THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Newberry County
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge
Civil Action No. 2008-CP-36-417

RECEIVED
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S.C. Supreme Court

Appellate Case No. 2013-000602
South Carolina Court of Appeals Unpublished Opinion No. 2013-UP-015

Travelers Property Casualty Co.,

Respondent

v.

Senn Freight Lines, Inc.,

Petioner

APPENDIX

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THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Travelers Property Casualty Co., Appellant,

v.

Senn Freight Lines, Inc., Respondent.

Appellate Case No. 2011-189987

Appeal From Newberry County
Eugene C. Griffith, Jr., Circuit Court Judge

Unpublished Opinion No. 2013-UP-015
Heard December 11, 2012 – Filed January 9, 2013

REVERSED AND REMANDED

M. Dawes Cooke Jr. and John William Fletcher, of Barnwell Whaley Patterson & Helms LLC, of Charleston, for Appellant.

William Chadwick Jenkins, of Pope & Hudgens PA, of Newberry, for Respondent.

PER CURIAM: Travelers Property Casualty Co. appeals the trial court's denial of its JNOV and new trial motions after a jury rendered verdicts against it on (1) a claim it brought against Senn Freight seeking premiums on three insurance policies

and (2) a counterclaim Senn Freight brought against it for bad faith cancellation of the third insurance policy. We reverse and remand.

In ruling on motions for JNOV, the trial court must view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). "[N]either the trial court nor the appellate court has authority to decide credibility issues or to resolve conflicts in the testimony or evidence." *Parrish v. Allison*, 376 S.C. 308, 319, 656 S.E.2d 382, 388 (Ct. App. 2007). "Yet, this rule does not authorize submission of speculative, theoretical, and hypothetical views to the jury." *Id.* at 319-20, 656 S.E.2d at 388. "The issue must be submitted to the jury whenever there is material evidence tending to establish the issue in the mind of a reasonable juror." *Id.* at 319, 656 S.E.2d at 388.

1. Travelers argues the trial court erred in denying its JNOV and new trial motions as to its debt collection claim because Senn Freight owes earned premiums for remuneration paid to owner/operators based upon the audit calculations. Travelers argues the policies covered the owner/operators and contemplated the final premium due would be based upon remuneration paid to these owner/operators. We agree.

First, all three policies provide workers' compensation coverage for "the benefits required of you by the workers' compensation law," and workers' compensation law requires coverage for statutory employees. S.C. Code Ann. § 42-1-400 (Supp. 2011). Second, evidence in the record indicates only that the owner/operators were statutory employees of Senn Freight. The drivers transported loads for Senn Freight, and that responsibility was an important, integral part of Senn Freight's trade, business, or occupation. *See id.* (providing an employer or business owner may be liable for the payment of compensation benefits to a worker not directly employed by the employer if the worker "undertakes to perform or execute any work which is a part of [the employer or business owner's] trade, business or occupation"); *Olmstead v. Shakespeare*, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003) (providing an activity is "part of [the owner's] trade, business, or occupation" for purposes of the statute if it (1) is an important part of the owner's business or trade; (2) is a necessary, essential, and integral part of the owner's business; or (3) has previously been performed by the owner's employees). Third, evidence in the record indicates only that Senn Freight is liable to Travelers for unpaid final premiums based upon remuneration paid to the owner/operators.

Travelers produced evidence the owner/operators were statutory employees of Senn Freight, but no evidence in the record indicates Senn Freight provided Travelers with "proof" the owner/operators "lawfully secured their workers' compensation obligations."[1] Although Mr. Senn consistently testified all of the owner/operators had less than four employees and he provided Travelers with all the information Travelers asked for, he did not testify he provided Travelers with *proof* either the owner/operators had statutory workers' compensation insurance or employed less than four people. *See* S.C. Code Ann. § 42-1-360(2) (2011) ("Th[e Act] does not apply to: . . . any person who has regularly employed in service less than four employees in the same business within the State . . . ."). Indeed, Mr. Senn's testimony and argument on appeal indicates he was confused about his responsibilities under the policies. As a result, evidence in the record indicates only that Senn Freight is liable to Travelers for final premiums based upon remuneration paid to owner/operators on all three policies. Because it would be inappropriate to grant a directed verdict on the amount of damages owed to Travelers, we reverse and remand for a new trial as to damages. *See* S.C. Code Ann. § 15-33-125 (2010) (providing that a new trial solely as to damages may be granted only when the evidence would support a directed verdict on liability).

2. Travelers also argues the trial court erred in denying its JNOV motion as to Senn Freight's bad faith counterclaim because no evidence in the record shows Travelers canceled the third policy in bad faith. We agree.

Even if our courts recognize a claim for bad faith cancellation of an insurance policy, no evidence in the record can reasonably support the claim in this case. The third policy broadly states Travelers "may cancel this policy," and the only restriction on that power is the requirement that Travelers provide ten days' notice of the cancellation. At oral argument, Senn Freight agreed this notice was given. Moreover, all of the evidence addressing the auditor and Mr. Senn's dispute over the premiums due for owner/operators indicates Travelers had a "reasonable basis to support" its decision to cancel the policy. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 645, 594 S.E.2d 455, 462 (2004) ("[A]n insurer acts in bad faith when there is no reasonable basis to support the insurer's decision."). The policy's language establishing what type of proof Senn Freight

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[1] The phrase "lawfully secured their workers' compensation obligations" to be ambiguous—it could mean either proof of workers' compensation insurance or proof of compliance with workers' compensation laws. Because insurance law requires us to construe contracts against insurers, we adopt the latter.

was required to produce as to owner/operators was ambiguous, and the record clearly shows Travelers canceled the policy because Mr. Senn failed to provide proof relating to owner/operators' insurance and the number of employees. Travelers' conduct after the cancellation does not show bad faith at the time it made the decision to cancel.

Because of our findings above, we need not address Travelers' remaining arguments. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (ruling an appellate court need not review remaining issues when its determination of a prior issue is dispositive of the appeal). Consequently, we reverse the denial of JNOV on the bad faith claim. We reverse and remand for a new trial as to damages on the debt collection claim.

REVERSED AND REMANDED.

HUFF, THOMAS, and GEATHERS, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2013-UP-015, Filed January 9, 2013

RECEIVED
JAN 24 2013
SC Court of Appeals

Travelers Property Casualty Co.,

Appellant,

v.

Senn Freight Lines, Inc.,

Respondent.

PETITION FOR REHEARING

In accordance with the provisions of Rule 221(a), SCACR, the Respondent petitions this Honorable Court for rehearing of unpublished Opinion No. 2013-UP-015 ("The Opinion"), filed on January 9, 2013. The Respondent received notice of the filing of The Opinion on January 10, 2013.

Respondent would respectfully assert that this Honorable Court misapprehended or overlooked important facts supportive of its position, and/or the lack of facts supporting the Appellant's position, and misapprehended the facts which were present in the Record on Appeal in this matter. Furthermore, the Respondent respectfully asserts that this Honorable Court misapprehended the applicable legal theories supporting the Respondent's position in this matter.

Attached to this Petition is a Memorandum in Support of Petition for Rehearing which identifies and analyzes the points which the Respondent contends The Opinion has overlooked or misapprehended. This Petition incorporates herein the Respondent's analysis and arguments contained in the attached Memorandum.

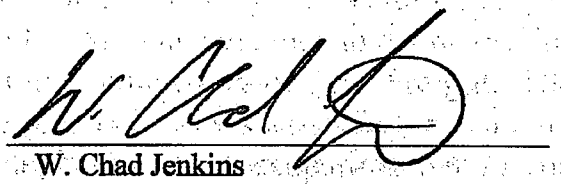
WHEREFORE, the Respondent respectfully requests that this Honorable Court rehear the matters contained in The Opinion and affirm the judgment of the Circuit Court in the following particulars:

(a) affirming the lower court's denial of Appellant's Motion for JNOV and new trial on Appellant's debt collection claim;

(b) affirming the lower court's denial of Appellant's JNOV Motion as to Respondent's bad faith counterclaim and affirming the jury's award of damages.

Respectfully submitted,

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January 24, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
JAN 24 2013
SC Court of Appeals

Opinion No. 2013-UP-015, Filed January 9, 2013

Travelers Property Casualty Co.,

Appellant,

v.

Senn Freight Lines, Inc.,

Respondent.

MEMORANDUM IN SUPPORT OF PETITION FOR REHEARING

In support of its Petition for Rehearing of Opinion No. 2013-UP-015 (the "Opinion"), Respondent respectfully submits this Memorandum in Support.

INTRODUCTION

The Respondent submits that the Opinion overlooked or misapprehended the evidence contained in the Record which supports Respondent's position on both the Appellant's debt collection action and the Respondent's bad faith counterclaim. The Record contains specific evidence that Respondent Senn Freight Lines, Inc. (hereinafter "Senn") complied with the Worker's Compensation laws and provided Appellant Travelers Property Casualty Co. (hereinafter "Travelers") with all requested documents and all necessary documents. While this Honorable Court was flawless in its reasoning

that the ambiguous phrase in the contract "lawfully secured their Worker's Compensation obligations" should be interpreted to mean "proof of compliance with Worker's Compensation laws," the facts contained in the Record are overlooked, misapplied and/or misunderstood.

Respondent respectfully asserts that the Opinion further misapprehended or overlooked the evidence proving that Travelers acted in bad faith in cancelling the assigned risk policy, including the fact that Travelers noticed the cancellation of the policy prior to the audit about which Travelers complained. Furthermore, Travelers' actions in waiting until after the statute of limitations or potential Worker's Compensation claims expired before initiating a lawsuit can be utilized to show a bad faith intention that existed at the time of the cancellation.

ARGUMENTS

I.

In ruling that the Respondent's President did not testify he provided Travelers with proof that the owner-operators had statutory Worker's Compensation insurance or employed less than four (4) people, the Opinion improperly shifted the burden of proof and overlooked or misapprehended the repeated statements and evidence contained within the Record showing that Senn Freight did in fact provide Travelers with all requested documents and information and that the owner-operators all employed less than four (4) persons.

The Opinion properly determined that the contract was one of adhesion and succinctly stated in Footnote 1:

> "the phrase 'lawfully secured their Worker's Compensation obligations' to be ambiguous – it could mean either proof of Worker's Compensation insurance or proof of compliance with Worker's Compensation laws. Because insurance law requires us to construe contracts against insurers, we adopt the latter."

Therefore, if the owner-operators had less than four (4) employees, they would not be required to have statutory Worker's Compensation insurance and the occupational accident policies and contracts signed by the owner-operators would in fact prove compliance with Worker's Compensation laws.

In reviewing the Record, it is clear that Danny Senn provided all requested and necessary records to Travelers. Mr. Senn testified that there was a contract for every owner-operator. (R. p. 65, ll. 12-13). Danny Senn testified repeatedly that he provided all documents and information he was asked for and that proof of coverage was provided to both the auditor and to Travelers' officials following the audit. (R. p. 71, ll. 15-22; R. p. 78, ll. 12-24). Furthermore, Danny Senn testified at trial that each of the owner-operators employed less than four (4) people and that most of them were one man operations. (R. p. 90, l. 20 – p. 91, l. 9). This evidence was not refuted at trial.

The Opinion states that Danny Senn did not testify he "provided Travelers with proof either the owner-operators had statutory Worker's Compensation insurance or employed less than four (4) people." It overlooked that Mr. Senn did testify that he provided Travelers with all requested documents and the Opinion improperly shifts the burden of proof to the Respondent when the breach of contract claim was a claim made by the Appellant. The burden of proof is upon the plaintiff to prove its case by a preponderance of the evidence. Smith v. Barr, 375 S.C. 157, 650 S.E.2d 486 (Ct. App. 2007). Travelers offered **no** testimony or evidence that Senn did not provide proof regarding the owner-operators employing four (4) or less persons. The only witness offered by Travelers learned he would be a witness only one week prior to the trial. (R. p. 190, ll. 20-22). Despite his best attempts, he could not and did not contradict Mr.

Senn's testimony that full cooperation and compliance were provided. Also, the Appellant basically concedes that the owner-operators employed four or fewer persons on page 16 of their Final Brief when it argues that because Senn employs four or more people, this statutory provision would not apply individually to each owner-operator.

The only testimony offered by Travelers came from Stephen Evanglista, a person who barely knew the file and who did not participate in the audit at Senn Trucking. The witness specifically stated that he never went to Senn Trucking, he never talked to the actual auditor, and that the audit documents are typically left at the insured's place of business. (R. p. 99, ll. 20 – p. 100, l. 7; R. p. 116, ll. 1-22; R. p. 160, ll. 1-4)). This, coupled with Danny Senn's testimony that he provided all requested documents and information, is sufficient evidence upon which the jury could properly deduce that all necessary documents and information, including proof of compliance regarding the owner-operators, were provided to Travelers. Mr. Evanglista certainly was not able to refute Mr. Senn's testimony given his short and limited involvement.

A trial court, in ruling on a motion for directed verdict, must view the evidence and all reasonable inferences in the light most favorable to the non-moving party. Anderson v. The Augusta Chronicle, 355 S.C. 461, 470, 585 S.E.2d 506, 511 (Ct. App. 2003). In this case, the issues regarding Appellant's debt collection action, including the issue of whether or not the owner-operators employed less than four persons, should be one for the jury. The Opinion misapprehended and overlooked the existence of uncontroverted evidence that Senn provided all documents requested and the owner-operators employed less than four people. At the very least, a factual dispute existed and the decision of the jury should not be disturbed. Travelers did not meet its burden of

proof as it provided zero evidence regarding the number of employees for each owner-operator.

The Opinion misapprehended the facts contained in the Record on Appeal in reversing the lower Court's denial of Travelers' Motion for JNOV and new trial. The decision of the lower Court should be affirmed regarding Respondent's post trial motions on their debt collection claim.

II.

By reversing the lower Court's decision denying Appellant's JNOV Motion as to Respondent's bad faith counterclaim, the Opinion misapprehends or overlooks the uncontradicted facts that Respondent provided all requested documents and information and that the Appellant actually cancelled the policy prior to the audit of the policy which occurred at the Senn Freight office.

The South Carolina Supreme Court has specifically recognized a cause of action for bad faith rescission or cancellation of an insurance policy. Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009). As courts from other states have noted, bad faith liability may rise from legal duties created by the party's relationship and not merely from a breach of the policy terms and that the duty of good faith extends to everything pertaining to insurance services including renewal or nonrenewal of policies. Pate v. Guarantee Life and Trust Ins. Co. 2010 WL 987090 (ND Ohio 2010); Ballow v. Phico Ins. Co., 875 P.2d 1354 (Colo. 1993). Travelers did not object to the Trial Court's charge to the jury regarding the bad faith rescission cause of action and evidence was provided which supports this claim.

Danny Senn testified repeatedly that he provided all documentation and information requested by Travelers. (R. p. 71, ll. 15-22; R. p. 78, ll. 12-24).

Furthermore, Travelers' own witness testified that auditors will often simply review the documents at the business location. (R. p. 99, l. 20 – p. 100, l. 7; R. p. 116, ll. 1-22). In fact, it was typical to leave the documents at the audit site. (R. p. 160, ll. 1-4). Mr. Evanglista would have no way of knowing what type of compliance was received from Senn Freight. The Appellant attempts to assert, through a witness whose only involvement with the case started a week before trial, that Senn Freight was not cooperative with the audit process. (R. p. 120, ll. 20-22). There is simply zero competent evidence to support its claim.

A jury's factual findings will not be disturbed on appeal unless there is no evidence to reasonably support those findings. Wright v. Craft, 372 S.C. 1, 640 S.E.2d 486 (Ct. App. 2007). Here, ample evidence exists to support the jury specifically finding the policy was cancelled in bad faith. (R. p. 15 – 16). Said evidence includes Danny Senn's testimony that all requested documents were provided, the fact that the policy was cancelled before the audit even took place, and Travelers' scheme to file suit only after the statute of limitations had run on any possible claims.

The Court further fails to consider the fact that this was a forced or placed insurance policy pursuant to the S.C. Assigned Risked Plan. This is not a policy that can simply be cancelled at the insurer's whim. The Assigned Risk Plan specifies that the carrier must provide an opportunity to cure and assist the employer on problems relating to coverage and service under the Plan. Crew v. W.R. Crews, Inc., 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010). Even compliance with statutory notice requirements is of no effect when dealing with an Assigned Risk Plan policy. Id. at p. 27.

The Opinion relies heavily upon an argument not advanced by Respondent at trial or on appeal: that Senn failed to provide proof related to the number of employees for each owner-operator. Travelers focused on proof related to payroll records and leased employees and never indicated they asked for information regarding the number of employees. Even assuming this argument is proper, the Opinion misconstrues the facts contained in the Record when it states that "the Record clearly shows Travelers cancelled the policy because Mr. Senn failed to provide proof related to the owner-operators insurance and the number of employees."

Even though there is no reference in the Record to Travelers ever requesting any documentation regarding the number of employees for the owner-operators, Danny Senn testified repeatedly that he provided all documentation required by Travelers. (R. p. 71, ll. 15-22; R. p. 78, ll. 12-24; R. p. 79, ll. 17-20). He testified he had a contract with each owner-operator and proof of coverage for each. (R. p. 63, 11. 12-13). Also, as stated above, Travelers' only witness testified that he knew nothing of the case until one week before the trial and that he never went to Senn Trucking and never talked to Barry Burnette, the person who actually performed that audit. He further testified that the documents are often simply left at the business and reviewed there. (R. p. 99, l. 20 – p. 100, l. 7; R. p. 116, ll. 1-22). Therefore, he had no way of knowing what type of cooperation was provided by Danny Senn and Senn Trucking. As noted by the jury, the actual auditor may have been helpful, but in his absence, they believed the uncontradicted testimony of Danny Senn. (R. p. 131, ll. 9-15).[1]

[1] The trial Court, with the consent of the both parties, spoke privately with the jury after the trial. He then informed the attorneys, on the record, of parts of that conversation as follows: "And I got through talking with jurors. You know the main question? Where was Mr. Burnette? How long have they been looking for him? A long time. They couldn't find him. He got let go. And I said, I imagine he was kind of hard to

The Opinion also failed to consider the fact that the notice of cancellation for the last policy in question was sent prior to the audit even being performed. It takes some amount of deduction to determine this point, but it is contained in the Record and counsel for Senn Trucking clearly explained it to the jury in his closing argument. Travelers did not refute that the cancellation of the policy went into effect on October 25, 2005 as stated in Travelers' Complaint. (R. p. 19). Travelers did not refute that the policy requires ten days notice prior to a cancellation going into effect and therefore the notice would have been sent on or before October 15, 2005. (R. p. 176). The audit about which Travelers complains of non-compliance or non-cooperation did not occur until October 17, 2005. (R. p. 101, ll. 20-22). It is clear that Travelers made its decision to cancel the policy prior to the audit and this is clear evidence of bad faith.

The Opinion misconstrues Senn's argument regarding the conduct of Travelers in waiting until after the statute of limitations expired on any claims as evidence of bad faith when it states "Travelers' conduct after the cancellation does not show bad faith at the time it made the decision to cancel." The South Carolina Supreme Court has allowed evidence which occurred after the insurance company made the decision to cancel a policy as evidence of bad faith liability. Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009) ("...this evidence is probative of Fortis' bad faith liability, ..."). It was clear to the jury from the evidence in the Record that Travelers made a conscious decision to wait until after the statute of limitations claims period had run on any possible Worker's Compensation claims before filing suit to recoup premiums they had not earned. Travelers did not offer any alternative explanation for their delay at trial or on appeal. As

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find because of the downsizing. They said, boy, he's been helpful. So that was one of the main considerations. I'll just tell you." (R. p. 131, ll. 9-15)

stated in the Respondent's brief, Travelers attempted to pull off the perfect insurance scam and the jury would not allow it.

CONCLUSION

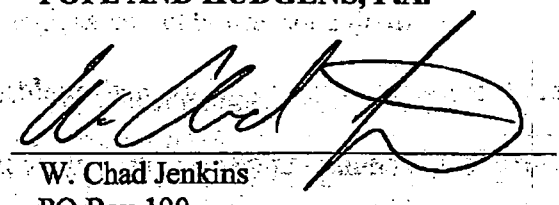
For the reasons set forth in this Memorandum, the Respondent respectfully requests that this Honorable Court grant this Petition for Rehearing and issue its opinion:

A. Amending the Opinion to affirm the lower Court's denial of Appellant's motions for JNOV and new trial on the debt collection action; and,

B. Affirming the lower Court's denial of Appellant's Motion for JNOV on Respondent's bad faith counterclaim and upholding the verdict of the jury.

Respectfully submitted,

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January 24, 2013

THE STATE OF SOUTH CAROLINA
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APPEAL FROM NEWBERRY COUNTY
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Eugene C. Griffith, Jr., Circuit Court Judge

Opinion No. 2013-UP-015, Filed January 9, 2013

Travelers Property Casualty Co.,

Appellant,

v.

Senn Freight Lines, Inc.,

Respondent.

PROOF OF SERVICE

The undersigned employee of Pope & Hudgens, P.A., Attorneys at Law, Post Office Box 190, 1508 College Street, Newberry, South Carolina 29108, does hereby certify that she has served the following named individual(s) with a copy of the pleading(s) indicated below by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the 24th day of January 2013:

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PLEADING SERVED:
Respondent's Petition for Rehearing
Respondent's Memorandum in Support of Petition for Rehearing

Katherine Barnett

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The South Carolina Court of Appeals

Travelers Property Casualty Co., Appellant,

v.

Senn Freight Lines, Inc., Respondent.

Appellate Case No. 2011-189987

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

Thomas E. Huff J.

Paula H. Thomas J.

John W. Kittredge J.

Columbia, South Carolina

cc:
William Chadwick Jenkins
M. Dawes Cooke, Jr.
John William Fletcher

FILED
February 22, 2013

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
No. 2011189987

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co., ...Appellant

v.

Senn Freight Lines, Inc., ...Respondent

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STATEMENT OF ISSUES ON APPEAL

1. **Did the trial court err in denying Travelers' Post-Trial Motions as to its breach of contract claims for unpaid premiums where the evidence showed only that the Contractor Drivers were "statutory employees"?**

   SUGGESTED ANSWER: YES.

2. **In light of the resolution of issue #1, should this Court award Travelers $197,308.00 in damages for unpaid premiums?**

   SUGGESTED ANSWER: YES.

3. **Did Travelers properly preserve for appellate review the question of whether South Carolina recognizes a cause of action for the alleged bad faith cancellation of an insurance policy?**

   SUGGESTED ANSWER: YES.

4. **Did the trial court err in concluding that South Carolina would recognize a cause of action for the alleged bad faith cancellation of an insurance policy?**

   SUGGESTED ANSWER: YES.

5. **Did the trial court err in denying Travelers' Post-Trial Motions and holding that there was evidence that Travelers cancelled the insurance policy at issue in bad faith?**

   SUGGESTED ANSWER: YES.

6. **Did the trial court err in denying Travelers' Post-Trial Motions and holding that there was evidence supporting the amount of compensatory damages awarded on Senn Freight's bad faith counterclaim?**

   SUGGESTED ANSWER: YES.

7. **Did the trial court err in denying Travelers' Post-Trial Motions and holding that there was evidence supporting the award of punitive damages?**

   SUGGESTED ANSWER: YES.

8. **Did the trial court err in denying Travelers' Post-Trial Motions and holding that the jury's award of punitive damages was not excessive?**

   SUGGESTED ANSWER: YES.

STATEMENT OF THE CASE

I. Background Facts

A. The Nature of Senn Freight's Business

Defendant-Respondent Senn Freight Lines, Inc. ("Senn Freight") is a for-hire freight carrier, engaged in the business of hauling cargo nationwide on flatbed tractor-trailers. (*See* R. p. 57, lines 8-12). As a "for-hire" carrier, Senn Freight typically receives requests from customers to move loads of freight from one location to another. (*See* R. p. 57, lines 13-19). During the time at issue in this case (2003-05), Senn Freight had an annual employee payroll of approximately $3-4 million. (*See* R. p. 57, line 20- p. 58, line 8).The President of Senn Freight is Danny Senn ("Mr. Senn"), who was one of two witnesses at trial. (*See* R. p. 56 line 24- p. 57 line 1). Mr. Senn's responsibilities included procuring insurance coverage for Senn Freight, including the workers' compensation insurance policies at issue in this case. (*See* R. p. 58, lines 9-16).

Senn Freight often utilized two classes of drivers to perform its primary business of hauling freight. First, Senn Freight utilized leased employees ("Leased Drivers") hired through a leasing company (also known as a Professional Employee Organization, or PEO); in such an arrangement, the PEO would provide workers' compensation insurance covering those leased drivers. (*See* R. p. 53, lines 19-21, p. 61, lines 16-21). From 2002 through February, 2004, Senn Freight engaged a leasing company, Vanguard. (*See* R. p. 72, lines 1-7). After that time, in late March, 2004, Senn Freight began leasing employees from Workforce Outsourcing. (*See* R. p. 72, lines 8-10; *accord* R. pp. 208-12). In February, 2005, Senn Freight began leasing employees from Certified HR Services. (*See* R. p. 74, line 5- p. 75, line 9). Evidence at trial included Certificates of Liability Insurance for Vanguard, Workforce and Certified HR, containing the following language:

> THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPN THE CERTIFICATE

HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

(*See* R. pp. 213-15).

Senn Freight also utilized the services of "contractor" and/or "owner-operator" drivers (collectively "Contractor Drivers"); these drivers were required to retain their own workers' compensation coverage. (*See* R. p. 61, line 22- p. 62, line 3, p. 88, line 19- p. 90, line 3). The evidence at trial included numerous 1099-MISC forms from Senn Freight that identified and memorialized the remuneration that Senn Freight paid to the Contractor Drivers for calendar years 2003, 2004 and 2005. (*See* R. pp. 186-206). However, Senn Freight did not proffer any evidence at trial that the Contractor Drivers had sufficient workers' compensation insurance coverage to cover any claims they might make. The evidence at trial disclosed that — while Senn Freight claims it had proof of workers' compensation insurance coverage for the Contractor Drivers — the actual insurance certificate issued by Great American Insurance Group stated that "[t]his policy does not provide workers compensation coverage . . . ." (*See* R. p. 67, line 1- p. 70, line 25; p. 207). The Certificate introduced into evidence at trial was, according to the testimony, "an example of what [Senn Freight] provided to Traveler's (sic) when they asked for proof of that coverage." (*See* R. p. 68, lines 13-16). Thus, there was no evidence that Senn Freight ever provided Travelers proof of actual workers compensation coverage for the Contractor Employees.

B. The Insurance Policies at Issue

This lawsuit concerns three Workers Compensation and Employers Liability Policies issued from Appellants Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois ("Travelers") to Senn Freight (collectively the "Policies"):

- Policy Number 6JUB-7803A47-6-03, covering the period of July 10, 2003 through July 10, 2004 ("Policy One") (*See* R. pp. 133-48);

- Policy Number 6JUB-7803A47-6-04, covering the period of July 10, 2004 through July 10, 2005 ("Policy Two") (*See* R. pp. 149-66); and

- Policy Number 6JUB-7803A47-6-05, covering the period of July 10, 2005 through July 10, 2006 ("Policy Three") (*See* R. pp. 167-85).

Specifically, this lawsuit arises out of Travelers' efforts to obtain payment of earned premiums under the Policies and Senn Freight's claims that Travelers wrongfully cancelled the Third Policy.

There are numerous provisions of the Policies that are relevant to this case and Travelers' claim of earned premiums for the Contractor Drivers.[1] The workers' compensation portions of the Policies detailed how the total ultimate premium Senn Freight was to pay would be calculated. That premium was to be calculated based upon the application of a factor to the amounts of "remuneration" that Senn Freight paid to various classes of people who performed work for it:

> Premium for each work classification is determined by **multiplying a rate times a premium basis**. Remuneration is the most common premium basis. 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

---

[1] The Policies include an "EMPLOYEE LEASING CLIENT EXCLUSION ENDORSEMENT," which states:

> As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."
>
> This endorsement applies only with respect to your leased workers engaged in any work provided under an employee leasing arrangement. Your policy does not provide coverage for workers you lease from labor contractors below.

(*See* R. pp. 133-185). The first two Policies identify the "labor contractor" as Vanguard Southeast, Inc.; the final Policy states that Senn Freight was to provide Travelers with leasing information. (*See* R. pp. 133-185). Under this provision, coverage was excluded for the Leased Drivers – but not the Contractor Drivers.

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. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

(*See* R. p. 141 ¶ 5.C (emphasis added), p. 157 ¶ 5.C (emphasis added) and p. 175 ¶ 5.C (emphasis added)).

The Policies further provide that "Item 4 of the Information Page shows the rate and premium basis for certain businesses or work classifications." (*See* R. p. 141 ¶ 5.B, p. 157 ¶ 5.B and p. 175 ¶ 5.B). In Policy One, the Item 4 of the Information Page set forth the following data for use in calculation of premiums:

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
. . .				
TRUCKING: LONG DISTANCE HAULING — ALL EMPLOYEES & DRIVERS	7229	IF ANY	10.47	
CLERICAL OFFICE EMPLOYEES NOC	8810	434460	.31	1347

(*See* R. p. 136). Similarly, the Information Page of Policy Two provided as follows:

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
. . .				
TRUCKING: LONG DISTANCE HAULING — ALL EMPLOYEES & DRIVERS	7229	IF ANY	10.47	
CLERICAL OFFICE EMPLOYEES NOC	8810	477906	.31	1482

(*See* R. p. 152). Finally, the Information Page for Policy Three set forth the following rates and classifications:

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
...				
TRUCKING: LOCAL HAULING ONLY – ALL EMPLOYEES AND DRIVERS	7228	IF ANY	12.25	
TRUCKING: LONG DISTANCE HAULING — ALL EMPLOYEES & DRIVERS	7229	IF ANY	15.06	
WAREHOUSING NOC	8292	33462	6.55	2192
CLERICAL OFFICE EMPLOYEES NOC	8810	525697	.52	2734

(*See* R. p. 170). As the Information Pages from the three Policies disclose, Travelers and Senn Freight anticipated that there might be drivers performing work for Senn Freight who might fall within the scope of the Policies (and impact the premium due).

Based upon these rates and classes of workers, the Policies indicated that premiums would be initially estimated and, later, finally set based on actual remuneration data:

> 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 the final premium is more than the premium you paid to us, you must pay us the balance.

(*See* R. p. 141 ¶ 5.E (emphasis added), p. 157 ¶ 5.E (emphasis added) and p. 175 ¶ 5.E (emphasis added)). Mr. Senn testified that he understood that the initial premiums set forth on the Information Pages to the Policies were only estimates based on whatever information that Senn Freight had provided to Travelers on its application. (*See* R. p. 59, line 17- p. 60, line 7). Mr. Senn stated that Senn Freight did not provide information concerning remuneration to drivers during the application process, since the Leased

Drivers would be covered under workers compensation policies issued to the PEO's:

> Q: Okay. You didn't intend. You didn't submit that information as a potential for your driver's. Is that correct?
>
> A: Correct.
>
> Q: Because at the time, you were using some leasing companies. Is that right?
>
> A: The driver's were covered by the PEO's.
>
> Q: Okay. And the PEO was the one that carried the insurance. Is that right?
>
> A: Yes, sir.

(*See* R. p. 61, lines 12-21).

In connection with calculation of premiums, the Policies obligated Senn Freight to "keep records of information needed to compute premiums" and to "provide us [Travelers] with copies of those records when we ask for them." (*See* R. p. 141 ¶ 5.F, p. 157 ¶ 5.F and p. 175 ¶ 5.F). The Policies further detailed Senn Freight's obligations to provide information:

> 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 the audit will be used to determine final premium.

(*See* R. p. 141 ¶ 5.G, p. 157 ¶ 5.G and p. 175 ¶ 5.G).

Travelers contended at trial — and Senn Freight did not disprove — that Senn Freight did not fulfill its duties to provide information to permit calculation of premiums. As a consequence, Travelers cancelled Policy Three on or about October 25, 2005. (*See* R. p. 113, lines 12-14).

II. Procedural History

Travelers commenced this action against Senn Freight on August 11, 2008 by

Summons and Complaint. The Complaint asserted a claim to recover $197,958.00 for unpaid premiums (calculated based on 1099-MISC forms for the Contractor Drivers that were provided to Travelers):

> 4. The terms of the policy of insurance further provided that, at the inception of the policy term the Defendant would be charged an estimated premium and, at the close of the policy term, the Defendant would be charged an additional earned premium (or credit therefore) premised upon a pay-roll audit for the policy term. The Defendant failed to cooperate with Plaintiff's audit and Plaintiff has proceeded upon an estimated audit, consistent with the terms of its contract of insurance, and your Plaintiff has provided its billing to the Defendant for additional earned premium.
>
> 5. That part of said account has been paid by credit or otherwise and there is not due and owing thereon [$197,958.00].

(*See* R. pp. 19-20 ¶¶ 4-5).

On November 10, 2008, Senn Freight filed its Answer and Counterclaim, denying liability for Traveler's claims and asserting three counterclaims against Travelers:

(a) Breach of contract relating to termination of the Policies;

(b) Bad faith, again relating to termination of the Policies; and

(c) A claim under a surety bond for $2,360.00.

(*See generally* R. pp. 25-30). Travelers responded to these Counterclaims on March 6, 2009. (*See generally* R. pp. 32-35).

This case proceeded through discovery and motions practice and, ultimately, was resolved through a jury trial conducted on August 3-4, 2010. The jury returned a verdict against Travelers on its primary claims; the jury also returned a verdict in favor of Senn Freight on its counterclaims, concluding that:

(a) When the Policies were cancelled, Senn Freight was owed $4,851.06 in unearned premiums;

(b) Travelers cancelled the Policies in bad faith, entitling Senn Freight to compensatory damages of $6,000.00 and punitive damages of $100,000.00; and

(c) Senn Freight was entitled to payment of $2,360.00 and interest on the surety bond.

(*See* R. pp. 14-16).

Subsequently, on or about August 13, 2010, Travelers filed timely post-trial motions, in the form of a Motion for Judgment Notwithstanding the Verdict/New Trial Absolute ("Post-Trial Motions"). (*See* R. pp. 37-52). The trial court denied Travelers' Post-Trial Motions in a March 4, 2011 Order, which Travelers' counsel received on March 11, 2011. (*See* R. p. 7). Travelers timely served and filed its Notice of Appeal from that Order on April 11, 2011. (*See* R. pp. 219-21).

For the reasons set forth herein, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

ARGUMENTS

I. Standard of Review

A. Appeal from Denial of Motion for Judgment N.O.V.

"When reviewing a motion for directed verdict or JNOV, an appellate court must employ the same standard as the trial court." *See Wright v. Craft*, 372 S.C. 1, 17, 640 S.E.2d 486, 495 (Ct. App. 2006).

> The trial judge must deny motions for directed verdict or judgment notwithstanding the verdict "when the evidence yields more than one inference or its inference is in doubt." *Steinke v. S.C. Dep't of Labor, Licensing & Regulation*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999). An appellate court "will reverse the trial court only when there is no evidence to support the ruling below." *Id.*

See Wright v. Hiester Const. Co., 389 S.C. 504, 512-13, 698 S.E.2d 822, 826-27 (Ct. App. 2010). "The appellate court must determine whether a verdict for the opposing party would be reasonably possible under the facts as liberally construed in his favor." *See Jones v. General Elec. Co.*, 331 S.C. 351, 356, 503 S.E.2d 173, 176 (Ct. App. 1998).

B. Appeal from Denial of Motion for New Trial Absolute

The standards governing a motion for a new trial absolute are well-settled in South Carolina:

> A circuit court may grant a new trial absolute on the ground that the verdict is excessive or inadequate. *Rush v. Blanchard*, 310 S.C. 375, 379, 426 S.E.2d 802, 805 (1993). "The jury's determination of damages, however, is entitled to substantial deference." *Id.* The circuit court should grant a new trial absolute on the excessiveness of the verdict only if the amount is so grossly inadequate or excessive so as to shock the conscience of the court and clearly indicates the figure reached was the result of passion, caprice, prejudice, partiality, corruption, or some other improper motives. *Id.* at 379–80, 426 S.E.2d at 805.
>
> The grant or denial of new trial motions rests within the discretion of the circuit court, and its decision will not be disturbed on appeal unless its findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law. *Umhoefer v. Bollinger*, 298 S.C. 221, 224, 379 S.E.2d 296, 297 (Ct. App. 1989); *see also Boozer v. Boozer*, 300 S.C. 282, 283, 387 S.E.2d 674, 675 (Ct. App. 1988) (stating the court

> of appeals has no power to review circuit court's ruling unless it rests on basis of fact wholly unsupported by evidence or is controlled by error of law). "In deciding whether to assess error to a court's denial of a motion for a new trial, we must consider the testimony and reasonable inferences to be drawn therefrom in the light most favorable to the nonmoving party." *Umhoefer*, 298 S.C. at 224, 379 S.E.2d at 297.

See Brinkley v. South Carolina Dep't of Corrections, 386 S.C. 182, 185-86, 687 S.E.2d 54, 56 (Ct. App. 2009).

II. The Trial Court Erred in Denying Traveler's Post-Trial Motions as to Traveler's Breach of Contract Claim

For the reasons set forth herein, the trial court erred in denying Travelers' Post-Trial Motions with regard to its breach of contract cause of action for earned premiums.

A. The Policies Plainly Provide the Travelers Is Entitled to Premiums for the Drivers at Issue

The trial court erred in denying Travelers' Post-Trial Motions, because the undisputed evidence establishes, beyond any doubt, that Travelers was entitled to earned premiums under the Policies.

The Policies provided for calculation of the premium to be paid to Travelers based upon a percentage of "remuneration" that Senn Freight paid to people who might conceivably make workers compensation claims.

> Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. 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. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

(*See* R. p. 141 ¶ 5.C (emphasis added), p. 157 ¶ 5.C (emphasis added) and p. 175 ¶ 5.C

(emphasis added)). The Policies further provided that the final premiums would be based upon the actual premium basis, *i.e.*, the amounts of "remuneration" that Senn Freight actually paid:

> 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 the final premium is more than the premium you paid to us, you must pay us the balance.

(*See* R. p. 141 ¶ 5.E, p. 157 ¶ 5.E and p. 175 ¶ 5.E).

As set forth above, the Policies stated an initial estimated premium, which was based upon information provided in Senn Freight's application. Initially, the Policies only estimated premiums for clerical/office and warehouse employees. Mr. Senn stated that Senn Freight did not provide information concerning drivers' remuneration in its application:

> Q: Okay. You didn't intend. You didn't submit that information as a potential for your driver's. Is that correct?
>
> A: Correct.
>
> Q: Because at the time, you were using some leasing companies. Is that right?
>
> A: The driver's were covered by the PEO's.
>
> Q: Okay. And the PEO was the one that carried the insurance. Is that right?
>
> A: Yes, sir.

(*See* R. p. 61, lines 12-21). However, the Information Pages of the Policies also included rates to calculate premiums for remuneration paid to drivers "if any." (*See* R. pp. 136, 152, and 170). As such, the parties specifically contemplated that drivers were included among the classes of people with regard to whom Travelers and Senn Freight "*could*" be liable for workers' compensation.

The ultimate question as to Travelers' claims is whether the Contractor Drivers — who are indisputably within the classes of drivers listed on the Policies' Information Pages — "**could** make us [Travelers] liable" to provide coverage for workers' compensation claims. For the reasons set forth below, the undisputed evidence showed that Senn Freight — and consequently Travelers — *could* have been liable under the workers' compensation laws to the Contractor Drivers. Consequently, Travelers earned premiums to be calculated based on the remuneration paid to the Contractor Drivers. As a result, the trial court erred in denying Travelers' Post-Trial Motions.

Coverage under the South Carolina Workers Compensation Act generally depends on the existence of an employer-employee relationship. *See McDowell v. Stilley Plywood Co.*, 210 S.C. 173, 41 S.E.2d 872 (1947); *Tillotson v. Keith Smith Builders*, 357 S.C. 554, 593 S.E.2d 621 (Ct. App. 2004). One statutory exception to this general rule is for "statutory employees":

> When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

See S.C. Code Ann. § 42-1-400. South Carolina case law defines who is a "statutory employee":

> Three tests are applied in determining whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee within the meaning of § 42-1-400:
>
> (1) is the activity an important part of the owner's business or trade;
>
> (2) is the activity a necessary, essential, and integral part of the owner's trade, business, or occupation; or
>
> (3) has the identical activity previously been performed by the owner's

employees?

> *Boone v. Huntington and Guerry Elec. Co.*, 311 S.C. 550, 430 S.E.2d 507 (1993); *Riden v. Kemet Elec. Corp.*, 313 S.C. 261, 437 S.E.2d 156 (Ct. App. 1993); *see also Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 473, 527 S.E.2d 761, 763 (2000) (holding there are three tests used to determine whether an employee was "engaged in an activity that is part of the owner's trade, business, or occupation"); *Smith v. T.H. Snipes and Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991) (listing the three factors of the statutory employee test); *Revels v. Hoechst Celanese Corp.*, 301 S.C. 316, 318, 391 S.E.2d 731, 732 (Ct. App. 1990) (finding the test used to determine if one is a statutory employee is "whether or not [the work] being done is or is not a part of the general trade, business or occupation of the owner."). . . . **Any doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act**. *Riden*, 313 S.C. at 263, 437 S.E.2d at 158.

See Edens v. Bellini, 359 S.C. 433, 442-43, 597 S.E.2d 863, 868 (Ct. App. 2004). "If the activity at issue meets **even one** of these three criteria, the injured employee qualifies as the statutory employee of the owner.'" *See Olmstead v. Shakespeare*, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003) (emphasis added).

