IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

Appellate Case No.: 2025-001114

SCWCC File No.: 2222593

Benjamin Moses, Appellant, Appellant,

v.

Evans Delivery., Inc., Employer, and Triumphe Casualty Co., Carrier, PeopLease, LLC, and National Interstate Insurance Company, Defendants,

of which Evans Delivery Company, Inc. and Triumphe Casualty Co. are the Respondents.

FINAL BRIEF OF RESPONDENTS

Benjamin Moses
281 Herbert Wilson Road
Dalzell, SC 29040
Bmoses1827@gmail.com
***Pro se* Appellant, Appellant**

Thomas B. Pritchard, Esquire
Vernis & Bowling of South Carolina, LLC
494-A Savannah Highway
Charleston, SC 29407
tpritchard@scarolina-law.com
-and-
D. Tyler Hembree, Esquire
J. Randall Hedlund, Esquire
McAngus Goudelock & Courie, LLC
PO Box 2980
Greenville, SC 29602
tyler.hembree@mgclaw.com
rhedlund@mgclaw.com
Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

IDENTIFICATION OF PARTIES

By way of identification of the parties, PeopLease, LLC, Employer, and Triumphe Casualty Company c/o National Interstate Insurance Company, Carrier (hereinafter "Respondent PeopLease") is a Professional Employer Organization ("PEO") for Evans Delivery, Inc., Employer, and Triumphe Casualty Company c/o Intact Insurance Specialty Solutions, Carrier (hereinafter "Respondent Evans") pursuant to S.C. Code Ann. § 40-68-10 *et seq*. The Appellant and Respondent Evans entered into a bona fide Lease Agreement in which the Appellant operated as an independent contractor truck driver. The Appellant owned and operated his own Freightliner truck and purchased an occupational accident policy ("OAP") via his OneBeacon OAP which was in effect at the time of the alleged accident on May 12, 2022.

COUNTER-STATEMENT OF ISSUES ON APPEAL

I. Whether the Appellate Panel of the South Carolina Workers' Compensation Commission properly determined that Appellant was an independent contractor as opposed to an employee, thereby divesting the Commission of jurisdiction to award benefits under the South Carolina Workers' Compensation Act.

II. Whether Appellant's remaining arguments are preserved for appellate review.

STATEMENT OF THE CASE

This case was initiated by the Appellant filing a Form 50, Request for a Hearing, on May 4, 2023, seeking benefits under the Act due to alleged injuries to his head, neck, back, left upper extremity, and right upper extremity after being struck by a 1,000-pound roll of material. Respondents filed a timely Form 51, Employer's Answer to Request for Hearing, denying that the Appellant was entitled to benefits under the Act due to the Appellant's status as an owner-operator/independent contractor for Respondent Evans, not an employee.

A hearing was scheduled for August 9, 2023, before the Single Commissioner, the Honorable Aisha Taylor (hereinafter "Commissioner Taylor") to determine the issues brought

forth on Forms 50 and 51. At the hearing, the Appellant asserted that he was an employee of Respondent Evans and therefore entitled to benefits under the Act. Respondents maintained their position that the Appellant was not an employee under the Act, but rather an independent contractor pursuant to a bona fide Lease Agreement. Moreover, the Appellant's OAP was effective and should provide coverage for the Appellant's purported medical and disability benefits. Respondents accordingly requested an Order dismissing and denying the claim.

Commissioner Taylor filed a Decision and Order on November 1, 2023, concluding that Appellant was an owner-operator for Respondents pursuant to S.C. Code Ann. § 42-1-360(9). Commissioner Taylor also found that the Appellant was operating for Respondents under a bona fide lease-purchase agreement and was therefore not an employee. Thus, the Act did not apply to this claim for lack of an employment relationship and Appellant was not entitled to any benefits.

Appellant then filed a Form 30, Request for Commission Review. The Form 30 was accompanied by a handwritten document setting forth various complaints raised by Appellant. A hearing on the Appellant's Form 30 was originally scheduled for April 8, 2024, but was postponed to May 20, 2024, after it was discovered that no transcript of the August 9, 2023, hearing existed. Respondents filed a Motion to Settle the Record, which was denied, leading to a Decision and Order of the Full Commission vacating Commissioner's Taylor's November 1, 2023, Order, and remanding the claim for a *de novo* hearing before a new commissioner.

