THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
WORKER'S COMPENSATION COMMISSION

The Honorable Aisha G. Taylor, Gene McCaskill and Susan S. Barden

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WCC File No. 1200329

JUAN YSLAS JR., EMPLOYEE, ... APPELLANT,

v.

JUAN YSLAS, EMPLOYER, RIVERPORT INSURANCE,
ALLEGED CARRIER FOR EMPLOYER; FULL CIRCLE CONSTRUCTION,
ALLEGED STATUTORY EMPLOYER, AND THE
SOUTH CAROLINA UNINSURED EMPLOYERS'
FUND, ... RESPONDENTS.

FINAL BRIEF OF RESPONDENT FULL CIRCLE CONSTRUCTION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations & Rules

STATEMENT OF ISSUES ON APPEAL

I. READ AS A WHOLE, WHETHER THE COMMISSION'S ORDER IS SUFFICIENTLY CLEAR IN ITS INTENT TO DELETE CERTAIN FINDINGS OF FACT AND SUPPORTING EVIDENCE MADE BY THE SINGLE COMMISSIONER?

II. WHETHER APPELLANT'S ARGUMENT THAT HE WAS AN EMPLOYEE OF RESPONDENT IS UNPRESERVED FOR REVIEW, OR IN THE ALTERNATIVE, WHETHER APPELLANT MET HIS BURDEN OF ESTABLISHING A COMMON LAW EMPLOYER-EMPLOYEE RELATIONSHIP?

III. WHETHER THE COMMISSION CORRECTLY HELD THAT APPELLANT WAS NOT A STATUTORY EMPLOYEE OF RESPONDENT PURSUANT TO S.C. CODE ANN. § 42-1-400?

STATEMENT OF THE CASE

Appellant Juan Yslas, Jr. is the sole proprietor of a construction business. Prior to subcontracting with Respondent Full Circle Construction, LLC ("Full Circle") to frame a house on Lot 181, Mr. Yslas purchased a worker's compensation policy from Riverport Insurance in which he excluded himself from coverage and failed to disclose that he employed several workers. On January 16, 2012, while framing this house, Mr. Yslas fell from scaffolding and suffered injuries to his ankles and legs. (R. p. 436). On January 18, 2012, Mr. Yslas filed a Form 50 with the South Carolina Worker's Compensation Commission that identified Full Circle as his employer and requested medical benefits, and temporary and permanent total disability benefits. (R. p. 28). Full Circle's carrier, Amerisure Insurance, denied Mr. Yslas' claim on the basis that he was not an employee of Full Circle. (R. p. 437). On May 16, 2012, Mr. Yslas filed an amended Form 50 requesting a hearing. (R. p. 33).

Through discovery, Full Circle learned that Mr. Yslas had obtained a worker's compensation policy from Riverport Insurance in effect on the date of his accident. Full Circle moved to add Riverport Insurance and the South Carolina Uninsured Employers Fund as parties to Mr. Yslas' claim. (R. pp. 90-93). On June 18, 2012, the Commission granted Full Circle's motion. (R. p. 94).

A hearing before Single Commissioner Wilkerson was held on July 8, 2012 to determine whether Mr. Yslas was entitled to benefits under the South Carolina Worker's Compensation Act ("Act"). Mr. Yslas argued that Riverport should accept his claim for workers compensation and provide coverage; in the alternative, he argued that he was a statutory employee of Full Circle, thus making Full Circle liable for benefits. (R. pp. 511-512). On October 12, the Single Commissioner issued his decision. (R. p. 507). The Single Commissioner made detailed

findings of fact concerning Mr. Yslas' accident and his insurance policy with Riverport. (R. pp. 524-527). The Single Commissioner found[1] that Mr. Yslas "would have been a statutory employee of Full Circle Construction but for the fact that he, and he alone, excluded himself from coverage ...." (R. p. 526).

On October 26, 2012, Mr. Yslas filed a Form 30 requesting Commission review. (R. p. 531). In his Form 30, Mr. Yslas took exception to numerous findings of fact concerning negligence and OSHA that he contended were irrelevant to the issue of the Commission's jurisdiction and were "intentionally placed in said Order to deny Juan Yslas, Jr. from filing a civil action against Full Circle Construction." (R. pp. 532-534). He also asserted that "the Commissioner erred in failing to find that the Worker's Compensation Commission, as a result of no coverage, no longer has jurisdiction, and that he is not covered by the Act." (R. p. 534). In his brief to the Commission, Mr. Yslas argued that his exclusion from coverage under his worker's compensation insurance policy did not preclude him from being a statutory employee of Full Circle. (R. p. 544). On November 2, 2012, Mr. Yslas filed a civil action against Full Circle, alleging negligence. (R. p. 1 as corrected).