In this case, the evidence supports only one conclusion: that the Contractor Drivers were Senn Freight's statutory employees. Senn Freight was engaged in business as a for-hire freight carrier, hauling cargo nationwide on flatbed tractor-trailers. (*See* R. p. 57, lines 8-12). As Mr. Senn testified at trial, "Senn hauls freight, sir." (*See* R. p. 64, line 14). It would be disingenuous to suggest that truck drivers were not important, necessary, essential and integral parts of Senn **Freight**'s business. In reality, it is self-evident that the work performed by the Contractor Drivers was highly important to Senn Freight's business — in fact, the performed the very work that Senn Freight was incorporated to engage in. There was no evidence at trial contradicting that the Contractor Drivers performed work that was an important part of Senn Freight's business or trade. As such, drivers contracted to haul loads for Senn Freight are Senn Freight's statutory employees. There was no evidence to permit the jury to determine otherwise.

This Court, in an unpublished opinion, has ruled on facts nearly identical to those

at bar and held that similar contractor drivers were a carrier's statutory employees:

> Here, Massey, a truck driver, sustained injuries while transporting loads for Werner, a common carrier. Clearly, the transportation of goods is an important, integral part of Werner's trade, business, or occupation.
>
> Massey admits she and her husband entered into a "contract" with Werner to lease their truck pursuant to an owner-operator agreement. Moreover, Massey concedes she signed an "Owner-Operator Compensation Coverage Agreement," wherein she is referred to as a "Contractor," and she sought workers' compensation coverage under Nebraska law. Further, in a "Declaration of Employment Status" document, Massey declared she was "self-employed." . . .
>
> Further, Massey's status as an independent contractor does not preclude her from receiving benefits as a statutory employee. *See Smith v. T.H. Snipes & Sons, Inc.*, 306 S.C. 289, 411 S.E.2d 439 (1991). In *Smith*, Smith's decedent, a self-employed welder, was fatally injured while repairing a metal shearing machine in T.H. Snipes' place of business. *Id.* at 290, 411 S.E.2d at 439. Our supreme court found the decedent was T.H. Snipes' statutory employee even though the decedent was "self employed" and a "subcontractor." *Id.* at 290-91, 411 S.E.2d 439-40. The court stated "nothing in the language of [§ 42-1-400] precludes classification of a subcontractor as a statutory employee." *Id.* at 291, 411 S.E.2d at 440. We see no distinction between *Smith* and this case, except that the decedent in Smith was a welder and Massey was a truck driver.
>
> We therefore affirm the circuit court's holding that Massey is entitled to benefits as a statutory employee.

See Massey v. Werner Enterp., Inc., Opinion No. 2010-UP-001 (S.C. Ct. App. filed Jan. 7, 2010) (withdrawn, substituted and refiled March 24, 2010). This persuasive case reiterates and bolsters Travelers' contention that the trial court erred in denying its Post-Trial Motions.

Travelers anticipates that Senn Freight will argue that the South Carolina Workers Compensation Act did not encompass the Contractor Drivers because of S.C. Code Ann. § 42-1-360(2), which provides that the workers' compensation scheme does not apply to:

> any person who has regularly employed in service less than four employees in the same business within the State or who had a total annual payroll during the previous calendar year of less than three thousand dollars regardless of the number of persons employed during that period.

See S.C. Code Ann. § 42-1-360(2). However, Senn Freight misapplies this statute. It is undisputed that Senn Freight has more than four employees — particularly when the number of statutory employee Contractor Drivers are included. While the Contractor Drivers may be individuals (or themselves have fewer than four employees), this is of no moment to whether the Contractor Drivers may be statutory employees vis-à-vis Senn Freight. The only relevant inquiry is whether the Workers Compensation Act would apply to employees of Senn Freight; if so, then it may also apply to Senn Freight's statutory employees.

Travelers also anticipates that Senn Freight will rely upon a section of the Workers Compensation Act providing that it does not apply to owner-operators of tractor trailers:

> an individual who owns or holds under a bona fide lease-purchase or installment-purchase agreement a tractor trailer, tractor, or other vehicle, referred to as "vehicle", and who, under a valid independent contractor contract provides that vehicle and the individual's services as a driver to a motor carrier. For purposes of this item, any lease-purchase or installment-purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease-purchase or installment-purchase is between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. This individual is considered an independent contractor and not an employee of the motor carrier under this title. The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier's workers' compensation policy or authorized self-insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

See S.C. Code Ann. § 42-1-360(9). However, this section did not become effective until 2007, well after the Policy periods at issue in Travelers' claims:

The 2007 amendment, in item (1), deleted ", and Federal employees in this State" following "42-1-130"; deleted item (3) relating to Textile Hall Corporation.; redesignated items (4) and (5) as items (3) and (4); **and added items (5) to (9)**

See S.C. Code Ann. § 42-1-360(9) "EFFECT OF AMENDMENT". The 2007 amendment to Section 42-1-360 expressly provided that it "applies to injuries that occur on or after this date [June 20, 2007]." *See* 2007 S.C. Acts 111. Therefore, this provision — excluding owner-operators from the South Carolina Workers Compensation Act in some circumstances — was not in effect at any time relevant to this lawsuit.

As set forth above, the undisputed evidence shows that the Contractor Drivers "*could*" be statutory employees entitled to benefits under the South Carolina Workers Compensation Act. As a result, there is no evidence to support the jury's verdict. Therefore, the remuneration paid to Contractor Drivers should be considered in determining the final premium due to Travelers under the Policies. The trial court erred in denying Travelers' Post-Trial Motions.

B. The Evidence Supports the Amount of Premiums Claimed by Travelers in This Case

As set forth above, the **only** conclusion that the evidence supports is that Travelers was entitled to premiums based upon the remuneration paid to the Contractor Drivers. For the reasons that follow, the evidence presented at trial provided — again, without dispute — a basis for calculating to a reasonable degree of certainty the amount of premiums to which Travelers was entitled under the Policies.

The evidence presented at trial demonstrated — based on the 1099-MISC forms — that Senn Freight paid the Contractor Drivers the following amounts in 2003, 2004 and 2005:

PERSON/ ENTITY	REMUNERATION PAID (2003)	REMUNERATION PAID (2004)	REMUNERATION PAID (2005)
William N. Ward	$95,975.97	$119,586.35	$104,305.92

Taylor Trucking Co., Inc.	$52,886.88	$69,944.79	$138,601.24
Randy Anderson	$9,280.98	$0.00	$0.00
Marshall Carver	$37,578.99	$0.00	$0.00
Bert Hayes	$43,595.46	$0.00	$0.00
Mitchell Wright	$92,274.13	$117,044.21	$112,233.50
Melroy Houser	$100,026.08	$121,133.15	$103,951.59
John B. Abney	$77,504.14	$66,995.56	$40,966.36
GEO Trucking Co., Inc.	$81,952.80	$114,919.15	$96,412.57
ASAP Logistics, Inc.	$0.00	$43,563.16	$0.00
Christopher P. Rahrer	$0.00	$0.00	$7,430.28
BME Trucking	$0.00	$0.00	$311,635.56
Richard Summers	$0.00	$0.00	$66,450.50
Sue Chandler	$0.00	$0.00	$106,647.66
TOTALS	$591,075.43	$653,186.37	$1,088,635.18

(*See* R. pp. 186-206). Stephen Evanglista — an employee of Travelers — testified that the remuneration information reflected on the 1099-MISC forms was appropriate to use to calculate the premium due:

> Q: But aside from all of that, the information is provided to you on these 1099's. If you are using it to calculate a premium for the policy period, how do you handle your evaluation of this?
>
> A: Oh, I see. I see. Well, we look at the amount that was paid to these

individuals, we take the amounts that were paid and, again, apply to the rate that's established on the policy. Like you said, divide the amount that was paid by a hundred and multiply it by the rate that's on the policy.

(*See* R. p. 107, line 23- p. 108, line 8). More to the point, he testified that — in the absence of Senn Freight providing additional information — these documents provided the best information available to calculate the premium:

Q: All right. And let me back up again -- do you take the amount of those 1099's unless there's some other guidance as far as what was actually paid to somebody?

A: Right. In the absence of any other records, we do have rules that we can apply to the amount paid to sub-contractors or independent contractors for the works that's being performed. But without having supporting documentation to know how to apply those rules to the payroll for the amounts paid to the subcontractors in order to give a proper adjustment to derive at the correct amount that should be included in the basis of premium, there's really no way of knowing how much to pick up. So in absence of the insured providing us that documentation, we take the full amount that was paid because we have no idea how to -- what adjustments to make to that.

(*See* R. p. 108, line 17- p. 109, line 6).

Applying the methodology discussed above and the rates contained in the Policies, the undisputed testimony at trial was that, based upon the amount of remuneration referenced in the 1099's (R. pp. 186-206), the premiums on the policies for the Contractor Drivers would total **$197,308.00**, itemized as follows:

- ***For the Policy period July 10, 2003-July 10, 2004***: $65,137.00
- ***For the Policy period July 10, 2004-July 10, 2005***: $91,184.00
- ***For the Policy period July 10, 2003-July 10, 2004***: $40,987.00

(*See* R. p. 110, line 5- p. 115, line 9). Senn Freight did not present any evidence challenging: (a) that the Contractor Drivers were included within the classes of drivers contained on the Information Pages; (b) the accuracy of the data contained in the 1099's; or (c) the calculations Travelers used to arrive at the final premium.

Therefore, in light of the trial court's error in denying Travelers' Post-Trial Motions as to liability and the undisputed evidence establishing the amount of damages, this Court should reverse the trial court and enter judgment in favor of Travelers in the amount of $197,308.00.

III. The Trial Court Erred in Denying Traveler's Post-Trial Motions as to Senn Freight's Bad Faith Counterclaim for Wrongful Termination of the Policies

For the reasons set forth herein, the trial court erred in denying Travelers' Post-Trial Motions with regard to Senn Freight's bad faith cause of action relating to the cancellation of the Third Policy.

A. South Carolina Law Does Not Recognize a Cause of Action for Bad Faith Cancellation of an Insurance Policy

As an initial matter, the trial court erred in denying Travelers' Post-Trial Motions with regard to Senn Freight's bad faith claim. South Carolina law does not recognize, and has never recognized, a bad faith claim relating to cancellation of an insurance policy — as opposed to the denial of coverage for a particular claim.

1. Travelers Did Not Waive Its Argument That South Carolina Does Not Recognize a Bad Faith Claim Arising Out of the Cancellation of an Insurance Policy (as Opposed to a Denial of Coverage for a Particular Claim)

In its Order denying Traveler's Post-Trial Motions, the trial court initially ruled that Traveler's challenges to Senn Freight's "bad faith cancellation" counterclaims were waived because Travelers did not timely raise them:

> The Plaintiff waived his (sic) objections to the Defendant's cause of action for bad faith cancellation of policy by failing to object to the jury charge. Plaintiff cannot raise an issue for the first time on appeal and must make a timely objection. *Lucas v. Rawl Family Ltd. P'ship*, 359 S.C. 505, 598 S.E.2d 712 (2004).
>
> Plaintiff also failed to plead in its Reply to Counterclaim that the cause of action was improper and simply issued a standard denial. Plaintiff did not allege failure to state a cause of action or failure to state a claim in its Reply and the issue cannot be raised for the first time on appeal. *Mains v. K-Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311, 314 (Ct. App. 1988).

(*See* R. pp. 6-7). However, this conclusion was in error and should be reversed.

"'[W]hen an appellant neither raises an issue at trial nor through a Rule 59(e), SCRCP, motion, the issue is not preserved for appellate review.'" *See McComb v. Conard*, 394 S.C. 416, 426-27, 715 S.E.2d 662, 667 (Ct. App. 2011) (*quoting Doe v. Doe*, 370 S.C. 206, 212, 634 S.E.2d 51, 55 (Ct. App. 2006)). However, the Supreme "Court does not require parties to engage in futile actions in order to preserve issues for appellate review." *See Staubes v. City of Folly Beach*, 339 S.C. 406, 415, 529 S.E.2d 543, 546–47 (2000). Travelers did more than enough under these standards to preserve this issue for appellate review.

At the close of evidence on Senn Freight's counterclaims, but before the case was submitted to the jury, Travelers' trial counsel moved for a directed verdict as to this very argument:

> Working off the insurance bad-faith, again, Your Honor, there's absolutely no evidence in the case. **South Carolina only recognizes bad faith in refusal to pay benefits in a first party or third party situation. There's been no allegation whatsoever that there was a refusal to pay benefits in this case.** And really reading the allegations of that particular fourth defense in the counterclaim, it's just a restatement of a breach of contract. **It's in a sheep's clothing of an insurance bad faith claim**. Testimony from the stand, I believe, basically was do you feel like it was done in bad-faith, yes. Without any further evidence or testimony of any insurance bad faith and refusal to pay benefits. So we believe that the Plaintiff would be entitled to directed verdict on that counterclaim.

(*See* R. p. 126, lines 4-18 (emphasis added)). The trial court rejected this argument, denied Travelers' motion and submitted the bad faith claim to the jury:

> All right. My ruling is I'm going to deny the motion right now. I'm going to go off the record just for a second. . . . Y'all were arguing the motions for directed verdict for Plaintiff and Defendant. If y'all want to be heard further on those, I'll let you -- hear you further on those, but my feeling before we took a break and as we had the conference in chambers was to deny them both ways and proceed with the verdict form that we fashioned roughly back in chambers.

(*See* R. p. 127, lines 3-5 and 8-14). Subsequently, Travelers raised the issue yet again in

its Post-Trial Motions. (*See* R. pp. 37-52). The trial court then again ruled upon and rejected this argument, this time in writing; this is the Order presently on appeal. (*See* R. pp. 1-13). Thus, Travelers raised this issue twice before the trial court and was twice unsuccessful. This was more than sufficient to preserve the issue for appellate review.

Therefore, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions as to Senn Freight's bad faith claims.

2. Senn Freight's Claim of Bad Faith Is Not Authorized by South Carolina Law

As to the merits, Senn Freight's bad faith claim must fail, insofar as it is premised upon Traveler's cancellation of the Third Policy, rather than denial of coverage for a particular claim. South Carolina has never explicitly recognized the extension of the bad faith cause of action to such facts. Therefore, the trial court erred in denying Travelers' Post-Trial Motions.

The only bad faith action recognized in South Carolina concerns an insurer's alleged bad faith failure to pay benefits under a first-party insurance policy or to defend or indemnify under a liability policy. The elements of the bad faith cause of action have been defined as follows:

> The elements of an action for breach of the covenants of good faith and fair dealing in an insurance contract are as follows:
>
> 1) the existence of a mutually binding contract of insurance between plaintiff and defendant;
>
> **2) a refusal by an insurer to pay benefits due under the contract;**
>
> 3) resulting from the insurer's bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing in the contract;
>
> 4) that causes damage to the insured.

See Cock-N-Bull Steak House, Inc. v. Generali Ins., Co., 321 S.C. 1, 6, 466 S.E.2d 727, 730 (1996) (emphasis added) (enumerating the elements

of a claim for bad faith refusal to pay benefits under an insurance contract).

See Gaskins v. Southern Farm Bureau Cas. Ins. Co., 343 S.C. 666, 673, 541 S.E.2d 269, 272 (Ct. App. 2000) (emphasis added). "A **necessary element** of this cause of action is 'a refusal by the insurer to pay benefits due under the contract.'" *See Walters v. Canal Ins. Co.*, 294 S.C. 150, 151, 363 S.E.2d 120, 121 (Ct. App. 1987) (*quoting Bartlett v. Nationwide Mut. Fire Ins. Co.*, 290 S.C. 154, 158, 348 S.E.2d 530, 532 (Ct. App. 1987)). Of particular note, no South Carolina case has ever explicitly stated that the bad faith tort may be extended to encompass bad faith cancellation of an insurance policy (in the absence of denial of coverage for a particular claim). Rather, every South Carolina appellate bad faith case has involved a failure to pay a specific claim, rather than the mere cancellation of a policy in the abstract.

Simply put, South Carolina has **never** recognized the claim Senn Freight seeks to assert in this case. In its Order denying Travelers' Post-Trial Motions, the trial court relied heavily upon *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), stating that *Mitchell* "specifically states that bad faith cancellation is a cause of action." (*See* R. p. 7). However, this is in error. While the *Mitchell* Court did affirm a bad faith judgment stemming from the rescission of an insurance policy, it did not go nearly as far as the trial court suggests. First, the *Mitchell* Court was not presented with the specific legal argument that Travelers raises here: whether South Carolina's bad faith tort, as a matter of law, should extend to policy cancellation. Moreover, *Mitchell* concerned a first-party health insurance policy that was cancelled after the insured was diagnosed as HIV-positive. In essence, the cancellation of the policy in *Mitchell* was a denial of coverage for a particular health condition. On the other hand, in this case, there is no allegation or evidence of a pending claim at the time of cancellation of the Third Policy. As such, *Mitchell* is not controlling and has no application.

For the foregoing reasons, this Court should reverse the trial court's denial of

Travelers' Post-Trial Motions.

B. The Undisputed Evidence Establishes That Travelers' Cancelled the Policies in Good Faith

Assuming, *arguendo*, that South Carolina recognizes that a bad faith claim *could* be asserted for the wrongful termination of an insurance policy, the trial judge nevertheless erred in denying Travelers' Post-Trial Motions. The undisputed evidence cannot support a reasonable person to conclude that Travelers acted in bad faith in cancelling the Third Policy. To the contrary, the only evidence of record — aside from Senn Freight's speculative innuendo — demonstrates that Travelers cancelled the Third Policy because of Senn Freight's refusal to cooperate it.

In the context of insurance, "bad faith" requires proof of the insurer's knowingly culpable conduct:

> "Bad faith is a knowing failure on the part of the insurer to exercise an honest and informed judgment in processing a claim.... [A]n insurer acts in bad faith where there is no reasonable basis to support the insurer's decision." *American Fire & Cas. Co. v. Johnson*, 332 S.C. 307, 311, 504 S.E.2d 356, 358 (Ct. App. 1998); *see also Cock-N-Bull Steak House v. Generali Ins. Co.*, 321 S.C. 1, 466 S.E.2d 727 (1996).

See Doe v. South Carolina Med. Malpractice Liab. Joint Underwriting Ass'n, 347 S.C. 642, 649, 557 S.E.2d 670, 674 (2001). "Bad faith, like fraud, connotes dishonesty. It should not be rashly charged or lightly inferred." *Miles v. State Farm Mut. Auto. Ins. Co.*, 238 S.C. 374, 382, 120 S.E.2d 217, 221 (1961). As the Verdict Form recognized, Senn Freight was required to prove bad faith cancellation of the Third Policy be clear and convincing evidence. (*See* R. pp. 14-16). However, Senn Freight did not present **any** evidence at trial to carry its burden of showing that Travelers acted in bad faith.

The Third Policy expressly reserved to Travelers the right to cancel that insurance policy:

> 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 sown in

Item 1 of the Information Page will be sufficient to provide notice.

3. The policy period will end on the day and hour stated in the cancellation notice.

(*See* R. p. 176 ¶ 6.D(2) and (3)). This provision of the Third Policy permits termination with or without cause. It does not restrict or limit Travelers' right to terminate. Therefore, it is clear that — irrespective of whether or not Senn Freight breached the agreement — Travelers had the contractual right to terminate. There was no evidence that the cancellation of the Third Policy violated any express terms of that agreement so as to cause any damage to Senn Freight.

In response to this broad contractual right to terminate, Senn Freight did not present a scintilla of evidence showing that Travelers exercised that right in bad faith. Instead, Senn Freight relies upon speculation and innuendo in an effort to carry its heavy burden. The only "evidence" of bad faith that Senn Freight proffered was Mr. Senn's self-serving testimony that he subjectively considered the cancellation of the final Policy to be in bad faith. (*See* R. p. 125, lines 6-8). Senn Freight did not present any expert witness testimony supporting its claim that Travelers acted in bad faith. Senn Freight did not present any admissions by Travelers that it knowingly lacked a reasonable basis to cancel the Third Policy. Senn Freight did not present any evidence of an ulterior motivation or purpose by Travelers. Simply put, there was no evidence whatsoever that could support a jury finding of bad faith.

To the contrary, the **only** evidence as to Travelers' motivation supports the contrary conclusion, *i.e.*, that Travelers had a proper and legitimate reason to cancel the Third Policy under the terms of that agreement. The Third Policy obligated Senn Freight to "keep records of information needed to compute premiums" and to "provide us with copies of those records when we ask for them." (*See* R. p. 175 ¶ 5.F). In addition, in the Third Policy, Senn Freight agreed to grant Travelers open and unrestricted access to a broad range of its business records and to permit an 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 the audit will be used to determine final premium.

(*See* R. p. 175 ¶ 5.G (emphasis added)). Mr. Senn testified that he was aware of these obligations under the Third Policy:

> Q: Now, the policy also provides, and you're aware of this that you were subject to being audited. Is that correct?
>
> A: Yes.
>
> Q: Okay. And that means that you were obligated and Traveler's had a right to review your books, disbursement journals, general ledgers and all that information that you said a few minutes ago was vital to conducting a complete and accurate and reliable audit. Is that correct?
>
> A: An auditor can look at what has happened. That doesn't mean every record we have.

(*See* R. p. 63, lines 15-25).

The only evidence at trial demonstrated that Senn Freight failed to comply with its contractual obligations to provide information to Travelers regarding the Leased and Contractor Drivers to permit Travelers to calculate its premium. For example, Stephen Evanglista of Travelers testified that Senn Freight failed to provide Travelers with certain requested information:

> Q: So backing up to the terms of the policy, Senn's to provide us with information. Is that correct?
>
> A: That's correct.
>
> Q: Travelers has a right to review this information. Is that correct?
>
> A: That's correct.
>
> Q: Now, based upon your review of the records subsequent to this audit of October 17, 2005, was there any indication this information was requested of Senn?

A: Yes. Yes, I believe so. . . .

Q: Now, Mr. Evanglista, you stated there is an indication in your view of the records that this information was subsequently requested from Senn, correct?

A: Yes.

Q: Based on your review of the records subsequent to this audit as well as the request for that information, is there any indication that this information has been provided to Travelers?

A: No. No, it hasn't been provided to us.

(*See* R. p. 105, line 18- p.107, line 1; *see generally* R. pp. 101-107). Moreover, with regard to the Leased Drivers, Mr. Senn's testimony established that Senn Freight did not provide Travelers with relevant and sufficient information (such as copies of binding insurance policies) to definitively establish that those drivers were covered under the PEOs' workers' compensation insurance policies as required by the Policies for all relevant times. (*See* R. p. 78, line 12-p. 88, line 25; R. pp. 213-15).

On the other hand, Senn Freight did not provide any specific evidence showing bad faith intention on the part of Travelers so as to permit a jury to disregard this evidence and find bad faith. As the trial judge instructed the jury, Senn Freight had a heavy burden to prove bad faith by clear and convincing evidence. Senn Freight did nothing to fulfill its obligation. Simply put, Senn Freight did not present a shred of evidence of bad faith — let alone sufficient evidence to carry its heavy burden of showing bad faith by clear and convincing evidence. Aside from Mr. Senn's self-serving and subjective testimony based on innuendo, there is **nothing** in the record whatsoever to support a finding of bad faith. Thus, the record could not support the jury's verdict.

For the foregoing reasons, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

IV. The Trial Court Erred in Denying Traveler's Post-Trial Motions as to Senn Freight's Bad Faith Counterclaim Because There Is No Evidence to Support the Amount of Damages Awarded

The trial court also erred in denying Travelers' Post-Trial Motions because there is no evidence to support the measure of Senn Freight's compensatory damages.

South Carolina law has long required that a party seeking to recover damages must present sufficient evidence to permit the jury to determine the amount of damages with reasonable certainty:

> In order for damages to be recoverable, the evidence should be sufficient to "enable the court or jury to determine the amount thereof with reasonable certainty or accuracy." *Whisenant v. James Island Corp.*, 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981). "While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required." *Id.* The evidence, however, should be such that a court or jury can reasonably determine an appropriate amount. *Gray v. S. Facilities, Inc.*, 256 S.C. 558, 570, 183 S.E.2d 438, 444 (1971). Moreover, bald allegations are insufficient to establish a claim for diminution in value, and the evidence must not be speculative as to the amount of the alleged diminution. *See Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 117, 410 S.E.2d 537, 546 (1991).

See Winters v. Fiddie, 394 S.C. 629, 647, 716 S.E.2d 316, 325 (Ct. App. 2011). Senn Freight never even attempted to present evidence sufficient to satisfy this standard.

On its bad faith cancellation counterclaim, the jury awarded Senn Freight $6,000.00 in compensatory damages. (*See* R. pp. 14-16). However, there was not a scintilla of evidence supporting such an award of damages. There was no objective basis for the jury to use to estimate the amount of actual harm from cancellation. The only specific damage figure that Senn Freight presented to the jury was the amount of "unearned premium" it claimed it was entitled to recover because of the early cancellation of the Third Policy — which was awarded on Senn Freight's breach of contract claim and could not have been included in the bad faith verdict. Rather, the amount of the bad faith damage award was cut from whole cloth. It was sheer speculation, unsupported by any

evidence.

For the foregoing reasons, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

V. There Is No Evidence Supporting the Jury's Award of Punitive Damages

The trial court also erred in denying Travelers' Post-Trial Motions because there is no evidence supporting the jury's award of punitive damages.

> In order to recover punitive damages, the plaintiff must present clear and convincing evidence that the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights. S.C.Code Ann. § 15–33–135 (2005) ("In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence."); *Taylor v. Medenica*, 324 S.C. 200, 221, 479 S.E.2d 35, 46 (1996). "The test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights." *Rogers v. Florence Printing Co.*, 233 S.C. 567, 577–78, 106 S.E.2d 258, 263 (1958); *see also Berberich v. Jack*, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011) (*quoting Rogers*). "It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor...." *Rogers*, 233 S.C. at 578, 106 S.E.2d at 263. In other words, "at the time of his act or omission to act the tort-feasor [must] be conscious, or chargeable with consciousness, of his wrongdoing." *Id.* at 578, 106 S.E.2d at 264.

See Cody P. v. Bank of America, N.A., 395 S.C. 611, 625, 720 S.E.2d 473, 480 (Ct. App. 2011). There was no evidence presented at trial that could support the jury's imposition of punitive damages on Travelers.

As described above, Senn Freight did not present a scintilla of evidence of Travelers' culpable or wrongful conduct. To the contrary, Senn Freight has relied solely on speculation, conjecture and innuendo. This is insufficient to carry the burden of proving entitlement to punitive damages by "clear and convincing evidence." Senn Freight never presented any evidence that Travelers cancelled the Third Policy in such a blameworthy manner as to warrant punitive damages. At the very most, Travelers exercised a contractual right to cancel for a reason that Senn Freight does not agree with.

Therefore, this Court should determine that there is no evidence supporting the award of punitive damages and that the trial court's denial of Travelers' Post-Trial Motions was in error.

VI. The Jury's Award of Punitive Damages Was Plainly and Unjustifiably Excessive

The trial court also erred in denying Travelers' Post-Trial Motions because the jury's award of punitive damages was plainly excessive.

> Our supreme court recently indicated an appellate court's scope of review to be *de novo*. *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 583, 686 S.E.2d 176, 185, 183 (2009).
>
> In reviewing an award of punitive damages, we consider (1) the reprehensibility of the conduct, (2) the disparity or "ratio" between actual harm and the punitive damage award, and (3) the comparative penalties. *Fortis*, 385 S.C. at 587–89, 686 S.E.2d at 185–86.
>
> **1. Reprehensibility**
>
> In considering reprehensibility, a court should consider whether:
>
> > (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.
>
> *Id.* at 185, 686 S.E.2d at 587. This encompasses the defendant's culpability, the duration of the conduct, the defendant's awareness or concealment, and the existence of similar past conduct. *Id.* at 185, n. 7, 686 S.E.2d at 587, n.7.

See Limehouse v. Hulsey, 397 S.C. 49, 723 S.E.2d 211, 227 (Ct. App. 2011). On Senn Freight's bad faith counterclaim, the jury returned a verdict of compensatory damages in the amount of $6,000.00 and punitive damages in the amount of $100,000.00. (*See* R. pp. 14-16). For the reasons that follow, that award is plainly excessive.

There is no evidence to support a finding of reprehensibility in this case. Any harm that Senn Freight sustained was purely economic, not physical. There was no

evidence that Travelers was indifferent to the health or safety of others. Moreover, Senn Freight is a sophisticated and successful business entity, not a financially vulnerable party. Mr. Senn testified that he was a college-educated, experienced Certified Public Accountant who had been involved with Senn Freight for most of his life; as such, he had knowledge of and experience with accounting practices and audits. (*See* R. p. 54, line 15-p. 58, line 16). Senn Freight presented no evidence of trickery, deceit or intentional malice by Travelers. This was a single, discrete incident (cancellation of the Third Policy); there was no evidence of similar conduct by Travelers.

Moreover, the ratio of punitive to actual damages here is patently unreasonable. The amount of punitive damages awarded ($100,000.00) was **16.67** times the amount of compensatory damages awarded ($6,000.00). This ratio is facially excessive. *See Hollis v. Stonington Development, LLC*, 394 S.C. 383, 399, 714 S.E.2d 904, 912-13 (Ct. App. 2011) ("The ratio of punitive damages awarded by the jury in this case to actual damages is 8.75 to 1. We find this to be an excessive disparity between the punitive damages awarded and the harm actually suffered by the Hollises and Robinsons."). While there is no concrete limit on the ratio between actual and punitive damages, "few awards exceeding a single-digit ratio between punitive and compensatory damages will satisfy due process." *See State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 410 (2003). Finally, there is no evidence to support that cases involving similar facts have warranted such draconian punitive damage awards.

Therefore, this Court should determine that the award of punitive damages was excessive and that the trial court's denial of Travelers' Post-Trial Motions should be reversed.

CONCLUSION

For all of the reasons set forth herein, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

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Date: May 25, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
No. 2011189987

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co., ... Appellant

v.

Senn Freight Lines, Inc., ... Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Appellant's Final Brief complies with Rule 211(b), SCACR.

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Appellant,

v.

Senn Freight Lines, Inc.,

Respondent.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. WAS THE LOWER COURT CORRECT IN DENYING APPELLANTS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL ON PLAINTIFF'S DEBT COLLECTION ACTION?

II. WAS THE LOWER COURT CORRECT IN DENYING APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FORNEW TRIAL ON RESPONDENT'S BREACH OF CONTRACT COUNTERCLAIM?

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IV. WAS THE LOWER COURT CORRECT IN DENYING APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT REGARDING THE JURY'S PUNITIVE DAMAGES AWARD WHEN THE JURY AND TRIAL COURT BOTH CONSIDERED ALL PROPER CRITERIA?

V. WAS THE LOWER COURT CORRECT IN DENYING APPELLANT'S MOTION FOR NEW TRIAL ABSOLUTE UNDER THE THIRTEENTH JUROR DOCTRINE WHEN THERE WAS NO EVIDENCE OF PASSION OR PREJUDICE OR OTHER IMPROPER MOTIVE?

STATEMENT OF THE CASE

Respondent Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois (hereinafter "Travelers") filed a Complaint with the Newberry County Clerk of Court on September 3, 2008 for a non-jury debt collection. (R. p. 19). Respondent Senn Freight Lines, Inc., (hereinafter "Senn Freight") filed its Answer & Counterclaim on November 10, 2008 asserting a general denial and alleging counterclaims for breach of contract, insurance bad faith and a surety bond claim. (R. p. 25). A trial was held before the Honorable Eugene C. Griffith, Jr. in the Court of Common Pleas for Newberry County on August 3-4, 2010. The jury issued its unanimous verdict for Defendant Senn Freight on Travelers' Complaint and awarding Senn Freight $4,851.06 on its breach of contract claim, $6,000.00 in actual damages on its insurance bad faith claim, $100,000.00 in punitive damages on its bad insurance bad faith claim, and $2,360.00 plus interest on the surety bond claim. (R. p. 15).

Travelers filed its Motion for Judgment Notwithstanding the Verdict/New Trial Absolute and The Honorable Eugene C. Griffith, Jr. heard oral arguments on same. Travelers alleged there was no evidence to support the jury's verdict and award of damages on each claim and counterclaim and that the jury acted improperly, necessitating the trial court granting a new trial absolute under the thirteenth juror doctrine. (R. p. 38).

The trial court issued its Order filed March 7, 2011 denying Travelers Motions on the Complaint and Counterclaims for breach of contract and insurance bad faith and affirming the jury's damages awards, including the punitive damage award. (R. p. 1). The trial court granted Travelers' JNOV motion regarding the surety bond claim and Senn

Freight did not appeal same. Whereby Travelers argues the trial court erred in denying Travelers' past trial motions.

STATEMENT OF FACTS

Senn Freight Lines, Inc., or its corporate predecessors, has been operating a flat bed trucking business since the mid 1950's. (R. p. 56, lines 11-14). Senn Freight typically receives a call from a prospective shipper, negotiates with said shipper for the price to carry cargo that would fit on a flat bed trailer and hauls it anywhere within the continental United States. (R. p. 57, lines 8-12).

As is required with businesses employing four or more persons, Senn Freight provided worker's compensation insurance coverage for certain office and clerical employees and applied to have this coverage provided through the South Carolina Assigned Risk Plan. Travelers provided coverage pursuant to the Assigned Risk Plan for the office and clerical staff of Senn Freight. Senn Freight applied for and received coverage only for the office and clerical employees. (R. p. 96, lines 10-18; R. p. 121, lines 13-21). At no time did Senn Freight ask for or receive any coverage for any driver and at no times were any claims submitted to Travelers for any drivers. (R. p. 93, lines 1-11).

Senn Freight has not employed drivers since 1994. (R. p. 92, lines 19-23). Senn Freight often utilized leased drivers obtained through a leasing company, also known as Professional Employee Organization or PEO, whereby PEO provides the employee and the worker's compensation insurance covering those drivers. (R. p. 61, lines 16-21). Several leasing companies were utilized. Senn Freight also utilized owner-operators who provided their own trucks and supplies and were responsible for their own insurance,

maintenance, taxes food and all other necessities of the job. (R. p. 90, lines 4-21). Senn Freight utilized no more than four or five owner-operators at any given time. (R. p. 64, lines 15-25). The owner-operators were free to conduct business as they saw fit with no control or authority exercised by Senn Freight. Senn Freight was only concerned that the loads went from point A to point B efficiently. (R. p. 94, lines 16-24).

Travelers filed its non-jury debt collection action via Complaint dated August 11, 2008 and filed on September 3, 2008 in the Newberry County Clerk of Court's office (R. p. 19). The policy periods applicable to this case began on July 10, 2003 and ended on October 25, 2005. (R. pp. 133-148; pp. 149-166; pp. 167-185). If the last policy, which was cancelled early by Travelers, had run to its end date, it would have run only until July 10, 2006. (R. pp. 167-185). Travelers waited over two years, until after the expiration of any possible claims period for worker's compensation claims under the policies, before filing this lawsuit in September 2008. (R. p. 19).

Travelers' Complaint in this matter originally alleged damages due for premiums earned but not paid on the leased drivers and the auditor who visited Senn Freight in October 2005 focused on the leased drivers. (R. p. 19; R. p. 97, lines 7-9). Over $300,000.00 worth of worker's compensation claims were filed for drivers covered by the PEOs during the policy terms at issue in this case and each claim was covered by the worker's compensation carrier provided by the PEO. Travelers was not asked to cover any of them. (R. p. 97, lines 10-25). At trial, Travelers turned their attention to the owner-operator drivers which were also utilized by Senn Freight, arguing that they should be classified as employees or statutory employees. These drivers utilized their own vehicles, maintained their own vehicles, were responsible for their own insurance,

gas and incidentals and signed an owner-operator agreement with Senn Freight declaring that they were in fact independent contractors. (R. p. 65, lines 12-13; R. p. 90, lines 4-21). Owner-operators are called by Senn Freight and offered individual loads as they may be available and as Senn Freight and driver sees fit. (R. p. 94, line 9 – p. 95, line 11). These independent contractors are paid on a different basis because they are responsible for their own trucks, maintenance, repair, gas and other incidentals so the funds received by them cannot be viewed in the same light as would be for a leased driver who is paid a salary. (R. p. 90, lines 4-21). Senn Freight did not have the right to control the owner operators as they could choose their own route and what work they wanted. (R. p. 94, line 18 – p. 95, line 11).

Senn Freight required each owner-operator to produce proof of insurance coverage, which was normally in the form of an occupational accident policy. (R. p. 78, lines 12-24; R. p. 79, lines 17-22). The individual owner-operators are not legally required to carry statutory worker's compensation insurance due to the fact that they have less than four employees so Senn Freight allowed for occupational accident polices and these policies have always covered the claims. (R. p. 90, line 22; R. p. 91, lines 10-20).

Travelers argued at trial that any policy cancellation was due to "non-cooperation" by Senn Freight in the audit process. (R. p. 106, line 18 – p. 107, line 1). Travelers did not produce as a witness at trial any person who participated in the 2005 audit of Senn Freight. Instead, it called Steven Evanglista, an auditor who was named as a witness the day before trial and became acquainted with the Senn Freight file only a few weeks before the trial date. He testified that both IRS Form 1099s and a Form 1096 were made available to Travelers during the audit. (R. p. 103, lines 1-12; R. p. 120, lines

12-22). He further testified that auditors typically just look at records at the place of business and do not take the records with them if possible. (R. p. 116, lines 1-4). This witness never went to Senn Freight's office, never talked to the actual auditor and never spoke to Senn Freight employees regarding this matter. (R. p. 116, lines 1-25). Regardless of this fact, he insinuated that Senn Freight had not cooperated with the audit but admitted that he had little knowledge of this case. Furthermore, as evidenced by the 10 day notice requirement in the contract and the date of the actual cancellation by Travelers, the Notice of Cancellation was sent before the October 17, 2005 audit at which non-compliance was complained was set to take place. (R. p. 71, lines 9-11; R. p. 96, line 19 – p. 97, line 9; R. pp. 167-185). The president of Senn Freight testified repeatedly that the records were provided. (R. p. 71, lines 9-22; R. p. 73, lines 1-14; R. p. 74, line 20 – p. 75, line 4). Travelers called no witness to refute this testimony.

Over two years later, Travelers instituted its action seeking to collect a "debt" in the amount of $197,958.00 for worker's compensation insurance premiums. Senn Freight denied the allegations of the Complaint and Counter-claimed, alleging breach of contract, bad faith insurance cancellation and damages on a surety bond.

ARGUMENT

I. THE LOWER COURT PROPERLY DENIED TRAVELERS' MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL ON PLAINTIFF'S DEBT COLLECTION ACTION.

The lower court carefully considered the evidence presented at the trial of the case and properly denied Travelers' Motion for Judgment Notwithstanding the Verdict and Motion For A New Trial regarding Appellant's Complaint seeking to collect a debt. If there is any evidence to support a jury's verdict, the verdict should be upheld and the Motion for Judgment Notwithstanding the Verdict should be denied. Pope v. Heritage Communities, Inc, 395 S.C. 404, 717 S.E.2d 765 (Ct. App. 2011). If, viewing the evidences and inferences that can reasonably be drawn therefrom in the light most favorable to the non moving party, there is any support for the jury's verdict, the verdict must be upheld. Id. There is an abundance of evidence to support the jury's verdict that Travelers did not meet its burden of proof on its Complaint.

Travelers argues that all of the owner-operators who performed services for Senn Freight are automatically statutory employees of Senn Freight and therefore covered under the worker's compensation insurance policy issued by Travelers through the South Carolina Assigned Risk Plan. Travelers further argues that the figures and calculations presented by their witness at trial are undisputed and the lower court should grant JNOV on its Complaint, awarding them $197,308.00. Travelers is wrong on all accounts and is simply attempting to initiate a ploy whereby they get all premiums and no risk. Travelers had no duty to provide coverage to any driver and therefore no right to collect premiums

as they were only asked to provide coverage for office and clerical staff as specified in the application for insurance. (R. p. 96, lines 10-18; R. p. 121, lines 13-21). Furthermore, the owner-operators were not Senn Freight Employees and were covered by proper insurance policies. Lastly, even though no monies are owed to Travelers, Senn Freight disputed the amounts claimed.

First and foremost, the application for insurance filed by Senn Freight seeking coverage through the South Carolina Assigned Risk pool seeks coverage for only office and clerical staff. (R. p. 121, lines 13-21). The president of Senn Freight testified that most of the drivers were leased employees covered through Professional Employee Organizations (PEO) which provide the worker's compensation insurance covering those leased drivers. (R. p. 53, lines 19-21; R. p. 61, lines 16-21).

The second class of driver discussed at trial is the owner-operator. These drivers were either companies or individuals that are usually one-man operations and all employing four or fewer persons. (R. p. 90, line 22 – p. 91, line 2). Pursuant to S.C. Code Ann. §42-1-360(2)(Supp. 2009), employers with four or less employees are not required to carry statutory worker's compensation insurance. Regardless, Senn Freight required the owner-operators to provide proof of coverage for occupational accidents and did in fact provide proof of same to Travelers. (R. p. 91, lines 10-20; R. p. 90, line 22 – p. 91, line 2; R. p. 74, line 23 – p. 75, line 4; R. p. 76, lines 9-15). Appellant states that Senn Freight misconstrues S.C. Code Ann. §42-1-360(2)(Supp. 2009). That is not the case. Senn Freight understands that it is an employer with four or more employees as listed for the office, clerical and warehouse staff. The drivers are not employees as they are either leased or owner-operators.

