

State of South Carolina  
Workers' Compensation Commission

APPELLATE PANEL DECISION AND ORDER

COMMISSION PANEL: The Honorable Melody L. James; The Honorable Gene McCaskill;  
and The Honorable T. Scott Beck.

SCWCC File No.: 2222593

Benjamin Moses,

Claimant,

v.

Evans Delivery Co., Inc. et al.,

Employer,

and

Triumphe Casualty Co. et al.,

Carrier,

Defendants.

**RECEIVED**

JUN 02 2025

SC Court of Appeals

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**AFFIRMED**

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Hearing Held in Richland County, South Carolina,  
on March 10, 2025

Per notice timely and properly served upon all Parties of Interest.

Appearances: Benjamin Moses, Claimant/Appellant, *pro se*.

J. Randall Hedlund, Esq., and Thomas B. Pritchard, Esq.,  
represents Defendants/Respondents.

Court Reporter: Skylet Kean, 803-609-0134.

Filed: May 2, 2025

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## I. STATEMENT OF THE CASE

### Single Commissioner

**Procedural History:** Claimant asserted he sustained injuries on May 12, 2022, to his head, neck, back, left upper extremity, and right upper extremity when he was struck by a roll of material in the course and scope of his employment. Defendants denied Claimant's claim and asserted he is an owner-operator (i.e. independent contractor) for PeopLease, Inc., and not a direct employee.<sup>1</sup> Defendants further asserted that there is a bona fide Lease Agreement between Claimant and Evans Delivery Co. and, therefore, there is no employer/employee relationship pursuant S.C. Code § Ann. 42-1-360. Defendants maintained that Claimant purchased an Occupational Accident Policy through Intact Insurance Specialty Solutions ("Intact Insurance"),<sup>2</sup> which was in place and provided coverage at the time of the accident.

On May 4, 2023, Claimant filed a Form 50, Request for Hearing, seeking benefits under the South Carolina Workers' Compensation Act ("the Act"). Defendants Intact Insurance, Triumph Casualty Co. and Evans Delivery Co. filed a Form 51 denying the claim on May 30, 2023. Defendants PeopLease and National Interstate Insurance Co. filed a Form 51 denying the claim on July 17, 2023. A hearing was held on the parties' Forms 50 and 51 before Commissioner Aisha Taylor on August 8, 2023; however, no record of the proceeding was made. Commissioner Taylor subsequently issued a Decision and Order, which was remanded by the Appellate Panel to the Jurisdictional Commissioner for a *de novo* hearing due to the absence of a record from the previous hearing.

On July 30, 2024 a *de novo* hearing was held on the parties' Forms 50 and 51 before Commissioner R. Michael Campbell, II. At the hearing, Claimant took the position that he was an employee of Evans Delivery and requested a finding that he was an employee, that he sustained

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<sup>1</sup> PeopLease is a Professional Employer Organization (PEO) for Evans Delivery Co. pursuant to S.C. Code §. Ann. 40-68-10 et seq.

<sup>2</sup> Formerly, OneBeacon American Insurance Group.

compensable injuries to the alleged body parts, and that he is entitled to medical treatment. Defendants took the position that Claimant was not an employee but rather an owner/operator under a bona fide Lease Agreement and maintained an occupational accident policy that Defendants contend should be responsible for benefits pursuant to S.C. Code § 42-1-360. By and through their attorney, John McKee, Esq., Intact Insurance took the position that Claimant was entitled to benefits under the Occupational Accident Policy, that some benefits were initially paid until Claimant filed the accident as a workers' compensation claim, and but for the worker' compensation claim, benefits would have continued to be provided to Claimant. (Hr. Tr. pp. 21-22.)

The Single Commissioner determined, *inter alia*:

[C]laimant is not entitled to receive any benefits under the Workers' Compensation Act, and this claim is dismissed without prejudice.

(Single Commissioner's Decision and Order filed on September 5, 2024, p.10.)

### **Appellate Panel**

This matter is now before the South Carolina Workers' Compensation Commission's Appellate Panel pursuant to issues raised on appeal by Claimant. Within the statutory period, Claimant filed a Form 30, Request for Commission Review. Accordingly, the parties presented before the Appellate Panel on March 10, 2025.

