THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case Number 2021-000633

Rachel J. Turner, Employee, Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrial, Inc.; Guarantee Insurance Company; Countrywide Staffing Solutions Group, Inc.; South Carolina Department of Corrections; State Accident Fund; and South Carolina Uninsured Employer's Fund, Respondents

of which Condustrial, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the Respondent-Appellant.

Respondent/Appellant's Petition for Rehearing

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PETITION FOR REHEARING

Pursuant to South Carolina Appellate Court Rules 221 and 240, Respondent/Appellant ("Condustrial") hereby petitions the Court for a rehearing of this matter. The purpose of a Petition for Rehearing under SCAR 221 is not to reargue the case in the appellate court a second time or regurgitate issues already argued/briefed. *See* Kennedy v. S.C. Retirement Systems, 349 S.C. 531, 564 S.E.2d 322 (2011). Rather, to prevail in its Petition for Rehearing a party must show that the Court overlooked or misapprehended a specific argument. *Id.* Although Condustrial contends the Court's decisions on all issues adverse to its positions/arguments via its Opinion filed on March 27, 2024 are erroneous for the reasons already briefed and argued, Condustrial specifically asserts in this Petition that the Court overlooked and/or misapprehended the average weekly wage (AWW), Professional Employer Organization (P.E.O.), and insurance coverage issues in particular. Without waiving any arguments for possible further appeal beyond the Court of Appeals regarding the independent contractor vs. employee and/or reformation of the Service Agreement between Condustrial and Countrywide ("Agreement") issues, Condustrial's focus in this Petition will be limited to the Court's misapprehension of the AWW, PEO, and insurance coverage issues, which is all SCACR 221 and ensuing case law permits.

ARGUMENTS

I. The Court's misapprehension of the P.E.O. issue is initially based on a patently erroneous reading of the Agreement between Condustrial and Countrywide, as wells as application of a manifestly irrelevant statutory provision.

The Court finds in its 3/27/2024 Opinion that the Agreement "did not include the terms a P.E.O. and client agreement must provide." The Court goes on to enumerate the five statutorily mandated provisions purportedly absent from the Agreement. However, with all due respect to the Court this assertion is just simply not accurate. *The Agreement in fact does contain the five*

mandated provisions for a valid P.E.O. agreement under the statute on Page 2. (R. p. 3108). For the Court's easy reference, Condustrial has attached the entire Agreement with those specific provisions highlighted an Exhibit to this Petition.[1] Exhibit # 1. The Court will note that the language of the Agreement mirrors the statutory provisions required for a valid P.E.O. agreement almost *verbatim.* **Specifically, Section 3 items (a) through (e) of the Contract regarding Countrywide's obligations to Condustrial mirrors the exact language and requirements of S.C. Code §40-68-70 (A) items 1-5.** These statutory items enumerate the fundamental benchmarks of a PEO arrangement, which tracks nearly identically with the terms and responsibilities imposed by the Agreement.

In light of this clear and present misapprehension of the Agreement, the Court must reconsider its entire Opinion on the P.E.O. issue. In doing so, Condustrial urges the Court to find that Countrywide's obligations under its Agreement with Condsutrial are essentially that of a P.E.O. in every meaningful sense including the following statutory requirements: establishment of the co-employment relationship for assigned employees, guarantee for the payment of wages, responsibility for remitting payroll taxes, maintaining personnel and employment files, the provision of workers compensation coverage and unemployment insurance, handling of claims, and the performance of "all other administrative functions customarily performed by an employer for its employees. Because Condustrial and Countrywide were clearly engaged in a P.E.O arrangement for the hundreds of other non-nursing employees pursuant to the clear terms of their

[1] In an effort to discern how the Court misinterpreted the Agreement, Counsel examined the Record on Appeal contained in the Court's C-Track system to verify the Agreement was in fact contained in the Record and not just indexed. Counsel discovered that C-Track only contains Volumes II-IV in PDFs on the website available for instant download. In the Email 1 and Email 2 attachments to the Record on Appeal filed by Appellant Turner on 6/23/2022, there is a OneDrive link with all 7 volumes of the Record. The Agreement is contained in Volume 7, pp. 3107-3113.

Agreement, then it necessarily follows that liability for Turner's workers compensation claim defaults to Countrywide via operation of law. Specifically, the law places the burden on a P.E.O. and its carrier for providing coverage under the Act when a "client company" purportedly fails to cover its own nonassigned employees. S.C. Code § 40-68-70 (C) states "[u]pon the failure or neglect of a client company to secure and maintain workers' compensation insurance, the licensee and its workers' compensation carrier agree and are liable to pay to a worker employed in the work of the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been employed by the licensee as provided in Section 40-68-120."(emphasis added). Further, S.C. Code §40-68-120 (A)(7) provides the following:

> (7) **When a person referred to as a licensee undertakes to provide assigned employees to a client company, the licensee is liable to pay a worker employed by the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been immediately employed by the licensee.** When the licensee is liable to pay compensation under this section, it is entitled to indemnity from a client company who would have been liable to pay compensation to the worker independently of this section and have a cause of action for indemnity. **This section must be construed to require that a licensee's workers' compensation carrier is liable to pay compensation to the client company's entire work force with the licensee and carrier's right to indemnity from the client company.** (emphasis added).

