DECISION AND ORDER
OF THE APPELLATE PANEL OF THE
SOUTH CARLINA WORKERS' COMPENSATION COMMISSION
WCC FILE NO. 1423018

GILES LONG,

Claimant,

vs.

METRO CONSTRUCTION, INC.,

Employer,

and

AMERICAN ZURICH INS. CO.

and

THE SC UNINSURED EMPLOYERS' FUND,

Carrier(s).

Defendants.

STATEMENT OF THE CASE

This case was originally heard before Commissioner Avery B. Wilkerson, Jr. ("Single Commissioner") on March 13, 2018 in Columbia, South Carolina.

The claimant, Giles "Gregg" Long ("Claimant") contended that he was injured in a work-related accident on November 20, 2014 while an employee and owner of Metro Construction Company ("Metro" or "Employer"). Claimant subsequently made a claim for medical expenses and payment of temporary total benefits with American Zurich Insurance Company ("Zurich") which was denied. Claimant asserted that the applicable case and statutory law supports his claim for worker's compensation benefits and that he is entitled to payment of past medical expenses, past temporary total benefits, and future medical care. The issue of permanency was not tried on the basis that it was premature. Claimant contended that, on April 4, 2014, Metro

applied to the NCCI (assigned risk plan administrator for SC) for an assigned risk workers' compensation policy and was assigned by the NCCI to Zurich, which issued a policy to Metro. Claimant was covered as an insured employee under the Zurich policy.

On July 5, 2014, Metro received a Notice of Non-Cooperation letter from Zurich advising of its need to cooperate with a preliminary audit of its policy and failure to do so would result in cancellation of its policy. On July 4, 2014, Zurich provided a cancellation notice to Metro stating that its policy was cancelled effective August 8, 2014.

Following Zurich's policy cancellation, Metro continued to receive requests for payroll information and additional premiums from Defendant Zurich. Metro, thereafter, provided some but not all of the required payroll and financial information to the insurance carrier and paid still outstanding premiums as requested.

On November 20, 2014, Claimant was involved in a work-related accident resulting in severe burns to much of his body and damage to his hearing, skin loss, pulmonary system, respiratory system, eyes, back, stomach, both upper and lower extremities and scarring.

On March 12, 2015, Claimant filed a claim for workers' compensation benefits against the SC Uninsured Employers' Fund ("Fund"). Defendant Fund also denied coverage for Mr. Long's injuries and filed a motion to add Defendant Zurich as a party-defendant. This motion was granted by the Commission.

Defendant Fund argues that either Defendant Zurich is responsible for the Claimant's damages or, conversely, that Claimant is personally responsible for his medical bills and damages. Defendant Fund's argument is based on the proposition that Claimant—as the owner of Metro—had continued to operate his business after it was administratively dissolved by the SC Secretary of State's office. In support of this argument Defendant Fund filed a motion with the Commission to add the Claimant as a Defendant in his personal capacity. Claimant filed a

responsive brief stating that he could not be held individually liable since he was an employee of the Metro when he was injured and since Metro was administratively reinstated by the Secretary of State's office in December 2016. On April 19, 2017, Commissioner Aisha Taylor ruled in favor of the Claimant and denied Defendant Fund's motion to add Giles Long individually as a Defendant. Moreover, Defendant Fund's appeal to the Full Commission was denied on May 15, 2017 as Commissioner Taylor's ruling was considered interlocutory and not subject to further appeal.

Defendant Zurich denies coverage for this claim and alleges that "the policy was cancelled for failure to comply with the audit, and for a substantial breach of contractual duty conditional warranty under Section 38-75-730(A)(4)." Specifically, Defendant Zurich argues that Metro's failure to provide audit information represents a substantial breach of contract in violation of Section 38-75-730(A)(4). Zurich maintains that its policy cancellation was properly executed since notice of cancellation was timely delivered to the insured and the agent of record in accordance with the statutory requirements.

Following the hearing, a Decision and Order was entered on August 22, 2018 in which the Single Commissioner found that Zurich did not properly cancel its policy, that Metro did not commit a substantial breach of its contract, and that Claimant believed that he had coverage in place on the date of his injury. As such, the Single Commissioner held that Zurich was the responsible carrier for this claim. The instant appeal was timely filed by Zurich and by the Defendant Fund. A hearing before the Appellate Panel of the Commission was held on December 17, 2018.

Based on the entirety of the record, the briefs of the parties, and the arguments of counsel at the hearing, the Appellate Panel finds, as set forth fully below, that decision and order of the Single Commissioner is **AFFIRMED IN PART** and **REVERSED IN PART.**

STATEMENT OF FACTS

A. Medical Opinions

11/20/2014, Palmetto Health Richland: The Patient is a 55-year-old white male who presented to Palmetto Health Richland Emergency Department as a trauma alert after being involved in a dynamite blast explosion. . . He was noted to have extensive burns anteriorly to the abdomen, chest, bilateral upper and lower extremities and face. He also sustained a soft tissue avulsion to the left lower extremity as well as a left open tibia-fibula fracture, multiple scattered 1-2mm superficial facial injuries, extensive orbital and maxillary sinus wall fractures, respiratory failure, pulmonary contusions and bilateral corneal abrasions. (APA pgs. 1-3, 13, 14 and16)

11/21/2014, Joseph Still Burn Center (Doctors Hospital): Claimant sustained burns of 25 – 30% of body of which 15% percent of body surface area receiving third and fourth degree burns. He has respiratory failure and a closed head injury as we as a deep cratering wound with necrotic skin and subcutaneous tissue visualized on the left medial thigh. (APA pgs. 38, 45 and 62)

11/29/2014, Joseph Still Burn Center (Doctors Hospital): Claimant has drainage from both ears, inner ear effusions on CT highly contaminated on arrival. . . Vision seems to be affected by injury. (APA p. 194)

B. Hearing Testimony

Timothy Lukes

On examination by counsel for Travelers and Zurich, Mr. Lukes testified that he is employed by Traveler's Indemnity Company and its property and casualty affiliates, where he is a Senior Underwriter for the Assigned Risk market. (Tr. p. 46). He has been employed there for twelve (12) years and his responsibilities include servicing a book of business, offering management and executive's opinions on complex cases, and appearing at hearings and/or depositions as needed. (Tr. p. 47). Mr. Lukes testified that he had traveled from the Orlando office and that his office along with an office in St. Louis, Missouri, operated the Assigned Risk Division of Travelers. (Id.). Mr. Lukes testified that the Orlando office services the State of South Carolina and thus he was sent from Orlando to attend the hearing. (Tr. pp. 47-48). Mr. Lukes testified about assigned risk policies and explained that each state provides an avenue for legal entities to acquire a Worker's Compensation policy in compliance with the law. (Tr. p. 48).

Mr. Lukes testified that a policy was issued to Metro in which he identified the specific policy that was issued to Metro and confirmed that the policy number was 6ZZUB2E1499-8-14. (Tr. pp. 49-50). Mr. Lukes then explained that Zurich contracts with Travelers to handle Zurich's worker compensation polices for South Carolina. (Tr. pp. 51-52). Mr. Lukes clarified that Travelers does not work underneath Zurich, but contracts with them to work on their South Carolina policies. (Id.). Mr. Lukes continued his testimony and explained that the policy coverage period for Metro's policy was from April 4, 2014 to April 4, 2015. (Tr. p. 52). Mr. Lukes confirmed the address for Metro as 2526 Caney Branch Road, Leesville, South Carolina 29070-8928 and clarified that the policy in question was Metro's first and only year of issuance with Zurich and that the date of issue was May 8, 2014, as stated at the bottom of the policy. (Tr. p. 53).

Mr. Luke testified about the notice of cancellation and explained that the notice was sent to Metro based on a failure to audit their payroll or permit an audit to be conducted by the insurer. (Tr. p. 54). He further explained that an audit is required on a policy to confirm the payroll information that was estimated at the time of issuance. (Id.). He explained that the initial payroll or exposure must be estimated and states that an audit can occur at any point during the term as a means of truing up the estimated exposure and providing actual exposure amounts. (Id.). Mr. Lukes testified that the payroll audit was a preliminary audit. (Tr. p. 55).