After hearing oral arguments on May 20, 2013, the Full Commission amended the Single Commissioner's Decision to delete the "Finding of Facts and Rulings of Law with regard to negligence and OSHA," that Mr. Yslas argued were improper or irrelevant. (R. pp. 571, 584). The Full Commission upheld the Single Commissioner's Finding of Fact that Mr. Yslas "would have been a statutory employee of Full Circle Construction but for the fact he, and he alone, excluded himself from coverage ...." (R. pp. 584-586). As a result, the Commission concluded

[1] The Single Commissioner also referred Mr. Yslas to the South Carolina Attorney General's Office to determine whether he committed fraud in failing to disclose to his insurer, Riverport Insurance, that he did in fact have employees on his payroll at the time he applied for worker's compensation insurance. The Full Commission upheld this referral. Because this portion of the Commission's decision is not relevant to Full Circle, Full Circle has not briefed this issue.

that "the claimant specifically excluded himself from workers' compensation coverage and therefore is not entitled to benefits under the South Carolina Workers Compensation Act." (R. p. 586). Mr. Yslas timely appealed to this Court, arguing in relevant part that the Full Commission Order was vague and ambiguous in its handling of the Single Commissioner's findings, and that the Full Commission erred in concluding that Mr. Yslas excluded himself from coverage under the Act.

STATEMENT OF THE FACTS

Mr. Yslas is the sole proprietor of his construction business. (R. p. 489, lines 5-12). Mr. Yslas was originally working for Naun Ruiz, a Full Circle subcontractor, to frame houses in a new residential development in Beaufort County. (R. p. 479, line 4- p. 480, line 18); (R. p. 123, lines 16-19). Mr. Ruiz covered Mr. Yslas under his policy. (R. p. 481, line 2 – p. 482, line 25). Mr. Ruiz had to depart to Mexico. (R. p. 481, line 23 – p. 482, line 10). Mr. Yslas approached Full Circle to subcontract with them for the framing work. Full Circle required its subcontractors to obtain a worker's compensation insurance policy before it would agree to a subcontract. (R. p. 374, line 19 – p. 375, line 23); (R. p. 127, lines 22-25; p. 180, line 6 – p. 181, line 25); (R. p. 474, lines 2-9).

On or about November 14, Mr. Yslas applied for a worker's compensation policy through People's Choice Insurance Company. (R. p. 388, line 17 – p. 389, line 22); (R. p. 488, lines 1-23). Ms. Fernandez assisted Mr. Yslas in completing the application.[2] (R. p. 383, line 19 – p. 384, line 14; p. 384, line 19 – p. 385, line 11).

[2] Mr. Yslas speaks and reads in English, and prefers speaking English over Spanish. (R. p. 114, line 19 – p. 115, line 18).

The application was made electronically, with Ms. Fernandez asking Mr. Yslas for the information necessary to complete the application.[3] (R. p. 389, line 10 – p. 400, line 25). He applied for a policy that excluded himself from coverage. (R. pp. 461-464); (R. p. 394, line 18 – p. 398, line 10). Consequently, the issued policy contained an express exclusion of Mr. Yslas. (R. pp. 453-456).

On November 28, People's Choice faxed to Full Circle a Certificate of Insurance, signed by an authorized representative, certifying that Juan Yslas, Jr. had been issued a worker's compensation policy by Riverport Insurance Company. (R. p. 440); (R. p. 409, lines 5-24; p. 415, line 12-17). At the time of Appellant's injury, this policy was in effect. (R. p. 465).

The next day, on November 29, 2011, Mr. Yslas submitted a proposal to Full Circle to "furnish the tools and perform the labor necessary for the completion of all framework" for a house on Lot 181. (R. p. 446); (R. p. 497, line 16 – p. 499, line 17). On January 16, 2012, in the course of performing this work, Mr. Yslas was injured when he fell off scaffolding, causing calcaneal fractures in both feet. (R. p. 436).