In the instant case, Condustrial is designated as the "Client" in the preamble of the Agreement with Countrywide. Further, the client company's '"entire work force" is defined by the P.E.O. statues as "**all persons** engaged by a client company as defined in Title 42." S.C. Code §40-68-10 (13) (emphasis added). Since Turner has already been found by the Court to be Condustrial's employee under Title 42 she is obviously a member of Condustrial's "entire work force" within the meaning of this statute. Therefore, coverage and liability for her claim under the Act defaults to Countrywide per S.C. Code § 40-68-70 (C) since the Court has found that Condustrial failed to insure its worker's compensation liability for Turner's employment.

Moreover, the Court misapprehends the relevance of S.C. §40-68-60 to this case. The Court held in its Opinion that there is no evidence that the "parties provided the Nurses with notice of a P.E.O. agreement as required by 40-68-60." However, the Court has already held that Turner and the other nurses were employees of Condustrial not subject to coverage as "assigned employees" to Countrywide under the four corners of the Agreement. In contrast, S.C. §40-68-60 only requires notice to employees who are intended to be *"assigned employees"* of the prospective P.E.O. As such, the statute has no application to Turner as an employee of Condustrial only. Simply put, there is no statutory requirement to provide notice of the P.E.O. arrangement to employees employed exclusively by the client company who are not even subject to that arrangement. As such, Turner is a *non-assigned* employee of Condustrial who is part of the "entire work force" of Condustrial within the meaning of S.C. Code §40-68-10 (13)("entire work force" is defined as "all persons engaged by a client company as defined in Title 42."). To reiterate- S.C. Code § 40-68-70 (C) states that "[u]pon the failure or neglect of a client company to secure and maintain workers' compensation insurance, the licensee and its workers' compensation carrier agree and are liable to pay to a worker employed in the work of the client company compensation under Title 42 which the licensee would have been liable to pay if the worker had been employed by the licensee as provided in Section 40-68-120." Guarantee is Countrywide's worker's compensation insurance carrier. Therefore, it is liable for the claim.

In sum, the Court's misapprehension of the Agreement between Condustrial and Countrywide, as well as its misunderstanding of the P.E.O. statutes application to Condustrial's arguments, render its Opinion fundamentally flawed. The Court should carefully reconsider this issue within the proper analytical framework outlined in the briefs of the parties. In that context, Condustrial submits the correct conclusion is inescapable- Countrywide and Condustrial were engaged in a

statutorily valid P.E.O. arrangement at the time in question and liability for Turner's claim as an uninsured employee of Condustrial defaults to Countrywide by operation of law.

II. The Court's dismissal of Condustrial's alternative estoppel arguments hinges on the same patently erroneous interpretation of the Agreement with Countrywide.

The Court's Opinion states, "Condustrial did not rely on Countrywide being a P.E.O. or change its position based on that reliance because Condustrial did not want a P.E.O and *specifically negotiated a contract that did not include al the terms of a P.E.O."*(emphasis added). However, for all the reasons noted previously, the Agreement between Condustrial and Countrywide did in fact include all the statutorily mandated terms of a valid P.E.O. agreement. See Exhibit # 1. Certainly, a party can rely on the contracts it negotiates, so the Court's misapprehension here is self-evident.

Next, the Court may be confusing the distinct concepts between the statutorily mandated "terms" required of a valid P.E.O. agreement in the first instance and the services bargained for under such agreement. In this case, Condustrial and Countrywide negotiated the Agreement, which in all practical respects is indisputably a classic P.E.O. agreement because it contains all the statutorily required provisions. Within the context of this facially valid P.E.O. service agreement, Countrywide and Condustrial negotiated the actual services Countrywide would provide under same. Condustrial elected not to engage Countrywide for the full slate of services that the statute enables because it is a more sophisticated business than a typical P.E.O. client company and did not require all those services. As Condsutrial has already explained in its Brief, there is no statutory or other legal requirement that a staffing company like Countrywide provide all services to the client company enabled by the statute to constitute a valid P.E.O arrangement. Indeed, such a requirement in fact goes against practical business factors and norms. (*See* Respondent-Appellant's Brief pp. 38-39).

Moreover, the Court also seemingly misunderstands the more nuanced aspects of Condustrial's alternative estoppel arguments. To clarify, as an equitable remedy estoppel only applies if the Court somehow excuses application of the law under the P.E.O. statutes to impose liability based solely on the fact that Countrywide failed to obtain a license to operate as a P.E.O. in South Carolina. The Court's Opinion does not address this scenario.

III. If liability for Turner's claim defaults to Countrywide by operation of law per S.C. Code §§ 40-68-70 (C) and/or 40-68-120 (A)(7), then Guarantee's policy with its insured Countrywide must cover such claim.

In this case, for all the reasons previously discussed, liability for Condustrial's entire work force, including Turner, defaults to Countrywide AND its carrier, Guarantee, by operation of §40-68-120 (A)(7) - "**[t]his section *must* be construed to require that a licensee's workers' compensation carrier is liable to pay compensation to the client company's entire work force.**" (emphasis added). It is undisputed that Guarantee is Countrywide's workers' compensation carrier.