Mr. Luke testified that the initial premium for Metro's policy was $15,928.00. (Tr. p. 57). Mr. Lukes then testified that the notice of cancellation was issued on July 4, 2014 and went out by mail either the evening of July 4, 2014 or early morning on July 5, 2014. (Id.). He stated that the effective date of the cancellation was August 8, 2014. (Tr. p. 58). Mr. Lukes explained that an insured is required to do an audit and if they fail to complete the audit, a cancellation will be issued. (Id.). Mr. Lukes confirmed that the notice of cancellation in question was the type that

would be issued for failure to complete an audit. (Id.). Mr. Lukes testified that the agent of the policy would also receive notice of cancellation which is indicated on a cover letter that shows the Agent's address. (Tr. pp. 58-59).

Mr. Lukes testified generally about the NCCI system used by the insurer and stated that the status of a policy is displayed in the system. (Id.). He explained that Travelers sends cancellation information to the system. (Tr. pp. 60-61). He clarified that the system reported that Metro's policy was cancelled as of August 8, 2014 for failure to comply with the terms and conditions pertaining to audits. (Tr. p. 61). He testified that the cancellation was due to Metro's refusal to permit preliminary audit. (Id.).

Mr. Lukes then testified about the premium notices and stated that the notice was mailed to the insured on September 19, 2014 and displayed a policy period of April 4, 2014 to August 8, 2014. (Tr. pp. 61-62). Mr. Lukes explained that the notice notified Metro that it was time for a premium audit and that Metro would need to schedule an appointment. (Tr. p. 62). He further explained that an audit was required to cover the policy terms from April 4 2014 until August 8, 2014. (Id.). Mr. Lukes testified that if the audit was completed within 60 days of lapse, then the policy could be reinstated with a lapse period. (Tr. pp. 62-63).

Mr. Lukes testified that a subsequent notice sent on October 23, 2014 deemed Metro to be uncooperative for failure to respond to the September 19, 2014 notice. (Tr. p. 63). He then testified about a November 3, 2014 premium adjustment notice sent to Metro based on an estimated audit. (Tr. p. 64). He pointed out that the policy period for this notice was April 4, 2014 to April 4, 2015, but also indicated that the cancellation period was for April 4, 2014 to August 8, 2014. (Id.). He clarified that this notice stated estimated audit results due to the fact that Metro failed to comply with the audit requirement. (Id.). He explained that Travelers must close the audit within sixty (60) days of the cancellation and in Metro's case, Travelers closed it

out with estimated information. (Id.). Mr. Lukes testified about how the estimates are formulated to create an even audit, which attempts to avoid a return premium or additional premium. (Tr. pp. 64-65). Mr. Lukes testified that the estimated audit figures are formulated in a system created by Travelers' IT department. (Tr. pp. 65-66).

Mr. Lukes testified that based on the estimated audit, Metro was billed $128.00. (Tr. pp. 67-68). The bill was issued on November 5, 2014 and payment was due on November 20, 2014. (Tr. p. 68). He stated that the amount due was for the policy period of April 4, 2014 to April 4, 2015. (Tr. p. 69). Mr. Lukes testified that the payment of the $128.00 would satisfy the monetary obligation, but not the interim audit requirement and thus the cancellation would remain effective as of August 8, 2014. (Tr. p. 70).

Mr. Lukes then testified that a second premium adjustment notice was mailed to Metro and included a revised cancellation generated based on actual figures provided by Metro pertaining to their payroll. (Tr. pp. 75-76). The revised notice maintained the same cancellation period from April 4, 2014 to August 8, 2014. (Tr. p. 76). Mr. Lukes explained that a new bill was issued on January 7, 2015 after the revised notice was issued which billed Metro $2,095.00 in additional premium based on actual payroll figures. (Tr. p. 77).

On cross-examination by Claimant's counsel, Mr. Lukes testified that he had never directly spoken to Claimant or his agent, nor was he the actual underwriter for Claimant's policy. (Tr. p. 79). Mr. Lukes testified that NCCI was the SC Assigned Risk plan administrator which assigned the policy to Zurich, which in turn is sent over to Travelers for issuance and underwriting. (Tr. pp. 81-82). Mr. Lukes testified that he reviewed the July notice and based on his review, he had the belief that prior attempts had been made to Metro from Travelers to comply with the audit requirement. (Tr. pp. 82-83). Mr. Lukes clarified that he did not have access to any documents except for documentation included in Metro's file. (Tr. p. 83). Mr.

Lukes testified that Metro's policy would have been reinstated if it would have satisfied the audit requirement. (Tr. p. 85). He stated that Metro paid both bills issued by the insurer, but had no proof of timely compliance with the audit requirement. (Tr. pp. 91-92). Mr. Lukes explained that the language in the notices, sent after cancellation, does not imply that the policy was still in effect. (Tr. p. 90). He also stated that all records of contact with Metro would be in the Travelers' Audit Department records. (Tr. p. 93).

On cross-examination by counsel for the SCUEF, Mr. Lukes explained that a form 941 is a report of the employer's quarterly federal tax return. (Tr. p. 96). He states that this form is usually required as a part of the audit. (Id.). Mr. Lukes testified that upon review of Metro's 941 form, signed and dated by Claimant on August 20, 2014, he noted that the form appeared much later in his file, showing January 2015 as the time of receipt. (Tr. pp. 97-98). Mr. Lukes explained that Metro was subject to two separate types of audits. (Tr. p. 99). He stated that the preliminary audit is a physical audit which requires that Metro make an appointment to meet up and provide wage reports, payroll records, which would include the 941 or annual tax return. (Id.). After cancellation of the policy, the second type of audit was a cancellation audit, which is performed as a result of noncompliance. (Id.).

On cross-examination by counsel for Metro, Mr. Lukes testified that the policy contract states that Metro would be subject to an audit. (Tr. pp. 106-107). He explained that no deadline for compliance is stated in the policy contract, but that Metro is subject to the policy provisions as well as the additional documentation that is sent during the policy cycle. (Tr. p. 108). Mr. Lukes testified that he could not affirmatively state that the cancellation of coverage complied with South Carolina law as such a judgement was outside of his role.. (Tr. pp. 109-111). Mr. Lukes confirmed his knowledge of a June 2014 worker's compensation claim by an employee of Metro named William Rogers and testified that the premium audit was not initiated as a result of

this employee's claim. (Tr. p. 112). Mr. Lukes reiterated that the decision to cancel the policy was due to noncompliance with the preliminary audit requirement only. (Tr. pp. 112-113). Mr. Lukes testified that the July 4, 2014 cancellation was a form letter that communicated the insured's intent to cancel Metro's policy. (Tr. pp. 114-119). He stated that language in the notice that advised Metro to disregard the notice, if Metro had already complied with the audit was a two-step disclaimer that only applied if the letter was sent after Metro had complied with the prior notices. (Tr. pp. 122-124). Mr. Lukes clarified that language in the three notices sent to Metro after cancellation, which stated that the policy "may" be cancelled, is due to the possibility of reinstatement anticipated by the insurer. (Tr. pp. 126-128). He clarified that the automated system will use the word "may" because it lacks knowledge to see if there is subsequent coverage in place (Tr. pp. 128-130).

On redirect by counsel for Zurich, Mr. Lukes reiterated that he represents the Underwriting department only. (Tr. p. 137). He stated that the preliminary audit notice was for the policy period of April 4, 2014 to April 4, 2015, but the final audit or cancellation audit was for the policy period of April 4, 2014 to August 8, 2014. (Tr. pp. 139-143). On re-cross by Claimant's counsel, Mr. Lukes testified that Metro was subject to the language of the policy and that the insurer reserved three (3) years to go back and perform an audit. (Tr. p. 146). Mr. Lukes testified that the first and second quarter payroll information was due from Metro for the audit based on the initial July notice. (Tr. pp. 148-149). On re-cross by counsel for the SCUEF, Mr. Lukes testified that the Audit Department could provide information on whether an invitation to complete an audit or make an audit appointment. (Tr. pp. 150-151). On further re-direct by counsel for Zurich, Mr. Lukes testified only as to Metro receiving notice of non-compliance with the audit prior to NCCI receiving notice. (Tr. pp. 152-153).

Claimant Gregg Long

During the second day of the hearing, Claimant testified on his own behalf. (Tr. p. 173). On direct examination by Claimant's counsel, Claimant testified that he is 59 years old with an 11th grade education. (Id.). He confirmed that his address is 2550 Horne Road, Leesville, South Carolina and he is sole owner and employee at Metro Construction. (Id.).

