

South Carolina Workers' Compensation
Commission
1333 Main Street, Suite 500
P.O. BOX 1715
Columbia, SC 29202-1715
(803) 737-5675 www.wcc.sc.gov



WCC File No: 1819776

Claimant's Name: <u>Jeff Quinn</u>	Employer's Name: <u>Mike Hannaway d/b/a Hannaway Painting; Yeaman's Hall Club</u>
Address: <u>7</u>	Address: <u>2655 Midland Park Road</u>
City: <u>North Charleston</u> State: <u>SC</u> Zip: <u>29418</u>	City: <u>Charleston</u> State: <u>SC</u> Zip: <u>29406</u>
Home Phone: () - - Work Phone: () - -	
Preparer's Name: <u>Phillip S. Ferderigos</u>	Carrier: <u>SCUEF, Travelers Property Casualty Co. of America, Accident Fund Insurance Co. of America</u>
	Preparer's Phone #: <u>(843) 577-7700</u>

DECISION AND ORDER OF FULL COMMISSION

HEARING:

Full Commission hearing held in Columbia, South Carolina on January 25, 2021.

APPEARANCES:

Catherine D. Meehan, Esquire on behalf of Employee/Claimant.

RECEIVED

JUN 30 2021

SC Court of Appeals

Phillip S. Ferderigos, Esquire on behalf of Travelers Property and Casualty Insurance Company of America.

Robert M. Cook, II, Esquire on behalf of South Carolina Workers' Compensation Uninsured Employers Fund.

Anne V. Noonan, Esquire on behalf of Yeaman's Hall Club and Accident Fund Insurance Company of America.

PURPOSE OF HEARING:

To determine Claimant's entitlement to benefits under the Workers' Compensation Act and determine issues set forth in Forms 50 and 51 submitted by the parties, including which employer and carrier is liable for compensation to the Claimant; appeal from Single Commissioner Hearing to Full Commission.

DECISION AND ORDER:

By Full Commission Panel:
Commissioner R. Michael Campbell, II
Commissioner Avery B. Wilkerson, Jr.
Commissioner T. Scott Beck, Chairman

FILED:

June 1, 2021

APA SUBMISSIONS

The following APA submissions were submitted on behalf of the parties:

CLAIMANT'S MEDICAL PROVIDER/DESCRIPTION DATES PAGES

APA #	PROVIDER	TYPE OF REPORT	DATED	# OF PAGES	PAGES
1	Summerville Med. Ctr.	Diagnostics	08/28/18	4	1-4
2	Trident Med. Ctr.	Medical Records	08/28/18-02/25/19	14	5-17
3	Dr. Adam Schaaf	Consultation Report	08/30/18	2	18-19
4	Dr. Howard Richter	Medical Records	09/05/18-1010 ² /19	31	20-50
5	Dr. Howard Richter	Operative Report	09/06/18	2	51-52
6	Trident Sports & Rehab	PT Records	12/7/18-02127/19	20	53-72

EXH #	PROVIDER	TYPE OF REPORT	DATED	# OF PAGES	PAGES
1	WCC	Notice of Violation to Employer	11/16/18	1	73
2	Claimant	2018 Tax Info	N/A	2	74-75
3	Claimant	Deposition	03/13/19	33	76-105
4	Rowell Insurance	Policy	Various	46	106-151
5	Claimant	Deposition of Mike Hannaway	05/15/19	62	152-213
6	Claimant	Deposition of Al Halle w/ Exhibits	05/15/19	61	214-274

TRAVELERS' DOCUMENTS DESCRIPTION DATES PAGES

1. Decision and Order of Commissioner Campbell and WCC documentation	July 25, 2019	Travelers APA 001 - 0013
2. Travelers assigned risk Servicing Carrier documents		Travelers APA 0014 - 00170
3. Producer Rowell Ins. Agency subpoenaed documents		Travelers APA 00171 – 00234
4. WCIP Basic Manual Sections		Travelers APA 00235 – 00243

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|--|------------------|-------------------------------|
| 5. Deposition of Producer Patsy J. Bootle
(and Accompanying Exhibits as set forth
In Deposition of Michael Hannaway) | October 31, 2019 | Travelers APA 00244 - 00280 |
| 6. Deposition of Michael Hannaway
And Accompanying Exhibits | October 31, 2019 | Travelers APA00281 - 00747 |
| 7. Affidavit of Travelers Underwriter
Mary Ellen Belins and Accompanying
Exhibits | December 2, 2019 | Travelers APA 00748 - 001031 |
| 8. Deposition of Mary Ellen Belins
And Accompanying Exhibits | December 2, 2019 | Travelers APA 001032 - 001346 |
| 9. Additional WCIP/Basic Manual Sections | | Travelers APA 001347 – 001353 |

YEAMANS HALL MEDICAL PROVIDER/DESCRIPTION

<u>NAME OF PHYSICIAN/OTHER</u>	<u>DATE OF REPORT</u>	<u>PAGE</u>
EXHIBIT (7) Form 1099		275 – 276
EXHIBIT (8) Deposition of Jason Lambert	12/2/2019	277 - 307

UEF'S MEDICAL PROVIDER/DESCRIPTION

<u>PHYSICIAN/PROVIDER</u>	<u>DATE(S)</u>	<u>PAGES</u>
1. Charleston County EMS	08/29/18	
2. UEF relies upon medicals submitted by Claimant, reserving all rights to supplement and/or amend.		

EXHIBITS

<u>DESCRIPTION</u>	<u>DATE(S)</u>	<u>PAGES</u>
1. WCC File, to include Coverage and Compliance investigation.		
2. Any exhibits of any party.		
3. Transcripts of depositions set for 10/31/19 (Michael Hannaway; Rowell Insurance Agency; and Mary Ellen Belins (Travelers).		
4. Materials produced by Travelers in response to subpoena of the UEF dated 10/16/19.		
5. 3/13/19 deposition of Jeff Quinn; 5/15/19 deposition of Michael Hannaway; 5/15/19 deposition of Al. Halle		
6. Materials produced by Rowell Insurance Agency by cover of letter dated 1/14/19, to		

include 9/7/18 premium adjustment notice; declarations page for policy number 6JUB-8H01 7-98-A-18; list of workers; 2016 1099, from Yeamans Hall, Inc. and Yeamans Hall Club; 5/1/17 certificate of insurance.

7. 2018 1099 from Michael Hannaway to Jeffrey S Quinn, Sr.
8. Emails from Michael Hannaway to Al Halle 1/23/18 to 11/13/18.
9. 2018 accounts payable from Yeamans Hall Club and Yeamans Hall, Inc.
10. Claimant's 2017 tax return.
11. Payment stubs for Claimant 12/21/17 to 8/24/18.

STIPULATIONS

It was stipulated and agreed at the time of hearing that:

1. No party had any objections to jurisdiction or venue;
2. Notice of the hearing was timely and properly served upon all parties of interest.

STATEMENT OF CASE

The above came to be heard before the undersigned Full Commission Panel in Columbia, South Carolina on January 25, 2021, pursuant to notice timely and properly given to all parties of record. Defendant Mike Hannaway d/b/a Hannaway Painting was provided with notice of the hearing before the Full Commission, but he did not appear or participate in the hearing.¹

Before the Single Commissioner, the contentions of the parties were as follows:

As for the Claimant, Jeff Quin, Claimant requests that the Commission order all benefits that the Claimant is entitled to under the Workers' Compensation Act. Jeffrey S. Quinn, SR is fifty-three (53) years old. Mr. Quinn was hired by the Employer, Mike Hannaway Painting, in August of 2017 as a handyman. Mr. Quinn's duties included pressure washing, painting and any other duties requested by the Employer. On August 29, 2018, Mr. Quinn was injured when he fell approximately ten to twelve (10-12) feet off of a ladder, injuring his left leg/ankle/foot (fractured) and right leg/ankle/foot (fractured). The claimant developed related neck pain from his altered gait. At the time of the accident, Mr. Quinn was earning \$18.00-\$20.00 per hour. His pre-injury wages for 2018 up until his injury totaled \$26,311.00, for an average weekly wage of \$762.64 and an applicable compensation rate of \$508.43 per week. The Claimant's injury and entitlement to benefits under the act is not disputed. The issue is which of the defendants is responsible to provide said benefits. There is an issue as to whether or not the Employer herein had workers' compensation insurance coverage at the time of this work-related injury. Upon information and belief, the Employer, Mike Hannaway, may contend he believed he has

¹ At the hearing before the single Commissioner, Defendant Mike Hannaway d/b/a Hannaway Painting was offered the opportunity to retain an attorney and to examine witnesses, which he declined (Tr. P. 25).

insurance coverage with Travelers. Records indicate additional premiums were required, which remained unpaid, causing the policy to be canceled. Since the Employer, either by virtue of statutory requirement or voluntarily assented to be under the requirements of Title 42, the Employer's responsibility did not abate upon the cancellation of the reported policy. It is believed the Employer/Carrier qualifies as an uninsured Employer subject to the Act, and therefore the SC Uninsured Employer's Fund is required to provide appropriate payments.

A determination needs to be made regarding Mr. Quinn's average weekly wage and applicable compensation rate; payment of past, present and ongoing TTD; payment of mileage reimbursement; and payment of medical bills related to this injury, which has been covered by his wife's personal insurance. Claimant's arguments are further set forth in the Hearing Transcript pp. 5 – 10, which is incorporated by reference herein.

As for the alleged uninsured employer Mike Hannaway d/b/a Hannaway Painting, ("Hannaway") Hannaway asserts that Travelers should provide coverage for him because Travelers did not forward him a Notice of Cancellation via a "certified letter." Hannaway "feels" that he should have received a certified letter from Travelers stating his assigned risk workers' compensation policy of insurance had been cancelled (Transcript p. 26).

As for servicing carrier Travelers Property and Casualty Insurance Company of American ("Travelers"), Travelers asserts its assigned risk workers' compensation insurance policy to Hannaway was in effect from 4/5/2017 to 7/3/2018 only and Hannaway's policy was effectively cancelled on 7/3/2018 (prior to the date of loss) per the Workers' Compensation Insurance Plan ("WCIP") due to Hannaway's premium non-payment. Hannaway did not pay premium when due and the Travelers assigned risk workers' compensation policy of insurance was effectively cancelled for lack of payment pursuant to the WCIP prior to the date of loss.

Initially, prior to filing this present claim, the coverage and compliance investigation confirmed and Commissioner Campbell previously found that Hannaway was uninsured on the date of loss. Travelers asserts that the unappealed Decision and Order of Commissioner Campbell is the "law of the case" and Hannaway (or the UEF) cannot collaterally attack such Order in this proceeding. Secondly, Travelers asserts its assigned risk workers' compensation policy with Hannaway was effectively cancelled on 7/3/2018 pursuant to the WCIP. After being provided notice and after numerous opportunities to cure, Hannaway failed to pay premium when due. As evidenced by its records, Travelers properly notified the WCC/NCCI of the Notice of Cancellation on 5/25/2018 and the cancellation became effective on 7/3/2018. Travelers also timely mailed the Notice of Cancellation to the insured and the producer in accordance with the policy terms and WCIP, and it properly cancelled Hannaway's assigned risk policy pursuant to WCIP Supplemental Rule 12. Moreover, Hannaway's producer, Rowell Insurance Agency, an agent of the insured Hannaway per the WCIP, and Hannaway received actual notice of the pending cancellation, several opportunities to cure, and an effective cancellation date, but Hannaway failed to pay the required premium or avail himself of any opportunity to cure (thereby, Hannaway

violated the terms of the assigned risk policy and requirements of the WCIP by not paying premium when due). Finally, the insured failed to appeal Travelers' premium determination or cancellation decisions pursuant to WCIP Rule 4, the mandatory appeal mechanism to the administrative body NCCI as required by the WCIP, thereby foreclosing a collateral attack on Travelers' premium or cancellation decisions. Travelers' argument is further set forth in the Hearing Transcript pp. 10 – 16, which is incorporated by reference herein.