On July 30, 2024, a *de novo* hearing was held before the Single Commissioner, the Honorable Mike Campbell (hereinafter "Commissioner Campbell"). At that hearing, Appellant again alleged entitlement to benefits under the Act. The Appellant testified as to the mechanism of injury and the body parts affected. Further, he conceded he was receiving benefits under his OneBeacon OAP but, upon filing his workers' compensation claim, benefits were terminated.

Counsel for OneBeacon American Insurance Co., advised Commissioner Campbell that Appellant's benefits under the OAP had not been reinstated because the workers' compensation claim had not been adjudicated and dismissed; however, the benefits could be reinstated once the workers' compensation claim was dismissed and denied.

On September 5, 2024, Commissioner Campbell—as Commissioner Taylor did previously—issued a Decision and Order concluding that Appellant was an independent contractor pursuant to S.C. Code Ann. § 42-1-360(9) and *Shatto v. McLeod Reg'l Med. Ctr.*, 406 S.C. 470, 753 S.E.2d 416 (2013). Accordingly, Commissioner Campbell dismissed the claim. Shortley thereafter, Appellant again filed a Form 30 request for a Full Commission Review of Commissioner Campbell's Order.

On March 10, 2025, a hearing was held before the Appellate Panel of the South Carolina Workers' Compensation Commission, consisting of Commissioners Melody James, Gene McCaskill, and T. Scott Beck. The parties were afforded an opportunity to present oral arguments on their respective positions in accordance with Commission regulations.

On May 2, 2025, the Full Commission issued a Decision and Order affirming the denial and dismissal of the claim because it also found Claimant to be an independent contractor rather than an employee. On June 14, 2025, the Appellant filed a Notice of Intent to Appeal. Respondents then moved to dismiss the appeal for Appellant's failure to adhere to the South Carolina Appellate Court Rules. The motion was denied on September 18, 2025, and briefing was commenced.

STANDARD OF REVIEW

"An award will not be made under our Workers' Compensation Act unless an employment relationship existed at the time of the alleged injury." *Spivey v. D.G. Constr. Co.*, 321 S.C. 19, 21,

467 S.E.2d 117, 118 (Ct. App. 1996). "The burden of proving the relationship of employer and employee is upon the claimants." *Marlow v. E.L. Jones & Son, Inc.*, 248 S.C. 568, 570, 151 S.E.2d 747, 748 (1966). "Whether a claimant is an employee or independent contractor is a jurisdictional question and therefore the Court may take its own view of the preponderance of the evidence." *Lewis v. L.B. Dynasty*, 411 S.C. 637, 641, 770 S.E.2d 393, 395 (2015). "[T]he determination of whether the worker is an employee or independent contractor is a fact-specific matter resolved by applying certain established principles." *Wilkinson v. Palmetto State Transp. Co.*, 371 S.C. 365, 373, 638 S.E.2d 109, 109 (Ct. App. 2006). "The test to determine whether a claimant is an employee or an independent contractor is if 'the alleged employer has the right and authority to control and direct the particular work or undertaking, as to the manner or means of its accomplishment.'" *Id.* (quoting *S.C. Workers' Comp. Comm'n v. Ray Covington Realtors, Inc.*, 318 S.C. 546, 547, 459 S.E.2d 302, 303 (1995)). "Four factors determine the right of control." *Id.* "They are: (1) direct evidence to or exercise of control, (2) method of payment, (3) furnishing of equipment, and (4) right to fire." *Id.* The four factors are to be evaluated "in an even-handed manner in determining whether the questioned relationship is one of employment or independent contractor." *Shatto v. McLeod Regional Medical Center*, 406 S.C. 470, 476, 753 S.E.2d 416, 419 (2013).

ARGUMENT

I. The Appellate Panel of the South Carolina Workers' Compensation Commission correctly determined Appellant to be an independent contractor rather than an employee.

Applying the plain language of the South Carolina Workers' Compensation Act, the Appellate Panel of the South Carolina Workers' Compensation Commission was correct in determining Appellant was an independent contractor. South Carolina law provides that:

> [A]n individual who owns or holds under a bona fide lease-purchase or installment-purchase agreement a tractor trailer, tractor, or other vehicle, referred to as "vehicle", and who, under a valid independent contractor contract provides that vehicle and the individual's services as a driver to a motor carrier. For purposes of this item, any lease-purchase or installment-purchase of the vehicle may not be between the individual and the motor carrier referenced in this title, but it may be between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller. Where the lease-purchase or installment-purchase is between the individual and an affiliate, subsidiary, or related entity or person of the motor carrier, or any other lessor or seller, the vehicle acquisition or financing transaction must be on terms equal to terms available in customary and usual retail transactions generally available in the State. **This individual is considered an independent contractor and not an employee of the motor carrier under this title.** The individual and the motor carrier to whom the individual contracts or leases the vehicle mutually may agree that the individual or workers, or both, is covered under the motor carrier's workers' compensation policy or authorized self-insurance if the individual agrees to pay the contract amounts requested by the motor carrier. Under any such agreement, the independent contractor or workers, or both, must be considered an employee of the motor carrier only for the purposes of this title and for no other purposes.

