

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

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SC Court of Appeals

Case No. 1423018

Giles LongClaimant, Appellant/Respondent

v.

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

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

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

FINAL REPLY BRIEF OF APPELLANT GILES LONG

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Pursuant to South Carolina Appellate Court Rule 208, the Claimant, Appellant, Giles Long, replies to the initial brief of the Respondent, 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 Initial 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.

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 Initial Br. p. 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 and 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 & Envtl. 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 SC 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." (R.p. 35) 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 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. Mr. Long 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,



February 18, 2020

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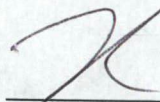
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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that the foregoing *Amended Final Brief, Final Reply Brief and Final Respondent's Brief* complies with Rule 211(b), South Carolina Appellate Court Rules.



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