As for the South Carolina Uninsured Employers' Fund ("UEF"), the UEF adopts all defenses raised by this alleged employer so as not to impair his ability to fully litigate this claim. Independent of any defenses raised by the alleged employer, the UEF asserts: (1) that the claimant was an independent contractor; (2) Travelers wrongfully denied coverage and should be responsible for this claim; and (3) that Yeamans Hall is a statutory employer of the claimant with coverage and the UEF should not have responsibility for this claim. The UEF's arguments are further set forth in the Hearing Transcript pp. 16 – 19, which by reference is incorporated herein.

As for the alleged statutory employer, Yeamans Hall Club and Accident Insurance Company of America ("Yeamans"), Yeamans asserts that no Employer-Employee relationship existed with Defendant Yeamans Hall Club and they are therefore not the proper party and Yeamans is not a statutory employer of the Claimant. Hannaway was an independent contractor hired to perform work on houses and was paid upon completion of each job. Furthermore, even if Hannaway were found to be a subcontractor, Defendant Yeamans confirmed that Hannaway had workers' compensation insurance on multiple occasions and obtained a certificate of insurance. Yeamans should be released from all liability. The evidence will reflect that the claimant was not a statutory employee of Yeamans Hall Club and that pressure washing was not a necessary, essential, or integral part of the business for Yeamans Hall Club. Yeamans Hall Club Employees, prior to this accident, did not perform pressure washing for the homeowners. Yeamans' arguments are further set forth in the Hearing Transcript pages 8 – 10, which by reference is incorporated herein.

On December 10, 2019, after a hearing on the merits of the claim, the single Commissioner, Aisha Taylor issued an award that held, among other findings, the Claimant sustained a compensable injury within the course and scope of his employment with the uninsured employer Mike Hannaway on August 28, 2018, that the Claimant is entitled to receive from the UEF workers compensation benefits, that Travelers did not provide coverage for the uninsured employer for Claimant's employment in South Carolina and Travelers is not liable for any benefits or compensation which are to be paid to the Claimant, and it is hereby dismissed from this case with prejudice and, finally, Yeaman's Hall Club is not a statutory employer of the Claimant and Yeaman's Hall Club and Accident Fund Insurance Company of America are hereby dismissed from this claim with prejudice. Thereafter, the UEF filed an appeal to the Full Commission.

Before the Full Commission, the UEF seeks Full Commission review of the Order of the Single Commissioner on the following grounds:

1. Did the Single Commissioner err in finding, concluding and ordering that the UEF was bound by and precluded from raising and litigating the issue of Travelers' coverage as a result of the show

- cause order concerning the employer, to which proceeding neither the UEF nor Travelers were notified or parties? (Findings of Fact/Conclusions of Law No. 3-5 at pages 16-17 of the order, including footnotes 8 and 9).
2. Did the Single Commissioner err in finding, concluding and ordering that Yeamans Hall Club was not the claimant's statutory employer? (Findings of Fact/Conclusions of Law No. 53 and 54 at page 29).
 3. Did the Single Commissioner err in finding, concluding and ordering that the Travelers properly cancelled coverage for the employer, including the ruling that Crews v. W.R. Crews, Inc., 390 S.C. 15 (Ct. App. 2010), was distinguishable? (Findings of Fact/Conclusions of Law No. 6-52 at pages 17-29).
 4. Did the Single Commissioner err in finding, concluding and ordering that the Claimant had not reached MMI for his injury and placing the Claimant on a running award, to include the issue of a subsequent non-work injury? (Findings of Fact/Conclusions of Law No. 57 and 59 at page 30).

EVIDENCE OF CASE

The Claimant is fifty-four (54) years old. After graduating high school he worked in jobs as a delivery driver, with a construction company, as a painter with Sherwin Williams, remodeling for Great American Restoration and then for the Defendant, Mike Hannaway (TR. p. 41-42). When the Great American Restoration job shut down in 2018, the Claimant worked full time for the Defendant Mike Hannaway (TR p. 43). His job for Mr. Hannaway was as "a handyman, painter, pressure washer "- anything Mike needed me to do, I did." (TR p. 43). The Claimant testified that his job involved walking, climbing ladders, painting and some lifting. The jobs, tools and directions were provided by Mike Hannaway (TR p. 44-45). Prior to this admitted accident, the Claimant had no problems performing his work (TR p. 46).

On August 29, 2018, the Claimant lost his balance while up on a ladder and he fell ten to twelve (10-12) feet onto a concrete driveway (TR p. 48-49). The Claimant testified he broke his left leg, his left ankle, shattered his right heel and developed low back pain (TR p. 49) Mr. Hannaway called 911 and the Claimant was transported to Summerville Medical Center. He was later transferred to Trident Hospital for three (3) nights. Medical treatment was provided by Dr. Howard Richter, an orthopedist (TR p. 50-51). The Claimant testified he had surgery by Dr. Richter placing two screws in his left ankle, along with a metal plate and screws into his left foot. He continued to see Dr. Richter (TR p. 52).

The Claimant testified about the problems he has with both legs, feet and his back. Because of continued swelling, he ices is right foot every day. He is able to walk but not able to run and his feet swell when he is on them for any length of time (TR p. 33-34). The Claimant stated trying to do daily things aggravates his injuries. The Commission noted a four to five (4-5) inch area of discoloration on the inside of his left ankle and foot, as well as a four to five (4-5) inch scar discoloration and swelling on his right foot. The

Claimant wears compression socks for stability (TR p 56). The Claimant testified he needs additional medical treatment. He has been out of work since the day of his injury. Claimant testified regarding the pain, swelling and instability he continues to experience in his legs and back. This prevents him from doing many daily activities. The Claimant further stated he is unable to return to the type of work he has done in the past (TR p. 58-62).

None of the Defendants cross examined the Claimant.

It was stipulated that the Claimant had sustained an injury by accident. The witnesses who testified at the hearing were the following:

1. Claimant, Jeff Quinn
2. Employer, Mike Hannaway via deposition testimony.
3. Hannaway's producer representative Patsy J. Bootle via deposition and live testimony.
4. Travelers' representative Mary Ellen Belins via deposition testimony.
5. Alan David Halle and Jason Lambert for Yeamans.

At the hearing, as shown above, the Claimant testified on his own behalf. The Claimant also submitted medical records supporting the nature and extent of his injuries, which is not in dispute.

As for the producer representative, Patsy Bootle testified Hannaway knew his assigned risk workers' compensation insurance policy was going to cancel before it cancelled (Travelers APA 246). She had a conversation with Hannaway prior to the effective date of cancellation and advised him that if he did not pay the premium that was owed, his assigned risk policy was going to cancel. (Travelers APA 246-247).

Initially, when Hannaway initially applied for the assigned risk policy, she explained to Hannaway that assigned risk policies worked differently than voluntary policies, that there were special rules such as the WCIP that applied to assigned risk policies, and that assigned risk policies were more expensive than a voluntary policy and are policies of a last resort. (Travelers APA 247). She explained to him that, if he wanted to get an assigned risk policy, he was going to have to sign an assigned risk application where he agreed to be bound by such rules such as the WCIP. (Travelers APA 247). She assumed that Hannaway would have filled out the application truthfully. She explained to him that there was an initial deposit premium that was due and, based on whatever exposure there was during the policy period, at the end of the policy period there would be an audit that would determine what the actual premium was due based on his exposure during the policy period. (Travelers APA 247). She advised Hannaway that his initial deposit premium was based on his zero payroll and, if he used any subcontractors, he would have to get a certificate of insurance from such subcontractors or his premium would increase based on his actual exposure. (Travelers 247-248). She also explained the appeal mechanism available under the WCIP (Travelers APA 248). Prior to the date of cancellation, she told Hannaway that if he did not pay his premium in full pursuant to the Notice of Cancellation that she and he had received, then his assigned risk policy would be cancelled pursuant to that Notice of Cancellation. (Travelers APA 248). Hannaway did not dispute the amount owed and did not ask her to dispute the amount owed at that time. (Travelers APA 248). At no time prior to the

cancellation of the policy did Hannaway ever state that he did not owe the premium which Travelers asserted was owed by Hannaway. (Travelers APA 248-249). Neither she nor Hannaway ever appealed any premium decision of Travelers and the only payments that Hannaway ever made was for the initial deposit premium for the initial policy and part of the initial deposit premium for the 2018 policy and Hannaway made no other payments to Travelers. (Travelers APA 249).

She testified that she was an agent of Hannaway and that a producer under the WCIP is an agent of the insured, not the servicing carrier. (Travelers APA 249). She then testified throughout the course of her deposition that she mailed numerous letters, notices, and bills to Hannaway, including the Notice of Cancellation prior to the effective cancellation of the policy. (Travelers APA 249-263). She fully explained to Hannaway what premium was owed and his need to pay the premium before the effective date of cancellation or his assigned risk policy would be cancelled. (Travelers APA 249-263). Hannaway never disputed the amount of premium owed and never disputed the cancellation until well after the assigned risk policy had been cancelled. The producer received the Notice of Cancellation which was issued on May 24, 2018 with an effective date of July 3, 2018 and, when she received the Notice of Cancellation, she called Hannaway and explained that he had to pay \$18,957 by July 3, 2018 or his policy would be cancelled pursuant to the Notice of Cancellation. (Travelers APA 249-252). She received the Notice of Cancellation on May 30, 2018 and she immediately called Hannaway and discussed that he needed to pay \$18,957 or his assigned risk policy would be cancelled and Hannaway, without a doubt, knew that his policy would be cancelled if he did not pay the full premium owed. (Travelers APA 253, 255-256, 259-260). She also agrees that Travelers' actions were required by the WCIP and everything Travelers did was consistent and required by the WCIP. Travelers provided every notice and every opportunity to cure to Hannaway that was required under the WCIP. (Travelers APA 263).

In her testimony before the Commissioner, she again confirmed that, on May 30th, she received the Notice of Cancellation from Travelers that was issued on May 24, 2018 and then, on May 30th, she spoke with Hannaway concerning the Notice of Cancellation and advised him that he had to pay his premium in full as set forth in the Notice of Cancellation or his assigned risk policy would cancel on July 3, 2018 (Hearing Transcript p. 21). Prior to the date of cancellation, Hannaway never disputed the premium owed and she never disputed the premium owed, Hannaway never appealed the decision of Travelers, and Hannaway did not pay the amount that was owed prior to the effective date of cancellation (Hearing Transcript p. 22). She agreed that Hannaway was provided multiple opportunities to dispute the premium owed or to pay the premium, and he was sent letters as well as the Cancellation Notice but Hannaway never availed himself of any opportunity to cure his failure to pay premium when due. (Hearing Transcript p. 22-23).