Claimant testified that he had a work-related accident before that resulted in a worker's compensation insurance claim and that he was injured, based on this present claim, in November 2014. (Tr. p. 174). Claimant testified that his business is mainly construction, infrastructure, sewer, water, storm drains, and roll buildings. (Id.). Claimant stated that he was injured while disposing of chemicals. (Tr. pp. 174-175). He testified that the chemicals were to be disposed by burning and an explosion was caused as a result. (Tr. p. 175). He testified that burning complied with the guidelines for disposing of these chemicals and he has performed this task over 20 times. (Id.). He testified that the disposal method is governed by the South Carolina Fire Marshall. (Id.).

Claimant stated that as a result of the explosion his skull, left thigh, left calf, lungs, eyes, skin, left eardrum, and stomach were severely injured due to burns and lodged debris. (Tr. pp. 175-176). He testified that he has lost his hearing in his left ear and can hear about 20 percent in his right ear. (Id.). Claimant testified that he is not done being treated and has over two-million dollars in medical bills. (Tr. p. 176). He testified that some of his bills have been covered by his health insurance provider and the others are outstanding. (Tr. p. 179). He explained that his healthcare provider went bankrupt and denied any further claims after initial coverage. (Tr. pp. 179-180). Claimant testified that he was airlifted to Palmetto Richland Hospital and then transported to the August Burn Center in Augusta, Georgia. (Tr. p. 181).

Claimant stated that it was his understanding that Zurich denied his worker's compensation claim because his company's policy was cancelled. (Tr. p. 182). Claimant testified that he received the notice of noncooperation dated July 5, 2014. (Tr. pp. 182-183). Claimant denied receiving any documents or phone calls from Zurich prior to July 5, 2014. (Tr. p. 183). He testified that he paid about $18,000.00 as an upfront payment of his initial premium and received about $2,000.00 in a refund from Zurich. (Tr. pp. 184-185). He stated that Zurich was provided with financial information prior to payment of the premium. (Id.). Claimant testified that upon receipt of the July 5th notice, that he instructed his bookkeeper to gather information for submission to Zurich. (Tr. p. 186). Claimant testified that he also received the August 2014 notice with the August 8, 2014 date of cancellation. (Id.). Claimant stated that he thought that if he complied, that his policy could be reinstated. (Id.). Claimant testified that he submitted the required payroll information on August 20, 2014 and believed that this was sufficient to reinstate his policy. (Tr. pp. 186-187).

Claimant testified that he had been in business since 1999, 18 years, and had never before applied for an assigned worker's compensation policy. (Tr. p. 187). He had never had an audit in the middle of the policy cycle and usually paid the premium upfront and had an audit at the yearend of the policy term. (Tr. p. 188). Claimant testified that by October 2014, when he received another notice about the audit, he thought that he had already complied with the audit requirement and thus disregarded the notice. (Tr. pp. 189-190). Claimant testified that he paid the $128.00 bill and the $2,095.00 bill assessed by Zurich in full. (Tr. pp. 190-191). Claimant testified that he had no idea that an audit would be initiated within 90 days of issuance and felt that the timing of the audit was unreasonable because his company was not prepared for the audit. (Tr. p. 192). He noted that this also was the reason for his delay in returning the audit information. (Id.). Claimant demanded payment of all medical bills, present and future,

attorney's fees, and a pain and suffering award. (Tr. p. 193). He testified that he got out the hospital on January 7th or 8th and continued to receive partial paychecks from Metro. (Tr. p. 196).

On cross-examination by counsel for the SCUEF, Claimant testified that he earned $10,820.00 in 2014 and $43,000.00 in 2013. (Tr. pp. 200-202). He stated that he worked up until November 2014, the date he was injured. (Tr. p. 202). Claimant testified that he is the President of Metro and sole officer, starting the company with a personal loan. (Tr. p. 203). Claimant testified that he does not have shareholders meetings, keep minutes, but he keeps a separate account from his personal funds. (Tr. p. 204). He testified that he only reported $43,000.00 in 2013 because he was in an accident with a drunk driver while in a company truck. (Tr. p. 205). He explained that he was out of work and when he returned only earned a partial salary. (Id.). Claimant filed a worker's compensation claim on this accident in October 2013 and was out until the end of the year. (Tr. p. 206). He stated that he received temporary total benefits and was paid by the Commission weekly checks for October, November, and December 2013. (Tr. pp. 206-207). Claimant testified that Metro's address is 2526 Caney Branch Road in Leesville, South Carolina and that Metro pays him rent of $1,000.00 a month which is currently being paid out. (Tr. pp. 207-208). Claimant testified that he has made about $12,000.00 a year from income from the corporation. (Tr. p. 208). He testified that Metro also uses his personal farm equipment at no cost. (Tr. p. 210). Claimant testified that Metro was in forfeiture after the accident. (Tr. pp. 210-212). Claimant also testified that he entered into a compliance agreement with the Commission and paid a fine in lieu of a hearing with the Commission. (Tr. pp. 212-215).

On cross-examination by counsel for Zurich, Claimant testified that his bookkeeper at the time of the accident was named Salina. (Tr. p. 218). He explained that she handled records including records of communication. (Tr. p. 219). He testified that she would have spoken to the insurance agent regarding cancellation due to noncompliance. (Tr. pp. 220-221). He testified that

he received, but failed to read, the premium audit tips included with Metro's policy. (Tr. pp. 225-226). Claimant testified that he received an August 21, 2014, letter from his agent that his policy was expired and would need to be rewritten and confirmed that he submitted the 941 form on August 20, 2014. (Tr. pp. 227-229). Claimant stated that his email address used for billing purposes was 'Metrocon@comporium.net' and that emails from Bonita Rabon, on behalf of the insurance agent, would go to that email address. (Tr. pp. 230-231). He stated that his bookkeeper, Salina, would report to him about their correspondence including cancellation and audit-related correspondence from Ms. Rabon. (Tr. p. 232).

On cross-examination by counsel for Metro, Claimant testified that Metro's employee William Roger had a worker's compensation claim that was paid. (Tr. pp. 234-235). Claimant also testified as to his family history of injury. (Tr. pp. 236-238). Claimant testified that Metro engages in inherently dangerous activity that involves a lot of risk and that he created a corporation to shield himself personally from liability along with tax benefits. (Tr. pp. 238-240). He testified that he has always received a W-2 as an employee and complied with Federal and State requirements as well as submits to Fire Marshall Inspections and obtains permits issued to Metro only. (Tr. pp. 242-244). Claimant testified that his activities on November 20, 2014 were done under a permit issued to Metro and he was paid as an employee on that same day. (Tr. p. 245). On cross-examination by counsel for the South Carolina Workers' Compensation Uninsured Employer's Fund, Claimant testified that he went into forfeiture on March 3, 2014 and was reinstated December 14, 2016. (Tr. p. 246). On redirect by Claimant's counsel, Claimant testified that he thought the reinstatement would operate retroactively as if he was never in forfeiture. (Tr. p. 248).

FULL COMMISSION REVIEW

Following the March 13, 2018 hearing, the Single Commissioner made the following findings of fact and conclusions of law:

FINDINGS OF FACT

After reviewing the Commissioner's file, the APA submissions, the exhibits and depositions, this Commissioner makes the following findings of fact and conclusions of law by a clear preponderance of evidence on the record as a whole. It is found as fact as follows:

1. All parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, and that this Commissioner has jurisdiction over the parties and subject matter. Further that venue is proper per the parties' stipulation. I base this finding on the stipulation and admissions of the Parties, the APA Submissions, the Exhibits and the evidence in the file.

2. I find that these matters were heard before the undersigned on March 13, 2018 pursuant to the Claimant's Form 50 and Defendants' Form 51s. I base this finding on the stipulation and admissions of the Parties, the APA Submissions, the Exhibits and the evidence in the file.

3. I find that the Claimant's average weekly wage is $1,000.00 and his compensation rate is $666.17. I further find that Mr. Long testified that he had been paid $1,000.00 per week since about 2012 until he had a prior worker's compensation accident in 2013. (Tr. p. 204, line 20 – p. 205, line 12) Moreover, I find that his 2013 personal tax return showed a gross income of approximately $47,800.00 and that the Claimant's W2 for 2013 showed income of $43,000.00. (Defendant Fund APA pgs. 748 – 749 and 820) I base these findings on the testimony of the Claimant, the APA Submissions and Exhibits.

