

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM
THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Full Commission Decision

Case No. 2016-002493

Armando Fuentes, Employee, Claimant, Respondent,

v.

Mays Contracting Company, LLC, Employer, and Builders Mutual Insurance Company,
Carrier, Appellants,

And

Jose M. Ortiz Mendoza DBA Ortiz Construction, Employer, and Riverport Insurance
Company, Carrier, Respondents.

SUPPLEMENTAL RECORD ON APPEAL

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SC Court of Appeals

William Tyler Littlejohn
HOLDER PADGETT LITTLEJOHN + PRICKETT
210 Wingo Way, Suite 201
Mount Pleasant, South Carolina 29464
(843) 278-0100
Attorney for Appellants

Mr. Joseph DuBois, Esquire
22 New Orleans Road, Suite 1
Post Office Box 7228 (29938)
Hilton Head Island, SC 29928
(843) 686-5500
Attorney for Respondent Armando Fuentes

Mr. Zachary Steven Naert, Esquire
22 New Orleans Road, Suite 1
Post Office Box 7228 (29938)
Hilton Head Island, SC 29928
(843) 686-5500
Attorney for Respondent Armando Fuentes

Mr. Michael Patrick Bennett, Esquire
22 New Orleans Road, Suite 1
Post Office Box 7228 (29938)
Hilton Head Island, SC 29928
(843) 686-5500
Attorney for Respondent Armando Fuentes

Mr. Michael Allen Farry, Esquire
Horton Law Firm
307 Pettigru Street
Greenville, South Carolina 29601
(864) 233-4351
Attorney for Respondent Riverport
Insurance Company

Mr. Jeremy Randall Summerlin, Esquire
Horton Law Firm
307 Pettigru Street
Greenville, South Carolina 29601
(864) 233-4351
Attorney for Respondent Riverport
Insurance Company

José M. Ortiz Mendoza d/b/a Ortiz
Construction
2026 Montgomery Street
Newberry, South Carolina 29108
Respondent

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SUPPLEMENT 2—DUTIES AND RESPONSIBILITIES**A. GENERAL EXPLANATION** *Effective 01 Jan 2010*

This section provides the general residual market business duties of the regulatory authority, Plan Administrator, assigned carrier, employer, and producer.

The information provided in Supplement 2 is not to be considered a complete or exhaustive list of general residual market duties.

B. REGULATORY AUTHORITY *Effective 01 Jan 2010*

Regulatory authority references throughout the **ARS** refer to the commissioner, director, or superintendent of the state's Department of Insurance or their properly appointed designee.

Regulatory authorities:

1. Approve the Plan and any amendments or state exceptions in their state
2. Approve petitions from the assigned carriers that are seeking to fulfill their obligation through direct assignments
3. Oversee direct assignment carriers under the Plan, either directly or through contract
4. Approve and/or take corrective action on assigned risk rates and rating programs where applicable in response to residual market operating results in the state

C. PLAN ADMINISTRATOR *Effective 01 Jul 2012*

(Exceptions: AR, KS)

The Plan Administrator is the organization designated to administer the affairs of the Plan as approved by the regulatory authority in a state.

Duties and responsibilities of the Plan Administrator include:

1. Administering, managing, and enforcing the Plan
2. Establishing eligibility criteria for servicing carriers
3. Determining applicant eligibility
4. Determining the methodology and formula for making assignments to assigned carriers
5. Developing and implementing assigned risk procedures and forms to the extent necessary to carry out the purpose of the Plan
6. Processing assigned risk applications pursuant to NCCI's **Basic Manual** Rule 4-A-3 and Supplement 4
7. Establishing written performance standards for assigned carriers; for further information on these standards, refer to NCCI's **Assigned Carrier Performance Standards** located on ncci.com
8. Monitoring assigned carrier performance (as required) and enforcing [] the **Assigned Carrier Performance Standards**
9. Administering the dispute resolution procedure in accordance with **Basic Manual** Rule 4-A-10 and Supplement 13
10. Informing the regulatory authority of any insurer not participating in the Plan
11. Monitoring the performance and operation of the WCIP and initiating amendments thereto as appropriate

For further information on the Plan Administrator's duties and responsibilities, refer to NCCI's **Basic Manual** Rule 4-A-6.