## **II. SINGLE COMMISSIONER FINDINGS OF FACT AND CONCLUSIONS OF LAW**

### **FINDINGS OF FACT**

1. This claim stems from an accident that occurred on May 12, 2022, when Claimant was struck by a roll of material and alleges injuries to his neck, head, [back], left upper extremity, and right upper extremity.
2. The primary issue in this case is whether Claimant was an owner/operator for Evans Delivery and, therefore, exempt from the Act pursuant to Section 42-1-360(9), or whether he was an

- employee of PeopLease at the time of his May 12, 2022 accident.
3. Claimant's lease agreement was signed on December 1, 2020 and states that the agreement was to, "remain in effect for a period of twelve (12) month, and shall continue in effect on a month to month basis thereafter. Either party may terminate this Agreement immediately, by giving five (5) day's written notice". There is no *direct* evidence, however, that this lease agreement was terminated by either party prior to Claimant's accident.
  4. A letter from Evans Delivery Co. from June 20, 2022 indicated that Claimant had a newer lease, which was signed on April 27, 2021, and was terminated on June 16, 2022. (Claimant's Exhibit D.)
  5. Therefore, I find that there was a bona fide lease agreement in place on the date of accident between Claimant and Evans Delivery.
  6. I further find that Claimant was an owner/operator for Evans Delivery and was thus, not an employee of Evans Delivery or PeopLease on the date of accident.
  7. Additionally, Claimant held an occupational accident policy at the time of the accident.
  8. Claimant chose his own routes, paid for his own fuel, and had control over his resting time and stops. He had the ability to pick or reject loads. Furthermore, he was able to hire other drivers to drive his tractor or help him at his sole discretion. His sole responsibility was to deliver the load on time.
  9. Claimant furnished all of his own equipment, including his own trailer and tires. He was responsible for vehicle maintenance, fuel, and insurance.
  10. Claimant was paid as a percentage of the load he was carrying, whereas Evans Delivery Co.'s direct employees were paid per mile. Claimant had no employee benefits, whereas a company driver would have such benefits as short-term disability, long-term disability, workers'

compensation, and health insurance. Claimant paid his own taxes, filed as a sole proprietor, and received a Form 1099 at the end of the year.

11. The right to terminate was controlled by the leasing agreement, and either party can terminate the agreement with five days' notice.

#### CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-130 and *Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 527 S.E.2d 761 (2000), coverage under the Workers' Compensation Act depends on the existence of an employment relationship.
2. To determine whether a worker is an employee covered by the Workers' Compensation Act or an independent contractor not covered by the act, I must apply the four-prong test found in *Shatto v. McLeod Reg'l Med Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013).
3. Pursuant to the first prong in the four-prong test in *Shatto*, which concerns Defendant's right to control Claimant in the performance of his work, I find that this prong favors Claimant's status as a contractor. Claimant chose his own routes, paid for his own fuel, and had control over his resting time and stops. He had the ability to pick or reject loads. Furthermore, he was able to hire other drivers to drive his tractor or help him at his sole discretion. His sole responsibility was to deliver the load on time.
4. As to the second prong of the *Shatto* test, which addresses the furnishing of equipment, I find that this prong also favors Claimant's status as a contractor. Claimant furnished all of his own equipment, including his own trailer and tires. He was responsible for vehicle maintenance, fuel, and insurance.
5. As to the third prong of the *Shatto* test, which addresses the method by which a worker is paid, I find that this prong favors Claimant's status as a contractor. Claimant was paid as a percentage

of the load he was carrying, whereas Evans Delivery's direct employees were paid per mile. Claimant had no employee benefits, whereas a company driver would have such benefits as short-term disability, long-term disability, workers' compensation, and health insurance. Claimant paid his own taxes, filed as a sole proprietor, and received a Form 1099 at the end of the year.

6. As to the fourth and final prong of the *Shatto* test, which addresses the right to fire, I find that this prong favors Claimant's status as a contractor, as Claimant's contract could not be immediately terminated. The right to terminate was controlled by the leasing agreement, and either party could terminate the agreement with five days' notice.
7. Weighing all of these prongs together in the evenhanded manner prescribed by *Wilkinson v. Palmetto State Transp. Co.*, I find that Claimant's status more closely resembles that of an independent contractor; therefore, Claimant is not covered by the Workers' Compensation Act for the injuries alleged in this case.
8. Furthermore, pursuant to S.C. Code Ann. § 42-1-360(9), the Act does not apply to an individual who owns or holds a vehicle under a bona fide lease-purchase and who, under a valid independent contractor contract, provides that vehicle and the individual's services as a driver to a motor carrier.
9. Given that Claimant is an owner/operator for Evans Delivery Co. and PeopLease under a bona fide lease-purchase and not an employee, the Act does not apply to this claim, and Claimant is not entitled to any benefits under the Act.
10. Thus, this claim is dismissed without prejudice.
11. I find that while there was a valid occupational accident policy in place at the time of the accident, the Commission does not have jurisdiction over the policy and cannot enforce any

benefits to be provided under the same.