The uninsured employer Mike Hannaway declined to testify live at the hearing. Hannaway asserted that he did not receive a certified letter from Travelers advising of the Notice of Cancellation and asked the Commissioner if Travelers was required to provide a certified letter to him prior to cancelling the policy. Hannaway did not provide any testimony, documentation, or argument supported by any evidence that a

servicing carrier was in any way required to provide an insured with the Notice of Cancellation via a certified letter. Hannaway was present at the hearing and knowingly and voluntarily waived his right to obtain counsel and, knowing the dangers of self-representation, chose to proceed with the hearing without retaining counsel (Hearing Transcript p. 25).

Travelers representative Mary Ellen Belins testified in accordance with her Affidavit and deposition testimony that the Travelers assigned risk policy was effectively and properly cancelled pursuant to the WCIP prior to the date of loss. Travelers complied with the WCIP and Hannaway was uninsured on the date of the loss as the Travelers assigned risk workers' compensation policy had been cancelled prior to the date of loss. The Travelers APA documentation reveals Hannaway submitted a workers' compensation application for a South Carolina assigned risk policy in South Carolina on about April 5, 2017. (Travelers APA 761 – 768). The application sets forth the Applicant's Statement wherein Hannaway agreed to be bound by the WCIP in South Carolina and to "comply with all WCIP rules and procedures and policy terms and conditions, including without limitation, those related to audits, inspections, loss prevention, and/or premium payments, to maintain WCIP eligibility and coverage."² The application further noted "Non-Compliance With Agreements Or Certifications" wherein "the undersigned Applicant further understands and agrees that violation of or non-compliance with any of the above agreements or certifications may result in cancellation of a policy of insurance issued under a Workers' Compensation Insurance Plan and/or ineligibility for coverage under a Workers' Compensation Insurance Plan." Hannaway submitted his South Carolina assigned risk application through his producer David E. Rowell Co. Inc. – Rowell Insurance Agency, with P.J. Bootle, a representative of Rowell, executing the producer's certification to Hannaway's application.

After Hannaway submitted the application, in accordance with the WCIP, on or about April 7, 2017, Travelers' issued its Service Binder to Hannaway assigning Travelers as the servicing carrier of Hannaway's assigned risk policy, with an effective date of 4/5/2017 stating "This is to acknowledge receipt of an initial or deposition premium payment in your application for coverage through the Workers' Compensation Insurance Plan for the State of South Carolina . . . coverage is provided under the Workers' Compensation law of South Carolina . . . in accordance with the Plan rules." (Travelers APA 769 – 771). Thereafter, pursuant to the WCIP, Travelers issued its initial assigned risk policy to Hannaway in accordance with the WCIP. (Travelers APA 772 – 857). As set forth in the application, the assigned risk policy listed the insured "Hannaway, Michael d/b/a Hannaway Painting" with an address of "2655 Midland Park Road, Charleston, South Carolina 29406-4550," with a producer David E. Rowell, Co., Inc., with a policy period of 4/5/17 to 4/5/18, and a date of issue of 4/20/17. (Travelers APA 778). Pursuant to the WCIP, the assigned risk policy Part 5 "Premium" sets forth "A. Our Manuals. All premiums for this policy will be determined by our manuals of rules, rates, rating plans and

² Said application listed 2655 Midland Park Road, Charleston, South Carolina 29406-4550 as the purported insured's mailing address and set forth zero full time employees and zero estimated annual remuneration/payroll, including a representation that the purported insured did not use subcontractors and would not sublet any work without receiving certificates of insurance from his subcontractors.

classifications.” Subsection C. “Remuneration,” subsection D. “Premium Payments,” and subsection E. “Final Premium,” further set forth premium will be based on payroll and all other remuneration paid or payable during the policy period including all other persons engaged in work that could make Travelers liable for workers’ compensation and further required the insured “to pay all premium when due.” Part 6 “Conditions,” subsection D. “Cancellation” sets forth that Travelers “may cancel this policy by mailing or delivering to the insured . . . when the cancellation is to take effect. Mailing that notice [to the insured] at the mailing address listed in the policy will be sufficient to prove notice.” (Emphasis added). Based on his representations of zero payroll, Hannaway paid the minimal deposit premium mandated at the time pursuant to the WCIP.

Thereafter, on or about January 24, 2018, pursuant to the WCIP, Travelers issued a renewal quotation (Travelers APA 858 - 898).³ Pursuant to the WCIP, on or about March 27, 2018, Travelers requested an audit of the 4/5/2017 to 4/5/18 policy period “to insure that [Hannaway’s] estimated premium reflects [Hannaway’s] business operations and any changes that may have occurred during the policy period, [and Travelers is] required to conduct a premium audit on the policies listed above. This is an industry-standard practice and your participation in providing this information is essential in order to calculate your premium.” The audit request also provided the insured with audit tips for “preparing for your premium audit.” (Travelers APA 899 – 900). On or about March 30, 2018, Travelers issued an account bill for an additional \$250 for the policy of 4/5/2018 to 4/5/2019 in accordance with the WCIP, said account bill also providing the insured with the ability to dispute/appeal the premium assessment and noted “failure to pay the amount due may affect your insurability under the State Workers’ Compensation Insurance Plan.” (Travelers APA 126 – 128). The payment of \$250 was to be received by April 14, 2018. Having not received payment of the \$250, on or about 4/30/2018, Travelers again reminded the insured that an additional \$250 was due to be paid by May 14, 2018 and again noted that failure to pay the amount due may affect Hannaway’s insurability under the State Workers’ Compensation Insurance Plan and additionally provided Hannaway with the appeal mechanism of the WCIP if he disputed the additional premium owed and a customer service contact phone number to call if he wished to dispute the amount of additional premium owed. (Travelers APA 129 - 131).

On or about May 3, 2017, Travelers requested supplementary underwriting information in order for Travelers to conduct its audit. (Travelers APA 44 - 45). Thereafter, on or about May 8, 2018, Travelers conducted its audit for the initial policy period which revealed an actual exposure of \$60,251 due to Hannaway’s uninsured labor, including six uninsured workers. (Travelers APA 937 - 955). The Workers’ Compensation Coverage and Compliance records reflect that these subcontractors/workers did not have workers’ compensation insurance coverage under their own policies in South Carolina. (Travelers APA 956 –

³ The renewal quotation set forth: “Enclosed is your renewal quotation based on the latest payroll classification information available to us. In addition, payrolls have been increased in accordance with our established inflationary guidelines. Your renewal premium may require further adjustment as the result of changes in the workers’ compensation insurance rates, surcharges, experience modification factors or other programs approved by your State. IMPORTANT NOTICE: All premiums billed under your expiring policy must be paid before your policy can be renewed. If any outstanding premiums have not been paid, please remit them immediately.... In order to avoid a lapse in coverage, your renewal payment must be received by the expiration date shown on your bill.” (Travelers APA 858).

962). Based on the additional \$60,251 in audited payroll during the 4/5/2017 to 4/5/2018 policy period, a Premium Adjustment Notice of audited results of earned premium was generated and sent to Hannaway and his producer. (Travelers APA 963 – 965).⁴ On May 10, 2018, after deducting the initial deposit premium, pursuant to the WCIP, Travelers issued an earned premium bill in the amount of \$8,552 to be received by May 25, 2018 for the 4/5/2017 to 4/5/2018 policy period.⁵

On or about May 11, 2018, as required by the WCIP, Travelers subsequently issued an additional Endorsement for the 4/5/2018 to 4/5/2019 policy period based on the recent activity of the insured.⁶ As required by the WCIP, the Endorsement for the 2018-2019 policy reflected the total balance of \$18,957 for both the initial policy and the renewal assigned risk policies, which “must” be received by May 26, 2018. (Travelers APA 968). Travelers did not receive any timely payment from Hannaway and, thereafter, on or about May 24, 2018, pursuant to the WCIP, Travelers properly issued a Notice of Cancellation to Hannaway at the correct address, and to his producer and to NCCI/WCC notifying Hannaway, his producer and NCCI and the WCC that the effective date of cancellation would be July 3, 2018 at 12:01 a.m. if payment is not received by July 3, 2018 for the total amount of \$18,957. The Notice of Cancellation again provided Hannaway with a telephone number of Travelers to contact if he had any questions or concerns concerning premium or pending cancellation and set forth the required appeal mechanism pursuant to WCIP Rule 4 for Hannaway or his producer to appeal Travelers’ cancellation determination if Hannaway or his producer wished to appeal Travelers’ decision. (Travelers APA 970 – 973). Travelers mailed the Notice of Cancellation with a Certificate of Mailing on May 24, 2018 to the correct address for Michael Hannaway at 2655 Midland Park Road and to his producer. (Travelers APA 974 – 984). Hannaway’s producer received a copy of the Notice of Cancellation and the producer testified that she called and advised Hannaway of the Notice of the Cancellation and his need to timely pay the full premium owed or his assigned risk policy would cancel in accordance with the WCIP on July 3, 2018. (Travelers APA 244 – 280). Hannaway never paid the amounts owed to Travelers and his assigned risk policy was thereafter effectively cancelled on July 3, 2018, as reflected by the NCCI Proof of Coverage inquiry. (Travelers APA 5). Thereafter, on or about July 27, 2018, a cancellation audit was requested for the 4/5/2018 to 7/3/2018 policy period. (Travelers APA 987 – 988). On or about August 22, 2018, a subsequent audit was performed for the cancelled policy period from 4/5/2018 to 7/3/2018, revealing \$5,623 in exposure during the cancelled policy term. (Travelers APA 989 – 995). On or after September 7 2018, after deducting the deposit renewal premium paid, Travelers issued a Premium Adjustment Notice to Hannaway for an additional \$1,129, as a result of the \$5,474 payroll, during the cancelled policy period of 4/5/2018 to 7/3/2018. (Travelers APA

⁴Said Premium Adjustment Notice again provided the insured a 1-800 telephone number regarding policy billing or service in case the insured or producer had any questions.

⁵The earned premium bill also provided a phone number for the insured to call if he had any questions concerning the earned premium bill and further set forth the WCIP appeal mechanism for the insured to dispute the amount of the bill if he or the producer so desired. (Travelers APA 966 – 967).

⁶The Endorsement providing the insured a telephone number to contact a Travelers representative if he disputed the amount owed and set forth the appeal dispute mechanism available to Hannaway or his producer to dispute the amount of the bill if Hannaway or his producer so desired.

996 – 997). Travelers APA 189 and 173-174 reflect the producer's written and oral communications to Hannaway on or about May 30, 2018 advising Hannaway that his Travelers assigned risk policy of insurance would cancel by July 3, 2018 if he did not pay the full amount of premium owed to Travelers in the amount of \$18,957 prior to such date.

Yeamans representatives testified that the Claimant was not a statutory employee of Yeamans based on the requirements of statutory employer law in South Carolina. Alan Halle testified that he is the maintenance manager for Yeamans and has worked for the same employer for 15 years. As maintenance manager, he is familiar with Hannaway Painting/Mike Hannaway as that is the contractor that he hired to do work at Yeamans. He specifically testified that he would tell Mike Hannaway where the job was located. Mr. Hannaway would perform the work and then send a bill or invoice to Yeamans who would pay him once the work was completed. Mr. Halle specifically testified that Hannaway Painting was only paid upon completion of the job. If a specific homeowner at Yeamans wants something done on the house and hires their own contractor, the homeowner is responsible for paying the contractor separately. Mr. Halle further testified he is familiar with Mr. Quinn but has never hired him or had him perform any work for Yeamans. He testified that Yeamans has now done some the pressure washing personally because of this Workers Compensation claim. He testified pressure washing houses is not an important part of the business of Yeamans and is in fact "minute."