4. I find that the Claimant, Giles Gregory Long, has been an employee and the owner of Defendant Metro Construction Company, Inc. since 1999 and that he is 58 years old

with an eleventh-grade education. (Tr. p. 187, line 22) I base this finding on the stipulations and admissions of the Parties, the Claimant's uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

5. I find that the Claimant has established by a preponderance of the evidence that he sustained a work-related injury on November 20, 2014 while working in the course and scope of his employment with Defendant Metro. (Tr. p. 174, lines 11 - 13) I base this finding on the stipulations and admissions of the Parties, the Claimant's uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

6. I find that the Claimant provided timely notice of his work-related accident to Defendant Metro and Defendant Zurich via Form 50 on February 26, 2015. I further find that Defendant Zurich denied coverage of this claim alleging that the policy had been cancelled for failing to provide audit information. Claimant then properly filed a form 50 on Defendant Fund on March 12, 2015. I further find that Defendant Fund moved to add Defendant Zurich as a party on April 7, 2016 and that the Commission granted this motion pursuant to an order dated April 19, 2017. I base these findings on the stipulations and admissions of the Parties, the Claimant's uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

7. I find that the Claimant has alleged that he sustained work-related injuries to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms, legs and skin. Specifically, I find that the Claimant sustained extensive burns to his abdomen, chest, bilateral upper and lower extremities and face as well as a soft-tissue avulsion to the left lower extremity, a left open tibia-fibula fracture, multiple facial injuries, extensive orbital and maxillary sinus wall fractures, respiratory failure, pulmonary contusions and bilateral corneal abrasions. Claimant also suffered skin loss and scarring while

working in the course and scope of his employment with Defendant, Metro Construction, Inc. (APA pgs. 1-3, 13, 14, 16, 38, 45, 62 and 194) I base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

8. I find that the Claimant received extensive medical treatment for his work-related injuries at various medical facilities including, but not limited to, the Palmetto Health Richland Hospital and Joseph Still Burn Center (Doctors Hospital). I further find that this medical care was necessary to treat the Claimant's pulmonary, respiratory, hearing and digestive injuries as well as for the injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs, skin loss and scarring. (APA pgs. 1 - 741) I base these findings on the admissions and stipulations of the Parties in their briefs and pleadings, the Claimant's uncontradicted testimony during the hearing of the case, the APA Submissions, the Exhibits and the evidence in the file.

9. I find that Claimant has not reached maximum medical improvement and that determination of permanency is premature. (Tr. p. 193, lines 14 – 17) I further find that the Claimant requires additional medical care to treat the injuries to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs, skin and scarring. (Claimant APA pgs. 1-3, 13, 14, 16, 38, 45, 62, and 194) I base these findings upon the Claimant's uncontradicted testimony during the hearing of the case, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

10. I find that the Claimant completed an application with Defendant Zurich for a worker's compensation policy providing coverage from April 4, 2014 to April 4, 2015. (Defendant Fund, APA pgs. 826 - 829) I further find that Defendant Zurich issued a worker's compensation and employers liability policy, number 6ZZUB-2E14299-A-14 dated May 8,

2014. (Defendant Zurich APA pgs. 748 - 801) This policy was an assigned risk plan and contained information on completing a premium audit, cancelling the policy as well as reporting an accident covered under the policy. I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

11. I further find that the Claimant paid the entire premium charge of $15,928.00 for the assigned risk plan, policy number 6ZZUB-2E14299-A-14. (Tr. p. 57, lines 10 – 12, p. 185, lines 6 - 14) I further find that Mr. Long initially paid his insurance agent the sum of $18,025.00 for the policy based on the carrier's initial assessment. (Claimant's Exhibit B) Mr. Long then received a refund shortly thereafter for the over-payment. (Tr. p. 184, lines 17 – 19, p. 185, lines 12 – 14) I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

12. I find that Defendant Zurich alleges that its policy with the Claimant (number 6ZZUB-2E14299-A-14) was cancelled on August 8, 2014 for failure to comply with the audit and for a substantial breach of contractual duty, conditional warranty under Section 38-75-730(A)(4). (Tr. p. 28, line 18 – p. 29, line 7, p. 54, lines 5 – 9, p. 61, lines 8 - 12) I base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

13. I find that Defendant Zurich mailed a notice of cancellation to Defendant Metro and its agent on July 4, 2014 for "failure to audit payroll or permit an audit" indicating an effective date of cancellation of August 8, 2014. (Defendant Zurich APA p. 802). I further find the Defendant Zurich's witness, Timothy Lukes, testified that the July 4, 2014 notice of cancellation was also sent

to NCCI. (Tr. p. 114, lines 7 – 12, p. 125, lines 11 – 18, 133, lines 15 - 18) I further find Defendant Zurich provided the proof of NCCI cancellation received on July 7, 2014, showing a cancellation reason of "failure to comply with the terms & conditions or audit failure" and a cancellation effective date of August 8, 2014. (Defendant Zurich APA p. 805) I base these findings on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

14. I find that Defendant Zurich mailed a notice of non-cooperation with preliminary audit to the Claimant and Metro Construction on July 5, 2014. (Defendant Zurich APA p. 804) I base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

15. I find that although the July 5, 2014 notice of non-cooperation with preliminary audit letter refers to prior attempts to collect financial information from the Claimant, that no documentation confirming these efforts could be provided by Defendant Zurich. Specifically, I find that Timothy Lukes stated that he was unaware of any prior letters sent to Mr. Long as documented in his file and that the Claimant testified that he had not received any requests for financial information by Defendant Zurich prior to the July 5, 2014 letter. (Tr. p. 114, lines 7 – 12, p. 125, lines 11 – 18, 133, lines 15 – 18, Tr. p. 149, line 24 – p. 150, line 1, p. 192, lines 7 - 14) I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

16. I find that the Claimant received the July 5, 2014 notice of non-cooperation with preliminary audit letter from Defendant Zurich. I further find that Mr. Long contacted his insurance agent and informed her of his efforts--and difficulties--to provide the requested payroll

information. (Tr. p. 186, lines 2 -4, p. 222, lines 12 – 15, Defendant Fund APA p. 892) I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

17. I find that after the policy was allegedly cancelled by Defendant Zurich on August 8, 2014, it mailed a notice of non-cooperation with preliminary audit letter to the Claimant and Metro Construction on October 23, 2014. (Defendant Zurich APA p. 811) I further find that the policy term specified in the October 23, 2014 letter was "4/4/14 to 4/4/15" and stated that "failure to allow access for audit of the policy term may result in cancellation of your Workers Compensation and Employers Liability Insurance Policy." I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

18. I find that the language in the October 23, 2014 notice of non-cooperation with preliminary audit letter sent to the Claimant and Metro Construction could reasonably be construed—and was construed by Mr. Long--that his worker's compensation policy was still in effect. Specifically, I find that the statement "failure to allow access for audit of the policy term may result in cancellation of your Workers Compensation and Employers Liability Insurance Policy" was interpreted by the Claimant that policy coverage was in effect. (Defendant Zurich APA p. 811, Tr. p. 190, lines 6 - 9) I base these findings upon the Claimant's testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

19. I find that after the policy was allegedly cancelled by Defendant Zurich, it mailed the Claimant an earned premium notice requesting an additional payment of $128.00 on

November 5, 2014. I further find that the policy term specified in the November 5, 2014 letter was "4/4/14 to 4/4/15" and that the Claimant paid this bill in full. (Defendant Zurich APA p. 817, Tr. p. 69, lines 11 – 13 and p. 91, lines 5 – 16) I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

20. I find that on January 7, 2015 and on January 26, 2015 Defendant Zurich sent the Claimant two earned premium notices requesting an additional payment of $2,095.00. (Defendant Zurich APA pgs. 823 and 825) I find the Claimant paid this bill in full. (Tr. p. 91, lines 5 – 16) I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

21. I find that language in the Defendant's earned premium letters requesting an additional $2,095.00 payment was confusing and could cause Mr. Long to believe that he still had coverage under the workers compensation contract. Specifically, I find that Timothy Lukes agreed under cross-examination that the letters stated "if you don't want coverage to be canceled you need . . . to do certain things." (Tr. p. 129, lines 4 – 21, Defendant Zurich APA pgs. 823 and 825) I base these findings on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

22. I find that the Claimant signed a Compliance Agreement with the S.C. Workers Compensation Commission acknowledging that Metro Construction did not have workers' compensation coverage for the period of August 8, 2014 through December 16, 2014 and that a $1,000.00 penalty was paid to the S.C. Workers Compensation Commission. (APA pgs. 917, 918 and 941) However, I find that the Compliance Agreement specifically states that "executing this agreement does not nullify any defenses the Employer may have for any claim." Therefore, I

find that the Compliance Agreement does not bind the Claimant or prevent him from asserting that coverage was in effect during the afore-stated period. I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