The owner-operators were not employees of Senn Freight. The owner-operators utilize their own vehicles, are responsible for their own maintenance and repairs, are free to work or not, are free to work for other companies, and have never been paid via W-2 wages. Senn Freight does not control the details of their work, their chosen routes and does not supply them with most of their "tools of the trade." (R. p. 94, line 9 – p. 95, line 25). Each owner-operator enters into a contract with Senn Freight agreeing that they are in fact independent contractors and that they will provide their own insurance coverage. (R. p. 65, lines 12-13). An independent contractor is one who contracts to do a piece of work as he sees fit and in accordance with his own judgment and methods without being subject to the authority of the employer except as to the result of the work. McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947). In the case of every owner-operator utilized by Senn Freight, the only concern was getting a load from point A to point B in an efficient amount of time. (R. p. 94, lines 18-24).

It is clear that the owner-operators were not employees of Senn Freight. An independent contractor is "one who, exercising an independent employment, contracts to do a piece of work according to his own methods, without being subject to the control of his employer except as to the result of his work. . . ." Gomillion v. Forsythe, 218 S.C. 211, 62 S.E.2d 297 (1950). In Gomillion, the Supreme Court found that the workers' status was a question for the jury – even when the employee was a milk deliveryman and the company provided his truck and maintained it, the company provided his gas and oil and retained the right to fire him. Id.

To determine whether or not an individual is an employee or independent contractor, one must look at the company's right and authority to control and direct the

particular work and the manner or means of its accomplishment. Kilgore Group, Inc. v. South Carolina Employment Security Commission, 313 S.C. 65, 437 S.E.2d 48 (1993); Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission, 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984). The factors to consider in determining whether the right to control exists are (1) direct evidence of the right to or exercise of said right, (2) method of payment, (3) furnishing of equipment and (4) right to fire. Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991); Tharpe v. G.E. Moore, 254 S.C. 196, 174 S.E.2d 397 (1970). Senn Freight simply notified an owner-operator that a load was available and where it was to be delivered – concerning itself only with the load getting from point A to B efficiently. (R. p. 94, lines 16-24). The owner-operators provided their own vehicles and were responsible for their own insurance, gas and incidentals. Furthermore, the owner-operators were paid on a different basis and signed an owner-operator agreement with Senn Freight agreeing to provide their own insurance. (R. p. 90, lines 4-21; R. p. 65, lines 12-13). A contract between the parties has considerable weight in determining employment status. Young v. Warr, 252 S.C. 179, 165 S.E.2d 797 (1969). The Young Court also stated that a company's right to designate the route for its drivers "was but a right to designate the result to be obtained and did not give Southeastern any control for the obtaining of that result." Id. at 196.

The case of Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 676 S.E.2d 700 (2009) is squarely on point. In Wilkinson, the Supreme Court noted that while worker's compensation laws are to be construed liberally in favor of coverage, this principal does not "justify an analytical framework that preordains the result." Id. at 301. The facts of Wilkinson are that the driver began as an employee for Palmetto and later

altered the employment relationship to that of an independent contractor via contract. In Wilkinson, the driver furnished his own tractor, was paid by the mile, was solely responsible for all expenses associated with acquiring financing, maintaining and insuring the tractor and was responsible for all withholding and employment taxes. Wilkinson complied with the terms of his contract requiring him to have worker's compensation coverage by purchasing an occupational accident policy and was therefore responsible for providing his own worker's compensation coverage. The Supreme Court considered these facts, in conjunction with the four factors as outlined in Felts v. Richland County, 303 S.C. 354, 400 S.E.2d 781 (1991) and Tharpe v. G.E. Moore, 254 S.C. 196, 174 S.E.2d 397 (1970) and found that Wilkinson was not entitled to receive worker's compensation benefits. In considering the four factors, the Court found: (1) no direct evidence of the right or exercise of control and a contract that clearly stated he was an independent contractor; (2) Wilkinson was paid per mile via a IRS form 1099 and was responsible for his own expenses and insurance and was therefore paid differently than an employee ; (3) Wilkinson furnished much of his own equipment; and (4) and there was no "right to fire" simply because Palmetto could terminate the owner-operator contract. Wilkinson at 301 – 304. When applying these factors to the present case in an even-handed manner as required by Wilkinson, it is crystal clear that the owner-operators were not employees of Senn Freight.

Assuming that there is contradictory evidence as to whether an individual is an independent contractor or employee, the question becomes one of fact. South Carolina Workers' Compensation Comm. V. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995). Despite facts that could be considered evidence of an employee-

employer relationship, including the company supplying office space and business forms to their salesman, the salesman's belief that he could be fired and the company having the right to terminate the independent-contractor relationship, the Supreme Court reversed the commission and the lower court and the salesman was declared to be an independent contractor. Id.

The Court of Appeals similarly held that the analysis must be made on a case by case basis in Todd's Ice Cream, Inc. v. South Carolina Employment Security Commission, 281 S.C. 254, 315 S.E.2d 373 (Ct. App. 1984). In that case, the drivers in question were paid on a commission basis and Todd's provided the trucks, provided major maintenance and repairs, maintained the retail licenses, and gave the drivers assigned territories. While the Court in Todd's upheld the Employment Security Commission's finding that drivers of the ice cream trucks in question were employees, it insinuated that had the administrative agency ruled the other way, the finding would have been upheld as well because "reasonable men might draw two inconsistent conclusions from the evidence presented." Id. at 259. There was ample evidence to support the jury's finding that the owner-operators of Senn Freight were independent contractors and that Travelers was not owed any premiums for these drivers.

Travelers further argues that the owner-operators are statutory employees of Senn Freight and that they are entitled to retroactively collect premiums for these persons, even though Senn Freight never asked for or received coverage for these drivers. Appellant wishes to gloss over the fact that most of the cases cited for the proposition that the owner-operators are statutory employees are cases dealing with whether or not the exclusivity provisions of S.C. Code Ann. §42-1-540 (1976) apply to a subcontractor,

usually when a defendant seeks to have the plaintiff limited to a worker's compensation action. Boone v. Huntington and Guerry Elec. Co., 311 S.C. 550, 430 S.E.2d 507 (1993); Olmstead v. Shakespeare, 354 S.C. 421, 581 S.E.2d 483 (2003); Revels v. Hoechst Celanese Corp., 301 S.C. 316, 391 S.E.2d 731 (Ct. App. 1990); Meyer v. Piggly Wiggly No. 24, Inc., 338 S.C. 471, 527 S.E.2d 761 (2000); Tillotson v. Keith Smith Builders, 357 S.C. 554, 593 S.E.2d 621 (Ct. App. 2004); Riden v. Kemet Electronics Corp., 313 S.C. 261, 437 S.E.2d 156 (Ct. App. 1993); Smith v. T.H. Snipes & Sons, Inc., 306 S.C. 289, 411 S.E.2d 439 (1991); Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863 (Ct. App. 2004). The remaining cases are appeals from a worker's compensation claim which was filed by an injured employee where no other coverage was available. Massey v. Werner Enterp., Inc., Opinion No. 2010-UP-001 (S.C. Ct. App. Filed Jan 7, 2010)(withdrawn, substituted and refiled March 24, 2010); McDowell v. Stilley Plywood Co., 210 S.C. 173, 41 S.E.2d 872 (1947). Furthermore, Travelers relies heavily on Massey which is an unpublished opinion.

Travelers fails to point out that the cases hold that "there is no easily applied formula and each case must be decided on its own facts." Meyer v. Piggly Wiggly No. 24, Inc., 338 S.C. 471, 473, 527 S.E.2d 761, 763 (2000). Travelers simply wants to lump each and every owner-operator together in this case - ignoring that differences may exist for each one. Each owner-operator's status must be decided on a unique factual basis regarding the facts of the individual case and the individual who is alleged to have been an employee. Here, each and every driver that Travelers is attempting to allege that is insured, (after any statute of limitations for the claims period has passed) had other insurance available as shown through the documents and testimony of Danny Senn. (R.

p. 91, lines 10-20; R. p. 78, lines 16-24; R. p. 79, lines 6-9; R. p. 79, lines 17-22). Even Travelers' own witness and auditor, Steven Evanglista, admitted that the certificates of insurance produced by Senn Freight were sufficient. He testified that the certificates of insurance are exactly what Travelers would offer as proof if asked and that Travelers intended for people to rely upon those certificates. (R. p. 117, line 24 – p. 118, line 9; R. p. 119, lines 11-20).

Although Respondent contends that no drivers are employees of Senn Freight and therefore were not intended to be and were not covered under the Travelers' insurance policy, the Appellant further errs in arguing that the amounts paid to the owner-operators and remuneration are the same thing and therefore there is no question as to the amount owed by Senn Freight. Remuneration is defined as "reward; recompense; salary." (Black's Law Dictionary, Revised 4th Ed. (1968). Remuneration is not defined in the insurance contract but is commonly referred to as salary. At best, the term "remuneration" is ambiguous and any ambiguity arising within a contract must be construed against the drafter, especially when the contract is one of adhesion. Southern Atlantic Financial Services, Inc. v. Middleton, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002).

Here, Danny Senn went to great lengths in his testimony to explain that the $2,332,896.98 paid during the policy periods to owner-operators was not in fact salary or a proper basis for worker's compensation premiums, but rather the total of all payments to the owner-operators. Mr. Senn further explained that the owner-operators must pay for all of their own expenses, including maintenance on their vehicles, food, insurance, lodging, and any other expenses related to their handling loads for Senn Freight and that

approximately 1/3 of the amounts paid to those owner-operators would be considered salary given the expenses they incur. (R. p. 90, lines 4-21). Senn Freight employed no more than four or five owner-operators at any given time yet paid them approximately $2.3 million in gross commissions for the three year policy period. (R. p. 64, lines 15-25; R. p. 66, lines 21-24). Senn Freight's entire payroll for the years in question was between three million and four million dollars. (R. p. 57, line 20 – p. 58, line 6). For the sake of argument, the amount of money which would be due if Appellant's position regarding the owner-operators was correct, and it is not correct, is highly disputed by Senn Freight, both now and at trial.

Travelers spent much time at trial and in its brief arguing that some of the leased employees were not covered by worker's compensation insurance at all times during the policy period. However, at trial, no evidence of any damages relating to these drivers was presented to the jury and this issue is simply a red herring. Senn Freight offered proof of coverage via certificates of insurance for these leased drivers, certificates just like the ones utilized by Travelers and that Travelers expects others to rely upon. (R. p. 117, line 24 – p. 118, line 9; R. p. 119, lines 11-20). Furthermore, Senn Freight's President testified that he provided all applicable certificates of insurance for the leased drivers and all other documents requested or needed by Travelers during the audit process. (R. p. 74, line 23 – p. 75, line 4; R. p. 76, lines 9-15; R. p. 78, lines 16-24).

There is no statutory authority allowing Travelers to attempt to cover the drivers retroactively, after the statute of limitations has passed for any possible claims. There is no statutory prohibition on obtaining worker's compensation for only a certain class of employees or certain types of employees through the South Carolina Worker's

Compensation Assigned Risk Plan. S.C. Code Ann. §38-73-540 (Rev. 2002). In this instance, Senn Freight listed specific employees for which it wanted coverage: its office and clerical staff. If a driver had any type of claim, there were numerous other avenues for coverage, including the PEO policies, the owner-operator policies and, if all else fails, Senn Freight would be liable.[1] There is no legal basis for Travelers' attempt to obtain payment for coverage they never provided after any claims period had passed.

The simple fact is that Travelers seeks to institute the perfect insurance scam, i.e. obtaining premiums for persons they were not asked to cover, and provided no coverage for, long after any claims could possibly be filed. There would be no better outcome for the insurer than all premiums paid in and no claims paid out which is exactly what Travelers seeks to obtain through its Complaint. The statutory employee doctrine was designed to protect the employee, not to enrich insurance companies after the fact.

Travelers waived any right to argue that the jury's verdict was based upon incorrect jury charge or any other improper error of law. The trial court properly charged the jury regarding independent contractors, business or employers employing less than four persons, and owner-operators as well as the general law regarding statutory employees pursuant to the Worker's Compensation Act. The jury's verdict was based upon the facts as presented to them and the law as provided to them by the presiding judge. The jury's verdict for the Defendant Senn Freight on Plaintiff's Breach of Contract/Debt Collection Cause of Action was properly upheld by the trial court.

[1] If any claims had been filed, pursuant to the worker's compensation uninsured employers fund under S.C. Code Ann. §42-7-200 *et. seq.* (Supp. 2009), the employer's assets can be attached to recover amounts paid from the uninsured employers' fund.

II. THE LOWER COURT PROPERLY DENIED APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL ON RESPONDENT'S BREACH OF CONTRACT COUNTERCLAIM.

The facts supporting the trial court's denial of Travelers' Motion for Judgment Notwithstanding the Verdict/Motion for New Trial and Traveler's Breach of Contract/Debt Collection claim also support the trial court's denial of Travelers' Motion for Judgment Notwithstanding the Verdict and Motion for a New Trial on Senn Freight's Breach of Contract Counterclaim. Respondent will not reiterate the facts as stated in Argument I, above, but supplements as follows.

It is undisputed that Senn Freight paid $5,436.00 for the office and clerical staff worker's compensation coverage for the policy term of July 10, 2005 to July 10, 2006. The policy amount had gone up yearly, as some of the employees for whom coverage was sought and provided made more money and one employee listed took on additional duties. After 107 days, Travelers unilaterally and without reason, cancelled the policy. (R. p. 98, lines 5-22). Their cancellation letter was actually sent before the audit was even scheduled to occur. Travelers did not provide 258 days of coverage of the policy term in question and therefore Travelers did not earn $3,822.23. (R. p. 216; R. p. 124, line 20 – p. 125, line 3). Travelers unilaterally breached the contract without cause and therefore owes Senn Freight the amount determined by the jury - $4,851.06, which represent paid but unearned premium with interest. It is clear that the jury believed the testimony of Senn Freight President Danny Senn over the testimony of an auditor who never visited Senn Freight and knew nothing about Senn Freight and their worker's

compensation policy until shortly before the trial. Danny Senn testified repeatedly that Senn Freight had fully complied with the audit initiated by Travelers and that all documentation had been provided to the auditor. Travelers attempted to prove non-cooperation through the use of a witness that was not present at the audit and had no direct participation in the audit process, yet failed to realize that their notice of cancellation which was sent to Senn Freight, required 10 days notice pursuant to the policy and was therefore sent before the audit was even scheduled to take place. There is simply no evidence that Senn Freight did anything to violate the terms of the insurance contract and there is ample evidence that Travelers did in fact breach the contract by accepting payment of premiums and refusing to provide the necessary and needed coverage. The jury's verdict was proper and the trial court properly upheld same.

III. THE LOWER COURT PROPERLY DENIED APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT AND MOTION FOR NEW TRIAL ON SENN FREIGHT'S BAD FAITH CANCELLATION OF INSURANCE POLICY COUNTERCLAIM.

Senn Freight's Counterclaim pled a valid cause of action for bad faith cancellation of the insurance policy pursuant to the standards set forth in Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009). The trial court correctly charged that the elements of an insurance bad faith claim are: 1) a mutually binding contract of insurance; 2) refusal by the insurer to provide benefits under the contract; and 3) that the refusal resulted from bad faith or unreasonable action in breach of an implied covenant of good faith and fair

dealings. Id; Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E. 2d 727, 730 (1996).

It is admitted by Travelers that there was a binding contract of insurance and that they did in fact refuse to provide benefits under the contract as they admitted that they unilaterally cancelled the contract of insurance effective October 25, 2005. Therefore, the only determination to be made was whether or not the refusal to provide benefits under the contract resulted from bad faith or an unreasonable action as set out in below.

Travelers argues that the policy was cancelled simply because Senn Freight did not provide the documentation requested in their worker's compensation audit. These facts are simply not supported by the evidence in this case and Travelers wants to infer that the auditor who actually performed the audit came to testify and indicated non-cooperation was a problem. Instead, Travelers called an auditor who had no relation to Senn Freight and who had not visited Senn Freight or spoken to Senn Freight prior to testifying at trial. This auditor was named as a witness only one day prior to trial and provided no evidence or testimony that Senn Freight did not comply with all requests by Travelers other than to say some materials were not "in the file." The auditor went on to testify that the normal process includes a review of documentation at the business location and that the documents are not normally included with the insurance company's file. He did not visit the business; he only reviewed Travelers' file the week before trial. (R. p. 99, line 20 – p. 100, line 7; R. p. 116, lines 1-25). Furthermore, Danny Senn testified specifically and repeatedly that he provided all documentation sought by Travelers during the audit process. (R. p. 73, lines 1-14; R. p. 74, lines 20-25).

Evidence of bad faith exists in abundance. It is undisputed that the policy was cancelled before the term expired and after the plaintiff had received the agreed upon premiums. (R. p. 98, lines 5-22; R. p. 216). Furthermore, Travelers refused to refund the premium despite the cancellation of the policy. Most importantly, Travelers attempted to unilaterally raise the premium without justification and instituted a lawsuit regarding this unilateral raise in premium only after the worker's compensation claims period had passed. S.C. Code Ann. §42-15-40 (Supp. 2009); (R. p. 122, line 20 – p. 123, line 11). It is important to remember this is a policy of adhesion. Senn Freight had no choice as to the terms or who the insurer would be pursuant to the S.C. Assigned Risk Plan. S.C. Code Ann. §38-73-540 (Rev. 2002).

The jury obviously had an unfavorable view of Travelers' scheme of waiting until the statute of limitations would bar any possible worker's compensation claims before seeking premiums. This was a major factor in determining whether or not Travelers' breach of contract was in fact in bad faith. Travelers asserts that Senn Freight failed and refused to cooperate with their audit but failed to call the auditor and other Travelers' employees who might offer some scintilla of proof as to the non-cooperation.[2] They alleged that the non-cooperation with the audit occurred on or around October of 2005 and before. They filed suit in August of 2008. Interestingly enough, this is approximately one month after any claims under the worker's compensation policies could have been filed if the policy had run to its end date of July 2006. S.C. Code Ann. §42-15-40 (Supp. 2009). These actions by Travelers show not only an indifference to the

[2] The trial court offered the jury the opportunity to speak privately with him following their verdict. After doing so, the court stated: "You know the main question? Where was Mr. Barnette?" (R. p. 131, lines 9-12). It is clear that in his absence, the jury believed Danny Senn's testimony.

rights of Senn Freight, but a calculated effort to run the perfect insurance scam by seeking premiums for employees on which it is assured no worker's compensation claims can be filed.

Travelers asserts that South Carolina does not recognize a cause of action for bad faith cancellation of insurance policy. This is incorrect as Mitchell specifically allowed a cause of action for bad faith cancellation of a health insurance policy. Mitchell v. Fortis, 385 S.C. 570, 686 S.E.2d 176 (2009). While Senn Freight has been unable to locate any South Carolina case law whereby a bad faith cancellation of policy has been applied in the worker's compensation arena, other jurisdictions allow for a cause of action regarding bad faith in any area of an insurance policy, not simply the denial of claims.[3]

Although no claims were submitted by Senn Freight under the worker's compensation policy provided by Travelers for office and clerical staff during the time period the policy should have been in effect (i.e. until July 2006), damages were sustained by Senn Freight. Senn Freight was forced to spend a tremendous amount of time due to the unexpected and improper cancellation of the policy and bad faith. (R. p. 125, lines 3-8). This time, coupled with the stress, worry and possible ramifications of not

[3] Johnson v. Liberty Mutual Fire Ins. Co., 653 F.Supp.2d 1133 (D. Colo. 2009) (District Court in Colorado found that the insurer and insured have a special relationship with an implied duty of good faith and fair dealing that is actionable in torte, even if the claim is eventually defended and/or paid.); Ballow v. Phico Ins. Co., 875 P.2d 1354 (Colo. 1993) (Colorado Supreme Court found that there is a duty of good faith that is broad and wide ranging and extends to "everything pertaining" to previsions of insurance services, including bad faith as it relates to renewal or nonrenewal of policies); Bariski v. Reassure America Life Ins. Co. 2011 WL 2651427 (M.D. PA. 2011) (In a case dealing with a statute of limitations, the 2 years statute of limitations for instituting a bad faith suit on a life insurance policy begins on the date the insured knew it was cancelled which was well before the death of the insured and well before payment would be due.); Dune v. American Ins. 251 P.3d 1232 (Col. App. 2010.) (The duty of good faith for an insurer extended to the "duty to adequately and promptly communicate in response to Plaintiff's claim."); Pate v. Guarantee Trust Life Ins. Co. 2010 WL 987090 (ND Ohio 2010) (The case found that bad faith liability may rise from the legal duty created by the party's relationship and not merely from a breach of the policy terms.)

having worker's compensation insurance, could have been catastrophic had an office employee fell and become permanently disabled while at work. This, coupled with the fact that this was an assigned risk plan and not a policy procured through the open market, means that Travelers well knew Senn Freight would likely be unable to obtain insurance coverage for the clerical and office staff quickly enough to avoid any gaps in coverage. Most of all, Senn Freight suffered risk, the very thing for which Travelers claims it is entitled to be paid. The jury properly found damages had been suffered and valued those damages at $6,000.00.

The Ohio court in Pate v. Guarantee Trust Life Ins. Co. stated it best: "the insurer has a duty to act in good faith toward its insured in carrying out its responsibilities under the policy of insurance." (Pate *citing* Hoskins v. Aetna Life Ins. Co., 452 N.E.2d, 1315, 1319 (Ohio 1983). The case of Mitchell v. Fortis has already extended the bad faith cause of action to cases involving wrongful termination of a policy of insurance. If, for the sake of argument, the Mitchell case does not extend said causes of action to include bad faith cancellation of a policy, this Court should, given the facts of this case, follow the lead taken by other states in similar situations.

IV. THE LOWER COURT PROPERLY CONSIDERED ALL FACTORS REGARDING PUNITIVE DAMAGES AND PROPERLY DENIED APPELLANT'S MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT REGARDING THE JURY'S PUNITIVE DAMAGES AWARD.

The jury and the trial court properly considered all factors when considering an award of punitive damages. The trial court properly upheld the jury's award of punitive damages on Respondent's Bad Faith Cause of Action.

The trial judge properly charged the jury on punitive damages and all of the elements to be considered before the awarding of punitive damages would be proper, including the fact that the breach of contract must be reckless, willful and wonton and that there must be a conscious failure to exercise due care or conscious indifference to the rights of the insured. The trial court indicated that Senn Freight must prove by clear and convincing evidence that the conduct complained of included consciousness of a wrong doing at the time of the conduct. All of the factors were laid out, including the reprehensibility of the conduct, the harm caused by the conduct and the Appellant's awareness of the conduct's wrongfulness. (R. p. 128, line 1 – p. 130, line 4). The Appellant made no objection to the jury charge and waived any objections thereto.

The trial court, in hearing the post trial motions and issuing its order, considered the guidelines established by the South Carolina Supreme Court in the case of Mitchell v. Fortis Ins. Co. 385 S.C. 570, 688 SE.2d. 176 (2009). The trial court made the following specific findings regarding the award of punitive damages:

- The Court considered the reprehensibility of Travelers' conduct and concluded that Senn Freight was placed at great risk due to the actions of Travelers and that Travelers was indifferent to this risk and acted with reckless disregard for the defendant's rights under the policy.

- Travelers' acts were intentional as they wanted until the claims period had passed before instituting a lawsuit to recover premiums.
- This incident was not isolated and is very capable of repetition.
- The evidence showed that the conduct and actions of Travelers was reprehensible and egregious and worthy of the punitive damages award levied by the jury.
- The Court considered the ratio of actual damages to punitive damages and found that the damages were not out of proportion in that they were less than 10 times the actual damages awarded in this matter.
- Travelers offered no indication that they could not pay the $100,000.00 punitive damages award and it was clear that Travelers, an insurance company, easily has the ability to pay such a relatively small punitive damages award.
- The Court found that the deterrent nature of the $100,000.00 award was proper and actually may not have been enough considering the fact that Travelers attempted to collect almost $200,000.00 in premiums in their Complaint. (R. p. 9-10).

Both the jury and the trial court properly considered all of the factors relevant to the award of punitive damages. Travelers did not object to the jury charge regarding punitive damages. The jury's award was not excessive and was in line with the facts of the case. The trial court properly upheld the jury's punitive damages verdict.

V. THE LOWER COURT PROPERLY DENIED TRAVELERS MOTION FOR NEW TRIAL ABSOLUTE UNDER THE THIRTEENTH JUROR DOCTRINE WHEN THERE IS NO EVIDENCE THE JURY ACTED WITH ANY IMPROPER PURPOSE OR GOAL.

Travelers offered no evidence that the jury's verdict was due to passion or caprice and the trial court correctly refused to institute the 13th juror doctrine and grant the appellant a new trial absolute. Appellant Travelers glosses over this issue and states its position in its post-trial motions supporting its position that the judge should exercise his

power as the 13th juror and grant Travelers a new trial absolute. Regardless, the trial court properly denied this motion as Travelers failed to produce any valid argument that the jury acted with passion or prejudice or that the verdict was motivated by any improper purpose or reasoning.

On a motion for new trial, the decision of the trial judge will not be disturbed absent an abuse of discretion. Fields v. J. Haynes Waters Builders, Inc., 376 S.C. 545, 658 S.E.2d 80 (2008); Prince v. Beaufort Mem. Hosp., 392 S.C. 599, 709 S.E.2d 122 (Ct. App. 2011). An appellant court must find that a directed verdict was necessary to find an abuse of discretion and a denial of a motion for a new trial absolute. Curtis v. Blake, 292 S.C. 494, 709 S.E.2d 79 (Ct. App. 2011). Travelers admitted in its post-trial motions for a new trial absolute that "the Plaintiff cannot know with certainty that this affected the jury's decision, it can however reasonably surmise that *something* in addition to the specific jury instructions given by the court confused or tainted the jury..." (R. p. 36). Travelers' Motion for a New Trial Absolute states no basis in fact or law for the granting of the new trial absolute.

Travelers implies that the Defendant being a local business and the Plaintiff being an out of town insurance company could have affected the jury's verdict. There is no evidence or basis for believing that the jury allowed this to enter into their deliberations. The jury followed the instructions of the Court and the instructions on the verdict form despite the allegation to the contrary by Travelers. The jury's verdict was clear and the notes written on the verdict form actually allowed the Court and the parties to understand their findings even more clearly than simply answering the questions would have. There is no evidence of confusion as the jury's verdict was completely consistent and within the

law charged by the trial court. An appellate court will not overturn a trial judge's order granting or denying a new trial upon the facts unless the trial judge's order on a motion for a new trial upon the facts is wholly unsupported by the evidence or the conclusion is controlled by an error of law. Curtis v. Blake, 292 S.C. 494, 709 S.E.2d 79 (Ct. App. 2011) *citing* Folkens v. Hunt, 300 S.C. 251, 254-55, 387 SE 2d 265, 267 (1990). If the scant evidence in the Curtis v. Blake case whereby the jury awarded and the trial court upheld a $450,000.00 verdict, an amount more than 100 times greater than the plaintiff's medical expenses and lost wages, the evidence presented at trial in this matter is more than sufficient to support the jury's verdict and the trial court's proper denial of Travelers' Motion for a New Trial Absolute.

Travelers argues or implies that the jury finding for Senn Freight on the surety bond claim goes to show prejudice against Travelers.[4] However, the trial court properly noted that Travelers did not contest the surety bond claim and presented no evidence regarding same. The jury finding in favor of Senn Freight on the surety bond claim was rendered because Travelers did not present any evidence to contradict the claim.

There was no basis for the trial court to negate the jury's verdict. The verdict was proper and based on the evidence presented at trial. No proof of passion or prejudice on the part of the jury was offered and Traveler's admitted that their contention otherwise was mere speculation.

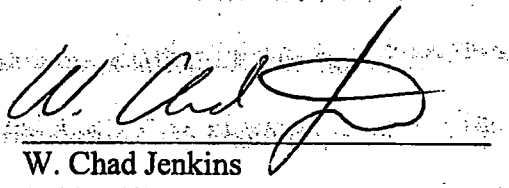
[4] The Trial Court granted Appellant's JNOV Motion regarding the surety bond claim and Respondent did not appeal that ruling.

CONCLUSION

For the reasons set forth herein, this Court should affirm the trial court's denial of Respondent's Post Trial Motions for JNOV and New Trial Absolute.

Respectfully Submitted

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
No. 2011189987

APPEAL FROM NEWBERRY COUNTY
In the Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Civil Action No. 2008-CP-36-417

Travelers Property Casualty Co.,

Appellant,

v.

Senn Freight Lines, Inc.,

Respondent.

CERTIFICATE OF COUNSEL

I, W. Chad Jenkins, Esquire, do hereby certify that the Final Brief of Respondent complies with Rule 211(b).

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ARGUMENTS

I. Contrary to Senn Freight's Contentions in Its Initial Brief, Travelers' Assertion of Its Contractual Rights Is Not Oppressive or Unfair[1]

In its Initial Brief, Senn Freight devotes a substantial portion of its discussion to the argument that Travelers' claims — seeking earned premiums for coverage actually provided under the Policies — are unfair or improper. Senn Freight goes so far as to attack Travelers by stating that "Travelers is wrong on all accounts and is simply attempting to *initiate a ploy* whereby they get all premiums and no risk." (*See* Resp.'s Init. Br., at p.7 (emphasis added)). However, Senn Freight's efforts to impugn Travelers shed more heat than light and are wholly without merit.

Travelers merely seeks to enforce contractual rights under the insurance Policies to earned, but unpaid, premiums. The conceptual underpinning of Travelers' claim is that the undisputed evidence shows that it had potential exposure to covered workers' compensation claims by Contractor Drivers under the Policies. As set forth in Travelers' briefs, Senn Freight has not refuted — and the evidence is incontrovertible — that the Contractor Drivers were statutory employees of Senn Freight during the Policies' terms. Senn Freight does not dispute that the Information Pages of the Policies identify truck drivers as a classification to be used in the determination of premiums. Moreover, the Policies plainly set forth that Travelers is entitled to compensation based upon its exposure to potential claims (as calculated from remuneration paid to specified classes of employees).

Fortunately for all involved, none of Senn Freight's Contractor Drivers actually asserted a workers' compensation claim against Senn Freight. However, Travelers' entitlement to premiums is not premised upon the existence of claims against the Policies. If a Contractor Driver would have made a claim, it is likely that the Policies would have

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[1] Travelers incorporates by reference its Appellant's Initial Brief (including all shorthand definitions used therein) into this Initial Reply as if set forth at length.

required Travelers to provide coverage. This is value provided to Senn Freight: assurance that, in the event of a covered claim by a Contractor Driver, Travelers would provide coverage. The evidence shows that Travelers could have been responsible to defend and indemnify Senn Freight in the event of such a claim. Travelers bore the burden of the risk of claims by Contractor Drivers during the terms of the Policies. The mere fact that no such claim was ever asserted does not change the fact that Travelers faced such an exposure.

Senn Freight suggests that Travelers is trying to get "something for nothing" in this lawsuit. Nothing could be further from the truth. Travelers provided value to Senn Freight with regard to the Contractor Drivers: it was potentially exposed to liability to defend and indemnify Senn Freight from claims by such drivers. Even if Travelers was not required to ever actually pay such a claim, it was contractually obligated to provide coverage as required by the Policies. Under Senn Freight's analysis, an insurer could not collect earned premiums in any case where no claim was asserted against the policy. Senn Freight's position in this appeal misapprehends the nature of insurance and the value provided by insurance policies.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

II. Senn Freight's Focus Upon Its Insurance Application Is Misplaced, Because the Terms of the Policies Make Clear That Travelers Is Entitled to the Premiums It Seeks to Recover

Senn Freight argues in its Initial Brief that the Policies could not extend to provide coverage for Contractor Drivers, because the application completed by Senn Freight did not specifically identify that it would extend to such Contractor Drivers. However, Senn Freight's argument lacks merit.

Irrespective of what the application Senn Freight might have completed stated — which was not introduced into evidence at trial — it does not displace what Senn Freight

expressly agreed to in the insurance contract itself. The Policies govern the parties' respective rights and obligations. They did not agree to make any applications binding upon them. As set forth above and in Travelers' Initial Brief, the Policies (including their constituent Information Pages) define the scope of Travelers' duty to provide coverage and Senn Freight's obligation to pay premiums.

Senn Freight has never disputed — and cannot dispute — the following facts, which establish beyond any doubt that Travelers is entitled to earned premiums:

- In addition to clerical employees, the Information Pages of the Policies provide that premiums shall be calculated for Senn Freight's truck drivers "if any".
- There is no evidence that Senn Freight ever disputed or challenged the inclusion of truck drivers on the Information Pages.
- Nothing in the Policies excluded coverage for Contractor Drivers who might be "statutory employees" under South Carolina law.
- The Policies provide that final premiums are to be determined by using "actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy." (*See* R. p. 141 ¶ 5.E, p. 157 ¶ 5.E and p. 175 ¶ 5.E).
- The Policies provided that Travelers was entitled to calculate premiums based on remuneration paid to "persons engaged in work that could make us [Travelers] liable under Part One (Workers Compensation Insurance) of this policy." (*See* R. p. 141 ¶ 5.C, p. 157 ¶ 5.C and p. 175 ¶ 5.C).
- The Policies required that Senn Freight cooperate with Travelers in its calculation of premiums earned and due thereunder.
- The Contractor Drivers are "statutory employees" as set forth below and in Appellant's Initial Brief. *See* S.C. Code Ann. § 42-1-400.

These indisputable facts establish that Travelers is entitled, under the terms of the Policies, to calculate final premium based on the **actual** risk to which it was potentially exposed — including the Contractor Drivers. Nothing in the application would override the parties' express agreement in this regard.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

III. Senn Freight Devotes a Substantial Portion of Its Initial Brief to the Red Herring of Whether Senn Freight Exercised "Control" Over the Contractor Drivers

Senn Freight devotes substantial effort to arguing that the Contractor Drivers were not actual employees of Senn Freight, because Senn Freight did not have the right to control their work. However, Travelers has never argued in this appeal that the Contractor Drivers were traditional "employees" under the workers' compensation laws because Senn Freight "controlled" their work. Rather, Travelers' contention on appeal is that the Contractor Drivers were "statutory employees" of Senn Freight under South Carolina law. As a consequence, the remuneration paid to Contractor Drivers should be utilized to calculate the final premium due under the Policies.

As Travelers has previously noted in its Appellant's Initial Brief, the South Carolina Workers Compensation Act applies to "statutory employees":

> When any person, in this section and §§ 42-1-420 and 42-1-430 referred to as "owner," undertakes to perform or execute any work which is a part of his trade, business or occupation and contracts with any other person (in this section and §§ 42-1-420 to 42-1-450 referred to as "subcontractor") for the execution or performance by or under such subcontractor of the whole or any part of the work undertaken by such owner, the owner shall be liable to pay to any workman employed in the work any compensation under this Title which he would have been liable to pay if the workman had been immediately employed by him.

See S.C. Code Ann. § 42-1-400. Resolving all doubts in favor of a finding of such a relationship:

> Three tests are applied in determining whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee within the meaning of § 42-1-400:
>
> (1) is the activity an important part of the owner's business or trade;
>
> (2) is the activity a necessary, essential, and integral part of the owner's trade, business, or occupation; or

(3) has the identical activity previously been performed by the owner's employees?

See Edens v. Bellini, 359 S.C. 433, 442-43, 597 S.E.2d 863, 868 (Ct. App. 2004) (citations omitted). "If the activity at issue meets **even one** of these three criteria, the injured employee qualifies as the statutory employee of the owner." *See Olmstead v. Shakespeare*, 354 S.C. 421, 424, 581 S.E.2d 483, 485 (2003) (emphasis added).

In this case, the only possible conclusion is that the Contractor Drivers are Senn Freight's statutory employees. The record is crystal clear that Senn Freight contracted with the Contractor Drivers to perform "an important part" of its business or trade and "a necessary, essential, and integral part" of its trade, business or occupation. It is indisputable that Senn Freight — as its name suggests — is in the business of hauling freight. As Mr. Senn succinctly put it, "Senn hauls freight." (*See* R. p. 64, line 14). It is further undisputed that hauling freight — the service Senn Freight provides as the focal point of its business — is the same service that the Contractor Drivers provided on behalf of Senn Freight. It is inescapable that the Contractor Drivers are statutory employees of Senn Freight. *See Massey v. Werner Enterp., Inc.*, Opinion No. 2010-UP-001 (S.C. Ct. App. filed Jan. 7, 2010) (withdrawn, substituted and refiled March 24, 2010) ("Massey, a truck driver, sustained injuries while transporting loads for Werner, a common carrier. Clearly, the transportation of goods is an important, integral part of Werner's trade, business, or occupation."). It defies credulity for Senn Freight to suggest otherwise.

Senn Freight's only argument that it was not the statutory employer of the Contractor Driver is to claim that "Appellant wishes to gloss over the fact that most of the cases cited for the proposition that the owner-operators are statutory employees are cases dealing with whether or not the exclusivity provisions of S.C. Code Ann. §42-1-540 (1976) apply to a subcontractor, usually when a defendant seeks to have the plaintiff limited to a worker's compensation action." (*See* Resp.'s Init. Br., at pp. 12-13).

However, Senn Freight does not explain why that procedural posture makes those cases inapposite or inapplicable. To the contrary, however the issue came to be presented in the cases Travelers cites, the issue was the same as that presented here: whether a contractor was a "statutory employee" of an "owner." The case law is clear that Senn Freight was the statutory employer of the Contractor Drivers.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

IV. Senn Freight's Argument Concerning the Calculation of the Amount of Premium Due to Travelers Is Without Merit

Senn Freight next argues that, if Travelers is entitled to premiums calculated based on remuneration paid to the Contractor Drivers, the calculations proposed by Travelers are improper. Specifically, Senn Freight contends that the use of 1099-MISC forms to determine the "remuneration" paid to the Contractor Drivers was somehow improper in that they include more than "remuneration":

> Remuneration is defined as "reward; recompense; salary." (Black's Law Dictionary, Revised 4th Ed. (1968). Remuneration is not defined in the insurance contract but is commonly referred to as salary. . . .
>
> Here, Danny Senn went to great lengths in his testimony to explain that the $2,332,896.98 paid during the policy periods to owner-operators was not in fact salary or a proper basis for worker's compensation premiums, but rather the total of all payments to the owner-operators. Mr. Senn further explained that the owner-operators must pay for all of their own expenses, including maintenance on their vehicles, food, insurance, lodging, and any other expenses related to their handling loads for Senn Freight and that approximately 1/3 of the amounts paid to those owner-operators would be considered salary given the expenses they incur.

(*See* Resp.'s Init. Br., at pp.14-15). Senn Freight's argument misses the mark.

Under the Policies, the final premium attributable to the Contractor Drivers is to be determined by the "payroll and all other remuneration paid or payable during the policy period for the services" of the Contractor Drivers. (*See* R. p. 141 ¶ 5.C, p. 157 ¶ 5.C and p. 175 ¶ 5.C). This is a broad definition that encompasses all compensation

paid to Contractor Drivers for their services. Nothing in the plain language of the Policies suggests that "payroll and all other remuneration" is limited only to "wages" or "salary." Senn Freight proffers no support for its argument that the definition should be so limited, aside from the *ipse dixit* of its counsel. In fact, the Policies' use of the phrase "payroll **and all other** remuneration" demonstrates that the Policies encompass more than Senn Freight suggests, more than merely wages. Compensation for expenses would certainly be compensation for work performed by the Contractor Drivers. All amounts reflected in the 1099-MISC's are payments made to compensate Contractor Drivers for work that they have performed.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

V. Senn Freight's Breach of Contract Counterclaim Fails

At trial, Senn Freight received a verdict of $4,851.06 on its "breach of contract" counterclaim. Senn Freight explains the basis of this claim in its Initial Brief: "Travelers did not provide 258 days of coverage of the policy term in question and therefore Travelers did not earn $3,822.23." (*See* Resp.'s Init. Br., at p.17). Travelers does not disagree that it did not earn premiums for the period after it cancelled the Policies. However, Travelers responds that it has never sought to obtain (or retain) premiums for that time period. Instead, Travelers seeks to recover final premiums for the period during which the Policies were in effect. Senn Freight is not entitled to the return of this amount because, even if Travelers canceled the Policies, Senn Freight owed Travelers substantially more than this amount for the final premium calculation under the Policies.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

VI. Senn Freight Does Not Refute Traveler's Contention That South Carolina Does Not Recognize a Bad Faith Cause of Action for Cancellation of a Policy

As Travelers argued in its Initial Brief, South Carolina has never recognized a cause of action for the "bad faith" cancellation of an insurance policy. Instead, South Carolina has only recognized this cause of action in the context of denials of actual benefits under a policy. Travelers has already shown that *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the only case cited by Senn Freight in support of its claim, is readily distinguishable in several controlling ways. Most importantly, *Mitchell* involved a cancellation that was, for all intents and purposes, a denial of benefits because of a particular health condition. Senn Freight has not made any argument defeating Traveler's contention that *Mitchell* is inapposite.

Senn Freight has still not cited a single case in South Carolina recognizing a bad faith claim where there was no refusal to pay benefits for an actual, existing claim. Senn Freight's version of the law would expand the scope of the bad faith cause of action far beyond what the courts of this State have previously authorized. Senn Freight has made no showing that such an extension is appropriate, warranted or desirable.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

VII. Senn Freight Has Not Directed the Court to a Scintilla of Evidence of Either Bad Faith or Conduct Sufficient to Justify the Imposition of Punitive Damages

At trial (and in its Initial Brief), Senn Freight did not proffer any evidence to support its claims that Travelers acted in bad faith or in such a manner that punitive damages are proper. Instead, Senn Freight relies on innuendo and speculation. Because there is no evidence of either "bad faith cancellation" or conduct worthy of punitive damages, this Court should reverse the trial court's denial of Traveler's Post Trial Motions.

