

BEFORE THE INDUSTRIAL ACCIDENT BOARD  
OF THE STATE OF DELAWARE

QUENTIN SKINNER,	)	
	)	
Employee,	)	
	)	
v.	)	Hearing No. 1380681
	)	
JOE BARBUTES,	)	
	)	
Employers.	)	

**ORDER**

All of the parties involved in this case agree that Quentin Brad Skinner ("Claimant") was injured in a compensable industrial accident on January 31, 2012 and that benefits have been paid for Claimant's medical expenses and total disability benefits. The dispute involves whether there was actually valid worker's compensation insurance in place at the time of the industrial accident.

On August 22, 2012, the Board entertained an evidentiary hearing upon the request of First Comp, which is the servicing agent for Southern Insurance Company ("Southern"), which is the workers' compensation insurance carrier for Joe Barbutes dba Garrett Mechanical ("Garrett"). First Comp argues that it insured employees of Garrett, but that Claimant was working for Advanced Comfort Engineering ("ACE") at the time of his industrial accident and that it does not insure ACE's employees. First Comp argues that Mr. Barbutes, who owns both companies, fraudulently filed the claim under Garrett's insurance policy because he had canceled the insurance policy for ACE and that both entities need separate policies. Furthermore, First

Comp argues that it paid benefits in the amount of \$10,220.30 to Claimant related to the industrial accident based on fraudulent information that Mr. Barbutes provided.

First Comp requested that the Board find that Claimant was injured while working for ACE, not Garrett; dismiss First Comp as a party to this case; refer Mr. Barbutes to the Bureau of Fraud Prevention with the Insurance Commission; award full indemnity to First Comp for what has been paid to Claimant for this injury; and require Garrett or Mr. Barbutes to post a bond in the amount of \$20,143.09 to cover the expenses that have already been paid to Claimant and need to be reimbursed to First Comp, as well as Claimant's expected additional medical expenses and total disability benefits.

Mr. Barbutes argues that he purchased two separate workers' compensation insurance policies for Garrett and ACE and then received a call from the insurance broker telling him that he had duplicate coverage and needed to cancel the policy for ACE. Mr. Barbutes argues that he did not commit fraud and he was simply following the instructions from his insurance agent. Furthermore, Mr. Barbutes argues that he is the sole proprietor of both companies, *he* is the named insured rather than Garrett or ACE, and Claimant is *his* employee, so the policy with First Comp is the correct policy for covering Claimant's industrial accident. Mr. Barbutes argues that *he* as the person is insured, rather than the business. *Mehan v. Travelers Insurance Co.*, 1986 WL 15416 (Del. Super. Dec. 30, 1986).

Mr. Barbutes argues that the Board must first determine whether First Comp covered Joe Barbutes as the employer even though Claimant was injured while working on a job for ACE. If the Board decides this point against Mr. Barbutes, then the Board should consider whether the insurance policy should be reformed to provide coverage in this case, because if Mr. Barbutes' expectation was that there would be coverage in this type of a situation, then the policy should be

reformed. If the Board decides that the policy should not be reformed, the Board should consider the question of whether there was intentional fraud committed in this case.

Claimant did not present any arguments or call any witnesses in this hearing. Given the amount of testimony and evidence presented and the issues involved, the Board completed its deliberations on September 5, 2012. This is the Board's decision on the issues presented at the August 22, 2012 hearing.

Prior to getting to the merits of these issues, Mr. Barbutes motioned the Board to dismiss the evidentiary hearing for lack of jurisdiction. Mr. Barbutes argued that the Board does not have jurisdiction to determine whether there is insurance coverage, as that is a question to be determined in Superior Court or Federal District Court because it is actually an issue involving the Declaratory Judgment Act. He argued that the Board will be required to interpret the insurance contract in this case to determine whether the policy covered Claimant and to determine whether the contract should be reformed, which is subject matter for Superior Court or District Court to determine.

In response, First Comp argued that the main issue in this case involves an employment issue and that the Board has exclusive jurisdiction over workers' compensation cases and has the authority to determine employment relationships and insurance coverage issues. 19 *Del. C.* §§ 2301A(i), 2301(11), 2304, 2348(b), 2374(d)(1), 2374(e)(3), 2378(b); *Comegys v. Chrysler Corp.*, C.A. No. 83A-SE-5 at 4 (Del. Super. July 20, 1984); *Martin v. M&W Drywall Co.*, 1990 Del. Super. Lexis at \*2 (Del. Super.), *aff'd* 1991 Del. Lexis 194 (Del.).

