah.

5 Q. Okay. And at some point he told you you couldn't do
6 that anymore?

7 A. Well, he was going to go Mexico, ma'am. That is why I
8 was saying, you know, did he want me to get my -- my
9 own insurance because he was going, you know, going to,
10 you know, leave.

11 Q. So, he told you he -- you couldn't use his insurance
12 anymore?

13 A. Right. Well, I was trying to get my own insurance from
14 the beginning, you know, I mean, but before we started
15 the job and all that.

16 Q. When did you try that?

17 A. No. It was before then. I mean, I was trying to get
18 it -- you know, get my own business.

19 Q. And why could you not do that?

20 A. Well, I was -- I was working very a little, you know,
21 with him and, you know, he was -- I was getting paid
22 but I -- I couldn't afford it, so.

23 Q. Okay. So, you didn't get workers' Comp insurance
24 before this because you couldn't afford to do it?

25 A. Right.

1 Q. And so, you were using Naun Ruiz's?

2 A. Right.

3 Q. But at some point he told you for whatever reason you
4 couldn't do that anymore?

5 A. Right.

6 Q. And you were the lead man from --

7 Mr. Moss: Objection. I think he said he was
8 going to Mexico.

9 A. Yeah. He was going to Mexico.

10 Mr. Moss: Yes.

11 Ms. Carter: I said for whatever reason.

12 A. Right.

13 Q. He told you you couldn't use his insurance --

14 A. Right.

15 Q. -- anymore, right?

16 A. Yes, ma'am.

17 Q. So you had to get your own insurance --

18 A. Yes, ma'am.

19 Q. -- in order to keep doing this job on Full Circle?

20 A. Yeah.

21 Q. Okay. And from what I remember from your testimony Mr.
22 Ruiz took the first draw?

23 A. Right.

24 Q. But after that you got all the rest of them; is that
25 right?

1 A. Right.

2 Q. And -- let's see.

3 Ms. Carter: And that was -- it looks like
4 this -- if you look on page 20 of my APA's. Well,
5 no, I'm sorry; that's not right. Let's go --
6 let's start at page 10.

7 Q. It looks like November 15th of 2011, would have been
8 the first draw, which was six thousand dollars
9 (\$6,000.00).

10 Mr. Moss: Wait a Minute.

11 Q. And that went to --

12 Mr. Moss: Wait a minute. You've got it
13 mixed up here. You've got page 11, page --

14 Ms. Carter: -- page 10.

15 Mr. Moss: -- 10.

16 Commissioner Wilkerson: Ten (10) with a
17 circle on it, right?

18 Mr. Moss: Yes. I -- what -- what happened
19 is that these -- these copies have cut off the
20 circle. Let me see over here; I think I've got
21 it, seven (7), eight (8), nine (9), ten (10). And
22 that's it right there. Six thousand dollars
23 (\$6,000.00) in the middle of --

24 Ms. Carter: Yes.

25 Mr. Moss: -- the page?

- 1 A. That was -- that one, yeah.
- 2 Q. That was Naun Ruiz's draw?
- 3 A. That's the -- the check, yeah.
- 4 Q. Okay. So, on November 15th, 2011, was the first draw
- 5 and he got that amount?
- 6 A. Right.
- 7 Q. And then after that is when you started getting the
- 8 money?
- 9 A. Yes, ma'am.
- 10 Q. Okay. So, the second draw is the next page, page 11?
- 11 A. Yes, ma'am.
- 12 Q. And that's November 22nd of 2011?
- 13 A. Yes, ma'am.
- 14 Q. That's the second draw of six thousand dollars
- 15 (\$6,000.00)?
- 16 A. Yes, ma'am.
- 17 Q. So, you would have gotten that second draw?
- 18 A. Yes, ma'am.
- 19 Q. Okay. So, we know that after November 15th of 2011, it
- 20 wasn't Naun Ruiz's job anymore; it was yours?
- 21 A. Yes, ma'am.
- 22 Q. Okay. And then we have some documents that begin on
- 23 page 12 of my APA. And those are documents that were
- 24 prepared by your Accountant; is that correct?
- 25 A. Yes, ma'am.

1 Q. Okay. And that first one is from November 19th of 2011
2 through November 25th of 2011; is that right?

3 A. Yes, ma'am.

4 Q. Okay. So, that Saturday, by my records, was November
5 19th of 2011; does that mean that on that date Juan
6 Yslas, III worked for you for eight (8) hours?

7 A. Yes, ma'am. Well --

8 Q. And --

9 Mr. Moss: Well, you've got to explain --

10 A. Yeah.

11 Mr. Moss: -- it now?

12 A. Yes.

13 Q. Okay. And Ricardo Yslas eight (8) hours?

14 A. Eight (8) hours.

15 Q. So, everybody on that page -- there's six (6) people
16 besides you, right?

17 A. Uh-huh.

18 Q. They all worked --

19 A. Yes, ma'am.

20 Q. -- worked eight (8) hours?

21 A. Yes, ma'am.

22 Q. And then nobody worked on Sunday. They all worked ten
23 (10) hours on Monday the 21st of 2011?

24 A. Yes, ma'am.

25 Q. And on Tuesday, the 22nd, they all worked ten (10)

1 hours?

2 A. Yes, ma'am.

3 Q. And on the 23rd they all worked ten (10) hours?

4 A. Yes, ma'am.

5 Q. Okay. So, at least we know the 19th, 20th -- well, the
6 19th, 21st, 22nd, and 23rd, you had six (6) employees
7 working for you?

8 A. Yes, ma'am.

9 Q. Okay. Now, in that timeframe is when you were told you
10 had to get Workers' Comp insurance, right?

11 A. Yes, ma'am.

12 Q. And there has been some testimony that that was a --
13 time was an issue, you had to get it pretty quickly; is
14 that right?

15 A. Yes, ma'am.

16 Q. And -- and that's because you didn't want to get kicked
17 off that job?

18 A. Well, I was trying to finish the job, ma'am. I never
19 left hanging a job, you know.

20 Q. Okay. Now, on page 34 of the APA is the application,
21 if you'll go to that. And is that something that you
22 recognize?

23 A. Yeah, I seen it in my file, ma'am, but, you know, I
24 never, you know, really -- like I said, I never get
25 into it, you know, reading.

1 Q. Well, you sat down with Jackie Hernandez at People's
2 Choice, correct?

3 A. Yes, ma'am.

4 Q. And from what I understand you don't really remember
5 what she said and what she didn't say; is that right?

6 A. Yes, ma'am. I don't remember.

7 Q. And on page 37 there's a signature on that application;
8 is that your signature?

9 A. Thirty-seven (37)? Yes, ma'am.

10 Q. And that signature -- that application on page 34 is
11 dated November 21st of 2011; is that right?

12 A. Yes, ma'am.

13 Q. And it's my understanding that you didn't have anybody
14 with you when you went to fill out the application,
15 correct?

16 A. No, I went by myself.

17 Q. Okay. So, it's just you and Jackie Hernandez?

18 A. Uh-huh.

19 Q. Is that right?

20 A. Yes, ma'am.

21 Q. And so, any of the information she got to fill out this
22 application had to have come from you?

23 A. Yes, ma'am.

24 Q. Okay. And on page 34 there's a section that says
25 individuals included, excluded, and it talks about Juan

1 Yslas, your date of birth.

2 A. Uh-huh.

3 Q. Is that your date of birth?

4 A. Yes, ma'am.

5 Q. And it says it was a sole proprietorship; is that what
6 kind of business you have?

7 A. Yes, ma'am.

8 Q. And it says you have one hundred percent (100%)
9 ownership of that?

10 A. Yes, ma'am.

11 Q. And you're the owner?

12 A. Yes, ma'am.

13 Q. Okay. And under E it has a -- under included, excluded
14 it has an E?

15 A. Right.

16 Q. And under remuneration payroll it has a zero (0); is
17 that right?

18 A. Yes, ma'am.

19 Q. Okay. Were you paying yourself anything as the boss of
20 your business?

21 A. Well, I know -- it was a -- like I put the payroll to
22 -- to my Accountant, you know, and whatever was left,
23 you know, that was -- you know, that's what I would get
24 but I still saved, you know, money just in case, you
25 know, if I ever -- if I didn't finish the job I had to

1 -- you know, help pay guys, you know, whatever was
2 left.

3 Q. But you weren't making -- getting paid zero (0)?

4 A. No, ma'am.

5 Q. Okay. And then on page 35, which is the second page of
6 the application, it talks about what you do.

7 A. Uh-huh. Say it again, ma'am.

8 Q. I'm sorry. Hold on a second; I'm looking for something
9 else. Yes, on page 35 it talks about what type of
10 business you have?

11 A. Yes, ma'am.

12 Q. You do framing residential dwellings, carpentry?

13 A. Yes, ma'am.

14 Q. And then under employees it says full time, part time,
15 and there's a zero (0) under that?

16 A. Yes, ma'am.

17 Q. And then under estimated annual payroll there's a zero
18 (0) under that?

19 A. Yes, ma'am.

20 Q. And under estimated annual manual premium it says a
21 zero (0)?

22 A. Yes, ma'am.

23 Q. And so, the information on this application is that you
24 had no employees?

25 A. Yes, ma'am.

1 Q. Okay.

2 Mr. Moss: He didn't fill that out.

3 A. Yeah, I --

4 Mr. Moss: She typed that.

5 A. Yeah.

6 Q. The information on the application shows that you
7 didn't have any employees; is that correct?

8 A. Yes, ma'am. I didn't fill that out, you know.

9 Q. Okay. Did Jackie Hernandez ask you questions?

10 A. Not really, ma'am. I don't -- I can't remember really

11 --

12 Q. Okay.

13 A. -- you know.

14 Q. And I thought you remembered that you told Jackie that
15 you were going to hire one (1) or two (2) people?

16 A. Yeah, I did, ma'am.

17 Q. Okay.

18 A. Yeah.

19 Q. So, you didn't tell Jackie that you had any employees
20 on November 21st of 2011, did you?

21 A. No, ma'am.

22 Q. Okay. And, in fact, on that date you had six (6)
23 employees?

24 A. Yes, ma'am.

25 Q. Okay. All right. And then after that you had the

1 it, you know.

2 Q. okay. So, if you'll look at page 39 of my brief?

3 A. Thirty-nine (39).

4 Mr. Moss: Thirty-nine (39) or 539?

5 Ms. Carter: Thirty-nine (39).

6 A. Thirty-nine (39).

7 Mr. Moss: That must be it right there, I
8 guess.

9 Q. From what I understand from your deposition that you
10 did not read this; so, you don't remember reading this
11 as part of your policy?

12 A. I can't remember, ma'am.

13 Q. okay. But had -- but had you read it you would have
14 understood that your policy did not include you?

15 A. I can't remember, ma'am. Yeah.

16 Q. Well, I'm not asking if you can remember it. I'm
17 asking you reading it now --

18 Mr. Moss: He said he didn't read it.

19 A. He didn't -- I didn't read it, ma'am.

20 Q. -- I know.

21 Commissioner Wilkerson: No, the question
22 was, if he had read it --

23 A. Yeah.

24 Commissioner Wilkerson: -- he would have
25 understood he --

1 page is what she's asking you?

2 A. No. Well --

3 Q. Okay.

4 Mr. Moss: Do you or don't you? That's what

5 --

6 A. No.

7 Mr. Moss: -- she asked you.

8 Q. Okay. So, sitting here today you don't understand it
9 but when I took your deposition you did?

10 A. I -- I -- I don't really, ma'am; I'm sorry.

11 Q. Okay.

12 A. Okay. I'm sorry.

13 Mr. Moss: That's all right.

14 Q. And you never notified your insurance company that you
15 wanted to be included in coverage, did you?

16 A. No, ma'am.

17 Q. All right. You never went back to Jackie Hernandez
18 after you received a copy of the policy or the
19 application telling her you wanted to be included in
20 coverage, did you?

21 A. No, ma'am.

22 Q. Now, when you paid for the policy you paid about seven
23 hundred and fifty dollars (\$750.00); does that sound
24 about right?

25 A. I -- I think so. Well, seven fifty (\$750.00) and --

1 answer.

2 Mr. Moss: Well, you -- you're leading him
3 all over the --

4 A. Yeah.

5 Ms. Carter: Well, I can lead him.

6 Mr. Moss: -- well, I know you can lead --

7 Ms. Carter: I'm allowed to lead him, Jim --

8 Mr. Moss: -- on cross-exam but --

9 Ms. Carter: -- it's a cross-examination.

10 Mr. Moss: -- but you're answering your own
11 question.

12 A. Uh-huh.

13 Q. Would you have been able to afford a policy that cost
14 six thousand, three hundred dollars (\$6,300.00) in
15 November of 2011?

16 A. Not that day, ma'am.

17 Q. Okay. Now, there's some documents -- I just want to
18 make sure you live at 70 -- what was your address? 70

19 --

20 A. Hickory Hill.

21 Q. -- Hickory Hill Road?

22 A. Yes, ma'am.

23 Q. And your son owns that property?

24 A. Yes, ma'am.

25 Q. And there's a 71 Hickory Hill Road?

1 was written that was on page 2 of my APA's, the
2 November 2nd, 2011 proposal.

3 A. On page two (2)?

4 Q. On page 2.

5 A. Yes, ma'am.

6 Q. I thought you said earlier that your daughter wrote
7 that; isn't that your son's handwriting?

8 A. I -- I think it was my daughter, ma'am. I don't know.
9 My -- because my son is kind of sloppy, too, you know,
10 so. I can't remember that well.

11 Q. All right. Well, if you said in your deposition that
12 it was your son's handwriting; do you --

13 A. It could have been, yeah.

14 Q. -- dispute that?

15 A. Yeah. It could --

16 Q. Okay.

17 A. -- have been him. Okay.

18 Q. Do you know why your son was writing a proposal for
19 you?

20 A. Well, because I tell him what I charge.

21 Mr. Moss: You can't read and write.

22 A. I -- and I can't read none, you know, so I can't write.

23 Mr. Montgomery: Let me just object. I -- I
24 think there's some coaching going on over there.

25 Mr. Moss: Well, he's --

1 Mr. Montgomery: I heard the phrase something
2 about read that.

3 Commissioner Wilkerson: Now, Mr. Moss, you
4 can't tell him what to say.

5 Mr. Montgomery: Thank you, Your Honor.

6 Q. And it's true that your son has helped you write up
7 your contracts; is that right?

8 A. Yeah. He does sometimes, yeah.

9 Q. And, in fact, he actually knows more about construction
10 than you do, doesn't he?

11 A. He does.

12 Q. Okay. Been doing it longer than you have?

13 A. Yes, ma'am.

14 Q. He can read the plans better than you can?

15 A. Yes, ma'am.

16 Q. Now, the payroll information stops on December the 9th
17 and doesn't start up again until January 7th of 2012;
18 so there's a period of three (3) or four (4) weeks in
19 there. Is that the time period you had to keep working
20 for free because you had already drawn all the money?