23. I find that Defendant Fund alleges that either Defendant Zurich is responsible for the Claimant's damages or, conversely, that Mr. Long is responsible for his medical bills and damages. Defendant Fund argues that the Claimant—as the owner of Metro Construction—continued to operate his business after it was administratively dissolved by the SC Secretary of State's office. In support of this argument Defendant Fund filed a motion with the Commission to add Mr. Long as a Defendant in his personal capacity. On April 19, 2017, Commissioner Aisha Taylor ruled in favor of the Claimant and denied Defendant Fund's motion to add Gregory Long individually as a Defendant. Moreover, I further find that Defendant Fund's appeal to the Full Commission was denied on May 15, 2017 as Commissioner Taylor's ruling was considered interlocutory and not subject to further appeal. I also find that Defendant Fund's reliance on Moore v. OSHA Review Committee, 891 F2d 991(4th Cir. 1979) does not apply to the facts of this case and is not controlling. Specifically, while the corporation in Moore was in forfeiture at the time of the proceedings against it, Defendant Metro is not currently in forfeiture. Moreover, due to the reinstatement provision under S.C. Code Ann. Section 33-14-220, Defendant Metro's previous dissolution is treated as if it never had occurred. I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

24. I find that Defendant Fund also asserts that the Claimant is not entitled to its protections by alleging that the Mr. Long--as owner of Metro Construction--should have pursued coverage elsewhere following policy termination with Defendant Zurich. I find that this argument fails because Mr. Long brought this claim against Defendant Fund in his capacity as an employee of Metro Construction pursuant to Section 42-7-200 (B). I base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

25. I find that the testimony of Timothy Lukes was unclear regarding as to when the 941 form submitted by the Claimant was in the file. Mr. Lukes stated on two occasions that he had not seen the 941 document in "our files." (Tr. p. 84, lines 16 – 21, p. 92, lines 1 - 11) However, Mr. Lukes later testified that the 941 form was received in early January 2015. (Tr. p. 97, line 14 – p. 98, line 6, p. 136, lines 5 – 15) I base this finding on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

26. I find that witness Timothy Lukes was not aware of any actions the Claimant made to comply with the audit and that he never spoke to Mr. Long. (Tr. p. 92, lines 12 – 15, p. 94, lines 3 – 9) I base this finding on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

27. I find that Timothy Lukes did not know if Defendant Zurich had made any attempts to assist the Claimant in completing the audit. (Tr. p. 93, lines 12 – 17) I further find that Defendant Zurich did not offer the Claimant any assistance in completing its audit. (Tr. p. 183, lines 14 – 17) I base these findings on the testimony of the witnesses, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

28. I find that Timothy Lukes understood that he was present at the hearing to give testimony on behalf of Defendant Zurich and that he admitted his testimony could bind Defendant Zurich. (Tr. p. 105, lines 9 – 16) I base this finding on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

29. I find that Timothy Lukes admitted that the language in the July 4, 2014 notice of cancellation was confusing or ambiguous. Specifically, in response to whether the language of notice of cancellation was meant to confer an intent to cancel rather than a notice of cancellation, Mr. Lukes responded, "I don't know that anybody would understand language like that if we did put it in there." (Tr. p. 119, lines 18 – 22, p. 120, lines 6 - 9) I further find that Mr. Lukes agreed that the notice of cancellation was confusing and would cause the Claimant to believe that there was nothing he could do to solve the problem by testifying, "Well, that's why we (Defendant Zurich) send the second letter (referring to the July 5, 2014 notice of non-cooperation with preliminary audit) (Tr. p. 121, lines 6 – 14, Defendant Zurich APA p. 803) I base these findings on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

30. I find that Timothy Lukes's testimony was unclear as to what financial information the Claimant needed to provide Defendant Zurich regarding its audit. Specifically, when queried by Defendant Zurich's attorney whether the 941 information provided by Mr. Long would have been sufficient for the audit, Mr. Lukes testified that he didn't know, and only "someone from the Audit Department" would know. (Tr. p. 136, line 19 – p. 137, line 11) I base this finding on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

31. I find that Giles Long believed he had provided the requested payroll information required by Defendant Zurich, paid all required premiums on time, and that he believed coverage was in effect at the time of his work-related accident. I further find that Mr. Long believed the non-compliance letter from Defendant Zurich dated October 23, 2014 meant that coverage was in effect. (Tr. p. 190, lines 6 – 25, p. 191, lines 13 - 18) I base these findings on the demeanor of the Claimant, my view of his testimony during the hearing and the APA Submissions and Exhibits.

32. I find that the actions taken by the carrier, Defendant Zurich, and the letters and correspondence sent by the carrier to the Employer, were confusing as to what was required of the Employer, when it was required and what would happen if the information was not provided as requested. I further find that the Employer fully paid all premiums as required and reasonably and substantially complied with all requests for additional information. Simply put, the Employer paid for coverage and was entitled to coverage, the efforts of the Carrier to cloud the issue notwithstanding. Defendant Zurich should not be permitted to take unfair and unwarranted advantage of any confusion that the carrier itself created. I base these findings on the testimony of the witnesses, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

33. I find that the Claimant did not commit a substantial breach of the contract pertaining to the audit requirement under the workers compensation policy, number 6ZZUB-2E14299-A-14 or under Section 38-75-730(A)(4). Specifically, I find that Mr. Long paid his initial premium in full; continued to provide payroll/financial information to the carrier and timely paid premium charges upon receipt. Moreover, Timothy Lukes, as a senior underwriter for Defendant Zurich, testified that there was no deadline specified in the policy contract as to when the Claimant needed to provide the requested audit information. (Tr. p. 107, line 8 – p. 108, line 1, p. 145, lines 3 – 9, Tr. p. 145, line 18 – p. 146, line 23) I base these findings on the testimony of the witness, the

APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

34. I find that Timothy Lukes could not state if Defendant Zurich's cancellation of the insurance policy was done in compliance with South Carolina law. (Tr. p. 111, lines 6 – 11) I base this finding on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

35. I find that the policy provided by Defendant Zurich (policy number 6ZZUB-2E14299-A-14) was not cancelled and that coverage was in effect on November 20, 2014 when the Claimant suffered injuries while working in the course and scope of his employment. I further find that Defendant Zurich is responsible for providing all benefits to the Claimant that he is entitled to under the S. C. Workers' Compensation Act. I base these findings upon the testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

36. I find that the Claimant has accumulated over two-million dollars in causally-related medical expenses as a result of his work-related accident and that Defendant Zurich is responsible for all past and continuing medical care and bills pursuant to S.C. Code Section 42-15-60(A). This treatment includes all causally-related medical expenses and bills from the following healthcare providers including, but not limited to: Palmetto Health Richland Hospital and Doctor's Hospital. I further find that the Defendant Zurich should reimburse the Claimant and his health insurance carrier for all past causally-related medical expenses and bills that have been paid. (APA pgs. 600 – 741, Tr. p. 179, lines 13 -15) I base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

37. I find that the Claimant was unable to work from November 21, 2014 until October

31, 2015 due to his work-related accident (49.2857 weeks). Therefore, I find that Defendant Zurich is responsible for paying past temporary total benefits to the Claimant for this period at his compensation rate of $666.17. I base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

38. I find that if Defendant Zurich had not been the appropriate party responsible for paying the Claimant's medical expenses and other benefits provided under the South Carolina Workers Compensation Act, then Defendant Fund would be responsible for providing these benefits. I further find that the S.C. Uninsured Employers' Fund was created to ensure payment of workers' compensation benefits to injured employees whose employers have failed to acquire necessary coverage for employees. S.C. Code Section 42-7-200 (Law Co-op, 1976) as amended. Hence, if Defendant Zurich had properly cancelled the policy with Metro Construction, then the Claimant would have been entitled to pursue a claim with the SC Workers' Compensation Uninsured Employers' Fund. I base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

39. I find that the Claimant's testimony at the hearing was strong and clear. I further find that during his hearing, Mr. Long became very emotional and stated that this situation had created a very tough time in his life. (Tr. p. 191, lines 13 - 23) I base this finding on the demeanor of the Claimant, my view of his testimony during the hearing and the APA Submissions and Exhibits.