On cross-examination, Mr. Cook questioned Mr. Halle regarding his deposition testimony. Mr. Halle was asked regarding his prior deposition testimony about whether pressure washing of private homes is an important part of Yeamans business where his response was no. He then testified in his deposition that pressure washing likely gets done once a year. He was then asked at the hearing whether he is "saying that there was not already a custom or habit of pressure washing houses one time a year?" Mr. Halle again responded no, not as a standard. (Transcript p.36). He then testified that, if a homeowner wants the house pressure washed, he will call the contractor and have them do it. Mr. Cook then asked him if "Yeamans Hall Club's employees began to do that." Mr. Halle testified "we started taking care of it after Mr. Quinn got hurt, injured." (Transcript p.37, L 2-9). Mr. Halle then testified that as a result of Mr. Quinn getting hurt, and finding out that the contractor's insurance was canceled, they first pressure washed houses to avoid any further lawsuits or exposure. When asked whether Yeamans has ever pressure washed before Mr. Quinn's injury, Mr. Halle testified no. (Transcript p. 37).

The deposition transcript of Jason Lambert was submitted into evidence as Exhibit 8. Mr. Lambert testified he is the Controller for Yeamans. Yeamans is a golf resort that hires independent contractors such as Hannaway Painting to work on the houses or properties that are in some of their areas. Hannaway Painting was hired as a vendor or independent contractor to do pressure washing on houses and other jobs such as painting and repairs. He testified pressure washing housing is not an important or integral part of the business of Yeamans (Lambert Depo Transcript p. 6). Yeamans did not provide any equipment or supplies to Hannaway painting, cannot hire or fire their employees, and Hannaway Painting only gets paid when each particular job is

completed. Mr. Lambert further testified that the pressure washing of houses was not an important part of the business of Yeaman's Hall and described it as "miniscule". (Lambert Depo Transcript p.29)

The deposition transcript for Mike Hannaway submitted reflects that he testified that Yeamans was his customer and he received his job offers by text message, email, and sometimes verbally on where the jobsite was located. No one from Yeamans showed up to tell him how to do his job or to give him instruction. When he finished the job, he would then send his bill to Yeamans.

MEDICAL EVIDENCE

On the day of his injury, Mr. Quinn was transported by Charleston County EMS to Summerville Medical Center. Upon admission, X-rays were taken of his lower leg right, lower leg left and ankle complete bilateral. The results of the X-rays were:

1. Lower leg right - calcaneal fracture is present
2. Lower left leg - distal tibial plafond nondisplaced fracture and medial malleolus
3. Ankle complete bilateral - commuted impacted right calcaneal fracture; on the left, mildly displaced transverse medial malleolus and a nondisplaced pilon fracture involving the tibial plafond extending into the distal tibial diaphysis, and chronic osteochondral lesion on the lateral talar dome of the left ankle."

Mr. Quinn was transferred to Trident Regional Medical and admitted for further treatment and diagnosis. Mr. Quinn presented to Dr. Adam Schaaf for an orthopedic consultation for bilateral lower extremity fractures. The diagnosis was: "right calcaneus fracture and left tibial plafond fracture." Dr. Schaaf's treatment plan included surgery "to address the calcaneus fracture on a delayed basis to allow his swelling to subside to decrease the incident of wound complications." Dr. Schaaf noted Mr. Quinn was to be non-weight bearing on the bilateral lower extremities. Dr. Schaaf recommended a pain control program, ice and elevation.

On August 31, 2018, Mr. Quinn was discharged to home care and was referred to Dr. Howard Richter for surgical evaluation.

On September 5, 2018, Mr. Quinn began treatment with Dr. Richter. Dr. Richter diagnosed Mr. Quinn with: "closed nondisplaced fracture of tuberosity of right calcaneus, unspecified fracture morphology, closed displaced fracture of medial malleolus of left tibia, and closed nondisplaced pilon fracture of left tibia." Dr. Richter recommended surgery.

On September 6, 2018, Dr. Richter performed ORIF right calcaneus, ORIF left medial malleolus and closed treatment of the left distal tibia pilon fracture. Mr. Quinn continued treating with Dr. Richter for postoperative follow up.

On January 9, 2019, Dr. Richter noted "throughout his post-operative course, he has developed lower back pain. He has been working with physical therapy for this."

On March 20, 2019, Dr. Richter noted "at this point he is not able to return to work in his usual capacity." Dr. Richter further noted Increased Fall Risk Factors as "difficulty ambulating (walks with cane or

walker), pain affecting level of function, pain impacts activities of daily living."

On May 1, 2019, Dr. Richter noted that Mr. Quinn had been weight-bearing as tolerated and that Mr. Quinn would continue to occasionally have pain to the plantar lateral aspect of his right foot. Dr. Richter further noted that "he has minimal discomfort localized to his subtalar joint." Dr. Richter recommended continued physical therapy, with a focus on strengthening.

On June 3, 2019, Dr. Richter noted Mr. Quinn was making moderate gains in physical therapy and was improving the range of motion of the subtalar joint. Dr. Richter recommended that Mr. Quinn increase his activity level.

On August 28, 2019, Mr. Quinn had axial and lateral radiographs taken. Dr. Richter noted "a healed calcaneus fracture in good anatomic alignment with hardware in place." Dr. Richter recommended continued increase of activity level and strengthening range of motion of the right lower extremity.

On October 2, 2019, Mr. Quinn presented to Dr. Richter due to a twisting injury of his right ankle, which resulted in significant pain and difficulty with range of motion and ambulation. Dr. Richter ordered AP and lateral radiographs and noted "no acute fracture dislocation with hardware placed in the right calcaneus." Dr. Richter recommended continued increase of activity level.

FINDINGS OF FACT & CONCLUSIONS OF LAW

The Full Commission has thoroughly reviewed the evidence in the Record and the testimony of the parties and witnesses and reached a decision in this matter. The Full Commission Panel has considered the matter and finds a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order. The Full Commission adopts and Single Commissioner's Findings of Fact and Conclusions of law as the Full Commission's findings. The Full Commission finds the following Findings of Fact and Conclusions of Law⁷:

The South Carolina common law, statutes, the WCIP and regulations cited below give the appropriate definitions and provisions of the South Carolina Workers' Compensation Act and South Carolina law as would be applicable to this case. South Carolina workers' compensation law sets forth: §42-1-40 defines "average weekly wages"; §42-1-100 defines "compensation"; §42-1-120 defines "disability"; §42-1-130 defines "employee"; §42-1-140 defines "employer"; §42-1-150 defines "employment"; 42-1-160, Defines injury by accident; 42-9-10 and 42-9-20 allows for compensation; §42-9-30 is applicable in determining the amount of compensation and period of disability for certain injuries; §12-9-210 is applicable in determining when a carrier is entitled to credit for overpayment of temporary disability; §42-15-60 is applicable in determining the period of time within which medical treatment and supplies shall be furnished; §42-17-40 is applicable in governing the conduct of hearings and rendering of awards.

⁷ To the extent applicable, all findings of fact and conclusions of law are findings of the Full Commission in regard to this matter. To the extent any findings of fact are conclusions of law and to the extent that any conclusions of law are findings of fact, the findings and conclusions HEREIN are interchangeable and serve as both the Full Commission's findings of fact and conclusions of law.

The Workers Compensation Insurance Plan, the NCCI Basic Manual and Supplements (collectively referred to as “the WCIP”) have the force of law; WCIP Rule 4 sets forth the mandatory WCIP appeal mechanism (Travelers APA 235-237; 1351-1353); Supplement Part 1, Section (I) of the WCIP sets forth “Duties and Responsibilities Under the Plan” (Travelers APA 1347-1348); Supplement Rule 12 sets forth “Cancellation, Renewal, Non-Renewal, Reinstatement, Reapplication, and Reassignment” of the WCIP (Travelers APA 1345-1346); S.C. Regulation 67-405 and 67-416 set forth “Employers and Insurance Carriers, Proof of Compliance” and “Electronic Data Interface,” and §42-7-200 sets forth the “Workers’ Compensation Uninsured Employers’ Fund; claims, collection powers; reimbursement agreements; funding.”

AS TO TRAVELERS

The Full Commission finds and concludes:

1. That South Carolina law provides for a workers’ compensation market for workers’ compensation policies of last resort, generally referred to as assigned risk workers’ compensation policies. Assigned risk policies are for high risk employers who are unable to obtain workers’ compensation coverage in the voluntary market. Assigned risk policies are highly regulated by the South Carolina Department of Insurance (SCDOI) and issued pursuant to the WCIP and are administrated through the SCDOI/NCCI.⁸ The SCDOI/NCCI require servicing carriers to provide for standard forms, policies, and Endorsements via forms adopted by the SCDOI/NCCI in South Carolina. Servicing carriers, such as Travelers, are required to follow the WCIP provisions and utilize forms as required by the SCDOI/NCCI in South Carolina.

2. That, in South Carolina, the WCIP has the “force of law.” According to the applicable provisions of the South Carolina assigned risk plan, the WCIP, as administered by SCDOI/NCCI, is the only “mechanism” in the state for implementing the assigned risk pool and has been approved by the Director of the Department of Insurance for use in South Carolina. Avant v. Willowglen Academy, 367 S.C. 315, S.E.2d 797 (S.C. 2006) affirming 356 S.C. 181, 588 S.E.2d 125 (Ct. App. 2003). While the Court of Appeals in the Avant case noted that the General Assembly had not specifically enacted the WCIP, it determined that the Director of the Department of Insurance followed the broad mandate of the General Assembly and properly acted upon its intent in section 38-73-540 to create an assigned risk plan by approving the WCIP for its use in the assigned risk practice in this State. Id. The WCIP provides the framework for the assigned risk pool and includes numerous provisions governing assigned risk practice. Id. Without the WCIP, there would be nothing guiding assigned risk practice and its procedure, such as an employer’s application process for assigned risk coverage or the assignment of an insurer to a risk. Id. The only way an employer can obtain an assigned risk policy is by applying through SCDOI/NCCI and the WCIP and certifying that the employer is unable to obtain voluntary coverage. Id. SCDOI/NCCI is designated in the WCIP as the “plan administrator.” Id. The Supreme Court affirmed that WCIP rules have the “force of law” concerning

⁸ For those entities that cannot obtain workers’ compensation coverage in the voluntary market, the State has an established “assigned risk” or “residual market.” Rates for such a program are established by the State, and rules and procedures have been promulgated by the State as they relate to the assigned risk market – the South Carolina Workers’ Compensation assigned risk Plan (WCIP), operating rules and procedures. The Plan administrator for the residual market is the National Council on Compensation Program, Inc. (NCCI).

assigned risk policies. More recently, in Burris v. Propst Lumber & Logging, Inc., 396 S.C. 85, 719 S.E.2d 695 (Ct. App. 2011), the Court of Appeals confirmed that the assigned risk Basic Manual and Supplement “is controlling law with respect to the issues it addresses.”