21 A. Well, it was a couple of weeks, you know, we didn't
22 work at all, you know, because we didn't start the
23 other houses until the 1st -- sometime, you know, in
24 January, ma'am.

25 Q. Okay.

1 Q. And you paid Juan Yslas, III, it looks like you paid
2 him a good bit more than you paid anybody else; is that
3 correct?

4 A. Yes, ma'am.

5 Q. Was that by agreement?

6 A. It was -- well, more because he knows more, you know,
7 and he stay on the job most of the time, you know; I
8 did too, you know, so.

9 Ms. Carter: That's all the questions I have.

10 A. Thank you.

11 Commissioner Wilkerson: Did she leave you
12 any?

13 Mr. Liipfert: I've got a few. I'll be
14 brief.

15 CROSS-EXAMINATION

16 By Mr. Liipfert:

17 Q. On this job you -- you were a subcontractor for Full
18 circle, weren't you?

19 A. Yes, sir.

20 Q. And you were the -- you were -- you, yourself, were the
21 subcontractor, right?

22 A. Yes, sir.

23 Q. And you had employees working for you?

24 A. Yes, sir.

25 Q. And you -- I think you testified that you were paid

1 with whatever was left after you paid your employees?

2 A. Right.

3 Q. And you used your own tools on the job?

4 A. Yes, sir.

5 Q. You -- you put up the scaffolding that was used on the
6 job?

7 A. Yes, sir. Well, one of my boys, you know, but I -- I
8 told him how to build it.

9 Q. Right. You decided how to put up the scaffolding --

10 A. Right.

11 Q. -- that used on the job?

12 A. Yeah, because I was going to have to get up there.

13 Q. And you decided how to do the job --

14 A. Yes, sir.

15 Q. -- the work? And Full Circle gave you some plans. I
16 guess you and son read the plans to figure how to --
17 how to get the roof on?

18 A. Yes, sir.

19 Q. And you were paid by draws based on percentages done?

20 A. Yes, sir.

21 Q. And the contract you gave them was for the full amount
22 of the job, right?

23 A. Yes, sir.

24 Q. And you were not an employee of Full Circle, were you?

25 A. I was working but I don't know what you mean.

1 Q. I mean you were a subcontractor --

2 A. Yes, I --

3 Q. -- right?

4 A. -- a subcontractor.

5 Q. You weren't a -- they didn't give --

6 A. Yeah, I was a subcontractor.

7 Q. -- Full Circle didn't give you a weekly salary, did
8 they?

9 A. No, sir.

10 Q. And after you were hurt Full Circle kept giving you the
11 draws when your men finished the job, didn't they?

12 A. Yes, sir.

13 Q. And your men did finish this job even though you
14 couldn't work anymore?

15 A. Yes, sir.

16 Q. And you could have fired your men, right?

17 A. Yes, sir.

18 Mr. Liipfert: That's all the questions I
19 think I have. Thank you.

20 Commissioner Wilkerson: Mr. Montgomery, any
21 questions.

22 Mr. Montgomery: Yes.

23 CROSS-EXAMINATION

24 By Mr. Montgomery:

25 Q. As -- as we sit here today, was your son an employee of

1 A. Excuse me, sir?

2 Commissioner Wilkerson: Would you have done
3 anything it took that day to get insurance where
4 you can get back to the job and get paid?

5 A. What you mean do any -- any -- do anything?

6 Commissioner Wilkerson: Well, you couldn't
7 do the job unless you had a certificate, right?

8 A. Right. What I was -- see, what I was trying to do I
9 was trying to get that so I can keep on going because I
10 had -- Naun was trying to leave; he was about to go
11 because that was a time when they was trying to get all
12 the illegal people out or whatever. So, that's why,
13 you know, I was trying to rush it, you know. So, I was
14 kind of in a hurry, too, you know. So, I wish I could
15 have sat down with Jackie, you know, and discussed it,
16 you know, and -- and all that, you know, but I don't
17 know what happened, sir, so. But I do like -- you
18 know, I mean, I had insurance before, you know, by
19 myself, you know, and I worked for other contractors
20 here in -- in Beaufort and Paris Island -- I mean,
21 Fripp Island. And I do small jobs, you know, big jobs,
22 you know, but, you know, it's been a little while, so.
23 But I move back and forth, so. I do tomatoes and I --
24 I sell and buy tomatoes, too, you know, and
25 watermelons, you know. If they're not -- if they're

1 or --

2 A. No, She never --

3 Q. -- anybody else?

4 A. -- no, she never talked to them. No, she didn't --

5 Q. Okay. So --

6 A. -- no.

7 Q. -- the only person she could have gotten this
8 information from was you?

9 A. Yes, ma'am.

10 Q. All right. And the information she put down where she
11 had zero (0) employees?

12 A. Uh-huh.

13 Q. And your testimony was that you told her you were going
14 to get two (2) or three (3)?

15 A. I -- yeah, I -- I did say that. Yeah.

16 Q. But you did not tell her on that date that you had six
17 (6) employees?

18 A. Huh-uh. No, ma'am.

19 Q. Okay.

20 Ms. Carter: That's all the questions I have.

21 Commissioner Wilkerson: Any more?

22 Mr. Moss: None, Your Honor.

23 Commissioner Wilkerson: Okay.

24 Mr. Montgomery: No, Commissioner.

25 Mr. Liipfert: None.

1 Commissioner Wilkerson: What page? I'm
2 sorry.

3 Ms. Carter: Two (2).

4 A. Yes, ma'am. That's my handwriting right there, ma'am.

5 Q. Okay. So, you actually drew up that proposal?

6 A. Yes, ma'am.

7 Q. Is that something that you often did with your father?

8 A. Yes, ma'am. He's not -- he's not good with words and
9 he's not good with spelling and he's not good with
10 reading; there's a lot of things he's not good with.

11 Q. Now, back to the 1099 on page 24. Do you know why that
12 was mailed to you at 70 Hickory Hill Road?

13 A. Ma'am, I was already staying there when I got hurt.
14 That's why that -- that's why I guess he put it on that
15 mailing address.

16 Q. Okay. Now, if you'll turn to page 32. These are some
17 notes from the NCCI and they were talking about a J&J
18 Construction that had the same employer identification
19 number as your father.

20 A. Uh-huh.

21 Q. And it said that that was a partnership. Do you know
22 what J&J Construction was?

23 A. J&J Construction was my father a long time ago.

24 Q. Okay. Were you ever a part of a partnership of J&J
25 Construction?

1 A. Because, like I said before, my Father is not good with
2 words.

3 Q. Right. And --

4 A. He's not -- he's not good with words. Everything gets
5 -- oh, he can tell it to me in Spanish like that
6 (snapped fingers) but everything -- when he's trying to
7 speak in English everything gets locked up in here.

8 Q. -- so, you had to write up a lot of the contracts?

9 A. Yes, ma'am.

10 Q. You --

11 A. When he asked me to I wrote up -- I wrote them to.

12 Q. -- you had to tell the people working with your dad
13 what to do on the job?

14 A. If he wasn't around, yeah.

15 Q. You were the lead man on the job?

16 A. Yes, ma'am. I was --

17 Q. You were getting --

18 A. -- I was --

19 Q. -- paid a lot more than everybody else on the job?

20 A. Yes, ma'am.

21 Q. And would Craig, the guy that was on the job
22 day-to-day; would he come to you with issues?

23 A. He knew I was the one that knew the most.

24 Q. Okay. And you know more about construction than your
25 dad?

1 A. And the way the trusses are made we have to walk the
2 walls back and forth; there is no way we can tie
3 ourselves down. There's no way without putting the --
4 even with a crane we can't tie ourselves down to be
5 able to move back and forth.

6 Q. -- so a crane wouldn't have done you any good?

7 A. A crane wouldn't have done -- done us any good to walk
8 back and forth, you know, we have to walk back and
9 forth on those walls.

10 Q. So, the way you were doing it that day is the only way
11 you can do it?

12 A. No. It's not the only way we can do it but it's the
13 way we were doing it that day.

14 Q. Okay.

15 A. Yeah.

16 Q. And this scaffolding is the one that you all
17 constructed?

18 A. Yes, sir.

19 Q. Okay. Now, the tools that you used to construct that
20 scaffolding; were they any of the ones -- the new ones
21 that you had purchased that you told Ms. -- Ms. Carter
22 about?

23 A. That -- that my Dad bought? Yes, sir.

24 Q. Okay. They're the ones your Dad --

25 A. My Dad bought.

1 Q. -- did you use any of your own tools on that job?

2 A. No, but I've bought my own tools.

3 Q. Okay. But on that job did you use any of yours?

4 A. No. Huh-uh.

5 Q. Okay.

6 A. See, as long as we keep tools, if we get another job
7 they pay you more when you've got tools.

8 Q. Right, I understand. Okay. And -- and so, assume for
9 purposes of this question that you were actually
10 operating under that construction name, Juan Yslas
11 Construction, okay?

12 A. Uh-huh.

13 Q. Did -- did you have any kind of workers' Comp insurance
14 working for your dad?

15 A. What do you mean?

16 Q. Meaning if -- if you were not an employee of your dad
17 did you have any other workers' Comp insurance to cover
18 you?

19 A. No, sir.

20 Q. Okay. So, you were uninsured yourself?

21 A. Yes, sir.

22 Q. Okay. And you were only insured through your dad's
23 policy?

24 A. At that time, yes.

25 Q. All right. So, if you were a subcontractor of your

1 Q. Does your dad read English at all or just -- just very
2 little?

3 A. Very little.

4 Q. Very little?

5 A. Very little. Very little.

6 Q. Does he --

7 A. The way he -- only the little words is what he can
8 pronounce --

9 Q. -- is he -- is he able --

10 A. -- like and or I --

11 Q. -- is he able to write the English language very well?

12 A. -- his -- his name. His name and -- and a -- a couple
13 of in, and, but; the small words he might. He's
14 always asking somebody to help him spell or to help him
15 write something.

16 Mr. Moss: I don't have anything further.

17 Commissioner Wilkerson: Any other questions?

18 Mr. Liipfert: No.

19 Mr. Montgomery: No, Commissioner.

20 Commissioner Wilkerson: No? Okay.

21 Mr. MacLoskie: No questions in light of the
22 ones I already asked.

23 Commissioner Wilkerson: All right. Thank
24 you. This concludes the hearings today or the
25 hearing today. If I could let me meet with the

DECISION AND ORDER
OF
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

W.C.C. FILE NO. 1200329

Juan Yslas, Jr., Employer/Employee
v.
Full Circle Construction, Alleged Statutory Employer
Amerisure, Alleged Statutory Carrier

And

Riverport Insurance, Alleged Carrier For
Juan Yslas, Jr. (Construction Company)

And

South Carolina Uninsured Employer's Fund

HEARING: Held in North Charleston, SC
July 9, 2012

APPEARANCES: Employee was represented by:
James H. Moss
Moss, Kuhn, Fleming, P.A.
P.O. Drawer 507
Beaufort, South Carolina 29901

Full Circle Construction was represented by:
Ryan S. Montgomery, Esquire
Ryan Montgomery Attorney at Law, LLC
108 Mills Avenue
Greenville, South Carolina 29605

Riverport Insurance was represented by:
Allison M. Carter
Wilson, Jones, Carter & Baxley, P.A.
Suite 100
421 Wando Park Boulevard
Mt. Pleasant, South Carolina 29464

S.C. Uninsured Employer Fund was represented by:
O. Edworth Liipfert, III
P.O. Box 570
Beaufort, South Carolina 29901

000507

PURPOSE OF THE HEARING: To determine all issues on Claimant's Form 50

DECISION AND ORDER: The Honorable Avery B. Wilkerson, Jr.

DATE OF DECISION: October 12, 2012

(order to follow)

I. APA SUBMISSIONS

Employee:

<u>APA #</u>	<u>Provider</u>	<u>Date</u>	<u>Page No.</u>
1.	Beaufort Memorial Hospital	1/16/12-1/18/12	1-32
2.	Beaufort Emergency Medicine	1/16/12	33-34
3.	Beaufort Medical Imaging	1/16/12	35-36
4.	Lowcountry Anesthesia	2/7/12	37
5.	Leland Stoddard, M.D.		38-89
6.	Correspondence regarding coverage		90-104
7.	Business License and WCC Materials Regarding coverage		105-108
8.	Affidavit of Ricardo Yslas	2/28/12	109-110
9.	First Report of Injury		111
10.	Riverport Insurance Materials WC-39-84-012364-00		112-136
11.	Riverport Insurance Materials on Employer's Liability		137-141
12.	Riverport Insurance Materials re: Filing Claims		142-151
13.	Atlantic Casualty Ins. Co. Commercial Lines Policy		152-154
14.	The Hartford materials regarding policy No. 6S60 UB 43087P58A regarding policy audit for 7/21/10 – 7/21/11		155-161

Full Circle Construction:

15 (5).	NCCI Liability Policy Binder	11/23/2011	197-249
16 (6).	Certificate of Insurance	11/28/2011	250
17 (7).	Correspondence from SCWCC Regarding Coverage	5/17/2012	251-269

Riverport Insurance

See Exhibits and Riverport Incorporates other parties APA Submissions.

S.C. Uninsured Employer's Fund

Adopted, incorporated and utilized the APA Submissions of all other parties. See UEF Form 58.

II. Exhibits*A. Claimant Exhibits*

<u>Exhibit #</u>	<u>Description</u>	<u>Page</u>
15.	2010 Tax Return and 1099 Forms	162-175
16.	Materials Regarding Lots 149 and 181	176-189
17.	Letter of Eduard Hernandez 6/26/12	190-196
18.	Jackie Hernandez Deposition	
19.	Cheryl Perkins Deposition	

B. Riverport Exhibits

<u>Exhibit #</u>	<u>Description</u>	<u>Page</u>
A.	Work Proposal from Juan Yslas	1
B.	Work proposal from Naun Ruiz And Juan Yslas	2
C.	Certificate of Insurance	3
D.	Exhibit 4 of Exhibit from Juan Yslas, Jr. Deposition	4-40
E.	W9 for Juan Yslas	41
F.	Policy Information	42-95

G.	Audit Report	96-102
H.	Tax Returns for Juan Yslas, Jr.	103-117

C. Full Circle Construction Exhibits

1. Deposition Transcript of Juan Yslas, Jr.
2. Deposition Transcript of Juan Yslas, III
3. Deposition Transcript of Ricardo Yslas
4. Deposition Transcript of Jackie Hernandez
5. Deposition Transcript of Matt Bader
6. Deposition Transcript of Cheryl Perkins

III. Stipulations

1. The South Carolina Workers' Compensation Commission has jurisdiction over this matter;
1. Venue is properly set in North Charleston per party stipulation;
2. There was no stipulation as to average weekly wage or compensation rate;
3. The parties stipulate to the medical records and exhibits listed herein and above as there were no objections to the submissions by any party; and
4. Both parties are subject to the provisions of the South Carolina Workers' Compensation Act;

IV. STATEMENT OF CASE

A. Claimant's Position

It was the position of the claimant that on or about January 16, 2012, he was working when he fell from scaffolding injuring his bilateral ankle and legs. The injury was denied by all carriers based upon coverage issues but it was the

position of the claimant that 1. Mr. Yslas has insurance for himself under the Riverport Insurance Policy and that Riverport should accept this claim and provide coverage; 2. In the alternative, it was the position of the claimant that Full Circle was the statutory employer and should pick up this claim and pay in the first instance as it was uncontested that Mr. Yslas was working on a job where Full Circle Construction was the general contractor; and 3. That Mr. Yslas, did not exclude himself from the South Carolina Workers' Compensation Act and therefore can avail himself to benefits under the South Carolina Workers' Compensation Act.