The Board considered the arguments and denied Mr. Barbutes' motion to dismiss for lack of jurisdiction. The Board finds that it has jurisdiction in this case, as it has sole jurisdiction over

workers' compensation cases and it has the authority to determine issues involving insurance coverage and employment relationships. "The IAB has jurisdiction over matters pertaining to the Workers' Compensation Act. The issue before the IAB was whether [the employer] had the workers' compensation insurance it was required to have under 19 *Del. C.* § 2372. As the administrative body charged with handling workers' compensation matters, the IAB is the most appropriate entity to resolve the dispute." *Liberty Mutual Ins. Co. v. City Window Cleaning of Delaware, Inc. and Jesus Silva-Garcia*, Del. Super., C.A. No. N10C-10-065-CLS, J. Scott, \*4 (May 26, 2011).

After determining that it has jurisdiction to hear this case and address the issues involved, the Board moved forward with the evidentiary hearing and the witnesses were called to testify.

Joe Bruno Barbutes, owner of Garrett and ACE, was called to testify by First Comp and then testified at the end of the hearing on his own behalf. Mr. Barbutes agreed that Claimant was injured on January 31, 2012, while working on a project at Dollar Tree.

Mr. Barbutes obtained a business license for ACE in 2011 and 2012 in the name of Advanced Comfort Engineering and has a bank account at M&T Bank for Joe Bruno Bruni dba Advanced Comfort Engineering. On March 12, 2011, Mr. Barbutes applied to Selective Insurance ("Selective") for workers' compensation insurance for ACE and he excluded himself from coverage as the owner of the company. He received the policy from Selective for ACE with the name of the insured as "Joe Barbutes t/a Advanced" and the effective dates of March 10, 2011 to March 10, 2012. The Federal Employer Identification Number ("FEIN") noted on the policy is 450551579.

Mr. Barbutes obtained a business license for Garrett in 2011 and 2012 in the name of Garrett Mechanical. He has a separate bank account at M&T Bank in the name of Joe Bruno Bruni dba Garrett Mechanical. On June 1, 2011, Mr. Barbutes applied for workers' compensation insurance with Southern Insurance Company for Garrett and excluded himself from coverage as the owner of the company. He received the policy from Southern for Garrett with the name of the insured as "Joe Barbutes dba Garrett Mechanical" with the effective dates of June 1, 2011 to June 1, 2012. The FEIN noted on the application is 264-77-5466, which is Mr. Barbutes' social security number. Mr. Barbutes wrote his social security number on the application as the FEIN; there is now an FEIN of 450551579 on the form, but it was not on the form when Mr. Barbutes signed it and he did not write it on the form.

Mr. Barbutes agreed that he signed the Cancellation Request form from Selective for the workers' compensation coverage for ACE on July 25, 2011. He testified that he did not fill out the form and he did not check the box indicating that the cancellation was requested by "insured." Mr. Barbutes is not sure why the Delaware Compensation Ratings Bureau ("DCRB") listed the reason for the cancellation of the ACE policy as "retiring from or going out of business." Mr. Barbutes is aware of the September 8, 2011 letter from DCRB to both insurance companies about the duplicate coverage. Mr. Barbutes testified that he never had any contact with DCRB and never said that ACE was going out of business.

Mr. Barbutes agreed that he signed the audit form from First Comp, but he did not prepare the fax cover page or the audit form. Lisa Durham is Mr. Barbutes' accountant and does everything for the business except for the taxes, although he does not know if she is a certified public accountant. Ms. Durham prepared the First Comp audit form and dated it January 10, 2012; it is her handwriting on the audit form. Mr. Barbutes did not tell Ms. Durham how to

complete the form; he only told her to send a copy of the Garrett payroll to First Comp. Ms. Durham picks up packets of work to do from Mr. Barbutes' home on Tuesdays and then she drops off the documents and tells him to sign them. On page 3 of the audit, Claimant's name is written as the only employee. On page 4 of the audit, the FEIN of 450551579 is crossed out and the number 45-1582712 is written beside it. Mr. Barbutes only wrote in the "job duties" section and someone else completed the rest of the form. The Garrett payroll summary is attached to the audit. Mr. Barbutes has tried to contact Ms. Durham about ten to fifteen times by email and telephone, but she has not responded and her voicemail is full. Ms. Durham wrote the letter at Exhibit 21 to a medical provider so that Claimant could obtain treatment; she wrote it because Mr. Barbutes' handwriting is very messy.