3. That the Workers’ Compensation Commission has already found that Michael Hannaway d/b/a Hannaway Painting was uninsured on the alleged date of loss, 8/29/2018 via the Order of Commissioner Campbell filed on July 25, 2019:

“The greater weight of the evidence, including the records contained in the Commission’s file, and the unrefuted testimony of Emillie Boggs, Coverage and Compliance Officer, establish that Respondent did not secure the payment of compensation under the Act by obtaining workers’ compensation insurance or qualifying as a self-insurer between July 3, 2018 through the date of Hearing on June 29, 2019.”
... [and] “Respondent violated the provisions of § 42-5-10 and § 42-5-20 by refusing or neglecting to secure the payment of compensation by failing to insure and keep insured its liability under the Act for the period of July 3, 2018 through June 19, 2019”).
(Travelers APA 1-4).

4. That, by prior Decision and Order of the Commission, which was not appealed, Hannaway was subject to the South Carolina Workers’ Compensation Act based on his prior election to come under the Act, when he obtained workers’ compensation insurance coverage and then violated the provisions of the Act by failing to insure and keep insured its liability under the Act. (Travelers APA 1-4).

5. That Commissioner Campbell’s Decision and Order is the “law of the case.”⁹ Commissioner Campbell has already decided that Hannaway was uninsured on the date of loss and his Order was unappealed. As such, the Full Commission further finds and concludes that neither Hannaway, nor the UEF, which steps in Mr. Hannaway’s shoes, can subsequently collaterally attack Commissioner Campbell’s Order via this subsequent action as a single Commissioner cannot overrule and overturn the decision of another single commissioner (Commissioner Campbell). As such, Commissioner Campbell’s Decision and Order is binding on Hannaway and the UEF, and Travelers, as the assigned risk carrier, did not provide any coverage on the date of loss pursuant to such Order.¹⁰

⁹ Indeed, the Full Commission further finds and concludes that the prior Decision and Order of Commissioner Campbell binds Hannaway and has a preclusive effect pursuant to the well-established principle collateral estoppel. Collateral estoppel, also known as issue preclusion, prevents a party from re-litigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same. Judy v. Judy, 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment. Beall v. Doe, 281 S.C. 363, 369 n. 1, 315 S.E.2d 186; 189-90 n. 1 (Ct.App.1984). “[C]ollateral estoppel bars re-litigation of the same facts or issues necessarily determined in the former proceeding.” Pye v. Aycock, 325 S.C. 426, 436, 480 S.E.2d 455, 460 (Ct. App. 1997).

¹⁰The UEF asserts that it is not bound by the Decision and Order of Commissioner Campbell as it was not a party to the prior proceeding and that the UEF does not otherwise “step into the shoes” of the insured. The UEF, however, fails to reference any specific statute or case law that would allow the UEF to avoid the Decision and Order of Commissioner Campbell or its implications in this case. Upon review of the South Carolina Uninsured Employers’ Fund statute, there is no provision which provides the UEF with additional or more rights to establish coverage between an assigned risk insured and an assigned risk servicing carrier above and beyond the rights the purported assigned risk insured would have. In contrast, as for the assigned risk policy at hand, the UEF “steps in the shoes” of the purported assigned risk uninsured employer and the UEF is equally bound by Commissioner Campbell’s Decision

6. In addition to the prior unappealed Order from the Commission finding Hannaway “failed to insure and keep insured its liability under the Act,” as an alternate sustaining ground, the Full Commission further finds that Travelers properly cancelled Hannaway’s policy within the requirements and parameters set forth by the WCIP and that Claimant did receive notice of the pending cancellation and right to cure directly and also by and through his agent – the producer – Ms. Patsy Bootle, both verbally over the telephone and via mail. This finding is based on the preponderance of the evidence as a whole including the policy documents (Travelers APA 14-170; 748-1031) and the hearing testimony (Transcript of Hearing p. 20-23) and deposition testimony of Ms. Patsy Bootle (Travelers APA 171-234; 244-280), which the Single Commissioner and the Full Commission find credible.

7. That, pursuant to the WCIP/South Carolina assigned risk law, a producer is an agent of the insured (in other words, Rowell, as a producer, is an agent of the insured Hannaway, not of the servicing carrier Travelers).

8. That Hannaway, through his producer Rowell Insurance Agency (hereinafter “Rowell”), submitted an assigned risk application in South Carolina to NCCI pursuant to the workers’ compensation insurance laws of South Carolina. (Travelers APA 749).

9. That the subpoenaed Rowell producer’s file, along with the producer’s sworn testimony, also clearly reflect that Hannaway’s producer and Hannaway received the previously mentioned Notices, Premium Adjustments, and Notice of Cancellation, and Hannaway was timely advised of such documentation.

10. That Hannaway initially held a workers’ compensation policy that covered the period from April 5, 2018 through April 5, 2019, which would have covered Claimant’s August 29, 2018 work injury if the assigned risk policy were not properly cancelled.

11. That Travelers, the assigned risk servicing carrier, fully complied with the workers’ compensation requirements and the WCIP, which required Travelers to cancel the policy based on the facts and circumstances of this case.

12. That, pursuant to the application and the assigned risk documents of South Carolina, Hannaway agreed to be bound by the terms of the assigned risk rules and the WCIP in South Carolina pursuant to South Carolina law. (Travelers APA 749):

and Order, as the uninsured employer would be. Indeed, there is no contractual relationship between the UEF and the assigned risk servicing carrier and, as far as the insured’s failure to comply with his assigned risk obligations, the UEF is bound and limited by such failures of the insured. The UEF cannot ignore the assigned risk insured’s failure to comply with his obligations and the resulting assigned risk policy cancellation in accordance with the WCIP based on the insured’s failures. The UEF does not have independent rights to coverage under an assigned risk policy that was properly cancelled in accordance with the WCIP. Moreover, it is untenable that the Workers’ Compensation Commission would find the uninsured employer to be uninsured and require him to pay a fine into the Workers’ Compensation Commission on the one hand via one Commissioner’s Order, but then another Commissioner would subsequently issue a contradictory Order finding the exact opposite, i.e., that the assigned risk insured was insured in a separate proceeding. Accordingly, the Rule to Show Cause hearing findings and the Decision and Order of Commissioner Campbell has binding effect on both the assigned risk insured and the UEF.

"Applicant's Statement: The undersigned Applicant hereby certifies that he/she has read and understands the questions and statements in the application, which is comprised of both the ACORD 130 and ACORD 133 forms. In consideration of coverage being afforded under the applicable Workers Compensation Insurance Plan developed or administered by NCCI (WCIP or Plan), by signing below, the Applicant also certifies that any and/or all responses provided in or to this application, which is comprised of both the ACORD 130 and ACORD 133 forms, are true and accurate and Applicant further understands and agrees that:

- Since he/she has been unable to secure workers compensation coverage in a regular manner through any other insurance carrier or provider, this coverage is being afforded under the applicable WCIP, and that the applicable rates and rating programs charged may be higher than those in the voluntary market.
- Provided that Applicant is determined to be eligible and in good faith entitled to WCIP Insurance based upon the information provided herein or otherwise available to the Plan Administrator, coverage will be bound in accordance with WCIP rules. See the WCIP for applicable binding rules.

If deemed eligible under the WCIP and as further consideration of policy issuance under the WCIP by signing below, the undersigned Applicant also agrees:

- To maintain a complete record of all payroll transactions in such form as the insurance company may reasonably require and that such record will be available to the company at the designated address; and
- To comply with all WCIP rules and procedures and policy terms and conditions, including without limitation, those relating to audits, inspections, loss prevention, and/or premium payments, to maintain WCIP eligibility and coverage.

NON-COMPLIANCE WITH AGREEMENTS OR CERTIFICATIONS

The undersigned Applicant further understands and agrees that violation of or non-compliance with any of the above agreements or certifications may result in cancellation of a policy of insurance issued under a Workers Compensation Insurance Plan and/or ineligibility for coverage under a Workers Compensation Insurance Plan."

13. That, in his assigned risk application, Hannaway represented he had zero employees, he had no payroll, he used no subcontractors and does not sublet without receiving a certificate of insurance from a subcontractor. Based on such material representations, the NCCI initially calculated the minimal deposit premium for the issuance of Hannaway's initial assigned risk policy. (Travelers APA 749).

14. That, pursuant to the South Carolina application submission, Travelers was assigned as the servicing carrier pursuant to the WCIP/South Carolina assigned risk law and issued a policy binder, Binder Number: 39-10804-17097-337145, effective 04/05/2017. See Travelers APA 750 stating:

"This is to acknowledge receipt of an initial or deposit premium payment and your application or coverage through the Workers Compensation Insurance Plan for the State of SOUTH CAROLINA. Coverage is provided under the Workers Compensation Law of SOUTH CAROLINA ... in accordance with the Plan rules. NOTICE: COVERAGE FOR THIS EMPLOYER HAS BEEN PLACED THROUGH THE ASSIGNED RISK PLAN. AS THE PLAN IS THE MARKET OF LAST RESORT, COVERAGE SHOULD CONTINUE TO BE SOUGHT THROUGH THE STANDARD/VOLUNTARY MARKET. PLEASE NOTE THAT PREMIUMS IN THE ASSIGNED RISK PLAN MAY BE HIGHER THAN THE STANDARD/VOLUNTARY MARKET.

If a policy issued by an Insurance carrier, pursuant to an assignment under the Workers Compensation Insurance Plan, is canceled due to the employer's failure to comply with terms or conditions of the policy, such employer may be ineligible for further coverage under the Plan."

15. That, thereafter, Travelers issued a South Carolina assigned risk Policy No. 6JUB-8H01798-A-17, pursuant to the WCIP. (Travelers APA 750). The South Carolina assigned risk policy Declaration Page sets

forth South Carolina coverage for the policy period 04/05/2017 to 04/05/2018 with an initial minimum premium deposit estimate of \$1,325, based on the application representations.

16. That, as required by the WCIP, the initial (and subsequent renewal policy) contained the Endorsements as mandated by the NCCI and the WCIP/Basic Manual. (Travelers APA 750).

17. That in relevant parts, the initial and renewal assigned risk policy set forth:

"PART FIVE: PREMIUM

A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

C. Remuneration

... This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. All your officers and employees engaged in work covered by this policy; and
2. All other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. ...

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. ... If this policy is canceled, final premium will be determined in the following way...

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. Insurance rate service organizations have the same rights we have under this provision.

**PART SIX
CONDITIONS**

D. Cancellation

... 2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.

3. The policy period will end on the day and hour stated in the cancellation notice. (Travelers APA 750 - 751).

18. That, pursuant to the WCIP, on or about January 24, 2018, Travelers issued Hannaway's renewal quotation with policy number 6JUB-8H01798-A-18 (a renewal of 6JUB-8H01798-A-17), and the renewal policy contained identical Endorsements as mandated by the NCCI and the WCIP, as well as the same premium and cancellation provisions as the initial policy. (Travelers APA 751).

19. That, pursuant to the WCIP, on or about March 27, 2018, Travelers requested to conduct a premium audit of the initial policy, providing “preparing for your Premium Audit” tips, including for the insured to have available payroll documentation and subcontractor information and/or certificates of insurance. (Travelers APA 751).