The claimant sought an award that the injury was compensable, covered under the South Carolina Workers' Compensation Act, requested temporary total disability benefits back to January 17, 2012 – present, and requested retroactive and ongoing medical treatment. Claimant contended that his average weekly wage was \$1,000 with a corresponding compensation rate of \$666.70 (.6667% of the AWW claimed on the claimant's Form 58).

B. Full Circle Construction's Position

It was the position of Full Circle Construction that it was undisputed that the claimant sustained an injury. However it was the position of Full Circle Construction that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself

under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

In the event Juan Yslas, Jr. did not exclude himself under the South Carolina Workers' Compensation Act, then it was Full Circle's secondary position that the claimant was covered by the insurance of Riverport Insurance the direct carrier with whom Mr. Yslas, Jr. had a policy. Finally, if Full Circle was ordered to pay this, then Full Circle requested that this be immediately transferred to the S.C. Uninsured Employer's Fund pursuant to Section 42-1-415.

C. Riverport Insurance's Position

It was the position of Riverport Insurance that it was undisputed that the claimant sustained an injury. However it was the position of Riverport Insurance that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself. In addition,

the claimant had been audited and it was determined that he had employees on his payroll and still to this day had not paid the retroactive premium per the audit.

D. S.C. Uninsured Employer's Fund (UEF)

It was the position of the UEF that it was undisputed that the claimant sustained an injury. However it was the position of UEF that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

If somehow it was found that Mr. Yslas was covered and that Full Circle Construction had to pay in the first insurance then Full Circle could not transfer to the UEF as the Certificate of Insurance was not on an "ACCORD" form but instead on an older version of the Certificate of Insurance.

V. EVIDENCE OF CASE

A. Testimony of Ricardo Yslas

Ricardo is the brother of Juan Yslas, Junior and began working for Junior when they began the Hampton Lake project under the Full Circle Construction general

contractor. See Dep. Tr. Of Ricardo Yslas, p. 10. According to Ricardo, Junior's company was "running the show" and showing people what to do on the job site. Id. At 11. At the time of the accident and on the Hampton Lake project, Junior had 3-4 additional guys other than Ricardo, Juan Junior and Juan Yslas, III. Id. At 12. In addition to those people there were other people that would come and go. Id. At 13.

E. Testimony of Letvy Jacquelyn Fernandez

Ms. Fernandez was employed with Peoples Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7. Ms. Fernandez has a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8. When completing the application Junior indicated that he had no employees. Id. At 12. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. Id. At 13, 21 and 22.

Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways. In Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. Id. At 17-19. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19. Junior went on to indicate that

he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.

Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business.

F. Testimony of Cheryl Perkins

Ms. Perkins was offered as the representative for Riverport Insurance but she was an employee of Berkley Risk as Berkley contracts to provide administrative services, day to day dealings with insurance applications, policies, binders, etc. See Dep. Tr. Of Cheryl Perkins, p. 5. In South Carolina a person applying for workers' compensation insurance has the ability to either include or exclude themselves from South Carolina Workers' Compensation coverage. Id. At p. 8. Mr. Yslas, Jr. excluded himself from South Carolina Workers' Compensation coverage. Id. At 9.

Deposition Exhibit 1 was referenced during the course of the deposition and accepted as evidence in this case as there were no objections argued at the hearing to exclude that information. See. Hr. Tr. Within that exhibit was an application that dealt with payroll and Junior had indicated that he was a sole proprietor and had no employees nor payroll. Id. At 12-13. If employees had been hired at a later date then that employer was to notify the carrier in writing of the payroll change. This was not done. Id. At 13-14. Junior was only charged \$750 for an annual insurance premium based upon his representation that he had zero (0) employees. Id. At 18.

According to Cheryl Perkins, had Ylas, III, been an employee of Junior then he would have been covered under Junior's workers compensation policy with Riverport. Id. At 35. At some point, Riverport went back and audited Junior and determined that he had employees where workers' compensation insurance premium was due. Ms. Perkins was to provide a copy of the audit where it would identify what employees were listed and premiums requested. Id. at 35-37.

G. Testimony of Juan Ylas, III

1. Deposition Testimony

Juan Ylas, III was born on August 25, 1975 and appeared as a Hispanic male who currently resides at 70 Hickory Hill in Beaufort County, South Carolina. See Dep Tr. Of Juan Ylas, III, p. 7. The Third has a history of working manual labor jobs to include tomato farming and construction work. The Third had a previous workers' compensation injury by way of a broken ankle and treated with Dr. Leland Stoddard. Id. at p. 17-18.

The Third testified that he used to run his own construction company but that at some point his insurance lapsed. Id. At p. 13-14. He then went to work for other builders with the most recent builder being his father, Junior. It was the testimony of The Third that he was an employee only and as his father told him he was getting workers' compensation insurance under his name. Id. At p. 30. The Third switched jobs from working for a Naun Ruiz and switched to his dad (Junior) as his employer. When this occurred he began to make \$20 per hour which was a raise of \$2/per hour compared to when he was working for Naun Ruiz. Id. At 35. At the time the Third came to work for Junior, the Third no longer had a construction company. Id. The Third

never had any conversations with Junior regarding workers' compensation insurance or who was included/excluded. Id. At 39.

Insofar as the accident is concerned, Juan Yslas, III testified that it was going to take a couple days to get a crane out to the job site so they did what they normally did. Id. At 42. They used their own methods and spread all the trusses around. They had them all on the gable end walls and started to pick them up and carry them. They built scaffolds in the center. Id. At 42.

Junior was located in the center of the scaffold and the Third on the side. They started to pick up the truss when the Third started to walk over to tell his father he needed to get down and let one of the younger guys do the work but Junior has a lot of pride. Id. At 42-43. As The Third got to Junior's location on the scaffold they constructed, Junior lost his balance and started to fall thereby pulling or knocking the Third down with him. Id. 43-44. The Third landed on his heels and sustained injury. He has treated with Dr. Leland Stoddard.

2. Hearing Transcript Testimony

The third testified he resides at 70 Hickory Hill, the same address where his dad lives. Hr. Tr. p. 116. He first started working in South Carolina in the Tomato business which consisted of dumping the tomatoes in boxes. Hr. Tr., p. 108. The Third worked in construction since 1994 or 1995 when he began as a framer. Hr. Tr., p. 109. On January 16, 2012 he was on one end of a wall and his dad (Junior) was on the center of the scaffold. Id. The third was walking towards Junior to tell him that he needed to get down off of the scaffold and put a younger guy up on the scaffold. Id. Junior

grabbed the truss being passed up and then let it go causing him to lose his balance. Hr. Tr. Pp. 109-110. As he lost his balance he reached out with his arms thereby hitting the Third with his backhand and they both fell to the ground below. Id. at p. 110.

The Third fractured both heels. Id. At the time of the injury, the third was working for Junior. Hr. Tr. P. 112. The Third had no involvement in the management of Junior's company as the Third did not negotiate the jobs, did not furnish the tools, and reported to his father (Junior) as the boss. Id. at 112-113.

While the Third did not negotiate the jobs, he would on occasion help draw up the proposals as his father is "not good with words and he's not good with spelling". Hr. Tr., p. 121. The Third further testified that he had a previous construction company with valid S.C. Workers' Compensation Insurance until it was cancelled for non-payment of premium. Id. at 123. The address used for the workers' compensation insurance at that time was the same address of 70 Hickory Hill. Id. at 124.

In so far as the scaffolding from which the Third and Junior fell, the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130. The scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131. Even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132. While this is not the only way to complete this work it was the way the Third and Junior chose to do it that day. Id. In addition, the scaffolding was constructed by Junior and/or his workers and not by Full Circle Construction. Hr. Tr., p. 132. The tools that the Third and Junior used to construct the scaffolding were Junior's tools. Id. at 132.

H. Testimony of Juan Yslas, Jr. (Junior)

1. Deposition Transcript

Junior also testified that he too lived at the 70 Hickory Hill Road address. He appeared as a 54-year-old Hispanic male. Dep Tr. Of Juan Yslas, Jr. at p. 11. Junior was originally employed by Naun Ruiz. Id. At 31-32. When he left the employment of Ruiz, Junior obtained his own workers' compensation insurance through First Choice later determined to be People's Choice. Id. At 32. When he applied for insurance he met with Jackie. When he took out workers' compensation insurance he did not know whether or not he was covered. Id. At 33. He didn't even know if it covered the "whole crew." Id. When Junior took over the project and no longer worked for Ruiz, Junior provided his own tools on the job site. Id. At 33.

According to the testimony of Junior, he believes he started his own company on or around November 22, 2011. Id. P. 35. When he started his company he paid his workers' compensation insurance premium. Id. According to Junior there were 6 employees all together working for him besides The Third, Junior and Ricardo Ylsas. Id. At 51.

On the day of the accident, Junior was on a walk board that he built. Id. p. 53. This walk board and/or scaffolding was constructed with Junior's tools. Id. at 54. No one at Full Circle Construction instructed Junior how to build the scaffold because "they knew how to do that". Id. at 54.

Junior testified similarly to the Third with respect to how the accident occurred. Junior also fell and sustained injury to his feet/ankles. Other body parts were claimed and in dispute. Junior also treated with Leland Stoddard and there was no dispute as

to the fact the accident occurred nor any issue with the medical treatment provided thus far.

According to Junior, he was instructed by representatives of Full Circle that he could not begin the job until he provided Full Circle with proof of workers' compensation insurance. Id. at 87. When Junior applied for insurance he told Jackie with People's Choice that he planned to hire one or two employees. Id. at 90. Junior then testified that this was untrue because he had 5-6 employees at the time of applying for the application. In addition to having these employees, Junior had provided his accountant with documents for tax purposes that indicated he had several employees. Id. at 91.

Junior did not tell Jackie how many employees he had. Id. at 93-94. Junior testified whether or not he and Jackie had discussed whether he wanted to be included or excluded and he could not remember whether he could afford to be included. Id. at 96-97. He does however remember getting a copy of the policy in the mail but never read it. Id. at 98.

Mr. Yslas, Jr. was asked to review various pages of information related to insurance coverage and applications. He reviewed p.36 of the exhibit which was p. 39 of Allison Carter's APA dealing with insurance inclusions and exclusions. As he reviewed this document, he interpreted this document to mean he was excluded from coverage. See Hr. Tr. PP. 99-100.

Also of significant importance is that Junior testified that when he began work on the Full Circle job, his son, the Third, was the lead man- "he was an employee" of Junior. Id. at 118.

2. Hearing Transcript and Testimony

Junior testified that he was injured on Lot 181 where Full Circle was a general contractor for the job site. Hr. Tr. generally and at p. 38. The contract itself was for \$12,118.50 and that proposal prepared by Junior's daughter. Id. at p. 39. On January 16, 2012, Junior was injured when he fell from scaffolding to the ground below. Junior hand his crew began to lift the trusses by hand. There were no cranes on site. Hr. Tr. pp. 41-42. The scaffold was built by Junior and/or his crew. Hr. Tr. p. 42. As he was lifting a truss, he had to put it back down. At that point, the Third came over to help him and he must have lost his balance or when he turned around after setting the truss down Junior hit the Third and then both went down together. Hr. Tr. p. 42.

Junior testified that he had employees working for him. Hr. Tr. p. 44. After the fall, Junior sustained various injuries some of which were in dispute at the time of the hearing. Id. at p. 47.

With respect to the insurance issue in this case, Junior was instructed by Full Circle Construction that he must obtain workers' compensation insurance. Id. at p. 48. He went to People's Choice (sic First Choice). Hr. Tr. p. 48. Junior testified that he and his son had not affiliation in each other's businesses. Hr. Tr. p. 49-50.

On cross examination, Junior conceded that at the time he began the job at lot 181 where he was the employer, he had employees. Hr. tr. p 63-64 and Riverport APA, p. 12. According to those documents, at the time of the application for insurance by Junior he had six (6) employees working for him. Hr. Tr. p. 65, ll. 5-8. In addition, when he applied for insurance he was in a hurry to get the insurance. Id. at 65. Junior also verified that he signed the application (at Riverport APA, p. 37) where it was

indicated he had no employees and was excluding himself from workers' compensation coverage. Riverport APA, p. 37 and Hr. Tr., p. 66. The information contained in the signed application came from Junior (emphasis added). Hr. Tr. p. 66. On that application Junior indicated he had no employees and had no payroll. Hr. Tr. p. 68. Junior further conceded that he did not tell Jackie Fernandez that he had any employees at all which at the time he had six (6) (emphasis added). Hr. Tr. p. 69. According to the Junior's tax records he supplied to his accountant, he started paying employees on November 19, 2011. Id. at 87 and Riverport APA, p. 12.

Finally, Junior never indicated to the insurance company that he wanted to be included in any type of workers' compensation coverage. Hr. Tr. p. 82. The claimant never returned to the insurance agent and requested that he be included or covered under the workers' compensation coverage. Id. The premium associated with his policy was \$750 which he was able to pay but went on to testify that if it had been \$3,600 as indicated in the Riverport audit, he would not have been able to pay that premium. Id. at 83.

I. Relevant Exhibits and APA Submissions

- Payroll Information for Juan Yslas, Jr., Riverport APA p. 12-14;
- Signed Insurance Application stating zero employees and excluding Junior from coverage. Riverport APA, 34-37 and 61-67;
- Certificate of Insurance from Junior to Full Circle, Full Circle APA 2;
- Berkley/Riverport Audit showing premium retroactively owed and Juan Yslas, III being named as employee/subcontractor and a premium requested for him from Junior; Full Circle APA 4.