As Travelers has previously argued, its conduct has been consistent with its rights

under the Policies. As permitted by the Policies, it has sought to recover premiums earned and due to it. Senn Freight has refused to pay those premiums. As permitted by the Policies, it has requested access to information necessary to calculate premiums. Senn Freight has refused to provide all of the information requested. As permitted by the Policies, it canceled the Policies. Senn Freight has not presented any evidence that Travelers' conduct was impermissible or the result of any improper motive. There is no evidence whatsoever that Travelers undertook any action believing or knowing that it could not do so.

Senn Freight's position seems to be that Travelers' conduct was somehow improper because it did not bring this action until after the time for bringing claims under the Policies had expired. However, this argument lacks any substance and is rank innuendo. Irrespective of whether Contractor Drivers actually asserted claims under the Policies, Travelers' rights to final premiums remained the same. There is nothing to suggest that Travelers' timing of this lawsuit somehow reflects a bad faith intention. To the contrary, as discussed above, Travelers has always merely sought to enforce its contract with Senn Trucking.

For all of the foregoing reasons (and those set forth in Appellant's Initial Brief), this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

CONCLUSION

For all of the reasons set forth herein, this Court should reverse the trial court's denial of Travelers' Post-Trial Motions.

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Date: May 25, 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
No. 2011189987

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co., ...Appellant

v.

Senn Freight Lines, Inc., ...Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Appellant's Final Reply Brief complies with Rule 211(b), SCACR.

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May 25, 2012

THE STATE OF SOUTH CAROLINA
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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP3600417

Travelers Property Casualty Co *vs.* Senn Freight Lines Inc

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Order

Dated at Newberry, South Carolina, this 4th day of March 2011.

Court Reporter:

S/Eugene C. Griffith, Jr.

PRESIDING JUDGE - Eugene C. Griffith, Jr.

This judgment was entered on the 7th day of march 2011, and a copy mailed first class this 9th day of March 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Byron Putnam Roberts Roberts Law Group, LLC
P.O. Box 670 Chapin, SC 29036

ATTORNEY(S) FOR THE PLAINTIFF(S)

William Chadwick Jenkins Pope & Hudgens, PA
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ATTORNEY(S) FOR THE DEFENDANT(S)

S/Jackie S. Bowers (BJB)

Jackie S Bowers - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No. 2008-CP-36-417
	)	
Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois	)	**ORDER**
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Senn Freight Lines, Inc.,	)	
	)	
Defendant	)	

FILED
2011 JUN 17 A 9:41
NEWBERRY COUNTY
CLERK OF COURT

This matter comes before the Court upon Plaintiff's Post-Trial Motions. Plaintiff seeks a judgment notwithstanding the verdict or a new trial absolute and reasserted their Motion for a Directed Verdict presented at the close of evidence. This Court denies Plaintiff's motions as to the breach of contract and bad faith causes of action, including the award of punitive damages under the bad faith cause of action. The plaintiff's post trial motions as to the surety bond claimed are granted and a directed verdict is entered for the plaintiff on that cause of action.

STANDARD OF REVIEW

In ruling on a motion for judgment notwithstanding the verdict, all evidence and inferences are viewed in the light most favorable to the non-moving party. The verdict will be upheld if there is any evidence to sustain the factual finding of the jury's verdict. Hilton Head Island Realty, Inc. v. Skull Creek Club, 287 S.C. 530, 339 S.E.2d 890, 891 (Ct. App. 1986). In a motion for judgment notwithstanding the verdict, the trial judge cannot disturb the factual

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findings of a jury unless a review of the record discloses no evidence which reasonably supports them. Horry County v. Laychur, 315 S.C. 364, 434 S.E.2d 259, 261 (1993).

On a motion for a new trial absolute, the trial court has the discretionary power to grant a new trial sitting as the thirteenth juror. Worrell v. S.C. Power Co., 186 S.C. 306, 195 S.E. 638, 641 (1938). If a jury's verdict is so excessive as to be actuated by passion, comprise or prejudice, the trial court has the power to grant a new trial absolute. Elam v. S.C. Department of Transportation, 361 S.C. 9, 602 S.E.2d 772, 781 (2004). Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E. 2d 557, 558 (1993). Elam v. S.C. Dept. of Transp., 361 S.C. 9, 602 S.E. 2d 972, 781 (2004).

As to the punitive damages, this Court reviews the award pursuant to the case of Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (2009). The consideration of the factors laid out in Mitchell v. Fortis are discussed at length in the punitive damages section below.

FACTUAL BACKGROUND

Plaintiff Travelers Property Casualty Company of America and the Travelers Indemnity Company of Illinois (hereinafter "Plaintiff" or "Travelers") filed its Complaint on September 3, 2008 alleging a non-jury debt collection matter regarding a worker's compensation policy issued through the South Carolina Assigned Risk Plan to the Defendant Senn Freight Lines, Inc. Defendant answered, denying the allegations of the Complaint and counterclaiming for breach of contract, insurance bad faith, and surety bond claims. After a trial in this matter, the jury found that there were no premiums due to the plaintiff pursuant to their Complaint and that the defendant prevailed on the breach of contract, insurance bad faith and surety bond claims. The

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jury found that Defendant Senn Freight Lines, Inc. was owed $4,851.06 for the breach of contract claim. The jury further found that Defendant was owed $6,000.00 for damages related to the insurance bad faith cause of action with an additional $100,000.00 of punitive damages for the bad faith cancellation of the insurance policy. On the surety bond claim, the jury found that Defendant Senn Freight Lines, Inc. was owed $2,360.00 plus interest from July 25, 2007 forward. The plaintiff's Motion for Directed Verdict during the trial was denied and plaintiff's Motion for Judgment Notwithstanding the Verdict and/or Motion for New Trial Absolute was timely filed. The parties presented arguments at a hearing before this Court on November 3, 2010.

PLAINTIFF'S COMPLAINT AND DEFENDANT'S BREACH OF CONTRACT CAUSE OF ACTION

The jury found against the plaintiff on its claim for debt collection. The defendant's breach of contract counterclaim and the plaintiff's initial claims were interlinked and will be discussed together herein. The same principals of law and facts apply to the plaintiff's complaint and the defendant's counterclaim for breach of contract.

Plaintiff argues that it was entitled to a directed verdict on its Complaint and in regards to defendant's breach of contract counterclaim. It is clear that the jury feels otherwise and this Court agrees. There was ample evidence presented at trial to show that no premiums were due to the plaintiff and that the plaintiff breached the contract by terminating it before its expiration date despite having received the initially charged amount of premiums. The evidence presented includes, but is not limited to, the following:

A. The application for worker's compensation insurance specifically lists clerical,

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office and warehouse employees only. The application presented in evidence does not request any coverage for drivers, whether leased or independent contractors.

B. The testimony of Danny Senn on behalf of Senn Freight Lines, Inc. that the defendant did not request or seek worker's compensation insurance from the plaintiff for drivers; Mr. Senn indicated that the drivers were either leased and covered through the leasing company or were independent contractors who provided their own coverage.

C. Testimony of Danny Senn that no drivers' claims were ever presented to the Plaintiff even though claims arose during the policy period;

D. Exhibits presented that indicate the independent contractor drivers were covered under other policies, including occupational accident policies; and,

E. The actual contract, including the riders and addendums, which indicate that lease drivers are specifically not covered by the policy issued to Senn Freight Lines, Inc. by the plaintiff.

Plaintiff seeks to rely upon Court decisions whereby worker's compensation carriers were found to have provided coverage for persons labeled as independent contractors. This is a matter to be considered on a case by case basis and is very fact specific. All of the cases cited by the plaintiff are appeals from worker's compensation commissioner rulings. These cases are on record only because insurance companies denied coverage to persons considered to be independent contractors.

This Court charged that:

A. Independent contractors are not within the scope of the Worker's Compensation Act and insurance company would not be entitled to premiums for such independent contractors.

B. Businesses or employers employing less than four (4) persons are not required to carry statutory worker's compensation insurance and do not fall within the provisions of the S.C. Worker's Compensation Act.

C. Owner/Operators are specifically exempt from worker's compensation laws if working under an independent contractor contract.

This jury concluded that the employees complained of by the plaintiff were in fact independent contractors and that plaintiff was not owed worker's compensation premiums for said independent contractors. The verdict was based upon the fact as stated above and the law as presented to them. The Plaintiff made no objections to the jury charge.

BAD FAITH CANCELLATION OF POLICY CAUSE OF ACTION

Plaintiff argues that the defendant's counterclaim for insurance bad faith is improper. This Court would note that the Plaintiff never objected to the jury charge provided to the jury and never made any request for additions or changes after the jury had been charged. The Plaintiff waived his objections to the Defendant's cause of action for bad faith cancellation of policy by failing to object to the jury charge. Plaintiff cannot raise an issue for the first time on appeal and must make a timely objection. Lucas v. Rawl Family Ltd. P'ship, 359 S.C. 505, 598 S.E. 2d 712 (2004).

Plaintiff also failed to plead in its Reply to Counterclaim that the cause of action was improper and simply issued a standard denial. Plaintiff did not allege failure to state a cause of action or failure to state a claim in its Reply and the issue cannot be raised for the first time on appeal. Mains v. K-Mart Corp., 297 S.C. 142, 375 S.E.2d 311, 314 (Ct. App. 1988)

Assuming that the Plaintiff did not waive the issues raised in its appeal regarding the Defendant's Counterclaim for bad faith cancellation of insurance policy, the defendant properly plead a valid cause of action pursuant to Mitchell v. Fortis, 385 S.C. 570, 686 S.E. 2d 176 (2009). This Court's charge that the elements of an insurance bad faith claim are (1) a mutually binding contract of insurance; (2) refusal by the insurer to provide benefits under the contract; and (3) the refusal resulted from bad faith or unreasonable action in breach of an implied covenant of good faith and fair dealing. Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E. 2d 727, 730 (1996). The plaintiff did not object to the jury instruction and therefore waives any objection to same. Also, the case of Mitchell v. Fortis specifically states that bad faith cancellation is a cause of action and pursuant to this case, Defendant properly plead and the jury properly found for the Defendant on this cause of action.

The Plaintiff argues that it was undisputed that the policy was cancelled because the defendant did not provide documentation requested by the plaintiff in its worker's compensation audit. These facts are simply not in evidence. Danny Senn testified that the defendant provided all documentation requested and that Senn Freight Lines, Inc. fully complied with the audit procedure. Furthermore, the testimony of the plaintiff's auditor, who was not in any way involved in the Senn Freight Lines, Inc. audit and who was named as a witness only 1 day before

SCA

the trial, provided no evidence or testimony that Senn Freight Lines, Inc. did not comply with all requests. The auditor further stated that often times the auditor will review the documents at the business location and that these documents are not included with the insurance company's file. Furthermore, the defendant presented evidence that bad faith did in fact exist. Said evidence includes, but is not limited to, the following:

A. The policy was cancelled before the term expired after the plaintiff received the premiums;

B. The plaintiff refused to refund the premiums despite the cancellation of the policy;

C. The plaintiff tried to raise the premium and instituted a lawsuit regarding same only after the worker's compensation claims period passed; and

D. Danny Senn testified that the cancellation was without any reason whatsoever and there was no evidence to the contrary presented to the jury.

The Plaintiff further argues that it should be protected by the rules and regulations of the National Council of Compensation Insurance and S.C. Worker's Compensation Insurance Plan. These issues were never raised at trial and no requests to charge were presented to the Court regarding these rules and regulations. Plaintiff has waived his right to argue same in post-trial motions.

Plaintiff further argues that the defendant admitted that it could not get damages for both a breach of contract and a bad faith cause of action. This is not the recollection of the Court. In closing argument, defendant's counsel did indicate that the defendant could not get the same

damages for both causes of action but that other damages did exist. Furthermore, the jury found two separate amounts for the damages which leaves this Court to believe that they considered separate and distinct damages for each of the causes of action.

PUNITIVE DAMAGES

Plaintiff complains that the punitive damages levied by the jury in this matter are improper and excessive. This Court would again note that the plaintiff did not object to the charge on punitive damages given by the Court and that they have waived any objections thereto. Assuming that any objections to punitive damages have not been waived by the plaintiff, this Court reviews the jury's award pursuant to the most recent case law of Mitchell v. Fortis Ins. Co. and the guidelines established by the Supreme Court in that case.

The Court must first consider the reprehensibility of the wrongdoer's conduct. Included in same is the economic harm created by the plaintiff's actions. Senn Freight Lines, Inc. was placed at great risk. One total disability claim by an office or clerical employee would place an extreme financial burden upon the company. Travelers was indifferent to this risk and acted with reckless disregard for the defendant's rights under the policy. It appears that Travelers' acts were intentional as they waited until the claims period had passed before instituting a suit. Furthermore, this instance is not isolated and is very capable of repetition, as Travelers could simply collect premiums for employees that they know they will never have to insure if their plan succeeded. The actions of Travelers, the evidence showed, could have been found by the jury to have been reprehensible and egregious and worthy of the punitive damages award levied by the jury.

This Court must also consider the ratio of actual damages to punitive damages. The jury's award of $100,000.00 punitive damages is less than ten times the actual damages of $10,851.06. Furthermore, the ratio to the potential harm is small as worker's compensation claims for the office, clerical and warehouse staff could be astronomical and catastrophic for Senn Freight Lines, Inc. Furthermore, considering the ability to pay, no evidence was offered by Travelers that payment of the punitive damages is beyond their ability. Being an insurance company, there is little question as to their ability to pay a $100,000.00 punitive damages award.

In considering whether the punitive damages amount is likely to deter Travelers from similar conduct in the future, the amount awarded may not have been high enough. Considering the almost $200,000.00 in premiums Travelers attempted to collect unlawfully from Senn Freight Lines, Inc., a $100,000.00 punitive damage award is justified under the evidence.

The punitive damages claim was presented to the jury without objection and this Court finds that the jury properly considered the factors and breached a just and reasonable award for the defendant.

SURETY BOND CAUSE OF ACTION

This Court rules in favor of the Plaintiff in its Motion for a Judgment Notwithstanding the Verdict regarding the defendant's claim for damages under a surety bond. It appears that a different entity, although possibly related to the plaintiff in this matter, actually issued the surety bond in question. While the plaintiff's failure to present any evidence whatsoever regarding the surety bond issue likely lead to the jury finding for the defendant, this Court finds as a matter of law that the Plaintiff's Motion for a Directed Verdict in regards to the surety bond claim should

have been granted. Therefore, the Plaintiff's Motion for Judgment Notwithstanding the Verdict regarding the surety bond claim is granted.

MOTION FOR NEW TRIAL ABSOLULTE "THIRTEENTH JUROR DOCTRINE"

Plaintiff argues that the verdict of the jury was due to passion or comprise and that therefore this Court should exercise its powers as the thirteenth juror and order a new trial absolute. However, the plaintiff fails to present any evidence that the jury in this matter failed to follow the Court's instructions or that they acted with any improper purpose or goal.

The Plaintiff points out that the defendant is a local business and that the plaintiff is not. This is true but the Court has no basis for believing that the jury allowed this to enter into their deliberations. This Court would further note that the plaintiff instituted this suit in the Court of Common Pleas for Newberry County. The defendant did not choose the venue for this action.

The plaintiff further argues that the jury "was unable or unwilling to follow the instructions of the verdict form." There is no evidence that the jury was confused as the verdict form and the jury's verdict was clear. The plaintiff argues that the jury answers questions on the verdict form which were not for their consideration but the answers are completely consistent with the overall verdict and completely consistent with this Court's instructions to them. It appears that the jury's hand written notes on the verdict form are in an effort to make certain that this Court and the parties understood their findings and the written comments did so. This Court finds no evidence of confusion as the jury's verdict was completely consistent.

The Plaintiff also argues that while the defendant testified at trial that Travelers waited to

SEDM

bring this action until after the two year statute of limitations had passed for worker's compensation claims under the policy, the defendant failed to plead an equitable defense such as unclean hands. First, the statement that Travelers waited to bring this action until after the statute of limitations had run for worker's compensation claims is true. The plaintiff did not object to the statement at any time throughout the trial and would have had no basis for doing so. Furthermore, the defendant did not allege unclean hands and simply alleged that they did not breach the contract and that they owed no money to Travelers for worker's compensation premiums. The statements regarding the delay in bringing the action were proper, true and utilized to let the jury know that the bad faith cause of action was valid and that punitive damages were proper. In its post-trial motions, plaintiff states, "the plaintiff cannot know with any certainty that this affected the jury's decision, it can however reasonably surmise that *something* in addition to the specific jury instructions given by the Court confused or tainted the jury..." This statement summarizes the plaintiff's entire argument that because Plaintiff failed to convince the jury that its position was correct, something improper must have influenced the jury. There is no basis for this Court to overturn the verdict or the findings of the jury as there is no evidence of improper motivations or influence. There was ample evidence as to each cause of action to support the jury's verdict. The sole exception is the surety bond cause of action which the plaintiff did not see fit to contest at all.

CONCLUSION

THEREFORE IT IS ORDERED, ADJUDGED AND DECREED that Plaintiffs' motions for judgment notwithstanding the verdict and for new trial as to the causes of actions for breach

SCM

of contract and bad faith are denied. Its motion for judgment notwithstanding the verdict on the cause of action on the surety bond claim is granted.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that judgment be entered in favor of Defendant Senn Freight Lines, Inc. against Plaintiffs Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois in the amended amount of $10,851.06 actual damages and $100,000.00 in punitive damages.

IT IS SO ORDERED.

The Honorable Eugene C. Griffith, Jr.

March 4
~~January~~ ____, 2011

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP3600417

Travelers Property Casualty Co *vs.* Senn Freight Lines Inc

CHECK ONE:

☒ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered. Verdict Form Attached

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

FILED
NEWBERRY COUNTY
2010 AUG -4 P 5:37
JACKIE S. BOWERS
CLERK OF COURT

Dated at Newberry, South Carolina, this 4 day of Aug, 2010.

Court Reporter: April Heron

PRESIDING JUDGE - Eugene C. Griffith, Jr.

This judgment was entered on the _____ day of _____, 2010, and a copy mailed first class this _____ day of _____, 2010, to attorneys of record or to parties (when appearing pro se) as follows:

Byron Putnam Roberts Roberts Law Group, LLC
P.O. Box 670 Chapin, SC 29036

ATTORNEY(S) FOR THE PLAINTIFF(S)

William Chadwick Jenkins Pope & Hudgens, PA
P.O. Box 190 Newberry, SC 29108

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S Bowers - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA) COUNTY OF NEWBERRY)	IN THE COURT OF COMMON PLEAS EIGHTH JUDICIAL CIRCUIT
Travelers Property Casualty Company, et al,) Plaintiff,) v.) Senn Freight Lines, Inc.) Defendant.)	**VERDICT FORM** 2008-CP-36-417

Travelers Insurance Claim

1. Do you find by the preponderance of the evidence that there are/is contract(s) for workers' compensation coverage between Travelers Insurance and Senn Freight Lines?

   ☑ YES: If you answer yes, go to Question 2.

   ☐ NO: If you answer no, go to Question 8.

2. Did this policy cover leased drivers if there were gaps in coverage?

   ☐ YES: If you answer yes, go to Question 3.

   ☑ NO: If you answer no, go to Question 4.

3. If so, what premium, if any, is due Travelers Insurance?
   $ 0 . Go to Question 4.

4. Did this policy cover non-leased drivers?

   ☐ YES: If you answer yes, go to Question 5.

   ☑ NO: If you answer no, go to Question 6.

5. If so, what premium, if any, is due Travelers Insurance?
   $ 0 . Go to Question 6.

FILED
NEWBERRY COUNTY
2010 AUG -4 P 5:37
JACKIE S. BOWERS
CLERK OF COURT

Senn Freight Lines Counterclaim

6. When the workers' compensation policy was cancelled, did Travelers Insurance owe unearned premiums to Senn Freight Lines?

☑ YES: If you answer yes, go to Question 7.

☐ NO: If you answer no, go to Question 8.

7. If so, what amount of premiums is due to be refunded to Senn Freight Lines?
$ 4,851.06. Go to Question 8.

8. Do you find that Senn Freight Lines proved by clear and convincing evidence that the policy was cancelled in bad faith?

☑ YES: If you answer yes, go to Question 9.

☐ NO: If you answer no, go to Question 11.

9. If so, are there any damages for the bad faith cancellation?
$ 6,000. Go to Question 10.

10. If so, are there any punitive damages for the bad faith cancellation?
$ 100,000. Go to Question 11.

11. On the claim due under the surety bond, is Senn Freight Lines due payment?

☑ YES: If you answer yes, go to Question 12.

☐ NO: If you answer no, stop and deliberate no further.

12. If so, how much? $ 2,360 + full amount of interest retroactive 7/25/07

I certify that this decision was the unanimous decision of the jury.

Tina B. Wilkerson
Foreperson
August 4, 2010

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Newberry)

CIVIL ACTION COVERSHEET

Travelers Property Casualty Company of et. al.)
Plaintiff(s))

vs.)

Senn Freight Lines, Inc.)
Defendant(s))

2008 -CP- 36 - 417

(Please Print)

Submitted By: Leo A. Dryer	SC Bar #: 1759
Address: P.O. Box 11567	Telephone #: (803) 926-1235
Columbia, SC 29211	Fax #: (803) 926-1276
	Other:
	E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☐ **JURY TRIAL** demanded in complaint. ☒ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☒ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date:** August 11, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA]
]
COUNTY OF NEWBERRY]

IN THE COURT OF COMMON PLEAS

2008-CP-36-417

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA & THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

PLAINTIFF,

VS.

SENN FREIGHT LINES, INC.

DEFENDANT.

SUMMONS

TO THE DEFENDANT ABOVE NAMED:

You are hereby summoned and required to Answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers at his law office at 659 Frink Street, Cayce, South Carolina, (P.O. Box 11567, Columbia, South Carolina 29211) within Thirty (30) days from the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the Court for Judgment by Default for relief demanded in the Complaint.

DRYER LAW OFFICE

LEO A. DRYER
Attorney for Plaintiff
P.O. Box 11567
Columbia, SC 29211
(803) 926-1235
SC Bar #1759

August 11, 2008
Columbia, South Carolina

SUM.DOC/08021105/th

STATE OF SOUTH CAROLINA]
]
COUNTY OF NEWBERRY]

TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA & THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS
PLAINTIFF,

VS.

SENN FREIGHT LINES, INC.
DEFENDANT.

IN THE COURT OF COMMON PLEAS

2008-CP-36-417

C O M P L A I N T
NON-JURY
DEBT COLLECTION

The Plaintiff herein alleges:

1. That Plaintiff is a Connecticut Corporation.

2. That, upon information and belief, the Defendant is a South Carolina Corporation.

3. That on or between July 10, 2003 and October 25, 2005 the Plaintiff provided to the Defendant, at its special instance and request, certain insurance services for the value of Two Hundred Eight Thousand Six Hundred Sixty and 00/100 ($208,660.00) Dollars as will more fully appear upon the itemized statement attached hereto and incorporated herein by reference.

4. The terms of the policy of insurance further provided that, at the inception of the policy term the Defendant would be charged an estimated premium and, at the close of the policy term, the Defendant would be charged an additional earned premium (or credit therefore) premised upon a pay-roll audit for the policy term. The Defendant failed to cooperate with Plaintiff's audit and Plaintiff has proceeded upon an estimated audit, consistent with the terms of its contract of insurance, and your Plaintiff has

provided its billing to the Defendant for additional earned premium.

5. That part of said account has been paid by credit or otherwise and there is now due and owing thereon by the Defendant the sum of One Hundred Ninety Seven Thousand Nine Hundred Fifty Eight and 00/100 ($197,958.00) Dollars, together with maximum legal interest to date and the costs of this action.

WHEREFORE, Plaintiff prays for Judgment against the Defendant in the sum of One Hundred Ninety Seven Thousand Nine Hundred Fifty Eight and 00/100 ($197,958.00) Dollars together with maximum legal interest to date and the costs of this action.

LEO A. DRYER
Attorney for Plaintiff

August 11, 2008
Columbia, South Carolina

COM.DOC/08021105/th

AFFIDAVIT

STATE OF CONNECTICUT
COUNTY OF HARTFORD, TO WIT:

This day personally appeared Laura Leyland before undersigned Brenda R. Strong, Notary Public in and for county aforesaid, in the State of Connecticut, who being duly sworn, doth depose and say:

1. That she is the Director of Travelers Indemnity Company of Illinois, a company incorporated under the laws of the state of Illinois and Travelers Property Casualty Company of America, a company incorporated under the laws of the state of Connecticut.

2. That the attached Statement of Account reflects an unpaid premium due on three separate insurance policies which are outlined as follows: Policy 6JUB 7803A476 for the policy term 07/10/03 to 07/10/04 there is an audited premium balance due of $91,452.00; Policy 6JUB 7803A476 for the policy term 07/10/04 TO 07/10/05 there is an estimated balance due of $77,737.00 and Policy 6JUB 7803A476 for the policy term 07/10/05 to 10/25/05 there is an estimated balance due of $28,769.00. The total balance due of One Hundred Ninety Seven Thousand, Nine Hundred and Eighty Five Dollars 00/100 ($197,985.00) reflected on the attached Statement of Account are justly due Travelers Property Casualty Company of America by SENN FREIGHT LINES, INC.

3. That the information herein above set forth is with the personal knowledge of the affiant who is competent to testify thereto.

4. The affiant is duly authorized by plaintiff to make this affidavit.

Laura Leyland - Director

Subscribed and sworn to before me in the county aforesaid, in the State of Connecticut on May 29, 2008.

My Commission Expires the 30th day of June, 2011.
Witness my hand and notarial seal.

Brenda R. Strong - Notary Public

(SEAL)

TRAVELERS

STATEMENT OF ACCOUNT
FOR
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

DATE: MAY 29, 2008

Type of Insurance: WORKERS COMPENSATION INSURANCE

Insurer: TRAVELERS INDEMNITY COMPANY OF ILLINOIS and TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

Policy Number: **6JUB 7803A476**
Policy Term: **07/10/03 TO 07/10/04**
Policyholder Report

Earned Premium:	$ 93,306.00	
Premium Paid:		$ 1,854.00
Paid to Special Collections:		$ 0.00
	$ 93,306.00	$ 1,854.00
	- (1,854.00)	
Balance Due:	**$ 91,452.00**	

Policy Number: **6JUB 7803A476**
Policy Term: **07/10/04 TO 07/10/05**
Estimated Report

Earned Premium:	$ 81,149.00	
Premium Paid:		$ 3,412.00
Paid to Special Collections:		$ 0.00
	$ 81,149.00	$ 3,412.00
	- (3,412.00)	
Balance Due:	**$ 77,737.00**	

Policy Number: **6JUB 7803A476**
Policy Term: **07/10/05 TO 10/25/05**
Estimated Report

Earned Premium:	$ 34,205.00	
Premium Paid:		$ 5,436.00
Paid to Special Collections:		$ 0.00
	$ 34,205.00	$ 5,436.00
	- (5,436.00)	
Balance Due:	**$ 28,769.00**	

TOTAL BALANCE DUE: $ 197,958.00

DRYER LAW OFFICE

LEO A. DRYER
ATTORNEY AT LAW
TELEPHONE: (803) 926-1235
FAX: (803) 926-1276

STREET ADDRESS:
659 FRINK STREET
CAYCE, SC 29033

MAILING ADDRESS:
P.O. BOX 11567
COLUMBIA, SC 29211

August 11, 2008

Honorable Jackie S. Bowers
Newberry County Clerk of Court
P.O. Box 278
Newberry, SC 29108

RE: Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois

VS: Senn Freight Lines, Inc.

Our File #: 08021105

Dear Ms. Bowers:

I enclose herewith original Summons and Complaint together with our cost check in the sum of $150.00 to cover your filing fee.

We also provide a copy of the Summons and ask that the Summons copy be returned with your clocking date and the docket number; we provide our stamped and preaddressed envelope for that purpose.

Your assistance is appreciated.

Very truly yours,

Leo A. Dryer
DRYER LAW OFFICE

LAD/th
Enclosures

Copy mailed 9/3/08

**** CONFIDENTIAL - FOR CLERK'S USE ONLY ****
Personal e-mail: pdryer@sc.rr.com

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No. 2008-CP-36-417
Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois	)	
Plaintiff,	)	**SUMMONS**
vs.	)	
Senn Freight Lines, Inc.,	)	
Defendant	)	

FILED
NEWBERRY COUNTY
2008 NOV 10 P 12:31
JACKIE S. FOWLER
CLERK OF COURT

TO PLAINTIFF: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA AND ITS ATTORNEY, LEO A. DRYER, ESQUIRE:

YOU ARE HEREBY SUMMONED and required to reply to the Counterclaim in this action, a copy of which is herewith served upon you, and to serve a copy of your reply to said Counterclaim on the subscriber at Post Office Box 190, Newberry, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to reply to the Counterclaim within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Counterclaim.

POPE AND HUDGENS, P.A.
1508 College Street
Post Office Box 190
Newberry, South Carolina 29108
(803) 276-2532

BY: _____
W. Chad Jenkins
Attorneys for Defendant

November 10, 2008
Newberry, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No. 2008-CP-36-417
Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois	)	
Plaintiff,	)	**ANSWER AND COUNTERCLAIM**
vs.	)	**(Jury Trial Requested)**
Senn Freight Lines, Inc.,	)	
Defendant	)	

FILED
2008 NOV 10 P 12:37
JACKIE C. HOOTS
NEWBERRY COUNTY

Defendant, answering the Complaint of the plaintiff herein, would allege as follows:

FOR A FIRST DEFENSE
(General Denial)

1. Each and every allegation of the Complaint not hereinafter specifically admitted is denied.

2. Defendant admits the allegations of paragraphs 1 and 2 of the Complaint.

3. As to the allegations of paragraph 3 of the Complaint, defendant admits that plaintiff provided to defendant certain insurance services through the South Carolina Assigned Risk Pool. The remaining allegations, specifically that the value of the services were $208,660.00 are specifically denied.

4. Defendant admits as much of the allegations of paragraph 4 of the Complaint as alleges the terms of the policy of insurance provided by the plaintiff to the defendant provided

that the defendant would be charged an estimated premium and that the defendant could be charged an additional earned premium based upon an actual payroll audit for the policy term at the end of said policy term. Defendant denies the remaining allegations of paragraph 4 of the Complaint.

5. Defendant denies the allegations of paragraph 5 of the Complaint.

6. Defendant denies the allegations of plaintiff's prayer for judgment.

7. Defendant denies the remaining allegations of the Complaint and all Affidavits or documents attached thereto.

FOR A SECOND DEFENSE
(Statute of Limitations)

8. Each and every denial, admission and assertion stated above is repeated as if stated verbatim herein.

9. Plaintiff's claims for the alleged policy term of July 10, 2003 to July 10, 2004 are barred by the applicable statute of limitations.

10. Plaintiff's claims for the alleged policy term beginning on July 10, 2004 and expiring on July 10, 2005 are barred by the applicable statute of limitations.

FOR A THIRD DEFENSE
(By Way of Counterclaim)
(Breach of Contract)

11. Each and every denial, admission and assertion stated above is repeated as if stated verbatim herein.

12. Plaintiff submitted a request through the South Carolina Assigned Risk Pool for insurance coverage and said coverage was assigned to Travelers Indemnity Company of Illinois and Travelers Property Casualty Company of America.

13. Pursuant to the terms of the policy requested and provided, plaintiffs were to provide insurance for all non-driver employees of Senn Freight Lines, Inc. in return for premiums. Said policy constitutes a valid and binding contract.

14. Defendant paid all premiums due to Plaintiff and performed all of its obligations pursuant to the parties' contact.

15. Senn Freight Lines, Inc. does not hire or employ any drivers and said drivers are leased through other companies, which provide all applicable Worker's Compensation insurance for said drivers.

16. Defendant paid plaintiff all premiums due as follows:

A.	Policy term 7/10/03 – 7/10/04:	$1,854.00 premium paid
B.	Policy term 7/10/04 – 7/10/05:	$3,412.00 premium paid
C.	Policy term 7/10/05 – 7/10/06:	$5,436.00 premium paid

17. Plaintiff, without cause and in violation of the laws of the State of South Carolina and in violation of the insurance contract, unilaterally cancelled the policy for the term of July 10, 2005 to July 10, 2006 on October 25, 2005. Plaintiff's actions amount to a material breach of the parties' contract.

18. Defendant had prepaid for the entire year's policy term in the amount of $5,436.00. Plaintiff earned only $1,593.57 of this premium paid for the 107 days of coverage provided.

19. Plaintiff owes defendant damages in the amount of $3,842.43 plus interest from October 25, 2005 to the present.

FOR A FOURTH DEFENSE
(By Way of Counterclaim)
(Insurance Bad Faith)

20. Each and every denial, admission and assertion stated above is repeated as if stated verbatim herein.

21. Plaintiffs illegally and without cause terminated the insurance contract despite having been paid all premiums owed and due for the coverage to be provided during the policy term of July 10, 2005 to July 10, 2006.

22. Defendant and its agents, stockholders and officers spent numerous hours dealing with this matter and informing the plaintiffs of its position both legally and pursuant to the terms of the insurance contract.

23. Defendant and its agents, stockholders, and officers were forced to endure countless hours of worry and emotional trauma due to the plaintiffs' failure to provide insurance coverage as contracted. Furthermore, Defendant was forced to seek alternate coverage.

24. Plaintiff has been damaged in the amount of $3,842.43 for premium paid to the plaintiffs but unearned for policy period July 10, 2005 to July 10, 2006.

25. Plaintiffs' denial of insurance coverage and cancellation of the policy was without cause and in bad faith and contrary to the laws of the State of South Carolina.

26. Defendant is entitled to recover from the plaintiffs amounts for lost time, costs, emotional trauma and other actual damages together with punitive damages in an amount to be determined by a jury not to exceed $68,500.00.

FOR A FIFTH DEFENSE
(By Way of Counterclaim)
(Surety Bond Claim)

27. Each and every denial, admission and assertion stated above is repeated as if stated verbatim herein.

28. Plaintiff is a surety for an entity known as Jones Motor Logistics, Inc. and agreed, via a valid bond (Bond No. 008-S-104352011) and Property Broker's Surety Bond under 49 U.S.C. 13906 (Form BMC-84), to pay all motor carriers or shippers to whom Jones Motor Logistics, Inc. became liable.

29. Defendant transported goods on July 16, 2007 at the request of and under the direction of Jones Motor Logistics, Inc.

30. Defendant sent and invoice and freight bill (Invoice No. 708530) to Jones Motor Logistics, Inc. in the amount of $2,360.00.

31. Jones Motor Logistics, Inc. has failed and refused to pay this invoice and bill in violation of Federal shipping regulations.

32. Defendant notified plaintiff of its claim on the bond on September 28, 2007. To date, Plaintiff has failed to pay pursuant to its position as surety for Jones Motor Logistics, Inc. and said failure is a violation of Federal shipping regulations as well as the bond.

33. Defendant has been damaged by plaintiff's failure to pay on this bond in the amount of $2,360.00, plus interest, attorneys fees and costs.

WHEREFORE, defendant prays for an Order of this Court dismissing the Complaint of Plaintiff with prejudice and for damages of the Counterclaims for breach of contract, bad faith failure to provide insurance, and surety bond claim as stated above in a total aggregate amount not to exceed $74,500.00.

POPE AND HUDGENS, P.A.
Post Office Box 190
Newberry, South Carolina 29108
(803)276-2532

By: _____
W. Chad Jenkins
Attorneys for Defendant

Newberry, South Carolina
November 10, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C/A No. 2008-CP-36-417
Travelers Property Casualty Company of America & The Travelers Indemnity Company of Illinois	)	
	)	**CERTIFICATE OF SERVICE**
Plaintiff,	)	
v.	)	
Senn Freight Lines, Inc.,	)	
Defendant	)	

The undersigned employee of Pope & Hudgens, P.A., Attorneys at Law, Post Office Box 190, 1508 College Street, Newberry, South Carolina 29108, does hereby certify that she has served the following named individual(s) with a copy of the pleading(s) indicated below by mailing a copy of same in the United States mail, with sufficient postage affixed thereto and return address clearly marked on the date indicated below:

FILED
NEWBERRY COUNTY
2008 NOV 10 P 12:37
JACKIE S. HOWERS
CLERK OF COURT

PARTY SERVED: Leo A. Dryer, Esquire
Dryer Law Office
PO Box 11567
Columbia, SC 29211

PLEADING SERVED: Summons and Answer and Counterclaim

Katherine Barnett

Newberry, South Carolina

November 10, 2008

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Case No. 2008-CP-36-417
	)	
Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois,	)	
Plaintiff,	)	PLAINTIFF'S REPLY TO DEFENDANT'S COUNTERCLAIM
vs.	)	
Senn Freight Lines, Inc.	)	
Defendant.	)	

FILED
NEWBERRY COUNTY
2009 MAR -6 P 2:44
JACKIE S. DOWLES
CLERK OF COURT

The Plaintiffs, Travelers Property Casualty Company of America and Travelers Indemnity Company of Illinois, hereby reply to Defendant's Answer and Counterclaim as follows:

AS TO THE FIRST AND SECOND DEFENSES

1. That each and every allegation contained in Plaintiffs' Complaint is repeated, re-alleged, reasserted and incorporated herein by reference as if set forth verbatim and Plaintiffs deny each and every allegation to which a response is deemed necessary.

AS TO THE THIRD DEFENSE
(Breach of Contract)

2. That each and every allegation contained in Plaintiffs' Complaint is repeated, re-alleged, reasserted and incorporated herein by reference as if set forth verbatim.

3. That Paragraph 11 requires no response, but, in the event a response is deemed necessary, those allegations are denied and strict proof is demanded thereof.

4. Plaintiff admits the allegations of Paragraph 12 to the extent that it was assigned as Defendant's workers' compensation insurance carrier upon application submitted pursuant to the South Carolina Workers' Compensation Insurance Plan.

5. Plaintiff admits the allegations of Paragraph 13 to the extent that it issued a policy for Defendant workers' compensation insurance coverage pursuant to the application it submitted and the assignment according to the South Carolina Workers' Compensation Insurance Plan (assigned risk plan).

6. Plaintiff denies the allegations of Paragraph denies the allegations of Paragraph 14 and demands strict proof thereof.

7. Plaintiff denies the allegations of Paragraph 15 and demands strict proof thereof.

8. Plaintiff denies the allegations of Paragraph 16 that the amounts paid represented the entire premium that is due and owing for the coverages provided by the policies of workers' compensation insurance that were issued.

9. Plaintiff denies the allegations of Paragraph 17 and demand strict proof thereof.

10. Plaintiff denies the allegations of Paragraph 18 and demands strict proof thereof.

11. Plaintiff denies the allegations of Paragraph 19 for Defendant's prayer for relief.

FOR A THIRD DEFENSE TO DEFENDANT'S COUNTERCLAIM
(Insurance Bad Faith)

12. That each and every allegation contained in Plaintiffs' Complaint is repeated, re-alleged, reasserted and incorporated herein by reference as if set forth verbatim.

13. That Paragraph 20 requires no response, but, in the event a response is deemed necessary, those allegations are denied and strict proof is demanded thereof.

14. Plaintiff denies the allegations of Paragraphs 21, 22 and 23 and demands strict proof thereof.

15. Plaintiff denies the allegations of Paragraph 24 for Defendant's prayer for relief.

16. Plaintiff denies the allegations of Paragraph 25 and demands strict proof thereof.

17. Plaintiff denies the allegations of Paragraph 26 setting forth Defendant's prayer for relief.

FOR A FOURTH DEFENSE TO DEFENDANTS COUNTERCLAIM
(Surety Bond Claim)

18. That each and every allegation contained in Plaintiffs' Complaint is repeated, re-alleged, reasserted and incorporated herein by reference as if set forth verbatim.

19. That Paragraph 27 requires no response, but, in the event a response is necessary, those allegations are denied and strict proof is demand thereof.

20. Plaintiff denies the allegations of Paragraphs 28, 29, 30, 31, 32 and 33 and demands strict proof thereof.

21. Plaintiff further asserts as an affirmative defense any and all applicable statutes of limitation with regard to the allegations of Defendants Fifth Defense by way of Counterclaim.

NOW, THEREFORE, the Plaintiff, having fully answered the counterclaims of the Defendant, would request that those counterclaims be dismissed, with prejudice, and that Plaintiff be awarded all of the relief demanded in the Complaint, including, but not limited to, an award of its attorney's fees and costs in this case.

BY: _____

Byron P. Roberts, Esquire
161 Chapin Road
P.O. Box 670
Chapin, South Carolina 29036
(803) 932-9282
ATTORNEY FOR PLAINTIFF

March 6, 2009

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY)

Travelers Property Casualy Company of America and Travelers Indemnity Company of Illinois,
☒ Plaintiff
v.
Senn Freight Lines, Inc.
☐ Defendant.