ACE entered into a service agreement with Dollar Tree to service the HVAC units at almost every Dollar Tree store in Delaware. Mr. Barbutes initialed every page of the agreement and signed on page 7 of the agreement as the owner of ACE on August 10, 2011. He signed that document more than ten days after the DCRB indicated that ACE was out of business and its workers compensation insurance policy was cancelled on July 25, 2011.

The January 30, 2012 Dollar Tree work order indicates that "Joe Barbutes -- ta -- Advanced" was the provider and Claimant signed the document as the vendor. There is a handwritten job invoice form for the work performed for Dollar Tree dated January 31, 2012, with the same work order number noted on the top. There is also a typed invoice from ACE to Dollar Tree with the same work order number noted and the name of the laborer noted as "Brad" and another form indicating that Claimant clocked in at Dollar Tree as "Joe Barbutes -- TA -- Advanced" on January 30, January 31, and February 14, 2012.

The First Report of Injury form indicates that Claimant was injured while working for Garrett Mechanical and that the workers' compensation insurance carrier is First Comp. Mr. Barbutes agreed that he signed the First Report of Injury and noted that he is the owner of the business, but he testified that it is not his handwriting on the form. In the Statement of Facts filed with the Board, it indicates at item 20 that "Claimant agrees that he was working for Advanced Comfort Engineering, who was not insured by First Comp Insurance."

At item 11 on the Statement of Fact, Claimant listed both ACE and Garrett as his employers. Mr. Barbutes explained that Claimant is an employee of Joe Barbutes and that Claimant is sent out on jobs under the trade names of ACE and Garrett; Claimant does HVAC repair for both companies. Mr. Barbutes owns two trucks (an Isuzu and a Ford F-150) and both trucks are used for ACE and Garrett and the same tools and parts are used on jobs, whether the jobs are through ACE or Garrett. There is no separation between ACE and Garrett of tools, trucks or work; the employees are the same and the customers are the same. Mr. Barbutes has two trade names that are not incorporated in order to get additional work to keep himself and his employees busy. He started Garrett so that he could take over a service contract that was dropped with ACE.

First Comp wanted proof that Claimant was working at Dollar Tree for Garrett on January 31, 2012, so Mr. Barbutes supplied a copy of the handwritten work order for that day with "Garrett Mechanical" written on the top left side of the page and Claimant's name "Brad" and his helper "Chris" written under the Labor section on the middle of the right side of the page. Mr. Barbutes supplied the same document to First Comp a few days or weeks earlier without "Garrett Mechanical," "Brad," or "Chris" written on it. When the insurance company asked for proof that Claimant was working on the job, Mr. Barbutes was told that the document was

insufficient because Claimant's name was not on it, so he wrote in the words "Garrett Mechanical," "Brad," and "Chris" after First Comp told him to do so and then he resubmitted the document to First Comp. Mr. Barbutes never imagined that he would be called before the Board or Insurance Commission on fraud charges. He was not trying to deceive First Comp into paying for a claim that it did not have responsibility to pay.

Mr. Barbutes signed the wage verification form for First Comp regarding Claimant's wages. He signed the form as the owner of Garrett and it is dated March 12, 2012. Mr. Barbutes testified that although he signed the form, he did not fill it out. The form indicates that Claimant was paid \$146.81 by check on February 10, 2012 for the pay period of January 29 through February 4, 2012, but the declaration from M&T Bank indicates that there was no check from any of Mr. Barbutes' accounts in the amount of \$146.81 in 2012. Mr. Barbutes explained that he did not write the checks or the wage verification form; he just signed the form. The pay stubs in Exhibit 25 do not show that any paycheck was issued to Claimant from Garrett Mechanical for work between January 29 and February 4, 2012. Mr. Barbutes testified that there was a check, but it was not included in the exhibit. He agreed that there was a paycheck from ACE to Claimant in the amount of \$693.54 dated February 10, 2012 for that pay period.