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of this Commissioner that:

1. This Commissioner has jurisdiction in the case since jurisdiction, venue, and all issues of notice in this case have been stipulated as being proper.

2. It is the conclusion of this Commissioner that the following sections of the Workers' Compensation Act and case law are applicable to this case:

A. Section 42-1-110 defines "Compensation";
B. Section 42-9-30 defines "Compensation and Disability For Certain Injuries";
C. Section 42-1-40 defines "Average weekly wage";
D. Section 42-15-60 governs "Medical";
E. Section 42-9-10 governs "Compensation For Total Disability";
F. Section 42-9-170 governs amount of compensation for permanent injury;
G. Section 42-9-20 defines "Amount of Compensation for Partial Disability";
H. Section 42-1-160 defines "Injury and Personal Injury"
I. Section 42-1-120 defines "Disability"
J. Section 42-7-200 defines "Expenditures from Fund"
K. Section 42-1-170 defines "Employees Notice of Claim"
L. Section 42-5-80 defines "Liability of Insurer"

3. I find, hold and conclude that the physicians and healthcare providers with Palmetto Health Richland Hospital and Joseph Still Burn Center (Doctors Hospital) provided authorized medical care to the Claimant. I further find that pursuant to Section 42-15-60, the Defendants have the right to direct the Claimant's ongoing and future medical care for all causally-related treatment including all necessary diagnostic tests and referrals.

4. I find that the Claimant has established by a preponderance of the evidence the causal connection, established by medical evidence, between the work activity and the injury to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs. Additionally, I find that the Claimant has established by a preponderance of the evidence the causal connection, established by medical evidence, between the work activity and the injury to his skin and scarring as a result of burns to his body.

5. I find that there has been no violation of Section 38-75-730(A)(4) in this case. Specifically, Section 38-75-730(A)(4) states a carrier may cancel an insurance policy if the insured commits substantial breaches of contractual duties, conditions, or warranties. I find that the Claimant did not commit a substantial breach of his contractual duties, conditions or warranties of the contract with Defendant Zurich.

6. I find that the Claimant is not at maximum medical improvement and is in need of additional medical treatment for his work-related injuries and that Defendant Zurich shall provide reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital and other treatment or care pursuant to Section 42-15-60(A).

7. I find that Moore v. OSHA Review Committee, 891 F2d 991(4th Cir. 1979) which is relied upon by Defendant Fund is both unpersuasive in this application and, as a matter of law, not binding as arising from another jurisdiction. I find that it is inapplicable to the facts of this case and is not controlling. Specifically, while the corporation in Moore was in forfeiture at the time of the proceedings against it, Defendant Metro is not currently in forfeiture. Moreover, due to the reinstatement provisions under S.C. Code Ann. Section 33-14-220, Defendant Metro's previous dissolution is treated as if it never had occurred.

8. Per Claimant's memorandum, I find that Crews v. W.R. Crews, Inc., 390 S.C. 15 699 W.E.d2d 189 (Ct. App. 2010), holds that a carrier is to adopt a flexible approach when dealing with an insured who is unable to strictly comply with the policy terms but is making reasonable efforts to do so.

9. I find that S.C. Code Ann. Section 42-1-40 defines "Average weekly wages." I further find that this section states that when exceptional reasons exist, that other methods of computing average weekly wages may be resorted to as will most nearly approximate the amount the injured employee would be earning if not for the injury.

10. I find that S.C. Code Ann. Section 42-5-80(B) states that the insurance agreement must be construed as a direct promise to pay from the carrier to the Claimant.

11. I find that there is no statute, regulation or binding case law or S.C. Workers Compensation Commission precedent that provides for the Commission to treat a Claimant who

happens to be the business owner, such as Mr. Long, differently from a Claimant that does not own the business.

DECISION OF THE FULL COMMISSION

Based upon its review of the record, the briefs of the parties, and the arguments of counsel, the Appellate Panel of the Full Commission finds that the Single Commissioner erred in finding Zurich to be the responsible carrier in this case. The Appellate Panel carefully considered the matter and **Affirms in Part, Reverses in Part** the decision and order of the Single Commissioner. As set forth below, there was a substantial breach of the contract by Metro, and the policy was properly terminated. Metro did not comply with Sections F and G of the policy. Metro did not contact the Carrier prior to the termination of the policy. Moreover, the actions of the parties subsequent to the breach did not constitute a reinstatement of the policy.

Following the March 13, 2018 hearing, and based on the record as a whole, the briefs of the parties, and the arguments of counsel, the Appellate Panel makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. All parties to these proceedings are subject to and bound by the terms and provisions of the South Carolina Workers' Compensation Act, as amended, and that this Commissioner has jurisdiction over the parties and subject matter. Further that venue is proper per the parties' stipulation. This finding is based on the stipulation and admissions of the Parties, the APA Submissions, the Exhibits and the evidence in the file.

2. We find that these matters were heard before the Single Commissioner on March 13, 2018 pursuant to the Claimant's Form 50 and Defendants' Form 51s. This finding is based on the stipulation and admissions of the Parties, the APA Submissions, the Exhibits and the evidence in the file.

3. We find that the Claimant's average weekly wage is $1,000.00 and his compensation rate is $666.17. We further find that Mr. Long testified that he had been paid $1,000.00 per week since about 2012 until he had a prior worker's compensation accident in 2013. (Tr. p. 204, line 20 – p. 205, line 12) Moreover, we find that his 2013 personal tax return showed a gross income of approximately $47,800.00 and that the Claimant's W2 for 2013 showed income of $43,000.00. (Defendant Fund APA pgs. 748 – 749 and 820) We base these findings on the testimony of the Claimant, the APA Submissions and Exhibits.

4. We find that Claimant, Giles Gregory Long, has been an employee and the owner of Defendant Metro Construction Company, Inc. since 1999 and that he is 58 years old with an eleventh-grade education. (Tr. p. 187, line 22) We base this finding on the stipulations and admissions of the Parties, Claimant's uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

5. We find that Claimant has established by a preponderance of the evidence that he sustained a work-related injury on November 20, 2014 while working in the course and scope of his employment with Defendant Metro. (Tr. p. 174, lines 11 - 13) We base this finding on the stipulations and admissions of the Parties, the Claimant's uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

6. We find that the Claimant provided timely notice of his work-related accident to Defendant Metro and Defendant Zurich via Form 50 on February 26, 2015. We further find that Defendant Zurich denied coverage of this claim alleging that the policy had been cancelled for failing to provide audit information. Claimant then properly filed a form 50 on Defendant Fund on March 12, 2015. We further find that Defendant Fund moved to add Defendant Zurich as a party on April 7, 2016 and that the Commission granted this motion pursuant to an order dated April 19, 2017. We base these findings on the stipulations and admissions of the Parties, the Claimant's

uncontradicted testimony during the hearing, the APA Submissions, the Exhibits and the evidence in the file.

7. We find that the Claimant has alleged that he sustained work-related injuries to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms, legs and skin. Specifically, we find that the Claimant sustained extensive burns to his abdomen, chest, bilateral upper and lower extremities and face as well as a soft-tissue avulsion to the left lower extremity, a left open tibia-fibula fracture, multiple facial injuries, extensive orbital and maxillary sinus wall fractures, respiratory failure, pulmonary contusions and bilateral corneal abrasions. Claimant also suffered skin loss and scarring while working in the course and scope of his employment with Defendant, Metro Construction, Inc. (APA pgs. 1-3, 13, 14, 16, 38, 45, 62 and 194). We base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

8. We find that the Claimant received extensive medical treatment for his work-related injuries at various medical facilities including, but not limited to, the Palmetto Health Richland Hospital and Joseph Still Burn Center (Doctors Hospital). We further find that this medical care was necessary to treat the Claimant's pulmonary, respiratory, hearing and digestive injuries as well as for the injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs, skin loss and scarring. (APA pgs. 1 - 741) We base these findings on the admissions and stipulations of the Parties in their briefs and pleadings, the Claimant's uncontradicted testimony during the hearing of the case, the APA Submissions, the Exhibits and the evidence in the file.