Further, it is axiomatic that coverage under a worker's compensation policy must follow the law because workers' compensation coverage in South Carolina is dictated statute. A carrier has little, if any, discretion to modify or limit coverage required by the Act via the policy itself. S.C. Code §42-5-70 states, in pertinent part, that " [a]ll policies insuring the payment of compensation under this title must contain a clause to the effect that,... ***the insurer shall be in all things bound by and subject to the awards, judgements, or decrees rendered against insured employer....***" (emphasis added).

Next, the actual terms/language of Guarantee's policy with Countrywide mirrors the notion that coverage must follow the law. Part One B of the policy states that Guarantee will "pay promptly when due the benefits required of you by *the workers compensation law*." (R. Vol. 7 p. 3167). The

term "workers compensation law" is defined under the policy as "the workers compensation and occupational disease law of each state" endorsed by the policy. *Id.* The worker's compensation law expressly incorporates its terms into all employment agreements and insurance contracts entered into thereunder. *See* Tedars v. Savannah River Veneer Co., 202 S.C. 363, 25 S.E.2d 235 (1943). Collectively, the statutes and the policy itself confirm that Guarantee is bound to cover all claims its insured is lawfully deemed liable for under the Act.

Moreover, the Court's finding that "Guarantee would not have provided coverage for the Nurses because the risk as presented would create an extreme liability for Guarantee from an underwiring perspective" even assuming *arguendo* such finding's veracity obviously cannot trump the statutory provisions mandating that a P.E.O.'s insurance carrier is liable to cover a client company's entire work force when the client company neglects or fails to secure coverage for its own employees. To the extent the Court may be concerned about forcing Guarantee to cover a loss it did not bargain for at the inception of its policy with Countrywide, the policy specifically provides a mechanism to remedy that quandary. Part Five C of the policy states the following:

> Premium for each work classification is determined by multiplying a rate times a premium 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. (EMPHASIS added). [R. p. 3171-Volume 7].

This policy language expressly contradicts the Court' suggestion that Guarantee is only required to cover risks it agrees to take on at the inception of the policy. The policy clearly recognizes that its insured's circumstances may change, which is the basis for the "could make us liable" policy language" and reference back to the "workers compensation law" in Part One of the policy. The policy, therefore, contemplates the risk posed by workers who *could be* covered under Guarantee's

policy. Turner clearly falls under the "all other persons engaged in work" policy language that "could make us [GIC] liable" under the workers compensation law.

Finally, Part Five E of the policy provides Guarantee with the right to conduct a premium audit of Countrywide's policy and assess additional premium for risks it is required to assume under the workers compensation law that were unknown or not in existence at the inception of the policy. The policy states, " [t]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." (emphasis added). [R. p. 3171- Volume 7]. Again, the provision for the premium audit and reassessment defers to the workers compensation law as to who is covered under the policy.[2]

In sum, coverage under Guarantee's policy for Countrywide must follow the law; it is not determined simply by Guarantee's self-serving assertion after the fact that it would not have covered the risk Turner allegedly posed. Condustrial does not need to belabor the catastrophic upheaval such a rule would impose. Certainly, the folly of allowing insurers to avoid paying lawful claims after the fact based solely on their own determination that the risk posed was not what they bargained for should be self-evident to the Court upon further consideration.

IV. The traditional statutory method for calculation of the AWW is not applicable when Turner was not taxed and/or reported to the Department of Employment and Workforce as an Employee and the Court cannot enter its own findings on the AWW under its standard of review.

First, Condustrial joins in the State Accident Fund's ("SAF") excellent analysis of the Court's misapprehension of the AWW issue in its Petition for Rehearing but adds the following points:

[2] The testimony of Albert Hyndshaw, Condustrial's former agent with decades of experience in the insurance industry, confirms that a premium audit and reassessment of premium against the insured is the usual and customary method for an insurer to cover risks after the fact. [R. Volume 4 pp. 1671-92, 1717, 161-1772].

1) S.C. Code §42-1-40 confirms that the preferred method for wage calculation is based on the earnings of the employee during the four fiscal quarters prior to the quarter in which the accident happened as reported to the Department of Employment and Workforce ("DEW"). This statutory provision presumes that the claimant's employment status for coverage under the Act is *undisputed* because a purported independent contractor's wages would not be reportable to DEW. In the instant where the claimant's independent contractor status is disputed and she is subsequently adjudicated to be an employee, this wage calculation method cannot apply;

2) Moreover, the Court's statement that Turner produced evidence of four quarters of completed wages in accordance with the statute is simply not accurate. Turner merely presented her yearly federal income tax returns for 2014 and 2015 reflecting her gross earnings with Schedule C Profit Loss from Business reflecting her net earnings after business deductions. As such, the evidence in the Record does not support the Court's conclusion that Turner produced evidence of four completed quarters of wages prior to the quarter in which she was injured (date of accident during the 3rd quarter of 2015 on September 5, 2015, so the applicable quarter of wages working backward would be 2nd quarter of 2015, 1st quarter of 2015, 4th quarter of 2014, and 3rd quarter of 2014). There is simply no evidence corresponding with these quarters of earnings;