### III. ISSUES ON APPEAL

1. Whether the Single Commissioner erred as a matter of fact and law that Claimant failed to meet his burden to prove by the preponderance of the evidence that he was Employer's employee and not an independent contractor?
2. Whether the Doctrines of Promissory Estoppel and Fraudulent Misrepresentation apply to representations made by opposing counsel to Claimant?

### IV. DECISION OF THE APPELLATE PANEL

Pursuant to S.C. Code Ann. §42-17-50, we, the Appellate Panel, have reviewed the Decision and Order of the Single Commissioner and weighed the evidence as presented at the initial hearing. We have also considered all issues raised in the respective Appellant and Respondent briefs of the parties, as well as those issues raised at the Full Commission Review Hearing.

After careful review, the Appellate Panel of the South Carolina Workers' Compensation Commission, by unanimous vote, does hereby **AFFIRM** the Decision and Order of the Single Commissioner filed on September 5, 2024.

**Below are set out the Findings of Fact and Conclusions of Law of the Appellate Panel as to this claim.**

#### FINDINGS OF FACT

1. This claim stems from an accident that occurred on May 12, 2022, when Claimant was struck by a roll of material and alleges injuries to his neck, head, back, left upper extremity, and right upper extremity.
2. The primary issue in this case is whether Claimant was an owner/operator for Evans Delivery and, therefore, exempt from the Act pursuant to Section 42-1-360(9), or whether he was an employee of PeopLease at the time of his May 12, 2022 accident.

3. Claimant's lease agreement was signed on December 1, 2020 and states that the agreement was to, "remain in effect for a period of twelve (12) month, and shall continue in effect on a month to month basis thereafter. Either party may terminate this Agreement immediately, by giving five (5) day's written notice". There is no *direct* evidence, however, that this lease agreement was terminated by either party prior to Claimant's accident.
4. A letter from Evans Delivery Co. from June 20, 2022 indicated that Claimant had a newer lease, which was signed on April 27, 2021, and was terminated on June 16, 2022. (Claimant's Exhibit D.)
5. Therefore, we find that there was a bona fide lease agreement in place on the date of accident between Claimant and Evans Delivery.
6. We further find that Claimant was an owner/operator for Evans Delivery and was thus, not an employee of Evans Delivery or PeopLease on the date of accident.
7. Additionally, Claimant held an occupational accident policy at the time of the accident.
8. Claimant chose his own routes, paid for his own fuel, and had control over his resting time and stops. He had the ability to pick or reject loads. Furthermore, he was able to hire other drivers to drive his tractor or help him at his sole discretion. His sole responsibility was to deliver the load on time.
9. Claimant furnished all of his own equipment, including his own trailer and tires. He was responsible for vehicle maintenance, fuel, and insurance.
10. Claimant was paid as a percentage of the load he was carrying, whereas Evans Delivery Co.'s direct employees were paid per mile. Claimant had no employee benefits, whereas a company driver would have such benefits as short-term disability, long-term disability, workers' compensation, and health insurance. Claimant paid his own taxes, filed as a sole proprietor,

and received a Form 1099 at the end of the year.

11. The right to terminate was controlled by the leasing agreement, and either party can terminate the agreement with five days' notice.

#### CONCLUSIONS OF LAW

1. Pursuant to S.C. Code Ann. § 42-1-130 and *Meyer v. Piggly Wiggly No. 24, Inc.*, 338 S.C. 471, 527 S.E.2d 761 (2000), coverage under the Workers' Compensation Act depends on the existence of an employment relationship.
2. To determine whether a worker is an employee covered by the Workers' Compensation Act or an independent contractor not covered by the act, we must apply the four-prong test found in *Shatto v. McLeod Reg'l Med Ctr.*, 406 S.C. 470, 481, 753 S.E.2d 416, 422 (2013).
3. Pursuant to the first prong in the four-prong test in *Shatto*, which concerns Defendant's right to control Claimant in the performance of his work, we conclude that this prong favors Claimant's status as a contractor. Claimant chose his own routes, paid for his own fuel, and had control over his resting time and stops. He had the ability to pick or reject loads. Furthermore, he was able to hire other drivers to drive his tractor or help him at his sole discretion. His sole responsibility was to deliver the load on time.
4. As to the second prong of the *Shatto* test, which addresses the furnishing of equipment, we conclude that this prong also favors Claimant's status as a contractor. Claimant furnished all of his own equipment, including his own trailer and tires. He was responsible for vehicle maintenance, fuel, and insurance.
5. As to the third prong of the *Shatto* test, which addresses the method by which a worker is paid, we conclude that this prong favors Claimant's status as a contractor. Claimant was paid as a percentage of the load he was carrying, whereas Evans Delivery's direct employees were paid

