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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE APPELLATE PANEL OF THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

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South Carolina Workers' Compensation Claim No. 1819776
(Appellate Case No. 2021-000695)

South Carolina Uninsured Employers Fund, ................................................Appellant

v.

Jeff Quinn, Employee, Yeamans Hall Club, Employer, Accident Fund Insurance Co. of America, Carrier, Travelers Property Casualty Company of America, Carrier, and Michael Hannaway d/b/a Hannaway Painting, Employer ......................Respondents

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# INITIAL BRIEF OF APPELLANT SOUTH CAROLINA UNINSURED EMPLOYERS FUND

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## STATEMENT OF ISSUES ON APPEAL

The South Carolina Uninsured Employers' Fund (UEF) seeks appellate review by this Court of the Decision and Order of the Full Commission dated 6/1/21. The Notice of Appeal filed by the UEF on 6/30/21, identifies the following issues on appeal:

1. Did the Full Commission err in failing to rule that Yeamans Hall Club was the statutory employer of the Claimant and that Yeamans Hall Club (and its carrier) was responsible for this claim rather than the UEF?
2. Did the Full Commission err in ruling that the UEF was bound by the Commission's coverage and compliance order dated 7/25/19 and could not contest the issue of coverage as to Travelers as a result?
3. Did the Full Commission err in failing to rule that Travelers improperly cancelled its coverage and that the UEF was responsible for this claim?

There are no issues in this appeal regarding the compensability of the claim or the benefits owed to the Claimant. The UEF is current paying those benefits as ordered by the Full Commission in compliance with the provisions of South Carolina Code Section 42-17-60 while appealing the above issues of statutory employment and coverage to this Court.

## STATEMENT OF THE CASE

This claim involves an injury to the Claimant on 8/29/18, when he fell from a ladder while pressure washing a residence that was owned by a member of the Yeamans Hall Club prior to painting the same. The Claimant's fall resulted in various injuries, including an ankle fracture requiring use of a plate and screws to reduce and stabilize the fracture. The Claimant was working for Michael Hannaway d/b/a Hannaway Painting (Hannaway) at the time he was injured. Travelers Property Casualty Co. of America (Travelers) issued a workers' compensation policy to Hannaway with policy coverage

dates of 4/5/18 to 4/5/19 and that policy term included Claimant's date of accident. Travelers disclaimed coverage for this date of accident, alleging that it had cancelled coverage under that policy because of Hannaway's non-compliance with the premium audit of a prior year's policy.

The Claimant filed a Form 50 naming Hannaway as the employer and with the UEF's involvement based upon Travelers' purported cancellation of its policy. The UEF subsequently moved to add Travelers based upon prior precedent invalidating the cancellation of a policy due to non-compliance with an audit for a preceding year. (Motion to Add). At the same, the UEF moved to add Yeamans Hall Club (and its carrier) to this claim as the Statutory Employer of the Claimant. The Commission added those parties as requested by the UEF. (Order Adding Parties).

All parties appeared at the hearing before Commissioner Taylor on 12/10/19, with Hannaway appearing, but unrepresented. That hearing resulted in a Decision and Order finding the claim compensable, awarding benefits, and holding the UEF responsible for this claim based upon the finding that Hannaway was uninsured and subject to the Act. (Single Commissioner Order). The Full Commission affirmed. (Full Commission Order). It is from that Full Commission Decision and Order that the UEF appeals to this Court.

## STANDARD OF REVIEW

Generally, on an appeal from the Commission this Court may not weigh the evidence or substitute its judgment for that of the Full Commission as to questions of fact, if the same are supported under the "substantial evidence rule.". Barton v. Higgs, 381 S.C. 367, 674 S.E.2d 145 (2009) (reversing finding that UEF was liable under

certificate of insurance statute and holding that statutory employer was liable for claim) and Hernandez-Zuniga v. Tickle, 374 S.C. 235, 647 S.E.2d 691 (Ct. App. 2007). This Court may reverse the decision of the Full Commission if it is based upon an error of law. Id. The interpretation of a statute or regulation is a question of law. Id.

As to jurisdictional issues before the Commission, the standard for review is different and more favorable to an appellant. That standard of review on jurisdictional issues is the preponderance of the evidence standard and this Court may make its own findings of fact without regard to the findings and conclusions of the Full Commission. Hernandez-Zuniga, supra. The issue of statutory employment is jurisdictional. Id.