3) The Court's holding that the Commission failed to make a specific finding of fact to justify its deviation from the preferred statutory method for AWW calculation is misguided for the reasons noted in the SAF's Petition. Specifically, the Commission indeed found that the traditional method for wage calculation based on gross *income* on tax returns does not accurately reflect Turner's actual *earnings*. Condustrial further cites the Commission's

thorough discourse with citation to legal authorities over multiple pages in its Order for the proposition that it sufficiently explained the rationale for its decision on the AWW calculation. Indeed, it is difficult to fathom how much more the Commission could have done to justify its findings; AND

4) With all due respect to the Court, by reinstating the Hearing Commissioner's findings on the AWW the Court has engaged in improper fact finding beyond the scope of its standard of judicial review under the substantial evidence rule. Lark v. Bi-Lo, Inc., 276 S.C. 130, 134-35, 276 S.E.2d 304, 306 (1981)(in an appeal from the commission, this court may not substitute its judgment for that of the full commission as to the weight of the evidence on questions of fact. S.C. Code Ann. §1-23-380(A)(6)(2005)). Wage calculation for compensation purposes is a fact intensive endeavor. The Commission is afforded wide latitude to determine the ultimate objective of most nearly approximating the earnings an injured worked is no longer able to earn due to injury. *See* Sellers v. Pinedale Residential Center, 350 S.C. 183, 564 S.E.694 (Ct. App. 2002) (the worker's compensation statute, which sets forth several different methods for calculating the average weekly wage provides an elasticity or flexibility with a view toward achieving the ultimate objective of fairly reflecting probable future earning loss). The Court cannot enter its own findings even under the guise of reinstating a prior ruling of a Hearing Commissioner, especially when the Full Commission, not the Hearing Commissioner, is the ultimate fact finder in workers' compensation matters. If the Court thinks that the Full Commission's findings on the AWW issue are insufficient and/or controlled by an error of law, then the proper remedy is remand back Full Commission with instructions to enter sufficient findings based on the Record and/or further consideration under the proper legal standard. Frame v. Resort Services Inc.,

357 S.C. 520, 531, 593 S.E.2d 491,497 (Ct. App. 2004)("when the Appellate Panel acts without first making the proper factual findings required by law, **the proper procedure is to remand the case and allow the Appellate Panel to make those findings.**")(emphasis added). The remedy is NOT entry of the Court's own findings on the matter; the case should be remanded.

CONCLUSION

For all the aforementioned reasons, Condustrial respectfully submits that the Court has misapprehended numerous issues/arguments presented in this case and should grant this Petition for Rehearing to amend its rulings accordingly.

Respectfully Submitted,

George D. Gallagher, Esquire
Counsel for Appellant-Respondent Condustrial, Inc.
f/k/a Medustrial Healthcare Staffing
S.C. Bar # 12149

April 22, 2024

COUNTRYWIDE staffing solutions group

SERVICE AGREEMENT

This CONTRACT LABOR SERVICE AGREEMENT (hereinafter "Agreement") is made on this 11th day of March, 2015, by and between Countrywide Payroll & HR Solutions, Inc. DBA Countrywide Staffing Solutions Group, a Tennessee corporation (hereinafter referred to as "CSSG" or the "Company"), and Condustrial, Inc. with a principal office located at 514 E. North Street, Greenville, SC 29601 (hereinafter referred to as "Client"). Collectively, CSSG and Client shall be hereinafter referred to as "the Parties."

WHEREAS, CSSG is a contract labor service (CLS) entity that wishes to outsource to Client one or more of the following functions: furnish Selected Staffing/Employees for client's normal business operations, staffing employee recruitment, job assignment, to obtain and provide workers' compensation insurance and/or employers liability insurance, payroll funding, and/or certain other functions.

WHEREAS, Client is a staffing entity who wishes to perform one or more of the above-referenced functions on an outsource basis on behalf of CSSG.

WHEREAS, Client and CSSG recognize that each will receive significant advantages from this Agreement.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **CSSG Services.** CSSG (through one of its subsidiaries at its option) will perform the following with respect to Selected Staffing/Employees performing services for Client based on timely, accurate, and complete information and payment provided by Client:

a. Furnish and/or Provide Selected Staffing/Employees to perform the type of work described on Exhibit B under Client's supervision at the locations specified on Exhibit B;

b. Reserved/Deleted;

c. Pay, withhold, and transmit all payroll, federal, state, or local taxes that are, or may be, assessed upon labor or employment furnished under this agreement; provide unemployment insurance and workers' compensation benefits; and handle unemployment and workers' compensation claims involving Selected Staffing/Employees;

d. Provide employer's liability insurance in amounts of $1,000,000 for each accident and $1,000,000 for each disease;

e. Establish and maintain an employee personnel file for each Assigned Employee and ensure that each personnel file meets all state and federal legal requirements, including all I-9 requirements; and

f. Perform all other administrative functions customarily performed by an employer for its employees to include but not be limited to recruiting, interviewing, selecting, hiring, training, and performing background checks as deemed necessary by CSSG.

g. CSSG agrees to provide or furnish, directly and/or through agents designated at the time of execution of this agreement, Client with Certificates of Insurance indicating compliance with and provision of all insurance coverage requirements provided in this agreement. Proof of insurance coverage and CSSG's Federal Tax ID Number will be submitted within 3 days of any request for same.