VI. FINDINGS OF FACT

1. I hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim;
2. I find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;
3. I find that the scaffold from which the claimant and Junior fell was built by Junior and or his crew. Dep of Juan Yslas, Jr. at P. 53, ll. 3-6;
4. I find that the scaffold from which the claimant and Junior fell was built with the tools provided by Junior;
5. I find that no one instructed the claimant on how to construct this scaffolding as they had the know how to do that on their own. Hr. Tr. p. 132;
6. I find that neither Junior nor anyone on his crew built hand rails on the scaffolding Hr. Tr., p. 131;
7. I find that the Junior was lifting a truss which according to his son, the claimant, was too heavy and a younger worker should have been lifting. Hr. tr. p. 108;
8. I find that Junior lost his balance on the scaffolding and struck the Third while trying to regain his balance causing both to fall. Hr. Tr. p. 109-110;
9. I find that that the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130.

10. I find that the scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131.
11. I find that even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132.
12. I find that the way they were lifting the trusses on the day of the accident was not the only way to do this job Junior chose to do it that day. Id.
13. I find that Ms. Fernandez was employed with People's Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6.;
14. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7.
15. Ms. Fernandez had a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8.
16. When completing the application Junior indicated that he had no employees. Id. At 12.
17. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. Id. At 13, 21 and 22.
18. Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways.

19. I find that in Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. Id. At 17-19.
20. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19.
21. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.
22. Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents, including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business;
23. I find that there is enough evidence in this file to warrant that the claimant be referred to the South Carolina Attorney General Office to determine whether or not fraud or some other violation has been committed. See Findings of Fact #33-34;
24. I further find that the claimant would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage, indicated he had 0 people on his payroll and failed to correct the insurance policy and/or endorsement as a result thereof;
25. I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of a the trussed;

26. In addition, I further find that the sole reason Mr. Yslas, Jr. is not covered by the workers compensation insurance of Full Circle is Junior's complete failure to include himself in coverage and honestly complete insurance applications as it relates to his business practices.

VII. CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:

1. All findings of fact are incorporated herein by reference as well as the hearing transcript and APA Submissions;
2. Pursuant to the South Carolina Workers' Compensation Act, the claimant specifically excluded himself from workers' compensation coverage and therefor is not entitled to benefits under the South Carolina Workers Compensation Act;
3. Nothing in this order in any way affects the Uninsured Employers' Fund's right to pursue collection of its costs pursuant to SC Code Ann. §42-7-200 as it pertains to the employer, Juan Yslas, Jr.;
4. Based upon the claimant's willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, I find that the claimant shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;
5. Nothing in this Order prevents Riverport Insurance from additional litigation to recover its premium owed by Yslas, Jr.;

6. Nothing in this Order impact's Full Circle's ability to see monetary damages at law from Junior as it relates to the completion of the job or that otherwise may be permitted.

VIII. ORDER

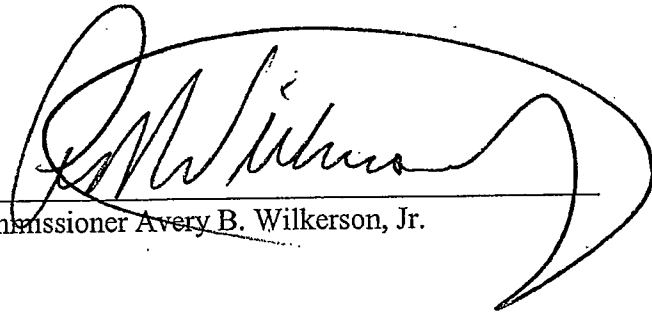
IT IS, THEREFORE, ORDERED that the Findings of Fact and Conclusions of Law are incorporated herein verbatim and this Order is based upon the above cited Findings of Fact and Conclusions of Law. It is further Ordered:

1. Claimant's negligence of building the scaffold, working in an area where a younger worker should have been and not requesting any type of assistive device or equipment was the direct and proximate cause of Junior's injuries;
2. The claimant specifically excluded himself from workers' compensation coverage and therefore his request for benefits is hereby DENIED;
3. The claimant shall be referred to the Attorney General to determine if prosecution is appropriate based upon the evidence herein and above and incorporated herein;
4. Full Circle Construction and Amerisure Insurance shall be dismissed with prejudice and removed from the caption of this claim;
5. Riverport Insurance shall be dismissed with prejudice and removed from the caption of this claim;
6. The South Carolina Second Injury Fund shall be dismissed with prejudice and removed from the caption of this claim

7. That no defendant or carrier shall not be required to file any more WCC Forms associated with this claim nor be subject to fines associated with Form filing;

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION



Commissioner Avery B. Wilkerson, Jr.

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States certified mail addressed to any unrepresented party.

October 12, 2012

By: Elaine Boyd, Administrative Assistant to Commissioner Wilkerson



Claimant's Name: Juan Yslas, Jr. SSN: 239-15-1999 Employer's Name: Full Circle Construction LLC
Address: 70 Hickory Hill Road Address: 168-A Boardwalk Drive
City: St. Helena State: SC Zip: 29920 City: Ridgeland State: SC Zip: 29936
Home Phone: 843 838 5373 Work Phone: Insurance Carrier: Amerisure Mutual Insurance
Preparer's Name: James H. Moss Law Firm: Moss, Kuhn & Fleming, P.A. Preparer's Phone #: 843 524 3373

REQUEST FOR COMMISSION REVIEW

Request for Commission Review by ☒ claimant ☐ employer (check one) Date of injury: January 16, 2012

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

See attached page of exceptions

SCWCC

OCT 30 2012

JUDICIAL

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

I certify that I have served this document pursuant to R.67-211 by delivering a copy to Allison M. Carter, Esquire, Ryan S. Montgomery, Esquire,

Name

Charles B. Macloskie, Esquire, O. Edworth Lipfert, III, Esquire - (See attached Certificate of Service)

on the 26th day of October, 2012 by



first class mail



personal service



certified mail.

X - Facsimile

X - E-mail

Counsel for Claimant

Title

Date

10/26/12

Preparer's Signature

Check this box if you are not represented by an attorney. ☐

If the claimant appeals and is representing himself or herself, the Judicial Department will prepare the additional copies of this form and serve this form on the opposing party. R.67-701B. Otherwise, file the original and four copies of this form with the Judicial Department. The appeal must be postmarked no later than 14 days from the date of service of the Hearing Commissioner's decision. R.67-701 and R.67-205. Attach the filing fee to this form. Attach a Form 32 if you are unable to pay the filing fee. Refer to R.67-701 through R.67-711 for additional information.



RECEIVED

SCWCC

REQUEST FOR COMMISSION REVIEW

OCT 30 2012

JUDICIAL

000531

EXCEPTIONS TO ORDER OF OCTOBER 12, 2012
RE: JUAN YSLAS, JR. V. FULL CIRCLE CONSTRUCTION LLC
WCC FILE NO: 1200329

The Defendant, Juan Yslas, Jr. appeals the twenty-four (24) page Order, which was orally ruled upon on July 9, 2012, but which Order was not signed until October 12, 2012. The Defendant appeals the entirety of the Order as it relates to the alleged Findings of Fact and Conclusions of Law intentionally placed in said Order to deny Juan Yslas, Jr. from filing a civil action against Full Circle Construction.

1. Finding of Fact #2 that states: "I find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;"
2. Finding of Fact #3 that states: "I find that the scaffold from which the claimant and Junior fell was built by Junior and or his crew;"
3. Finding of Fact #4 that states: "I find that the scaffold from which the claimant the Junior fell was built with the tools provided by Junior;"
4. Finding of Fact #5 that states: "I find that no one instructed the claimant on how to construct this scaffolding as they had the know how to do that on their own;"
5. Finding of Fact #6 that states: "I find that neither Junior nor anyone on his crew built hand rails on the scaffolding;"
6. Finding of Fact #7 that states: "I find that the Junior was lifting a truss which according to his son, the claimant, was too heavy and a younger worker should have been lifting;"
7. Finding of Fact #8 that states: "I find that Junior lost his balance on the scaffolding and struck the Third while trying to regain his balance causing both to fall;"

8. Finding of Fact #9 that states: "I find that the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride;"

9. Finding of Fact #10 that states: "I find that the scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls;"

10. Finding of Fact #11 that states: "I find that even if they had used a crane it would not have done them any good to walk back and forth;"

11. Finding of Fact #12 that states: "I find that the way they were lifting the trusses on the day of the accident was not the only way to do this job Junior chose to do it that day.

12. All of these facts are erroneous, as the individuals fell from the wall, and these facts have nothing to do with the finding of applicability of Workers' Compensation to this Claimant.

13. Finding of Fact #25 that states: "I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of the truss."

14. The Commissioner erred in finding a "willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, I find that the claimant shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;" Again, this has nothing to do with the determination of coverage under the Workers' Compensation Act.

15. The Commissioner particularly erred in #1 of its Order setting forth the "Claimant's negligence of building the scaffold, working in an area where a younger worker should have been and not requesting any type of assistive device or equipment was the direct and proximate cause of Junior's injuries." This was done specifically.

16. The Commissioner erred in #3 of its Order setting forth, "The claimant shall be referred to the Attorney General to determine if prosecution is appropriate based upon the evidence herein and above and incorporation herein."

17. The Commissioner erred in failing to find that the Workers' Compensation Commission, as a result of no coverage, no longer has jurisdiction, and that he is not covered by the Act.

18. The Commissioner erred in failing to find in Finding of Fact #2 that the only areas injured were Claimant's ankle and feet. (See Form 50).

CERTIFICATE OF SERVICE

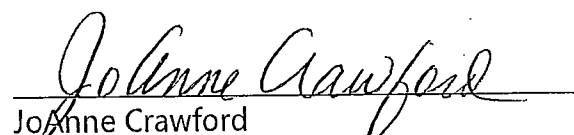
I, JoAnne Crawford, Assistant to James H. Moss, Esquire, counsel for the Claimant named in the foregoing action, do hereby certify that on the 24th day of October, 2012, I caused to be deposited in the United States Mails, via 1st class delivery, facsimile, AND e-mail, pursuant to the provisions of Regulation 67-211(C)(1), S.C. Workers Compensation Regulations, a complete copy of the Form 30 - Request for Commission Review, together with complete list of exceptions to the Order, or grounds for appeal, with said copy being supplied to opposing counsel of record at the address indicated below:

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JoAnne Crawford
Assistant to James H. Moss

000535

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

BEFORE THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
WCC FILE NUMBER: 1200329

JUAN YSLAS, JR.,)
)
Claimant,)

v.)

BRIEF OF APPELLANT

FULL CIRCLE CONSTRUCTION)
CO.,)
)
Employer,)

and)

AMERISURE MUTUAL)
INSURANCE,)
)
Carrier.)

Juan Yslas, Jr. was born in Immokalee, Florida of Mexican parents, who did not speak English well. His family was primarily agricultural workers, and he dropped out of school in approximately the ninth grade, and went to work in the fields. He cannot read and write the English language very well, and his son, daughter and wife help him with the same. (TOR, pg. 5, ll. 13-25; pg. 34, ll. 7-16). The record is replete with statements of his inability to read or write the English language. (TOR, pg. 88, ll. 20-22; p. 26., ll. 4-22; pg. 27, ll. 2-17; pg. 121, ll. 4-15, showing he was not good at spelling; pg. 135, ll. 1-14; pg. 128, ll. 4-9, showing that he got locked up with English words and only knew the little words). Also, at the time he signed the documents in regards to this case, he had no glasses on, and his son and daughter were not with him. (TOR, pg. 54, ll. 9-16; pg. 76, ll. 13-25; pg. 77, ll. 9-20).

These all show he never read the contract in question, and the same was prepared by Jackie

SCWCC
JAN 23 2013
JUDICIAL

SCWCC
JAN 23 2013
000538 JUDICIAL

Fernandez, the agent of First Choice Insurance Company, prior to his going to the office to sign the contract without assistance.

THE INSURANCE CONTRACT

Jacqueline Fernandez, a twenty-two (22) year old agent with Peoples Choice Insurance of Beaufort, South Carolina issued the policy in question. Additionally, Mr. Yslas was required by the general contractor to take out liability policies, all of which, including the ghost policy, were forwarded to Full Circle Construction. (TOR, pg. 36, ll. 3-25; pg. 37, ll. 1-25). The agent testified concerning the ghost policy as follows:

"Q. Now when you say ghost policy, what do you mean?

A. It doesn't cover him if he were to get injured.

Q. Does it cover anybody?

A. From what I have heard, if he has an employee working with him at the time, they will cover it, but then they will do an audit and then his -- they will charge him for whatever time period employee worked for him, and then his future policy will be, I guess, prorated or adjusted with the employee included." (emphasis added).

It is also clear that she typed the application, not Mr. Yslas. He was asked the question:

"Q. Now, you said this application was actually filled out earlier than it was signed, is that correct, because you had to wait for the audit?

A. Yes."

It appears that she actually filled out the application herself, and was probably done by phone on the 14th of November, 2011 or earlier, and it was not signed by Mr. Yslas until the 21st of November, 2011, when he came to the office. Clearly, she was also the one who typed the contract. (TOR, pg. 38, ll. 1-22).

The owner of Full Circle Construction, Mr. Bader, testified concerning insurance as follows:

"Q. And did they, in fact, give the insurance information to her (Full Circle employee) or tell her where to get it from?

A. Sometimes she helps them and calls the numbers that they give. I mean, we're pretty, you know we're pretty helpful to the subcontractors. If they do the work, you know as long as they play by the rules, we want to satisfy them. We don't want to just string them out for weeks and weeks and weeks.

Q. Right.

A. When those one or two guys came in, and she probably gave them a list of what they needed to turn in in order to do our bid or bid our work to do or bid our work. (emphasis added).

Q. And they did at some time turn that in, I assume.

A. Yes. I believe so.

Q. In any event, she didn't tell you they weren't approved or they weren't able to do it or didn't have the right insurance?

A. She won't write a check and I won't sign it unless it's all been checked off." (emphasis added).

This was the testimony of Mr. Bader, the owner of the Full Circle Construction, LLC, who testified that they hired as many as sixteen (16) to twenty-two (22) subcontractors, all of whom were licensed. (TOR, pg. 11, ll. 7-18). Mr. Bader was also very clear that immediately when the accident occurred, he was called by his supervisor, and knew that it all happened on the job. (TOR, pg. 14, ll. 14-25; pg. 15, ll. 1-21). The general contractor is basically admitting that his subcontractor and employees of his subcontractor were injured on the job, and notice was immediately given to the general contractor by his supervisor.

PROCEDURE

This action was commenced with the filing of a Form 50. The following items are all that is required to comply with the Workers' Compensation Act:

1. There was an injury; the date of the injury; the Claimant sustained an injury; the parts of the body that were injured; and the month, day and year, County and State of the injury.

2. 1B of the Form 50 then requires that the body parts affected are listed. Then the Form 50 states: Briefly describe how the accident occurred. (See Form 50).