D. ASSIGNED CARRIER *Effective 01 Jul 2012*

Assigned carrier references throughout the **ARS** mean direct assignment carriers and servicing carriers. If a carrier is specifically referenced as either direct assignment carrier or servicing carrier, the language is exclusive of that carrier's status.

The assigned carrier is held accountable to the appropriate:

- **Assigned Carrier Performance Standards**, including, but not limited to, providing ongoing services in a prompt and efficient manner for:
 - Customer service, underwriting, loss prevention, claims, and audits
 - Billing and collection of premium (i.e., maintaining adequate deposits or advance premiums on policies and promptly refunding any excess premiums as determined by final audits, valuations, etc.)

Assigned Risk Supplement—2010 Edition

SUPPLEMENT 3—ELIGIBILITY AND ASSIGNMENT

A. GENERAL EXPLANATION *Effective 01 Jan 2010*

The following rules govern the insuring of employers who are *in good faith entitled to workers compensation insurance* as defined herein, but who are unable to procure such insurance in a regular manner.

For purposes of the Plan, the offer of any reasonable rating plan approved by the regulatory authority is deemed an offer of insurance in a regular manner. Any dispute arising from the application or interpretation of the Plan is subject to the dispute resolution procedure provided in *Basic Manual Rule 4-A-10*.

B. GOOD FAITH RULES OF ELIGIBILITY *Effective 01 Jul 2012*
(Exceptions: GA)

Good faith will be presumed in the absence of clear and convincing evidence to the contrary.

An employer is not in good faith entitled to insurance if any of the following circumstances exist at the time of application or thereafter, or other evidence exists that such employer is not in good faith entitled to insurance:

1. A self-insured employer knows or is aware of pending bankruptcy proceedings, insolvency, cessation of operations, or conditions that would probably result in occupational disease or cumulative injury claims from exposure incurred while the employer was self-insured.
2. On a current or previous workers compensation policy, the employer knowingly refuses to meet reasonable health, safety, premium audit, or loss prevention requirements; does not allow any insurer or assigned carrier reasonable access to its records for audit or inspection under the policy; and/or does not comply with any other policy obligations. The employer will remain ineligible for coverage through the WCIP until such time the employer has complied with the policy provisions and is deemed by the Plan Administrator to be in good faith entitled to insurance.
3. The employer has any outstanding workers compensation insurance premium obligation or other monetary policy obligation (e.g., deductible program) on a current workers compensation insurance policy or on any previous or other workers compensation insurance policy that is not subject to a bona fide premium dispute as defined in *Basic Manual Rule 4-A-2-g*. The employer will remain ineligible for coverage through the WCIP until such time the employer has satisfied the outstanding workers compensation insurance premium obligation or other monetary policy obligation and is deemed by the Plan Administrator to be in good faith entitled to insurance.
4. The employer, its representative, or the producer knowingly fails to comply with Plan procedures; or knowingly makes a material misrepresentation on the application by express statement, omission or otherwise, including, but not limited to, the following:
 - Estimated payroll
 - Offers of workers compensation insurance
 - Nature of business
 - Name of business
 - Management or ownership of business
 - Previous insurance history
 - Avoidance of an experience rating modification
 - An outstanding workers compensation insurance premium obligation or other monetary policy obligation of the employer
 - Noncompliance with any applicable state licensing or registration requirements

The employer will remain ineligible for coverage through the WCIP until such time the employer has remedied the above-referenced instances of noncompliance and is deemed by the Plan Administrator to be in good faith entitled to insurance.

5. The employer, its representative, or the producer does not accept any reasonable offer of voluntary coverage through NCCI's *VCAP[®] Service*, where applicable. If there is a dispute regarding whether or not the offer of voluntary coverage is reasonable, the Plan Administrator will review the dispute in accordance with Plan dispute resolution procedures located in *Basic Manual Rule 4-A-10* and Supplement 13. For further information on reasonable offers of coverage, refer to *Basic Manual Rule 4-A-2-r*.

For further information on good faith rules of eligibility, refer to *Basic Manual Rule 4-A-3*.

G. PREMIUM OBLIGATIONS *Effective 01 Jan 2010*

(Exceptions: GA, OR)

Assignments under the Plan will not knowingly be made unless all undisputed workers compensation premium obligations on any previous workers compensation insurance have been met by the employer, whether the obligation is to any or all of the following, but not limited to an assigned carrier, a voluntary insurer, or the Plan Administrator.