2. **Client Obligations.** Client shall:

a. Client shall make any and all strategic, operational and other business-related decisions regarding its business. Such decisions and related outcomes shall exclusively be the responsibility of Client and CSSG shall bear no

EXHIBIT 8
Deponent Sears
Date 3/6/17 Rptr SB
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154

responsibility or liability for any actions or inactions by Client or by any leased employee. Additionally, Client shall have sole and exclusive control over the day-to-day job duties of all leased employees and CSSG shall have no responsibility with regard to the leased employees' performance of such day-to- day job duties. Furthermore, CSSG shall have no control over the jobsite at which, or from which, leased employees perform their services. Control over the day-to-day duties of leased employees and over the job site at which, or from which, leased employees perform their services is solely and exclusively assigned to Client. Client expressly absolves CSSG of control over the day-to-day job duties of the leased employees and over the job site at which, or form which, leased employees perform their services. CSSG does not assume any responsibility for and makes no assurances, warranties, or guarantees as to the ability or competence of any leased employee. Client shall immediately report to CSSG all complaints, allegations or incidents of any misconduct or workplace safety violations, regardless of the source. This duty shall also include reporting all employment-related complaints, allegations or incidents of employment misconduct, including but not limited to sexual harassment matters. Client shall provide to CSSG complete and accurate disclosure of all circumstances surrounding such matters;

b. Provide Selected Staffing/Employees with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site;

c. Submit timely, complete, and accurate payroll information (including gross wages earned, any deductions, time worked, leave/time off status, worker classification code, and overtime exempt status) for each Assigned Employee for each applicable payroll period at least three banking days prior to the date on which payroll is to be issued by CSSG. All information provided by Client to CSSG will be complete, accurate, and not misleading. Client is responsible for the security and transmission of information prior to actual receipt by CSSG;

d. Pay CSSG's invoices in full by guaranteed certified/cashier's funds or wire transfer of funds upon receipt of the invoice documented with signed time tickets for the Client's job assignments. Client will be responsible for any and all ACH and/or wire transfer fees. If invoices are not paid immediately upon receipt, Client shall be subject to the payment terms as stipulated in Section 4 herein;

e. Timely report to CSSG any and all claims for benefits made or pursued by any Selected Staffing/Employees, whether such claim for benefits is due to an occupational injury, employment termination, or otherwise. Client acknowledges that they will be charged a claims fee for each claim reported that is based on an occupational injury. This claims fee shall be specified in the attached Schedule A.

3. **Selected Staffing/Employees.** The parties agree that all labor and/or employment performed by the Selected Staffing/Employees under this agreement shall be performed under the mutual direction and control of both parties as co-employers, as recited throughout this agreement, including that CSSG:

(a) Reserves a right of direction and control over leased employees assigned to Client's location, but not to the extent of prescribing how the work shall be performed. Client retains sufficient direction and control over the leased employees as is necessary to conduct Client's business and without which Client would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any applicable licensure, regulatory or statutory requirement of Client Company;

(b) Assumes responsibility for the payment of wages to the leased employees without regard to payments by Client to the leasing company;

(c) Assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on leased employees;

(d) Retains authority to hire, terminate, discipline, and reassign the leased employees. However, Client has the right to accept or cancel the assignment of any leased employee;

(e) Retains a right of direction and control over management of safety, risk and hazard control at the worksite or sites affecting its leased employees, including (1) responsibility for performing safety inspections of client equipment and premises, (2) responsibility for the promulgation and administration of employment and safety policies; and (3) responsibility for the management of workers' compensation claims, claims filings and related procedures,

although Client Company acknowledges that CSSG in either providing or not providing such assistance and responsibility assumes no liability; and

(f) Gives written notice of the relationship between CSSG and Client to each leased employee it assigns to perform services at Client's worksite

4. **Service Fees.** Client shall be entitled to service fees from CSSG for performing one or more of the following functions: recruiting employees, performing certain administrative functions, payroll funding, and procuring CLS customers for CSSG. Upon Client signing this Agreement and Schedule A which is attached to and an integral part of this Agreement, Client accepts the rates to be charged. Client shall not make any agreement, promise, or other agreement with any CLS customer to extend credit for payment to Countrywide Staffing Solutions Group of payroll, payroll taxes, unemployment insurance, workers' compensation insurance or any administrative functions without express written consent of CSSG.