STANDARD OF REVIEW

Judicial review of a Commission decision is directed by the Administrative Procedures Act, S.C. Code Ann. § 1-23-380(A)(5) (Supp. 2010). *Gray v. Club Group, Ltd.*, 339 S.C. 173, 528 S.E.2d 435 (Ct. App. 2000); *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981). A reviewing court may not substitute its own judgment for that of the Full Commission as to the weight of the evidence on a question of fact, but may reverse if the decision is affected by errors of law. S.C. Code Ann. § 1-23-380(A)(5). The Administrative Procedures Act "mandates that the commission take the evidence, judge the credibility and weight of that evidence, and from that judgment determine the facts of the case." *Rogers v. Kunja Knitting Mills, Inc.*, 312 S.C.

[3] Ms. Fernandez was communicating with Mr. Yslas in English. (R. p. 410, lines 12-22).

377, 381, 440 S.E.2d 401, 403 (Ct. App. 1994). The Full Commission is the ultimate fact finder in workers' compensation cases. *Ross v. American Red Cross*, 298 S.C. 490, 492, 381 S.E.2d 728, 729 (1989). Where there is a conflict in the evidence, either by different witnesses or the testimony of the same witnesses, the finding of facts of the Commission are conclusive. *Anderson v. Baptist Med. Ctr.*, 343 S.C. 487, 492-493, 541 S.E.2d 526, 528 (2001).

Determination of whether a statutory employment relationship exists is jurisdictional. *Voss v. Ramco, Inc.*, 325 S.C. 560, 565, 482 S.E.2d 582, 584 (Ct. App. 1997). As such, this Court's review is governed by the preponderance of evidence standard. *Hernandez-Zuniga v. Tickle*, 374 S.C. 235, 243, 647 S.E.2d 691, 694 (Ct. App. 2007). "Although doubts about jurisdiction are resolved in the claimant's favor in accordance with the inclusive purposes of the Act, this Court is bound by the Act as written and does not have the power to expand the jurisdictional reach of the Act." *Voss*, 325 S.C. at 565, 482 S.E.2d at 585; *Hernandez-Zuniga*, 374 S.C. at 256, 647 S.E.2d at 702.

ARGUMENT

I. A fair reading of the Commission's Order does not support Appellant's contention that the Order is vague and ambiguous.

Appellant complains that the Commission's Appellate Panel Order ("Order") "is vague, ambiguous, and subject to contradiction" in that it allegedly leaves intact certain findings that Appellant finds objectionable. A fair reading of the Commission's Order does not support Appellant's contention. The Single Commissioner made certain findings of fact that Appellant objected to on appeal to the Full Commission – Findings of Fact # 3-12 and # 25. The Appellate Panel Order recited the Single Commissioner's findings of fact in their entirety, and then, in making its own findings of fact, deleted the Single Commissioner's Finding of Fact # 3-12 and # 25. In other words, the Commission did not adopt or affirm the Single Commissioner's findings

of fact to which Appellant objects.[4] "An order should be construed within the context of the proceeding in which it is rendered." *Dibble v. Sumter Ice & Fuel Co.*, 283 S.C. 278, 282, 322 S.E.2d 674, 677 (Ct. App. 1984); *see also Anderson v. Buonforte*, 365 S.C. 482, 488, 617 S.E.2d 750, 753 (Ct. App. 2005) ("An appellate court must view the trial court's statements as a whole to determine its reasoning."). Appellant has no basis from which he can reasonably argue that the Commission erred simply by its recitation of findings of fact made by the Single Commissioner prior to the Commission's amendment of those findings.

Appellant seemingly attempts to create a reviewable issue on appeal by arguing that Full Commission Order is vague and ambiguous by virtue of the following statement within the Order - "we hereby incorporate the findings of evidence above and the citations as if listed herein and verbatim where consistent with out [sic] Amendments." (R. p. 584). "As a general rule, judgments are to be construed like other written instruments." *City of N. Myrtle Beach v. East Cherry Grove Realty Co.*, 397 S.C. 497, 503, 725 S.E.2d 676, 679 (2012). "The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself." *Id.* "Hence, in construing a judgment, it should be examined and considered in its entirety." *Id.*

Viewing the Order as a whole, the latter phrase, "where consistent with out [sic] Amendments," clearly contains a typographical error. Instead of "with out Amendments," the intent of the Commission was to say "with our Amendments." *See Ashley v. Ware Shoals Mfg.*

[4] Thus, Appellant's detailed dispute of these findings by the Single Commissioner is irrelevant and should be disregarded entirely. Appellant's Brief, pp. 6-8, 16. Furthermore, Appellant's request that this Court declare that, "any Order by the Commission in this case would have no precedential value in any civil action filed in Jasper County or elsewhere," is both misplaced and inappropriate. The issue of the precedential value or effect of the Full Commission's Order is not stated in Appellant's statement of Issues on Appeal, as required by Rule 208(b)(1)(B), SCACR. In addition, it is not relevant or necessary to this Court's determination of whether the Full Commission Order should be affirmed on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal).