20. That, pursuant to the WCIP, on or about March 30, 2018, and then again on April 30, 2018, Travelers issued an account bill of \$250 for additional deposit premium pursuant to the WCIP. The additional \$250 payment was due on or before April 14, 2018 (per Travelers’ March 27 letter to Hannaway) and then on or before May 14, 2018 (per Travelers’ April 30 letter to Hannaway). Travelers’ bills further provided Hannaway and his producer with an opportunity to dispute the additional amount due and the WCIP required appeal procedure to avoid cancellation if a premium dispute were to arise. (Travelers APA 751).¹¹

21. That, on May 4, 2018, Hannaway confirmed the proposed audit date and advised Travelers that his CPA Diana Thompkins would handle the audit. (Travelers APA 752).

22. That, pursuant to the WCIP, the Travelers auditor proceeded with the audit of the initial policy on May 28, 2018 (Travelers APA 752), and the audit revealed that Hannaway’s application was incorrect and that Hannaway’s actual exposure was \$60,251 based on his uninsured workers as set forth in Travelers APA 942 in particular. The Full Commission further finds that Hannaway’s contract workers/laborers Blanca Cartagana, Gerson Pena, David Excoabar, Veronica Guevara, Cesar Garcia, and Jeff Quinn were not insured with their own workers’ compensation policies during the policy period (Travelers APA 956 – 962), and that Coverage and Compliance documents verify Hannaway’s workers had no workers’ compensation coverage in South Carolina. Likewise, Hannaway did not provide any certificates of insurance to Travelers for such uninsured workers. The Full Commission further finds that the WCIP/Basic Manual requires that such workers and payments made to such workers be added to the exposure and to be treated as payroll during the policy period. (Travelers APA 752).

23. That, pursuant to the WCIP and based on the annual physical audit, Travelers issued a Premium Adjustment Notice on May 8, 2018, advising Hannaway of the \$9,877 for the 2017 policy premium owed (based on the additional audited payroll/exposure of \$60,251). The Full Commission further finds that the additional charges were correctly and appropriately assessed in accordance with the WCIP. (Travelers APA 752).

24. That, pursuant to the WCIP, on May 10, 2018, Travelers properly issued an Earned Premium Invoice for \$8,552 (the audited results minus the initial deposit premium paid in 2017) to Hannaway for the additional premium owed for the 2017 policy, with a payment deadline of May 25, 2018 and advising Hannaway of his

¹¹ Hannaway never paid the \$250 additional deposit premium as required by the WCIP.

ability to dispute the amount due and the required WCIP appeal procedure if Hannaway disputed the amount owed. (Travelers APA 752).

25. That, pursuant to the WCIP, on or about May 11, 2018, due to the recent activity and additional premium owed under the initial policy (whereby Hannaway's application representations were erroneous), Travelers properly issued the required Endorsement set forth in Travelers APA 968 for the renewal policy, advising the insured that his total balance of premium owed to the servicing carrier for the correct amount of premium due for the initial and renewal assigned risk policies to be \$18,957 and that payment must be received by May 26, 2018. I hereby find that the Endorsement further provided Hannaway with the WCIP required appeal procedure if Hannaway disputed the amount of premium owed pursuant to the Endorsement. (Travelers APA 752).

26. That, pursuant to and in accordance with the WCIP, having not received premium payment when due, on or about May 24, 2018, Travelers properly and correctly issued the WCIP Notice of Cancellation (NOC) with an effective date of cancellation of July 3, 2018 if payment of \$18,957 was not received by the servicing carrier by July 3, 2018. Pursuant to the policy terms and WCIP, the Full Commission further finds that the NOC was properly mailed by Travelers to Hannaway's correct address noted on the application and policy, and properly mailed to the producer, who both received a copy of the NOC. The Full Commission further finds that Hannaway's producer timely received the NOC and advised Hannaway of the NOC prior to the effective cancellation of the policy. (Travelers APA 753; 970 – 986).

27. That, pursuant to the WCIP, due to Hannaway's failure to pay premium timely or even contest the premium determination of Travelers, Travelers properly issued a NOTICE OF CANCELLATION FOR NON-PAYMENT OF PREMIUM on May 24, 2018 with an effective cancellation date of July 3, 2018 for the renewal policy. Said NOC was properly filed with the NCCI/South Carolina WCC on May 24, 2018 and mailed to Hannaway and its producer Rowell in accordance with the WCIP/South Carolina law. (Travelers APA 753; 970 – 986).

28. That, on or about June 6, 2018, the servicing carrier Travelers, through its representative Pattie Burns, called the insured Hannaway at the phone number listed on the application. However, the insured's phone number was incorrect. Pattie called as a courtesy to follow up with the insured about the audit and the pending cancellation. Being provided with an incorrect phone number, Pattie then called the producer to obtain updated phone numbers for the insured Hannaway. The producer provided Pattie with two phone numbers. Pattie called both phone numbers and left a voice message with the insured to contact her to discuss the potential cancellation and to see if he had any questions or would like to discuss any issue, including payment and/or cancellation of the renewal policy. The servicing carrier attempted to contact the insured telephonically

as a matter of courtesy and as an additional opportunity to cure any potential issues of concern of the insured. (Travelers APA 753).

29. That, pursuant to the WCIP, Hannaway was to fully cooperate with his WCIP obligations and underwriter requirements, including fully paying premium when due pursuant to the policy terms and the WCIP; however, Hannaway failed to pay premium when due or comply with his obligations under the terms of the policies and the WCIP. Moreover, as required pursuant to WCIP Rule 4, Hannaway did not dispute the amount of premium owed or the cancellation of said policy prior to its cancellation on July 3, 2018. (Travelers APA 753).

30. That, as Hannaway failed to pay premium when due, the servicing carrier, Travelers' Notice of Cancellation became effective on July 3, 2018, for Hannaway's failure to pay premium when due pursuant to the WCIP. (Travelers APA 753).

31. That the WCIP requires the servicing carrier Travelers to charge the premium it charged to Hannaway. The servicing carrier has no discretion to waive or fail to collect the premium owed (or how the WCIP requires the premium to be determined). The WCIP requires that the initial policy and subsequent renewal policy premium be paid in full when due or any subsequent renewal or current policy will be cancelled after an opportunity to cure. Indeed, the WCIP requires all premium for all assigned risk policies issued to an insured to be paid when due or the insured is no longer eligible for an assigned risk policy at all. The WCIP expressly requires a servicing carrier to cancel a renewal policy if the insured has not fully paid his premium for the prior or current policy. See WCIP Supplement 12 – **Cancellation, Renewal, Nonrenewal, Reinstatement, Reapplication and Reassignment** which states:

B. Cancellation

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

... Violating any of the terms and conditions under which the insurance was issued ...

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

The policy must 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 is made. (Travelers APA 1345-1346)

32. That, under Supplement Rule 12, the WCIP specifically and expressly requires a servicing carrier to receive full payment under all policies (the initial policy, and any subsequent renewal policy) in

full by the due date for such premium, or the servicing carrier has a duty to cancel the assigned risk policy. If, after the issuance of a policy, the assigned carrier determines that an employer is in non-compliance with any of the policy provisions of a current or previous workers' compensation policy by, including, but not limited to, violating any of the terms and conditions under which the insurance was issued (such as failure to pay premium when due), the servicing carrier must initiate cancellation after providing an opportunity for cure, (even if the non-compliance was for a previous policy issued by a different carrier). Significantly, the WCIP sets forth:

NCCI Assigned Risk Supplement, Part One – Workers Compensation Insurance Plans, sets forth:

1. Duties and Responsibilities Under the Plan

C. Employer

The employer's responsibilities are as follows:

1. Complies with all provisions of the Plan, including accurately and fully completing the required application form(s) and supplying with the specified time frame any supporting documents that may be required. . . .

5. Complies strictly with all terms and conditions of the policy, including providing all information requested by the assigned carrier for auditing and underwriting purposes, and paying all premium when due. (Emphasis added).

The WCIP requires that an insured's responsibility includes, No. 5, to comply strictly with all terms and conditions of the policy, including "paying all premium when due." (Emphasis added). Therefore, it is an insured's obligation to pay all premium when due for initial and renewal policies or the servicing carrier must cancel the assigned risk policy of insurance after an opportunity to cure is provided to the insured.¹²

33. That, per the WCIP Supplement, Part 1, Section (I)(C)(5), payment of premium in full is an obligation and responsibility of an assigned risk insured and, moreover, failure to pay premium when due of an initial or renewal assigned risk policy is a violation of the terms and conditions under which the insurance was issued pursuant to Supplement Rule 12 and requires the servicing carrier to initiate cancellation after providing an opportunity to cure. Moreover, the Full Commission further finds Travelers properly cancelled Hannaway's assigned risk policy in accordance with the WCIP Supplement, Part 1 Section (I)(C)(5), and Supplement Rule 12.

34. That Travelers complied with the express requirements as set forth and mandated by the WCIP. Hannaway's requirement to pay all premium due for a renewal assigned risk policy to remain in effect is mandated by the WCIP and his failure to pay premium when due is a violation of Hannaway's WCIP requirements and key terms of the assigned risk policy issued to Hannaway. The Full Commission further finds that Hannaway did not substantially comply with payment of his premium obligations; rather, he utterly failed

¹² The cancellation of a subsequent policy procedure is by design because the total premium owed for the initial policy, and the audit for such initial policy, may not even occur until after the renewal policy has been issued.

to pay the required premium owed when due as mandated by the WCIP. The Full Commission further finds that Hannaway was provided multiple opportunities to cure his deficiencies by Travelers, but Hannaway failed to pay the premium due and as required by the WCIP. As such, the Full Commission further finds that Hannaway repeatedly failed to pay the premium owed when due after numerous opportunities to cure, and, therefore, Hannaway violated his key premium obligations per the assigned risk policy issued to him pursuant to the WCIP.

35. Particularly, the Full Commission further finds that Hannaway was provided with numerous opportunities to cure the violation of failure to pay premium, but Hannaway failed to avail himself of such opportunities. Hannaway never called the customer service number to question or object to Travelers' premium determination or cancellation. Hannaway never disputed the premium with Travelers prior to cancellation as is required under Rule 4 of the WCIP. Hannaway never filed an appeal under Rule 4 as is required under the WCIP. Further, as a courtesy, the servicing carrier called the producer and the insured and left messages, and Hannaway never responded to the servicing carrier after the notice of cancellation was sent, but before the cancellation became effective.

36. The Full Commission further finds that this claim is distinguished from Crews v. W.R. Crews, Inc., 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010).¹³ In Crews, the South Carolina Court of Appeals held that Crews' third renewal policy could not be cancelled for failure to comply with the audit requirements of the first/initial policy because the insured was fully compliant with the third policy, had substantially complied with the audit request on the first/initial policy, and the carrier did not provide an opportunity to cure any non-compliance. In this case, Hannaway was completely non-compliant on his first/initial policy as he did not pay the premiums when due. Furthermore, the Full Commission hereby finds that Hannaway was provided with multiple opportunities to cure his non-compliance which included both an additional time period in which to pay as well as an administrative appeal to the carrier after the policy was cancelled. Hannaway did not avail himself of any of the aforementioned remedies and failed to comply in whole. As such, the Full Commission hereby finds Crews does not apply to this case.