Accordingly, the appeal of the UEF on the statutory employment issue involving Yeamans Hall Club deals with a jurisdictional issue to which the findings and conclusions of the Full Commission are entitled to no particular deference. The appeal of the UEF as to coverage with Travelers is subject to the more typical substantial evidence rule, primarily requiring the UEF to show that an error of law was made by the Full Commission.

## ARGUMENT

### 1. Yeamans Hall Club was a statutory employer.

The UEF asserts that Yeamans Hall Club (Yeamans) (insured by Accident Fund Ins. Co. of America) was the Statutory Employer of the Claimant. The UEF moved to add Yeamans to the claim on the basis that the work performed by the Claimant was part of the trade, business or occupation of Yeamans as contemplated by Section 42-1-400. (Motion to Add). The Commission added Yeamans and its carrier based upon the

contention of the UEF, which was supported by the deposition testimony of Alan David Halle (Halle), who was the maintenance manager of Yeamans. (Order Adding Parties). At the merits hearing before the Single Commissioner the UEF submitted the depositions of Halle and Jason Lambert (the controller of Yeamans), among other evidence, in support of its statutory employment contention. In the event Yeamans was determined to be the statutory employer, the UEF would not be liable for payment of this claim.

That part of the Decision and Order of the Full Commission addressing the statutory employment issue is exceptionally brief. In approximately one-half page of text, consisting of two findings (only one of which was substantive), the issue of statutory employment was raised, analyzed, and concluded. (Decision and Order at pages 30-31, findings/conclusions No. 54 and No. 55). In other words, the issue of statutory employment was treated in a summary manner. Summary treatment of such issues by the Full Commission is disfavored. Pugh v. Piedmont Mechanical, 396 S.C. 31, 719 S.E.2d 676 (Ct. App. 2011). In light of this, the evidence and the statutory and case law should be reconsidered and reevaluated by this Court and a finding made that Yeamans was the statutory of the Claimant.

Section 42-1-400 imputes workers' compensation liability to owners who use "any other person" to "perform or execute any work which is part of [the owner's] trade, business or occupation." The courts of our state have applied the following analysis to resolve issues of statutory employment:

> **"To determine whether the work performed by a subcontractor is a part of the owner's business, this Court must consider whether (1) the activity of the subcontractor is an important part of the owner's trade or business; (2) the activity performed by the subcontractor is a necessary, essential and integral part of the owner's business; or (3) the identical activity performed by the subcontractor has been performed by the employees of the owner. If any one**

**of these tests is satisfied, the injured worker is considered the statutory employee of the owner. Any doubts as to a worker's status are to be resolved in favor of coverage under the Act."**

Voss v. Ramco, Inc., 325 S.C. 560, 482 S.E.2d 582 (Ct. App. 1996) (traveling salesman of distributor who took small industrial equipment on consignment found to be statutory employee of the manufacturer of that equipment). Issues of statutory employment can arise out of any number of contexts and scenarios.

In the case at bar the question of statutory employment arises out of the following factual scenario, from which the UEF contends the work being done by the Claimant at the time of his injury was part of the business of Yeamans:

**--Yeamans contacted, hired and arranged for Hannaway to come to the Strawbridge house and perform the pressure washing that the claimant was doing when he was injured on 8/29/18 (Halle deposition at page 19).**

**--Hannaway invoiced Yeamans for the job on which the claimant was injured by way of an emailed invoice from Hannaway to Al Halle in the total amount of $1,070 for that day's work, which invoice included the following entry: "Strawbridge house-dormer on garage-pressure cleaned, primed new wood, and applied one full coat of Ben Moore Soft Gloss. White -$480. Paint new door on garage - $65.00" (Halle deposition, Exhibit 2 at page 23 of that exhibit).**

**--the job duties of the maintenance manager at Yeamans, who was Al Halle, was "to care for the homes in the club properties" which included "painting, pressure washing, cleaning gutters" (Halle at page 7).**

**--property owners at the golf course are entitled to certain benefits as "proprietor" members for which they pay a greater than $10,000 annual fee (Lambert deposition at page 19).**

**--one of those benefits is the use of Yeamans to coordinate and arrange contractor services for a member's residence (Lambert at page 20).**

**--Yeamans would pay the contractor for the work performed and then bill the member for the cost (Lambert at page 7) (Halle at page 9).**

**--this was an "amenity" that was provided by Yeamans to members (Lambert at page 27).**

**--Yeamans had three of its own employees that performed such tasks in addition to private contracts like Hannaway (Lambert at page 25).**