On May 31, 2012, Dollar Tree cancelled the service contract with Joe Barbutes – TA – Advanced. Mr. Barbutes testified that he asked to terminate the contract and asked for the letter.

Mr. Barbutes testified that he cancelled the workers compensation policy with Selective because his insurance agent, Ed Bolton at the Williams Insurance Agency, told him that he had duplicate policies and needed to cancel that policy because he is not allowed to have duplicate policies. The emails between Mr. Barbutes and Mr. Bolton indicate that on June 30, 2012, Mr. Bolton told Mr. Barbutes that "Per attached you requested that we cancel the Advanced Comfort



Workers Compensation policy issued by Selective.” Mr. Barbutes then questioned Mr. Bolton about the cancellation and stated “No, you said they canceled the policy because of some issue related to me having my 2 business (sic) do you remember that? Advanced and Garrett . . .” Mr. Bolton responded by stating “I did not communicate that as Selective never requested we cancel this policy!” The original email from Mr. Bolton to Mr. Barbutes on July 25, 2011 states that “Per our telephone conversation, attached you will find a cancellation form that we ask you to read, complete, sign & return so that we may approach Selective Insurance to cancel the captioned policy.” Mr. Barbutes testified that Mr. Bolton had called him urgently in late July 2011 because he had to cancel the Selective policy because it was a duplicate policy. They scheduled the meeting for July 25<sup>th</sup> and he explained the situation with the duplicate policies for Joe Barbutes and explained that Mr. Barbutes could not have duplicate policies, so Mr. Barbutes signed the cancellation form from Mr. Bolton on July 25<sup>th</sup>.

When Mr. Barbutes purchased the policy with Southern on June 1, 2011, he thought it covered all of the employees of Joe Barbutes, not just the employees working for Garrett Mechanical.

Edward Anthony Dilibero, an underwriter for First Comp, testified by telephone on behalf of First Comp. Mr. Dilibero has been an underwriter for about a year and a half at this time, so he had been an underwriter for about five months when the First Comp policy was issued on June 1, 2011.

When reviewing a workers’ compensation policy application, Mr. Dilibero first looks at the applicant’s company website to see if it is a “fit” for the risk taken on by First Comp. He looks to see if the company is doing more than what was indicated on the application because that could mean there is an additional risk that was not disclosed. He also looks to see if an

application had been submitted previously or policy had been issued previously. If the applicant has a current workers' compensation policy, he looks at DCRB for the rating.

The insurance agent takes the relevant information from the applicant and inputs it into the computer system. The underwriter performs the due diligence to see if a quote should be given or declined. If a quote is issued and accepted, the agent issues the policy. The FEIN is important because it is reported to DCRB to see if the company already has coverage. If it is the wrong FEIN, then DCRB will not know if there is duplicate coverage.

Mr. Dilibero reviewed the application that Holmes Insurance submitted on behalf of Joe Barbutes, owner of Garrett Mechanical. Mr. Barbutes excluded himself on the policy. The application was for insurance of Garrett Mechanical as a business entity. If Mr. Barbutes had more than one business, then that is something that First Comp wants to know because First Comp wants to know all of the entities being insured because it changes the risk. In the remarks section, Mr. Dilibero noted that Garrett is a new company and Mr. Barbutes has another business that is already insured. Mr. Dilibero testified that First Comp would not have issued a policy for Garrett if Mr. Barbutes owned another business without existing insurance. Mr. Barbutes said that there was no interchange of labor between the two companies and he did not lease employees from other companies for Garrett.

First Comp issued the policy to Garrett Mechanical as the sole proprietorship of Joe Barbutes from June 1, 2011 to June 1, 2012; First Comp was not covering other sole proprietorships of Mr. Barbutes. The name of the insured on the information page of the policy is Joe Barbutes dba Garrett Mechanical. On page 4, the policy states that it is issued to Joe Barbutes. On page 5, under section B for "who is insured," it states "You are insured if you are an employer named in Item 1 of the Information Page." The insured's name in Item 1 on the

information page is "Joe Barbutes" on the left side of the section and "DBA Name: Garrett Mechanical" on the right side of the section. The insurance agent completed the information page.