It is unquestioned in this case that the Claimant, Juan Yslas, Jr., was injured as a result of a fall where one (1) foot was on a scaffold, and one (1) foot was on the wall. No safety plan was ever presented, nor was compliance with OSHA standards shown by the general contractor, Full Circle Construction, nor was it required to be shown in a Workers' Compensation case. These may be issues for civil litigation, but they are not issues concerning a Workers' Compensation claim.

Ryan Montgomery, at all times, represented Full Circle Construction, LLC and, although he was allowed to ask questions concerning the mechanism of the fall, he objected to the Claimant's doing the same. (Page 43). Prior to the issuance of the Final Order, the Commissioner had already ruled that Juan Yslas, Jr. was not covered under the Workers' Compensation Act. (Oral Order issued post hearing date). It was decided and announced prior to the preparation of the Order. Therefore, prior to the preparation of the Order, it was announced by the Commissioner that Juan Yslas, Jr. was not covered by the Workers' Compensation Act and was excluded from the Riverport policy. After that oral

Order, a lawsuit was filed in the Jasper County Court of Common Pleas against Full Circle Construction, LLC.

In the Statement of the Case, the Commissioner states, "It was the position of the Claimant that on or about January 16, 2012, he was working when he fell from scaffolding injuring his bilateral ankle and legs." The Commissioner goes on to state on Page 6, "It was the position of Full Circle Construction that it was undisputed that the Claimant sustained an injury." (emphasis added). Here, the Commissioner admits that it is undisputed that the Claimant sustained an injury on the job and in the scope of his employment. Injury or injury by accident is defined under 42-1-160 which states "injury" and "personal injury" "mean only injury by accident arising out of and in the course of employment and shall not include"

§ 42-1-150 of the Code of Laws of the State of South Carolina, 1976, as amended, talks about rights against third persons prior to award.

"If the employee, his personal representative or other person may have a right to recover damages for injury, loss of service or death from any person other than the employer, he may institute an action at law against such third person before an award is made under this title and prosecute it to its final determination." Fisher v. South Carolina Department of Mental Retardation-Coastal Center, 277 S.C. 573, 291 SE2d 200.

Additionally, § 42-17-50 provides for the review and rehearing by commission. It provides as follows:

"If an application for review is made to the commission within fourteen (14) days from the date when notice of the award shall have been given, the commission shall review the award and, if good grounds be shown therefor, reconsider the evidence, receive further evidence, rehear the parties or their representatives and, if proper, amend the award." (emphasis added).

It is clear that there was no lift, no lull, and no crane on the job site when the trusses were delivered. Full Circle Construction, LLC ordered the pre-made trusses, and had them delivered to the job site. The trusses were all purchased by Full Circle Construction. (TOR, pg. 41). The Transcript then says Junior was located in the center of the scaffold but, in fact, he testified that he had moved out from the center of the scaffold to the right in order to grab the truss. Page 42 shows that the scaffold was built, which was a total of twenty-two (22") inches, which is a standard procedure to use whether a crane is used or individuals are used to place trusses. If ever a crane is used, it is required that individuals stand on each side of the wall, with one in the middle on the scaffold to place the trusses in their correct location. When using a scaffold, as opposed to using a crane, a great deal of weight is placed on the individuals standing on the walls to lift the trusses. The statement is made in the Order that, "They had them all on the gable end walls and started to pick them up and carry them." This is totally incorrect, as none of the trusses were on the walls or secured by the walls at the time this event occurred.

The Commissioner next states on Page 13 of the Order that, "The scaffolding itself consisted of two walk boards and did not have a hand rail or fence to prevent falls." This is absolutely absurd, as there is no way that you could put trusses in place if the scaffold had hand rails or a fence. In other words, the whole purpose of a scaffold is to lay the trusses on the scaffold and on the side walls, and slide it down the scaffold until it stood up, erected and nailed in place. (See OSHA, 29 CFR 1926.402(K), Fall Protection Systems). Of course, this was explained, but not put in the Order. On Page 131, it states, "We couldn't keep a hand rail on it because, see, the way the trusses are made they already have sealing joists on it." All of this evidence, which the Commissioner would not allow in by the

Claimant, was allowed in by Mr. Montgomery, who was apparently trying the civil case in this Workers' Compensation claim. Further, on Page 132, he answers very clearly, "In the way trusses are made we have to walk the walls back and forth. There is no way we can tie ourselves down." There is no way even with a crane we can't tie ourselves down to be able to move back and forth." (emphasis added). The point he makes is that you have to walk back and forth on the walls and also the scaffold even with the use of a crane to put up these trusses. There was nothing wrong with the scaffold and, in fact, what they did was the standard practice and procedure in the industry.

Although the OSHA standards were not offered, it was clear from the Commissioner's ruling that he was not going to allow opinions concerning OSHA standards, nor the fact that OSHA required a protection plan. (See OSHA Sample Fall Protection Plan, Appendix E Subpart M, 29 CFR 1926). The Commissioner would have been correct, as this was a Workers' Compensation claim, and the issue was not whether Mr. Yslas was caused to fall, but whether or not he fell during and within the scope of his employment, and was injured on the job. (See also, 29 CFR 1926.502(K) providing for this type of scaffold system without guardrails, etc.

Each Finding of Fact is now responded to:

Finding of Fact #2. Ankles and feet were not the only areas injured. (See Form 50. See also, Page 46). Hips, back, knees.

Finding of Fact #3. The scaffold was built by his crew but was not defective.

Finding of Fact #4. Trusses and all wood came from general contractor.

Finding of Fact #5. There was no safety plan or fall protection plan as required by OSHA.

Finding of Fact #6. Truss was being pushed up from first floor to Yslas, Jr.

Finding of Fact #7. One (1) foot was on scaffolding, and one (1) was on gable wall.

(Page 130, ll. 1-25).

Finding of Fact #8. Nothing to do with the ultimate issues in this Workers' Compensation case.

Finding of Fact #9. Scaffold was twenty-two (22") inches wide (complied with OSHA).

Finding of Fact #10. No way to move trusses to resting position if hand rails are put up. (131-132). See OSHA Sample Fall Protection Plan, Appendix E Subpart M; 29 CFR 1926.502(K).

Finding of Fact #11. Use of crane would have lifted the entire truss, placing it where it could be secured. Three men, two on wall and one on scaffold, would be required to put truss in place.

Finding of Fact #12. Argumentative but a crane or lull lift would be correct way to place trusses (pre-made) on the building.

All of these, Findings 2 - 12, had nothing to do with Workers' Compensation claim and were not necessary in the Decision and Order.

I make this next statement as an Officer of the Court, and one who has been practicing law since 1967. When I attended the Court of Common Pleas concerning the Motion made by the new attorney representing Full Circle Construction, one of the grounds for dismissing my lawsuit prior to my knowledge of the issuance of this Order was that my client was collaterally estopped from bringing the civil action. At that time, I had not received the Order and, of course, did not know all of these Findings of Fact as set forth

above, as well as the ones I am about to address. Specifically, this is Finding of Fact #25 which states:

"I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of the trussed."

This statement was put in specifically for the purpose of defeating this man's civil action in the Court of Common Pleas. This is what we refer to as collateral estoppel, and my failing to object to the same is the purpose for which they have placed the same in this Order so that I (my client) would be collaterally estopped from bringing the action in civil court. This was transferred to #1 in the Order setting forth as follows:

"Claimant's negligence of building the scaffold, working in an area where a younger worker should have been and not requesting any type of assistive device or equipment was the direct and proximate cause of Junior's injuries."

This is the Commissioner's finding as a matter of law, and an issue that was not litigated in the Workers' Compensation claim.

The issue of whether the Claimant was an employee at the time he was injured is jurisdictional, so the Commissioner's conclusions were subject to judicial review, even though supported by the evidence. Revis v. Watkins, 256 S.C. 30, 180 S.E.2d 648.

In this case, the Commissioner first ruled orally, and now has ruled in his Order that the Claimant is not entitled to the benefits under the South Carolina Workers' Compensation Act. Here, we have a general contractor, Full Circle Construction, LLC, a subcontractor, Juan Yslas, Jr., a policy taken out by Juan Yslas, Jr., which apparently excluded Juan Yslas, Jr. from the coverage of the policy. This does not exclude coverage under the South Carolina Workers' Compensation Act, and the fact that an individual may be excluded from the insurance policy does not remove him from the Act. The question

is whether or not he is a statutory employee. Apparently, in the Commissioner's ruling that excluded him from Riverport Insurance, also excluded him from the Act.

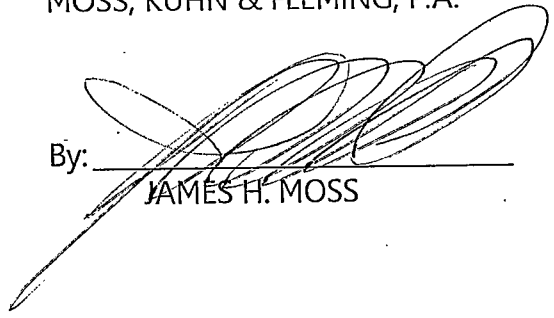
REFERRAL TO ATTORNEY GENERAL

Lastly, as if Mr. Yslas had not suffered enough from his injuries, the Commissioner refers the Claimant to the Attorney General to determine if prosecution is appropriate based upon the evidence incorporated herein. Nothing has happened to Mr. Yslas since that referral, and I certainly welcome the Attorney General's Office to read this record to, first of all, decide the legality of the ghost policies and how they are being used by the insurance industry of the State, and why the practice of selling these ghost policies, in most instances, provide no coverage for anyone. Certainly, individuals like Mr. Yslas, scrapping to make a dollar, and who has a chance to earn \$12,000.00 on a contract, would jump at the chance to comply with Full Circle Construction's requirements, and did meet those requirements.

CONCLUSION

The Commission needs to strike all Findings of Fact and Conclusions of Law that have nothing to do with, and do not relate to, a Workers' Compensation Claim, but are directly set to defeat the Claimant's claim, which he is entitled to bring in the Court of Common Pleas, and which he has so brought. If not covered by the Act, as the Commissioner so found, Mr. Yslas, Jr. may proceed with his civil action, which has nothing to do with his Workers' Compensation claim.

MOSS, KUHN & FLEMING, P.A.

By: 

JAMES H. MOSS

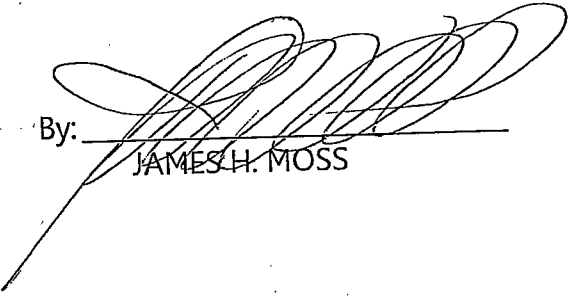
Beaufort, South Carolina
January 17, 2013

000546

CONCLUSION

The Commission needs to strike all Findings of Fact and Conclusions of Law that have nothing to do with, and do not relate to, a Workers' Compensation Claim, but are directly set to defeat the Claimant's claim, which he is entitled to bring in the Court of Common Pleas, and which he has so brought. If not covered by the Act, as the Commissioner so found, Mr. Yslas, Jr. may proceed with his civil action, which has nothing to do with his Workers' Compensation claim.

MOSS, KUHN & FLEMING, P.A.

By: 

JAMES H. MOSS

Beaufort, South Carolina
January 17, 2013

000547

BEFORE THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1200329

JUAN YSLAS, JR.,)
) FULL COMMISSION HEARING
CLAIMANT,)
) PANEL B
)

vs.

YSLAS, JR.,)
) COMMISSIONER McCASKILL
) COMMISSIONER BARDEN
) COMMISSIONER TAYLOR - CHAIR
EMPLOYER,)
)
KEY RISK MANAGEMENT,)
)
CARRIER,)
DEFENDANTS.)



COPY

THE WORKERS' COMPENSATION HEARING, TAKEN BEFORE
CORA ELLIS BRUTON, A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF
2:30 P.M., MAY 20, 2013, SOUTH CAROLINA WORKERS'
COMPENSATION COMMISSION, 1333 MAIN STREET, COLUMBIA,
SOUTH CAROLINA 29202.

CORA ELLIS BRUTON
COURT REPORTER
131 BROWNING COURT
LEXINGTON, SOUTH CAROLINA 29073
803-397-0189

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REPORTED BY

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803-397-0189

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EXHIBITS

(No Exhibits Proffered)

1 THE COURT REPORTER: Today is May 20, 2013. This
2 is South Carolina Workers' Compensation Case Number
3 1200329. This is the case of Juan Yslas, Jr.,
4 Claimant, versus Yslas, Jr., Employer and Key Risk
5 Management is the Carrier.

6 The Appellant is the Claimant represented by
7 Attorney James H. Moss. The Respondent, Amerisure is
8 represented by Attorney Ryan S. Montgomery. Riverport
9 is represented by Attorney Allison M. Carter.

10 The Appellant is allowed ten minutes for oral
11 argument, the Respondents have three minutes each and
12 the Appellant has three minutes in reply. You are
13 requested to argue the grounds of exception and stay
14 within the record.