CASE NO.
2008-CP-36-417

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Byron P. Roberts, Esquire, Bar No. 68009 Address: P.O. Box 670, Chapin, SC 29036 phone: 803-932-9282 fax: 803-932-9280 e-mail: roberts@lakemurraylaw.com other:	W. Chad Jenkins, Bar No. Address: Post Office Box 190 Newberry, SC 29108 phone: 803-276-2532 fax: 803-276-8684 e-mail: cjenkins@popeandhudgins.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: JNOV
Estimated Time Needed:30 minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Rebecca Anne Roberts for Byron P. Roberts 5/13/2010
Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF NEWBERRY	)	IN THE COURT OF COMMON PLEAS FOR THE EIGHTH JUDICIAL CIRCUIT Case No. 2008-CP-36-417
Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois, Plaintiff, vs. Senn Freight Lines, Inc. Defendant.	)	PLAINTIFF MOTION FOR JDUGMENT NOTWITHSTANDING THE VERDICT/NEW TRIAL ABSOLUTE

The undersigned hereby certifies that he/she is employed in the Law Office of Roberts Law Group, LLC, Attorneys and Counselors at Law, and that she has mailed, on the date set forth below, a copy of the document described below, in the above entitled action to the following with proper postage affixed thereto:

TO: Jackie S. Bowers, Clerk of Court
Newberry County Circuit Court
P.O. Box 278
Newberry, SC 29108

W. Chad Jenkins, Esquire
Pope & Hudgens Attorneys, P.A.
P.O. Box 190
1508 College Street
Newberry, SC 29108

Judge Eugene C. Griffith Jr.
Eighth Judicial Circuit Court
P.O. Box 375
Newberry, SC 29108

DOCUMENT: Plaintiff's Motion for Judgment Notwithstanding the Verdict/New Trial Absolute

DATE OF MAILING: August 13, 2010

Sarah Abramson

Fileclerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	
	)	Case No. 2008-CP-36-417
Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois,	)	
Plaintiff,	)	PLAINTIFF MOTION FOR JUDGMENT NOTWITHSTANDING THE VERDICT/NEW TRIAL ABSOLUTE
vs.	)	
Senn Freight Lines, Inc.	)	
Defendant.	)	

The Plaintiff, Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois (Hereafter, for purposes of brevity only, "Travelers") by and through its undersigned counsel, respectfully submits the following pursuant to Rules 50(b) and any other applicable rules, statutes and case law for Judgement Notwithstanding the Verdict (JNOV), and, in the alternative, for New Trial Absolute.

As an initial matter, the Plaintiff reasserts its Motion for Directed Verdict that was presented at the close of evidence. The grounds for this Motion, set forth in the Plaintiff's previous Motion (Summary Judgment and Directed Verdict), are incorporated herein.

In ruling on a motion for judgment notwithstanding the verdict the trial court must view the evidence and inferences in the light most favorable to the nonmoving party and must deny the motions if either the evidence yields more than one reasonable inference or

its inferences are in doubt. Buff v. South Carolina Dept. Of Transp. 332 S.C. 472, 505 S.E.2d 360 (Ct.App.1998) rehearing denied, certiorari granted, reversed on other grounds, 342 S.C. 416, 537 S.E.2d 279. The verdict will be upheld if there is any evidence to sustain the factual findings implicit in the jury's verdict. Hilton Head Island Realty, Inc. v. Skull Creek Club, 287 SC 530, 339 SE2d 890 (Ct. App. 1986). When considering a motion for judgment notwithstanding the verdict, the trial judge cannot disturb the factual findings of a jury unless a review of the record discloses no evidence which reasonably supports them. Horry County v. Laychur, 315 SC 364, 434 SE 2d 259 (1993). In making the determination, the judge must view the evidence and all its inferences in the light most favorable to the nonmoving party. Id. Furthermore, if more than one reasonable inference exists, the jury verdict must stand. Id.

"When considering a motion for a new trial based on the inadequacy or excessiveness of the jury's verdict, the trial court must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice." Elam v. S.C. Dep't of Transp., 361 S.C. 9, 27, 602 S.E.2d 772, 781 (2004). There can be no doubt that a trial judge has the discretionary power to grant a new trial absolute...upon his disapproval of the verdict on factual grounds, and in this role he has been recognized and designated as the thirteenth juror. Worrell v. South Carolina Power Co. 186 S.C. 306 195 S.E. 638 (1938). Such discretion is founded upon the facts, the evidence, the witnesses, the trial circumstances, the verdict and the judge's view of them. Fallon v. Rucks 217 S.C. 180, 60 S.E.2d 88 (1950). Nor does it follow that because under the law the trial judge is compelled to submit the issues to the jury, he

cannot grant a new trial absolute. As has often been said, the trial judge is the thirteenth juror, possessing the veto power to the Nth degree, and, it must be presumed, recognizes and appreciates his responsibility, and exercises the discretion vested in him with fairness and impartiality. Worrell, supra.

As to Plaintiff's Breach of Contract:

The policy itself listed "long distance drivers" and included the job classification code 7229 for these drivers. Despite the fact that there was an "if any" payroll amount recited does not change the fact that by the face of the policy, drivers would have been covered.

Additionally, the policy itself provides that it will pay benefits. It also provides that the premium is to be based on the amount paid (remuneration) upon an audit at the conclusion of the policy term. Furthermore, there was no question with regard to any ambiguity in relation to the term "remuneration" since the jury found simply, erroneously, that the policy did not include drivers. The jury stated spontaneously and specifically (without the court's direction or instruction) on the verdict form that, in their opinion, the policy only included office/clerical and warehousing and completely ignored the inclusion on the policy of the class code for drivers. This class code designation was specifically pointed out and explained during trial and there was no evidence to refute that this 7229 was indeed the class code for drivers. There was no other evidence offered that the policy did not cover drivers and thus there is no other reasonable inference that exists regarding the coverage extended by the policy. Creighton v. Coligny Plaza Ltd Partnership 334 S.C. 96, 512 S.E.2d 510 (Ct.App.1998) rehearing denied. ("Directed

verdict or judgment notwithstanding the verdict should not be granted unless only one reasonable inference can be drawn from the evidence...")

As discussed above, there is no reasonable inference regarding the non-leased drivers (as well as no evidence that the leased drivers were covered during the gap periods discussed in the Plaintiff's case in chief). The unrefuted evidence in the record was that the non-leased drivers, referred to by the Defendant as "owner/operators" or "subcontractors" or "independent contractors", were performing activities that were a part of the trade or business of the owner, Senn Freight Lines. Other unrefuted evidence was that Senn was a long-distance trucking company that hauls loads for its customers/clients around the country in all 48 states and that the individuals in question, were driving trucks and hauling loads for Senn. This activity meets at least two of the criteria established by the appellate courts in South Carolina for these drivers to be considered statutory employees of Senn Freight lines. First, the activity was an important part of Senn's trade or business. Second, and more importantly, the activity was a necessary, integral and essential part of Senn's trade or business. Without these drivers hauling loads for Senn Freight Lines, the company would not exist.

The Defendant's argument that because the drivers owned their own vehicles/equipment and/or exercised their own judgment with regard to the routes they took made them "independent" thus, not statutory employees, is irrelevant. According to the Supreme Court's decision in Smith v. T.H. Snipes & Sons, Inc., 306 S.C. 289, 411 S.E.2d 439 (S.C. 1991), there is nothing in section 42-1-400 that would exclude a self named "independent contractor" from being a statutory employee for purposes of the

Workers Compensation Act. Rather, in quoting Bailey v. Owen Elec. Steel Co. of S.C., 298 S.C. 36, 378 S.E.2d 63 (1989) the Court reiterated that there are three prongs in determining whether someone is a statutory employee for purposes of the Act. These three prongs are:

1. Whether the activity is an important part of the trade or business;

2. Whether the activity is a necessary, essential and integral part of the business; and

3. Whether the identical activity in question has been performed by employees of the principal employer.

Indeed, the specific code section, 42-1-400, refers to the "workman." Furthermore, the individual in the Smith case could also have called himself an "independent contractor," as he was "a self-employed welder and sole proprietor."

There is no argument that the drivers in the case at bar were likewise sole proprietors and may have also called themselves "independent contractors." However, the question does not stop there. The determination of whether a claimant qualifies as an employee or a true independent contractor for workers' compensation purposes is " a fact-specific determination reached by applying certain general principles." S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc., 318 S.C. 546, 547, 459 S.E.2d 302, 303 (1995). Among these principles is " South Carolina's policy to resolve jurisdictional doubts in favor of the inclusion of employers and employees under the Workers' Compensation Act." Dawkins v. Jordan, 341 S.C. 434, 439, 534 S.E.2d 700, 703 (2000) (citing Spivey v. D.G. Constr. Co., 321 S.C. 19, 21, 467 S.E.2d 117, 119 (Ct.App.1996)). While other cases since Snipes have found additional determinations, these holdings remain the gold standard as to whether a workman is, for purposes of workers'

compensation law, an independent contractor. See Posey v. Proper Mold & Engineering, Inc., 378 S.C. 210, 661 S.E.2d 395 (Ct.App. 2008) in affirming the validity of the Snipes test:

> "Three tests are applied to determine whether the activity of an employee of a subcontractor is sufficient to make him a statutory employee of the contractor within the meaning of section 42-1-410:(1) Is the activity an important part of the contractor's business or trade? (2) Is the activity a necessary, essential, and integral part of the contractor's trade, business, or occupation? or (3) Has the identical activity previously been performed by the contractor's employees? Edens v. Bellini, 359 S.C. at 433, 443, 597 S.E.2d at 863, 868; Olmstead v. Shakespeare, 354 S.C. 421, 425, 581 S.E.2d 483, 486 (2003); Boone v. Huntington and Guerry Elec. Co., 311 S.C. 550, 553, 430 S.E.2d 507, 509 (1993)."Riden v. Kemet Elec. Corp., 313 S.C. 261, 263-64, 437 S.E.2d 156, 157-58 (Ct.App.1993); see also Meyer v. Piggly Wiggly No. 24, Inc., 338 S.C. 471, 473, 527 S.E.2d 761, 763 (2000) (holding there are three tests used to determine whether an employee was "engaged in an activity that is part of the owner's trade, business, or occupation"); Smith v. T.H. Snipes & Sons, Inc., 306 S.C. 289, 292, 411 S.E.2d 439, 441 (1991) (listing the three factors of the statutory employee test); Revels v. Hoechst Celanese Corp., 301 S.C. 316, 318, 391 S.E.2d 731, 732 (Ct.App.1990) (finding the test used to determine if one is a statutory employee is "whether or not [the work] being done is or is not a part of the general trade, business or occupation of the owner"). **If the activity at issue meets even one of these three criteria, the worker qualifies as the statutory employee of the owner. Edens v. Bellini, 359 S.C. 433, 597 S.E.2d 863 (S.C.App. 2004),** (emphasis added) 359 S.C. at 443, 597 S.E.2d at 868; Olmstead, 354 S.C. at 421, 581 S.E.2d at 483. Any doubts as to a worker's status should be resolved in favor of including him or her under the Workers' Compensation Act. Edens, 359 S.C. at 443, 597 S.E.2d at 868; Riden, 313 S.C. at 263, 437 S.E.2d at 158."

Finally, the Supreme Court recently affirmed a decision of the Workers' Compensation Commission that was almost identical factually to this situation. Massey v. Werner Enterprises. Memorandum Opinion No. 2009-MO-034 Submitted June 24, 2009 – Filed June 29, 2009. Although this decision is an unpublished opinion, it offers significant persuasive value. Most importantly, it is an appeal of the Workers Compensation Commission that considered the very factual issue as that which confronts the Court in this case and confirms that the non-leased drivers referred to as owner/operators are

indeed considered statutory employees for purposes of the Workers Compensation Act and are therefore properly considered when the premium for this policy is calculated.

Defendant's Claim for Breach of Contract.

The Plaintiff requested the records from Defendant in accordance with the policy/contract. Both parties had initially agreed to an estimated premium with the full understanding that the Plaintiff had a right to review and audit the Defendant's records. Therefore the Defendant had an obligation under the contract to provide the records. The records of the audit document that Defendant did not produce all of the necessary records and the Defendant even testified at trial that the records were again requested from it. The Plaintiff offered testimony that some of the necessary records were never produced and the Defendant did not refute this. The Plaintiff had a right to cancel the policy upon the failure of the Defendant to produce the records. As to the Defendant's argument as to the unearned premium, the contract was clear that this premium was estimated. Upon the audit, such as it was without all of the requested documentation, the estimated premium paid was insufficient. Therefore, there was no "unearned premium" to be refunded to the Defendant, despite the early cancellation.

Defendant's Claim for Bad Faith.

South Carolina recognizes insurance bad faith in situations where the insurer unreasonably fails to pay either first or third party benefits. Refusal to pay benefits due under the contract is a necessary element to this cause of action. Walters v. Canal Insurance Co. 294 S.C. 150, 363 S.E.2d 120 (Ct. App. 1987) Cook v. Mack's Transfer

and Storage, 291 S.E. 861, 352 S.E.2d 296, 299 (Ct. App. 1986) *cert denied,* 292 S.C. 230, 355 S.E.2d 861 (1986) In the most recently published case in South Carolina alleging a bad faith rescission of an insurance policy, the Appellate Court while specifically taking up the question of punitives, again implies that the insurer's refusal to pay the benefits was the basis for upholding the jury's verdict as to bad faith. Mitchell v. Fortis, 358 S.C. 570, 686 S.E.2d 176 (2009). In the case at bar Travelers has never refused to pay benefits to the Defendant. On the contrary, it is undisputed that the reason for the cancellation was that the Defendant did not provide the necessary and agreed upon (by the terms of the contract) documents. Also, the evidence is not in dispute that the criteria for maintaining a policy under the Assigned Risk Pool is strictly controlled by NCCI (National Council of Compensation Insurance) and SCWCIP (South Carolina Workers Compensation Insurance Plan), not by Travelers. Therefore, mere cancellation, due to noncompliance by the Defendant, cannot be in bad faith. See Carolina Cable Network v. Alert Cable TV, Inc. 316 S.C. 98, 447 S.E.2d 199 (1994) for wrongful contract termination courts employ test whether done arbitrarily, maliciously or in bad faith.

In the case at bar, the Defendant simply re-alleges its breach of contract cause of action in the sheep's clothing of a bad faith claim. In fact, Defendant's counsel even admitted that the Defendant could not collect damages on both bad faith and breach of contract. Further, there is no evidence that Travelers' action was arbitrary, malicious or unreasonable. The only testimony was that the records were not produced and the Defendant's testimony that he thought the cancellation was in bad faith.

Defendant's Claim for punitive damages

The Plaintiff reasserts that because there was no bad faith cancellation, there can be no punitive damages. Notwithstanding, while states possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards." State Farm v. Campbell, 538 U.S. 408, 416, 123 S.Ct. 1513, 155 L.Ed.2d 585 (2003)." To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property." Id. at 417. Further, South Carolina jurisprudence has specific standards to apply to punitive damages. First of these is reprehensibility. Reprehensibility is " perhaps the most important indicium of the reasonableness of a punitive damages award." Gore, 517 U.S. at 565, 116 S.Ct. 1589. " This principle reflects the view that some wrongs are more blameworthy than others." Id. In considering reprehensibility, a court should consider whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.[7] Campbell, 538 U.S. at 419, 123 S.Ct. 1513, quoted in Mitchell v. Fortis Ins. Co., 385 S.C. 570, 686 S.E.2d 176 (S.C. 2009).

It is apparent that even a cursory reading of the above indicia show that the Plaintiff would have had to have behaved in a manner more abominable than the evidence would ever suggest in the case at bar. The evidence in the present case shows, in a nutshell, that the Plaintiff requested records, the Defendant refused, and the Plaintiff

thereafter cancelled the policy. There was no indifference, malice or trickery. There was no reckless disregard for health or safety and no physical harm. The cancellation did not involve repeated actions on the part of the Plaintiff. Rather, it was the Defendant's repeated refusal to provide the necessary documentation that prompted the cancellation. In light of Mitchell, even IF the Plaintiff cancelled the policy in bad faith, punitive damages are not appropriate. In the alternative, should this court determine that punitive damages are appropriate, the amount that the jury awarded in the case at bar is excessive.

Defendant's Claim of Damages Due under the Surety Bond

Aside from his testimony, the Defendant produced no documentation of the existence of a surety bond. The only evidence in the record documented that the Defendant hauled a load. However, the Defendant could not even identify the proper entity that issued the surety bond. He testified that it was simply "Travelers." Upon cross-examination, the Defendant's witness conceded that the surety bond was issued by Travelers Casualty and Surety Company. The Plaintiff in the case at bar is Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois. There was simply no evidence whatsoever linking the two entities beyond the common name of "Travelers." As a matter of law, there is absolutely no evidence that states Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois would legally stand in the shoes of Travelers Casualty and Surety Company. For all of the above reasons, the Plaintiff respectfully requests that its Motion for Judgment Notwithstanding the Verdict be granted.

In the alternative, the Plaintiff moves for a New Trial Absolute on the same grounds previously argued above and, in addition, on the following:

As an initial consideration, it is undisputed that the Defendant is a local business that has been in business and employed many citizens of Newberry County for many years. It is also undisputed that Travelers Property Casualty Company of America and The Travelers Indemnity Company of Illinois is not a local company.

A trial judge, sitting as the thirteenth juror, is charged with the duty of seeing that justice is done and has the authority to grant new trials when he is convinced that a new trial is necessitated on the basis of the facts in the case. Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984). Traditionally, in South Carolina, circuit court judges have the authority to grant a new trial upon the judge's finding that justice has not prevailed. Todd v. Owen Indus. Prods., Inc., 315 S.C. 34, 431 S.E.2d 596 (Ct.App.1993). Similarly, the judge may grant a new trial if the verdict is inconsistent and reflects the jury's confusion. Johnson v. Parker, 279 S.C. 132, 303 S.E.2d 95 (1983). See also Johnson v. Hoechst Celanese Corp., 317 S.C. 415, 453 S.E.2d 908 (Ct.App.1995) (under " thirteenth juror doctrine," trial court may grant new trial if judge believes verdict is unsupported by evidence and, similarly new trial may be granted if verdict is inconsistent and reflects jury's confusion). Youmans ex rel. Elmore v. South Carolina Dept. of Transp., 380 S.C. 263, 670 S.E.2d 1 (Ct.App. 2008)

The recent case of Dillon v. Frazer, 383 S.C. 59, 678 S.E.2d 251 (2009), provides guidance on jury confusion or its inability to follow instructions. In Dillon , the Plaintiff presented evidence of over $500,000 in damages as a result of an accident. While portions of the Plaintiff's damages claim were contested, unchallenged testimony at trial

established at least $30,026 in undisputed damages. (Liability was admitted.) However the jury returned a verdict for only $6,000.00. On appeal, the Court found that the disparity between the award and the admitted damages went beyond a merely conservative award and suggests that the jurors were motivated by improper considerations. Quoting Sullivan v. Davis, 317 S.C. 462, 467, 454 S.E.2d 907, 911 (Ct.App.1995). the Court found that the "[t]he jurors obviously did not follow the court's instructions..."

In the case at bar, the jury was unable or unwilling to follow the instructions of the verdict form. According to the jury's responses to the interrogatory verdict form Question 1, it found that the policy did not extend to drivers. The jury, without direction, wrote a specific response not requested by the court or by the parties. Thereafter, a negative response on Question 2 directed the jury to Question 4. However, the jury instead answered Question 3. Following Question 4, a negative response directed the jury to Question 6. However, despite another negative response, the jury proceeded to answer Question 5. These responses show, at best, confusion as to the court's specific direction.

In addition, the Defendant testified at trial[1] that it was his opinion that Travelers waited to bring this action until after the two year statute of limitations had run for workers compensation claims and that, therefore, Travelers knew that it would have no claims and thus all premiums that it collected would be without any offsetting costs of claims. While this opinion may have been admissible during trial, the Defendant failed to plead any equitable defense such as unclean hands. See Rule 12(b), SCRCP (every

[1] And counsel for the Defendant reminded the jury at several junctures

defense must be asserted in the responsive pleading); Rule 8(c), SCRCP (in a responsive pleading a party " shall set forth affirmatively ... any other matter constituting an avoidance or affirmative defense."). While there were, correctly, no jury instructions on this matter, it is more than plausible that the jury improperly allowed this opinion to influence its decision. The Plaintiff cannot know with any certainty that this affected the jury's decision, it can however reasonably surmise that *something* in addition to the specific jury instructions given by the court confused or tainted the jury as there was, in each cause of action, not adequate evidence to support the jury's verdict. At the point where this occurs, it is wholly proper for the trial judge to "hang" the jury.

As to the Defendant's Bad Faith counterclaim, (as discussed above and incorporated herein) upon recollection of the judge's instructions, there was nothing that indicated there were any legal underpinnings whatsoever to find a bad faith denial of coverage and/or cancellation. Again, the jury was, at best, confused and did not properly follow the trial judge's charge. (As previously noted, Defendant's counsel even admitted that his client could not prevail on both breach of contract and bad faith cancellation. Yet, despite this, the jury found damages for breach of contract as well as for bad faith cancellation.)

Even if there had been such an instruction, there is no evidence, much less clear and convincing evidence, that Travelers acted in any such manner. As the Plaintiff adequately presented at trial, the Defendant's policies in question are placed under the Assigned Risk Pool. Travelers has specific requirements to follow, both in its audit requirements and in its cancellation policies. These requirements are set by NCCI and SCWCIP and are followed by every insurance provider in the Pool. Based on the

Defendant's admitted failure to provide all of the documents, Travelers could not have retained Senn Trucking under these policies regardless. For the above reasons, the Plaintiff respectfully requests that this motion be granted either by Judgment Notwithstanding the Verdict or New Trial Absolute.

As to the jury's decision regarding the Defendant's claim on the surety bond, the jury imputed a contract between the Plaintiff and a third party without ever even seeing the surety bond! That the jury could find liability of this Plaintiff based on no evidence and only Mr. Senn's testimony that there was a bond and that somehow he lost money to a third party because the Plaintiff (of whom there was no evidence of involvement) refused to pay on the bond, borders on the absurd.

The Defendant could have easily provided the bond and documentation to bolster his allegation that the bond holder and the Plaintiff were one in the same. But he did not. He brought only unfounded allegations with absolutely no legal foundation to prove his position. However, (again) the jury bought the Defendant's argument, hook, line and sinker. It is the Plaintiff's position that had the jury made a considered and logical decision on this last (and decidedly most obviously) non meritorious allegation, the Plaintiff's case for JNOV or a new trial might not be so strong as to the prejudice of this particular jury against the Plaintiff. However, the jury did not give a considered and logical response to this question. Given this finding it is obvious that the jury was collectively prejudiced against the Plaintiff and could not or would not follow the law and decide the case with reason and impartiality. Respectfully, under the prevailing attitude and sentiment of this jury, it is the right and the duty of the trial judge to assert his power as the thirteenth juror.

Respectfully Submitted,

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August 13, 2010

Case 2008-CP-36-417
Motion JNOV

impartial jurors to make our system work, to decide disputes between parties. So I want to thank you for being here and for taking the time to be here. I know it's sort of forced upon you but you're service is appreciated by everyone here today. Now, Travelers sued Senn Trucking in this case and said -- Senn Freight Lines, you owe us a hundred and ninety-something thousand dollars in additional premiums. Now, keep in mind a couple of things that I -- the initial premium was set I think like three thousand and then went up to about four thousand the second year and then about five thousand the third year. Then they send a bill saying you owe us a hundred and ninety-seven thousand dollars. Why? Because they're saying we want all the truckers too. We want to cover all of these truckers during this time period and you need to pay us more. Travelers never got a claim, never paid out any, never saw a claim come through them from anyone, much less Senn Freight Lines asking them to pay. Now, there were claims during this time period. You know who covered them? The PEO's, the Professional Employee Organizations. I'll explain to you in just a little bit and you'll hear it on the stand also. Or they're independent contracts who have their FICA insurance that covers them should they become injured on the job. Owner/operators, they work in the same fashion. Travelers wants to cover all of those people too.

behind me is my new law clerk, Kaitlin Nobles. Her first day was yesterday and it was quite a day and here we are in our second day and we've already started her second trial. I think that's everybody in the courtroom. All right. To that explanation, we're now ready to begin the testimony. Mr. Roberts.

MR. ROBERTS: Thank you, Your Honor. The Plaintiff's would call Danny Senn, please.

THE CLERK: Place your left hand on the Bible, raise your right.

DANNY SENN,

BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MR. ROBERTS:

Q. Now, Mr. Senn, you are originally from the Newberry area. You were born here and grew up. Is that right?

A. Yes.

Q. Okay. You went to school through high school and then graduated from Newberry College. Is that correct?

A. Yes, sir.

Q. And what was your course of study at Newberry?

A. Accounting.

Q. Okay. And after you finished Newberry, you practiced as a certified public accountant about ten years. Is that right?

A. Yes, sir. It is.
Q. You took the CPA Exam and passed it and were licensed or certified?
A. Yes, sir.
Q. Okay. And in your experience as a CPA, you're familiar with accounting practices. Is that correct?
A. Yes, sir.
Q. You're familiar with financial reports and tax returns and audits. Is that correct?
A. Yes, sir.
Q. And you're very aware of the need as an accountant to review complete records in order to have a complete audit, to verify the financial records. Is that correct?
A. Yes, sir.
Q. And you need that type of valid audit to make a final, conclusion whether it's a tax matter or some other matter. Is that correct?
A. Yes, sir.
Q. You need to review general ledgers and disbursement journals and tax forms, tax filings and so forth in order to verify exactly where the money's going, find out where it's going. Is that right?
A. If it's applicable.
Q. I'm sorry.
A. If it's applicable.

Q. If it's?
A. Applicable.
Q. Such as payroll records ---
A. Yes.
Q. --- those would be absolutely critical. Isn't that right?
A. Yes, sir.
Q. Now, you practiced as a CPA for about ten years. Where was that in ---
A. Greenville, South Carolina.
Q. Greenville? Okay. And you and your family have been running this trucking business since you were a kid. Is that right?
A. Mid-50's.
Q. Okay. And you had it in your blood and you just really needed to get back. Is that right?
A. Yes, sir. That's pretty much it.
Q. Okay. And you came back, it would have been early '90's. Is that right?
A. Approximately 1985.
Q. '85, okay. And Senn Freight Lines as exist today started in the early '90's. Is that right?
A. That's true.
Q. Okay. And you are the President of Senn Freight Lines?

A. Yes, sir.
Q. And I believe from my understanding you wear a lot of hats. Isn't that right?
A. Unfortunately, I do.
Q. And you oversee a lot of the operations and so forth. Is that right?
A. Yes, sir.
Q. Now, what exactly does Senn Freight Lines do?
A. Well, we're technically a for-hire carrier. And we operate in forty-eight states. We operate, right now, exclusive flat-beds. We haul any kind of cargo nationwide that you can place on a flat-bed.
Q. So you get -- when you say you're "for-hire," that means you get a call from someone that says, hey, Mr. Senn, we've got a load of freight we need you to move for us.
A. That's how it works.
Q. And you send out your driver's and they'll pick it up and take it somewhere?
A. Yes, sir.
Q. Now, going back to 2003, 2004 and 2005, is it fair to say that Senn's operations, your employees, your officers, your payroll was about four or five million dollars. Is that right?
A. All total?
Q. Yes.

A. I don't think it would be quite that high. It would be between three and four.
Q. I'm sorry?
A. It would be between three and four, I think.
Q. Okay. Because you were paying ---
A. You're back five years ago.
Q. Right.
A. So I think it would be between three and four million.
Q. Okay. And now as far as your responsibilities as President of Senn Freight Lines, you were involved with procuring insurance coverages. Is that right?
A. Yes, sir.
Q. And you were directly involved in procuring the worker's compensation insurance coverage that's at issue in this case. Is that correct?
A. Yes, sir.
Q. Okay. I'm going to hand you what's been marked ---
MR. ROBERTS: --- and I assume there's no objection to these? No, objection to the Exhibits ---
MR. JENKINS: No.
MR. ROBERTS: Okay. Your Honor, I'd like to admit this into evidence, without objection. Plaintiff's ---
THE COURT: Have you given them to Ms. Herron?

Q. Okay. Now, I'm going to refer you to the policy. We can just -- and they're essentially the same thing, right?
A. Right.
Q. I believe you refer to these as standard assigned risk policies, is that right?
A. That's what I call them. They all say -- they all pretty much have the same wording in them.
Q. Okay. All right. Now, I'm looking at them real quick. I just want to go over a couple of things with you. If you'll flip over ---
MR. ROBERTS: Your Honor, If I may approach the witness?
THE COURT: You may.
Q. --- let me just direct you here to this page right here.
A. It's the same thing.
Q. The one on the last - there we go. All right. Now, Mr. Senn, if you -- if you could, in your experience as President of Senn Freight Lines, and as an accountant, you're familiar with how the premium on these policies is calculated. Is that correct?
A. Yes, sir.
Q. Okay. And you understand that it's based on your payroll. Is that right?
A. Yes, sir.

Q. And you understand that the initial policy premium is an estimate, right?
A. Correct.
Q. And it's based on the information that you provided to your agent when you submitted that application right before the issuance of this policy. Is that correct?
A. Yes, sir.
Q. And according to this policy -- well, let me back up. It breaks down job classification codes. Is that right?
A. Yes, sir.
Q. You're familiar with those and the relative risks for those different jobs. Is that correct?
A. Yes, sir.
Q. Okay. Now, your policy applies to class code 8810, which is clerical and office employees. Is that right?
A. That is correct.
Q. And it lists an estimate of four hundred thirty-four thousand, four hundred and sixty dollars. Is that right?
A. Yes, sir.
Q. And the rate per one hundred dollars of remuneration, which I love to say that word -- but that's basically a fancy way of saying your payroll. Is that right?
A. That's correct.

Q. Okay. Now, it also has this other class code, trucking long distance hauling, all employees and drivers. It's got a 7229. Is that right?

A. Yes, sir.

Q. Okay. And it list, And if any payroll. Is that correct?

A. Yes, sir.

Q. Okay. That's because you didn't report any payroll to your agent when you submitted this application. Is that right?

A. The driver payroll is excluded.

Q. Okay. You didn't intend. You didn't submit that information as a potential for your driver's. Is that correct?

A. Correct.

Q. Because at the time, you were using some leasing companies. Is that right?

A. The driver's were covered by the PEO's.

Q. Okay. And the PEO was the one that carried the insurance. Is that right?

A. Yes, sir.

Q. Now, you also at this time you were engaging these sub-contractors. Is that right?

A. Yes, sir.

Q. Okay. And you required them to have workers' compensation insurance?
A. Yes, sir.
Q. Okay. We'll come back to that in a minute. Now, just going over the rate for this premium, it's thirty-one cents for the employees per every hundred dollars. Is that right?
A. Yes, sir.
Q. So the initial estimated premium was one thousand three hundred and forty-seven dollars. Is that right?
A. That's correct.
Q. Now, the rate for the truck drivers, that's a bit higher. That's ten dollars and forty-seven cents per hundred dollars of payroll. Is that right?
A. Yes, sir.
Q. So it's roughly about ten and a half cents on each dollar?
A. Yes, sir.
Q. All right. Now, I'm going to ask you if you will flip over now to part one, a couple of pages over. And I refer you to part one (a).
A. Okay.
Q. All right. And this policy applies to -- this workers' compensation insurance applies to bodily injury by accident or bodily injury by disease. Is that right?

Q. If they had their own coverage under workers' compensation.
A. I'm just alluding to your assumption. If somebody comes with their own insurance, they' not ---
Q. Right. And they're not going to come under this policy.
A. That's right.
Q. If they don't have their own insurance, they come under this policy. Is that correct?
A. It's possible. This policy excludes a lot of people. Not everybody's going to go under this policy.
Q. It excludes the lease drivers when there under the leasing arrangement. Is that correct?
A. That is exactly what it excludes.
Q. Now, the policy also provides, and you're aware of this that you were subject to being audited. Is that correct?
A. Yes.
Q. Okay. And that means that you were obligated and Traveler's had a right to review your books, disbursement journals, general ledgers and all that information that you said a few minutes ago was vital to conducting a complete and accurate and reliable audit. Is that correct?
A. An auditor can look at what has happened. That doesn't mean every record we have.

A. An owner/operator is an independent contractor.
Q. Okay. But you gave them a call to go pick up the load and they called you and you gave them instructions about the load and where it goes. Is that right?
A. Yes, sir.
Q. And that's an important part of what Senn does, isn't it?
A. It's minor compared to the hauling itself.
Q. Hauling loads is what Senn does?
A. Hauling a load but an owner/operator is minor and we have a few.
Q. Only a few though, it's still what Senn does, isn't it?
A. Senn hauls freight, sir. And we use ---
Q. And those owner/operators ---
A. And we use primarily Senn drivers.
Q. And those ---
A. Owner/operators only account for two or three guys, maybe four or five at any point in time. That's it. So that is minor ---
Q. Is it now?
A. --- compared ---
Q. Is it now or was that back then?
A. That's been the last, probably the last half a dozen years or so. We've never had many owner/operators.

Q. Okay. That's what you paid these fellows. Is that right?
A. That's gross commissions.
Q. Okay. That would represent anywhere from fifteen to almost thirty percent of what your driver payroll was, if it was two to three million dollars. Is that right?
A. That's not a fair, apples-to-apples comparison. The owner/operator is responsible for all expenses. A truck driver is paid a wage. Historically speaking, workers' compensation analyst have described the commission of owner/operators as one-third of paid wages.
Q. Did you get a contract with each one of these guys?
A. Absolutely.
Q. And you verified they had workers' compensation insurance coverage?
A. Yes, sir.
Q. Now 2004, Exhibit 5.
A. I have it.
Q. You got that?
A. I got it.
Q. You had Wright again and you had Taylor again, Houser, GEO, Ward, Abney.
A. Yes, sir.

Q. And another one ASAP Logistics. You paid them six hundred and fifty-three thousand a hundred and eighty-six dollars?
A. Again, it's gross commissions.
Q. That's what you paid them to haul your loads. Is that right?
A. All their expenses have to come from that.
Q. That's what you paid each one of these to haul your loads. Is that right?
A. That's gross commission, sir.
Q. And that totaled six hundred and fifty-three thousand, one hundred and eighty-six?
A. If your math is correct.
Q. And then 2005, do you want to take a look at that one?
A. I have it.
Q. And in 2005 you paid these fellows over a million dollars. Is that right?
A. Yeah. If your math is correct.
Q. You want to check that?
A. No.
Q. So over this three-year period of time, you paid these drivers approximately two point three million dollars. Is that right?
A. In gross commissions that might be true.

Q. All right. Now, Mr. Senn, do you remember when I took your deposition back in March and I asked you about these independent or these sub-contractors or whatever these drivers were that are hauling these loads. You remember I asked you about the insurance coverage they had?
A. I think you did, yes, sir.
Q. Okay. And do you recall specifically the question I had?
A. Not specifically.
Q. Do you recall me asking you about the documentation you provided to me for what coverage they had?
A. We probably provided proof of the coverage.
Q. You, in fact, provided documentation of an occupational accident policy. Is that correct?
A. Yes, sir.
Q. That's not workers' compensation is it?
A. Yes, it is. It's not statutory, but it is workers' compensation.

(WHEREUPON, Plaintiff's Exhibit Number 7 was marked for identification.)

MR. ROBERTS: You Honor, I would admit this into evidence without objection.

THE COURT: It hasn't been identified to me.

MR. ROBERTS: Oh, I'm sorry. This is -- let me -- I apologize, Your Honor. Forgive me.

Q. Mr. Senn, I'm going to hand you what's been marked for identification purposes as Plaintiff's Exhibit 7.
A. Okay.
Q. Can you identify that document?
A. This seems to be a certificate of insurance ---
Q. Is that a -- I'm sorry. I apologize. I didn't mean to cut you off.
A. It appears to be a certificate of insurance for one policy.
Q. Okay. That's for one of the occupational accident policies. Is that right?
A. Yes, sir.
Q. Is that -- would that be an example of what you provided to Traveler's when they asked for proof of that coverage?
A. Yes, sir.
MR. ROBERTS: Your Honor, I'd now move that into evidence.
THE COURT: Any objection?
MR. JENKINS: No objection.
THE COURT: All right. Plaintiff's Exhibit 7 is admitted into evidence without objection.
(WHEREUPON, Plaintiff's Exhibit Number 7 is admitted into evidence.)
Q. Now, Mr. Senn, if you look down at the very bottom,

item three, second sentence down there. Will you read what that sentence says?

A. All right. I'm looking at the bottom. Now, what are you talking about?

Q. Item three, second sentence there.

A. I have item two. Then I have item four. There -- here. I see what you're talking about. You want the second sentence?

Q. Yes, sir.

A. All right. This policy does not provide workers' compensation coverage nor provide coverage for --

Q. Now, let me just ask you real quick, Mr. Senn, referring to page 65 of your deposition in March.

MR. ROBERTS: Your Honor, may I approach the witness?

THE COURT: You may.

Q. Okay. Mr. Senn, I don't mean to crowd you. I apologize, but you recall there, if you want to read from line 1 to down about to line 5.

MR. JENKINS: So what's he reading?

MR. ROBERTS: Line 1 through about 5.

MR. JENKINS: Your Honor, he's asking him to read the question and the answer.

MR. ROBERTS: No, I'll read the question. I'm just asking him to -- to refresh his memory.

MR. JENKINS: Okay.
Q. Do you remember when I asked you that question?
A. Yes. I do also recall, as it says right here, do not confuse workers' compensation with statutory compensation.
Q. Let me, let me -- in fact, let me read this. I asked you the question. Now, down here at the bottom it says that this policy does not provide workers' compensation. Is that correct?
A. Yes, sir.
Q. And you say it's technical an unprofessional accident policy. Do not confuse workers' compensation with statutory compensation. Nobody pretends that's statutory workers' compensation. So you testified right there this is not -- this does not satisfy the laws of South Carolina for workers' compensation for these --
A. No, sir. That's not what I'm saying. I said it's workers' compensation. The independent owner/operator is not required to have statutory workers' compensation, which is required within the law. So the owner/operator is not required to have it. That is what I'm saying.
Q. It says right down there that this policy is not workers' compensation though, didn't it?
A. Well, you're playing with words again. Statutory is one thing. Workers' compensation is something else.

Q. All right. And Christopher Roper is not listed as one of your drivers, is he, for any one of three years. Is that right?
A. I didn't list them, but, yes.
Q. So he's not here. So this certificate's not for anybody that you even engaged to do your work. Is that right?
A. Well, he obviously was with us at one point.
Q. Now, Mr. Senn, you also back in October 17, 2005, you met with the auditor. Is that correct?
A. I did.
Q. Okay. And you provided certain information about your payroll records. Is that right?
A. That is correct.
Q. And part of the examination involved the drivers that were lease -- or were drivers that you leased from the leasing companies. Is that correct?
A. The policy requires us to prove that these people are ---
Q. I'm sorry?
A. The policy from Traveler's requires that we prove the drivers are covered and we did.
Q. Okay. And one of the questions that came up was March of 2004. Is that right?
A. It could have been. I don't remember.

Q. Okay. Okay. Well, now, you do remember that you were involved with Vanguard Leasing, is that right? Starting sometime in 2002?
A. Yes, sir.
Q. Okay. And according to your information that ran out at the end of February of 2004. Is that right?
A. I believe that's correct.
Q. Okay. And the next leasing company that you engaged. That was Work Force Outsourcing. Is that right?
A. I think so.
Q. Okay.
(WHEREUPON, Plaintiff's Exhibit Number 8 was marked for identification and admitted into evidence.)
Q. Mr. Senn, can you identify -- you want to look through that and can you identify that document?
A. It's a service agreement.
Q. And if you flip over to the back page there, that's your signature there. Is that correct?
A. Yes, sir.
Q. Okay. This is a Staffing Vendor Agreement between your company, Senn Freight Lines and Work Force Outsourcing. One of your leasing companies. Is that correct?
A. Yes, sir.

Q. But there was a question about documentation of the pay records to either Vanguard or Work Force. Is that right?
A. There was a question about it.
Q. Okay. And you didn't produce -- you didn't have records that either Vanguard or Work Force was paid. Is that correct?
A. Yes, we did.
Q. Okay. And you provided those to the auditor?
A. We provided what we had, yes, sir.
Q. Okay. So if there was a gap there that there were no records provided to the auditor, you provided him with everything you had. Is that correct?
A. Yes, sir.
Q. Now, I'm going to ask you about this agreement with Work Force now. If you'll flip to page three in the agreement, paragraph twenty-three, (a).
A. Okay.
Q. All right. I'm going to back up because there's no question that Vanguard, that ran out the end of February. Is that correct?
A. I think so.
Q. Okay.
A. I don't have anything in front of me.

Q. Okay. So they didn't extend anything past the end of February 2004, correct?
A. I think that's correct.
Q. Okay. So Work Force would have picked upon the effective date of this agreement. Is that correct?
A. As far as the service was concerned, yes.
Q. Okay. And paragraph twenty-three (a) that I've asked you to look at says that this agreement shall be for an initial term of twelve months from the effective date of this agreement, correct?
A. Yes, sir.
Q. And it would be determined by the later date of signature of the parties, correct?
A. Yes, sir.
Q. So prior to the effective date of this agreement, you had no contract with Work Force Outsourcing. Is that correct?
A. Well, it took us a while to switch over. It's not uncommon.
Q. You had no legally binding agreement with Work Force Outsourcing before the effective date of this agreement?
A. We had coverage under their policy.
Q. Did you have a legally binding agreement?
A. We had proof from Work Force that we were covered and we provided that.

Q. You had it on March 1st?
A. Yes.
Q. And you provided that?
A. Yes.
Q. Now, flipping back over to the last page.
A. Okay.
Q. The effective date of this contract is March 26th of 2004. Is that right?
A. Yes.
Q. Friday, March 26, 2004. Prior to that date, you had no contractual arrangement with Work Force Outsourcing. Is that correct?
A. The contract was done in a lapse, between going from one company to the other. It has no correlation whatsoever as to whether we were covered under their insurance policy or not.
Q. At the time, let's say, March 1st through 25th ---
A. Uh-huh (affirmative).
Q. --- they didn't have any obligation to do anything for you and you didn't have any obligation to do anything for them. Is that right?
A. No, that's not true. They had us covered under their insurance and we produce proof of that.
Q. Okay. Have you got anything in the contract saying that?