Co., 210 S.C. 273, 281, 42 S.E.2d 390, 393 (1947) (stating that judicial correction of clerical errors in a statute by substituting a word more consistent with intent for a word that makes a sentence senseless and absurd is an appropriate means of construing legislative intent); *Watkins v. Smith*, 40 N.C. App. 506, 510, 253 S.E.2d 354, 356 (Ct. App. 1979) ("Judgments should be liberally construed so as to make them serviceable instead of useless."). Reading this statement to mean that the Commission incorporated the evidence identified previously in the Order that supported its amended findings of fact comports with the overall intent of the Order. Appellant's attempt to create a contradiction in the Commission's findings of fact is unavailing and should be rejected.

II. Appellant's argument that he was an employee of Full Circle Construction is not preserved for appellate review, or in the alternative, Appellant has failed to show that he was an employee rather than an independent subcontractor.

Citing to case law setting forth the test for whether a person is an employee or independent contractor, Appellant appears to argue that he was an employee of Full Circle Construction. Appellant's Brief, pp. 12-13 (citing to *Nelson v. Yellow Cab Company*, 343 S.C. 102, 538 S.E.2d 276 (Ct. App. 2000), *Dawkins v. Jordan*, 341 S.C. 434, 534 S.E.2d 700 (Ct. App. 2000)). To the extent that he is arguing that he was an employee of Full Circle as opposed to an independent contractor, Appellant's argument is unpreserved for review. To preserve an issue for review by this Court, a claimant must raise the issue in his appeal of the Single Commissioner's order to the Commission. *Bazen v. Badger R. Bazen Co.*, 388 S.C. 58, 65, 693 S.E.2d 436, 440 (Ct. App. 2010). Here, Appellant's Form 30 requesting Commission review of the Single Commissioner's order did not raise any error concerning the issue of whether a common law employer-employee relationship existed between himself and Full Circle. (R. pp. 531-535). Nothing in his Form 30 asserts that Full Circle exercised a right of control over Appellant's work. *Id.* Instead, Appellant's Form 30 and brief to the Appellate Panel argued that

the Single Commissioner erred in rejecting his contention that he was a "statutory employee" of Full Circle pursuant to S.C. Code Ann. § 42-1-400. (R. pp. 536-547).

A "statutory employee" under the Worker's Compensation Act is a separate and distinct concept from the common law definition of an employee. *See Posey v. Proper Mold & Eng'g, Inc.*, 378 S.C. 210, 217, 661 S.E.2d 395, 399-400 (Ct. App. 2008) (explaining that a "statutory employee" is an exception to the general rule that an employer-employee relationship must exist in order for an injured worker to be covered under the Worker's Compensation Act). A common law employer-employee relationship is found when the employer has a right to exercise control over a worker's performance, as indicated by direct evidence of exercising control over a worker's performance, furnishing of equipment, right to fire, and method of payment. *Dawkins v. Jordan*, 341 S.C. 434, 439, 534 S.E.2d 700, 703 (2000). The concept of a "statutory employer" and "statutory employee" imposes liability on an employer or contractor for the payment of compensation benefits to a worker not directly employed by the contractor." *Posey v. Proper Mold & Eng'g,* Inc., 378 S.C. 210, 217, 661 S.E.2d 395, 399 (Ct. App. 2008) (emphasis added). To hold a general contractor liable for the worker's compensation benefits of an employee of a subcontractor, that employee's activity must be an important, necessary, or integral part of the general contractor's business or trade. *Id.* at 218, 399. In other words, a "statutory employee" is an employee of a subcontractor who may seek to hold the "upstream employer" – the general contractor – liable for workers compensation benefits even though no common law employer-employee relationship exists between the employee of the subcontractor and the general contractor. By arguing that he is a "statutory employee," Appellant is asserting that he is an employee of his own business, but that Full Circle should be held to pay worker's

compensation benefits arising from his injuries on the job.[5] Appellant cannot now argue before this Court that he is a common law employee of Full Circle.