Either CSSG shall perform the CLS customer billing and collection function or CSSG may outsource this function to Client to be performed on its behalf. This will be agreed upon before the execution of this Agreement and a box will be checked by Client on Schedule A reflecting and confirming this arrangement. If CSSG performs the CLS customer billing and collection function CSSG shall pay Client on a weekly basis for all CLS customer payments received by Countrywide Staffing Solutions Group during the previous week. This weekly payment will be equal to the amount CSSG invoices and collects from CLS customers procured by Client for recruited employees on assignment, plus other expenses, if any, less Schedule A rates per workers' compensation class code, times the gross wages of recruited employees on assignment in that applicable week. CSSG shall pay Client every Friday after CSSG has debited electronically the account of the CLS customer or negotiated a check from a third party payor, provided the third-party payor has paid CSSG's invoices in full for the services provided. Such amounts paid to Client shall be less any NSF and/or delivery charges. If Client performs the CLS customer billing, collection and funding function on behalf of CSSG, CSSG will bill and collect from Client per pay period, and in advance, an amount equal to Schedule A rates per workers' compensation class code times the gross wages of recruited employees on assignment in that applicable pay period ("Payroll Funding"). In such case, the amount due to CSSG will be ACH'd by CSSG from Client on Tuesday for a Friday payroll. The line on Schedule A stating that Client will perform this function must be checked upon execution of this Agreement to reflect this arrangement and agreement. In either case whether it be CSSG or Client that performs the CLS customer billing and collection function, the CSSG name must appear predominantly on all billing invoices issues in any way to CLS customers.

The rates shown in Schedule A are subject to change by CSSG based upon various factors with any change requiring written agreement and acceptance by Client prior to taking effect. Rates for workers' compensation class codes not shown in Schedule A to the Agreement that are applicable to a recruited employee's services on assignment to Client procured CLS customer, shall be established by and between CSSG and Client before any such rates are applied or used under the Agreement.

If CSSG is performing the billing and collection functions and CSSG's accounts receivable balance with any CLS customer has a negative balance, CSSG shall not be required to pay to Client any service fee under the Agreement until such receivable account shows a positive balance.

5. **CLS Customer Contracts.** Deleted

6. **Work Environment.** CSSG and CSSG 's workers' compensation carrier shall have the right to inspect the premises of all CLS customers upon reasonable notice during normal business hours to access and recommend safety procedures. CSSG is responsible for the establishment, circulation, and administration of employment and safety policies, coordinating the management of workers' compensation claims and procedures. CSSG shall have the right to cease providing recruited employees to a third party if, in the reasonable opinion of CSSG, after consultation with Client and a reasonable time to cure, CSSG believes that the third party's worksite or any portion thereof or any practice or equipment of the third party presents an undue risk of injury or death to Selected Staffing/Employees. CSSG shall have the right to refrain from providing recruited employees to such third party until, in the opinion of CSSG, the unsafe worksite, practice or equipment is rectified to such an extent that the undue risk of injury or death no longer exists. Alternatively, Client may continue relationship with such third party in its reasonable business discretion if it obtains other insurance coverages for the provision of its Selected Staffing/Employees, apart from those provided under this agreement, and holds CSSG harmless for the provision of any such personnel.

COUNTRYWIDE staffing solutions group

7. Effective date and Term. This Agreement shall be effective on the date signed by the last party to execute this Agreement and remain in force for the term of one (1) year (the "Initial Term"). Following the Initial Term, this Agreement shall renew for additional one (1) year periods unless terminated by either party per the terms of this Agreement.

8. Termination. Either party may terminate this Agreement for any reason with 60 days written notice to the other party. This Agreement may also be terminated by CSSG if Client materially breaches this Agreement if Client does not cure such breach or take substantial steps to cure such breach after 10 days written notice by CSSG to Client. CSSG may also terminate this Agreement if CSSG reasonably determines that a material adverse change has occurred in the financial condition or the business operation of Client, or that Client cannot or will not pay its obligations in the ordinary course of business, if Client does not cure such breach or take substantial steps to cure such breach after 10 days written notice by CSSG to Client of such concern/determination. This Agreement may also be terminated, upon five (5) days' notice by either party, in the event of any federal or state legislation, regulatory action or judicial decision that, in the sole discretion of the other party, materially adversely affects its ability to perform under this Agreement. These rights shall not be in derogation of any rights either party may have under this Agreement. Upon termination by either party of this Agreement, necessary Client information will be given to Client by CSSG.

9. Indemnification. Each party agrees to indemnify, defend and hold harmless the other party, its officers, shareholders, non-recruited employees, directors and agents from and against any and all losses, liabilities, expenses (including court costs and attorneys' fees) and claims for damage of any nature whatsoever, whether known or unknown as though expressly set forth and described herein, which the other may incur, suffer, become liable for, or which may be asserted or claimed against the other as a result of the actual or alleged acts, errors or omissions of the first party, including without limitation any violation or breach by the first party, or any claims whatsoever arising out of actual or alleged violations of wage and hour laws, tort law, and/or any federal or state employment related regulation or law. In the event that each party is required to defend against any claim or prosecute any claim by the breach or default in any provision of this Agreement to enforce the terms of this Agreement, the prevailing party shall be awarded all reasonable costs pertaining thereto, including reasonable attorneys' fees and costs in addition to any other relief to which the prevailing party may be entitled. Client agrees that access to real or personal property at Clients or a CLS customer's site, to any person who may be handicapped or disabled that Client has ownership or some other control, shall be the sole and exclusive responsibility of the Client. The parties further agree to hold harmless, indemnify, and defend each other, their officers, shareholders, employees, and directors, from any losses, liabilities, or attorneys' fees and claims for damage, for the consequences of any such breaches under this Agreement attributable in whole or in part to said party.