A. Yes, sir.
Q. Okay. Moving ahead, there's another question about a period of time in January of 2005. Is that correct?
A. I don't remember.
Q. Okay. Do you remember there was a question in between Work Force and HR Solutions. Is that right?
A. The only question that I know of, you've asked. But there are no questions between the two of them.
Q. Okay. And then you recall there was some discussion about -- there was a request for documentation for records which evidenced you paying Work Force Solutions or the other crowd.
A. The Traveler's policy requires us to prove we have coverage for the drivers and we did so, over and over again. That is what the policy requires.
Q. And you provided them with the contract for this new leasing company?
A. Provided who with what contract?
Q. The Traveler's with a contract of that new leasing company?
A. I don't know whether we did or not. I have one here.
Q. Okay. That's the Work Force.
A. Right.

Q. Certified HR is the one I couldn't think of. That was the one that took effect in February of 2005. Is that right?
A. I don't have it front of me, but that sounds approximately correct.
Q. And did you ever -- have you got a copy of that contract somewhere?
A. Probably.
Q. Okay. Did you bring it here today?
A. Sir, I didn't bring anything with me today.
(WHEREUPON, Plaintiff's Exhibit Number 10 was marked for identification)
Q. Now, Mr. Senn, following this audit in October 2005 ---
MR. JENKINS: I am going to object to this on hearsay grounds.
THE COURT: You do?
MR. JENKINS: Yes, sir.
THE COURT: All right. Let's take a quick break. Ms. Wilkerson, will y'all step back to the jury room. I want to discuss something with the attorneys and we'll have you back here. Do not begin discussing the case.
MR. JENKINS: The documents he intends to introduce, Your Honor, I object on the hearsay grounds, first of all. We got a letter from a Ginger Smeltzer to a Marsha Huggins who is employed at Senn Freight Line. The

you're more than welcome to it. They've gathered them up, so y'all can take notes. It is allowed. I have to specifically instruct you about that. Keep them to yourself. They're for your own benefit, not for the benefit of everyone but each individual. So if y'all would like that, we'll gather those up. And obviously there is a request for at least one. All right, how many you need?

(WHEREUPON, Court's Exhibit 1 was marked for identification.)

THE COURT: All right. Mr. Roberts.

MR. ROBERTS: Thank you, Your Honor.

Q. Now, Mr. Senn, following this audit in October 2005, you received correspondence from Traveler's, early December 2005. Is that correct?

A. There was a subsequent letter, which we responded to.

Q. Okay. And they were requesting certain information. Is that right?

A. Requesting the same information that had been given to the auditor, but we gave it to Ms. Smeltzer again.

Q. They were asking for valid certificates of insurance for your sub-contractors?

A. That was part of it.

Q. These driver's here?

A. It was provided.

Q. Do you remember if they told you that this occupational accident certificates, and that coverage was not sufficient?
A. It's not their decision to decide whether it's sufficient or not. It was sufficient for us.
Q. And they asked you for copies of or access to your general ledger for the relative policy periods?
A. Any records backing up the payroll that Traveler's had was provided.
Q. They did ask you for copies of your or access to your general ledger?
A. The general ledger doesn't tell you anything, sir.
Q. Did they ask you for that information?
A. I don't remember. But a general ledger is a general -- just what it says. It doesn't have any details to it. It doesn't backup anything.
Q. Do you recall them asking you for proof of workers' compensation for your drivers through March 2004?
A. We provided it.
Q. And the last two weeks of January -- I mean, February of 2005?
A. We provided it twice.
Q. Now, as proof of workers' compensation ---
MR. ROBERTS: Your Honor, 11, 12, and 13.
MR. JENKINS: Without objection.

MR. ROBERTS: All right. Thank you. I'd like to place those into evidence.

THE COURT: Yes, sir.

MR. ROBERTS: Your Honor, May I approach the witness?

(WHEREUPON, Plaintiff's Exhibit Numbers 11 through 13 were admitted into evidence.)

THE COURT: You may.

Q. Mr. Senn, I'm going to come up again. I apologize. Let me know if I'm crowding you here. But I'm going to show you what's been marked and admitted as Plaintiff's 11, 12, and 13.

A. Okay.

Q. Are these the certificates of insurance that you're referring to?

A. Yes, sir.

Q. And those are the documents that you are telling us this afternoon provide legally binding obligations of coverage. Is that correct?

A. That is correct.

Q. Okay. Now, would you refer to the box in the upper right-hand corner and read the first sentence or so of that box?

A. Right-hand top. Is that what you're saying?

Q. Yes, sir.

A. This certificate is issued as a matter of information only and ---

Q. I'm sorry. Will you speak up, please?

A. The certificate is issued as a matter of information only and confers rights upon the certificate holder. This certificate does not amend, extend or alter the coverage reflected by the policies below.

Q. So just so we're clear, this says right here, this certificate is issued as a matter of information only.

A. That's what it says in the upper right-hand corner. It's still ---

Q. And bears no rights upon the certificate holder, correct?

A. We're the certificate holder.

Q. It says here, Georgia Pacific is the Certificate ---

A. That's a client, but we're the original certificate holder.

Q. All right. But it says that this is for information only.

A. That is an insurance document, sir, produced by people in the insurance world. We don't have anything to do with that. The coverage is provided -- the coverage is shown at the bottom. What it says at the top is irrelevant. The coverage is included at the bottom and it's signed by an authorized agent that issued it.

Q. So on the one hand you're telling us that this is a legally binding document, but it says on its face that it's for information only, and you're saying that's irrelevant. Is that what I understand you to be saying?

A. I'm saying that the phrase in the upper right-hand corner does not distort the meaning of a certificate that's issued by insurance providers. We don't issue the certificate. It's not our document. It is given to us as proof of insurance coverage. It's been accepted in our industry all my life, which is plus fifty years. Okay. It's been accepted with every finance institution we've ever borrowed money from. No one has said, it's for information only, therefore we should ignore it. No one has ever said that.

Q. So what you're saying is this is a summer important things?

A. It's a what?

Q. Summer important things. We're in the middle of the summer, right? Summer important things. So the important things, some are and some are there, but you ignore the rest of it.

MR. JENKINS: Objection ---

A. The insurance, sir, is a document produced by insurance folks. You're implying we have something to do

with that. We don't have anything to do with the certificate. It's issued to us.

Q. Well, you're the one, Mr. Senn, you have testified that this evidence is the legal obligation that satisfies the absence of the contract of Work Force Out Source.

A. It's proof enough for me.

Q. For information only?

A. No. It's not just information only. It has a bonafide insurance policies and policies numbers listed and it has dates in it. Are you suggesting that doesn't mean anything?

Q. I'm just asking what the document says, Mr. Senn?

A. That's what it says.

Q. Okay.

A. It's got the coverage right there on the bottom.

Q. Now this is Vanguard Southeast. This is the crowd you contracted with again, in November 2002 up until the end of February of 2004. Is that right?

A. Approximately. I don't have the dates exact, but that sounds about right.

Q. Okay. And in this policy expiration information, it ends March 1st, '04. Is that correct?

A. Yes, sir.

Q. All right. Now, that's Plaintiff's 11. Going to Plaintiff's 12, this is the same document, correct? The one that says information only.

A. It's a standard core [sic] form if that's what you're referring to.

Q. The issue date is April 13th of 2004, about two, three weeks after the date you signed the contract with Work Force Outsourcing. Is that correct?

A. Yeah.

Q. And this one says the policy went into effect on 2/1/04. So were you double-paying? You were paying two different companies for coverage. Is that what you're telling us?

A. No, I'm not telling you that. PEO is saying his policy started on February the 1st. Again, we don't issue the certificate, sir.

Q. Okay. So the PEO is saying their policy started on February 1st, but it's not saying Senn's coverage started on February 1st then.

A. The certificate is issued to us or either one of our clients. That's what it says.

Q. Okay. It was issued in blank to a blank to a certificate holder and it was issued on April the 13th ---

A. That's the date the certificate is actually issued. It doesn't have anything to do with the coverage dates.

Q. Okay. But what you're telling -- I think you're saying now that this is only Work Force's Policy, but there's no where on here that says that Senn was covered beginning March 1st of 2004, is there?

A. Can I see it? It says right here Work Force provides staff to Senn Freight Lines. Right there.

Q. On a certificate dated April 13th. But there's nothing on there that says, and you'll have to point me to it if I'm missing it, but I don't see anywhere on there that says ---

A. Well, let me see it.

Q. Okay. I'll hand it to you. I just want to finish looking at it, though.

MR. ROBERTS: Your Honor, I apologize.

Q. I just don't see where it says the coverage was effective March 1st of 2004.

A. It says February 1st, 2004.

Q. That's Work Force's policy, isn't it?

A. That's the policy we have.

Q. So you're paying two different leasing companies for the month of February?

A. No.

Q. Well, your ---

A. This is Work Force's policy. Work Force determines whether anybody pays them or not.

Q. So for two months ---
A. If Work Force says we paid them, we paid. If they don't, we don't.
Q. So for two months you didn't have a contract with Work Force, but you're telling this jury that this certificate says that you were covered?
A. That's exactly what the certificate says.
Q. The certificate's dated April 13th of 2004. That's no where near February 1st or March 1st for that matter?
A. When you write a letter, do you date it today or do you back-date it three months?
MR. ROBERTS: Your Honor.
THE COURT: Rephrase your question.
Q. The certificate's dated April 13th of 2004.
A. I see that.
Q. That's two ---
A. That's when the certificate is actually issued, sir. It's what's in the certificate that matters.
Q. Thank you, Mr. Senn. Now, one more certificate here. I show you Plaintiff's 13. This is their certificate for Certified HR Services. Is that correct?
A. It is.
Q. And that's the crowd that you jumped on board with beginning the 1st of February. Is that right?
A. I think so.

Q. Okay. Now, this one in the description -- well, let me ask you. What date was this issued?
A. This was a copy of one issue to one of our clients, but it would be the same thing to us. Reading that correct, that's 4/24.
Q. 4/24 of what?
A. I can't read that. '04.
Q. 2/7/05. Is that right?
A. Yes.
Q. Okay. So 2/7/05 that Certificate's issued there. Now, the description of the operation -- let me back up. You guys didn't sign on with this -- you were still with Work Force up until some time in January of 2005. Is that right?
A. It sounds right. Again, I don't have all of those dates in front of me, but I think that's right.
Q. All right. And this certificate actually says you're covered by Certified HR beginning December 1st of 2004.
A. Sir, you've complained vehemently in here about alleged lapses. We have overlap here. So what you're saying now is we're covered by two PEO's at one time. There is no lapse. That's the whole point of this. There never has been. The policy periods overlap. You are exactly correct in what you're saying.

Q. Okay. This is the policy, this is the policy information for Certified HR Services, correct?
A. Yes, sir.
Q. Why would you contract with Certified HR in February of 2005 and then have an overlap all the way back to December of '04? Do you have documentation of where you paid Certified HR?
A. This certificate is issued by the PEO. We don't issue the certificates. The PEO get's their own policies. The policy could be dated February the 1st of 2010. That policy may include fifty clients like Senn Freight Lines. There could be forty-nine other clients in addition to us. They're not going to change the dates just for us. They're giving us a certificate saying we're covered on their policy. It's that simple. The PEO's don't communicate with each other and say, well, let me stop my policy so I can pick up on the other guy's policy. The policies are already there. It's a question of whether we're covered under the policy or not. And the certificates show that we are.
Q. And that would be if you were paying ---
A. It says we're covered.
Q. --- if you were paying a fee to them, you'd be covered. Is that right?
A. It says we're covered.

MR. ROBERTS: That's all I have for this witness.

THE COURT: All right.

MR. JENKINS: Thank you, Your Honor.

THE COURT: All right. Mr. Jenkins.

CROSS-EXAMINATION

BY MR. JENKINS:

Q. Mr. Roberts covered a lot of stuff, he asked you about your background, so let's skip by that and get to the point.

A. Okay.

Q. Explain to us the different types of employees Senn Freight Lines has?

A. The different categories?

Q. In other words, you have office and clerk staff?

A. Yes, sir.

Q. And all of the other persons who perform any services for Senn would be truck drivers?

A. Truck drivers and some mechanics.

Q. Okay. Now, the truck drivers, there are three categories, owner/operators, independent contractors, which the owner/operators can actually fall under the independent contractor label, and leased employees?

A. Yes, sir. The owner/operator and the independent contractor can be one in the same.

Q. That's what I'm saying. The owner/operators are normally independent contractors?
A. Yes, sir.
Q. Now, he put this big number for 2003 up on the board, five hundred ninety-one thousand dollars, seventy-five -- five hundred ninety-one thousand, seventy-five dollars and forty-three cent. And made a difference between -- he said, that's the remuneration you paid them. Does that cover anything, other than salary?
A. It covers everything, including salary.
Q. Okay. So it's salary. Do some of these people have their own truck?
A. Most of them do.
Q. And are they responsible for providing their own occupational accident or workers' comp policy?
A. Out of the commissions they have to pay all expenses. That would include the likes of repairs, fuel, if they have their own driver, it would be the driver's wages. If not, their own wages. They're having to pay for all insurance. They're having to pay all their taxes. They pay everything from those commissions, including their own salaries.
Q. To your knowledge, do any of those persons listed on the exhibits, the 1099 forms, do any of those companies or persons employ four people or more?
A. No, sir.

Q. Are most of them one-man operations?
A. Yes, sir.
Q. Do businesses with less than four employees have to carry workers' compensation, statutory workers' compensation?
A. Not according to South Carolina law, no, sir.
Q. And that's where the occupational accident policy comes into effect?
A. Yes, sir.
Q. Now, during your years as President of Senn, have you ever had an independent contractor get injured while working?
A. Yes, sir.
Q. Have they filed any types of claim?
A. Only on the policy that would be in their name.
Q. Okay. The occupational accident policy that he wanted to point out was not a workers' comp policy?
A. Yes, sir.
Q. And to your knowledge, do those policies pay?
A. Yes, sir. They pay every time.
Q. Did you fill out an application when you applied for insurance through the South Carolina Assignment of Risk Plan?
A. Yes, sir.

Q. And what did you ask for in that application?
A. We asked for coverages for our clerical workers.
Q. Okay. The office staff?
A. Yes, sir.
Q. Did you exclude the Officer's of the Corporation?
A. Yes, sir, we did.
Q. And that would be you, your brother?
A. I have two brothers.
Q. You and your two brothers?
A. The three of us, voluntarily excluded ourselves.
Q. And you're allowed to do that under the Workers' Compensation Laws. Is that correct?
A. Yes, sir.
Q. And there's actually an addendum to each one of those contracts introduced that said, leased drivers don't apply?
A. That is correct.
Q. And non-employees don't apply.
A. That is correct.
Q. Do you have any drivers who are direct employees of Senn Freight Lines?
A. No, sir.
Q. Have you since approximately 1994?
A. No, sir.

Q. Have you ever submitted a claim from one of those drivers to the Assigned Risk Plan Insurance Company that Senn was utilizing at that time?
A. No, sir.
Q. Have you ever asked the insurance company, Traveler's or any of the other ones to cover those claims?
A. No, sir.
Q. Have you, in fact, told them don't cover them somebody else has it?
A. If the question has come up, which is rare, the answer is always the same. The PEO has them covered.
Q. Okay. Is Workers' Compensation Insurance expensive for truck drivers?
A. It's very expensive.
Q. As he, I think gave the calculation, thirteen or fourteen dollars for every hundred dollars that they're paid in salary?
A. Yes, sir.
Q. Are you able to lower that costs by utilizing the PEO's?
A. Yes, sir. A PEO can have many clients, therefore can have many drivers. The bigger the pool, the risk is spread more evenly and the lower the rate.
Q. Okay. Now, that's a statutory, a South Carolina statutory provision that you can use a PEO?

A. Yes, sir.
Q. And that's a professional employee organization?
A. Yes, sir.
Q. Even though you may still tell that employee you have to do A, B, and C today, they're still not required to be covered under the Workers' Compensation policy that Senn has because of their relationship with the PEO?
A. That is correct.
Q. And individual contractor or the owner/operators, either group, however you classify them, all the people listed, Ward, Taylor Trucking, Anderson, Carver, Hayes, Wright, Houser, GEO Trucking, Abney and all the people that he listed for 2003, 2004 and 2005, do you supply most of them with tools of the trade?
A. No, sir.
Q. Do most of them have their own vehicle?
A. Yes, sir.
Q. Do they need your approval for what route they're going to take?
A. No, sir.
Q. As long as they get a load at point A and carry it to point B in an efficient amount of time, they're okay with you?
A. Yes, sir.
Q. Do they have to call in and say, I want work?

A. No, sir.
Q. Are they under any specific guarantees or contracts that say, you're going to get "X" amount of dollars per year from us, you're going to get "X" amount of work?
A. No, sir.
Q. Sometimes you call them and say, hey, I've got a load. Do you want it?
A. That's the way it works.
Q. And sometimes they call you and say, hey, do you have any loads? I'd like to carry something.
A. It could work that way also.
Q. Do you pay them for any sick leave?
A. No, sir.
Q. Vacation?
A. No, sir.
Q. Have you ever, since 2000 -- let's limit it to that time frame. Have you ever given a truck driver a W-2?
A. No, sir.
Q. Can the independent contractors or owner/operators, can they work for other people?
A. Yes, sir.
Q. If you didn't have any work for them for a couple of weeks and they wanted to go take a load for Jenkins Trucking, they could that?
A. They could do that.

Q. Page four of five at the bottom. I think it's about the eighth page actually in the packet. It's listed page four of five.

A. Part five.

Q. Yes, sir. On the bottom.

A. Or page of five. I'm with you.

Q. Okay. Now, if you will, look under "G". I apologize. Let me go back. Look under section "E", final premium.

A. Okay.

Q. Does it not say over in the second column, they are to use the actual not the estimated premium basis and the proper classifications and rates lawfully applied to the business and work covered by this policy?

A. Yes, sir. That's what it says.

Q. What employees were covered by this policy?

A. Clerical.

Q. Did you ever ask for the drivers to be covered?

A. No, sir.

Q. What was the focus of the auditor when he was visiting you?

A. The focus?

Q. Well, what type of employees was he focused on?

A. Well, the policy, of course, covers the clerical. So what he should have been focusing on was the payroll records backing up the clerical payroll. He may have

gotten that information. I think he did. He was certainly welcome to it. He wanted information on the drivers, which are not covered under the policy. We had a discussion about that. I pointed out the endorsement in the policy excludes them. He continued to ask questions about it and we gave him what information we had.

Q. Was he focused on the independent contractors or the leased drivers?

A. The leased drivers.

Q. Did you have any claims for leased drivers during the 2003, 2004, and 2005 policy periods we're talking about?

A. Oh, yes.

Q. A Workers' Compensation claim?

A. Yes, sir.

Q. To your knowledge how much was paid out or how much was dealt with in those claims?

A. During the three-year period?

Q. Yes. During that three-year period?

A. Approximately three hundred thousand -- three hundred twenty-five thousand dollars thereabouts.

Q. And who paid that?

A. All of the PEO Insurance Carriers.

Q. So the PEO's covered any claims that were made during those policy periods?

A. Yes, sir.

MR. JENKINS: Would you mark that as Defendant's 1.

(WHEREUPON, Defendant's Exhibit Number 1 was marked for identification and admitted into evidence.)

Q. The premiums for that policy period?

A. Five thousand four hundred thirty-six dollars.

Q. And the last page of that document, is that a check you wrote to St. Paul/Travelers?

A. Yes, sir.

Q. In payment of that invoice?

A. Yes, sir.

Q. And that covered the warehousing and the clerical office employees at their rates?

A. For the entire year.

Q. Did Travelers provide you with coverage for that entire year?

A. No, sir.

Q. They cancelled it in October of 2005?

A. Yes, sir.

Q. So they gave you service for a hundred and seven days. Is that about right?

A. That's about right.

Q. And we'll do the calculations later. Did you ever ask Travelers to cover any of your drivers?

A. No, sir.

A. Well, we have the premium audit department. It's a separate business entity within the organization. Just like there's a claims department, an underwriting department, sales department, there's an audit department.
Q. Okay. And is your -- is this audit department located in Charleston or is it ---
A. No, no, no. All the auditors work remotely from a Travelers office. And because of the nature of our job where we have to go to an insured's business to physically inspect their records in order to be able to do an audit. My office that I report to is actually located in Orlando, Florida.
Q. Okay. Now, the records you've reviewed in this case, where -- are they considered audit department records? Is that right?
A. That's correct. That's correct.
Q. So they're not necessarily housed in your office, but that's part of the audit department?
A. Yes, yes. That's correct.
Q. And because you're assigned to this claim or this policy, this commercial line, you have access to those. Is that right?
A. That's correct. In fact, we typically don't like to take actual records from an insured's place of business because of the information that's contained in those

records. I mean, it's very private. There's a lot of information in there so typically, we don't like to take, remove the paper records. We just document the information that we see on the worksheet that we use within our audit system.

Q. And so when you go, you go to their place of business?

A. That's correct.

Q. Now -- and backing up real quick, there's been some discussion about the fact that this is an assigned risk policy and, again, it's not necessarily an issue. Would you just explain briefly what that means?

A. Right. The assigned risk plan that was discussed yesterday, the State of South Carolina mandates that employers of a certain size are required to have workers' comp. Insurance. Since there is a State law that says that, the State has to offer a mechanism for employers who cannot get workers' compensation insurance in the voluntary market to meet their statutory requirement to purchase workers' comp insurance and that's a plan that's administered through the State of South Carolina. So if an applicant was to go to their insurance agent looking for workers' comp insurance, that agent could not place the business with Nationwide Insurance or State Farm Insurance or Travelers Insurance or wherever the insurer of last resort, so to speak, is the State, is the State Plan. It's

(WHEREUPON, the jury entered the open court at approximately 9:20 a.m.)

THE COURT: You're standing in the line of some heavy ventilation.

MR. ROBERTS: I think there are gale force winds blowing up there.

THE COURT: It used to blow down on the jury and I moved it this way a little bit so the gentleman right here wouldn't freeze to death. You might like it. Mr. Roberts, you may continue.

MR. ROBERTS: All right. Thank you, Your Honor.

BY MR. ROBERTS:

Q. Now, Mr. Evanglista, just a moment ago I handed to you Plaintiff's Exhibit 14 and you've had a chance to look at that and you can identify that document?

A. Yes, sir.

Q. Okay. And what is that document?

A. This is a worksheet that was used to conduct an audit of Senn Trucking.

Q. Okay. This is the audit that Mr. Burnette did back on October 17th, 2005?

A. Yes, sir.

Q. All right.

MR. ROBERTS: Your Honor, at this time I'd like to move this into evidence.

THE COURT: That's Number 14?

MR. ROBERTS: Yes, sir.

THE COURT: All right, moved in with it being subject to your objection, Mr. Jenkins.

MR. JENKINS: Thank you, Your Honor.

(WHEREUPON, Plaintiff's Exhibit Number 14 was admitted into evidence.)

BY MR. ROBERTS:

Q. Now, if you could take a moment and look at this and explain what's -- let's walk through the results. What exactly -- what kind of information did Mr. Burnette obtain for this report?

A. Well, on the first page that we're looking at, from looking at payroll records or the amount earned by payroll on the payroll records, by quarter, by each of the employees with Senn Trucking. And the left column lists the individuals name. The column to the right gives a brief description of the work that they perform for them, and then the next four columns are the payroll earned by quarter for each of those individual. And the total of those four quarters are listed under the gross wages column and then based on the work that each of the folks do there, that payroll is carried forward into the proper workers' comp classification, based on the duties of that employee.

Q. Okay. And then -- now, on the second page about the middle of that page, if you would look at that information there that refers to these owner/operators we've been talking about. Can you explain what that information is there?

A. These appear to be total payments to individuals that were identified as owner/operators during the period that the audit was being conducted for. And it looks like it was from information that came from a 1099. And there was apparently a 1096 made available at our audit based on the notes here on the worksheet, which is a total of all the 1099's that were issued for a particular year.

Q. Okay. So what was the total for these drivers for this report?

A. Six hundred fifty-three thousand one hundred eighty-five dollars.

Q. Okay. And what was the total for the form 1096?

A. Seven hundred forty-one thousand four hundred thirty-six dollars.

Q. Okay. Now, are there any records for the 2003, for any of these owner/operators?

A. There doesn't appear to be so. Based on the dates that are listed on the first page, it looks like it's for 2004 only.

Q. All right. Now, going down after that, the next couple of pages, what is this information we're looking at there?
A. This looks like weekly payments to various leasing companies, the amount that was paid to each of these leasing companies per week. And then, which leasing company the payment was made to.
Q. Now, is this information -- according to this report, is this complete?
A. No. There appear to be some gaps in here where there is no indication of payments to anyone for a few weeks in question.
Q. Okay. Now, tell me exactly where these gaps were in this document?
A. I'm sorry, sir?
Q. When were these gaps, according to this documentation?
A. Payment on September 19th, 2003, there's nothing there but it looks like -- well, Vanguard is listed as the leasing company but there's no indication that there was a payment made there. Then the weeks of March 12th, 2004, March 19th, 2004, March 26th, 2004 and April 2nd, 2004, there's no indication of any payments there, nor is there an indication of a leasing company being listed as the potential payee.

Q. Now, backing up to this 9/19/03 week, is there any notation or memo regarding that omission for that week?
A. I don't see any.
Q. How about for March 2004?
A. There is a memo here. It says, per the insured he thinks he paid Vanguard for the first two weeks of March and he thinks the last weeks of March for Work Force.
Q. All right. Now, moving forward to the next gap you noted, on the last page. When was that?
A. January 2005 and -- January 28, 2005 and February 4th of 2005.
Q. All right. Is there any notation or memo for that -- those blanks?
A. No. It does not appear to be any.
Q. Does it list an individual or a company that was paid?
A. It says Certified HR as the payees, but there's no amount associated with it.
Q. So backing up to the terms of the policy, Senn's to provide us with information. Is that correct?
A. That's correct.
Q. Travelers has a right to review this information. Is that correct?
A. That's correct.

Q. Now, based upon your review of the records subsequent to this audit of October 17, 2005, was there any indication this information was requested of Senn?

A. Yes. Yes, I believe so.

Q. Okay. Based upon your review of those, the records of this audit ---

MR. JENKINS: Your Honor, we're getting into exactly what -- I object. We're getting into exactly what -- the questions that he's asking are questions that Barry Burnette can answer, the auditor who's not here.

MR. ROBERTS: I believe we can address this with that letter, September 19th, -- I'm sorry, Your Honor.

THE COURT: Step up here just real quick.

(WHEREUPON, a bench conference was held in the presence of the jury but out of the hearing of the jury.)

BY MR. ROBERTS:

Q. Now, Mr. Evanglista, you stated there is an indication in your view of the records that this information was subsequently requested from Senn, correct?

A. Yes.

Q. Based on your review of the records subsequent to this audit as well as the request for that information, is there any indication that this information has been provided to Travelers?

A. No. No, it hasn't been provided to us.
Q. Now, jumping back to these owner/operators, these sub-contractors that Travelers used -- I mean, Travelers -- that Senn was engaged during these policy terms. You've had an opportunity now to review the forms 1099 that have been produced at the time of the audit as well as subsequent to that audit. Is that correct?
A. Yes.
Q. I'm going to hand you Plaintiff's 4, 5, and 6, Mr. Evanglista, if you would take a look at those. Do you recognize those documents now, Mr. Evanglista?
A. Yes, sir.
Q. Okay. And these evidence the payments made by Senn to these owner/operators. Is that correct?
A. Yes, sir.
Q. How do you as an auditor handle the processing or the evaluation of that information?
A. It's fairly complicated, actually. We like to look at, first of all, the contract that's in place between the sub-contractor, the owner/operator and the insured in order to assess, is there truly an independent contract relationship between the two parties.
Q. But aside from all of that, the information is provided to you on these 1099's. If you are using it to

calculate a premium for the policy period, how do you handle your evaluation of this?

A. Oh, I see. I see. Well, we look at the amount that was paid to these individuals, we take the amounts that were paid and, again, apply to the rate that's established on the policy. Like you said, divide the amount that was paid by a hundred and multiply it by the rate that's on the policy. So it's basically a percentage, but the rate is ten dollars and seventy-six cents per hundred. Yeah, you would take ten point seven six percent of that and that would equate to the rate, the premium that would be charged for that amount paid.

Q. All right. Now, we've totaled these forms 1099 and I'd like to walk through them with you real quick, if I could.

A. Sure.

Q. All right. And let me back up again -- do you take the amount of those 1099's unless there's some other guidance as far as what was actually paid to somebody?

A. Right. In the absence of any other records, we do have rules that we can apply to the amount paid to sub-contractors or independent contractors for the works that's being performed. But without having supporting documentation to know how to apply those rules to the payroll for the amounts paid to the subcontractors in order

to give a proper adjustment to derive at the correct amount that should be included in the basis of premium, there's really no way of knowing how much to pick up. So in absence of the insured providing us that documentation, we take the full amount that was paid because we have no idea how to -- what adjustments to make to that.

Q. Okay. Let's say if it's a construction contractor, they may get reimbursed for materials they purchase. Is that ---

A. That's correct. There's a provision in the rules that allow us to make an adjustment for material and labor costs, but that has to be supported by an invoice that the sub-contractor would have given to the insured or the general contractor showing the breakdown between material and labor, and even then the rule further states that we're only allowed to cap the amount for material to fifty percent of the invoiced amount.

Q. And, again, is that Travelers rule?

A. No, that's not Travelers rule.

Q. And why is -- what's the purpose of that? Do you know what the purpose of that rule is?

MR. JENKINS: Your Honor, I'm going to object. He's asking for opinion and he's asking for expert testimony.

correct number added up from those 1099's. Not that it's correct in theory, but it's correct in the actual number.

THE COURT: So stipulated.

BY MR. ROBERTS:

Q. Okay. Now, let me just back up real quick. There's some questions in this case about the amount that is sought for this premium for these truckers. It's a hundred ninety-seven thousand nine hundred eighty-five dollars. According to your review of these records, is that amount an amount based on these numbers or how is that amount -- how did that amount come up?

A. Well, initially there was an estimated amount because we didn't have the full breakdown of the payments to all of these individuals so an estimate was created based on the best available information that we had access to, to come up with the final premium.

Q. Okay. Now, so taking this five hundred ninety-one thousand seventy-five dollars, and I'll hand you the policy, Plaintiff's 1, to calculate the premium for those drivers, how is that done?

A. Well, again, you would take the amount paid divide by one hundred and then multiply it by the rate that's on the policy because the rates are based on every one hundred dollars of -- the policy outlines as remuneration.

Q. Okay. Now, in this case the policy term there starts about half-way through the year.
A. That's correct.
Q. So about six months. So it works out to kind of a nice split as far as trying to work with these numbers because, again, let me ask you this. Is there any breakdown according to your review of these records of when any of these drivers were paid during the years of 2003 and 2005?
A. No, they were just lump-sum figures for the year.
Q. Okay. So because we've got a pretty even split, we could take roughly half that number for 2005?
MR. JENKINS: Your Honor, I'm going to object to the relevance of the question.
Q. Is that a fair way to ---
MR. JENKINS: Now I'm going to object to the leading.
THE COURT: Rephrase your question.
MR. ROBERTS: Okay.
Q. What's half of the number for 2003, have the five hundred ninety-one thousand seventy-five dollars?
A. Two hundred and ---
Q. Five ninety-one-o-seventy-five.
A. Two hundred ninety-five thousand five hundred thirty-seven dollars.

Q. Okay. Now, jumping over to 2004 we've got a total of, according to the audit report as well as the 1099, a total of six fifty-three one eighty-six. So what's half of that?
A. Three hundred twenty-six thousand five hundred ninety-three dollars.
Q. Okay. Three twenty-six five ninety-three. So what is that total when you get three twenty-six five ninety-three plus two ninety-five five thirty-seven?
A. I come up with six twenty-two one thirty.
Q. Okay. And then taking that and applying the equation according to the terms of the policy, what do you come up with for what the premium for that policy term would be?
A. Based on that it's sixty-five thousand one hundred thirty-seven dollars, just for the trucking class alone pays this rate - based on this rate.
Q. Now, going ahead now to the next policy term, since we've got about six months, we'd take the same three twenty-six five ninety three, which is half of the six hundred and fifty-three thousand, and then looking at the 2005 Forms 1099, which total for the year one million eighty-eight thousand six hundred thirty five, what would be half of one million eighty-eight thousand six hundred thirty-five.
A. I'm sorry. You want to give me that number real quickly?

Q. Yeah. One million-o-eighty-eight six three five.
A. That would be five hundred and forty-four thousand three hundred seventeen dollars.
Q. Okay. And then what is that when add that with the three twenty-six five ninety-three?
A. Eight hundred seventy thousand nine hundred and ten dollars.
Q. Okay. Now, applying the mathematical equation according to the terms of the policy, what does that come -- what would that premium be for that policy term?
A. Ninety-one thousand one hundred eighty-four dollars.
Q. Okay. Now, the policy was cancelled October 25th of 2005.
A. Correct.
Q. So essentially it was for the months of July, August, September and October. Is that correct?
A. Correct.
Q. So that's twenty-five percent of the year?
A. Correct.
Q. Okay. What is one-fourth of one million eighty-eight thousand six thirty-five?
A. Twenty-seven -- two hundred seventy-two thousand one hundred fifty-eight dollars.
Q. Two seventy-two one fifty-eight. Is that right?
A. Yes, sir.

Q. Now, I'm going to refer you to Plaintiff's 3. Let me back up. I just want to point out Plaintiff's 2 for the policy term, the 2004, 2005, the second policy term.
A. Okay.
Q. The rate remained the same. Is that right?
A. That's correct.
Q. Okay. Now, going ahead to Plaintiff's Number 3, what is the rate for these drivers that is in effect at that point?
A. For long distance drivers it's fifteen dollars and six cents per one hundred dollars of payroll.
Q. So the rate went up?
A. That's correct.
Q. Okay. Who made that decision?
A. The State Plan. The State Plan raised the rates.
Q. Okay. Now, applying that mathematical equation now this two seventy-two one fifty-eight, what do we come up with?
A. Forty thousand nine hundred eighty seven dollars.
Q. Now, Mr. Evanglista, going back to the numbers 2003, 2004 that first policy term, sixty-five thousand one thirty-seven. You're going to have to use ---
A. Oh, I'm sorry. You said sixty-five thousand ---
Q. One thirty-seven.
A. All right.

Q. 2004/2005 the second policy term was ninety-one thousand one eighty-four.
A. Okay.
Q. And then the third policy term forty thousand nine-eighty-seven?
A. Correct.
Q. Okay. And what's the total?
A. I came up with a hundred ninety-seven thousand three hundred and eight dollars.
Q. Okay. And the estimate was one hundred ninety-seven thousand nine hundred eighty-five dollars.
A. The estimated, yes.
Q. The estimated.
A. Yes.
Q. So that's pretty darn close, isn't it?
A. Yes, that's correct.
MR. ROBERTS: I have no further questions for this witness, Your Honor.
THE COURT: All right. Mr. Jenkins.

CROSS-EXAMINATION

BY MR. JENKINS:

Q. One hundred ninety-seven thousand three hundred eight dollars, that's for the independent contractors and owner/operators?

Q. You said auditors often just look at the records and don't actually remove them from the place of business, from the business?
A. Typically, we try not to. That's correct.
Q. Have you ever talked to Barry Burnette about Senn Trucking?
A. No, I have not.
Q. So you're relying upon what's in the file located at Travelers?
A. That's correct.
Q. You didn't go to Senn and you've never talked to Danny Senn?
A. No, I have not.
Q. And never talked to Barry Burnette?
A. Not about this case, no.
Q. Who performed the actual on-site audit in this case?
A. That's correct.
Q. There were actually some claims filed by drivers during the time periods we're talking about, weren't they?
A. I'm not aware of the claims on there. I could probably track it down. But at the time, right now I don't know.
Q. Okay. So you're not real familiar with this file?
MR. ROBERTS: Your Honor ---
A. I'm not familiar with the claims on this file.

MR. ROBERTS: Your Honor, I'm going to object unless he's got some documentation of claims that we've covered so far.

MR. JENKINS: Your Honor, he gave me a box of documents that included the claim file. If he'd like to see it, I can show it to him. And we previously provided him with a copy of all the claims filed during this time period. During the time period when Travelers said they were covered. I can dig out those documents if necessary if he doesn't remember.

THE COURT: If it's going to take a few minutes, the jury can take a break.

MR. JENKINS: Won't take but a few minutes.

Q. Are you aware of any claims that were filed?

A. I didn't look through the claims information on this particular case, no.

Q. Would you be surprised if Travelers' denied the claims that were filed from any drivers?

A. It would depend on who the drivers were, but not necessarily. For example, if one of the leased drivers filed a claim, I would expect that that would be denied since we've already, I think, established that there's an exclusion on the policy for leased employees.

Q. Now, if someone comes to Travelers and says we need proof of workers' compensation insurance for Senn Freight

Lines' clerical and office staff, Travelers would issue a certification. Is that correct?

A. Like, I assume you're talking about a certificate of insurance?

Q. Correct?

A. It would issue a certificate of insurance saying that the operation had workers' comp insurance but it wouldn't be specific as to just clerical or anyone else. It's a policy of insurance for that operation.

Q. Okay. And Senn, when they applied for insurance, they applied for insurance and specifically limited it to clerical and office staff, didn't they?

A. They can ask for any workers' comp classification on the policy based on what type of operation that they're in, but the policy is not narrow in its application of offering coverage simply to those classes that are identified on the application.

Q. But if there's ever a question the workers' compensation commissioner has to make that decision, doesn't he? Travelers doesn't get to make that decision, do they?

A. Only if there's a matter of an employee/employer relationship. For example, if we had simply clerical on the workers' comp policy; however, half-way through the year the insured decides that he's going to become a

roofing contractor and he goes out and hires roofers, pays them W-2 wages so there's no question of an employer/employee relationship and one of those employees happens to fall off a roof during the course of their work, the policy would still provide benefits for that because we are insuring the operation, not an individual class of duties on working the working for the insured.

Q. You made a good point, W-2 wages. Are you aware of any drivers Senn has ever paid W-2 wages, ever?

A. No, I'm not aware of it.

Q. And Traveler's expects people to rely upon the certificates of insurance that they issue?

A. You mean the ones that are -- the certificate that would be issued to one of our insureds?

Q. Correct?

A. Yeah. It's one way of determining that there's insurance coverage available if you happen to hire a sub-contractor to work for you. But that certificate in and of itself oftentimes not sufficient to show that there's coverage for the whole time period on the certificate.

Q. Talking about the assigned risk plan, Travelers is paid for participating in this assigned risk plan, aren't they?

A. As every other insurance company is.

Q. You can opt-out, you just said. And certain insurers do.

A. What happens is, for example, let's say insurance "X" does not have the staff locally to be able to do the work or they just don't have the resources to be able to do the work. They notify the State that they don't have the resources to be able to do this, so the work for that insurance company is offered out to other carriers that are in the State. They say, well, somebody has to do it. So -- and at Travelers we pick up some of that work as do many other insurance carriers.

Q. You're not aware of any claims that were ever made on any persons Travelers indicate weren't providing coverage for?

A. Again, I haven't looked at that. I can try and track it down, but that wasn't something that I was -- didn't think I was going to be asked about so I just simply didn't look at that. I mean, on the worksheet there is notation here ---

Q. Let me ask you this. When did you learn you would be a witness in this case?

A. About a week or so ago.

Q. Now, all the calculations that you presented are involving the independent owner/operator contractors. Is that correct?

Q. Okay. Travelers has been in business for a long time and they receive an application for insurance from Senn Freight Lines that says, we only want office staff covered and that's the only thing they give them.

MR. ROBERTS: Your Honor.

Q. Did Travelers not know that Senn had ---

THE COURT: Wait a minute. Yes, sir.

MR. ROBERTS: I would object. I don't think that Travelers received this application. It's an assigned risk plan application that went to the --

MR. JENKINS: I don't know if he knows.

THE COURT: All right. Rephrase your question.

Q. You've seen the application that Senn filed in this case?

A. Sure.

Q. And it ask for office clerical staff?

A. That is one of the classifications that the insured identified.

Q. And that's the only classification issued by Senn Freight Lines. Is that correct?

A. That's all they put on the application, correct.

Q. If Travelers had been in the insurance business for so long and said, well, we're going to be covering drivers also, why wouldn't they charge the premium up front?

A. Well, at this point here we had no way of knowing that we were going to be insuring drivers as he put an exclusion on the policy saying that leased employees were not to be covered, which is a very normal business practice and there's nothing unusual about that whatsoever.

Q. And independent contractors are not covered under your workers' compensation insurance policy. If they're true independent contractors, they're not covered. Is that correct?

A. Again, you would have to define for me what a true independent sub-contractor is. The only way to determine that is you would have to look at the facts of that relationship. What does the contract call for between the sub-contractor and a person hiring them. There's the relative nature of the work issue, frequency and amounts of payments, business licensures. I mean, you just can't simply look at one thing and say, oh, he's an independent contractor because I use him every once in a while. That's simply not an accurate statement.

Q. Are you aware of the workers' comp statute that limits claims to two years from the date of any accident?

A. I thought it was three, but if you're saying it's two then it must be two.

Q. Okay. And Travelers filed this lawsuit long after any statute of limitations period had run, didn't it?

A. When was the lawsuit filed?

Q. It was filed in 2008, I believe.

A. Then by going off of your two years then that would be correct.

Q. So at that point when Travelers filed this lawsuit, they were absolutely certain no claims would ever be filed against them for any of these drivers or anything that they're trying to recover.