15 THE COURT: Mr. Moss, you have ten minutes.

16 BY MR. MOSS: May it please the Commission. I
17 had the pleasure to represent Mr. Yslas in this
18 matter. He is -- unlike a lot of his family, he's an
19 American citizen born in Immokalee, Florida and went
20 as far as the ninth grade. His family worked mainly
21 in agricultural area for years and when he came to
22 Beaufort his son got into the construction business
23 and is -- and is so licensed and so is Juan, doing
24 basically construction of houses, framing and that
25 type thing primarily. You know, I'm not here because

1 I want the cheese; I'm here because I want the trap
2 and let me tell you what the trap is. The trap is the
3 Findings of Fact that the Commissioner put in an Order
4 concerning a potential civil action that's -- that's
5 -- that we already filed, that the Court dismissed it
6 and it's filed again. But if he's not covered by
7 workers' comp he's entitled to bring a civil action
8 and we filed a civil action. But here's the type that
9 I'm talking about; has no business in a workers' comp
10 Order. I've been practicing workers' comp for 40
11 years since I got out of law school and it says,
12 "Claimant's negligence of building the scaffold,
13 working in an area where a younger worker should have
14 been and not requesting any type of assistance, device
15 or equipment was a direct and proximate cause of Mr.
16 Yslas' injuries." Okay? That's in the Order part of
17 the -- now, additionally there's 12 Findings of Fact
18 that were initially placed in the Order and it talks a
19 lot about the scaffold. Now, the wood to build this
20 building was furnished by the general contractor, the
21 trusses that were being put up that day were ordered
22 by the general contractor and put on the site a little
23 ahead of schedule. And then they go on talking about
24 Mr. Yslas built this scaffold. Well, let me tell you,
25 the scaffold was 22 inches. It met code. You have to

1 put a scaffold on a building that's up in the air in
2 order to set trusses and that doesn't matter whether
3 the trusses are being set by a crane, which they ought
4 to have been in this case, or they are being set
5 individually. The reason is, is because when you get
6 the trusses there you slide them down the scaffold
7 until they're at the location where you want to nail
8 them permanently. Okay? So you -- you can't not have
9 a scaffold in the middle of a building to set trusses
10 whether they are done by crane or otherwise, and
11 there's a lot of Finding of Fact that the scaffold was
12 negligently constructed, the scaffold was improper and
13 lastly it says that the scaffold should have had rails
14 on it. Okay? Well, you can't put rails on a scaffold
15 and then slide the trusses down the scaffold and nail
16 them -- there's no way you can do that. You can't
17 have rails on the -- on the center of -- of that.
18 There's just no way you can do. And I don't know
19 where that came from because he put that in the Order.
20 Okay? So what I'm saying is all of these factual
21 issues are for the sole purpose, I believe, of
22 collaterally estopping me from the civil action that
23 we've filed. Okay? Now, I, quite frankly, think the
24 fact that somebody excludes you from a policy, okay,
25 if somebody excludes you from a policy that that

1 doesn't necessarily mean the Workers' Comp Act doesn't
2 still apply. Now the policy I'm talking about is real
3 important -- insurance where he was excluded -- I
4 assume he was excluded because it just put excluded
5 person was Juan Yslas, and of course, he's one of the
6 owners of the company or partnership, whatever you
7 call it. And of course, he's entitled just like a
8 worker to -- to be included in the policy. But in any
9 event, basically it then goes on to state "The
10 Claimant specifically excluded himself from workers'
11 compensation coverage and therefore his request for
12 benefits is hereby denied." Now, the fact that he is
13 excluded from a policy does not exclude him from the
14 Act. Okay? The general contractor represented here
15 by counsel, Mr. McDonald, the general contractor
16 basically is still an upstream employer and could be
17 held responsible under his policy of insurance. And
18 he so stated that his girl had cleared it -- when she
19 got it from Riverport that she cleared it out and said
20 it was fine and he -- in fact, he testified that in --
21 in fact, if it wasn't right it wouldn't be done.
22 Okay? Now, number 25 even states -- and this is --

23 COMMISSIONER BARDEN: Where is -- the references
24 to the negligence with -- I'm searching for his Order
25 instructions. Were those actually drafted by him or

1 -- the ones about the references to negligence, which
2 as we all know --

3 MR. MOSS: I think it was -- I think Mr. McDonald
4 prepared the Order, but here's -- here's a copy of the
5 Order.

6 COMMISSIONER BARDEN: No, I've got the Order.

7 MR. MOSS: Oh, excuse me. I'm sorry.

8 COMMISSIONER BARDEN: No, no, we have the Order.
9 We all have that. I was just looking in the file for
10 the actual Order instructions which, for whatever
11 reason, I don't see it in here.

12 MS. CARTER: It was a telephone conference,
13 Commissioner.

14 COMMISSIONER BARDEN: Okay. All right, thank
15 you. I appreciate it. Okay, go ahead, sir.

16 MR. MOSS: Thank you. Well, initially there was
17 a telephone conference and he basically ruled at that
18 time that my client was not covered at which time we
19 filed a civil action and then we dismissed it because
20 he hadn't issued the regular Order and so we then
21 waited for the regular Order and when we got the
22 regular Order it basically excluded Mr. Yslas because
23 he had excluded himself under that policy. But in any
24 event, I -- I primarily am objecting to the Findings
25 of Fact that this Commissioner made and I'm sure Mr.

1 McDonald prepared the Order, but that's -- that's what
2 you're asked to do, it's no problem. But, he -- he --
3 he puts, "I further find that this injury was a result
4 of Mr. Yslas' failing to construct a proper scaffold,
5 failing to wait on a younger worker to assist and
6 failing to request a crane to assist with the lifting
7 of trusses." Now, in my Brief I've put the OSHA
8 Standards on -- on doing this and I've listed those in
9 my Brief. But those -- those weren't an issue at the
10 workers' comp hearing. The only question -- the only
11 thing he had to say was that Mr. Yslas was working on
12 the job and he was injured -- in the scope of
13 employment and he was injured. That's all you have to
14 say in a workers' comp Order, you don't have to go on
15 and on and on, and so that's what I'm faced with now.
16 And so I don't mind the result if -- if he's not
17 covered and this Court -- this Commission has -- no
18 longer has any jurisdiction, I don't mind that if
19 that's what you're going to say, because I need to go
20 to circuit court and try my civil case. I mean I have
21 a good case, but I'm not going to have a good case if
22 this Order is approved as is set forth. And I -- in
23 40 years I've never seen anything drafted to
24 collaterally estopp somebody better. Now, I did make
25 a statement as an officer of the court in there that

1 when we went to court about the dismissal that's one
2 of the issues she raised, "Well, y'all, he'd be
3 collaterally estopped anyway from filing this action
4 because of what it says in the workers' comp Order."

5 Well, at the time we had that hearing I didn't even
6 have the Order. She did, but I didn't and I didn't
7 even know what it said. So in any event, but the
8 accident is filed again and it's sitting there and the
9 circuit judge is waiting for y'all's Order to, I hope,
10 strike out those Findings of Fact. And I don't have
11 any objection to you finding that Mr. Yslas was
12 injured on this date and so and so and so and so, and
13 I don't have any problem with you finding that he's
14 not covered by the Act, if that's what you want to
15 find. Okay? But those are all jurisdictional issues
16 and -- and I just want to get on with my civil action.
17 Okay? And I thank y'all all. If you have any
18 questions I'll be glad to answer them.

19 THE COURT: I don't think we have any. Thank you
20 very much, Mr. Moss.

21 MR. MOSS: Thank you.

22 THE COURT: Mr. Montgomery.

23 BY MR. MONTGOMERY: Thank you. May it please the
24 Commission. Ryan Montgomery on behalf of Amerisure
25 Insurance who was the Carrier for the upstream

1 contractor, Full Circle Construction. Allison is here
2 and she represents Riverport that represented Mr.
3 Yslas, Jr. who has a construction company by the same
4 name. Procedural history isn't quite the -- it needs
5 a little more detail. As with every hearing,
6 sometimes Commissioners give you their general
7 thoughts and feelings following the hearing. Well,
8 that was done in this case and on the way out the door
9 Mr. Moss indicated I would have his third party
10 complaint Monday following when we had the hearing on
11 Friday or Thursday; and I did. So the hearing -- the
12 third party complaint was filed before we even had
13 Order instructions in the case, much less an Order.
14 That being said, no S-2 filed, Commission Regulation.
15 He ultimately dismissed that, re-filed, still no S-2
16 has ever been filed, still hasn't been filed to this
17 date. On top of that he says he has a problem getting
18 out of the trap, not a problem with the -- he doesn't
19 want the cheese. The problem is you've got to peel
20 the cheese to get out of the trap and he didn't do
21 that here. What he didn't do is he didn't file -- he
22 didn't appeal a primary finding which is his client
23 has no jurisdiction anymore before the South Carolina
24 Workers' Compensation Commission. He specifically
25 excluded himself under this Riverport Insurance

1 Policy. Now, I appreciate his roots being
2 Americanized and that sort of thing, but the facts are
3 a little bit more severe than that. Not only did he
4 exclude himself, he represented to Riverport, the
5 other Carrier, he had no employees when, in fact, at
6 the time he had six or seven. So not only did he
7 exclude himself, he fraudulently included -- did not
8 indicate the other employees. So he's not without
9 fault in this case such that the single Commissioner
10 referred him to the Attorney General's Office. Now,
11 that all being said, if you'll look at the case of
12 Smith v. South Carolina Department of Mental Health,
13 329 South Carolina 45, "All Findings of Fact in Law by
14 the hearing Commissioner became and are law of the
15 case except only those when in the scope of exception
16 and those given to the parties by the Commission."
17 Mr. Moss hasn't appealed that his client doesn't have
18 jurisdiction before y'all, so it's the law of the
19 case; game over, it stops right there. If that wasn't
20 enough you go on to read Creech versus Ducane Company
21 which says, "Only issues within the application for
22 review are preserved for the Full Commission." So
23 while I understand he doesn't want the Findings in
24 there he didn't appeal the ultimate Finding that gets
25 him to look at those other Findings. Now, that all

1 being said, I drafted the Order. I circulated the
2 Order. In fact, I got response from Ms. Carter and I
3 got response from the Uninsured Employer's Fund with
4 requested changes. Allison actually told me to tone
5 it down a little bit and so I did and I re-circulated
6 it and never once did I have a request to change from
7 Mr. Moss. Only after the Order was signed by the
8 single Commissioner did we all hear about these
9 objections when he sent a letter to the Commissioner
10 outlining those Findings. Okay? At that time I
11 offered to take those changes out again and instead
12 the appeal was dismissed for administrative purpose,
13 but it's now back before you all. In terms of the
14 actual Findings, and I'll be brief on this. He
15 doesn't like the Findings, but the Findings are
16 accurate. Finding of Fact Number 3 states, "I find
17 that the scaffold from which the Claimant Junior fell
18 was built by Junior and his crew." His son testified
19 in his deposition at page 43, 19 we built the
20 scaffold; plain and simple. It's a Finding of Fact,
21 you know. Finding of Fact Number 4 that he doesn't
22 like, "I find that the scaffold from which the
23 Claimant Junior fell was provided by the tools by
24 Junior which is Juan Yslas, Jr." That was in Junior's
25 deposition transcript at page 54, lines eight through

1 nine. So it goes on to --

2 COMMISSIONER BARDEN: Those two Findings that you
3 have just referenced don't contain any allegation of
4 negligence or OSHA --

5 MR. MONTGOMERY: No.

6 COMMISSIONER BARDEN: -- violations or anything?

7 MR. MONTGOMERY: No.

8 COMMISSIONER BARDEN: And I think that's what his
9 point is.

10 MR. MONTGOMERY: Correct. And I think that's the
11 issue; if he didn't like the word "negligence", very
12 candidly, I would have taken it out. I mean I'll
13 represent to y'all had I just heard about it before
14 the appeal (inaudible) it would have come out.

15 COMMISSIONER BARDEN: Did Mr. -- or excuse me,
16 Commissioner Wilkerson hold, I mean, I don't know, all
17 of us have a different, you know, policy for how long
18 we hold Orders, you know, and I don't know what his is
19 or whether he has one or not. And perhaps, you know,
20 I don't know how much time was given to the -- you
21 know, sometimes it's like here's the Order and then
22 there's no delay for a time period by which someone
23 else can respond to a procedure for efficiency or
24 request a change or whatever?

25 MR. MONTGOMERY: Correct. Fair point. I don't

1 recall it being one of those immediate signatures, but
2 I honestly couldn't say --

3 COMMISSIONER BARDEN: We're out of town, they get
4 sick, they have family crises, and so --

5 MR. MONTGOMERY: And I have no issue with that,
6 again, keeping in mind that I had circulated the Order
7 prior to and provided counsel with at least a week
8 which is also our standard policy in the office.

9 COMMISSIONER BARDEN: Okay.

10 MR. MONTGOMERY: But I don't remember if it was
11 an instant signature or not.

12 COMMISSIONER BARDEN: Thank you.

13 MR. MONTGOMERY: I don't have anything else.

14 THE COURT: Thank you. Ms. Carter.

15 BY MS. CARTER: Thank you. The only issue I'm
16 here on behalf of is the Attorney General referral.
17 My company did insure Mr. Yslas, Jr. and it was found
18 that he excluded himself from his policy and we
19 requested the Attorney General referral. And the
20 reason we requested that and I believe Mr. Moss in
21 addressing his original argument, I assume he will
22 respond, he has really played Mr. Yslas to be the
23 victim throughout all this, but it is very clear Mr.
24 Yslas understood Ghost Policies, he understood Minimum
25 Limits Policies. He was using someone else's

1 insurance. That person went back to Mexico and he
2 knew he had to get a policy that day and he couldn't
3 afford a \$6300.00 policy so he got a \$750.00 policy.
4 The most important thing for us is that we cannot keep
5 these people from getting insurance policies unless we
6 have on -- on history with NCCI that they committed
7 fraud or that they did something like that and that is
8 what ultimately led to the question between him and
9 his son in the first place as to whether they were
10 working together because they used each other's, they
11 used different addresses, things like that occurred.
12 So what the main thing is that the day that he signed
13 the application and said that he had zero employees
14 and to say that somebody excluded him or somebody did
15 this to him, he went to Jackie Hernandez, he claimed
16 he doesn't read or write English very well, he didn't
17 need an interpreter for the hearing or the deposition.
18 Ms. Hernandez speaks fluent Spanish so he could have
19 spoken to her in Spanish; she testified he spoke to
20 her in English. Anyway, he told her he did not have
21 any employees. She documented on the application he
22 didn't have any employees and he said, "I told her I
23 was going to get one or two." The truth of the matter
24 is when he had to come back and prove that his son
25 wasn't his employee he submitted payroll that showed

1 on the date he signed the application he had six
2 employees. So if I don't see that as a referral, I'm
3 not saying he committed fraud, but it certainly is
4 enough information in evidence for the Commissioner to

5 refer it to the Attorney General so that a Finding
6 could be made. It's just not right for him to walk in
7 there, say, oh, I don't have any employees, maybe I'm
8 going to have one or two, and he knew -- they all knew
9 he had six. He admitted he had six the day that he
10 signed the application. So for us, we believe that
11 the referral to the Attorney General was obviously
12 very warranted.