To the extent that this Court concludes otherwise, the evidence presented to the Commission indisputably shows that Claimant, Juan Yslas, Jr., was not an employee of Full Circle. An employer-employee relationship is found when the employer has a right to exercise control over a worker's performance. *Dawkins v. Jordan*, 341 S.C. 434, 439, 534 S.E.2d 700, 703 (2000). "There are four elements which determine the right of control: 1) direct evidence of the right or exercise of control; 2) furnishing of equipment; 3) right to fire; and 4) method of payment." *Id.* These factors must be evaluated "with equal force in both directions." *Wilkinson v. Palmetto State Transp. Co.*, 382 S.C. 295, 300, 676 S.E.2d 700, 702 (2009). "The burden of proving the relationship of employer and employee is upon the claimant." *Marlow v. E. L. Jones & Son, Inc.*, 248 S.C. 568, 570, 151 S.E.2d 747, 748 (1966).

The evidence shows that Mr. Yslas was an independent subcontractor, not an employee of Full Circle. He testified that he was a sole proprietor who employed six employees. (R. p. 475 – p. 476, line 4). Appellant made a written proposal to Full Circle to "furnish the tools and perform the labor necessary for the completion of all framework" for a new single family residence on Lot 181. (R. p. 446); (R. p. 497, line 16 – p. 499, line 17). Mr. Yslas testified that he was a subcontractor to Full Circle and he had employees working for him on the job. (R. p. 497, lines 17-24). Full Circle furnished the building material and building plans. (R. p. 470, line

[5] *See Hardee v. McDowell*, 381 S.C. 445, 449, 673 S.E.2d 813, 815 (2009) ("Under the statutory employee doctrine, a contractor may be held liable for work-related injuries to employees hired by subcontractors.") (emphasis added); *Barton v. Higgs*, 381 S.C. 367, 370, 674 S.E.2d 145, 146 (2009) ("Under the Workers' Compensation Act, a general contractor is considered the 'statutory employer' of a subcontractor's employees and is liable to pay workers' compensation benefits to the subcontractor's employee injured on the job.") (emphasis added); *Miller v. Lawrence Robinson Trucking*, 333 S.C. 576, 580, 510 S.E.2d 431, 434 (Ct. App. 1998) ("The employee of the subcontractor may look to an upstream employer for benefits without regard to whether the subcontractor has workers' compensation coverage.") (emphasis added).

14 – p. 471, line 11; p. 477, line 21 – p. 478, line 20). Mr. Yslas used his own tools at the job site. (R. p. 218, line 20 – p. 219, line 17); (R. p. 504, line 19 – p. 505, line 7). He testified that on the job site, he was his own boss. (R. p. 143, lines 6-16). Full Circle did not instruct Mr. Yslas and his employees on how to perform the work. (R. p. 148, line 19 – p. 149, line 15). Full Circle did not pay Mr. Yslas a weekly salary. (R. p. 499, lines 7-12). Instead, Full Circle paid Mr. Yslas a weekly draw based upon the percentage of the work completed. (R. p. 498, lines 19-23); (R. pp. 446-452). From this draw, Mr. Yslas paid his employees and himself. *Id.* Under these facts, Appellant has failed to meet his burden of proving that he was an employee rather than an independent subcontractor of Full Circle.

III. The Commission correctly held that Appellant was not a statutory employee of Full Circle Construction.

Appellant argues that the Commission erred in failing to conclude that he was a "statutory employee" of Full Circle, pursuant to S.C. Code Ann. § 42-1-400. Under S.C. Code Ann. § 42-1-400, if a general contractor, while undertaking work "which is a part of his trade, business or occupation," contracts with any other person (referred to as a subcontractor) "for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay workers compensation benefits to an injured employee of the subcontractor as "if the workman had been immediately employed by him." To be deemed a "statutory employee" of a general contractor, the injured worker must, as a threshold matter, be an employee of a subcontractor.