A. I wouldn't know if that would come into the decision to file a lawsuit or not, but I think what you're saying would be correct on the surface.

MR. JENKINS: One moment, Your Honor, beg the Court's indulgence. That's all I have, Your Honor.

THE COURT: Redirect?

MR. ROBERTS: Very briefly on redirect, Your Honor.

REDIRECT EXAMINATION

BY MR. ROBERTS:

Q. Mr. Evanglista, if you would look at Plaintiff's Exhibit 1 on the fourth page. Look at that sheet.

A. Okay.

Q. Okay. Now, at the bottom it says this policy -- this is the policy for the period, the first term it's 2003/2004. Is that correct?

A. Yes.

A. No, sir.
Q. Now, Travelers cancelled your policy earlier. Is that correct?
A. Yes, sir, they did.
Q. And what did you have to do when they cancelled your policy?
A. We had to get replacement coverage since we couldn't talk them into reinstatement.
Q. Okay. And I'm going to ask you to speak up just a little bit --
A. Okay. I'm sorry.
Q. --- and maybe pull the microphone towards you just a little bit.
A. Okay. I'm sorry.
Q. I'll ask that again so we can make sure we hear it. What did you have to do when the Travelers cancelled that policy?
A. We have to find replacement, replacement coverage because we were unable to get them to reinstate it.
Q. Did they earn all of the policy premium you had previously paid to them?
A. No.
Q. As a matter of fact, they owed you a little over three thousand dollars for the remainder of that year that they did not cover?

A. We had pre-paid the entire year. They only covered us for about a third of the year.

Q. Now, did you or your office staff have to spend a lot of time on that?

A. A tremendous amount of time because it was unexpected.

Q. Did you consider Travelers cancellation of that policy to be bad faith?

A. Absolutely.

Q. Travelers owed a duty to you to preserve your contract and cover the office employees for that time period?

A. They did. It's assigned risk.

Q. And they breached that contract?

A. Yes, sir.

Q. You have another claim, counterclaim against travelers regarding a Jones Motor Group are you familiar with that?

A. I'm familiar with it.

Q. Did you handle that situation with Travelers?

A. Did I handle it personally?

Q. Yes.

A. Yes, sir.

Q. And why is Travelers involved in that situation with Jones Motor Group?

A. In that particular instance Travelers was underwriting a surety bond. A surety bond is required in our industry by federal law. Every freight broker has to have a surety

would be, this assigned risk, workers' comp insurance carrier. And we submit based on that that the Plaintiff's entitled to a directed verdict on that counterclaim.

Working off the insurance bad-faith, again, Your Honor, there's absolutely no evidence in the case. South Carolina only recognizes bad faith in refusal to pay benefits in a first party or third party situation. There's been no allegation whatsoever that there was a refusal to pay benefits in this case. And really reading the allegations of that particular fourth defense in the counterclaim, it's just a restatement of a breach of contract. It's in a sheep's clothing of an insurance bad faith claim. Testimony from the stand, I believe, basically was do you feel like it was done in bad-faith, yes. Without any further evidence or testimony of any insurance bad faith and refusal to pay benefits. So we believe that the Plaintiff would be entitled to directed verdict on that counterclaim.

Thirdly, on the third's defense by way of counterclaim and breach of contract, this is, of course, the insurance contracts that are at issue. Plaintiff claims that the -- I'm sorry. Defendant claims that the contract was cancelled unilaterally in violation of the insurance contract. Well, as we've been through exhaustively here, the contract required Senn to produce

it's a collateral source, it's not workers' compensation insurance coverage.

THE COURT: All right. My ruling is I'm going to deny the motion right now. I'm going to go off the record just for a second.

(WHEREUPON, an off-the-record discussion was had in chambers.)

THE COURT: Y'all were arguing the motions for directed verdict for Plaintiff and Defendant. If y'all want to be heard further on those, I'll let you -- hear you further on those, but my feeling before we took a break and as we had the conference in chambers was to deny them both ways and proceed with the verdict form that we fashioned roughly back in chambers. Does either party want to be heard further on those?

MR. JENKINS: Not at this time.

THE COURT: All right. Do either, Mr. Roberts or Mr. Jenkins, do y'all have any other suggestions or modifications to the suggestions for the verdict form?

MR. JENKINS: Pending a review of the final copy, we were okay with what was suggested in chambers.

THE COURT: All right.

MS. ROBERTS: Your Honor, the only one we had requested a change is, will this policy cover drivers? If

In addition to that, on the bad faith claim, if you award actual damages you may also consider an award of punitive damages. Now, punitive damages are normally intended to punish the other side for extraordinary or outrageous conduct and to prevent a person from acting or committing similar acts in the future. Punitive damages can only be awarded when the conduct of the party has been something more than mere negligence. The evidence must establish the insurance contacts were reckless, willful and wanton, meaning there was a conscious failure to exercise due care or a conscious indifference to the rights of the others or reckless disregard thereof. Now, if you find that the insurance company's conduct was willful, wanton or reckless, you may award Senn Freight Lines punitive damages. To support an award of punitive damages, Senn Freight Lines must prove by clear and convincing evidence that the conduct complained of included consciousness of a wrong doing at the time of the conduct. Clear and convincing evidence is more than just a preponderance or greater weight of the evidence. This requires a higher standard as a burden of proof is even higher than the burden of proof in criminal cases, which is proof beyond a reasonable doubt. Clear and convincing proof leaves no substantial doubt in your mind and it means the evidence is not ambiguous, doubtful, equivocal or contradictory.

Convincing means persuading by proof or argument causing one to believe in the truth of what is asserted. Clear and convincing proof establishes in your mind not the fact is probable, but it is highly probable. And also, before awarding punitive damage you must consider and weigh for evidence which may be pertinent to the facts in this case. You may consider the relationship between any punitive damage award and the harm caused. Any penalty imposed should take into account the reprehensibility of the conduct, the harm caused and the Defendant's awareness of the conducts wrongfulness, the duration of the conduct and any concealment. Thus, any penalty imposed should bear in relationship, nature and extent of the conduct and the harm caused including the compensatory damages or the actual damages awarded by you. Secondly, any penalty imposed should take into account as a mitigating factor any other penalty which may have been imposed or which may be imposed for the conduct involved.

Next you should consider whether the award of and the amount of any punitive damage may deprive the Defendant or the insurance of any profits derived from the improper conduct and whether the ill-gotten profits should be properly awarded to the party claiming such.

Finally, an award of punitive damages must be limited to punishment and thus may not effect economic

bankruptcy. To this end, the Defendant's ability to pay any punitive damage award should be considered. However, the economic bankruptcy factor is not an absolute bar to an award of punitive damages.

Now, ladies and gentlemen, I'm going to give you some specific charges regarding specific portions of law regarding the law of this case.

Businesses may apply for insurance through the South Carolina Assigned Risk plan when insurance is not readily available in the open market. Participation by insurance companies in the assigned risk plan is voluntary. If another policy of insurance exists, the assigned risk plan will be null and void.

Now, there was an issue presented regarding consideration of independent contracts and I instruct you that our Supreme Court has provided a list of factors for your consideration in determining whether an independent contractor is a statutory employee for the purpose of the South Carolina Workers' Compensation Act and these factors are as follows. Whether the activity is an important part of the trade of business conducted, whether the activity is necessary and essential, an integral part of the business, and whether the identical activity in question is performed by employees of the principal employer. This three-part test is what is considered part of the owners trade or

entertain those in the jury room. You're not required to do so but if you want to I'll step in there in a few minutes and answer your questions. If you don't have any questions y'all are free to go. I've had the entire jury of all 12 stay and I've had three stay, doesn't matter. Thank you again for your service.

(WHEREUPON, the jury exited the open court at approximately 5:16 p.m.)

THE COURT: And I got through talking with the jurors. You know the main question? Where was Mr. Burnette? How long have they been looking for him? A long time. They couldn't find him. He got let go. And I said, I imagine he was kind of hard to find because of the downsizing. They said, boy, he's been helpful. So that was one of the main considerations. I'll just tell you. Would you like some time to file post-trial motions?

MR. ROBERTS: I would, please, sir.

THE COURT: Fifteen days?

MR. ROBERTS: Well it's either that - I'm going to have to get them in Tuesday, I'm leaving to go out of town for 10 days --

THE COURT: All right. Well, you can get them in by then.

MR. JENKINS: I certainly don't care if he gets 20 days, however many days by the statute. I don't know

STATE OF SOUTH CAROLINA
COUNTY OF Newberry

CASE # 08-CP-36-417

PLAINTIFF	Travelers Property, etal	PLAINTIFF'S ATTORNEY	B Roberts
DEFENDANT	Senn Freight Lines, Inc	DEFENDANT'S ATTORNEY	W Jenkins
JUDGE	Griffith	DATE	8-3-10

PLAINTIFF'S EXHIBITS	DEFENDANT'S EXHIBITS	COURT'S EXHIBITS
1 Ins. policy 03-04	1 Premium notice	1 Affirmation
2 " " 04-05	2 Invoice 11/25/03	2
3 " " 05-06	3	3
4 03-1099	4	4
5 04-1099	5	5
6 05-1099	6	6
7 ACE Certificate of Liability Ins	7	7
8 Lease Agreement	8	8
9 letter 10-27-05	9	9
10 " 12-9-05	10	10
11 Cert of Ins	11	11
12 " "	12	12
13 " "	13	13
14 document	14	14
15	15	15
16	16	16
17	17	17
18	18	18
19	19	19
20	20	20

FILED
2010 AUG -4 P 3:53
JACKIE D. BOWERS
CLERK OF COURT
NEWBERRY COUNTY

COURT REPORTER: April Herron

CLERK OF COURT Jackie D. Bowers DATE RECEIVED August 4 2010

PLAINTIFF'S EXHIBIT

1 A9
8.3-17

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

Travelers v. Senn Appendix 239

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-03)
NEW-03

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

NCCI CO CODE: 13579

1.

INSURED:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

PRODUCER:

ADAMS EADDY & ASSOC
PO BOX 5595
COLUMBIA SC 29250-5595

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 07-10-03 to 07-10-04 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	$	100000	Each Accident
Bodily Injury by Disease:	$	500000	Policy Limit
Bodily Injury by Disease:	$	100000	Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

DATE OF ISSUE: 08-08-03 LM
OFFICE: ORLANDO 870
PRODUCER: ADAMS EADDY & ASSOC 2433N

ST ASSIGN SC

Travelers v. Senn Appendix 240

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-03)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4213

		STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	$	1347
PREMIUM DISCOUNT		NONE
0900-39 EXPENSE CONSTANT		230
TERRORISM RISK INS ACT 2002		130
TOTAL ESTIMATED PREMIUM		1707
DEPOSIT AMOUNT DUE		1707

A/R (WCIP) #

Minimum Premium: $ 750

DATE OF ISSUE: 08-08-03 LM
OFFICE: ORLANDO 870
PRODUCER: ADAMS EADDY & ASSOC 2433N

ST ASSIGN: SC

Travelers v. Senn Appendix 241

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-03)

INSURER: THE TRAVELERS INDEMNITY COMPANY OF ILLINOIS

INSURED'S NAME: SENN FREIGHT LINES, INC. 13579-SC

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 057095600 ENTITY CD 001				
SENN FREIGHT LINES, INC.				
2699 HIGHWAY 34-121 NEWBERRY, SC 29108				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	IF ANY	10.47	
CLERICAL OFFICE EMPLOYEES NOC	8810	434460	.31	1347

EXPERIENCE MODIFICATION: NONE MODIFIED PREMIUM	$	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		1347
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		130
TOTAL ESTIMATED PREMIUM		1707
DEPOSIT AMOUNT DUE		1707

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-03)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT
WC 00 03 22 00 - 001	EMPL LEASING CLIENT EXCLUSION ENDT

The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE – WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. **Recovery From Others**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. **Statutory Provisions**

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. **How This Insurance Applies**

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. **We Will Pay**

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. **Exclusions**

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws.
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident – each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.
2. Bodily Injury by Disease. The limit shown for "bodily injury by disease – policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease – each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

   Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE – OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR – YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

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.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. 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. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

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 the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

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

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
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.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.

Secretary

President

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-7803A47-6-03)

RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT

"Part Three – Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:

   a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and

   b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and

   c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.

2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.

3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

DATE OF ISSUE: 08-08-03 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 14 (00)

POLICY NUMBER: (6JUB-7803A47-6-03)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 08-08-03 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (6JUB-7803A47-6-03)

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	$200,000
Alaska	$200,000
Connecticut	$200,000
District of Columbia	$200,000
Georgia	$200,000
Idaho	$200,000
Illinois	$200,000
Indiana	$100,000
Kansas	$200,000
Nevada	$200,000
New Hampshire	$175,000
North Carolina	$200,000
South Dakota	$200,000

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-03)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.

b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.

c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.

d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed $100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-03)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule

State	Rate per $100 of Remuneration	State	Rate per $100 of Remuneration
SOUTH CAROLINA	0.030		

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective | Policy No. | Endorsement No.

Insured | Premium $

Insurance Company | Countersigned by _____

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 22 (00)

POLICY NUMBER: (6JUB-7803A47-6-03)

EMPLOYEE LEASING CLIENT EXCLUSION ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."

This endorsement applies only with respect to your leased workers engaged in any work provided under an employee leasing arrangement. Your policy does not provide coverage for workers you lease from labor contractors listed below.

This endorsement may be used in jurisdictions where not prohibited by single policy statutes and/or regulations.

SCHEDULE

LABOR CONTRACTOR	ADDRESS
VANGUARD SOUTHEAST INC	2223 LADEAN COURT, SUITE G SIMPSONVILLE, SC 29680

DATE OF ISSUE: 08-08-03 ST ASSIGN: SC

PLAINTIFF'S EXHIBIT

2

8.3.10

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

Travelers v. Senn Appendix 255

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-04)

RENEWAL OF (6JUB-7803A47-6-03)

INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

NCCI CO CODE: 13579

1. INSURED:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

PRODUCER:

ADAMS EADDY & ASSOC
2230 DEVINE STREET
PO BOX 5595
COLUMBIA SC 29250-5595

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 07-10-04 to 07-10-05 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	$	100000 Each Accident
Bodily Injury by Disease:	$	500000 Policy Limit
Bodily Injury by Disease:	$	100000 Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-04)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4213

	STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	$ 1482
PREMIUM DISCOUNT	NONE
0900-39 EXPENSE CONSTANT	230
TERRORISM RISK INS ACT 2002	143
TOTAL ESTIMATED PREMIUM	1855
DEPOSIT AMOUNT DUE	1855

A/R (WCIP) #

Minimum Premium: $ 750

ST ASSIGN: SC

DATE OF ISSUE: 07-23-04 WC
OFFICE: ORLANDO 870
PRODUCER: ADAMS EADDY & ASSOC 2433N

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-04)

INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

13579-SC

INSURED'S NAME: SENN FREIGHT LINES, INC.

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 057095600 ENTITY CD 001				
SENN FREIGHT LINES, INC.				
2699 HIGHWAY 34-121 NEWBERRY, SC 29108				
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	IF ANY	10.47	
CLERICAL OFFICE EMPLOYEES NOC	8810	477906	.31	1482

EXPERIENCE MODIFICATION: NONE MODIFIED PREMIUM	$	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM		1482
EXPENSE CONSTANT(0900)		230
TERRORISM RISK INS ACT 2002 (9740)		143
TOTAL ESTIMATED PREMIUM		1855
DEPOSIT AMOUNT DUE		1855

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-04)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 04 00 - 001	PENDING RATE CHANGE ENDORSEMENT
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION ENDORSEMENT
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT
WC 00 03 08 00 - 001	PARTNERS, OFFICERS,AND OTHERS EXCLUSION
WC 00 03 22 00 - 001	EMPL LEASING CLIENT EXCLUSION ENDT

The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE – WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws.
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident – each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.
2. Bodily Injury by Disease. The limit shown for "bodily injury by disease – policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease – each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

   Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE – OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

PART FOUR – YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

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.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. 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. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

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 the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

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

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. Cancelation

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
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.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. Sole Representative

The insured first named in Item 1. of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.

Secretary

President

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-7803A47-6-04)

RESIDUAL MARKET
LIMITED OTHER STATES INSURANCE ENDORSEMENT

"Part Three – Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
   a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
   b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
   c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

Travelers v. Senn Appendix 265

DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 04 (00)

POLICY NUMBER: (6JUB-7803A47-6-04)

PENDING RATE CHANGE ENDORSEMENT

A rate change filing is being considered by the proper regulatory authority. The filing may result in rates different from the rates shown on the policy. If it does, we will issue an endorsement to show the new rates and their effective date.

If only one state is shown in item 3.A of the Information Page, this endorsement applies to that state. If more than one state is shown there, this endorsement applies only in the state shown in the Schedule.

SCHEDULE

STATE

SC

DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

Travelers v. Senn Appendix 266

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 14 (00)

POLICY NUMBER: (6JUB-7803A47-6-04)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

Travelers v. Senn Appendix 267

DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (00)

POLICY NUMBER: (6JUB-7803A47-6-04)

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	$200,000
Alaska	$200,000
Connecticut	$200,000
District of Columbia	$200,000
Georgia	$200,000
Idaho	$200,000
Illinois	$200,000
Indiana	$100,000
Kansas	$200,000
Nevada	$200,000
New Hampshire	$175,000
North Carolina	$200,000
South Dakota	$200,000

DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-04)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.

b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.

c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.

d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed $100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

Travelers

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-04)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule

State	Rate per $100 of Remuneration	State	Rate per $100 of Remuneration
SOUTH CAROLINA	0.030		

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective | Policy No. | Endorsement No.

Insured | Premium $

Insurance Company | Countersigned by _____

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 08 (00) – 001

POLICY NUMBER: (6JUB-7803A47-6-04)

PARTNERS, OFFICERS, AND OTHERS EXCLUSION ENDORSEMENT

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

SCHEDULE

PARTNERS	OFFICERS	OTHERS
	HENRY SENN VP/TREAS (EFF 9-11-03)	
	GRADY SENN VP/SEC (EFF 9-11-03)	
	DANNY SENN PRES (EFF 9-11-03)	

DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

Travelers

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 22 (00)

POLICY NUMBER: (6JUB-7803A47-6-04)

EMPLOYEE LEASING CLIENT EXCLUSION ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."

This endorsement applies only with respect to your leased workers engaged in any work provided under an employee leasing arrangement. Your policy does not provide coverage for workers you lease from labor contractors listed below.

This endorsement may be used in jurisdictions where not prohibited by single policy statutes and/or regulations.

SCHEDULE

LABOR CONTRACTOR	ADDRESS
VANGUARD SOUTHEAST INC	2223 LADEAN COURT, SUITE G SIMPSONVILLE, SC 29680

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DATE OF ISSUE: 07-23-04 ST ASSIGN: SC

PLAINTIFF'S EXHIBIT

3

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

A Custom Insurance Policy Prepared for:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

Travelers v. Senn Appendix 273

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-05)
RENEWAL OF (6JUB-7803A47-6-04)

INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

NCCI CO CODE: 13579

1. INSURED:

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

PRODUCER:

ADAMS EADDY & ASSOC
2230 DEVINE STREET
PO BOX 5595
COLUMBIA SC 29250-5595

Insured is A CORPORATION

Other work places and identification numbers are shown in the schedule(s) attached.

2. The policy period is from 07-10-05 to 07-10-06 12:01 A.M. at the insured's mailing address.

3. A. **WORKERS COMPENSATION INSURANCE:** Part One of the policy applies to the Workers Compensation Law of the state(s) listed here:

SC

B. **EMPLOYERS LIABILITY INSURANCE:** Part Two of the policy applies to work in each state listed in item 3.A. The limits of our liability under Part Two are:

Bodily Injury by Accident:	$	100000 Each Accident
Bodily Injury by Disease:	$	500000 Policy Limit
Bodily Injury by Disease:	$	100000 Each Employee

C. **OTHER STATES INSURANCE:** Part Three of the policy applies to the states, if any, listed here:

COVERAGE EXCLUDED - REFER TO RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT WC 00 03 26

D. This policy includes these endorsements and schedules:

SEE LISTING OF ENDORSEMENTS - EXTENSION OF INFO PAGE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating Plans. All required information is subject to verification and change by audit to be made ANNUALLY.

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

TYPE AR INFORMATION PAGE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-05)

CLASSIFICATION SCHEDULE:

CLASSIFICATIONS	CODE NO	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM

SEE EXTENSION OF INFORMATION PAGE - SCHEDULE(S)

SIC-CODE: 4213

		STANDARD
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	$	4926
PREMIUM DISCOUNT		NONE
0900-39 EXPENSE CONSTANT		230
TERRORISM RISK INS ACT 2002		168
DOMESTIC TERRORISM, EQ & CAT-DTEC		112
TOTAL ESTIMATED PREMIUM		5436
DEPOSIT AMOUNT DUE		5436

A/R (WCIP) #

Minimum Premium: $ 750

ST ASSIGN: SC

DATE OF ISSUE: 08-05-05 GS
OFFICE: ORLANDO 870
PRODUCER: ADAMS EADDY & ASSOC 2433N

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

EXTENSION OF INFO PAGE-SCHEDULE WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-05)

INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

INSURED'S NAME: SENN FREIGHT LINES, INC. 13579-SC

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 057095600 ENTITY CD 001				
SENN FREIGHT LINES, INC.				
2699 HIGHWAY 34-121 NEWBERRY, SC 29108				
TRUCKING: LOCAL HAULING ONLY-ALL EMPLOYEES & DRIVERS	7228	IF ANY	12.25	
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	IF ANY	15.06	
WAREHOUSING NOC	8292	33462	6.55	2192
CLERICAL OFFICE EMPLOYEES NOC	8810	525697	.52	2734

EXPERIENCE MODIFICATION: NONE MODIFIED PREMIUM	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	4926
EXPENSE CONSTANT(0900)	230
0.0300 TERRORISM RISK INS ACT 2002 (9740)	168
DOMESTIC TERRORISM, EQ & CAT-DTEC(9741)	112
TOTAL ESTIMATED PREMIUM	5436
DEPOSIT AMOUNT DUE	5436

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 00 01 (A)

POLICY NUMBER: (6JUB-7803A47-6-05)

LISTING OF ENDORSEMENTS
EXTENSION OF INFO PAGE

We agree that the following listed endorsements form a part of this policy on its effective date.

WC 00 00 01 A - 001	INFORMATION PAGE
WC 00 00 01 A - 001	INFORMATION PAGE 2
WC 00 00 01 A - 001	EXTENSION OF INFORMATION PAGE - SCHEDULE
WC 00 00 01 A - 001	ENDORSEMENT LISTING
WC 00 03 26 A - 001	LIMITED OTHER STATES INSURANCE END
WC 00 04 14 00 - 001	NOTIFICATION OF CHANGE IN OWNERSHIP ENDT
WC 00 04 17 00 - 001	A/R LSRP NOTIFICATION
WC 00 01 12 00 - 001	NOTICE OF PENDING LAW CHANGE TO TRIA
WC 00 04 20 00 - 001	TERRORISM RISK INS ACT ENDT
WC 00 04 21 00 - 001	DTEC
WC 00 03 08 00 - 001	PARTNERS, OFFICERS,AND OTHERS EXCLUSION
WC 00 03 22 00 - 001	EMPL LEASING CLIENT EXCLUSION ENDT

The Travelers Insurance Companies

(Each a Stock Insurance Company)

Hartford, Connecticut

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

B. Who Is Insured

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

D. State

State means any state of the United States of America, and the District of Columbia.

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

PART ONE – WORKERS COMPENSATION INSURANCE

A. How This Insurance Applies

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

B. We Will Pay

We will pay promptly when due the benefits required of you by the workers compensation law.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the workers compensation law that apply to:
   a. benefits payable by this insurance;
   b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

PART TWO – EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

C. Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions.
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.

9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws.
10. bodily injury to a master or member of the crew of any vessel.
11. fines or penalties imposed for violation of federal or state law.
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgement as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below:

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

   A disease is not bodily injury by accident unless it results directly from bodily injury by accident.
2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

   Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgement.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

PART THREE – OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

B. Notice

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

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PART FOUR – YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

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.

B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. 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. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

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 the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

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

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. **Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

C. **Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

D. **Cancelation**

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
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.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

E. **Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

In witness whereof, the company has caused this policy to be signed by its President and Secretary at Hartford, Connecticut and countersigned on the Information page by a duly authorized agent of the company.

Secretary

President

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 26 (A)

POLICY NUMBER: (6JUB-7803A47-6-05)

RESIDUAL MARKET LIMITED OTHER STATES INSURANCE ENDORSEMENT

"Part Three – Other States Insurance" of the policy is replaced by the following:

PART THREE OTHER STATES INSURANCE

A. How This Insurance Applies

1. We will pay promptly when due the benefits required of you by the workers compensation law of any state not listed in Item 3.A. of the Information Page if all of the following conditions are met:
   a. The employee claiming benefits was either hired under a contract of employment made in a state listed in Item 3.A. of the Information Page or was, at the time of injury, principally employed in a state listed in Item 3.A. of the Information Page; and
   b. The employee claiming benefits is not claiming benefits in a state where, at the time of injury, (i) you have other workers compensation insurance coverage, or (ii) you were, by virtue of the nature of your operations in that state, required by that state's law to have obtained separate workers compensation insurance coverage, or (iii) you are an authorized self-insurer or participant in a self-insured group plan; and
   c. The duration of the work being performed by the employee claiming benefits in the state for which that employee is claiming benefits is temporary.
2. If we are not permitted to pay the benefits directly to persons entitled to them and all of the above conditions are met, we will reimburse you for the benefits required to be paid.
3. This insurance does not apply to fines or penalties arising out of your failure to comply with the requirements of the workers compensation law.

IMPORTANT NOTICE!

If you hire any employees outside those states listed in Item 3.A. on the Information Page or begin operations in any such state, you should do whatever may be required under that state's law, as this endorsement does not satisfy the requirements of that state's workers compensation law.

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DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 14 (00)

POLICY NUMBER: (6JUB-7803A47-6-05)

NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT

Experience rating is mandatory for all eligible insureds. The experience rating modification factor, if any, applicable to this policy, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 17 (OO)

POLICY NUMBER: (6JUB-7803A47-6-05)

ASSIGNED RISK LOSS SENSITIVE RATING PLAN NOTIFICATION ENDORSEMENT

This endorsement is issued because you may qualify to have the cost of your insurance subject to the assigned risk mandatory Loss Sensitive Rating Plan (LSRP).

Eligibility:

1. Your insurance is written under Workers Compensation Insurance Plan (WCIP) in a state which has adopted the Loss Sensitive Rating Plan (LSRP).
2. The LSRP shall apply to an individual assigned risk policy if the total annual estimated Standard Premium or preliminary physical audit premium equals or exceeds the amount noted in the schedule.
3. A decrease in premium during the first 120 days of coverage which results in the premium falling below the LSRP premium eligibility threshold, shall result in the conversion of the policy to a guaranteed cost policy, retroactive to policy inception.
4. An increase in premium during the first 120 days of coverage which qualifies an employer for the LSRP shall result in the retroactive application of the LSRP to policy inception.
5. After the first 120 days of the coverage term, if it is determined that an employer qualifies for LSRP, the policy shall not be changed until renewal.
6. Notwithstanding, anything above to the contrary, any attempt to avoid the application of the LSRP arising from a misrepresentation or omission by you, your agent, employees, officers or directors shall result in the pro rata application of LSRP from the date upon which it would have applied had such misrepresentation or omission not been made.
7. The LSRP will apply on an interstate basis when the estimated aggregate (total of all states having approved LSRP) annual standard premium meets the premium eligibility requirement for the LSRP state generating the largest premium.

This plan will adjust your premium for this insurance based upon the losses incurred during the period covered by this insurance.

This endorsement applies in the states listed in the schedule below.

SCHEDULE

STATE	PREMIUM ELIGIBILITY
Alabama	$200,000
Alaska	$200,000
Connecticut	$200,000
District of Columbia	$200,000
Georgia	$200,000
Idaho	$200,000
Illinois	$200,000
Indiana	$100,000
Kansas	$200,000
Nevada	$200,000
New Hampshire	$175,000
North Carolina	$200,000
South Carolina	$200,000
South Dakota	$200,000
Vermont	$200,000

Travelers v. Senn Appendix 285

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 01 12 (00)

POLICY NUMBER: (6JUB-7803A47-6-05)

Notification Endorsement of Pending Law Change to Terrorism Risk Insurance Act of 2002

This endorsement is being sent to you with respect to your workers compensation and employers liability insurance policy. This endorsement does not replace the separate Terrorism Risk Insurance Act Endorsement (WC 00 04 20) that is attached to your current policy and which remains in effect as applicable.

The Terrorism Risk Insurance Act of 2002 (TRIA) took effect on November 26, 2002 and provides for a three-year program under which the Federal Government will share in the payment of insured losses caused by certain acts of terrorism. In the absence of affirmative U.S. Congressional action to extend, update or otherwise reauthorize in whole or in part, TRIA is scheduled to expire December 31, 2005.

Since the timetable for any further Congressional action respecting TRIA is unknown at this time, and the exposure to acts of terrorism remains, we are providing our policyholders with relevant information concerning their workers compensation policies in effect on or after January 1, 2005 in the event of TRIA's expiration.

Your policy provides coverage for workers compensation losses caused by acts of terrorism or war, including workers compensation benefit obligations dictated by state law. Coverage for such losses is still subject to all terms, definitions, exclusions, and conditions in your policy.

The premium charge for the coverage your policy provides for terrorism or war losses is shown in Item 4 of the Information Page or the Schedule in the Terrorism Risk Insurance Act Endorsement (WC 00 04 20) that is attached to your policy, and this amount may continue or change for new, renewal, and inforce policies in effect on or after December 31, 2005 in the event of TRIA's expiration, subject to regulatory review in accordance with applicable state law.

You need not do anything further at this time.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective | Policy No. | Endorsement No.

Insured | Premium $

Insurance Company | Countersigned by _____

0180

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-05)

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act the definitions in the Act will apply.

"Act" means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002 and any amendments.

"Act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

a. The act is an act of terrorism.

b. The act is violent or dangerous to human life, property or infrastructure.

c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.

d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Insured terrorism or war loss" means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

"Insurer deductible" means:

a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.

b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.

c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.

d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed $100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 04 20 (OO)

POLICY NUMBER: (6JUB-7803A47-6-05)

2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule

State	Rate per $100 of Remuneration	State	Rate per $100 of Remuneration
SOUTH CAROLINA	0.030		

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective | Policy No. | Endorsement No.

Insured | Premium $

Insurance Company | Countersigned by _____

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY
ENDORSEMENT WC 00 04 21 (OO)

POLICY NUMBER: (6JUB-7803A47-6-05)

DOMESTIC TERRORISM, EARTHQUAKES, AND CATASTROPHIC INDUSTRIAL ACCIDENTS PREMIUM ENDORSEMENT

This endorsement is notification that your insurance carrier is charging premium to cover the losses that may occur in the event of domestic terrorism, earthquakes and/or a catastrophic industrial accident.

The premium charge provides funding for the risk of earthquakes, catastrophic industrial accidents, and certain acts of domestic and foreign terrorism. It does not provide funding for acts of terrorism certified as such by the Terrorism Risk Insurance Act (TRIA) of 2002, but rather provides funding for all other acts of terrorism specifically excluded by TRIA.

For purposes of this endorsement, the following definitions apply:

Domestic terrorism: All acts of terrorism outside the scope of TRIA with aggregate workers compensation losses in excess of $50 million.

Earthquake: The shaking and vibration at the surface of the earth resulting from underground movement along a fault plane or from volcanic activity where aggregate workers compensation losses from the single event are in excess of $50 million.

Catastrophic Industrial Accident: Any single event resulting in aggregate workers compensation losses in excess of $50 million.

Schedule

See State Schedule WC 00 00 01 (A)

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Effective Policy No. Endorsement No.

Insured Premium $

Insurance Company Countersigned by _____

0183

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 08 (00) – 001

POLICY NUMBER: (6JUB-7803A47-6-05)

PARTNERS, OFFICERS, AND OTHERS EXCLUSION ENDORSEMENT

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

SCHEDULE

PARTNERS	OFFICERS	OTHERS
	SENN, HENRY VP/TREAS (EFF 9-11-03)	
	SENN, GRADY VP/SEC (EFF 9-11-03)	
	SENN, DANNY PRES (EFF 9-11-03)	

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC

ST PAUL TRAVELERS

WORKERS COMPENSATION
AND
EMPLOYERS LIABILITY POLICY

ENDORSEMENT WC 00 03 22 (00)

POLICY NUMBER: (6JUB-7803A47-6-05)

EMPLOYEE LEASING CLIENT EXCLUSION ENDORSEMENT

As used in this endorsement, "employee leasing" shall mean an arrangement whereby an entity utilizes the services of a third party to provide its workers for a fee or other compensation. The third party providing employee leasing services shall be referred to as a "labor contractor." The entity receiving the services shall be referred to as a "client."

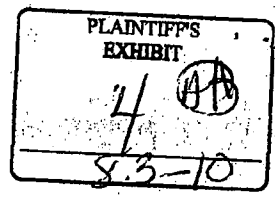
This endorsement applies only with respect to your leased workers engaged in any work provided under an employee leasing arrangement. Your policy does not provide coverage for workers you lease from labor contractors listed below.

This endorsement may be used in jurisdictions where not prohibited by single policy statutes and/or regulations.

SCHEDULE

LABOR CONTRACTOR	ADDRESS
INSURED TO PROVIDE LEASING CO INFORMATION	

DATE OF ISSUE: 08-05-05 ST ASSIGN: SC



[redacted]

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2003
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

PAYER'S Federal Identification number	RECIPIENT'S Identification number
[redacted]	[redacted]

5 Fishing boat proceeds $

6 Medical and health care payments $

Copy C For Payer or State Copy

RECIPIENT'S name, address (including apt. no.), city, state, and ZIP code
WILLIAM N. BARD
E
ANDERSON, SC 29625

7 Nonemployee compensation $ 95975.97

8 Substitute payments in lieu of dividends or interest $

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐

10 Crop insurance proceeds $

11

12

For Privacy Act and Paperwork Reduction Act Notice, see the **2003 General Instructions for Forms 1099, 1098, 5498, and W-2G.**

Account number (optional)

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

15

16 State tax withheld $

17 State/Payer's state no. SC/252927O8-9

18 State income $

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2003
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

PAYER'S Federal Identification number	RECIPIENT'S Identification number
57-0956006	57-0658433

5 Fishing boat proceeds $

6 Medical and health care payments $

Copy C For Payer or State Copy

RECIPIENT'S name, address (including apt. no.), city, state, and ZIP code
TAYLOR TRUCKING CO., INC.
GREENWOOD, SC 29649

7 Nonemployee compensation $ 52886.88

8 Substitute payments in lieu of dividends or interest $

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐

10 Crop insurance proceeds $

11

12

For Privacy Act and Paperwork Reduction Act Notice, see the **2003 General Instructions for Forms 1099, 1098, 5498, and W-2G.**

Account number (optional)

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

15

16 State tax withheld $

17 State/Payer's state no. SC/252927O8-9

18 State income $

Form 1099-MISC

Department of the Treasury - Internal Revenue Service

13 13 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents $	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	2 Royalties $	2003 Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S Federal identification number: 57-0956006	RECIPIENT'S identification number: [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name: RANDY ANDERSON		7 Nonemployee compensation $ 9280.98	8 Substitute payments in lieu of dividends or interest $
Street address (including apt. no.)		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
City, state, and ZIP code: JOHNSONVILLE, SC 29555		11	12
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15		16 State tax withheld $	17 State/Payer's state no. SC/25292208-9	18 State income $

For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service

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9595 ☐ VOID ☐ CORRECTED

Senn Supplemental Discovery Responses000068

PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2003
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

Copy A For Internal Revenue Service Center
File with Form 1096

PAYER'S Federal identification number
57-0956006

RECIPIENT'S identification number
[redacted]

5 Fishing boat proceeds $

6 Medical and health care payments $

RECIPIENT'S name
MARSHALL CARVER

7 Nonemployee compensation
$ 37578.99

8 Substitute payments in lieu of dividends or interest $

For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G

Street address (including apt. no.)
[redacted] HOLLY ROAD

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐

10 Crop insurance proceeds $

City, state, and ZIP code
ROCK HILL, SC 29730

11

12

Account number (optional)
[redacted]

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

15

16 State tax withheld $

17 State/Payer's state no.
SC/25292708-9

18 State income $

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service

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PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2003
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

Copy A For Internal Revenue Service Center
File with Form 1096

PAYER'S Federal identification number
57-0956006

RECIPIENT'S identification number
[redacted]

5 Fishing boat proceeds $

6 Medical and health care payments $

RECIPIENT'S name
BERT HAYES

7 Nonemployee compensation
$ 43595.46

8 Substitute payments in lieu of dividends or interest $

For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G

Street address (including apt. no.)
[redacted]

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐

10 Crop insurance proceeds $

City, state, and ZIP code
EASTMAN, GA 31023

11

12

Account number (optional)
[redacted]

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

15

16 State tax withheld $

17 State/Payer's state no.
SC/25292708-9

18 State income $

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2003	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy 1 For Internal Revenue Service Center
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096
RECIPIENT'S name MITCHELL WRIGHT		7 Nonemployee compensation $ 92274.13	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G
Street address (including apt. no.)		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code SALUDA, SC 29138		11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15		16 State tax withheld $ $	17 State/Payer's state no. SC/25292708-9	18 State income $ $

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service

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9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2003	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096.
RECIPIENT'S name MELROY HOUSER		7 Nonemployee compensation $ 100026.08	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2003 General Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.)		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
City, state, and ZIP code MARTINEZ, GA 30907		11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15		16 State tax withheld $ $	17 State/Payer's state no. SC/25292708-9	18 State income $ $

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service

9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneou Incom
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2003	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy Fo Internal Revenu Service Cente
PAYER'S Federal identification number: 57-0956006	RECIPIENT'S identification number: [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 109
RECIPIENT'S name: JOHN B. ABNEY		7 Nonemployee compensation $ 77504.14	8 Substitute payments in lieu of dividends or interest $	For Privacy Ac and Paperwor Reduction Ac Notice, see th 2003 Genera Instructions fo Forms 1099 1098, 5498 and W-2G
Street address (including apt. no.): P.O. BOX 112		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: NINETY SIX, SC 29666		11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15		16 State tax withheld $ $	17 State/Payer's state no.: SC/25292708-9	18 State income $ $

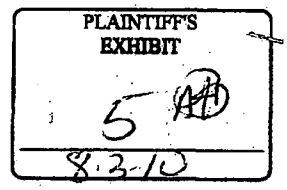
Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Servic

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9595 ☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2003	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center
PAYER'S Federal identification number: 57-0956006	RECIPIENT'S Identification number: 57-0980133	5 Fishing boat proceeds $	6 Medical and health care payments $	File with Form 1096
RECIPIENT'S name: GEO TRUCKING CO., INC.		7 Nonemployee compensation $ 81952.80	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2003 Genera Instructions for Forms 1099, 1098, 5498, and W-2G.
Street address (including apt. no.): [illegible] D		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐	10 Crop insurance proceeds $	
City, state, and ZIP code: UNION, SC 29379		11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15		16 State tax withheld $ $	17 State/Payer's state no.: SC/25292708-9	18 State income $ $

Form 1099-MISC 41-0852411 Department of the Treasury - Internal Revenue Service



[redacted]

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer or State Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code Mitchell Wright P. Saluda SC 29138	7 Nonemployee compensation 117044.21 $	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
	11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15	16 State tax withheld $ $	17 State/Payer's state no. SC/252427UB-9	18 State income $ $

Form 1099-MISC ⊛ Printed on Recycled Paper Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer or State Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number 57-0658433	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code Taylor Trucking Co. Greenwood SC 29649	7 Nonemployee compensation 69944.79 $	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $	
	11	12	
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15	16 State tax withheld $ $	17 State/Payer's state no. SC/252427UB-9	18 State income $ $

Form 1099-MISC ⊛ Printed on Recycled Paper Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer or State Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code John B Abney Ninety Six SC 29666		7 Nonemployee compensation $ 66995.56	8 Substitute payments in lieu of dividends or interest $
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
		11	12
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15		16 State tax withheld $	17 State/Payer's state no. SC/252927U8-7
			18 State income $

Form 1099-MISC ♻ Printed on Recycled Paper — Department of the Treasury - Internal Revenue Service

For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2. Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer or State Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code Melroy Houser Martinez GA 30907		7 Nonemployee compensation $ 121133.15	8 Substitute payments in lieu of dividends or interest $
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
		11	12
Account number (optional)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15		16 State tax withheld $	17 State/Payer's state no. SC/252927U8-7
			18 State income $

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☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2004
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

PAYER'S Federal identification number	RECIPIENT'S identification number
57-0956006	56-2084877

5 Fishing boat proceeds $

6 Medical and health care payments $

Copy C For Payer or State Copy

RECIPIENT'S name, address, and ZIP code
ASAP Logistics, Inc.

Lexington SC 29072

7 Nonemployee compensation $ 43563.16

8 Substitute payments in lieu of dividends or interest $

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐

10 Crop insurance proceeds $

11

12

Account number (optional)

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

15

16 State tax withheld $

17 State/Payer's state no. SC/252927084-9

18 State income $

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Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.
SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY, SC 29108

1 Rents $

2 Royalties $

OMB No. 1545-0115
2004
Form 1099-MISC

Miscellaneous Income

3 Other income $

4 Federal income tax withheld $

PAYER'S Federal identification number	RECIPIENT'S identification number
57-0956006	57-0980133

5 Fishing boat proceeds $

6 Medical and health care payments $

Copy C For Payer or State Copy

RECIPIENT'S name, address, and ZIP code
GEO Trucking

Union SC 29379

7 Nonemployee compensation $ 114919.15

8 Substitute payments in lieu of dividends or interest $

9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ► ☐

10 Crop insurance proceeds $

11

12

Account number (optional)

2nd TIN not. ☐

13 Excess golden parachute payments $

14 Gross proceeds paid to an attorney $

For Privacy Act and Paperwork Reduction Act Notice, see the 2004 General Instructions for Forms 1099, 1098, 5498, and W-2G.