13 THE COURT: All right. Thank you. Mr. Moss, you
14 have three minutes in reply.

15 BY MR. MOSS: Yes, ma'am. Thank you. I
16 certainly welcome the Attorney General's -- if he
17 wants to look at this, but I am -- I am very concerned
18 that an individual with about a eighth or ninth grade
19 education who can't read or write, and everybody knows
20 that. He could not -- he could hardly read a sentence
21 that I showed him to read, is -- is now going to be
22 hauled before the Attorney General's office. I don't
23 think they're going to prosecute it and I don't think
24 they would, and I think the Judge's Finding is
25 incorrect. The -- the testimony is, is that he -- she

1 filled out -- here it is, the testimony is on the 16th
2 of November she filled out this via phone; that's in
3 her testimony on the record, that she filled out this
4 before he ever got there, okay, on the 16th. He
5 didn't sign it until the 21st. There's not one
6 legible thing on there other than typing that he
7 signed other than when he signed the -- at the end of
8 the -- of the contract. Okay? So what I'm saying is
9 on the 16th when she took all this down on the phone
10 he didn't come in until the 21st or 22nd. At that
11 time he then was picking up a crew to work on this
12 house. He had just gotten the agreement from Full
13 Circle to go work on the house and so, I mean you
14 know, that's fine if they want to include it in there,
15 but I -- I just think that's a terrible Finding to
16 send -- refer somebody to the Attorney General that
17 didn't have a thing to do -- and -- and then they
18 mention, well, everybody understands Ghost Policies.
19 I don't understand Ghost Policies. I'm glad everybody
20 else does, but -- but I've tried to figure it out
21 myself and these clients come in and say, well, Mr.
22 Moss, I've got a Ghost Policy and I -- I just rear
23 back and say, "Oh, hell, we're in for it now." But I
24 don't understand Ghost Policies and I think the
25 Insurance Commission ought to do something better to

1 start with, but this guy is an unlearned individual
2 that called on the phone, was typed on the 16th or
3 17th, already prepared, when he came in there he
4 signed up on it. And so, you know, I would welcome
5 anybody that wants to investigate it further, but I
6 just -- I just -- almost retribution when that was put
7 in there.

8 Thank y'all.

9 THE COURT: Thank you, Mr. Moss. That concludes
10 the hearing.

11 (The hearing concluded at 2:49 p.m.)
12
13
14
15
16

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

CERTIFICATE

BE IT KNOWN THAT I TOOK THE FOREGOING
WORKERS' COMPENSATION HEARING;

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN
AND FOR THE STATE OF SOUTH CAROLINA-AT-LARGE;

THE FOREGOING TRANSCRIPT CONSISTING OF 18
TYPEWRITTEN PAGES REPRESENTS A TRUE, ACCURATE AND
COMPLETE TRANSCRIPTION OF THE TESTIMONY SO GIVEN AT
THE TIME AND PLACE AFORESAID TO THE BEST OF MY SKILL
AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF
ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE
OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES
HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

WITNESS MY HAND AND SEAL THIS 7TH DAY OF OCTOBER,
2013.

CORA ELLIS BRUTON
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES JANUARY 18, 2015

Diane Logan

From: Hollmon, Eugenia <EHollmon@wcc.sc.gov>
Sent: Thursday, June 06, 2013 4:01 PM
To: wliipfert@gandspa.com; ryan@ryanmontgomerylaw.com; Allison M. Carter; Jim Moss
Cc: Sally Hitchcock (sally@gandspa.com); cammy@ryanmontgomerylaw.com; Michelle Barnes (mlbarnes@wjlaw.net); Diane Logan
Subject: Yslas

Below is a request for a proposed decision and order

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION
REQUEST FOR A PROPOSED DECISION AND ORDER

This document is not a Decision and Order. It is a request for a proposed order. The Commissioners reserve the right to modify and/or delete any or all portions of the submitted Decision and Order.

Juan Yslas, Jr. v Juan Yslas, et. al.
SCWCC: 1200329
Commission Panel: Barden, McCaskill, Taylor; Chair
Order Assigned to Commissioner: Taylor
Court Reporter – Cora Bruton – cocobk@windstream.net

James H. Moss
O. Edworth Liipert, III
Ryan S. Montgomery
Allison M. Carter

Claimant/Appellant
Defendants/Respondents
Defendants/Respondents
Defendants/Respondents

This matter was heard before the South Carolina Workers' Compensation Full Commission Appellate Panel during the last term of Review. The Commissioners considered the matter and **Affirms with Amendments** the Decision and Order of the Single Commissioner.

The Panel affirms the Decision and Order of the Commissioner while deleting all references to Findings of Fact and Rulings of Law with regard to negligence and OSHA. Amend the order to conform.

Mr. Montgomery, please prepare a proposed order and submit to the Judicial Department within thirty (30) days of this notice. The proposed order shall be submitted in Word format to appeals@wcc.sc.gov and shared with each Party. Please make sure the Appellate Panel Decision and Order recites the specific Finds of Fact and Rulings of Law of the Single Commissioner's Decision and Order and reflects any comments requested by a Commissioner.

The signature page shall include a signature line for each Commissioner and the first signature should be the name of the Commissioner assigned the case as indicated above.

If you have any questions, please do not hesitate to email me at vcrocker@wcc.sc.gov or call at 803.737.5739.

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

W.C.C. FILE NO. 1200329

JUAN YSLAS, JR. , Employee

APPELLANT,

-V-

JUAN YSLAS, Employer,

AND

RIVERPORT INSURANCE, Alleged Carrier for Employer,

AND

FUL CIRCLE CONSTRUCTION. Alleged Statutory Employer,

AND

THE SOUTH CAROLINA UNINSURED

EMPLOYER'S FUND,

RESPONDENTS.

Appellate Panel Review held in Columbia, SC

On May 20, 2013 per notices timely and properly served on all

Parties/persons of interest

Appellate Panel Decision and Order filed 8-21, 2013

APPEARANCES:

Appellant represented by James Moss of Beaufort, South Carolina

Respondent, Riverport Insurance, represented by Allison Carter of Charleston, South Carolina

Respondent, Full Circle Construction, represented by Ryan Montgomery of Greenville, South Carolina

Respondent, S.C. Uninsured Employer's Fund, represented by O. Edworth Liipert, III

STATEMENT OF THE CASE

A. Claimant's Position

It was the position of the claimant that on or about January 16, 2012, he was working when he fell from scaffolding injuring his bilateral ankles, legs, and his back. The injury was denied by all carriers based upon coverage issues but it was the position of the claimant that 1. Mr. Yslas has insurance for himself under the Riverport Insurance Policy and that Riverport should accept this claim and provide coverage; 2. In the alternative, it was the position of the claimant that Full Circle was the statutory employer and should pick up this claim and pay in the first instance as it was uncontested that Mr. Yslas was working on a job where Full Circle Construction was the general contractor; and 3. That Mr. Yslas, did not exclude himself from the South Carolina Workers' Compensation Act and therefore can avail himself to benefits under the South Carolina Workers' Compensation Act.

The claimant sought an award that the injury was compensable, covered under the South Carolina Workers' Compensation Act, requested temporary total disability benefits back to January 17, 2012 – present, and requested retroactive and ongoing medical treatment. Claimant contended that his average weekly wage was \$1,000 with a corresponding compensation rate of \$666.70 (.6667% of the AWW claimed on the claimant's Form 58).

B. Full Circle Construction's Position

It was the position of Full Circle Construction that it was undisputed that the claimant sustained an injury. However it was the position of Full Circle Construction that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring

himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

In the event Juan Yslas, Jr. did not exclude himself under the South Carolina Workers' Compensation Act, then it was Full Circle's secondary position that the claimant was covered by the insurance of Riverport Insurance the direct carrier with whom Mr. Yslas, Jr. had a policy. Finally, if Full Circle was ordered to pay this, then Full Circle requested that this be immediately transferred to the S.C. Uninsured Employer's Fund pursuant to Section 42-1-415.

C. Riverport Insurance's Position

It was the position of Riverport Insurance that it was undisputed that the claimant sustained an injury. However it was the position of Riverport Insurance that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself. In addition, the claimant had been audited and it was determined that he had employees on his payroll and still to this day had not paid the retroactive premium per the audit.

D. S.C. Uninsured Employer's Fund (UEF)

It was the position of the UEF that it was undisputed that the claimant sustained an injury. However it was the position of UEF that the claimant applied for workers' compensation insurance with a local agency and specifically excluded himself from workers' compensation coverage. Because he did, he could not avail himself to any laws under the South Carolina Workers' Compensation Act as he never elected to bring himself under the Act. In addition, it was requested that Mr. Yslas, Jr. be referred to the South Carolina Attorney General Office to investigate whether or not he committed insurance fraud as when he applied for the application he indicated that he had no employees on the payroll when he actually had 5-6 including himself.

If somehow it was found that Mr. Yslas was covered and that Full Circle Construction had to pay in the first insurance then Full Circle could not transfer to the UEF as the Certificate of Insurance was not on an "ACCORD" form but instead on an older version of the Certificate of Insurance.

Claimant appealed the Order of the Single Commissioner to specifically include the findings addressing "negligence", OSHA violations, and the referral of the claimant to the Attorney General office for a fraud investigation.

Oral arguments were presented before the full commission appellate panel on May 20, 2013. All proffered testimony has been taken. The Appellate Panel has properly considered such, together with all the documentary evidence submitted by the parties along with their respective oral arguments. For these reasons set forth herein, we **AFFIRM WITH AMENDMENTS** in that the Order shall be amended to deleting all references to Findings of Facts and Rulings of law with regard to negligence and OSHA.

EVIDENCE OF THE UNDERLING CLAIM/CASE

A. Testimony of Ricardo Yslas

Ricardo is the brother of Juan Yslas, Junior and began working for Junior when they began the Hampton Lake project under the Full Circle Construction general contractor. See Dep. Tr. of Ricardo Yslas, p. 10. According to Ricardo, Junior's company was "running the show" and showing people what to do on the job site. *Id.* At 11. At the time of the accident and on the Hampton Lake project, Junior had 3-4 additional guys other than Ricardo, Juan Junior and Juan Yslas, III. *Id.* At 12. In addition to those people there were other people that would come and go. *Id.* At 13.

E. Testimony of Letvy Jacquelyn Fernandez

Ms. Fernandez was employed with Peoples Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. *Id.* At 6-7. Ms. Fernandez has a personal memory of Junior as the family has other insurance policies with Peoples Choice. *Id.* At 8. When completing the application Junior indicated that he had no employees. *Id.* At 12. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. *Id.* At 13, 21 and 22.

Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways. In Junior's case, he did not ask for this quote to be run as it was not noted in her file and

therefore he had excluded himself from the insurance policy. Id. At 17-19. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.

Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business.

F. Testimony of Cheryl Perkins

Ms. Perkins was offered as the representative for Riverport Insurance but she was an employee of Berkley Risk as Berkley contracts to provide administrative services, day to day dealings with insurance applications, policies, binders, etc. See Dep. Tr. Of Cheryl Perkins, p. 5. In South Carolina a person applying for workers' compensation insurance has the ability to either include or exclude themselves from South Carolina Workers' Compensation coverage. Id. At p. 8. Mr. Yslas, Jr. excluded himself from South Carolina Workers' Compensation coverage. Id. At 9.

Deposition Exhibit 1 was referenced during the course of the deposition and accepted as evidence in this case as there were no objections argued at the hearing to exclude that information. See. Hr. Tr. Within that exhibit was an application that dealt with payroll and Junior had indicated that he was a sole proprietor and had no employees nor payroll. Id. At 12-13. If employees had been hired at a later date then that employer was to notify the carrier in writing of the payroll change. This was not done. Id. At 13-14. Junior was only charged \$750

for an annual insurance premium based upon his representation that he had zero (0) employees.

Id. At 18.

According to Cheryl Perkins, had Ylas, III, been an employee of Junior then he would have been covered under Junior's workers compensation policy with Riverport. Id. At 35. At some point, Riverport went back and audited Junior and determined that he had employees where workers' compensation insurance premium was due. Ms. Perkins was to provide a copy of the audit where it would identify what employees were listed and premiums requested. Id. at 35-37.

G. Testimony of Juan Ylas, III

1. Deposition Testimony

Juan Ylas, III was born on August 25, 1975 and appeared as a Hispanic male who currently resides at 70 Hickory Hill in Beaufort County, South Carolina. See Dep Tr. Of Juan Ylas, III, p. 7. The Third has a history of working manual labor jobs to include tomato farming and construction work. The Third had a previous workers' compensation injury by way of a broken ankle and treated with Dr. Leland Stoddard. Id. at p. 17-18.

The Third testified that he used to run his own construction company but that at some point his insurance lapsed. Id. At p. 13-14. He then went to work for other builders with the most recent builder being his father, Junior. It was the testimony of The Third that he was an employee only and as his father told him he was getting workers' compensation insurance under his name. Id. At p. 30. The Third switched jobs from working for a Naun Ruiz and switched to his dad (Junior) as his employer. When this occurred he began to make \$20 per hour which was a raise of \$2/per hour compared to when he was working for Naun Ruiz. Id. At 35. At the time the Third came to work for Junior, the Third no longer had a construction company. Id. The Third

never had any conversations with Junior regarding workers' compensation insurance or who was included/excluded. Id. At 39.

Insofar as the accident is concerned, Juan Yslas, III testified that Junior lost his balance while on the scaffolding and started to fall thereby pulling or knocking the Third down with him. Id. 43-44. The Third landed on his heels and sustained injury. He has treated with Dr. Leland Stoddard.

2. Hearing Transcript Testimony

The third testified he resides at 70 Hickory Hill, the same address where his dad lives. Hr. Tr. p. 116. He first started working in South Carolina in the Tomato business which consisted of dumping the tomatoes in boxes. Hr. Tr., p. 108. The Third worked in construction since 1994 or 1995 when he began as a framer. Hr. Tr., p. 109. On January 16, 2012 he was on one end of a wall and his dad (Junior) was on the center of the scaffold. Id. The third was walking towards Junior to tell him that he needed to get down off of the scaffold and put a younger guy up on the scaffold. Id. Junior grabbed the truss being passed up and then let it go causing him to lose his balance. Hr. Tr. Pp. 109-110. As he lost his balance he reached out with his arms thereby hitting the Third with his backhand and they both fell to the ground below. Id. at p. 110.

The Third fractured both heels. Id. At the time of the injury, the third was working for Junior. Hr. Tr. P. 112. The Third had no involvement in the management of Junior's company as the Third did not negotiate the jobs, did not furnish the tools, and reported to his father (Junior) as the boss. Id. at 112-113.

While the Third did not negotiate the jobs, he would on occasion help draw up the proposals as his father is "not good with words and he's not good with spelling". Hr. Tr., p. 121. The Third further testified that he had a previous construction company with valid S.C. Workers'

Compensation Insurance until it was cancelled for non-payment of premium. Id. at 123. The address used for the workers' compensation insurance at that time was the same address of 70 Hickory Hill. Id. at 124.

In so far as the scaffolding from which the Third and Junior fell, the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130. The scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131. Even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132. While this is not the only way to complete this work it was the way the Third and Junior chose to do it that day. Id. In addition, the scaffolding was constructed by Junior and/or his workers and not by Full Circle Construction. Hr. Tr., p. 132. The tools that the Third and Junior used to construct the scaffolding were Junior's tools. Id. at 132.

H. Testimony of Juan Yslas, Jr. (Junior)

1. Deposition Transcript

Junior also testified that he too lived at the 70 Hickory Hill Road address. He appeared as a 54-year-old Hispanic male. Dep Tr. Of Juan Yslas, Jr. at p. 11. Junior was originally employed by Naun Ruiz. Id. At 31-32. When he left the employment of Ruiz, Junior obtained his own workers' compensation insurance through First Choice later determined to be People's Choice. Id. At 32. When he applied for insurance he met with Jackie. When he took out workers' compensation insurance he did not know whether or not he was covered. Id. At 33. He didn't even know if it covered the "whole crew." Id. When Junior took over the project and no longer worked for Ruiz, Junior provided his own tools on the job site. Id. At 33.