10. Guarantee. The individual signing this Agreement on behalf of Client (Guarantor) acknowledges that this Agreement constitutes a valuable benefit to Guarantor and accordingly, as an inducement to CSSG to enter into this Agreement, personally guarantees all obligations of Client under this Agreement (as it may be amended from time to time with written notice to Guarantor) and will save, indemnify, and hold harmless CSSG from Client's failures to meet its obligations and any costs (including court/arbitration costs and reasonable attorneys' fees) of enforcing this guarantee. Upon Client's failure to meet any obligation, CSSG may recover immediately from Guarantor without having to make demand on Client, and any discharge (including, without limitation, in bankruptcy) of any sum due from Client to CSSG other than by full payment will not discharge Guarantor, nor will claims against CSSG or assertions of set-off constitute a defense to an obligation of Guarantor. CSSG may enforce this guarantee by arbitration or suit in Knox County, Tennessee as provided elsewhere herein and guarantor consents to personal jurisdiction and venue accordingly. Guarantor consents to be personally served by sending service to Client's last known place of business or by other legally sanctioned method. No delay or failure to enforce the terms of this provision will constitute a waiver or require future waivers. This guarantee is irrevocable and will survive any termination of this Agreement.

11. Credit Checks and Information. Both parties agree that the other may use credit reports and information during and after the approval process of this Agreement and/or the collection of any debt created by this Agreement. If one party requests, the other party will inform the other whether a credit report was requested and, if so, the name and address of the consumer reporting agency used.

12. Confidential Information. Each party shall keep the other party's business secrets, including but not limited to customer, supplier, logistical, financial, research and development information, business model, confidential and shall not disclose such information to any third party during and after termination of this Agreement without the written consent of the other party. Each party agrees not to divulge to anyone, any confidential information of the other party, that comes to

157

his or her attention, except as absolutely necessary in the performance of his or her duties hereunder. Also each party agrees not to make any use of confidential information that is contrary to this Agreement.

13. Non-solicitation/non-circumvention by Countrywide Staffing Solutions Group. During the term of this Agreement and for a period of (1) one year after a termination of this Agreement, CSSG shall not, for itself, or any other entity, directly or indirectly, in any capacity, pirate, induce, solicit, or contact, CLS customers or recruited employees procured or recruited by Client for CSSG, or conduct business directly with the CSSG without Client being compensated per this Agreement, or to otherwise interfere with in any way any such business relationship.

14. Governing Law: Partial Invalidity. This Agreement and the respective rights and obligations of the parties hereto shall be governed by and determined solely in accordance with the laws of the State of Florida, without giving effect to its conflict of laws, principles or rules. If any provision of this Agreement shall be declared invalid under such laws, the validity of the other provisions shall remain in effect just as if the invalid portions had been omitted.

a. In the event of any controversy or claim arising out of or relating to this Agreement or the breach or alleged breach hereof, each of us irrevocably agrees to submit the matter to mediation where such mediation shall be a condition precedent to any demand for arbitration. Each party shall bear their own costs and expenses for mediation. The costs of the mediator shall be borne equally by each party. The parties shall confer and agree upon a mutual mediator.

b. Where mediation is unsuccessful, the parties shall submit the dispute to a binding arbitration to be administered by a single arbitrator selected from the list of panel arbitrators provided by the American Arbitration Association. Any arbitration proceeding shall be initiated by the complaining party serving a written demand for arbitration upon the other party. The written demand shall contain a detailed statement of the matter and facts supporting the demand and include copies of all related documents.

c. The arbitration shall be conducted pursuant to the AAA arbitration rules and shall be administered by the AAA. The arbitrator shall be required to apply the substantive law of the State of Florida. The arbitrator shall make findings of fact and conclusions of law and shall have no authority to make any award which could not have been made by a Court that has jurisdiction over the parties.

d. Any judgment obtained from the arbitration shall be binding and may be reduced to judgment in any Court having jurisdiction over the judgment debtor.

15. No Agency Relationship. Client shall not have the power or authority to execute any legal documents for or on behalf of CSSG or do anything to legally bind or obligate CSSG in any manner, apart from the provision of co-employment services by Selected Staffing/Employees under this Agreement. This Agreement does not in any way create an agency or employer relationship between CSSG and Client, other than as defined herein.

16. Non-solicitation/non-circumvention by Client. During the term of this Agreement and for a period of (1) one year after a termination of this Agreement, Client shall not, for itself, or any other entity, directly or indirectly, in any capacity, pirate, induce, solicit, contact, or respond to CSSG CLS customers or recruited employees not procured or recruited by Client for CSSG to terminate a business relationship with Client, or conduct business directly with the CSSG without Client being compensated per this Agreement, or to otherwise interfere with in any way any such business relationship.