Here, Appellant was not an employee of the subcontractor; instead, he was the subcontractor. "As a general rule, independent contractors or subcontractors are not included under the Workers' Compensation Act." *Smith v. Squires Timber Co.*, 311 S.C. 321, 324-325, 428 S.E.2d 878, 880 (1993). Even so, the Act provides a narrow exception where a "sole

proprietor or partner of a business whose employees are eligible for benefits" may "elect to be included as employees under the workers' compensation coverage of the business if they are actively engaged in the operation of the business and if the insurer is notified of their election to be included." S.C. Code Ann. § 42-1-130. "Any sole proprietor or partner, upon this election, is entitled to employee benefits and is subject to employee responsibilities prescribed in this title." *Id.* A subcontractor who has obtained a worker's compensation policy and elected to cover himself as an "employee" pursuant to S.C. Code Ann. § 42-1-130 may be deemed a "statutory employee" of a general contractor. *Smith v. T.H. Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991); *Smith v. Squires Timber Co.*, 311 S.C. 321, 325, 323, 428 S.E.2d 878, 880 (1993); *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 476, 478 S.E.2d 91, 97 (Ct. App. 1996). Appellant cannot meet this test.

On November 22, 2011, Appellant obtained a workers' compensation insurance policy through Peoples Choice Insurance Company. (R. pp. 453-456). Mr. Yslas opted not to include himself as a covered employee. (R. p. 461). Consequently, the issued policy contained an express exclusion of Mr. Yslas. (R. p. 456). Because Appellant did not carry workers' compensation insurance for himself as an employee of his own business, he cannot claim to be a statutory employee under S.C. Code Ann. § 42-1-400. *Smith v. Squires Timber Co.*, 311 S.C. 321, 325, 428 S.E.2d 878, 880 (1993); *Neese v. Michelin Tire Corp.*, 324 S.C. 465, 476, 478 S.E.2d 91, 97 (Ct. App. 1996).[6]

Even if this Court were to find that Appellant was a statutory employee of Full Circle, "under section 42-1-415(A), a statutory employer is no longer directly liable for workers'

[6] At oral argument before the Appellate Panel to the Full Commission, counsel for Appellant essentially conceded this point, stating, "I don't have any problem with you finding that [Mr. Yslas is] not covered by the Act, if that's what you want to find. Okay? ... I just want to get on with my civil action." (R. p. 556, lines 13-16). A party is bound by the statements of its counsel. *See Smith v. Pearson*, 210 S.C. 524, 530, 43 S.E.2d 479, 482 (1947).

compensation payments whenever documentation is presented to the commission that a contractor or subcontractor represented himself to the statutory employer as having workers' compensation insurance." *Harrell v. Pineland Plantation, Ltd.*, 337 S.C. 313, 330, 523 S.E.2d 766, 774-775 (1999). S.C. Code Ann. § 42-1-415(A) provides that "[n]otwithstanding any other provision of law, upon the submission of documentation to the commission that a contractor or subcontractor has represented himself to a higher tier subcontractor, contractor, or project owner as having workers' compensation insurance at the time the contractor or subcontractor was engaged to perform work, the higher tier subcontractor, contractor, or project owner must be relieved of any and all liability under this title ...."

Here, Full Circle required all subcontractors to provide proof of workers compensation coverage. (R. p. 474, lines 2-9); (R. p. 180, line 6 – p. 181, line 25). Prior to starting work on Lot 181, Mr. Yslas procured a worker's compensation insurance policy for coverage in South Carolina, and Full Circle received a signed certificate of insurance showing Mr. Yslas, Jr. as the insured.[7] (R. p. 440). The certificate identified the insured as "Juan Yslas Jr." and Full Circle had no knowledge as to whether Mr. Yslas declined to cover himself as an employee of his business. (R. p. 440); (R. p. 378, lines 2-11). At the time of Appellant's injury, this policy was in effect. (R. p. 465). Thus, Full Circle is relieved of any liability relating to workers compensation benefits that may be payable to Appellant.

[7] Pursuant to S.C. Code Reg. 67-415(A)(2), an ACORD Form certificate is "acceptable documentation of insurance" for the purposes of S.C. Code Ann. § 42-1-415. The certificate issued by People's Choice does not expressly state that it is an ACORD form; however, S.C. Code Reg. 67-415(A)(2) does not make an ACORD certificate the only acceptable means of providing documentation.

CONCLUSION

For the reasons stated above, this Court should affirm the Commission's Order.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned certifies that the Final Brief of Respondent Full Circle Construction complies with Rule 211(b), SCACR. The undersigned further certifies that the Final Brief of Respondent complies with the South Carolina Supreme Court's April 15, 2014 Revised Order Concerning Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings.

April 23, 2014

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