**--both Yeamans employees and private contractors pressure wash the private homes of members (Halle at page 10).**

**--in 2018 Hannaway did extensive work at Yeamans to include work on the cottages, the golf cart barn, the business center, the maintenance shop, the club house, the dining room, Hole 19 and the scoreboard (Lambert at pages 23-26).**

**--Al Halle was the conduit at Yeamans that would arrange this type of work for private proprietor members. Lambert stated that this service for proprietor members was "important to the members." (Lambert at pages 28-29).**

All this shows that Yeamans provided various services to the proprietor members to assist with the maintenance and upkeep for their homes at the club. A substantial yearly fee (at least $10,000) for this was paid by each proprietor member to Yeamans. The practice of Yeamans was to arrange for private contractors to perform such tasks at the homes of members and Yeamans would pay the contractors directly for that. Yeamans had its own employees that also performed those home maintenance tasks. That service was described by Yeamans' own controller as "important" to the members.

The Claimant was injured while performing such a task at the home of a member and this was arranged by Yeamans on the member's behalf and the work done was paid for by Yeamans. All of this shows that the work being done by the Claimant when he was injured was part of the trade, business or occupation of Yeamans as contemplated by Section 42-1-400. The Appellate Panel should find and order accordingly. See Fortner v. Evans Constr., 402 S.C. 421, 741 S.E.2d 538 (Ct. App. 2013) (using the Voss analysis and finding statutory employment of claimant, who worked for a subcontractor, injured

while pressure washing a residence when that service was being done as a gesture of "goodwill" towards a customer by the Statutory Employer).

Yeamans defense up this point has been to focus only upon the golf/recreational activities it provides. That is incomplete and misleading. Yeamans has further limited its analysis to pressure-washing, rather than the general maintenance services provided by the Claimant's direct employer. The uncontradicted evidence is that Yeamans undertook (as part of the amenities offered to members for which a substantial fee was paid) to arrange for the work done by the Claimant's direct employer, receive the invoices from the Claimant's direct employer, pay the invoices of the Claimant's direct employer, and then bill the homeowners for the general residential maintenance services provided by the Claimant's direct employer.

The evidence submitted by the UEF shows that during the period from 1/23/18 to 11/13/18, which is less than ten months, Yeamans arranged for the Claimant's direct employer to work on at least 33 private residences at the club. (UEF APA at pages 20-50, which are emailed invoices to Yeamans from the Claimant's direct employer). This work included repairs, painting (including prep, sanding and priming), cleaning gutters, blowing off roofs, pressure washing, removing/cleaning mold, lattice work and the boarding up of private residences to prevent storm damage. (Id.). 27 of those 33 residences were worked on multiple times by the Claimant's direct employer and 24 of them were worked on 3 or more times by the Claimant's direct employer. (Id.). Significantly, the Claimant's direct employer performed general maintenance services on at least 5 separate occasions at the Strawbridge residence, which is the specific residence at which the Claimant was injured. (Id.). The work performed by the Claimant's direct

employer at the Strawbridge residence included cleaning gutters, blowing off the roof, pressure washing, and the painting of both the interior and exterior. (Id.). The UEF contends that the general maintenance work done by the Claimant's direct employer on the private residences at Yeamans was extensive as regards the variety of the types of maintenance provided, the number of residences at which that maintenance was provided, and the number of residences that required multiple visits. Simply put, it fits within the purview of Section 42-1-400, and that makes the Claimant a statutory employee.

The recent decision of our Supreme Court in Keene v. CNA Holdings, LLC, (Op. No. 28052, filed 8/11/21), further supports the position of the UEF. Although that case dealt with the use of statutory employment as a bar to liability in a civil tort action, the Supreme Court made clear that its decision applies with equal force to the issue of statutory employment in both the tort and workers' compensation contexts. The Court noted "purpose of this legislation was to protect employees of irresponsible and uninsured subcontractors." (At page 53 and quoting from Larson's Workers' Compensation Law). That is the exact scenario before this Court, assuming that the coverage decision of the Full Commission as to Travelers is not reversed. In analyzing the history and development of prior decisions regarding statutory employment the Court held that "the applicable public policy, however, is to ensure that workers are covered under the Workers' Compensation Law." Id. at page 60. It specifically noted that the policy was to provide recourse to an injured worker when work was subcontracted out "to a financially irresponsible subcontractor without the capacity to insure its workers." Id. The Court held "the original purposes of the statutory employee doctrine are not served by making CNA Holdings an additional provider of workers' compensation benefits,

because Daniel provided those benefits." Id. at page 62. That recent case is first and foremost a reiteration of the foundational premise that statutory employment was designed to provide an injured worker with access to insurance benefits when the direct employer to whom work was subcontracted out did not have such coverage.

