

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Gene McCaskill, Commissioner
Melody L. James, Commissioner
R. Michael Campbell, II, Commissioner

Case No. 1423018

Giles Long Claimant, Appellant/Respondent

v.

Metro Construction, Inc., Employer, and
American Zurich Ins. Co. and The
SC Uninsured Employers' Fund Carrier, Defendants

of which Metro Construction, Inc., Employer, and
The SC Uninsured Employers' Fund, Carrier are..... Respondents/Appellants

And American Zurich Ins. Co..... Respondent

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SC Court of Appeals

REPLY BRIEF OF CLAIMANT, APPELLANT/RESPONDENT'

Nicholas G. Callas, S.C. Bar#15193
Law Office of Nicholas G. Callas, P.A.
1901 Gadsden Street, STE B
Columbia, South Carolina 29201
(803) 369-3968
Nick@callaslawfirm.com

Attorney for Claimant, Appellant/Respondent

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Pursuant to South Carolina Appellate Rule 208, the Claimant, Appellant/Respondent, Giles Long, replies to the initial brief of the , American Zurich Insurance Company.

ARGUMENT IN REPLY

I. DID THE COMISSION ERR IN FINDING THAT ZURICH PROPERLYCANCELLED METRO'S POLICY PRIOR TO THE DATE OF ACCIDENT?

A. No Substantial Breach of Contract with Insurance Policy

Respondent Zurich asserts that it properly cancelled its policy with Appellant Long and that the Appellate Panel of the S.C. Workers Compensation Commission was correct in making this finding. (Resp't Zurich's Br. p. 5) As previously stated in his initial brief, Appellant Long contends that the Appellate Panel erred in making this Finding in its Decision and Order. (Decision and Order of the Appellate Panel, Finding of Fact No. 18).

Respondent Zurich bases its argument that "when a contract is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used." (Resp't Zurich's Br. 4 citing *B.L.G. Enters., Inc. v. First Fin. Ins. Co.*, 334 S.C. 529, 535, 514 S.E.2d 327, 330 (1999). Respondent merely asserts the Findings of Fact in the Appellate Panel's Decision and Order argues its conclusions in its brief. However, a review of the evidence in the Record clearly shows that there is more than a "conflict of evidence" but rather that the Commission's Findings were "clearly erroneous in view of the reliable, probative and substantial evidence on the whole record." *Bursey v. South Carolina Dep't of Health & Env'tl. Control*, 360 S.C.135, 141, 600 SE.2d 80, 84 (Ct. App. 2004); S.C. Code Ann. § 1-23-380(A)(6)(e) (Supp. 2003).

The Appellate Panel of the S.C. Workers Compensation ruled that "the policy was properly cancelled as of August 8, 2014 due to Metro's failure to provide the requested audit information." (Decision and Order of the Appellate Panel, Finding of Fact No. 18) The Appellate Panel found

this failure constituted “a substantial breach of the terms of the policy.” *Id.* As previously asserted in his initial brief, Claimant contends that there were no time specifications outlined in the Zurich Policy. Moreover, Respondent Zurich’s witness, Timothy Lukes, testified that the Policy did not specify a time deadline to provide these materials.

B. No Violation of S.C. Code § 38-75-730

Respondent Zurich also argues that the Claimant’s failure to provide audit information constituted a substantial breach of contract under S.C. Code § 38-75-730(a)(4), the Appellate Panel did not make a finding of any statutory violation in its Findings of Fact or Conclusions of Law. The entire decision is based on a breach of contract of the insurance policy.

Consequently, the Claimant submits contends that his failure to provide the audit information to Respondent Zurich within the 30-day timeframe did not constitute a substantial breach of contract under S.C. Code § 38-75-730(a)(4) .

CONCLUSION

Mr. Long asserts that Metro Construction did not breach the terms of the policy with Respondent Zurich. Metro Construction provided the requested financial information 47 days after he received his first notice and 12 days after a deadline imposed by the carrier. However, the policy does not specify a timeframe when audit material or financial information must be provided. Testimony from Respondent Zurich’s only witness substantiates the fact that no deadline is specified in the policy. Moreover, Mr. Lukes’ testimony reveals that the Claimant must adhere to carrier demands not included in the policy despite the exclusivity clause in the Plan stating all terms of the contractual agreement are in the policy.

Mr. Long asserts that it was reasonable for him to believe that Metro Construction’s coverage was in effect at the time of his work-related accident based on the explicit language of

numerous communications received from Respondent Zurich.

Respectfully submitted,



December 12, 2019

Nicholas G. Callas, Esq.
LAW OFFICE OF NICHOLAS G. CALLAS, PA
1901 Gadsden Street
Suite B
Columbia, SC 29201
(803)369-3968 (phone)
(803)862-1002 (facsimile)
nick@callaslawfirm.com

ATTORNEY FOR CLAIMANT
APPELLANT/RESPONDENT

Certificate of Service

I certify that I have served the Reply Brief of Claimant, Appellant/Respondent upon all parties by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2019, to the Counsel of Record, as listed below:

Lee Dixon, Esquire
Hedrick Gardner Kincheloe & Garofalo, L.L.P.
1230 Main Street, Suite 325
Columbia, SC 29201

Timothy B. Killen, Esquire
Holder Padgett Littlejohn & Prickett, LLC
349 West Coleman Boulevard, Suite 300
Mt. Pleasant, SC 29464

Robert C. Cook, Esquire
The Robert Cook Law Firm, LLC
128 North Oak Street, Batesburg, SC 29006


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And I certify that I have served the Reply Brief of Claimant, Appellant/Respondent upon the South Carolina Workers' Compensation Commission by depositing a copy of it in the United States Mail, postage prepaid, on December 16, 2019, as listed below:

Amy Bracy, Judicial Director
S.C. Workers' Compensation Commission
P.O. Box 1715
Columbia, SC 29202-1715


Merridy Taylor



L A W O F F I C E O F

Nicholas G. Callas P.A.

1901 Gadsden Street
Suite B
Columbia, SC 29201

P: 803.369.3968
F: 803.862.1002
www.scdisabilitylawyer.com
nick@callaslawfirm.com

December 16, 2019

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Giles Long, Claimant, Appellant/Respondent v. Metro Construction, Inc.,
Employer, and The SC Uninsured Employers' Fund, Carrier, Respondents/Appellants,
and American Zurich Ins. Co., Respondent
Appellate Case No. 2019-000897
Trial Court Case No. 1423028

Dear Ms. Kitchings:

We received the Respondent's brief on December 6, 2019 and are hereby enclosing the original and one copy of the Reply Brief of Claimant, Appellant/Respondent with proof of service attached. Please file the originals and return the file-stamped extra copy to me in the enclosed envelope. By copy of this letter I am serving opposing counsel with this document.

If you need any additional information, please let me know.

Sincerely,

Nicholas G. Callas

cc: Lee Dixon, Esquire
Timothy B. Killen, Esquire
Robert C. Cook, Esquire
Amy Bracy, Judicial Director



L A W O F F I C E O F

Nicholas G. Callas P.A.

1901 Gadsden Street, Suite B
Columbia, SC 29201

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, SC 29201



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