If, after policy issuance, the employer does not meet all undisputed workers compensation insurance premium obligations under the current policy or previous assigned risk or voluntary market policies, the employer's present assigned carrier retains the right to cancel a policy currently in force under this Plan within the statutory cancellation requirements.

Refer to Basic Manual Rule 4-A-3-g for further information on premium obligations.

H. NEW APPLICATION INITIAL OR DEPOSIT PREMIUM *Effective 01 Jan 2013*

The employer and/or its representative must submit the required initial or deposit premium to the Plan Administrator, using one of the following payment methods:

- The Automated Clearing House (ACH) system in the form of an Electronic Funds Transfer (EFT)
- Credit card (American Express, MasterCard, and Visa are accepted)
- Personal or business check, when submitting application by mail only

Refer to Supplements 5-A and 5-B-4 for further information on initial or deposit premium and acceptable payment methods by application submission method.

Refer to Basic Manual Rule 4-I for applicable initial or deposit premium rules or the applicable state workers compensation insurance plan.

SUPPLEMENT 12—CANCELLATION, RENEWAL, NONRENEWAL, REINSTATEMENT, REAPPLICATION AND REASSIGNMENT**A. GENERAL INFORMATION** *Effective 01 Jan 2010*

The employer will remain with the same assigned carrier until the policy is renewed, nonrenewed, reassigned due to a request for reassignment in accordance with *Basic Manual* Rule 4-A-3-k, or reassigned due to quota changes in accordance with *Basic Manual* Rule 4-A-9-b and Supplement 6.

B. CANCELLATION *Effective 01 Jul 2012***1. Assigned Carrier-Initiated Cancellation**

(Exceptions: AZ, IN, NV, VA)

If, after the issuance of a policy, the assigned carrier determines that an employer is in noncompliance with any of the following policy provisions on a current or previous workers compensation policy by:

- Not being in good faith entitled to workers compensation insurance
- Failing to comply with reasonable health, safety, audit, and/or loss prevention requirements
- Violating any of the terms and conditions under which the insurance was issued
- Refusing to allow the carrier or NCCI reasonable access to its facilities or its files and records for audit or inspection
- Refusing to disclose to the carrier the full nature and scope of the employer's exposure

The current assigned carrier will initiate cancellation (after providing an opportunity for cure) even if the noncompliance was for a previous policy issued by a different carrier, and inform the Plan Administrator and appropriate state organization of the reason for such cancellation.

The policy should be cancelled in accordance with the cancellation provisions of NCCI's *Basic Manual* Rule 3-A-3, *Assigned Carrier Performance Standards*, and state law.

The assigned carrier must keep the Plan Administrator fully informed of any cancellation and of any reestablishment of eligibility or of compliance by the employer in accordance with *Basic Manual* Rule 4-A-4-a(7).

Any employer whose coverage is cancelled must reestablish eligibility or must demonstrate entitlement to coverage under this Plan to the Plan Administrator before any further assignment can be made under this Plan.

2. Employer-Initiated Cancellation

Written requests for cancellation by an employer or its representative must be processed and notice of cancellation issued after receipt of request and required documentation. The appropriate parties must be provided notices of cancellation detailing the reason(s) for cancellation or nonrenewal of the policy. Such notification must be in accordance with all applicable state laws.

Retroactive cancellation is not permitted unless other workers compensation insurance has been secured, the employer has been approved as a self-insured, or to comply with statutory cancellation notice requirements.

For further information on employer initiated cancellation, refer to NCCI's *Assigned Carrier Performance Standards*.

3. Producer-Initiated Cancellation

(Additions: VA) (Exceptions: KS)

A producer may not request cancellation by the carrier or Plan Administrator for the employer's failure to pay money (including installment payments) due to the producer unless permitted to do so under the following types of agreements between the producer and employer:

- An executed finance agreement
- A legal power of attorney

The producer may request cancellation if the employer is out of business and cannot be located or has obtained voluntary coverage. Refer to Supplement 12-B-4 for further information on cancellation for voluntary coverage.

Certificate of Counsel

The undersigned hereby certifies that the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 6, 2017



William T. Littlejohn
210 Wingo Way, Suite 201
Mount Pleasant, South Carolina 29464
(843) 278-0100
Attorney for Appellant

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