15

16 State tax withheld $

17 State/Payer's state no. SC/252927084-9

18 State income $ 0195

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Department of the Treasury - Internal Revenue Service

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PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	State Copy or Extra File Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code William N. Ward [redacted] Anderson SC 29625		7 Nonemployee compensation $ 119586.35	8 Substitute payments in lieu of dividends or interest $
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
		11	12
Account number (optional)		13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15		16 State tax withheld $ $	17 State/Payer's state no. SC/252927O8-9	18 State income $ $

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☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P.O. BOX 1191 NEWBERRY, SC 29108	$	2004	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	State Copy or Extra File Copy
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code		7 Nonemployee compensation $	8 Substitute payments in lieu of dividends or interest $
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
		11	12
Account number (optional)		13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15		16 State tax withheld $ $	17 State/Payer's state no. SC/252927O8-9	18 State income $ $ 0196

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9595 · ☐ VOID ☒ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	2005	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	Form 1099-MISC	
	2 Royalties $		
	3 Other income $	4 Federal income tax withheld $	Copy A For Internal Revenue Service Center File with Form 1096.
PAYER'S Federal identification number: 57-0956006	RECIPIENT'S identification number: [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name: WILLIAM N. WARD		7 Nonemployee compensation $ 104305.92	8 Substitute payments in lieu of dividends or interest $
Street address (including apt. no.)		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ▶ ☐	10 Crop insurance proceeds $
City, state, and ZIP code: ANDERSON, SC 29625		11	12
Account number (see instructions)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 39-1808647

Department of the Treasury - Internal Revenue Service

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PLAINTIFF'S EXHIBIT 6 8-3-10

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PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	**Miscellaneous Income**
	2 Royalties $	Form 1099-MISC	
	3 Other Income $	4 Federal income tax withheld $	
PAYER'S Federal Identification number 57-0956006	RECIPIENT'S Identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code CHRISTOPHER P RAHRER [redacted]AD CHAPPELL SC 29037	7 Nonemployee compensation $ 7430.28	8 Substitute payments in lieu of dividends or interest $	
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11 [redacted]	12 [redacted]	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A Income $	16 State tax withheld $ $	17 State/Payer's state no.

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Copy C For Payer

Form **1099-MISC** 39-1808647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED Senn Supplemental Discovery Responses000109

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number 57-1128907	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code B M E TRUCKING LEXINGTON SC 29072		7 Nonemployee compensation $ 311635.56	8 Substitute payments in lieu of dividends or interest $
		9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $
		11	12
Account number (see instructions)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

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Form 1099-MISC 39-1908647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number 57-0980133	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code GEO TRUCKING AD UNION SC 29379	7 Nonemployee compensation $ 96412.57	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11	12	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $	17 State/Payer's state no.	18 State income $

Form 1099-MISC 39-1908647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code JOHN B ABNEY NINETY SIX SC 29666	7 Nonemployee compensation $ 40966.36	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11 [redacted]	12 [redacted]	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 39-1908647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code MELROY HOUSER MARTINEZ GA 30907	7 Nonemployee compensation $ 103951.59	8 Substitute payments in lieu of dividends or interest $	
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11 [redacted]	12 [redacted]	
Account number (see instructions)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Copy C For Payer

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Form 1099-MISC 39-1908647

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code MITCHELL WRIGHT [redacted] SALUDA SC 29138	7 Nonemployee compensation $ 112233.50	8 Substitute payments in lieu of dividends or interest $	
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11 [redacted]	12 [redacted]	
Account number (see instructions)	2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Copy C For Payer

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Form 1099-MISC 39-1908647

Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005 Form 1099-MISC	
	2 Royalties $		
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification nu [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code RICHARD SUMMERS /E CHARLESTON SC 29412	7 Nonemployee compensation $ 66450.50	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11 [redacted]	12 [redacted]	
Account number (see instructions) / 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 39-1908647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED SENN Supplemental Discovery Responses000115

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number [redacted]	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code SUE CHANDLER WAGENER SC 29164	7 Nonemployee compensation $ 106647.66	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11	12	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC 39-1908647 Department of the Treasury - Internal Revenue Service

☐ VOID ☐ CORRECTED

PAYER'S name, street address, city, state, ZIP code, and telephone no.	1 Rents	OMB No. 1545-0115	Miscellaneous Income
SENN FREIGHT LINES, INC. P. O. BOX 1191 NEWBERRY, SC 29108 803-321-1611	$	2005	
	2 Royalties $	Form 1099-MISC	
	3 Other income $	4 Federal income tax withheld $	Copy C For Payer
PAYER'S Federal identification number 57-0956006	RECIPIENT'S identification number 57-0658433	5 Fishing boat proceeds $	6 Medical and health care payments $
RECIPIENT'S name, address, and ZIP code TAYLOR TRUCKING CO. GREENWOOD SC 29649	7 Nonemployee compensation $ 138601.24	8 Substitute payments in lieu of dividends or interest $	For Privacy Act and Paperwork Reduction Act Notice, see the 2005 General Instructions for Forms 1099, 1098, 5498, and W-2G.
	9 Payer made direct sales of $5,000 or more of consumer products to a buyer (recipient) for resale ☐	10 Crop insurance proceeds $	
	11	12	
Account number (see instructions) 2nd TIN not. ☐	13 Excess golden parachute payments $	14 Gross proceeds paid to an attorney $	
15a Section 409A deferrals $	15b Section 409A income $	16 State tax withheld $ $	17 State/Payer's state no.	18 State income $ $

Form 1099-MISC

39-1908647

Department of the Treasury - Internal Revenue Service

GREAT AMERICAN INSURANCE GROUP

TRUCKING PROGRAM

Great American Insurance Company
580 Walnut Street
Cincinnati, OH 45202
513.369.5000

Appalachian Underwriters, Inc.
P.O. Box 1017
Clinton TN 37717
888-376-9633

OCCUPATIONAL ACCIDENT INSURANCE POLICY-CERTIFICATE SCHEDULE OF BENEFITS
GREAT AMERICAN INSURANCE COMPANY

PLAINTIFF'S EXHIBIT
47 AB
8-3-10

Item 1:

Trust name:	Great American Insurance Trust
Eligible persons:	Scheduled owner-operators and scheduled drivers under contract to the participating motor carrier. Any owner-operator or driver over the age of 65 is ineligible.
Policy holder/trustee:	Provident Bank 1 East Fourth Street Cincinnati, OH 45202
Participating motor carrier:	Applachian Underwriters - Plan D P.O. Box 1017 Clinton TN 37717
Policy number:	OA6014871-00
Certificateholder:	Christopher Robrer 514 Poplar Springs Rd Chappells SC 29037
Certificate number:	OA6014871-00-0081
Authorized passenger:	Amanda Robrer
Effective date:	4/9/2004
Monthly premium:	$ 165
Anniversary/ Termination date:	6/01/2004 12:01 a.m. standard time at the address of the policy holder stated above

Item 2: **SCHEDULE OF BENEFITS : PLAN D**

DESCRIPTION OF BENEFITS	OCCUPATIONAL	NON-OCCUPATIONAL	PASSENGER
ACCIDENTAL DEATH (MAXIMUM) SURVIVOR'S BENEFIT (LUMP SUM) ACCIDENTAL DISMEMBERMENT INCLUDING PARALYSIS, AND SEVERE BURN BENEFITS INCURRAL PERIOD	$250,000 PRINCIPAL SUM ($50,000 +$1000 PER MONTH UP TO 200 MTHS) 104 WEEKS	$15,000 PRINCIPAL SUM ($500 PER MONTH UP TO 30 MTHS) 104 WEEKS	$50,000 PRINCIPAL SUM ($12,500+$500/MTH 25 MTHS) 104 WEEKS
ACCIDENTAL MEDICAL EXPENSE ACCIDENTAL DENTAL BENEFIT DEDUCTIBLE INCURRAL PERIOD RIDER LIMIT FOR: HERNIA OR HEMORRHOID OR OCCUPATIONAL DISEASE OR OCCUPATIONAL CUMULATIVE TRAUMA HERNIA OR HEMORRHOID MAX BENEFIT PERIOD	$1,000,000 MAXIMUM BENEFIT AMOUNT $1000 PER INJURY/$10,000 LIFETIME 0 104 WEEKS $7,500 PER ACCIDENT OR INJURY SUBJECT TO A $15,000 LIFETIME MAXIMUM 10 WEEKS	$10,000 MAXIMUM BENEFIT AMOUNT NOT COVERED 0 104 WEEKS NOT COVERED	$50,000 MAX BENEFIT NOT COVERED $100 104 WEEKS NOT COVERED
TEMPORARY TOTAL DISABILITY WAITING PERIOD DURATION-MAXIMUM BENEFIT PERIOD RIDER LIMIT FOR: HERNIA OR HEMORRHOID OR OCCUPATIONAL DISEASE OR OCCUPATIONAL CUMULATIVE TRAUMA HERNIA OR HEMORRHOID MAX BENEFIT PERIOD	$700 WEEKLY MAXIMUM 7 DAYS 104 WEEKS 10 WEEKS	NOT COVERED	NOT COVERED
CONTINUOUS TOTAL DISABILITY WAITING PERIOD	$700 WEEKLY MAXIMUM 104 WEEKS	NOT COVERED	NOT COVERED
POLICY AGGREGATE AND COMBINED SINGLE LIMIT ANY ONE ACCIDENT	$1,000,000		

Item 3: The coverage provided by this policy is limited and is subject to certain conditions. Please read the policy carefully. This policy does not provide workers compensation coverage nor provide coverage for sickness.

Item 4: Please report claims to 1-800-643-7882

Item 5: The following forms are made a part of this policy:

F.32161 (5-01)

Workforce Outsourcing, Inc.

STAFFING VENDOR AGREEMENT

IT IS HEREBY AGREED by and between STAFFING FIRM ("STAFFING FIRM"), Workforce Outsourcing, Inc. and Senn Freight Lines, Inc. ("CLIENT").

WHEREAS, STAFFING FIRM is engaged in the business of assigning its employees to perform services for clients, and providing related management and human resource services; and

WHEREAS, CLIENT desires to engage STAFFING FIRM to provide such services;

NOW, THEREFORE, in consideration of the promises, and of the mutual covenants hereinafter set forth, and intending to be legally bound hereby, the parties hereto agree as follows:

DEFINITIONS

1. For purposes of this Agreement, "CLIENT" refers to and includes the entity named above and its parents, subsidiaries, affiliates, and successors. This includes CLIENT's facilities located at: 260 Highway 24-121, Newberry, SC, 29108.

2. For purposes of this Agreement, "STAFFING FIRM" refers to Workforce Outsourcing, Inc. and means its parents, subsidiaries, affiliates, and successors.

DUTIES OF STAFFING FIRM

3. STAFFING FIRM shall provide to CLIENT the services of its employees ("Assigned Employees") as requested by CLIENT. CLIENT shall use the services of STAFFING FIRM as a provider of Assigned Employees for the job titles set forth on Exhibit A for CLIENT. STAFFING FIRM shall manage the provision of services to CLIENT in accordance with the provisions of this Agreement.

4. Responsibilities of STAFFING FIRM: STAFFING FIRM agrees to assume full responsibility for paying, withholding, and transmitting payroll taxes; making unemployment contributions; and handling unemployment and workers' compensation claims involving Assigned Employees with respect to compensation that STAFFING FIRM has agreed to pay. Assigned Employees shall not be entitled to holidays, vacations, disability, insurance, pensions or retirement plans, or any other benefits offered or provided by CLIENT to its direct employees. STAFFING FIRM shall require all Assigned Employees to sign an agreement, annexed hereto as Exhibit B, acknowledging their understanding that they are not entitled to CLIENT benefits offered to its direct employees and waiving any right that may be deemed to exist or that may come into existence with respect to such benefits. STAFFING FIRM may at its own discretion outsource certain functions of the administration, including but not limited to payroll processing, workers compensation insurance, payroll taxes, and may designate an alternative employer of record.

5. Selection and Background Checks: STAFFING FIRM shall recruit, interview, test, screen, and ensure compliance with legally required pre-employment obligations for all Assigned Employees to be assigned to CLIENT's facilities prior to their assignment at CLIENT.

6. Other Background Checks: Possible other checks include criminal conviction record, education, drug testing, credit searches, as requested by client, etc. Price schedule for these background checks is found under Exhibit C.

7. Reports: STAFFING FIRM shall produce such reports as CLIENT may reasonably request pertaining to Assigned Employees. STAFFING FIRM shall furnish to CLIENT any other reports in such formats and at such intervals as CLIENT may reasonably request.

DUTIES OF CLIENT

8. Payment for Services:

a. STAFFING FIRM will invoice CLIENT for services provided in accordance with this Agreement on a weekly basis. Payment shall be due upon receipt of the invoice, not less than three days prior to payroll check date. Payment must be made by cashiers check, wire transfer or ACH. Invoices shall be accompanied by the pertinent timesheets. CLIENT's signature on STAFFING FIRM's timesheets certifies that the hours shown are correct and that the work was performed to CLIENT's satisfaction and authorizes STAFFING FIRM to bill CLIENT for the hours worked by the named Assigned Employee.

b. STAFFING FIRM's bill rates by job categories are attached hereto as Exhibit A, which is incorporated by reference herein. In the event a portion of any invoice is disputed, the undisputed portion shall be paid. CLIENT acknowledges and agrees that in the event an Assigned Employee works more than forty (40) hours in any work week or eight (8) hours in any day for CLIENT, that Assigned Employee is entitled to overtime compensation as provided by law and CLIENT agrees to an increase in the bill rate to reflect such additional compensation plus applicable markup.

c. CLIENT agrees to pay Net Upon Receipt of invoice not less than three days prior to payroll, and to pay late charges on any unpaid balances after 30 days from the date of receipt at the rate of 1.5 % per month (Annual Percentage Rate of 18%) or the maximum legal rate, whichever is higher. CLIENT agrees that services will be suspended if any outstanding invoices are unpaid.

CLIENT INITIALS

1

PLAINTIFF'S EXHIBIT

0208

9. Conversion Fees:
STAFFING FIRM shall waive its right or claim to any placement fee, conversion fee, or liquidated damages in the event CLIENT hires directly on to its own payroll or engages as an independent contractor any Assigned Employee at any time after such Assigned Employee has worked at CLIENT's facility for at least 520 hours in any one calendar year, with no break in service of more than 40 hours, provided that CLIENT has paid to STAFFING FIRM all invoiced amounts for such Assigned Employee. In the event that CLIENT hires or engages as an independent contractor any Assigned Employee prior to such 520 hour period, CLIENT shall pay to STAFFING FIRM a liquidated damage amount equal to the difference in the employee's bill rate and pay rate times the difference of 520 hours minus the number of hours the employee has worked. No other conversion fee applies.

10. ~~No Staff Hires: CLIENT and STAFFING FIRM agree not to directly or indirectly employ or engage as an independent contractor any staff employee of the other party during the term of this Agreement and for a period of one hundred and eighty (180) days thereafter without the prior written consent of the other party. Any party violating this paragraph shall pay to the other party a fee in the amount of 50% of the employee's annualized compensation.~~ VOID

11. Limitations:
a. CLIENT agrees that it will not entrust Assigned Employees with unattended premises, cash, checks, keys, credit cards, merchandise, confidential or trade secret information, negotiable instruments, or other valuables without the express prior written permission of STAFFING FIRM and then only under STAFFING FIRM's direct supervision and control.

b. CLIENT will not request or permit any Assigned Employee to use any vehicle, regardless of ownership, in connection with the performance of services for CLIENT.

GUARANTEE OF RATES
12. STAFFING FIRM guarantees the bill rates as set forth in Exhibit A through twelve (12) month from the date of this agreement, unless there is an increase in payroll taxes or workers compensation insurance rates. The parties agree to review rates in six (6) months and adjust rates no later than seven (7) months unless the parties agree otherwise in order to facilitate recruitment and retention of Assigned Employees.

INDEPENDENT CONTRACTOR
13. The services which STAFFING FIRM shall render under this Agreement shall be as an independent contractor with respect to each other and to CLIENT. Nothing contained in this Agreement shall be construed to create the relationship of principal and agent, or employer and employee, between STAFFING FIRM and CLIENT.

14. STAFFING FIRM shall provide workers' compensation insurance coverage for Assigned Employees. The parties agree to immediately notify each other of any injury or accidents or any claim for workers' compensation benefits involving Assigned Employees assigned to CLIENT's facility.

OSHA COMPLIANCE
15. Because CLIENT controls the facilities in which Assigned Employees work, it is agreed that CLIENT is primarily responsible for compliance with the Occupational Safety and Health Act and comparable state laws and regulations thereunder, to the extent those laws apply to Assigned Employees assigned to CLIENT's facility, except as may be otherwise agreed in writing signed by the parties hereto. Any such agreement shall be included as an addendum to this Agreement.

EEO COMPLIANCE
16. CLIENT and STAFFING FIRM affirm and agree that they are equal employment opportunity employers and are in full compliance with any and all applicable anti-discrimination laws, rules, and regulations. CLIENT and STAFFING FIRM agree not to harass, discriminate against, or retaliate against any employee of the other because of his or her race, national origin, age, sex, religion, disability, marital status, or other category protected by law, nor shall either party cause or request the other party to engage in such discrimination, harassment, or retaliation. In the event of any complaint of unlawful discrimination, harassment, or retaliation by any Assigned Employee, CLIENT and STAFFING FIRM agree to cooperate in the prompt investigation and resolution of such complaint.

FMLA COMPLIANCE
17. CLIENT and STAFFING FIRM agree that for purposes of all statutory and regulatory requirements for employee leaves of absence, including the Family and Medical Leave Act and any similar state or local law, CLIENT and STAFFING FIRM shall cooperate in compliance with any such requirements.

CLIENT INITIALS

RIGHT TO AUDIT AND CONFIRM COMPLIANCE
18. STAFFING FIRM reserves the right to audit and confirm compliance of client without any notice.

CONFIDENTIALITY
19. CLIENT's Confidential Information: STAFFING FIRM acknowledges that it or its Assigned Employees may be given access to or acquire information which is proprietary to or confidential to CLIENT or its affiliated companies and their clients and customers. Any and all such information obtained by STAFFING FIRM shall be deemed to be confidential and proprietary information. STAFFING FIRM agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purposes whatsoever other than the providing of services to CLIENT. STAFFING FIRM agrees to direct Assigned Employees to keep such information confidential, and to require Assigned Employees to enter into Confidentiality Agreements in the form annexed hereto as Exhibit D before being assigned to CLIENT.

20. STAFFING FIRM's Confidential Information: CLIENT acknowledges that during STAFFING FIRM's performance under this Agreement, CLIENT may be given access to or acquire Confidential Information of STAFFING FIRM (as defined below), all of which provides STAFFING FIRM with a competitive advantage and none of which is readily available. CLIENT agrees that during the term of this Agreement and any time thereafter it will not use or disclose to any person or company (except under the authority of STAFFING FIRM or if ordered to do so by a Court of competent jurisdiction) any Confidential Information obtained during the term of this Agreement for any reason or purpose. CLIENT also agrees that it will use due care and diligence to prevent any unauthorized use or disclosure of such information. As used herein, STAFFING FIRM's "Confidential Information" means: all information regarding STAFFING FIRM's Assigned and Staff Employees, including but not limited to their names, home addresses, telephone numbers, skills, qualifications, evaluations, availability, record of assignments, and related information.

ASSIGNMENT OF COPYRIGHTS AND PATENTS TO CLIENT
21. Any and all discoveries and/or inventions (which shall include improvements and modifications) relating to work performed by Assigned Employees, or relating to matters disclosed to Assigned Employees in connection with work to be performed, or suggested by such matters, whether or not patentable, which discoveries and/or inventions are made or conceived by Assigned Employees, solely or jointly with others, during the term of any assignment (regardless of whether conceived or developed during working hours) or during a period of one (1) year thereafter, shall be the property of CLIENT as "work made for hire" to the extent provided by sections 101 and 201(b) of the Copyright Act, 17 U.S.C. 101 *et seq.* and such discoveries and/or inventions shall be promptly disclosed to CLIENT. CLIENT shall have the right to file and prosecute, at its own expense, all patent applications, whether U.S. or foreign, on said discoveries and/or inventions. Assigned Employees shall, during any assignment with CLIENT or any time thereafter, provide to CLIENT all documents, information, and assistance requested for the filing or prosecution of any such patent application, for the preparation, prosecution, or defense of any legal action or application pertaining to such discoveries and/or inventions, and for the assignment or conveyance to CLIENT of all right, title, and interest in and to such discoveries and/or inventions, patent applications, and letters patent issuing thereon. All Assigned Employees shall sign an agreement, attached hereto as Exhibit E, confirming the provisions contained in this paragraph 21.

COOPERATION
22. The parties agree to cooperate fully and to provide assistance to the other party in the investigation and resolution of any complaints, claims, actions, or proceedings which may be brought by or involve any of the Assigned Employees.

TERM AND TERMINATION
23. a. This Agreement shall be for an initial term of twelve (12) months from the effective date of this Agreement, determined by the later date of signature of the parties. This Agreement shall be automatically renewed for successive one-year terms unless modified or terminated in accordance with the provisions of this Agreement. The parties agree to waive any notice prior to automatic renewal of this Agreement that may be required by state law.

b. This Agreement may be terminated by either party upon thirty (30) days' written notice to the other party. Such notice shall be personally delivered or sent by recognized overnight courier or by certified mail, return receipt requested, and shall be effective when received as follows:
As to STAFFING FIRM: As to CLIENT:

Workforce Outsourcing, Inc.
2230 West Chapman Avenue, 211
Orange, CA 92868

c. Either party may designate a different person to whom notices should be sent at any time by notifying the other party in writing in accordance with this Agreement.

d. Notwithstanding any other provision of this Agreement, in the event the other party declares or becomes bankrupt or insolvent, dissolves or discontinues operations, or fails to make any payments within the time periods specified in this Agreement, either party may terminate this agreement upon four (4) hours written notice.

24. Notwithstanding any other provision of this Agreement, if CLIENT terminates this Agreement or notifies STAFFING FIRM of its intent to terminate this Agreement, and CLIENT desires to have all or some of the Assigned Employees

RH
CLIENT INITIALS

continue to work at CLIENT's facilities. CLIENT shall pay for liquidated damages on each and every eligible employee of STAFFING FIRM as calculated in Paragraph 15 above.

MISCELLANEOUS

25. Survival of Certain Provisions: Those provisions of this Agreement which by their terms extend beyond the termination or non-renewal of this Agreement shall remain in full force and effect and survive such termination or non-renewal.

26. Amendments: No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by the parties.

27. Severability: Each provision of this Agreement shall be considered severable such that if any one provision or clause conflicts with existing or future applicable law, or may not be given full effect because of such law, this shall not affect any other provision which can be given effect without the conflicting provision or clause.

28. Complete Agreement: This Agreement, the exhibits attached hereto, and the provisions on the STAFFING FIRM Timesheet Agreement, contain the entire understanding between the parties hereto, and supersede all prior agreements and understandings relating to the subject matter hereof.

29. Successors and Assigns: The provisions of this Agreement shall inure to the benefit of and be binding upon the parties and their respective representatives, successors, and assigns.

30. Headings: The headings of the paragraphs of this Agreement are inserted solely for the convenience of reference. They shall in no way define, limit, extend, or aid in the construction of the scope, extent, or intent of this Agreement.

31. Waiver: The failure of a party to enforce the provisions of this Agreement shall not be construed as a waiver of any provision or the right of such party thereafter to enforce each and every provision of this Agreement.

32. Transferability: CLIENT shall not transfer or assign this Agreement without the written consent of STAFFING FIRM.

33. Ambiguities: The rule of construction that ambiguities in an agreement are to be construed against the drafter shall not be invoked or applied in any dispute regarding the meaning or interpretation of any provision of this Agreement.

REMEDIES

34. Arbitration

a. Any controversy or dispute between the parties, whether arising out of or in connection with this Agreement or otherwise, shall be resolved in an arbitration under the Federal Arbitration Act and before the American Arbitration Association (AAA) in accordance with AAA's then obtaining Commercial Arbitration Rules at the AAA location closest to STAFFING FIRM's office. The administrative cost of the arbitration and the arbitrator's fee shall be shared equally by the parties.

b. In such arbitration, the arbitrator shall have no authority or power to amend, modify, or in any other way change any of the terms of this Agreement. All decisions of such arbitrator shall be final and binding upon both parties. The prevailing party in such Arbitration as determined by the arbitrator in his or her decision shall be awarded an amount equal to its reasonable attorney's fees incurred in connection with such arbitration, in addition to what other relief may be awarded.

c. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

35. Consent to Injunctive Relief: CLIENT acknowledges that STAFFING FIRM will suffer irreparable damage in the event CLIENT violates or threatens to violate the Agreement, and agrees that in the event of such violation or threatened violation, STAFFING FIRM shall be entitled, in addition to its other remedies, to injunctive relief to restrain such violation(s) by CLIENT and others acting in concert or participation with CLIENT, without the necessity of an injunction bond, pending the outcome of the arbitration as provided in paragraph 34 above and to recover its reasonable attorney's fees incurred in connection with any such injunction proceeding.

36. Indemnifications:

a. To the extent permitted by law, and except for claims, losses, and liabilities expressly disclaimed by STAFFING FIRM in paragraph 37 below, STAFFING FIRM agrees to defend, indemnify, and hold CLIENT harmless of and from any and all claims or losses that CLIENT actually incurs (including reasonable attorney's fees) proximately caused by the fault, negligence, gross negligence, or recklessness of STAFFING FIRM, or STAFFING FIRM's officers, employees, or authorized agents, or which arise from STAFFING FIRM's breach of this Agreement.

b. To the extent permitted by law, CLIENT agrees to defend, indemnify, and hold STAFFING FIRM harmless against any and all claims, losses, and liabilities that STAFFING FIRM incurs (including reasonable attorney's fees agreed upon by CLIENT) that are proximately caused by the fault, negligence, gross negligence, or recklessness of CLIENT, or CLIENT's officers, employees, or authorized agents, that arise from CLIENT's breach of this Agreement that arise from risks inherent in CLIENT's business, or that are expressly disclaimed by STAFFING FIRM in paragraph 37.

c. The parties agree that this paragraph 36 is the complete agreement between them with respect to any possible

CLIENT INITIALS

Workforce Outsourcing, Inc.

Indemnification claim, and giving their right to assert any position in law independent or contributory claim against the other.

d. As a condition precedent to indemnification hereunder, the parties each agree to inform one another within 3 business days of its receipt of any claim, demand, or notice for which indemnification hereunder may be sought, and to cooperate in the investigation and defense of any such claim, demand, or notice.

37. Disclaimer of STAFFING FIRM Liability: STAFFING FIRM expressly disclaims liability for any claim, loss or liability of any kind whatsoever resulting from:

a. CLIENT's failure to supervise, control, or safeguard premises, processes, or systems of, without STAFFING FIRM's express prior written approval, entrusting Assigned Employees with unsupervised passes, keys, access keys, credit cards, merchandise, confidential or proprietary information, negotiable instruments, or other valuables.

b. CLIENT requesting or permitting Assigned Employees to use any vehicle, regardless of ownership, in connection with the performance of services for CLIENT unless STAFFING FIRM has given its express prior approval in writing.

c. Claims by Assigned Employees for benefits, damages, conditions, or penalties under any employee benefit plan, fringe benefit plan, or personnel policy sponsored and maintained by CLIENT, whether or not CLIENT's plans include Assigned Employees from coverage.

d. Promises of increased compensation made by CLIENT to Assigned Employees.

e. Claims by any person relating to any CLIENT product or service.

f. CLIENT's making unauthorized changes in the Assigned Employee's job duties or tasks without STAFFING FIRM's prior written approval.

g. Claims by any person based on allegations that CLIENT's business activities damaged the environment.

h. The conduct of CLIENT's officers, employees, and agents.

i. Failure by CLIENT to provide Assigned Employees with a safe workplace or to provide information, training, and safety equipment with respect to any hazardous substance or conditions to which they may be exposed at the worksite, whether or not required by law.

j. Acts or omissions of any Assigned Employee in the furtherance of CLIENT's particular business, except for those that could occur in any assignment for any type of work and except to the extent that such claim, loss, or liability is caused by STAFFING FIRM's failure to properly perform its screening, selection, background, or other contractual duties with respect to the Assigned Employee.

k. Claims for special, indirect, consequential, punitive, or lost profit damages.

38. Choice of Law: This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to any conflicts of law principles thereof.

IN WITNESS WHEREOF, this Agreement has been duly executed by STAFFING FIRM and CLIENT on the date set forth below.

CLIENT

Signature

Printed Name

Title

3-26-04

Date

STAFFING FIRM

Signature

Jeff Ligi

Printed Name

Title

3-26-04

Date

CLIENT initials

ACORD CERTIFICATE OF LIABILITY INSURANCE

REVISED

DATE (MM/DD/YY) 12/30/2003

PRODUCER

Serial # B2671

TYLER UNDERWRITING SERVICES, INC.
330 ROBERTS STREET
EAST HARTFORD, CT 06108

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED

VANGUARD SOUTHEAST, INC.
9100 KEYSTONE CROSSING
SUITE 600
INDIANAPOLIS, IN 46240

INSURERS AFFORDING COVERAGE

INSURER A: TRAVELERS INDEMNITY COMPANY OF ILLINOIS
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY				EACH OCCURRENCE	$
	COMMERCIAL GENERAL LIABILITY				FIRE DAMAGE (Any one fire)	$
	CLAIMS MADE OCCUR				MED EXP (Any one person)	$
					PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
	POLICY PRO-JECT LOC				PRODUCTS - COMP/OP AGG	$
	AUTOMOBILE LIABILITY				COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO				BODILY INJURY (Per person)	$
	ALL OWNED AUTOS				BODILY INJURY (Per accident)	$
	SCHEDULED AUTOS				PROPERTY DAMAGE (Per accident)	$
	HIRED AUTOS					
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS LIABILITY				EACH OCCURRENCE	$
	OCCUR CLAIMS MADE				AGGREGATE	$
						$
	DEDUCTIBLE					$
	RETENTION $					$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	TRJ-UB-100D4967-03	03/01/03	03/01/04	X WC STATU-TORY LIMITS / OTH-ER	
					E.L. EACH ACCIDENT	$ 1,000,000
					E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
					E.L. DISEASE - POLICY LIMIT	$ 1,000,000
	OTHER					

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

SENN FREIGHT LINES IS INCLUDED AS ALTERNATE EMPLOYER

FILED
NEWBERRY COUNTY
2009 OCT 14 P 4:2
JACKIE S. BOWERS
CLERK OF COURT

CERTIFICATE HOLDER

GEORGIA PACIFIC CORP.
55 PARK PLACE, 12TH FLOOR
ATLANTA, GA 30303
ATTN: DOULIS S. WALLS
FAX: 404-654-1016

ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

PLAINTIFF'S EXHIBIT 17
11
8-3-10

ACORD 25-S (7/97)

© ACORD CORPORATION 1988

ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YY) 04/13/2004

PRODUCER
Jason Scrimpsher Insurance
5101 New York Avenue
Cypress, CA 90630

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURERS AFFORDING COVERAGE

INSURED
Workforce Outsourcing, Inc.
2230 W. Chapman Avenue, Suite 211
Orange, CA 92868

INSURER A: The Hartford
INSURER B:
INSURER C:
INSURER D:
INSURER E:

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
	GENERAL LIABILITY COMMERCIAL GENERAL LIABILITY CLAIMS MADE / OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY / PRO-JECT / LOC				EACH OCCURRENCE $ FIRE DAMAGE (Any one fire) $ MED EXP (Any one person) $ PERSONAL & ADV INJURY $ GENERAL AGGREGATE $ PRODUCTS - COMP/OP AGG $
	AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) $ BODILY INJURY (Per person) $ BODILY INJURY (Per accident) $ PROPERTY DAMAGE (Per accident) $
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT $ OTHER THAN AUTO ONLY: EA ACC $ AGG $
	EXCESS LIABILITY OCCUR / CLAIMS MADE DEDUCTIBLE RETENTION $				EACH OCCURRENCE $ AGGREGATE $
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	0488B13304	02/01/2004	02/01/05	WC STATU-TORY LIMITS / OTH-ER E.L. EACH ACCIDENT $ E.L. DISEASE - EA EMPLOYEE $ E.L. DISEASE - POLICY LIMIT $
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS

*10 Day notice of cancellation applies. Workforce Outsourcing, Inc. provides staff to Senn Freight Lines, located at PO Box 1191 Newberry, SC 29103.

FILED
2004 APR 14 PM 12:11
JACQUES S. BOWERS
CLERK OF COURT
NEWBERRY COUNTY, SC

CERTIFICATE HOLDER | ADDITIONAL INSURED; INSURER LETTER:

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 10 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25-S (7/97)

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PLAINTIFF'S EXHIBIT
12 AD
5-2-10

ACORD™ CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY) 02/07/05

PRODUCER
Providence Property & Casualty Insurance Company
12300 Ford Rd Ste 400
Dallas, TX 75234

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED
Certified H.R. Services Co. ETAL
5181 NW 21st Ave #350
Ft. Lauderdale, FL 33309
UCF
Sana Freight Lines, Inc

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Providence Property & Casualty Insurance Company	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS	
	GENERAL LIABILITY					
	COMMERCIAL GENERAL LIABILITY				EACH OCCURRENCE	$
	CLAIMS MADE ... OCCUR				DAMAGE TO RENTED PREMISES (Ea occurrence)	$
					MED EXP (Any one person)	$
					PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:				GENERAL AGGREGATE	$
	POLICY ... PRO-JECT ... LOC				PRODUCTS - COMP/OP AGG	$
	AUTOMOBILE LIABILITY					
	ANY AUTO				COMBINED SINGLE LIMIT (Ea accident)	$
	ALL OWNED AUTOS				BODILY INJURY (Per person)	$
	SCHEDULED AUTOS				BODILY INJURY (Per accident)	$
	HIRED AUTOS				PROPERTY DAMAGE (Per accident)	$
	NON-OWNED AUTOS					
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT	$
	ANY AUTO				OTHER THAN AUTO ONLY: EA ACC	$
					AGG	$
	EXCESS/UMBRELLA LIABILITY				EACH OCCURRENCE	$
	OCCUR ... CLAIMS MADE				AGGREGATE	$
	DEDUCTIBLE					$
	RETENTION $					$
						$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				X WC STATU-TORY LIMITS ... OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? NO (Mandatory in NH)	WC0108089	12/1/2004	12/1/2005	E.L. EACH ACCIDENT	$ 1,000,000
	If yes, describe under SPECIAL PROVISIONS below				E.L. DISEASE - EA EMPLOYEE	$ 1,000,000
	OTHER				E.L. DISEASE - POLICY LIMIT	$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Workers' compensation coverage is provided by GAIT act to all employees of Certified H.R. Services Co. ETAL & Sana Freight Lines, Inc. Any employees working under the directive of the mentioned companies are covered by the referenced policy effective 12/01/04.

FILED
NEWBERRY COUNTY
2005 OCT 14 P 1:
JACKIE S. BOWEN
CLERK OF COURT

CERTIFICATE HOLDER

Georgia Pacific Corp.
Dolly S Walls
133 Peachtree St NE
Atlanta, GA 30303

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

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PLAINTIFF'S EXHIBIT 13 5.3.10

ST PAUL TRAVELERS

ST PAUL TRAVELERS - AMD
P.O. 30X 3556
ORLANDO FL 32802-3556

DEFENDANT'S EXHIBIT
1830

PREMIUM NOTICE

ASSIGNED RISK—WORKERS COMPENSATION INSURANCE

Date of Bill: 05-05-05
Policy Number: 7803A476

SENN FREIGHT LINES, INC.
P.O. BOX 1191
NEWBERRY SC 29108

DIRECT INQUIRIES TO:
ST PAUL TRAVELERS - AMD
P.O. BOX 3556
ORLANDO FL 32802-3556

1-800-443-4404
(FL) 1-800-247-7218

Amount Due	$5436
Date Due	07-10-05

PRODUCER: ADAMS EADDY & ASSOC

TRANSACTION DESCRIPTION	AMOUNT
AMOUNT NEEDED FOR RENEWAL:	$ 5436

If we do not receive the required deposit premium by the due date, your policy will expire on that date. If the required deposit is received by us within 60 days after its due date, your renewal policy will be effective the day after the U.S. postmark appearing on the renewal deposit envelope. Monies received for deposit more than 60 days after the due date will be returned and the policy will not be reinstated.

TO ENSURE YOUR PAYMENT IS PROPERLY APPLIED, detach the return payment stub and mail to the return address below.

RETURN PAYMENT STUB

Payment From:

SENN FREIGHT LINES, INC.

Make checks payable to ST PAUL TRAVELERS - AMD and write your policy number on the check.

Policy Number: 7803A476

ST PAUL TRAVELERS D
P.O. BOX 96359
CHICAGO IL 60693-6359

DATE DUE
07-10-05
AMOUNT DUE
$5436
AMOUNT ENCLOSED
5436.00

1137383033013437361911111119111111000000000005436000009635900000000003

870 2433N SC

0216

ST PAUL TRAVELERS

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY

QUOTE PROFILE

POLICY NUMBER: (6JUB-7803A47-6-05)

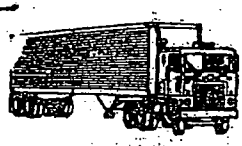
INSURER: TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA

INSURED'S NAME: SENN FREIGHT LINES, INC. 13579-SC

CLASSIFICATION	CODE	PREMIUM BASIS ESTIMATED TOTAL ANNUAL REMUNERATION	RATES PER $100 OF REMUNERATION	ESTIMATED ANNUAL PREMIUM
LOCATION 001 01				
FEIN 057095600 ENTITY CD 001				
SENN FREIGHT LINES, INC.				
2699 HIGHWAY 34-121 NEWBERRY, SC 29108				
TRUCKING: LOCAL HAULING ONLY- ALL EMPLOYEES & DRIVERS	7228	IF ANY	12.25	
TRUCKING: LONG DISTANCE HAULING-ALL EMPLOYEES & DRIVERS	7229	IF ANY	15.06	
WAREHOUSING NOC	8292	33462	6.55	2192
CLERICAL OFFICE EMPLOYEES NOC	8810	525697	.52	2734

EXPERIENCE MODIFICATION: NONE MODIFIED PREMIUM	NONE
TOTAL ESTIMATED ANNUAL STANDARD PREMIUM	4926
EXPENSE CONSTANT(0900)	230
TERRORISM RISK INS ACT 2002 (9740)	168
DOMESTIC TERRORISM, EQ & CAT-DTEC(9741)	112
TOTAL ESTIMATED PREMIUM	5436
DEPOSIT AMOUNT DUE	5436

DATE OF ISSUE: 05-05-05 WC ST ASSIGN: SC SCHEDULE NO: 1 OF 1 ~~0217~~



SENN FREIGHT LINES, INC.
PO BOX 1191
NEWBERRY, SC 29108
PH. (803) 321-1611

48644

67-160/532

DATE 7-8-05

PAY TO THE ORDER OF St. Paul Travelers

$ 5436.00

five thousand, four hundred, thirty six and no/100 DOLLARS

BB&T
Branch Banking and Trust Company

FOR Renewal - Policy # 7803A476

Johnny Senn

HC#1023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co. ..... Respondent,

v.

Senn Freight Lines, Inc. ..... Appellants

NOTICE OF APPEAL

Travelers Property Casualty Company of America appeals the Order of the Honorable Eugene Griffith dated March 4, 2011. Appellant received written notice of entry of the order March 11, 2011.

April 11, 2011

Byron P. Roberts, Esquire
Rebecca Anne Roberts, Esquire
ROBERTS LAW GROUP, LLC
P.O. Box 670
Chapin, SC 29036
803-932-9282

Attorneys for Appellants

Other Counsel of Record:
W. Chad Jenkins
Pope & Hudgens, PA
PO Box 190
Newberry, SC 29108

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co.....Respondent,

v.

Senn Freight Lines, Inc.....Appellant

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Senn Freight Lines, Inc. by depositing a copy of it in the United States Mail, postage prepaid, on April 11, 2011, addressed to Mr. W. Chadwick Jenkins, Esquire, Pope & Hudgens, PA, PO Box 190, Newberry, SC 29108.

April 11, 2011

Byron P. Roberts, Esquire
Rebecca Anne Roberts, Esquire
ROBERTS LAW GROUP, LLC
P.O. Box 670
Chapin, SC 29036
803-932-9282

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
No. 2011189987

APPEAL FROM NEWBERRY COUNTY
In The Court of Common Pleas

Eugene C. Griffith, Circuit Court Judge

Case No. 2008-CP-36-417

Travelers Property Casualty Co., ... Appellant

v.

Senn Freight Lines, Inc., ... Respondent

CERTIFICATE OF COMPLIANCE

The undersigned certifies that this Record on Appeal complies with Rule 210(g), SCACR.

M. Dawes Cooke, Jr.
John W. Fletcher
BARNWELL WHALEY PATTERSON & HELMS, LLC
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P. O. Drawer H
Charleston, SC 29402
Attorneys for Appellant

May 5, 2012