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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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

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

v.

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

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**FINAL REPLY BRIEF OF APPELLANT SOUTH CAROLINA UNINSURED  
EMPLOYERS' FUND TO BRIEF OF TRAVELERS PROPERTY CASUALTY CO. OF  
AMERICA**

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## ARGUMENTS IN REPLY

The Appellant, pursuant to the provisions of Rule 208 (a) (3), SCACR, replies to the Respondent Travelers Property Casualty Company of America's (Travelers) brief as follows:

1. Travelers simply seeks to evade meaningful review of its policy cancellation.

The brief of Respondent Travelers is solely directed at having this Court prevent any meaningful review of its decision to cancel its policy. First, that Respondent argues that the UEF is somehow bound by the administrative appeal provisions of the insurance policy between Travelers and the direct employer. (Initial brief at pages 12-20). Of course, the UEF was not a party to that insurance contract and Travelers would never allow a non-party to participate in an administrative appeal. Travelers then contends that the UEF is bound by the provisions of a show cause order (finding there was no coverage) to which it was not a party, had no notice, and could not appeal. (Id.). Basically, Travelers wants to shift liability for this claim to the UEF while denying the UEF any avenue or means to contest whether or not the policy cancellation by Travelers was itself proper. Travelers seeks this Court's endorsement of that evasion of review, but adopting the reasoning of Travelers would impair the overall effectiveness of the Workers Compensation Act and be contrary to the purpose of the Act.

The purpose of the Act is to protect injured employees by providing insurance coverage for work injuries. James v. Anne's Inc., 390 S.C. 188, 200, 701 S.E.2d 730 (2010) (Act means to provide benefits to injured employee to keep society at large from having to bear the cost of work injuries rather than the employer). That purpose is furthered by the requirement of mandatory insurance for employers. South Carolina Code Section 42-5-10. By force of statute this mandatory insurance is expressly construed as a direct promise from the insurance company of the employer to the injured worker. Section 42-5-80. Unlike an insurance carrier, the UEF has no such direct

liability to a claimant as its statutory obligations are contingent and derivative. This is shown by the enabling legislation for the UEF which also provides for lien rights of the UEF against an uninsured employer. Section 42-7-200. Assuming that the purpose of the Act remains the protection of injured workers by means of mandatory insurance, then logically, in a situation such as the case at bar, the UEF (and the Claimant as well) should retain the ability to somehow realistically contest a policy cancellation. The Full Commission simply erred in ruling that the UEF was precluded from raising the coverage issue, especially in light of there being no statutory, regulatory or precedential basis for that ruling. The whole structure of the Act is built to ensure the availability of coverage and the decision of the Full Commission undermines that salutary goal.

The two issue rule argument raised by Travelers is also unavailing. The UEF absolutely did argue that it was not bound by the administrative appeal provisions of a policy to which it was not a party. At page 5 of its reply brief to Travelers before the Full Commission the UEF argued:

**“Arguments A, B and C above are also applicable to the issue (as an alternate sustaining ground) of whether the direct employer’s alleged failure to exhaust administrative remedies against the carrier binds the UEF. (See e.g. Order at page 26 (No. 44) and brief at pages 26-29). The whole issue of whether or not the UEF is bound as to matters of coverage by the actions of the employer in this regard is even more clear and stark than the alleged preclusive effect of the show cause order. The UEF was not a party to the insurance contract and would never be privy to any private actions, correspondence or notices between the carrier and employer dealing with contesting a policy cancellation administratively. To contend that it is bound by the failure of the employer in fashion is simply not justified by logic or compelled by any statute or law.”**

To contend, as Travelers does at page 14, that the UEF did not address this issue at all is both incorrect and misleading. Farmer v. CAGC Ins. Co., 424 S.C. 579, 819 S.E.2d 142 (Ct. App. 2018) (finding application of two issue rule inapplicable).

Further, the appeal of the UEF is based upon the totality of the improper cancellation of the policy, which would necessarily include this issue as part of the overall contention that the cancellation by Travelers was improper. The whole import of Traveler’s brief is to have this Court

permit it to shield its policy cancellation decisions from meaningful review. This Court could, of course, rule that Travelers is correct and that the UEF (and the Claimant) is simply precluded from ever contesting coverage issues. Put bluntly, the only beneficiaries of such a ruling would be those insurance companies that wrongfully cancel coverage. It would allow them to hide their bad behavior. That would, however, be a result at odds with the purpose and structure of the Act. Also, such a result would be inconsistent with the legislation creating the UEF and the Commission's own regulations dealing with the UEF.

2. Supplemental Rule 12 and the WCIP are misconstrued by Travelers.

Travelers argues that the provisions of the WCIP, specifically Supplemental Rule 12, allows it to cancel coverage for non-payment of a prior year's final audit premium contrary to this Court's holding in Crews v. W.R. Crews, Inc., 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010). (Initial brief at pages 21-28). The provision relied upon by Travelers simply does not do what Travelers argues it does. At page 26 of its initial brief Travelers lays out the provisions of the rule that purportedly allows it to cancel current coverage for non-payment of the final audit premium for a prior year's coverage term. No where is that specifically provided for in the rule cited and such a rule would, in any event, be in direct conflict with this Court's decision in Crews. Travelers' own witness admitted that the WCIP did not specifically provide for cancellation in this context. (Belin's deposition at pages 41-44) (R. pp. 371-372). The premium and cancellation provisions of the actual policy issued by Travelers (Part Five and Part Six D) (R. pp. 423-424) are devoid of any language that would permit Travelers to cancel current coverage on that basis. Ultimately, it is up to this Court to determine, as a matter of South Carolina workers' compensation insurance law, whether or not Travelers can, consistent with the Crews decision and the manifest purpose of the Act to provide coverage to injured workers, cancel current coverage for a payment default on

the final audit premium for a previous year's coverage. In this regard, it is important to note that Travelers' policy specifically provides that it must be construed and applied according to this law of this state, which includes the Crews decision.

**CONCLUSION**

For the reasons stated above, or as previously made in the Appellant's final brief or to be made at oral argument, the Appellant requests that this Court reverse the order of the Commission and find that the Respondent Travelers improperly cancelled coverage and that the UEF was not precluded from raising that issue.

Respectfully submitted,

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The undersigned counsel for the Appellant certifies that this final brief complies with Rule 211(b), SCACR.

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