The Full Commission held that Yeamans was not the Statutory Employer of the Claimant. It is undisputed that Yeamans has workers' compensation and that the Commission determined that the Claimant's direct employer did not. In light of that specific posture (no coverage with direct employer), and the overwhelming evidence of ongoing, continuous and substantial work being done by the Claimant's direct employer in further of the business and operations of Yeamans, it was error for the Full Commission to find that the Claimant was not the Statutory Employee of Yeamans. This Court should reverse as to that jurisdictional issue.

### 2. The UEF was not precluded from raising and litigating the coverage issue with Travelers.

#### *A. The issue of Travelers' coverage had already been joined and was in litigation when the show cause order was issued.*

The Commission held that the UEF was bound by a 7/25/19 order finding that the direct employer (Hannaway) was subject to the Act and uninsured. (Decision and Order at pages 17-18, findings/conclusions No. 3-6). These types of coverage orders are sometimes referred to as "show cause" orders by the Commission. In the case at bar the Commission held that this show cause order precluded the UEF from asserting that Travelers improperly cancelled its coverage. This decision was faulty both as applied to the specific, unique facts of this claim and also when (perhaps most importantly), viewed in the context of Title 42 and use of collateral estoppel/claim preclusion against the UEF

generally. The UEF urges this Court to be cognizant that this particular issue/ruling will impact the UEF and the Commission beyond the context of this particular case as the UEF and Commission deal with literally hundreds of claims involving allegedly uninsured employers ever year. The decision of this Court will likely have ramifications upon most, if not all, cases involving uninsured employers and impact the Commission's procedure to handling such claims and, specifically, the determination of whether or not the UEF can contest coverage for claims to which it is made a party.

The procedural history of this claim reveals the nature of the Commission's error on this issue. The UEF was not a party to that "show cause" proceeding nor is there any indication that the UEF was notified of the "show cause" preceding at any point, but specifically as to the hearing that led to the 7/25/19 order. That alone should be sufficient reason to reverse her decision. The relevant timing is:

> **1/11/19** -- Order adding the UEF to the claim and providing that the UEF shall "pay or defend the claim as it considers necessary." (Order).
>
> **6/28/19** – UEF files motion to add Travelers based upon improper cancellation resulting from audit of prior policy term. (Motion to add).
>
> **7/8/19** – Commission's order adding Travelers as a party to this claim. (Order).
>
> **7/25/19** – Commission's "show cause" order finding Hannaway was subject to the Act and operating without coverage in place. (Show Cause Order).

Application of the doctrine of collateral estoppel presupposes that the party against whom it is applied had a full and fair opportunity to litigate the issue to which the doctrine applies. SCPCIGA v. Wal-Mart Stores, Inc., 304 S.C. 210, 403 S.E.2d 625 (1991) (collateral estoppel cannot be applied against a party that lacked a full and fair opportunity to litigate the issue in the first action); see also Crosby v. Prysmian Comm. Cables, 397 S.C. 101, 723 S.E.2d 813 (Ct. App. 2012) (only proper to apply the doctrine

when the party against whom it is applied had the ability to present witnesses, make factual and legal arguments and appeal rulings).

In the case at bar the UEF was not a party to the show cause proceeding before the Commission and it does not appear that the UEF was even notified of those proceedings. None of that is unusual as regards coverage enforcement proceedings against employers and it is common for such employers to be unrepresented and/or simply not participate. The 7/25/19 show cause order does not refer to the UEF, nor is there any indication from that order that the issue of Travelers' improper cancellation of coverage was raised or considered at all (let alone actually and meaningfully litigated). Under these particular facts, it is unfair and improper to hold the UEF bound by the show cause order and precluded from litigating the coverage issue as part of the merits hearing before the Single Commissioner.

The procedural history of this matter supports a reversal of the Full Commission. On 6/28/19 the UEF filed a motion to add Travelers to this claim on the specific basis that the carrier improperly cancelled coverage. On 7/8/19 the Commission issued its order adding Travelers as a party as requested by the UEF. Travelers did not appeal that order and, in fact, Travelers did not contest the motion to add in any manner. The show cause order upon which Travelers relies was not issued until 7/25/19. It was plain error for the Full Commission to hold that the UEF was precluded from contesting Travelers' coverage as a result of a show cause order to which the UEF was not a party and which was not issued until **AFTER** the UEF had already added Travelers as a defendant and put the coverage matter into issue. The answer (Form 51) of Travelers contains a mere general denial in which the existence of the coverage issue was acknowledged, and

coverage denied, without any defense or reference to the show cause order and without contesting the motion to add. Standing alone from the other arguments made by the UEF, this Court should simply reverse that part of the order in light of the procedural history and timing of the orders in this particular matter.