According to the testimony of Junior, he believes he started his own company on or around November 22, 2011. Id. P. 35. When he started his company he paid his workers' compensation insurance premium. Id. According to Junior there were 6 employees all together working for him besides The Third, Junior and Ricardo Ylsas. Id. At 51.

On the day of the accident, Junior was on a walk board that he built. Id. p. 53. This walk board and/or scaffolding was constructed with Junior's tools. Id. at 54. No one at Full Circle Construction instructed Junior how to build the scaffold because "they knew how to do that". Id. at 54.

Junior testified similarly to the Third with respect to how the accident occurred. Junior also fell and sustained injury to his feet/ankles. Other body parts were claimed and in dispute. Junior also treated with Leland Stoddard and there was no dispute as to the fact the accident occurred nor any issue with the medical treatment provided thus far.

According to Junior, he was instructed by representatives of Full Circle that he could not begin the job until he provided Full Circle with proof of workers' compensation insurance. Id. at 87. When Junior applied for insurance he told Jackie with People's Choice that he planned to hire one or two employees. Id. at 90. Junior then testified that this was untrue because he had 5-6 employees at the time of applying for the application. In addition to having these employees, Junior had provided his accountant with documents for tax purposes that indicated he had several employees. Id. at 91.

Junior did not tell Jackie how many employees he had. Id. at 93-94. Junior testified whether or not he and Jackie had discussed whether he wanted to be included or excluded and he could not remember whether he could afford to be included. Id. at 96-97. He does however remember getting a copy of the policy in the mail but never read it. Id. at 98.

Mr. Yslas, Jr. was asked to review various pages of information related to insurance coverage and applications. He reviewed p.36 of the exhibit which was p. 39 of Allison Carter's APA dealing with insurance inclusions and exclusions. As he reviewed this document, he interpreted this document to mean he was excluded from coverage. See Hr. Tr. PP. 99-100.

Also of significant importance is that Junior testified that when he began work on the Full Circle job, his son, the Third, was the lead man- "he was an employee" of Junior. Id. at 118.

2. Hearing Transcript and Testimony

Junior testified that he was injured on Lot 181 where Full Circle was a general contractor for the job site. Hr. Tr. generally and at p. 38. The contract itself was for \$12,118.50 and that proposal prepared by Junior's daughter. Id. at p. 39. On January 16, 2012, Junior was injured when he fell from scaffolding to the ground below. Junior hand his crew began to lift the trusses by hand. There were no cranes on site. Hr. Tr. pp. 41-42. The scaffold was built by Junior and/or his crew. Hr. Tr. p. 42. As he was lifting a truss, he had to put it back down. At that point, the Third came over to help him and he must have lost his balance or when he turned around after setting the truss down Junior hit the Third and then both went down together. Hr. Tr. p. 42.

Junior testified that he had employees working for him. Hr. Tr. p. 44. After the fall, Junior sustained various injuries some of which were in dispute at the time of the hearing. Id. at p. 47.

With respect to the insurance issue in this case, Junior was instructed by Full Circle Construction that he must obtain workers' compensation insurance. Id. at p. 48. He went to

People's Choice (sic First Choice). Hr. Tr. p. 48. Junior testified that he and his son had not affiliation in each other's businesses. Hr. Tr. p. 49-50.

On cross examination, Junior conceded that at the time he began the job at lot 181 where he was the employer, he had employees. Hr. tr. p 63-64 and Riverport APA, p. 12. According to those documents, at the time of the application for insurance by Junior he had six (6) employees working for him. Hr. Tr. p. 65, ll. 5-8. In addition, when he applied for insurance he was in a hurry to get the insurance. *Id.* at 65. Junior also verified that he signed the application (at Riverport APA, p. 37) where it was indicated he had no employees and was excluding himself from workers' compensation coverage. Riverport APA, p. 37 and Hr. Tr., p. 66. The information contained in the signed application came from Junior (emphasis added). Hr. Tr. p. 66. On that application Junior indicated he had no employees and had no payroll. Hr. Tr. p. 68. Junior further conceded that he did not tell Jackie Fernandez that he had any employees at all which at the time he had six (6) (emphasis added). Hr. Tr. p. 69. According to the Junior's tax records he supplied to his accountant, he started paying employees on November 19, 2011. *Id.* at 87 and Riverport APA, p. 12.

Finally, Junior never indicated to the insurance company that he wanted to be included in any type of workers' compensation coverage. Hr. Tr. p. 82. The claimant never returned to the insurance agent and requested that he be included or covered under the workers' compensation coverage. *Id.* The premium associated with his policy was \$750 which he was able to pay but went on to testify that if it had been \$3,600 as indicated in the Riverport audit, he would not have been able to pay that premium. *Id.* at 83.

I. Relevant Exhibits and APA Submissions

- Payroll Information for Juan Yslas, Jr., Riverport APA p. 12-14;

- Signed Insurance Application stating zero employees and excluding Junior from coverage. Riverport APA, 34-37 and 61-67;
- Certificate of Insurance from Junior to Full Circle, Full Circle APA 2;
- Berkley/Riverport Audit showing premium retroactively owed and Juan Yslas, III being named as employee/subcontractor and a premium requested for him from Junior; Full Circle APA 4.

The Single Commissioner's Finding of Facts were as follows:

FINDINGS OF FACT

1. *I hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim;*
2. *I find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;*
3. *I find that the scaffold from which the claimant and Junior fell was built by Junior and or his crew. Dep of Juan Yslas, Jr. at P. 53, ll. 3-6;*
4. *I find that the scaffold from which the claimant and Junior fell was built with the tools provided by Junior;*
5. *I find that no one instructed the claimant on how to construct this scaffolding as they had the know how to do that on their own. Hr. Tr. p. 132;*
6. *I find that neither Junior nor anyone on his crew built hand rails on the scaffolding Hr. Tr., p. 131;*

7. I find that the Junior was lifting a truss which according to his son, the claimant, was too heavy and a younger worker should have been lifting. Hr. tr. p. 108;
8. I find that Junior lost his balance on the scaffolding and struck the Third while trying to regain his balance causing both to fall. Hr. Tr. p. 109-110;
9. I find that that the Third thought his father should get down and let a younger guy handle the work but didn't want to yell that out to his dad as his dad has a lot of pride. Hr. Tr., p. 130.
10. I find that the scaffolding itself consisted of two walk boards and did not have a handrail or fence to prevent falls. Hr. Tr., p. 131.
11. I find that even if they had used a crane it would not have done them any good to walk back and forth. Id. at p. 132.
12. I find that the way they were lifting the trusses on the day of the accident was not the only way to do this job Junior chose to do it that day. Id.
13. I find that Ms. Fernandez was employed with People's Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6.;
14. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7.
15. Ms. Fernandez had a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8.
16. When completing the application Junior indicated that he had no employees. Id. At 12.

17. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. *Id.* At 13, 21 and 22.
18. Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways.
19. I find that in Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. *Id.* At 17-19.
20. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. *Id.* At 19.
21. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. *Id.* At 20. He signed this policy indicating this. *Id.* At 21-22.
22. Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. *Id.* At 31. She went on to testify that the documents, including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business;
23. I find that there is enough evidence in this file to warrant that the claimant be referred to the South Carolina Attorney General Office to determine whether or not fraud or some other violation has been committed. See Findings of Fact #33-34;
24. I further find that the claimant would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage,

indicated he had 0 people on his payroll and failed to correct the insurance policy and/or endorsement as a result thereof;

25. I further find that this injury was a result of Mr. Yslas failing to construct a proper scaffold; failing to wait on a younger worker to assist, and failing to request a crane to assist with the lifting of a the trussed;

26. In addition, I further find that the sole reason Mr. Yslas, Jr. is not covered by the workers compensation insurance of Full Circle is Junior's complete failure to include himself in coverage and honestly complete insurance applications as it relates to his business practices.

The Single Commissioner's Conclusions of Law were as follows:

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:

- 1. All findings of fact are incorporated herein by reference as well as the hearing transcript and APA Submissions;*
- 2. Pursuant to the South Carolina Workers' Compensation Act, the claimant specifically excluded himself from workers' compensation coverage and therefor is not entitled to benefits under the South Carolina Workers Compensation Act;*
- 3. Nothing in this order in any way affects the Uninsured Employers' Fund's right to pursue collection of its costs pursuant to SC Code Ann. §42-7-200 as it pertains to the employer, Juan Yslas, Jr.;*
- 4. Based upon the claimant's willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, I find that the claimant*

shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;

5. Nothing in this Order prevents Riverport Insurance from additional litigation to recover its premium owed by Yslas, Jr;

6. Nothing in this Order impact's Full Circle's ability to see monetary damages at law from Junior as it relates to the completion of the job or that otherwise may be permitted.

After consideration of all of the evidence contained within the record, we AFFIRM WITH AMENDEMENTS and hereby outlining the below and applicable findings of facts and Conclusions of Law:

FINDING OF FACTS

1. We hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim where consistent with out Amendments;
2. We find that on January 16, 2012, the claimant fell from a scaffold and sustained injury to his ankles/feet;
3. We find that Ms. Fernandez was employed with People's Choice Insurance as an insurance agent where she is one of two agents with the other being the male owner of the company, Les Goude. See Jackie Fernandez Dep. Tr. Pp. 5-6.;
4. In connection with her job duties as an agent, she runs quotes, signs the quotes and then sends the policies to be bound. Id. At 6-7.

5. Ms. Fernandez had a personal memory of Junior as the family has other insurance policies with Peoples Choice. Id. At 8.
6. When completing the application Junior indicated that he had no employees. Id. At 12.
7. Ms. Fernandez completed the application and indicated that he had no employees and Juan Yslas, Jr. signed the application also indicating he had no employees. Id. At 13, 21 and 22.
8. Ms. Fernandez then went on to testify that as she goes through an insurance application she will explain the difference between the company principal be included in coverage or excluded in coverage. If the person requests that they be included then she runs the quote both ways.
9. We find that in Junior's case, he did not ask for this quote to be run as it was not noted in her file and therefore he had excluded himself from the insurance policy. Id. At 17-19.
10. In addition, Junior was in a rush to get the policy in place because he was getting ready for a big job. Id. At 19.
11. Junior went on to indicate that he had zero (0) employees and that he had not paid any employees payroll at all. Id. At 20. He signed this policy indicating this. Id. At 21-22.
12. Ms. Fernandez testified that she in fact provided the certificate of insurance to Full Circle Construction. Id. At 31. She went on to testify that the documents, including the Certificate of Insurance was the certificate used by their office and also kept in the ordinary course of business;

13. We find that there is enough evidence in this file to warrant that the claimant be referred to the South Carolina Attorney General Office to determine whether or not fraud or some other violation has been committed. See Findings of Fact #33-34;
14. We further find that the claimant would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage, indicated he had 0 people on his payroll and failed to correct the insurance policy and/or endorsement as a result thereof;
15. In addition, we further find that the sole reason Mr. Yslas, Jr. is not covered by the workers compensation insurance of Full Circle is Junior's complete failure to include himself in coverage and honestly complete insurance applications as it relates to his business practices.

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. and based upon the above findings of fact, the APA submissions from all parties, I make the following Conclusions of Law:

1. All findings of fact are incorporated herein by reference as well as the hearing transcript and APA Submissions;
2. Pursuant to the South Carolina Workers' Compensation Act, the claimant specifically excluded himself from workers' compensation coverage and therefor is not entitled to benefits under the South Carolina Workers Compensation Act;
3. Nothing in this order in any way affects the Uninsured Employers' Fund's right to pursue collection of its costs pursuant to SC Code Ann. §42-7-200 as it pertains to the employer, Juan Yslas, Jr.;

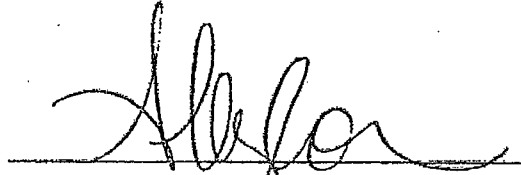
4. Based upon the claimant's willful violation and failure to disclose his business practices to include his payroll and number of employees, and his specific exclusion of himself from coverage indicating there was a zero payroll, we find that the **claimant shall be referred to the Attorney General's office to determine all violations and issues of potential fraud;**
5. Nothing in this Order prevents Riverport Insurance from additional litigation to recover its premium owed by Yslas, Jr;
6. Nothing in this Order impact's Full Circle's ability to see monetary damages at law from Junior as it relates to the completion of the job or that otherwise may be permitted.

ORDER

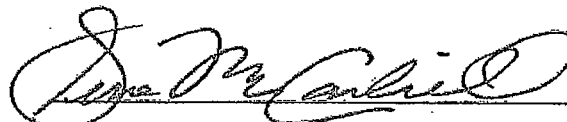
1. The claimant specifically excluded himself from workers' compensation coverage and therefore his request for benefits is hereby DENIED;
2. **The claimant shall be referred to the Attorney General to determine if prosecution is appropriate** based upon the evidence herein and above and incorporated herein;
3. Full Circle Construction and Amerisure Insurance shall be dismissed with prejudice and removed from the caption of this claim;
4. Riverport Insurance shall be dismissed with prejudice and removed from the caption of this claim;
5. The South Carolina Second Injury Fund shall be dismissed with prejudice and removed from the caption of this claim

6. That no defendant or carrier shall not be required to file any more WCC Forms associated with this claim nor be subject to fines associated with Form filing;

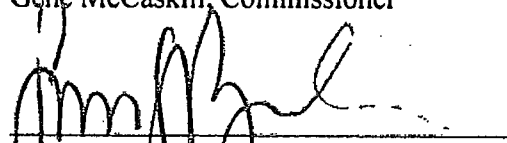
IT IS SO ORDERED.



Aisha G. Taylor, Commissioner



Gene McCaskill, Commissioner



Susan S. Barden, Commissioner

CERTIFICATE OF SERVICE

This is to certify the undersigned has this date served this order in the above entitled action upon all parties to this cause by sending an electronic copy hereof by electronic mail addressed to the attorney or attorneys for said parties or by depositing a copy hereof, postage paid, in the United States mail addressed to any unrepresented party.

By Valerie Deller on August 21, 2013

CERTIFICATION

I, James H. Moss, do hereby certify that the *Record on Appeal* contains all materials proposed to be included by any party, and no other material.

MOSS, KUHN & FLEMING, P.A.

By: _____

James H. Moss, Esquire

Beaufort, South Carolina

April 1, 2014

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