per mile. Claimant had no employee benefits, whereas a company driver would have such benefits as short-term disability, long-term disability, workers' compensation, and health insurance. Claimant paid his own taxes, filed as a sole proprietor, and received a Form 1099 at the end of the year.

6. As to the fourth and final prong of the *Shatto* test, which addresses the right to fire, we conclude that this prong favors Claimant's status as a contractor, as Claimant's contract could not be immediately terminated. The right to terminate was controlled by the leasing agreement, and either party could terminate the agreement with five days' notice.
7. Weighing all of these prongs together in the evenhanded manner prescribed by *Wilkinson v. Palmetto State Transp. Co.*, we conclude that Claimant's status more closely resembles that of an independent contractor; therefore, Claimant is not covered by the Workers' Compensation Act for the injuries alleged in this case.
8. Furthermore, pursuant to S.C. Code Ann. § 42-1-360(9), the Act does not apply to an individual who owns or holds a vehicle under a bona fide lease-purchase and who, under a valid independent contractor contract, provides that vehicle and the individual's services as a driver to a motor carrier.
9. Given that Claimant is an owner/operator for Evans Delivery Co. and PeopLease under a bona fide lease-purchase and not an employee, the Act does not apply to this claim, and Claimant is not entitled to any benefits under the Act.
10. Thus, this claim is dismissed without prejudice.
11. We conclude that while there was a valid occupational accident policy in place at the time of the accident, the Commission does not have jurisdiction over the policy and cannot enforce any benefits to be provided under the same.

**ORDER**

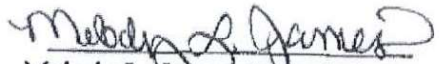
**THEREFORE IT IS HEREBY ORDERED** that the Decision and Order of the Single Commissioner filed in the above-captioned matter on September 5, 2024, is hereby **AFFIRMED**.

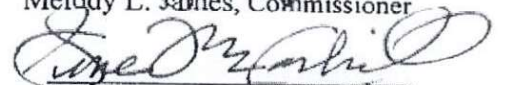
**ACCORDINGLY:**

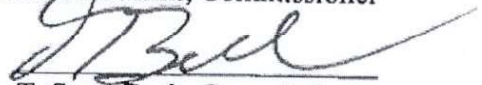
**IT IS FURTHER ORDERED** that Claimant is not entitled to receive any benefits under the Workers' Compensation Act, and this claim is dismissed without prejudice.

**AND SO IT IS ORDERED.**

\_\_\_\_\_ (date)  
Columbia, SC

  
Melody L. James, Commissioner

  
Gene McCaskill, Commissioner

  
T. Scott Beck, Commissioner

**Order Served via email:**

<p>Benjamin Moses <a href="mailto:Bmoses1824@gmail.com">Bmoses1824@gmail.com</a></p>	<p>J. Randall Hedlund McAngus, Goudelock &amp; Courie <a href="mailto:rhedlund@mgclaw.com">rhedlund@mgclaw.com</a></p> <p>Thomas B. Pritchard Vernis &amp; Bowling of South Carolina <a href="mailto:tpritchard@sccarolina-law.com">tpritchard@sccarolina-law.com</a></p>
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**Order Served via USPS:**

<p>Benjamin Moses 281 Herbert Wilson Road Dalzell, SC 29040</p>	<p>J. Randall Hedlund McAngus Goudelock, &amp; Courie P.O. Box 2980 Greenville, SC 29602</p> <p>Thomas B. Pritchard Vernis &amp; Bowling of South Carolina 494-A Savannah Highway Charleston, SC 29407</p>
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**CERTIFICATE OF SERVICE**

This is to certify that the undersigned has on this date served a copy of this order in the above entitled action upon all parties to this case by sending an electronic copy hereof by electronic mail addressed to the attorneys for said parties; or if there is an unrepresented party(ies), by depositing a copy hereof, postage paid in the United States mail, first class, addressed to the unrepresented party(ies) and to the attorney(s) for the represented party(ies).

***By Eugenia Hollmon on May 2, 2025***