B. *There is no statutory or regulatory basis upon which to preclude the UEF from litigating the issue of Travelers' coverage.*

Additionally, the general statutory and regulatory context controlling both the UEF and enforcement proceedings does not support the decision to apply collateral estoppel against the UEF. The Decision and Order of the Full Commission, at pages 17-18, footnote 10, states: "The UEF, however, fails to reference any specific statute or case law that would allow the UEF to avoid the [show cause order] or its implications in this case." The reality is quite the opposite. Section 42-7-200(B) provides that the UEF can "pay or defend as it considers necessary in accordance with the provision of Title 42." The Commission's own regulations regarding enforcement actions (Regulations 67-1402 and 67-1404) contain no provision for the involvement of the UEF in enforcement actions against an employer nor do they address any binding effect of those enforcement actions against the Fund (or anyone else).

The regulations of the Commission establish the UEF as a separate party entitled to notice and service separate and apart from the alleged uninsured employer. Regulation 67-210. This is vastly different from insured employers which are not to be served or noticed at all. Likewise, the statutes (Sections 42-5-70 and 42-5-80) governing insurance policies for employers specifically require that such policies provide: (1) the employer's notice of injury is imputed to the carrier; (2) that the jurisdiction of the employer is the jurisdiction of the carrier; (3) the carrier is bound by all orders against the

employer; and (4) that the coverage provided to the employers is deemed to operate as a direct promise by the carrier to the claimant. Section 42-7-200 provides for the UEF to have lien rights against an uninsured employer equivalent to those of the Department of Revenue in order to facilitate reimbursement of benefits paid by the UEF.

The whole structure of Title 42 treats the carriers differently from the UEF, all of which is submitted in opposition to the ruling of the Full Commission. By way of comparison and contrast, the Guaranty Association is specifically provided with "all rights, duties and obligations of the insolvent insurer" and is "considered the insurer." Section 38-31-60(b). This simply shows that the legislature can successfully use alter ego or "step into the shoes" type language when it wishes to do so. It has not done so in connection with the UEF and the manifest implication is that it did not intend the UEF to be the functional equivalent of the employer.

Plain logic and simple fairness would indicate that there was no legislative intent to have the UEF bound in the absence of any provisions in the statutes or regulations explicitly addressing that issue. For all these reasons, that part of the Decision and Order holding the show cause to have preclusive effect against the UEF should be reversed.

Further, as a matter of public policy the UEF should not be precluded from litigating coverage issues once it is a party. As a practical matter, that part of the Decision and Order of the Full Commission, if affirmed, will create serious issues going forward as to other claims involving the UEF. The UEF would necessarily and understandably have compelling reasons to immediately appeal each time it is added to a claim if the failure to appeal was deemed to be a waiver of the right to later litigate

coverage. This would create delays and roadblocks in the resolution of claims that would only impair the prompt and efficient determination of claims.

Employers oftentimes do not participate in enforcement proceedings and, when they do participate, they frequently lack legal representation. In truth, enforcement proceedings resemble default hearings more than they resemble evidentiary hearings during which coverage issues are fully and fairly litigated. That being so, it is not unreasonable to conclude that, on occasion, an employer is found by the Commission to be uninsured when, in fact and in truth, coverage could be shown to exist had the question of coverage actually been litigated. In such instances, insurance companies that have wrongfully cancelled, denied or terminated coverage will be the only parties to benefit when the UEF is precluded from litigating coverage. Frequently, it is only the UEF (and not the often pro se, often defunct employer), that has the knowledge and means to identify and raise coverage issues.

Historically, the normal practice of the Commission has been to allow the UEF to contest issues of coverage separate and apart from enforcement proceedings. That practice acknowledges the reality that the alleged uninsured employer often (almost always) lacks the ability or resources to effectively dispute policy cancellations in any meaningful manner. Allowing the UEF to do this furthers the remedial purposes of the Act by protecting employers/employees from improper cancellations and creating a disincentive for carriers improperly deny coverage.