17. Representations & Warranties. Each Party represents and affirms to the other that they each have the authority to execute, deliver, and perform under this Agreement; that there is no pending legal actions against either party that may interfere or prohibit either party from performing the contemplated services per this Agreement. Client hereby represents and warrants to CSSG that it is not subject to an agreement that would restrict Client from entering into this Agreement.

18. Assignment. Neither party may assign this Agreement or the benefit of this Agreement to any other entity without the written consent of the other party. Such consent shall not be unreasonably withheld.

19. **No Waiver.** The failure by either CSSG or Client to insist upon strict performance of any of the provisions contained in this Agreement shall in no way constitute a waiver of any of its rights as set forth herein, at law or equity.

20. **Entire Agreement, Amendment.** This Agreement constitutes the entire understanding and agreement between the parties hereto. This Agreement may be modified or amended only by a written modification or amendment signed by both parties.

21. **Rule of Construction.** Since both parties hereto have had the opportunity to have this Agreement reviewed by counsel, the rule of construction regarding ambiguities to be construed against the drafter will not be applicable and is hereby voided.

22. **Supremacy of the Agreement.** This Agreement supersedes all previous Agreements or understandings between the parties hereto, and all other such Agreements or understandings, whether oral or written, shall become null and void as of the date of the execution hereof.

23. **Successors.** This Agreement shall be binding upon and insure to the benefit of the parties to this Agreement and their respective successors, assigns, and personal representatives.

24. **Notices.**
Each written notice provided for herein shall be given in writing and shall be mailed, in the case of a CSSG, to its principal offices and in the case of Client, to its principal offices. Such notice shall be considered given upon receipt when mailed by certified mail, return receipt requested, or by personal delivery.

25. **Headings**
The headings in the Agreement are intended for convenience or reference and shall not affect its interpretation.

26. **No Third Party Beneficiaries**
No rights of any third party are created by this Agreement and no person not a party to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral, to the contrary.

[Signatures on Following Page]

COUNTRYWIDE
staffing solutions group

IN WITNESS WHEREOF, the Company has caused this Agreement to be executed by its duly authorized officer, and Broker has hereunto set its hand and seal, all as of the date(s) and year written below.

ACCEPTED AND APPROVED BY:

CountryWide Payroll & HR Solutions, Inc. DBA CountryWide Staffing Solutions Group (CSSG)

Name: _____ Date: 3-26-15

Title: MS

Condustrial, Inc. (Client)

Name: _____ Date: 3-26-15

Title: President

Exhibit A

7

160

RECEIVED
Apr 22 2024
SC Court of Appeals

PROOF OF SERVICE

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Appellate Case No. 2021-000633

Rachel J. Turner, Employee, Appellant-Respondent,

v.

Medustrial Healthcare Staffing Service and Condustrial, Inc.; Guarantee Insurance Company; Countrywide Staffing Solutions Group, Inc.; South Carolina Department of Corrections; State Accident Fund; and South Carolina Uninsured Employer's Fund, Respondents

of which Condustrial, Inc. f/k/a Medustrial Healthcare Staffing Service, Employer, is the Respondent-Appellant.

PROOF OF SERVICE

I certify that I have served the Respondent-Appellant Condustrial, Inc.'s Petition for Rehearing by electronic mail on April 22nd, 2024, addressed to all attorneys of record at the addresses below:

The Honorable Amy Bracy
Judicial Director
S.C. Workers' Compensation Commission
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April 22nd, 2024

George D. Gallagher, Esquire
Speed, Seta, Martin, Trivett, Stubley & Fickling, LLC
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Attorney for Appellant-Respondent Condustrial, Inc.

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JENNIFER S. RAY (GA)
DAVID RESTUCHER (GA)
RICHARD W. SIMMONS, II (SC)
JOSEPH G. SPIVEY (GA)
LINDSEY R. STEWART (GA)
BRIGGS P. TUCKER (SC)
BRITTANY BELL TURNER (GA & FL)
RACHEL E. WEISSERT (GA)

GEORGE D. GALLAGHER (SC)

April 22, 2024

VIA EMAIL: CTAPPFILINGS@SCCOURTS.ORG
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: ***Rachel Turner v. SC Department of Corrections – Kirkland, et al***
Appellate Case No.: 2021-000633
WCC No.: 1514359
DOA: 9/5/2015
Our File No.: 8400-0101

Dear Ms. Kitchings:

Please find enclosed the Respondent-Appellant Condustrial's Petition for Rehearing in the above-referenced matter. The original and six copies along with our firm's check in the amount of $50.00 for the filing fee have been placed in the mail to your office.

By copy of this letter to all counsel of the involved parties, I am serving them with this Petition.

Sincerely,

George D. Gallagher
GDG/rco
Enclosures

cc: The Hon. Amy Bracy
Stephen B. Samuels, Esq.
Erin Farthing, Esq.
Gregory M. Alford, Esq.
Lisa C. Glover, Esq.
Beth Richardson, Esq.
Grady L. Beard, Esq.
Edwin P. Martin, Jr., Esq.
James P. Newman, Jr., Esq.
Tom Sears, Esq.