First Comp would not have issued the policy if it knew that Mr. Barbutes had another company that was not insured. During the underwriting due diligence process, Mr. Dilibero looked to make sure that the other trade name was covered. He was not contacted by DCRB at any time before July 25, 2011 regarding Mr. Dilibero having duplicate policies and that one needed to be cancelled. First Comp was first notified on September 8, 2011 by DCRB and the Selective policy had already been cancelled by that time. Mr. Dilibero does not know why the Selective policy was cancelled on July 25, 2011; it could have been for non-payment.

The First Comp policy was initially issued with Mr. Barbutes' social security number, which is not unusual because an owner of sole proprietorship can use his social security number until he gets the FEIN. If there is another business with another FEIN, it will be listed as a separate entity with DCRB. An endorsement was issued to the First Comp policy after Mr. Barbutes changed his social security number to his FEIN for Garrett Mechanical.

First Comp received the September 8, 2011 and October 31, 2011 letters from DCRB regarding the duplicate coverage and that the policy with Selective was cancelled on July 25, 2011. Those letters were received after Mr. Barbutes changed the FEIN number for Garrett on the First Comp insurance policy. First Comp started an audit of Garrett Mechanical on January 10, 2012 and Mr. Barbutes said that the FEIN was wrong and changed it, so Mr. Dilibero corrected it with DCRB. Claimant is listed as the only employee covered under the policy for Garrett and the premium would be doubled if his wages were double what was reported. Garrett was the only entity that First Comp insured and the policy would not have been issued if Mr.

Barbutes had another company to insure. There was nothing on the audit regarding a second business. The audit just showed the updated FEIN and listed Claimant as the only employee and Mr. Barbutes as the 100% owner.

Claimant, age fifty-three, was called to testify on behalf of First Comp. Claimant has worked with Mr. Barbutes for three years.

Claimant got the work order for Dollar Tree on the morning of January 31, 2012, so he went to Dollar Tree with Christian Moore. Mr. Moore is Mr. Barbutes' stepson and he helps out occasionally. Dollar Tree has a service contract with ACE; it never had a service contract with Garrett. When Claimant got to Dollar Tree, there was a bolt off of a motor on the HVAC system and the motor slipped. Claimant caught the motor, but he felt pain, but he kept working. He called Mr. Barbutes and told him about the accident and pain. After a while, Claimant was diagnosed with a hernia, and underwent surgery on March 28, 2012.

Claimant did not complete the First Report of Injury form, but he believes that it looks like Mr. Barbutes' handwriting and signature.

Claimant called First Comp to ask why he was only getting a little more than \$200 a week for total disability benefits because he earns more than \$800 per week. He was informed that the rate was based on what Mr. Barbutes indicated as his wages at Garrett. Claimant said that he was working for ACE at the time of the industrial accident at Dollar Tree, not Garrett.

Claimant explained to the Board that Mr. Barbutes created Garrett because Dollar General dropped ACE as the service provider due to issues involving stealing. Mr. Barbutes got another phone number for Garrett and answers that phone as "Garrett." Claimant only made four service calls for Garrett and those were only to Dollar General. He earned a lot more money for ACE than for Garrett. Claimant believes that Mr. Barbutes is his employer and he works under

two trade names, although most of the work is for ACE. In 2011, Claimant had a W-2 from Joerg Barbutes t/a Advanced Comfort Engineering and a W-2 from Garrett Mechanical. He got separate paychecks from Garrett and ACE.

Mr. Barbutes supplied the trucks and tools for Claimant to use, although Claimant had his own tools too. Claimant used the same trucks and tools whether he was working for Garrett or ACE; Garrett and ACE did not have separate tools and trucks.

Mr. Barbutes took care of Claimant after the industrial accident and said that he was putting the claim under Garrett because he could not afford it under ACE.

Donna Lage, a claims examiner for First Comp, testified by telephone on behalf of First Comp. The process for a claims examiner is to first verify that there was a policy in effect at the time of the industrial accident, then investigate with the employer and claimant to determine compensability, and then open the claim and issue benefits.