S.C. Code Ann. § 42-1-360(9) (emphasis added).

The parties hereto entered into a bona fide lease agreement and independent contractor agreement on December 1, 2020. The agreement was to "remain in effect for a period of twelve (12) months, and shall continue in effect on a month-to-month basis thereafter." The agreement allowed for either party to terminate the lease immediately "by giving five (5) day's written notice." Respondents ultimately elected to terminate the lease in accordance with the agreement, but did not do so until June 20, 2022, one month after the alleged workplace accident. Thus, the lease agreement was in place and effective at the time of the alleged injury and the Full Commission's determination of the same should be affirmed.

Additionally, Appellant was not covered by Respondents' workers' compensation policy as he obtained and purchased his own OAP to provide benefits in the case of a workplace injury. Appellant's OAP was in effect at the time of his injury and the carrier for that policy paid benefits to Appellant until he elected to file this workers' compensation claim. The Appellant falls directly

into the statutory purview of subsection § 42-1-360(9), and the Appellate Panel's determination of the same should be affirmed.

Furthermore, Appellant does not fall under any exception to classify him as an employee under the Act rather than an independent contractor. To determine if an individual is an independent contractor, "[t]he general test applied is that of control by the employer." *Young v. Warr,* 252 S.C. 179, 189, 165 S.E.2d 797, 802 (1969). Our Supreme Court has previously addressed a substantially similar factual scenario in which an owner-operator entered into a formal independent contractor agreement with a transportation company in *Wilkinson.*

In that case, the Supreme Court determined that Wilkinson was an independent contractor, reversing the Court of Appeals' determination that he was an employee. *Wilkinson*, 382 S.C. at 297, 676 S.E.2d at 701. Further, the Supreme Court clarified that the common law factors – right or exercise of control, method of payment, furnishing of equipment and right to fire – should be evaluated in an evenhanded manner when determining whether the questioned relationship is one of employment or independent contractor." *Id.* at 307, 676 S.E.2d at 706 (emphasis added). In doing so, and citing a prior South Carolina Supreme Court case, *Kilgore Group v. S.C. Employment Sec. Comm'n.,* 313 S.C. 65, 68-69, 437 S.E.2d 48, 50 (1993), our Supreme Court explained that in its analysis for finding *Wilkinson* an independent contractor, they were guided by the parties' independent contractor agreement. and the adherence of the parties' conduct to the terms of the contract because while the language in the contract declaring the relationship is that of an employer/independent contract is not dispositive, the contract nonetheless has considerable weight in determining the nature of the parties' relationship. *Wilkinson*, 382 S.C. at 300, 676 S.E.2d at 702. The case here is nearly identical to the facts presented to the Supreme Court in *Wilkinson* and should achieve the same result.

The first factor in determining an independent contractor relationship is direct evidence of the right or exercise of control. Here, just as in *Wilkinson*, the parties entered into a bona fide lease agreement contract, listing Appellant as an independent contractor and an owner-operator of his own truck. Appellant also acquired and maintained his own OAP, effective at the time of his accident, evidencing an independent contractor relationship even further than the facts present in *Wilkinson*. In addition, Appellant's OAP even paid out benefits prior to his filing of this workers' compensation claim. Significantly, pursuant to the Lease Agreement, Appellant retained personal control over his routes while delivering loads, breaks, refueling stops, and rest periods. He also retained the ability to decline loads offered to him by Respondent's dispatch service. Further, Appellant refers to himself as a contractor and owner-operator multiple times within the record. Each of these facts supports the Commission's determination of an independent contractor relationship.