37. Moreover, Crews interpreted the 2003 WCIP, which did not reference WCIP Supplement Rule 12. Here, the applicable WCIP in 2018 sets forth Supplement Rule 12, which specifically requires Travelers to cancel the subsequent renewal policy for Hannaway's failure to pay premium for the initial and

¹³ The UEF asks the Full Commission to apply a prior version of the WCIP that is not applicable to this case. Indeed, the UEF not only asks the Full Commission to apply distinguishable law (i.e., the Crews decision which was based on a prior version of the WCIP), but the UEF asks the Full Commission to also apply the distinguishable case in an incorrect manner. Significantly, the Crews decision applied and interpreted the WCIP as it existed at the time in 2003. The Crews decision does not involve the 2018 WCIP provisions applicable to this case (being the WCIP in 2018). The WCIP applicable to this case expressly requires a servicing carrier such as Travelers to cancel an assigned risk policy if premium is not paid for any prior or current policy period; this is significantly different than what the WCIP required in 2003. Moreover, even if the Crews decision were to apply, Travelers would still prevail because Travelers meets the Crews requirements anyway, as the insured had numerous opportunities to cure by paying the premium owed, but repeatedly failed to do so.

renewal policy period. Moreover, even if Crews were applicable, here, Hannaway was completely non-compliant because he did not pay any premium (other than the initial deposits), and, although he was provided with numerous opportunities to cure, Hannaway ignored his repeated opportunities to cure. Therefore, Crews is inapplicable.¹⁴

38. That, thereafter, pursuant to the WCIP, Travelers, requested a physical cancellation audit for the period of 04/05/2017 to 07/3/2018, (the cancellation date) and thereafter performed a physical cancellation audit on 8/22/2018 and the cancellation audit revealed additional exposure of \$5,623 and Travelers was owed \$1,129 for such period. Said Premium Adjustment Notice was mailed to Hannaway and its producer Rowell on 09/07/2018. (Travelers APA 753 - 754).

39. That, pursuant to the South Carolina assigned risk policy terms itself and the WCIP, the Travelers South Carolina assigned risk policy was effectively cancelled on July 3, 2018 and was not in effect on the date of loss of the Claimant, August 29, 2018; moreover, the Full Commission further finds that the Travelers' South Carolina assigned risk policy does not provide workers' compensation coverage in the State of South Carolina for such date of loss.

40. That, once the Travelers policy was properly cancelled on July 3, 2018 in accordance with the WCIP and South Carolina law, Hannaway was no longer insured by Travelers and was uninsured.

41. That Travelers assigned risk policy terms, the WCIP, or any applicable South Carolina statute or regulations do not require a servicing carrier to forward Notice of Cancellation via a certified or registered mailing as Hannaway requests; rather, in contrast, the Full Commission further finds and concludes that mailing of the Notice of Cancellation to the address listed on the policy via U.S. regular Mail to the insured satisfies a servicing carrier's obligation to provide notice of the cancellation to its insured pursuant to the WCIP.

42. That, other than \$1,325 for deposit premium for the initial policy and \$1,325 for deposit premium for the renewal policy, Travelers received no additional premium from Hannaway for any assigned risk workers' compensation policy and Hannaway was not insured by the servicing carrier, Travelers, with any assigned risk workers' compensation insurance policy issued by Travelers to him for the date of loss.

43. Accordingly, the Full Commission further finds that Hannaway was not insured by Travelers or any Travelers assigned risk policy issued to Hannaway on the alleged date of loss of August 29, 2018, as the Travelers assigned risk renewal policy issued to Hannaway was properly and effectively cancelled in accordance with the WCIP and South Carolina law. Moreover, the Full Commission further finds that Hannaway was repeatedly provided with right to cure opportunities and, moreover, did not appeal Travelers'

¹⁴ Indeed, the gravamen of Crews held that the servicing carrier failed to provide the insured with an opportunity to cure and the insured was substantially compliant with his obligations. Here, with Hannaway, the opposite is true as the servicing carrier provided multiple opportunities for Hannaway to cure his deficiencies and Hannaway was not compliant with his obligations to pay the premium when due.

cancellation determination or any premium determination to NCCI in accordance with the WCIP in South Carolina. See WCIP Rule 4. The Full Commission further finds that, as neither Hannaway nor his producer ever (1) advised Travelers that Hannaway had an issue/problem with Travelers' premium determinations prior to cancellation, or (2) ever filed the required appeal of Travelers' premium determinations or cancellation determination to NCCI in accordance with the WCIP, Hannaway is prohibited from challenging the servicing carrier's determinations concerning his cancelled assigned risk policy and/or premium decisions Travelers made concerning such policy as Hannaway failed to dispute the premium changes (or the effective cancellation) as required by Rule 4 of the WCIP.

44. As an alternate sustaining ground, Hannaway failed to appeal Travelers' premium or cancellation determination pursuant to WCIP Rule 4. The WCIP provides Hannaway with an opportunity to appeal Travelers premium determination or cancellation pursuant to Rule 4. The Full Commission further finds that Hannaway was provided with ample opportunities to cure, but he failed to avail himself of the mandatory appeal mechanism to NCCI as set forth in WCIP Rule 4. The WCIP appellate process requires Hannaway to appeal any such dispute to NCCI and, if unsatisfied, the appeal process provides further appropriate venues for Hannaway's appeal to continue. The NCCI/WCIP unappealed premium and cancellation determination binds Hannaway (and thereby the UEF) per the WCIP due to his failure to appeal and avail himself of such administrative appeal mechanism.

45. The Full Commission further finds and concludes that the WCIP Rule 4 (Travelers APA 235-236) provided Hannaway with a mandatory appeal mechanism/process to appeal to NCCI, an administrative body, concerning any premium or cancellation dispute between the parties. Specifically, the assigned risk Supplement and NCCI Basic Manual Rule 4 set forth the following mechanism:

Rule 4 – Workers Compensation Insurance Plan (WCIP)

10. Dispute Resolution Procedure

a. Procedure

The dispute resolution procedure can be categorized as either Assignee Risk Employer/Producer related disputes or WCIP related disputes.

b. Assigned Risk Employer/Producer Disputes

“Any assigned risk policyholders and their producers affected by the actions of their assigned carrier or NCCI are provided with a process in which grievances can be reviewed, resolved, or heard by the mechanism that has been established and approved in the state for such grievances.

(1) Employer Disputes

“The conditions outlined in Rule 4-A-2-g must be met in order for the employer to have a bona fide premium dispute. The Plan Administrator's intervention in disputes is generally limited to matters involving:

- Experience rating modification factors
- application of rules contained in NCCI manuals
- Eligibility and assignment under the Workers Compensation Insurance Plan (WCIP)
- Classification assignment
- assigned risk pricing programs

The Plan Administrator may intervene in disputes involving other matters arising under this Plan as determined by the Plan Administrator in its discretion.

The Plan Administrator (upon receipt of all necessary information regarding the dispute), will review the matter and provide a written response within thirty (30) days.

...
c. WCIP Disputes

Any Plan participants (Association members and/or assigned carriers) who have a dispute with respect to any aspect of the Plan or Reinsurance Agreement(s) (including any dispute arising out of the Association Bylaws) must first seek a review of the matter under this section by providing the following to Plan Administrator:

- Written documentation detailing specific areas of the dispute
- Specific request for a review of all documentation
- Appropriate actions of areas to resolve the dispute

The Plan Administrator may request additional information, as it deems necessary to make a decision ... (Emphasis added).

46. The Full Commission further finds that Hannaway did not file any appeal of Travelers' premium determination or cancellation decision to the NCCI. Rather, Hannaway never began and abandoned his rights to appeal of the dispute and, pursuant to WCIP, the insured is bound by Travelers' decision. In South Carolina, failure to exhaust administrative remedies requires the administrative ruling, right or wrong, to be affirmed. See Carolina Chloride, Inc. v. Richland County, 394 S.C. 154, 714 S.E.2d 869 (S.C. 2011) (citing Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating "an unchallenged ruling, right or wrong, becomes law of the case."); Bennett v. S.C. Dep't of Corrections, 305 S.C. 310, 408 S.E.2d 230 (1991) (stating "the decision of administrative tribunal precludes the re-litigation of the issues addressed by that tribunal in a collateral action"). Accordingly, as Hannaway failed to timely appeal Travelers' decision to the NCCI, the administrative body charged with administering the WCIP, the Full Commission further finds and concludes that Hannaway cannot collaterally attack Travelers unappealed decision via this present claim. If Hannaway wished to assert any arguments contrary to Travelers premium or cancelation determinations, he was required to raise those arguments before the NCCI previously. Hannaway cannot attempt to side-step the entire administrative process designed to provide NCCI with an opportunity to address an insured's potential problems and then seek direct relief from the Workers' Compensation Commission without giving NCCI an opportunity to address an insured's dispute.

47. The Full commission further finds and concludes that Commissioner Taylor found, as an alternate sustaining ground, Hannaway failed to exhaust his administrative remedies by failing to appeal Travelers' premium or cancellation determination pursuant to WCIP Rule 4. However, the UEF did not brief or present any argument in its Brief as to this alternate sustaining ground. In South Carolina, "[a]n issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." Fields v. Melrose Ltd. P'ship, 312 S.C. 102, 106, 439 S.E.2d 283, 284 (Ct.App.1993); Bell v. Bennett, 307 S.C. 286, 294, 414 S.E.2d 786, 791 (Ct.App.1992). As such, the UEF has abandoned such issue on appeal and the two issue rule itself requires that Commissioner Taylor's Order be affirmed on such ground as a matter of law. See Atlantic Coast Builders and Contractors, LLC v. Lewis, 398 S.C. 323, 730 S.E.2d 282 (2012) (stating "under the 'two issue rule,' where a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become law of the case."). As an alternate sustaining ground, the Full Commission further affirms the Order of the single Commissioner findings as to Travelers based on the UEF's failure to brief or present any argument against (and abandonment of the appeal as to) the alternate sustaining ground that the insured's failure to exhaust administrative remedies and the two issue rule.