Mr. Barbutes faxed Claimant's First Report of Injury to First Comp on February 22, 2012. The claim was assigned to Ms. Lage and she reviewed the First Report of Injury and verified the policy for Garrett Mechanical who was listed as the employer. Mr. Barbutes was listed as the owner of Garrett on the First Report of Injury and the accident date was on January 31, 2012. There was no indication that Claimant worked for any other employer, so there was no reason to question whether there was any other company involved. First Comp accepted compensability of the claim based on Mr. Barbutes' representations and has paid a total of \$10,220.30 for Claimant's indemnity and medical benefits.

Claimant was hospitalized on May 31, 2012, so Ms. Lage called Claimant to find out why he was hospitalized. Claimant questioned his compensation rate and she told him that it was based on the wage information as an employee of Garrett that Mr. Barbutes provided. Claimant

contested the compensation rate and said that he worked for ACE, not Garrett at the time of the industrial accident. Ms. Lage then asked for proof of whether Claimant was working for Garrett or ACE. The pay stubs provided showed that Claimant worked for ACE at the time of the industrial accident. Ms. Lage contacted Mr. Barbutes regarding Claimant's employer and Mr. Barbutes said that Claimant was just upset about the calculation of his average weekly wage because he earned more when working for ACE than for Garrett. Mr. Barbutes said that he had workers' compensation insurance for ACE, but could not remember the name of the carrier or FEIN and would get back to Ms. Lage with that information. Ms. Lage said that the employment information had to be verified before she could move forward with the claim.

It was difficult to communicate with Mr. Barbutes because he got irritated and did not provide a direct answer to Ms. Lage's direct questions. It was clear to Ms. Lage that Mr. Barbutes was trying to stall because he did not have the necessary documentation.

Mr. Barbutes provided a work order to show that Claimant was working for Garrett. Ms. Lage never asked Mr. Barbutes to write Garrett Mechanical or Claimant's name on the work order. When she received the document, it appeared to have been altered. The handwriting was different and there was new information on the same document; he added "Garrett Mechanical" and "Brad" and "Chris" to the work order in blue ink and the rest of the document was written in black ink. Ms. Lage compared the handwriting on the First Report of Injury to the work order and it was the same handwriting on the First Report of Injury as the words "Garrett Mechanical," "Brad," and "Chris" on the work order. The original work order does not say "Garrett Mechanical," "Brad," or "Chris." Ms. Lage did not tell Mr. Barbutes to write on the work order; she asked for proof that Claimant was an employee of Garrett and proof that Claimant was working for Garrett at the time of the industrial accident.

The contract from Dollar Tree is with ACE and the February 15, 2012 invoice to Dollar Tree lists ACE as the service provider, not Garrett. Ms. Lage believes that Mr. Barbutes submitted false documentation and information to mislead her and First Comp. Claimant was working on behalf of ACE, not Garrett, at the time of his industrial accident and Mr. Barbutes submitted the claim under Garrett's insurance policy because there was no workers' compensation insurance for ACE. Ms. Lage believes that Claimant sustained a work-related injury on January 31, 2012 and that the medical treatment was reasonable, necessary and related to that industrial accident; however, Claimant was working for ACE at the time of the accident, not Garrett, so First Comp is not liable for paying the benefits.

Albert William Holmes, an insurance agent for thirty-eight years, testified on behalf of Mr. Barbutes. Mr. Holmes was an insurance agent with the Williams Agency and then changed to Bonetti-Holmes Agency on July 1, 2012.

The June 1, 2011 workers compensation insurance policy issued to Joe Barbutes dba Garrett Mechanical through Southern Insurance was issued by the Williams Agency. Mr. Holmes understands that there was also a policy issued from Selective Insurance by the Williams Agency in March 2011. The policy with Selective Insurance was cancelled on July 25, 2011. If Mr. Holmes anticipated on July 25, 2011 the scenario that Mr. Barbutes' employee on an ACE job would not be covered under Southern Insurance, he would not have cancelled the Selective Insurance policy.

Mr. Holmes has known Mr. Barbutes for twenty-five years and provided him with insurance for many years. He believes Mr. Barbutes to be an honest person and he finds it uncomfortable to testify against Mr. Barbutes. Mr. Bolton worked for Mr. Holmes at the Williams Agency.