A broader look at this issue implicates the right of the UEF to due process under both the Federal and State constitutions. (5th and 14th Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution). Due process

requires that the UEF have notice and an opportunity to be heard on the coverage issue. Clemmons v. Lowes, 412 S.C. 366 (Ct. App. 2015). In this particular case the UEF had no such notice, which is also generally true for most, if not all, enforcement proceedings. If there is coverage, then the UEF has no liability or obligation to pay the claim under Section 42-7-200. The ruling of the Commission eliminated any chance at all for the UEF to dispute its foundational liability, which is based upon whether or not the direct employer had coverage. That part of the order of the Full Commission on the issue of collateral estoppel should be reversed as a due process violation of the rights of the UEF. This argument applies not just to this specific order, but also more broadly to any show cause proceedings to which the UEF was not provided with notice and an opportunity to be heard.

### 3. Travelers wrongly cancelled coverage.

This part of the appeal as to coverage is not about whether the employer had notice or an opportunity to cure, and it is not about the comparative differences in the nature of agency between voluntary and residual market policies. The order of the Full Commission extensively details the many ways in which the employer allegedly should have done things differently with Travelers and, because he did not, he simply deserves what happened (and the UEF as well, apparently). (Order at pages 18-30 (No. 7-52). All of that may be superficially compelling, and factually more or less accurate, but none of it matters. It does not matter because the root question in all this is whether or not Travelers had the right to cancel the policy at all. The stated term of the policy (6JUB8H01798A) Travelers issued to Hannaway was from 4/5/18 to 4/5/19, which would have covered the 8/29/18 date of accident.

In Crews v. W.R. Crews, Inc., 390 S.C. 15 (Ct. App. 2010), the Court of Appeals held that current year coverage under an assigned risk policy cannot be validly cancelled based upon a default in an obligation owed under the prior year's policy unless the assigned risk plan specifically provided for that particular remedy with precise language ("we found no rules with this precise language"). In the case at bar, neither the policy issued by Travelers, nor the provisions of the assigned risk plan, provide for a cancellation on that basis.

Travelers offered the deposition testimony of Mary Belins, one of its underwriters, in support of its contentions regarding the cancellation of coverage. She stated that the policy for 4/5/18 to 4/5/19 was cancelled because Hannaway did not pay $18,957 by 5/26/18, which included $8,552 as additional premium owed for the prior year's policy. (Belins deposition at pages 28-29). Travelers' own witness affirmatively stated that it would not continue to provide the current coverage (4/5/18 to 4/5/19) unless Hannaway paid the additional audited premium owed for the prior coverage. (Belins at pages 28 and 40). In other words, Travelers would not accept payment for just the current coverage, even though Travelers had earlier accepted the deposit premium from Hannaway for that coverage from 4/5/18 to 4/5/19. (Belins at page 26). Belins further testified that the cancellation of Hannaway's policy was solely for non-payment and there was no contention that Hannaway had been non-compliant in any other manner. (Belins at pages 36-37). She further acknowledged that the WCIP itself does not contain any provision regarding premium payment compliance and that Travelers was relying only on language in its application even though the policy in questions was an assigned risk policy. (Belins at pages 41-45). Interestingly, Travelers' own witness admitted that

Travelers issued its cancellation of coverage prior to the date by which Hannaway was told he could pay. (Belins at pages 30-31).

Travelers' own witness admitted that the assigned risk plan did not specifically provide for a cancellation in that precise context. (Deposition at pages 41-44). The terms of the actual Travelers' policy regarding "Premium" (Part Five) and "Cancellation" (Part Six D) contain no language authorizing the cancellation of a current policy based upon a default on a previous year's policy. (Travelers' policy). The policy does, however, contain a provision that any terms of insurance in conflict with South Carolina law are deemed changed to conform with South Carolina law. (Id.).

The appeals courts are the final word on what is the law regarding insurance coverage in South Carolina. To date, Crews is the only appellate case addressing when a current assigned risk policy can be cancelled due to a prior year's default. Crews requires that such a cancellation term be precisely stated in specific language. As neither the assigned risk plan nor the policy specifically permitted Travelers to cancel the employer's policy on the basis it was cancelled, the purported cancellation was invalid and the decision of the Commission should be reversed on that issue.

## CONCLUSION

For the reasons discussed above, and as may be made during oral argument or by way of reply brief, the UEF respectfully requests that this Court reverse parts of the Decision and Order of the Full Commission and hold and find that Yeamans Hall Club was the claimant's Statutory Employer as responsible for his work injury, that the UEF was not precluded from litigating the issue of Travelers' coverage, and that Travelers did not properly cancel coverage.

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