48. The Full Commission further finds and concludes that, pursuant to the WCIP, Hannaway's producer is an agent of Hannaway, not Travelers, the servicing carrier. Pursuant to the WCIP and South Carolina law, the producer who submitted the assigned risk application on behalf of Hannaway is the agent of Hannaway, not Travelers. As such, any alleged failure of Hannaway's producer to sufficiently explain to its own client the WCIP, the assigned risk policy, the Notice of Cancellation or their implications rests solely with Hannaway's own agent, not with Travelers. Assigned Risk Supplement, Part One – WCIP, I., D. (9) sets forth: "**Important Note Concerning the Producer:** Although the producer provides a very important service to the employer, the producer is not a contract agent or agency of the assigned carrier, and has no authority to bind or cancel coverage or to otherwise act as an agent of the Plan Administrator or assigned Carrier."¹⁵

49. The Full Commission further finds and concludes that Hannaway's producer admitted she had received and was aware of the Notice of Cancellation of Hannaway's applicable policy before the policy was effectively cancelled for non-payment of premium and she also testified that she advised Hannaway of the Notice of Cancellation of the applicable policy and his need to pay the premium required by the WCIP or his assigned risk policy would be cancelled. As such, the producer (and thereby Hannaway) had actual knowledge of the Notice of Cancellation and that the Travelers applicable policy would cancel prior to the date of loss. Moreover, the Full Commission further finds and concludes the admitted knowledge of the producer is imputed to Hannaway as a matter of law. It is well established that a principal is affected with constructive knowledge of all material facts of which his agent receives notice while acting within the scope of his authority. Crystal Ice Co. of Columbia, Inc. v. First Colonial Corp., 273 S.C. 306 (S.C. 1979); see 3 Am.Jur.2d, Agency, § 273, et

¹⁵ This WCIP provision has not been bolded for emphasis; rather, the WCIP provision itself has bolded such terms for emphasis.

seq.; 3 C.J.S. Agency § 432, et seq.; American Freehold Land Mortgage Co. v. Felder, 44 S.C. 478, 22 S.E. 598 (1985); Hill v. Carolina Power & Light Co., 204 S.C. 83, 28 S.C. 83, 28 S.E.2d 545 (1943). Citizens' Bank v. Heyward, 135 S.C. 190, 190, 133, S.E. 709, 709 (1925) (recognizing general rule that notice to an agent is notice to principal, particularly in cases of corporations); 18B Am.Jur.2d Corporations § 1442 (2004) (“A corporation’s knowledge is entirely imputed to it from the knowledge possessed by its officers and agents. In accordance with general agency principles, a corporation generally is charged with knowledge of facts that its agents learn within the scope of their employment”).

50. That, in addition to Travelers’ notices and opportunity to cure, Rowell’s April 6, 2018 and May 4, 2018 letters, Rowell’s April 19, 2018 email (which advised and explained to Hannaway the additional \$250 deposit premium owed for the renewal policy); Rowell’s May 16, 2018 letter (which advised Hannaway of the additional \$8,552 premium owed after the initial audit and “Failure to pay will result in non-compliance and cancellation of your policy”); Rowell’s May 16, 2018 letter (which advised Hannaway of the \$10,155 balance for the renewal period and a total premium of \$18,957 owed with a breakdown explaining the additional \$250 owed for renewal deposit premium, \$8,552 the balance owed for the initial policy period after the audit was completed, and the balance owed for the renewal policy of \$10,155, for a total of \$18,957 and stating “Balance due is required to avoid cancellation of your policy”); and finally, the Rowell 5/30/2018 letter (which provided an additional copy of the Notice of Cancellation and effective date of cancellation to Hannaway) unequivocally put Hannaway on notice of the pending cancellation and provided Hannaway with numerous opportunities to cure and to avoid the cancellation, but Hannaway failed to comply with his premium obligations despite such opportunities. (Travelers APA 1032 – 1346).

51. That, as set forth in the producer’s log notes and her testimony, the producer unequivocally advised Hannaway of the effective date of cancellation and Hannaway’s need to pay the premium prior to the cancellation date or his policy would be cancelled. (Travelers APA 1032 – 1346).

52. The Full Commission further finds that the WCIP requires and mandates every aspect of Travelers’ actions, communications, and decisions in this case, and Travelers properly and effectively cancelled Hannaway’s renewal policy prior to the date of loss for failure to pay his premium when due pursuant to the policy terms and the WCIP.

53. The Full Commission further finds Travelers is hereby dismissed from this claim with prejudice.

AS TO YEAMANS HALL CLUB

The Full Commission further finds and concludes:

54. Yeamans Hall Club is not a statutory employer for purposes of this workers’ compensation claim. Liability of owner to workmen of a subcontractor is required under Section 42-1-400 when the work (whole or part) is undertaken by the subcontractor and the determination is based on whether the injuries are related to

activities that: (1) are an important part of the trade or business of the employer; (2) are a necessary, essential, and integral part of the business of the employer; or (3) have been previously performed by employees of the employer. Harrell v. Pineland Plantation; Glass v. Dow Chemical Co. In this case, Yeamans Hall Club is a golf club that also has private residential homes along the golf course. The maintenance manager, Alan David Halle, testified that the Club offered residents the option of paying a fee directly to the club in order to coordinate maintenance on the homes. He testified that, prior to Claimant's injury in this case, they would subcontract out the work, but that after Claimant's injury, they started taking on that portion of the operations themselves. Mr. Halle testified that pressure washing homes was not an important part of the business of Yeamans Hall but was a very minute part. (Hr. Tr. pp. 31-38; see also Depo. Tr. of Lambert).

55. Yeamans Hall Club and Accident Fund Insurance Company are hereby dismissed with prejudice.

AS TO THE CLAIMANT

The Full Commission further finds and concludes:

56. the Claimant sustained an injury by accident arising out of and in the course and scope of his employment with Mike Hannaway d/b/a Hannaway Painting a sole proprietor, when he fell ten to twelve (10-12) feet off of a ladder onto a concrete driveway, causing multiple fractures and injuries to his left leg and ankle; right leg, ankle and foot; and back. The Claimant's injuries are reflected in the medial record and his testimony. The Defendants did not contest or dispute the nature and extent of the Claimant's injuries.

57. The Claimant has received necessary and causally related medical treatment from EMS, Summerville Medical Center, Dr. Adam Schaaf, Trident Sports and Rehabilitation and Dr. Howard Richter all of which treatment is a direct result of the claimant's compensable injury by accident and would tend to lessen his period of disability. The Claimant's injuries are reflected in the medial record and his testimony. The Defendants did not contest or dispute the nature and extent of the Claimant's injuries.

58. The Claimant needs and is entitled to additional medical treatment causally related to his injuries. As he has not reached Maximum Medical Improvement, the Claimant needs to return to Dr. Howard Richter, his treating Orthopedist, or such additional medical treatment as allowed under the Act.

59. The Claimant has an average weekly wage of \$762.64, which yields a compensation rate of \$508.43 based on the Claimant's earning records submitted into evidence for the year 2018 up until his injury.

60. The Claimant's multiple severe injuries rendered him incapable of working. The Claimant is not at maximum medical improvement and continues to be disabled. The Claimant is entitled to temporary total compensation at his applicable compensation rate from August 29, 2018 through the present and continuing until said compensation can be terminated by agreement of the relevant parties or by Order of the Commission. Given the Claimant is not at MMI, it is premature to determine the Claimant's permanent disability and therefore this is reserved for a future determination.

AS TO THE SOUTH CAROLINA UNINSURED EMPLOYERS FUND

The Full Commission further finds and concludes that:

61. Based on the preponderance of the evidence in the record, the Full Commission further finds liability for Claimant's work injuries is hereby transferred to the South Carolina Uninsured Employers Fund with all rights of reimbursement and subrogation from the uninsured direct employer, Mike Hannaway d/b/a Hannaway Painting.

62. The Full Commission further finds Claimant was a direct employee of Mike Hannaway, d/b/a Hannaway Painting, a sole proprietor.

63. As to the UEF, the Full Commission further finds and concludes that the employer was subject to the Act and operating without insurance and that medical benefits are to be paid only per the Fee Schedule. In the event the primarily liable employer is unable or unwilling to pay the benefits provided by this Order in the first instance, then the secondarily liable UEF shall pay such benefits pursuant to the terms of this Order and in accordance with applicable statutes and regulations. The UEF shall retain all lien, reimbursement and other rights against the employer per South Carolina Code Section 42-7-200 or otherwise.

64. Claimant is not at maximum medical improvement for his work-related injuries.

65. Claimant is entitled to additional medical treatment to be directed by the Fund until Ordered otherwise ordered by the Commission.

66. Claimant has an average weekly wage of \$762.64, which yields a compensation rate of \$508.43. This finding is based on a review of the evidence as a whole including the Claimant's wages for 2018 as reported on his W-2 from Great American Restoration and his Form 1099 from Michael Hannaway d/b/a Hannaway Painting.

67. Claimant is entitled to a lump-sum back payment of TTD from August 29, 2018 through the present and continuing until he is placed at maximum medical improvement or otherwise returns to work and a Form 17 is signed and filed with the Commission.

68. No hearing costs are assessed.

Based upon the Statement of the Case, the Findings of Fact and Conclusions of Law, the following Order is accordingly made:

AWARD

The Full Commission has thoroughly reviewed the evidence in the Record and the testimony of the parties and witnesses and reached a decision in this matter. The Full Commission Panel has considered the matter and finds a **FULL AFFIRMATION** of the Single Commissioner's Decision and Order. The Full Commission adopts and Single Commissioner's Findings of Fact and Conclusions of law as the Full Commission's findings.

IT IS THEREFORE, HEREBY ORDERED, ADJUDGED AND DECREED that the Claimant sustained a compensable injury within the course and scope of his employment with the uninsured employer Mike Hannaway on August 28, 2018 and is entitled to additional medical treatment as set forth above;

IT IS FURTHER ORDERED that Claimant's average weekly wage is \$762.64 and his compensation rate is \$508.43;

IT IS FURTHER ORDERED that the Claimant is entitled to receive from the UEF temporary total compensation from August 29, 2018 through the present and ongoing at his applicable compensation rate; it is further ordered that the UEF shall pay and be responsible for the Claimant's causally related medical treatment from EMS, Summerville Medical Center, Dr. Adam Schaaf, Trident Sports and Rehabilitation and Dr. Howard Richter. And it is further ordered the Claimant is entitled to ongoing medical treatment and shall return to Dr. Howard Richter, with full authority of Dr. Richter to provide necessary related treatment, diagnostic studies therapy medications equipment/stockings and any and all other treatment as allowed under the Act.

IT IS FURTHER ORDERED that, as set forth above, Travelers did not provide coverage for the uninsured Employer or Claimant's employment in South Carolina, and Travelers is not liable for any benefits or compensation which are to be paid to the Claimant and is hereby dismissed from this case with prejudice;

IT IS FURTHER ORDERED that, as an alternate sustaining ground as to Travelers, this appeal is also dismissed pursuant to the two issue rule based on the single Commissioner's alternate sustaining ground (Hannaway's failure to exhaust administrative remedies pursuant to the WCIP Rule 4 appeal mechanism) and the UEF's failure to brief or present any argument against such ground, as the unappealed ground becomes the law of the case;


IT IS FURTHER ORDERED that, as set forth above, Yeamans Hall Club is not a statutory employer of the Claimant and Yeamans Hall Club and Accident Fund Insurance Company of America are hereby dismissed from this claim with prejudice.

IT IS SO ORDERED!

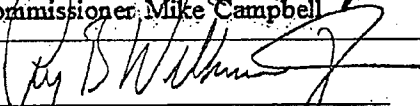
South Carolina Workers' Compensation Commission

By Full Commission Panel:

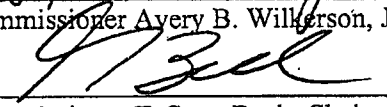
By:



Commissioner Mike Campbell

By: 

Commissioner Avery B. Willkerson, Jr.

By: 

Commissioner T. Scott Beck, Chairman

Order Served via E-Mail:

Robert M. Cook The Robert Cook Law Firm, LLC robcook1965@yahoo.com	Anne V. Noonan Wilson, Jones, Carter, & Baxley avnoonan@wjlaw.net
Phillip S. Ferderigos Barnwell, Whaley, Patterson & Helms pferderigos@barnwell-whaley.com	Catherine D. Meehan Cmeehan@steinberglawfirm.com

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 June 1, 2021

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SC Court of Appeals