After considering the arguments, the Board finds that the First Comp policy covered the employees of Garrett Mechanical, but that Claimant was working for Advanced Comfort Engineering at the time of his injury on January 31, 2012. The Board also finds that the First Comp policy was written for the insured Joe Barbutes dba Garrett Mechanical and did not cover employees of ACE.

Mr. Barbutes knew that he had two businesses that he held out as two separate entities with two separate workers' compensation insurance policies in the names of those businesses and he paid Claimant separate paychecks from those two companies and he issued Claimant separate W-2s from each of those companies for the 2011 taxes. He cancelled the workers' compensation insurance policy for ACE on July 25, 2011. He argued that he was told to cancel it, but the emails with Mr. Bolton show that Mr. Barbutes was the person who asked for the policy with Selective Insurance to be cancelled. On the insurance application with Southern Insurance for Garrett Mechanical's policy, Mr. Barbutes indicated that he owns another company that has separate workers' compensation insurance and that Garrett Mechanical is a new company.

Mr. Barbutes asks the Board to reform the insurance policy with First Comp because he argues that he had a reasonable expectation that the policy covered all of his employees, whether they were working for Garrett Mechanical or Advanced Comfort Engineering. The Board finds that Mr. Barbutes' argument must fail because as stated above, Mr. Barbutes even indicated on his application with Southern Insurance that he owned another company that had separate workers' compensation insurance coverage, so he knew that this policy with Southern Insurance was not going to cover employees working for any company other than Garrett Mechanical.

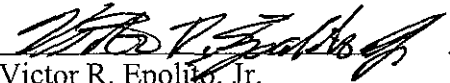


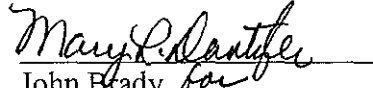
The Board will refer this matter to the Fraud Prevention Bureau of the Delaware Insurance Department to review the facts and circumstances of the alleged fraud, as there is reason to believe that Mr. Barbutes might have committed an act of insurance fraud. The Board finds that Mr. Barbutes is not credible and that he altered documents submitted to First Comp and indicated on several forms with the IAB and First Comp that Claimant was working for Garrett Mechanical at the time of the industrial accident when it is clear that Claimant was working for ACE at the time of the accident. The service contract was between Dollar Tree and ACE (not Garrett), the invoice to Dollar Tree was from ACE, Claimant testified that the work was performed on behalf of ACE, and there is a document showing that Claimant clocked-in at Dollar Tree as "Joe Barbutes – TA – Advanced" on January 30, January 31, and February 14, 2012. Furthermore, during the investigation, Mr. Barbutes told Ms. Lage that ACE had its own workers' compensation insurance but that he could not remember the FEIN; however, he knew at that time that he had cancelled that insurance policy on July 25, 2011, so he lied to Ms. Lage during the investigation.

Therefore, the Board hereby GRANTS First Comp's Motion to be Dismissed from this case and to be reimbursed by Joe Barbutes dba Garrett Mechanical for the \$10,220.30 that has been paid related to Claimant's January 31, 2012 industrial accident. The Board is also requiring Joe Barbutes dba Garrett Mechanical to post a bond in the amount of \$20,143.09 to cover the amount to be reimbursed to First Comp and Claimant's future medical and indemnity benefits. Furthermore, pursuant to 19 *Del. C.* § 2344(B)(4), the Board will refer this matter to the Fraud Prevention Bureau of the Delaware Insurance Department to review the facts and circumstances of the alleged fraud.

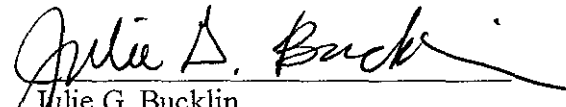
IT IS SO ORDERED this 11<sup>th</sup> day of SEPTEMBER 2012.

**INDUSTRIAL ACCIDENT BOARD**

  
Victor R. Epolito, Jr.

  
John Brady

I hereby certify that the above is a true and correct Order of the Industrial Accident Board.

  
Julie G. Bucklin  
Workers' Compensation Hearing Officer

Mailed Date:

\_\_\_\_\_  
OWC Staff

cc: Chase T. Brockstedt, Esquire, Attorney for Claimant  
Benjamin Schwartz, Esquire, Attorney for Joe Barbutes  
Joseph Andrews, Esquire, Attorney for First Comp