9. We find that Claimant has not reached maximum medical improvement and that determination of permanency is premature. (Tr. p. 193, lines 14 – 17) We further find that the Claimant requires additional medical care to treat the injuries to his pulmonary, respiratory, hearing

and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs, skin and scarring. (Claimant APA pgs. 1-3, 13, 14, 16, 38, 45, 62, and 194) We base these findings upon the Claimant's uncontradicted testimony during the hearing of the case, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

10. We find that the Metro completed an application with the NCCI for an assigned risk worker's compensation policy and was assigned by the NCCI to Defendants Zurich, which was to issue a worker's compensation policy effective April 4, 2014 to April 4, 2015. (Defendant Fund, APA pgs. 826 - 829) We further find that Defendant Zurich actually issued said worker's compensation and employers liability policy, number 6ZZUB-2E14299-A-14 on May 8, 2014. (Defendant Zurich APA pgs. 748 - 801) The policy contained information on completing a premium audit, cancelling the policy, as well as reporting an accident covered under the policy. We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

11. We further find that the Metro paid the entire estimated premium charge of $15,928.00 for the assigned risk policy, policy number 6ZZUB-2E14299-A-14. (Tr. p. 57, lines 10 – 12, p. 185, lines 6 - 14) We further find that Metro paid Metro's insurance agent the sum of $18,025.00 for the policy based upon the initial estimated premium. (Claimant's Exhibit B) Metro then received a refund shortly thereafter for the over-payment. (Tr. p. 184, lines 17 – 19, p. 185, lines 12 – 14) We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

12. We find that Defendant Zurich alleges that its policy with Metro (number 6ZZUB-2E14299-A-14) was cancelled on August 8, 2014 for failure to comply with the audit and for a substantial breach of contractual duty, conditional warranty under Section 38-75-730(A)(4). (Tr. p. 28, line 18 – p. 29, line 7, p. 54, lines 5 – 9, p. 61, lines 8 - 12) We base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

13. We find that Defendant Zurich mailed a notice of cancellation to Defendant Metro and its agent on July 4, 2014 for "failure to audit payroll or permit an audit" with an effective date of cancellation of August 8, 2014. (Defendant Zurich APA p. 802). We further find the Defendant Zurich's witness, Timothy Lukes, testified that the July 4, 2014 notice of cancellation was also sent to NCCI. (Tr. p. 114, lines 7 – 12, p. 125, lines 11 – 18, 133, lines 15 - 18) We further find Defendant Zurich provided the proof of NCCI cancellation received on July 7, 2014, showing a cancellation reason of "failure to comply with the terms & conditions or audit failure" and a cancellation effective date of August 8, 2014. (Defendant Zurich APA p. 805) We base these findings on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

14. We find that Defendant Zurich mailed a notice of non-cooperation with preliminary audit to the Claimant and Metro Construction on July 5, 2014. (Defendant Zurich APA p. 804) We base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

15. We find that terms of the policy issued to Metro are clear and unambiguous. The policy states that the insured has an obligation to maintain records to compute the premium and the insurer has the right to perform an audit. Specifically, the policy provides in pertinent part:

> **Part Five – Premiums**
>
> **F. Records**
>
> You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.
>
> **G. Audit**
>
> You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium.

Furthermore, mailed with the policy are Premium Audit Tips which provide instructions and answers to commonly asked questions by customers. We base this finding upon express terms of the policy, specifically at APA, pp. 758; 773-774.

16. We find that Zurich mailed to Metro a Notice of Non-Cooperation with Preliminary Audit on July 5, 2014. This notice indicated that "**Failure to allow access for audit of the policy term may result in cancellation of your Workers Compensation and Employers Liability Policy.**" We base this finding on APA, p. 803 (emphasis in original).

17. We find that, at no time prior to the cancellation notice of July 4, 2014, did Metro make any attempt to contact Zurich regarding the previous notice of non-cooperation and to comply with the audit provisions of the policy. We base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

18. We find that the Zurich policy was properly cancelled as of August 8, 2014 based on Metro's failure to provide the requested audit information. We further find that this failure to provide the requested audit information constituted a substantial breach of the terms of the policy. We base this finding upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

19. We find that after receipt of the July 5, 2014 notice of non-cooperation from Defendant Zurich, Claimant did contact his insurance agent and informed her of his efforts--and difficulties--to provide the requested payroll information. (Tr. p. 186, lines 2 -4, p. 222, lines 12 – 15, Defendant Fund APA p. 892)

20. We find that after the policy was cancelled by Defendant Zurich on August 8, 2014, Metro received a notice of non-cooperation with preliminary audit letter on October 23, 2014. (Defendant Zurich APA p. 811) As with the previous notice, this letter stated that "failure to allow access for audit of the policy term may result in cancellation of your Workers Compensation and Employers Liability Insurance Policy." Nothing in this letter indicates that policy had been reinstated after the August 8, 2014 cancellation or indicates that the cancellation had been revoked. We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

21. We find that after the policy was cancelled, Defendant mailed the Metro an earned premium notice requesting an additional payment of $128.00 on November 5, 2014. This letter references the original policy term of "4/4/14 to 4/4/15". Nothing in this letter indicates that policy had been reinstated after the August 8, 2014 cancellation or indicates that the cancellation had been revoked. We further find that Metro paid this bill in full. We base these

findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

22. We find that on January 7, 2015 and on January 26, 2015 Defendant Zurich sent the Metro two additional earned premium notices requesting an additional payment of $2,095.00. (Defendant Zurich APA pgs. 823 and 825) We find the Metro paid this bill in full. (Tr. p. 91, lines 5 – 16) We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

23. Because we find that the Zurich policy was properly cancelled based on the substantial breach of Metro to cooperate with a premium audit, we find that the actions of the parties subsequent to the breach did not constitute a reinstatement of the policy. The notice of noncooperation and notice of cancellation were clear and unequivocal and the date of cancellation was specifically set as August 8, 2014. None of the correspondence or actions of the parties subsequent to the cancellation date could reasonably be construed as a reinstatement of the policy or revocation of the cancellation. We base these findings on the testimony of the witness, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

24. We find that Defendant Fund alleges that either Defendant Zurich is responsible for the Claimant's damages or, conversely, that Mr. Long is responsible for his medical bills and damages. Defendant Fund argues that the Claimant—as the owner of Metro Construction—continued to operate his business after it was administratively dissolved by the SC Secretary of State's office. In support of this argument Defendant Fund filed a motion with the Commission to add Mr. Long as a Defendant in his personal capacity. On April 19, 2017, Commissioner

Aisha Taylor ruled in favor of the Claimant and denied Defendant Fund's motion to add Gregory Long individually as a Defendant. Moreover, we further find that Defendant Fund's appeal to the Full Commission was denied on May 15, 2017 as Commissioner Taylor's ruling was considered interlocutory and not subject to further appeal. We also find that Defendant Fund's reliance on Moore v. OSHA Review Committee, 891 F2d 991(4th Cir. 1979) does not apply to the facts of this case and is not controlling. Specifically, while the corporation in Moore was in forfeiture at the time of the proceedings against it, Defendant Metro is not currently in forfeiture. Moreover, due to the reinstatement provision under S.C. Code Ann. Section 33-14-220, Defendant Metro's previous dissolution is treated as if it never had occurred. We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

25. We find that Defendant Fund also asserts that the Claimant is not entitled to its protections by alleging that the Mr. Long--as owner of Metro Construction--should have pursued coverage elsewhere following policy termination with Defendant Zurich. We find that this argument fails because Mr. Long brought this claim against Defendant Fund in his capacity as an employee of Metro Construction pursuant to Section 42-7-200 (B). We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

26. We find that Claimant's subjectively believed that he had provided the requested payroll information required by Defendant Zurich, paid all required premiums on time, and that he believed coverage was in effect at the time of his work-related accident. Notwithstanding this subjective belief, we find that such a belief does not nullify or invalidate the proper cancellation of

the policy by Zurich. We find that Zurich complied will the applicable provisions in the policy and under state law to effectively and properly cancel a policy of insurance based on a substantial breach of the terms of the policy. We base these findings upon the uncontradicted testimony during the hearing of the case, APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

27. We find that the policy provided by Defendant Zurich (policy number 6ZZUB-2E14299-A-14) was properly cancelled and that coverage was not in effect on November 20, 2014 when the Claimant suffered injuries while working in the course and scope of his employment. Based on these findings, we find that Zurich's policy was not in effect on the date of Claimant's injury and, therefore, Zurich is not the responsible carrier for this claim.

28. We find that Employer was not covered by any valid and enforceable workers compensation policy on the date of Claimant's injury.