The second factor in determining an independent contractor relationship is the furnishing of equipment. Here, just as in *Wilkinson*, Appellant is the owner-operator and possesses the title to the 2000 Freightliner truck he uses as an independent contractor and testified during his deposition that he made payments on the truck himself. Appellant was responsible for the ownership of his truck and the determination for logistics of maintenance and repairs. Pursuant to the Lease Agreement, Appellant obtained his own plates, license, permits, and furnished all necessary equipment including lubricants, fuel, tires, and other parts, supplies, equipment and repairs necessary or required to safely and efficiently operate the truck and trailer. None of these items were furnished by Respondents. Further, the Appellant—and not Respondents—was responsible for equipping and maintaining the truck's safe condition in complete

compliance with state law and DOT regulations, including vehicle insurance. Accordingly, this factor also leans in favor of an independent contractor relationship.

The third factor in determining an independent contractor relationship is the method of payment. Here, the Appellant was paid by Respondents based on a set percentage of the value of the load he delivered in his truck. This contrasts from the method of payment for Respondent's direct employees, who were paid per mile driven. Furthermore, Appellant filed his own taxes listing himself as a sole proprietor and received a Nonemployee Compensation Form 1099 from Respondents. This factor leans in favor of an independent contractor relationship.

The final factor in determining an independent contractor relationship is the right to fire. In *Wilkinson,* the Supreme Court conceded that this is the most difficult factor to evaluate, in part, due to "[r]ecognition that a right of termination, in some form, exists in an independent contractor arrangement. The critical inquiry is the term 'fire,' for it embraces the employment relationship." *Wilkinson*, 382 S.C. at 304, 676 S.E.2d at 704. Likewise here, the termination of the parties' relationship was controlled by the agreement and "[t]he termination provisions, when viewed in the context of the agreement as a whole, leads to a finding of an independent contractor arrangement." *Id.* The Lease Agreement in this case afforded both parties the right to terminate the Lease Agreement immediately by giving five days' written notice to the other party, which Respondents elected to execute in June 2022 via a document labeled "Lease Termination." The other provisions of the Lease Agreement sets forth methods of terminating the agreement rather than "firing." Illustrated by the Lease Agreement, the right to fire factor also points in the direction of an independent contractor relationship between the parties.

II. The remaining arguments of the Appellant are not preserved for appellate review and are without merit.

Appellant raises several concerns regarding the "untruth" presented by the attorneys and the Commissioner's alleged biased opinion of Appellant, as well as violations of the constitution and the Rules of Professional Conduct. These issues, among various others raised in Appellant's brief, were not raised in Appellant's Form 30 to the Appellate Panel. In addition, they were not raised or ruled upon at any level of the proceedings below. Accordingly, they are not preserved for review by the Court of Appeals. *See Hilton v. Flakeboard Am. Ltd.*, 418 S.C. 245, 249, 791 S.E.2d 719, 721 (2016) ("Only issues raised to the [Appellate Panel] within the application for review of the single commissioner's order are preserved for review."); *Rummage v. BGF Industries*, 434 S.C. 441, 865 S.E.2d 380 (Ct. App. 2021) ("Indeed, an oft-cited rule of appellate preservation instructs an issue must be raised to and rule upon to be preserved for appellate review. However, other requirements for preservation cannot be disregarded. To successfully preserve an issue for appellate review, the issue must be: '(1) raised and ruled upon by the trial court; (2) raised by the appellant; (3) raised in a timely manner; and (4) raised to the trial court with sufficient specificity.'" (quoting *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007)).

CONCLUSION

Respondents respectfully request that the South Carolina Court of Appeals affirm the Full Commission's Appellate Panel Decision and Order from May 2, 2025, finding that the Appellant was an independent contractor as an owner-operator with a bona fide lease agreement and therefore, not entitled to benefits under the Act.

Respectfully submitted,

/s/ Thomas B. Pritchard
Thomas B. Pritchard
Vernis & Bowling of South Carolina, LLC
494-A Savannah Highway
Charleston, SC 29407
tpritchard@scarolina-law.com
Attorney for Employer, Carrier, Respondents
Evans Delivery Co., Inc.
Triumphe Casualty Company
c/o Intact Insurance Specialty Solutions

/s/ D. Tyler Hembree
D. Tyler Hembree
J. Randall Hedlund
McAngus Goudelock & Courie, LLC
PO Box 2980
Greenville, SC 29602
tyler.hembree@mgclaw.com
rhedlund@mgclaw.com
Attorneys for Employer, Carrier, Respondents
Peoplease, LLC
Triumphe Casualty Company
c/o National Interstate Insurance Company

November 19, 2025
Charleston, South Carolina