

TAYLOR AND WALKER P.C.

PRESS RELEASE

Taylor and Walker attorneys win a significant victory for workers' compensation insurers.

November 18, 2008

Norfolk - Taylor and Walker, P.C. workers' compensation and appellate attorneys successfully argued before the Supreme Court of Virginia with respect to the issue of whether an insurer must provide notice of nonrenewal to the Virginia Workers' Compensation Commission under Code § 65.2-804(B), when the insured does not renew their insurance policy. Section 65.2-804(B) requires that an insurer provide notice to the Virginia Workers' Compensation Commission when the policy is "nonrenewed by the insurer." If the insurer does not provide notice of such nonrenewal, then the Commission has authority to continue coverage until such notice is received by the Commission.

The issue was before the Supreme Court in two consolidated appeals. In Leslie C. Ely v. Graycon, Inc., Travelers Property Casualty Company of America informed its insured, Graycon, Inc., that its policy was about to expire. Travelers offered to Graycon the opportunity to renew its policy through payment of the new term's premium. Graycon did not renew the policy and the policy expired. Subsequently, Leslie C. Ely, an employee of Graycon, was injured while in the course and scope of his employment while building a home, and subsequently filed a workers' compensation claim against Graycon, and the general contractor of the site, J.F. Schoch, as statutory employer. The matter was heard before a deputy commissioner in Virginia Beach, who found that Travelers did not provide coverage to Graycon, Inc. after the policy expired.

In Matthew L. Bailey v. Willie M. Thomas Home Improvements, Travelers informed the insured, Willie M. Thomas Home Improvements, that its policy was set to expire, and that the policy could be renewed contingent on payment of a renewal premium. The insured did not renew the policy, and the policy term ended. Following the expiration of the policy, an employee of the insured, Matthew Bailey, suffered a compensable injury by accident. Bailey filed a workers' compensation claim, and a deputy commissioner in Richmond found that Travelers had failed to notify the Commission of the non-renewal of the workers' compensation policy, and therefore found that Travelers was the responsible carrier following the expiration of the policy.

The Virginia Workers' Compensation Commission, on appeal to the Full Commission, found that in both cases, Travelers had not complied with the provisions of § 65.2-804(B), by failing to provide notice to the Commission when the insured policies had expired.

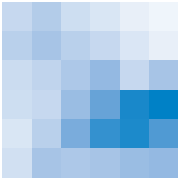
The cases were consolidated on appeal to the Court of Appeals of Virginia, and in an opinion issued February 6, 2007, a divided panel of the Court affirmed the Full Commission's decision, and found that Travelers had failed to provide notice to the Commission after the expiration of the policies. Travelers requested and was granted a rehearing en banc, and on June 5, 2007, an evenly divided Court vacated the prior Court of Appeal's Opinion, and affirmed the Full Commission's finding without an opinion.

Travelers petitioned the Supreme Court of Virginia and was granted an appeal. In a unanimous decision issued September 12, 2008, the Court held that the language of § 65.2-804(B) was not ambiguous. In considering the plain language of the statute, the Court held that Travelers was not required to comply with the notification provisions of the statute. The Court, citing the statute, stated,

An insurer must comply with the statutorily prescribed notification mandates if its policy

NORFOLK
1300 FIRST VIRGINIA TOWER
555 MAIN STREET
POST OFFICE BOX 3490
NORFOLK, VIRGINIA 23510
T 757 625-7300
F 757 625-1504

RICHMOND
6800 PARAGON PLACE
SUITE 626
RICHMOND, VIRGINIA 23230
T 804 673-0341
F 804 673-2001



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of insurance is ‘cancelled or nonrenewed by the insurer issuing such a policy.’ Code § 65.2-804 (B). Travelers offered to renew the policies but Graycon and Thomas Home Improvements did not pay the workers’ compensation and employers’ liability insurance premiums that were required in order to renew the policies. Graycon and Thomas Home Improvements voluntarily chose to allow their insurance policies to expire as contemplated by the specific terms of those policies. Thus, Graycon and Thomas Home Improvements, not Travelers, caused the policies of workers’ compensation and employers’ liability insurance at issue to expire.

Travelers Property Casualty Company of America v. Ely, et al, ___ Va. ___, ___ S.E.2d ___ (September 12, 2008). The Court held that Travelers was not required to comply with the notice provisions contained in Code § 65.2-804(B) because the insurance policies were not “nonrenewed by the insurer issuing such policies.” Thus, the Court held that the insurance policies were not in effect when Ely and Bailey were injured.

The victory before the Supreme Court of Virginia represented a group effort by multiple attorneys at the firm. William C. Walker, now retired, originally tried the cases before the deputy commissioners. After Mr. Walker’s retirement, Gerard E.W.Voyer assumed responsibility for he each case’s appeal, arguing before the Full Commission, before the three judge for the Court of Appeals’ panel, and before the Court of Appeal, on rehearing en banc. Audrey Marcello assisted in drafting the Court of Appeals’ brief, the Petition for Rehearing En Banc, and the Brief Upon Rehearing En Banc. Brian N. Casey petitioned the Supreme Court of Virginia for an appeal of the Court of Appeals’ decision, and argued the appeal before the Supreme Court of Virginia. Jizel M. Palmer was lead paralegal for both matters.

Travelers, and many other workers’ compensation carriers, had strictly interpreted the notice provisions of Code § 65.2-804, and thus did not give notice to the Commission when a policy had lapsed due to an insured’s nonrenewal of a policy. The Supreme Court’s ruling is a significant victory for workers’ compensation insurers. Had the Court found in favor of the employers, many carriers were at risk for compensable injuries that occurred after policies expired and were not renewed by the employer.

Taylor and Walker attorneys successfully represent insurers and employers in federal and state workers’ compensation cases throughout Virginia. Taylor and Walker has an extensive appellate practice, successfully arguing appeals in the Supreme Court of Virginia, Court of Appeals of Virginia, and the United States Court of Appeals for the Fourth Circuit on a wide variety of appellate issues.

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NORFOLK
1300 FIRST VIRGINIA TOWER
555 MAIN STREET
POST OFFICE BOX 3490
NORFOLK, VIRGINIA 23510
T 757 625-7300
F 757 625-1504

RICHMOND
6800 PARAGON PLACE
SUITE 626
RICHMOND, VIRGINIA 23230
T 804 673-0341
F 804 673-2001