29. We further find that, because Employer was subject to the terms and provisions of the South Carolina Workers' Compensation Act and failed to acquire necessary coverage, Employer is responsible for all benefits and payments; however, if Employer is unable or unwilling to pay this award, then the S.C. Workers' Compensation Uninsured Employers' Fund shall be required to pay. Any payment made or benefit provided by the S.C. Workers' Compensation Uninsured Employers' Fund shall be made with all rights of indemnification or reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the S.C. Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. § 42-7-200 or otherwise.

30. We find that the Claimant has accumulated over two-million dollars in causally-related medical expenses as a result of his work-related accident and that Employer and Defendant Fund are responsible for all past and continuing medical care and bills pursuant to S.C. Code

Sections 42-15-60(A) and 42-7-200. This treatment includes all causally-related medical expenses and bills from the following healthcare providers including, but not limited to: Palmetto Health Richland Hospital and Doctor's Hospital. We base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

31. We find that Claimant was unable to work from November 21, 2014 until October 31, 2015 due to his work-related accident (49.2857 weeks). Therefore, we find that Employer is responsible for paying past temporary total benefits to the Claimant for this period at his compensation rate of $666.17. However, if Employer is unable or unwilling to pay these benefits, then the S.C. Workers' Compensation Uninsured Employers' Fund shall be required to pay. Any payment made or benefit provided by the S.C. Workers' Compensation Uninsured Employers' Fund shall be made with all rights of indemnification or reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the S.C. Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. § 42-7-200 or otherwise. We base these findings upon the uncontradicted testimony, the APA Submissions, the Exhibits and the stipulations and admissions of the parties in their briefs and pleadings, and the evidence in the file.

CONCLUSIONS OF LAW

Accordingly, it is the determination and finding of this Commissioner that:

1. This Commissioner has jurisdiction in the case since jurisdiction, venue, and all issues of notice in this case have been stipulated as being proper.

2. It is the conclusion of the Appellate Panel that the following sections of the Workers' Compensation Act and case law are applicable to this case:

D. Section 42-1-110 defines "Compensation";
E. Section 42-9-30 defines "Compensation and Disability For Certain Injuries";

F. Section 42-1-40 defines "Average weekly wage";
D. Section 42-15-60 governs "Medical";
M. Section 42-9-10 governs "Compensation For Total Disability";
N. Section 42-9-170 governs amount of compensation for permanent injury;
O. Section 42-9-20 defines "Amount of Compensation for Partial Disability";
P. Section 42-1-160 defines "Injury and Personal Injury"
Q. Section 42-1-120 defines "Disability"
R. Section 42-7-200 defines "Expenditures from Fund"
S. Section 42-1-170 defines "Employees Notice of Claim"
T. Section 42-5-80 defines "Liability of Insurer"

3. We find, hold and conclude that the physicians and healthcare providers with Palmetto Health Richland Hospital and Joseph Still Burn Center (Doctors Hospital) provided authorized medical care to the Claimant. We further find that pursuant to Section 42-15-60, the Defendant Fund has the right to direct the Claimant's ongoing and future medical care for all causally-related treatment including all necessary diagnostic tests and referrals.

4. We conclude that the Claimant has established by a preponderance of the evidence the causal connection, established by medical evidence, between the work activity and the injury to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms and legs. Additionally, we find that the Claimant has established by a preponderance of the evidence the causal connection, established by medical evidence, between the work activity and the injury to his skin and scarring as a result of burns to his body.

5. We conclude that the Claimant is not at maximum medical improvement and is in need of additional medical treatment for his work-related injuries and that Defendant Fund shall provide reasonable and necessary nursing services, medicines, prosthetic devices, sick travel, medical, hospital and other treatment or care pursuant to Section 42-15-60(A).

6. We conclude that Moore v. OSHA Review Committee, 891 F2d 991(4th Cir. 1979) which is relied upon by Defendant Fund is both unpersuasive in this application and, as a matter of law, not binding as arising from another jurisdiction. We find that it is inapplicable to

the facts of this case and is not controlling. Specifically, while the corporation in Mo ore was in forfeiture at the time of the proceedings against it, Defendant Metro is not currently in forfeiture. Moreover, due to the reinstatement provisions under S.C. Code Ann. Section 33-14-220, Defendant Metro's previous dissolution is treated as if it never had occurred.

7. We conclude that S.C. Code Ann. Section 42-1-40 defines "Average weekly wages." We further find that this section states that when exceptional reasons exist, that other methods of computing average weekly wages may be resorted to as will most nearly approximate the amount the injured employee would be earning if not for the injury.

8. We conclude that the Zurich policy's terms are clear and unambiguous and, as such, Metro, as the insured, had an obligation to comply with those terms. We conclude that Zurich properly provided notice to Metro of its obligations to cooperate with a premium audit, and upon its failure to do so, properly provided notice of cancellation in accordance with the policy and state law. We conclude that Metro's failure to cooperate with the audit and provide the requested records constitutes a substantial breach of the terms of the policy. We, therefore, conclude that Zurich properly terminated the policy effective August 8, 2014 as set forth in the July 5, 2014 notice of cancellation.

9. We conclude that the attempts by Zurich to collect after the policy cancellation date for premiums which accrued during the policy coverage period and prior to the cancellation date do not constitute a reinstatement of the policy or a revocation of the cancellation.

10. We conclude that Zurich is not the responsible carrier for this claim based on the proper cancellation of its policy prior to the date of Claimant's injury.

11. We conclude that Metro, on the date of Claimant's injury, was an employer subject to the S.C. Workers Compensation Act and did not have workers compensation coverage in effect on the date of Claimant's injury.

12. We find that there is no statute, regulation or binding case law or S.C. Workers Compensation Commission precedent that provides for the Commission to treat a Claimant who happens to be the business owner, such as Mr. Long, differently from a Claimant that does not own the business.

13. We conclude that, because Employer was subject to the terms and provisions of the South Carolina Workers' Compensation Act and failed to acquire necessary coverage, Employer is responsible for all benefits and payments; however, if Employer is unable or unwilling to pay this award, then the S.C. Workers' Compensation Uninsured Employers' Fund shall be required to pay. Any payment made or benefit provided by the S.C. Workers' Compensation Uninsured Employers' Fund shall be made with all rights of indemnification or reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the S.C. Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. § 42-7-200 or otherwise.

AWARD

Based on the above findings of fact and conclusions of law:

IT IS HEREBY ORDERED that the Claimant, Giles Gregory Long, suffered a compensable injury by accident to his pulmonary, respiratory, hearing and digestive systems as well as injuries to his back, ears, eyes, lungs, stomach, bilateral arms, legs and skin arising out of and in the course and scope of his employment with Defendant, Metro Construction.

IT IS FURTHER ORDERED that Defendant American Zurich is dismissed from this claim on the basis that it properly cancelled it policy prior to the date of the accident and, therefore, provided no coverage for the injuries sustained by the Claimant and no responsibility for payment of any benefits arising from Title 42.

IT IS FURTHER ORDERED that the physicians with Palmetto Health Richland and the Joseph Still Burn Center (Doctors Hospital) provided authorized medical care and that the Defendant Fund shall be responsible for providing the ongoing and future medical care of Gregory Long including all necessary diagnostic tests and referrals.

IT IS FURTHER ORDERED that the Employer shall pay for all past, current, and future causally-related medical benefits pursuant to Section 42-15-60, which specifically includes all expenses from Palmetto Health Richland Hospital and Joseph Still Burn Center (Doctors Hospital). However, if Employer is unable or unwilling to pay these expenses, then the S.C. Workers' Compensation Uninsured Employers' Fund shall be required to pay. Any payment made or benefit provided by the S.C. Workers' Compensation Uninsured Employers' Fund shall be made with all rights of indemnification or reimbursement as prescribed by statute. Nothing appearing in this Order, explicit or implied, shall limit any claim the S.C. Workers' Compensation Uninsured Employers' Fund has against the Employer pursuant to S.C. Code Ann. § 42-7-200 or otherwise.

IT IS FURTHER ORDERED that the Defendant Fund shall pay the Claimant through his attorney at Popowski, Callas and Shirley, PA the sum of $32,832.65 for payment of past temporary total benefits as a result of the injuries that he sustained on November 20, 2014 while working with the Defendant, Metro Construction, Inc.

AND IT IS SO ORDERED.

SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Commissioner Gene McCaskill

Commissioner Melody L. James

Commissioner R. Michael Campbell, II

CERTIFICATE OF SERVICE

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

By Eugenia Hollmon on April 30, 2019